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1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2 **STATE OF NEW MEXICO,**

Court of Appeals of New Mexico
Filed 3/14/2024 11:07 AM

3 Plaintiff-Appellee,



Cynthia A. Hernandez-Madrid
Acting Chief Clerk

4 v.

No. A-1-CA-41118

5 **JOHN ROBERT FISHER,**

6 Defendant-Appellant.

7 **APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY**

8 **Douglas R. Driggers, District Court Judge**

9 Raúl Torrez, Attorney General

10 Santa Fe, NM

11 for Appellee

12 Bennett J. Baur, Chief Public Defender

13 Santa Fe, NM

14 Steven J. Forsberg, Assistant Appellate Defender

15 Albuquerque, NM

16 for Appellant

17 **MEMORANDUM OPINION**

18 **BOGARDUS, Judge.**

19 {1} Defendant appeals from his convictions for aggravated battery against a
20 household member and battery against a household member. In this Court's notice
21 of proposed disposition, we proposed to summarily affirm. Defendant filed a
22 memorandum in opposition, which we have duly considered. Remaining
23 unpersuaded, we affirm.

1 {2} In his memorandum in opposition, Defendant raises the same challenges to
2 the sufficiency of the evidence that we addressed in our notice of proposed
3 disposition. [MIO 2-3] In particular, Defendant continues to assert that he presented
4 evidence that he acted in self-defense. [MIO 2] As we pointed out in our proposed
5 disposition, however, evidence supporting acquittal does not provide a basis for
6 reversal because the fact-finder is free to reject a defendant’s version of the facts.
7 [CN 4-5] Moreover, the jury could have found that Defendant’s actions were
8 excessive and unreasonable under the circumstances. [CN 5] *See* UJI 14-5171
9 NMRA (providing that self-defense requires a finding that a “reasonable person in
10 the same circumstances as the defendant would have acted as the defendant did”).
11 In reasserting the same arguments already addressed, Defendant has failed to assert
12 any facts, law, or argument that persuade this Court that our notice of proposed
13 disposition was erroneous. *See Hennessy v. Duryea*, 1998-NMCA-036, ¶ 24, 124
14 N.M. 754, 955 P.2d 683 (“Our courts have repeatedly held that, in summary calendar
15 cases, the burden is on the party opposing the proposed disposition to clearly point
16 out errors in fact or law.”); *State v. Mondragon*, 1988-NMCA-027, ¶ 10, 107 N.M.
17 421, 759 P.2d 1003 (stating that a party responding to a summary calendar notice
18 must come forward and specifically point out errors of law and fact, and the
19 repetition of earlier arguments does not fulfill this requirement), *superseded by*
20 *statute on other grounds as stated in State v. Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d

1 374. We therefore conclude that Defendant has failed to carry his burden to
2 demonstrate reversible error. *See State v. Aragon*, 1999-NMCA-060, ¶ 10, 127 N.M.
3 393, 981 P.2d 1211 (stating that we presume correctness in the district court’s rulings
4 and the burden is on the appellant to demonstrate district court error).


5 {3} Accordingly, for the reasons stated in our notice of proposed disposition and
6 herein, we affirm.

7 {4} **IT IS SO ORDERED.**

8
9 
10 **KRISTINA BOGARDUS, Judge**

11 **WE CONCUR:**

12 
13 **SHAMARA H. HENDERSON, Judge**

14 
15 **KATHERINE A. WRAY, Judge**