

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

STATE OF NEW MEXICO,

Court of Appeals of New Mexico

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Plaintiff-Appellee,



Mark Reynolds

v.

No. A-1-CA-42609

ERINEO ORTIZ,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY

Stan Whitaker, District Court Judge

Raúl Torrez, Attorney General

Santa Fe, NM

Sarah M. Karni, Assistant Solicitor General

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for Appellee

Bennett J. Baur, Chief Public Defender

Allison H. Jaramillo, Assistant Appellate Defender

Santa Fe, NM

for Appellant

MEMORANDUM OPINION

IVES, 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, the answer brief, and the reply brief, we affirm
3 for the following reasons.

4 {2} Defendant appeals his conviction for resisting, evading, or obstructing a peace
5 officer, contrary to NMSA 1978, Section 30-22-1 (1963). The sole issue on appeal
6 is whether the evidence was sufficient to support his conviction. “The test for
7 sufficiency of the evidence is whether substantial evidence of either a direct or
8 circumstantial nature exists to support a verdict of guilty beyond a reasonable doubt
9 with respect to every element essential to a conviction.” *State v. Montoya*, 2015-
10 NMSC-010, ¶ 52, 345 P.3d 1056 (internal quotation marks and citation omitted).
11 The reviewing court “view[s] the evidence in the light most favorable to the guilty
12 verdict, indulging all reasonable inferences and resolving all conflicts in the
13 evidence in favor of the verdict.” *State v. Cunningham*, 2000-NMSC-009, ¶ 26, 128
14 N.M. 711, 998 P.2d 176. We disregard all evidence and inferences that support a
15 different result. *State v. Rojo*, 1999-NMSC-001, ¶ 19, 126 N.M. 438, 971 P.2d 829.

16 {3} In order to support a conviction for resisting, evading or obstructing an officer
17 in this case, the State was required to prove that on the date in question: “(1) Rachel
18 Nakamura was a peace officer in the lawful discharge of duty; (2) [D]efendant knew
19 Rachel Nakamura was a peace officer”; and (3) Defendant “with knowledge that
20 Rachel Nakamura was attempting to apprehend or arrest [him], fled, attempted to

1 evade or evaded Rachel Nakamura.” [RP 91] *See* UJI 14-2215 NMRA (describing
2 the essential elements of the crime of resisting, evading or obstructing an officer).

3 {4} At trial, the State presented evidence that on October 31, 2023, Sargent Rachel
4 Nakamura with the auto theft unit of the Albuquerque Police Department (APD) was
5 on patrol with other officers looking for stolen vehicles. [BIC 1; AB 1] The officers
6 were driving unmarked police vehicles. Sargent Nakamura and the other officers
7 were not wearing standard police uniforms, but had department issued tactical vests
8 with the word “police” written across the front and back. The vests also displayed
9 the officers’ badges. [BIC 1; AB 1; 10/7/2024 FTR 3:49:44-53]

10 {5} Sargent Nakamura was riding passenger in a police truck driven by Detective
11 Wright-Brown that was equipped with a vehicle apprehension device known as a
12 “grapppler.” [BIC 2; AB 2] At trial, Sargent Nakamura described the grapppler as a net
13 attached to the front bumper of the police truck that can be extended to the rear tire
14 of the target vehicle and tethered to the grapppler truck, forcing it to stop. [10/7/2024
15 FTR 2:32:54-2:34:11]

16 {6} Sargent Nakamura saw a Nissan Sentra with a window that had been broken
17 out and replaced with plastic. She ran its license plate and learned that the car had
18 been reported stolen a few days earlier. [BIC 1-2; AB 1] Sargent Nakamura alerted
19 patrol officers in two other vehicles, and the officers in the grapppler truck and the
20 backup officers covertly tailed Defendant until he was alone on the road. [BIC 2;

1 AB 1-2] Officers then deployed the grapppler, which successfully ensnared the
2 Nissan’s rear wheel, and brought the car to a stop. [BIC 3; AB 1]

3 {7} As soon as the Nissan was brought to a stop, the officers activated the lights
4 and sirens in all three vehicles. [10/7/2024 FTR 2:32:54-2:34:11; 3:48:20-33]
5 Sargent Nakamura estimated that there were ten officers there in total. [BIC 3;
6 10/7/2024 FTR 2:40:02-10] Sargent Nakamura and the other officers, while wearing
7 their vests, then shouted “police,” and ordered Defendant to put his hands up.
8 Sargent Nakamura also yelled “you’re under arrest.” [10/7/2024 FTR 2:40:28-47]
9 At this point, Defendant revved the engine of his car and attempted to drive away.
10 Detective Wright-Brown testified that the tether connecting the police truck to the
11 Nissan was pulled taut, and he told Sargent Nakamura to get back into the police
12 truck for her safety, while he applied the brakes on the grapppler truck to prevent it
13 from being dragged. [AB 2; 10/7/2024 FTR 2:47:33-44] Defendant then opened the
14 driver’s side door of the Nissan and began to run, but was quickly subdued by a
15 police dog and taken into custody. [10/7/2024 FTR 3:50:00-51:07; 4:07:00-54]

16 {8} Defendant’s challenge to the sufficiency of the evidence focuses on the second
17 and third elements of the offense, which concern Defendant’s subjective knowledge
18 that Sargent Nakamura was a peace officer and was attempting to arrest or apprehend
19 him. *See State v. Gutierrez*, 2007-NMSC-033, ¶ 36, 142 N.M. 1, 162 P.3d 156. [BIC
20 9] The question of a defendant’s “knowledge or intent generally presents a question

1 of fact for a jury to decide.” *State v. Wasson*, 1998-NMCA-087, ¶ 12, 125 N.M. 656,
2 964 P.2d 820. Because knowledge, like intent, “can rarely be proved directly[, it]
3 often is proved by circumstantial evidence.” *State v. Durant*, 2000-NMCA-066,
4 ¶ 15, 129 N.M. 345, 7 P.3d 495. “A jury may infer knowledge and control from the
5 defendant’s actions, statements, or conduct, and from circumstantial evidence
6 connecting the defendant to the object.” *State v. Martinez*, 2020-NMCA-043, ¶ 54,
7 472 P.3d 1241.

8 {9} The trial evidence supported a finding that Defendant possessed the requisite
9 knowledge. There was evidence before the jury that after stopping Defendant’s
10 vehicle, three police vehicles activated their sirens and lights, Sargent Nakamura and
11 multiple other officers identified themselves as police and told Defendant to put his
12 hands up, and Sargent Nakamura told Defendant he was under arrest. *See State v.*
13 *Akers*, 2010-NMCA-103, ¶ 34, 149 N.M. 53, 243 P.3d 757 (finding sufficient
14 evidence to prove the defendant’s knowledge that peace officers were trying to arrest
15 him when the officer identified himself verbally five to six times and showed his
16 badge while ordering the defendant to exit the vehicle). Additionally, after his car
17 was stopped, Defendant unsuccessfully tried to drive away before fleeing on foot,
18 which also supports an inference that Defendant knew that the officers were
19 attempting to apprehend him. *See Gutierrez*, 2007-NMSC-033, ¶ 36 (recognizing
20 that the jury could infer from the defendant’s flight from officers that he knew they

1 were attempting to apprehend or arrest him). The jury could reasonably conclude
2 from these circumstances that Defendant knew that Sargent Nakamura was a peace
3 officer and that she was attempting to apprehend or arrest him. *See State v. Gee*,
4 2004-NMCA-042, ¶ 24, 135 N.M. 408, 89 P.3d 80 (noting that “[i]ntent may be
5 inferred from circumstantial evidence”); *State v. Bell*, 1977-NMSC-013, ¶ 15, 90
6 N.M. 134, 560 P.2d 925 (“The jury is entitled to rely upon rational inferences
7 deducible from the evidence.”); *see also Dull v. Tellez*, 1971-NMCA-133, ¶ 13, 83
8 N.M. 126, 489 P.2d 406 (explaining that a reasonable inference is a “rational and
9 logical deduction from facts admitted or established by the evidence, when such
10 facts are viewed in light of common knowledge or common experience”).

11 {10} We understand Defendant to argue specifically that his knowledge could not
12 be reasonably inferred because Sargent Nakamura and the other officers were
13 driving unmarked vehicles, were not wearing standard uniforms, officers had
14 “forcibly and covertly” disabled the car he was driving, and Sargent Nakamura got
15 back into the grappler truck after announcing that she was an officer. [BIC 8-15; RB
16 3-4] *Cf. Gutierrez*, 2007-NMSC-033, ¶ 36 (holding that the State presented sufficient
17 circumstantial evidence of the defendant’s knowledge where the defendant fled from
18 a fully uniformed officer in a marked car who attempted to detain him). Defendant
19 cites to NMSA 1978, Section 66-8-124(A) (2007), which applies to officers making
20 misdemeanor arrests for violations of the Motor Vehicle Code and mandates that

1 they be “wearing a uniform clearly indicating the peace officer’s official status.”
2 Defendant also cites to case law construing a former version of the aggravated
3 fleeing statute and its requirements that officers be in uniform and in an
4 “appropriately marked law enforcement vehicle.” *See State v. Montano*, 2020-
5 NMSC-009, ¶ 65, 468 P.3d 838; *State v. Padilla*, 2008-NMSC-006, ¶ 15, 143 N.M.
6 310, 176 P.3d 299; NMSA 1978, § 30-22-1.1(A) (2003, amended 2022). We find
7 this authority to be inapposite, however, as Defendant was not charged with
8 aggravated fleeing or a violation of the Motor Vehicle Code. *See generally*
9 *Dominguez v. State*, 2015-NMSC-014, ¶ 16, 348 P.3d 183 (“[T]he general rule is
10 that cases are not authority for propositions not considered.” (alteration, internal
11 quotation marks, and citation omitted)).

12 {11} Moreover, our case law recognizes that a person may be convicted of resisting,
13 evading, or obstructing under Section 30-22-1 when the officers are in plain clothes
14 and unmarked vehicles where knowledge can be inferred from the other
15 circumstances, as in this case. *See Akers*, 2010-NMCA-103, ¶ 4 (upholding a
16 conviction under Section 30-22-1 involving officers wearing plain clothes and
17 driving an unmarked vehicle). Therefore, the fact that Sargent Nakamura’s tactical
18 vest was obscured from Defendant’s view at some time after the stop was effectuated
19 does not require reversal, as there was sufficient other evidence, as described above,
20 to support an inference of his knowledge.

1 {12} Finally, Defendant argues that he thought he had been in a car accident, did
2 not run away, and was bit by the police dog very soon after his vehicle was stopped.
3 [BIC 15] However, the jury was not required to accept Defendant's version of
4 events, and several witnesses testified that Defendant ran from the vehicle after
5 trying to drive away. *See generally State v. Sosa*, 2000-NMSC-036, ¶ 8, 129 N.M.
6 767, 14 P.3d 32 (stating that it is the jury's function to assess the credibility of
7 witnesses, and we defer to their decision on such matters); *Rojo*, 1999-NMSC-001,
8 ¶ 19 (stating that the jury need not accept the defendant's version of events). And to
9 the extent Defendant argues that the relatively short time frame in which the events
10 occurred is inconsistent with a finding that he fled police, we view this as an
11 invitation to reweigh the evidence, which we cannot do on appeal. [BIC 15; RB 6-7]
12 *See State v. Griffin*, 1993-NMSC-071, ¶ 17, 116 N.M. 689, 866 P.2d 1156 (noting
13 that this Court does not reweigh the evidence); *see also State v. Caudillo*, 2003-
14 NMCA-042, ¶ 7, 133 N.M. 468, 64 P.3d 495 (holding that, on appeal, the question
15 is whether substantial evidence supports the verdict, not whether substantial
16 evidence would have also supported acquittal).

17 {13} For these reasons, we affirm.

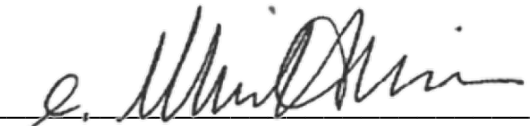
18 {14} **IT IS SO ORDERED.**



ZACHARY A. IVES, Judge

1 **WE CONCUR:**

2 
3 **JACQUELINE R. MEDINA, Chief Judge**

4 
5 **J. MILES HANISEE, Judge**