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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 7/30/2024 8:37 AM

3 Plaintiff-Appellee,



Ramon J. Maestas
Chief Clerk

4 v.

No. A-1-CA-41804

5 **FELIX FITZGERALD RAINEY,**

6 Defendant-Appellant.

7 **APPEAL FROM THE DISTRICT COURT OF LEA COUNTY**

8 **Efren A. Cortez, District Court Judge**

9 Raúl Torrez, Attorney General

10 Santa Fe, NM

11 for Appellee

12 Bennett J. Baur, Chief Public Defender

13 Brian Parrish, Assistant Appellant Defender

14 Santa Fe, NM

15 for Appellant

16 **MEMORANDUM OPINION**

17 **IVES, Judge.**

18 {1} Defendant appeals the sufficiency of the evidence to support his convictions

19 for possession of fentanyl, cocaine, and methamphetamine. Defendant specifically

20 asserts that that the district court erred in denying Defendant a directed verdict at the

21 close of evidence. In this Court's notice of proposed disposition, we proposed to

1 summarily affirm. Defendant filed a memorandum in opposition, which we have
2 duly considered. Remaining unpersuaded, we affirm.

3 {2} In his memorandum in opposition, Defendant reasserts his contention that the
4 evidence was not sufficient to support his conviction because he was not in exclusive
5 control of the backpack where the drugs were found. Defendant argues that “there
6 was no evidence presented to the jury that made it more likely that he knew the
7 substances were in his backpack (as opposed to the possibility that [his passenger]
8 placed them there without his knowledge).” [MIO 7] We disagree.

9 {3} As we explained in our notice of proposed disposition, the evidence indicating
10 Defendant’s knowledge included,

11 the fact that Defendant was the driver of a vehicle containing multiple
12 items of drug paraphernalia in plain view, including a scale that
13 Defendant admitted was his, the amount of fentanyl that was found, and
14 that the fentanyl was found inside a container bearing Defendant’s
15 name that was located inside a backpack belonging to Defendant and
16 kept inside Defendant’s vehicle.

17 [CN 4-5] *See State v. Durant*, 2000-NMCA-066, ¶ 15, 129 N.M. 345, 7 P.3d 495
18 (explaining that knowledge, like intent, can rarely be proved directly and is therefore
19 often proved by circumstantial evidence). We recognize Defendant’s argument that
20 his passenger may have planted the drugs in his backpack, but as we explained in
21 our notice of proposed disposition, the jury was free to reject Defendant’s claim that
22 the drugs were planted in favor of the evidence presented by the State. [CN 4] *See*
23 *State v. Rojo*, 1999-NMSC-001, ¶ 19, 126 N.M. 438, 971 P.2d 829 (“Contrary

1 evidence supporting acquittal does not provide a basis for reversal because the jury
2 is free to reject [the d]efendant’s version of the facts.”). We do not reweigh this
3 evidence on appeal, and we may not substitute our judgment for that of the fact-
4 finder, as long as there is sufficient evidence to support the verdict. *State v. Griffin*,
5 1993-NMSC-071, ¶ 17, 116 N.M. 689, 866 P.2d 1156.


6 {4} Defendant’s memorandum in opposition has not otherwise asserted any fact,
7 law, or argument that persuades us that our notice of proposed disposition was
8 erroneous. *See State v. Mondragon*, 1988-NMCA-027, ¶ 10, 107 N.M. 421, 759 P.2d
9 1003 (stating that a party responding to a summary calendar notice must come
10 forward and specifically point out errors of law and fact, and the repetition of earlier
11 arguments does not fulfill this requirement), *superseded by statute on other grounds*
12 *as stated in State v. Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d 374; *see also Hennessy*
13 *v. Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d 683 (“Our courts have
14 repeatedly held that, in summary calendar cases, the burden is on the party opposing
15 the proposed disposition to clearly point out errors in fact or law.”). Accordingly,
16 for the reasons stated in our notice of proposed disposition and herein, we affirm.

17 {5} **IT IS SO ORDERED.**

18
19 

ZACHARY A. IVES, Judge

1 **WE CONCUR:**

2 

3 **J. MILES HANISEE, Judge**

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5 **SHAMMARA H. HENDERSON, Judge**