

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

Court of Appeals of New Mexico

Filed 12/16/2025 12:11 PM

**STATE OF NEW MEXICO,**

Plaintiff-Appellee,



Mark Reynolds

v.

**No. A-1-CA-42458**

**LACEY HARRELL,**

Defendant-Appellant.

**APPEAL FROM THE DISTRICT COURT OF OTERO COUNTY**

**Stephen Ochoa, District Court Judge**

Raúl Torrez, Attorney General

Santa Fe, NM

Tyler Sciara, Assistant Solicitor General

Albuquerque, NM

for Appellee

Bennett J. Baur, Chief Public Defender

Kathleen T. Baldridge, Assistant Appellate Defender

Santa Fe, NM

for Appellant

**MEMORANDUM OPINION**

**BACA, Judge.**

{1} This matter was submitted to the Court on Defendant's brief in chief pursuant to the Administrative Order for Appeals in Criminal Cases from the Second, Eleventh, and Twelfth Judicial District Courts in *In re Pilot Project for Criminal Appeals*, No. 2022-002, effective November 1, 2022. Following consideration of the

1 brief in chief, the Court assigned this matter to Track 2 for additional briefing. Now  
2 having considered the brief in chief and answer brief, we affirm for the following  
3 reasons.

4 {2} Defendant appeals from her jury trial conviction for a violation of NMSA  
5 1978, Section 30-31-23 (2021) (possession of a controlled substance). [RP 151-55]  
6 Defendant’s sole issue on appeal is whether sufficient evidence existed to support  
7 her conviction for possession of fentanyl. Having considered this argument, we  
8 affirm Defendant’s conviction.

#### 9 **Background**

10 {3} Defendant was in the passenger seat of a parked vehicle when an officer  
11 approached for a welfare check and found both the person in the driver’s seat and  
12 Defendant “either passed out or asleep, but breathing.” [BIC 1] After the arrival of  
13 another officer, the first officer “removed [Defendant] from the [vehicle], detained  
14 and handcuffed her, and asked her to sit on the curb.” [BIC 2] When the officer  
15 removed Defendant, she noticed on the passenger’s floorboard “a strip of tin foil  
16 with a blue pill on it and a residue trail on the foil.” [BIC 2] The officer Mirandized  
17 Defendant. [BIC 2] Defendant said that the fentanyl on the foil “did not belong to  
18 her but she took two hits from it.” [BIC 2] Following the issuance of a search warrant  
19 for the vehicle, no other drugs were found. [BIC 3]

## **Sufficiency of the Evidence to Support Possession**

{4} Defendant argues that insufficient evidence supported the conviction for possession of fentanyl. [BIC 4] “The test for sufficiency of the evidence is whether substantial evidence of either a direct or circumstantial nature exists to support a verdict of guilty beyond a reasonable doubt with respect to every element essential to a conviction.” *State v. Montoya*, 2015-NMSC-010, ¶ 52, 345 P.3d 1056 (internal quotation marks and citation omitted). This Court “views the evidence in the light most favorable to the guilty verdict, indulging all reasonable inferences and resolving all conflicts in the evidence in favor of the verdict.” *Id.* (alteration, internal quotation marks, and citation omitted). The jury is not required to accept a defendant’s version of the facts. *Id.* For that reason, we review “the evidence and supervision of the jury’s fact-finding function to ensure that, indeed, a rational jury could have found beyond a reasonable doubt the essential facts required for a conviction.” *State v. Rojo*, 1999-NMSC-001, ¶ 19, 126 N.M. 438, 971 P.2d 829 (emphasis, internal quotation marks, and citation omitted). In order to consider whether the essential facts support a conviction, we first turn to the jury instructions, which “become the law of the case against which the sufficiency of the evidence is to be measured.” *See State v. Smith*, 1986-NMCA-089, ¶ 7, 104 N.M. 729, 726 P.2d 883.

1 {5} In the present case the jury, in relevant part, was instructed:

2 For you to find [D]efendant guilty of possession of fentanyl . . .  
3 the [S]tate must prove to your satisfaction beyond a reasonable doubt  
4 each of the following elements of the crime:

5 1. [D]efendant had fentanyl in her possession;

6 2. [D]efendant knew it was fentanyl, or believed it to be  
7 fentanyl, or believed it to be some drug or other substance the  
8 possession of which is regulated or prohibited by law;

9 3. This happened in New Mexico, on or about the 29th day  
10 of June, 2023.

11 [RP 130] UJI 14-3102 NMRA; *see State v. Morales*, 2002-NMCA-052, ¶ 29, 132  
12 N.M. 146, 45 P.3d 406 (“When a conviction is based on constructive rather than  
13 actual possession, this Court must be able to articulate a reasonable analysis that the  
14 jury might have used to determine knowledge and control.”), *overruled on other*  
15 *grounds by State v. Tollardo*, 2012-NMSC-008, ¶ 37 n.6, 275 P.3d 110. The jury  
16 additionally was instructed on constructive possession:

17 A person is in possession of fentanyl methamphetamine when  
18 she knows it is on her person or in her presence and she exercises  
19 control over it.

20 Even if the substance is not in her physical presence, she is in  
21 possession if she knows where it is, and she exercises control over it.

22 Two or more people can have possession of a substance at the  
23 same time.

24 A person’s presence in the vicinity of the substance or his  
25 knowledge of the existence or the location of the substance, is not, by  
26 itself, possession.

1 [RP 131] UJI 14-3130 NMRA; *see State v. Phillips*, 2000-NMCA-028, ¶ 8, 128  
2 N.M. 777, 999 P.2d 421 (providing that “the mere presence of the contraband is not  
3 enough to support an inference of constructive possession”). Defendant contends  
4 that the only evidence connecting her to the fentanyl was her admission that she took  
5 two hits of fentanyl. [BIC 5] Defendant admits that “[w]hile taking two hits of  
6 fentanyl would arguably satisfy the knowledge requirement for constructive  
7 possession, it does not necessarily satisfy the requirement of having control over the  
8 fentanyl, in light of the fact that the fentanyl and foil squares were found in someone  
9 else’s vehicle.” [BIC 6] We conclude to the contrary that a “fair inference from the  
10 evidence, [was] sufficient to establish constructive possession.” *See Morales*, 2002-  
11 NMCA-052, ¶ 28.

12 {6} The jury could reasonably have determined that Defendant knew about and  
13 controlled the fentanyl found on the passenger-side floorboard in the vehicle. *See id.*  
14 ¶ 29. The jury heard testimony that Defendant stated that the fentanyl on the foil did  
15 not belong to her but she took two hits from it. [BIC 2] As Defendant notes, this was  
16 likely sufficient in itself to show that Defendant had knowledge of the fentanyl. [BIC  
17 6; AB 5, 6] As to the control of the fentanyl, while we agree that proximity alone is  
18 insufficient to establish possession, in this case the fentanyl’s location—on the car’s  
19 passenger-side floorboard, where Defendant was sitting—bolsters a rational  
20 inference that Defendant had exercised control over the drug. When combined with

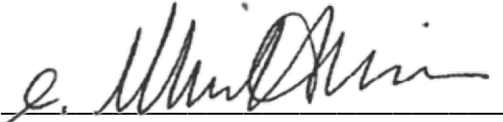
1 Defendant's admission to using the fentanyl, we conclude that the State presented  
2 sufficient evidence for a jury to conclude that evidence existed to support an  
3 inference that Defendant had knowledge of and control over the fentanyl. *See State*  
4 *v. Garcia*, 2022-NMCA-008, ¶ 9, 504 P.3d 567 ("We do not reweigh the evidence  
5 or substitute our judgment for that of the fact-finder as long as there is sufficient  
6 evidence to support the verdict." (alteration, internal quotation marks, and citation  
7 omitted)).

8 {7} "We will affirm a conviction if supported by a fair inference from the evidence  
9 regardless of whether a contrary inference might support a contrary result." *State v.*  
10 *Barrera*, 2002-NMCA-098, ¶ 10, 132 N.M. 707, 54 P.3d 548. Viewing the evidence  
11 in the light most favorable to the verdict, we conclude that the State presented  
12 sufficient evidence at trial to support the jury's reasonable inference that Defendant  
13 had knowledge and control of the fentanyl and the essential facts required for a  
14 rational jury to convict Defendant of constructive possession of fentanyl. *See*  
15 *Morales*, 2002-NMCA-052, ¶ 29.

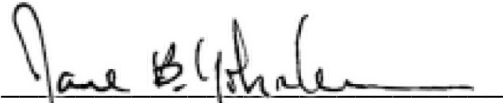
16 {8} **IT IS SO ORDERED.**

17   
18 **GERALD E. BACA, Judge**

1 **WE CONCUR:**

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3 **J. MILES HANISEE, Judge**

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5 **JANE B. YOHALEM, Judge**