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

7 **STATE OF NEW MEXICO,**

8 Plaintiff-Appellee,

9 v.

NO. 29,722

10 **GREG LOMAS,**

11 Defendant-Appellant.

12 **APPEAL FROM THE DISTRICT COURT OF CHAVES COUNTY**

13 **Steven L. Bell, District Judge**

14 Gary K. King, Attorney General

15 Santa Fe, NM

16 for Appellee

17 Hugh W. Dangler, Chief Public Defender

18 Karl Erich Martell, Assistant Appellate Defender

19 Santa Fe, NM

20 for Appellant

21 **MEMORANDUM OPINION**

22 **WECHSLER, Judge.**

23 Defendant appeals his convictions for one count of burglary and one count of

1 larceny over \$250. [MIO 1; DS 2] We proposed to affirm in a notice of proposed
2 summary disposition, and pursuant to an extension, Defendant has filed a timely
3 memorandum in opposition. Remaining unpersuaded by Defendant’s memorandum,
4 we affirm his convictions.

5 **Sufficiency of the Evidence**

6 Defendant contends that there is insufficient evidence to support his
7 convictions. [MIO 2-3] In reviewing the sufficiency of the evidence in a criminal
8 case, we must determine whether substantial evidence, either direct or circumstantial,
9 exists to support a verdict of guilty beyond a reasonable doubt for every essential
10 element of the crime at issue. *See State v. Rojo*, 1999-NMSC-001, ¶ 19, 126 N.M.
11 438, 971 P.2d 829 (filed 1998). The evidence is reviewed in the light most favorable
12 to the verdict, resolving all conflicts and indulging all permissible inferences to
13 uphold the conviction and disregarding all evidence and inferences to the contrary, to
14 ensure that a rational factfinder could have found each element of the crime
15 established beyond a reasonable doubt. *Id.* Finally, we observe that it is for the
16 factfinder to evaluate the weight of the evidence, to assess the credibility of the
17 various witnesses, and to resolve any conflicts in the evidence; we will not substitute
18 our judgment as to such matters. *See State v. Roybal*, 115 N.M. 27, 30, 846 P.2d 333,
19 336 (Ct. App. 1992).

1 In our notice of proposed summary disposition, we reviewed the evidence and
2 testimony introduced at trial in support of Defendant's convictions. In his
3 memorandum in opposition, Defendant does not challenge our recitation of the
4 evidence. [MIO 1-3] He also fails to challenge the analysis contained in our notice
5 of proposed summary disposition, which resulted in our proposal to affirm. [MIO 2-
6 3] Therefore, for the reasons set forth in our notice of proposed summary disposition,
7 we hold that there was sufficient evidence to support Defendant's convictions.

8 **Motion for a New Trial**

9 Defendant claims that the district court erred in denying his motion for a new
10 trial, his motion to reconsider the motion for a new trial, and his request for an
11 evidentiary hearing based on allegations that one juror made a mistake in entering the
12 verdict. [MIO 4; DS 10] He states that a juror wrote a letter to the judge prior to
13 sentencing stating that she and another juror believed Defendant was not guilty of
14 burglary but acquiesced in the verdict in order to go home. [MIO 2; DS 8-9]

15 We review the district court's decision to deny Defendant's motion for a new
16 trial for abuse of discretion. *See State v. Garcia*, 2005-NMSC-038, ¶ 9, 138 N.M.
17 659, 125 P.3d 638. As discussed more fully in our notice of proposed summary
18 disposition, Rule 11-606(B) NMRA specifically prohibits such an attack on the jury
19 verdict. *See* Rule 11-606(B) (providing that a verdict may only be called into question

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2 **TIMOTHY L. GARCIA, Judge**