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

2 **STATE OF NEW MEXICO,**

3 Plaintiff-Appellee,

4 v.

5 **PABLO AVALOS,**

6 Defendant-Appellant.

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

8 **Joseph Montano, District Court Judge**

9 Raúl Torrez, Attorney General

10 Santa Fe, NM

11 for Appellee

12 Bennett J. Baur, Chief Public Defender

13 MJ Edge, Assistant Appellate Defender

14 Santa Fe, NM

15 for Appellant

16 **MEMORANDUM OPINION**

17 **HANISEE, Judge.**

18 {1} This matter was submitted to the Court on the brief in chief pursuant to the  
19 Administrative Order for Appeals in Criminal Cases from the Second, Eleventh, and  
20 Twelfth Judicial District Courts in *In re Pilot Project for Criminal Appeals*, No.  
21 2022-002, effective November 1, 2022. Having considered the brief in chief,  
22 concluding the briefing submitted to the Court provides no possibility for reversal,

Court of Appeals of New Mexico

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Ramon J. Maestas  
Chief Clerk

**No. A-1-CA-41899**

1 and determining that this case is appropriate for resolution on Track 1 as defined in  
2 that order, we affirm for the following reasons.

3 {2} Defendant appeals from the district court’s judgment and sentence, convicting  
4 him of aggravated battery causing great bodily harm to a household member. [RP  
5 138-43, 146-47] Defendant challenges the sufficiency of the evidence to prove that  
6 he did not act in self-defense. [BIC 11-13]

7 {3} When assessing the sufficiency of the evidence to support a conviction, “we  
8 view the evidence in the light most favorable to the guilty verdict, indulging all  
9 reasonable inferences and resolving all conflicts in the evidence in favor of the  
10 verdict.” *State v. Samora*, 2016-NMSC-031, ¶ 34, 387 P.3d 230 (internal quotation  
11 marks and citation omitted). We disregard all evidence and inferences that support  
12 a different result. *State v. Rojo*, 1999-NMSC-001, ¶ 19, 126 N.M. 438, 971 P.2d 829.  
13 “We then determine whether substantial evidence of either a direct or circumstantial  
14 nature exists to support a verdict of guilt beyond a reasonable doubt with respect to  
15 every element essential to a conviction.” *State v. Garcia*, 2016-NMSC-034, ¶ 15,  
16 384 P.3d 1076 (internal quotation marks and citation omitted). “Jury instructions  
17 become the law of the case against which the sufficiency of the evidence is to be  
18 measured.” *State v. Smith*, 1986-NMCA-089, ¶ 7, 104 N.M. 729, 726 P.2d 883.

19 {4} The jury was instructed to find that Defendant acted in self-defense if the State  
20 established beyond a reasonable doubt: (1) “[t]here was an appearance of immediate

1 danger of death or great bodily harm to [D]efendant as a result of [Victim] attacking  
2 him”; (2) “[D]efendant was in fact put in fear of immediate death or great bodily  
3 harm and struck and pushed [Victim] because of that fear”; and (3) “[t]he apparent  
4 danger would have caused a reasonable person in the same circumstances to act as  
5 the defendant did.” [RP 130]

6 {5} Defendant contends the State failed to prove Defendant did not act in self-  
7 defense and that Victim’s injuries to her head were caused by Defendant, as opposed  
8 to being caused by cocaine use and falling. [BIC 12-13] Defendant claimed that just  
9 before the incident, Victim was drinking a lot of whiskey, snorting cocaine, and  
10 smoking marijuana. [BIC 2-3] Defendant argued that he acted in self-defense after  
11 Victim hit him in the head with a hard foam massage roller, which caused him to  
12 pass out, and that Victim later choked him, threw a small heater and a mirror at him,  
13 and hit him again with the foam roller and a bottle of whiskey. [BIC 3-5] Defendant  
14 claimed he only pushed Victim away and blocked her blows by kicking and  
15 punching at her while he was lying on his back. [BIC 4-5] Defendant asserted that  
16 Victim hurt herself multiple times when she fell on the floor and on the furniture.  
17 [Id.]

18 {6} The State presented testimony showing that when officers found Victim, she  
19 was unconscious and nonresponsive, lying on a blanket on the floor with both of her  
20 eyes swollen shut, a severely swollen left cheek, and a left arm that was starting to

1 bruise. [BIC 6-7] Paramedics who arrived on the scene noticed a disruption in  
2 Victim's brain activity and gave her a sedative. [BIC 7] The State also presented  
3 testimony from several medical experts describing Victim's injuries and treatment.  
4 [BIC 9-10] The testimony showed that Victim had fractured ribs, which, in light of  
5 the location and pattern of the fractures, must have resulted from a direct blow.  
6 [BIC 9] Victim also suffered severe injuries to her brain that could have only resulted  
7 from massive blunt force trauma, like falling from a height or a high-speed car crash,  
8 not from falling from a standing height. [BIC 10] Victim's brain was so severely  
9 injured that it swelled and shifted within her cranium, and a piece of her cranium  
10 had to be removed and replaced with a prosthetic to accommodate the swelling.  
11 [BIC 9] Victim tested negative for alcohol and positive for cocaine and marijuana.  
12 [BIC 8] Victim regained only episodic consciousness after a few weeks, but was  
13 unable to interact with her environment. [BIC 9] Victim will never live  
14 independently and will likely require years of therapy after she becomes more fully  
15 conscious. [Id.] Defendant's injuries included a small protruding bump on his head  
16 and scratches and bruises on his knuckles. [BIC 8] Defendant was cleared to leave  
17 the hospital the same day without the need for medical treatment and was advised to  
18 take Tylenol. [BIC 8; CD 1-2-24 3:32:11-28]

19 {7} We conclude the State presented evidence, which, if believed by a jury, was  
20 adequate to prove that Defendant did not act self-defense. *See State v. Largo*, 2012-

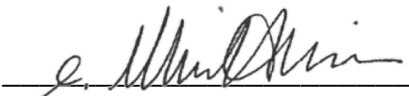
1 NMSC-015, ¶ 30, 278 P.3d 532 (“Substantial evidence is relevant evidence that a  
2 reasonable mind might accept as adequate to support a conclusion.” (internal  
3 quotation marks and citation omitted)). The State’s evidence could persuade a  
4 rational fact-finder that Defendant directly caused Victim’s rib fractures and severe  
5 head injuries by blunt force trauma. A reasonable fact-finder could also determine  
6 that it defies logic to conclude that Victim repeatedly attacked Defendant and  
7 repeatedly put him in fear of immediate death or great bodily harm, in light of the  
8 severity of the injuries she had sustained over the course of the incident. The State’s  
9 evidence shows that neither Defendant’s nor Victim’s injuries were consistent with  
10 Defendant’s claims about the incident. The lack of alcohol in Victim’s toxicology  
11 screens also undermined Defendant’s assertions. Defendant’s version of events also  
12 changed over time. Where conflicting evidence is presented, we defer to the fact-  
13 finder to resolve such conflicts and determine where the weight and credibility lie.  
14 *See State v. Salas*, 1999-NMCA-099, ¶ 13, 127 N.M. 686, 986 P.2d 482; *see also*  
15 *Rojo*, 1999-NMSC-001, ¶ 19 (“Contrary evidence supporting acquittal does not  
16 provide a basis for reversal because the jury is free to reject Defendant’s version of  
17 the facts.”).

18 {8} Even assuming Victim was the first aggressor, in light of the State’s evidence  
19 showing the numerous and extreme severity of Victim’s injuries and the  
20 superficiality of Defendant’s injuries, a rational jury could conclude that, at a

1 minimum, Defendant’s reaction was not objectively reasonable. *See State v.*  
2 *Gallegos*, 2011-NMSC-027, ¶ 16, 149 N.M. 704, 254 P.3d 655 (“[C]ircumstantial  
3 evidence alone can amount to substantial evidence.” (internal quotation marks and  
4 citation omitted)); *cf. State v. Swick*, 2010-NMCA-098, ¶ 18, 148 N.M. 895, 242  
5 P.3d 462 (considering “large number and varying types of severe injuries inflicted  
6 on [the victim], in contrast to the relative superficiality of [the d]efendant’s injury,  
7 we conclude that even if [the victim] stabbed [the d]efendant’s hand,  
8 [the d]efendant’s response cannot be regarded as objectively reasonable”), *aff’d in*  
9 *part, rev’d in part on other grounds*, 2012-NMCA-018, ¶ 70, 279 P.3d 747  
10 (affirming this Court’s rejection of the defendant’s self-defense claim); *State v.*  
11 *Sutphin*, 1988-NMSC-031, ¶ 23, 107 N.M. 126, 753 P.2d 1314 (“A reviewing court  
12 may neither reweigh the evidence nor substitute its judgment for that of the jury.”).  
13 Thus, we propose to hold that sufficient evidence supports the jury’s determination  
14 that Defendant did not act in self-defense.

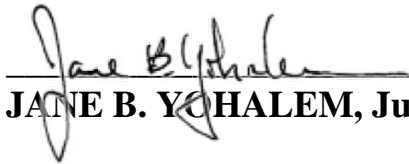
15 {9} For the reasons discussed above, we affirm the district court’s judgment and  
16 sentence.

17 {10} **IT IS SO ORDERED.**

18   
19 \_\_\_\_\_  
**J. MILES HANISEE, Judge**

1 **WE CONCUR:**

2   
3 **KRISTINA BOGARDUS, Judge**

4   
5 **JANE B. YCHALEM, Judge**