IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v. **No. A-1-CA-41279**

CARLOS SANCHEZ-TRILLO,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF CURRY COUNTY
Drew D. Tatum, District Court Judge

Raúl Torrez, Attorney General
Santa Fe, NM
Walter Hart, Assistant Solicitor General
Albuquerque, NM

for Appellee

Bennett J. Baur, Chief Public Defender
MJ Edge, Associate Appellate Defender
Santa Fe, NM

for Appellant

MEMORANDUM OPINION

WRAY, Judge.

{1} Defendant Carlos Sanchez-Trillo was convicted of bringing contraband into jail, contrary to NMSA 1978, Section 30-22-14(B) (2013, amended 2024),[1] and

[1]This statute was amended in 2024, and because the amendments do not impact the substantive issues on appeal, we refer to the 2024 version of the statute.

conspiracy to commit distribution of a controlled substance, contrary to NMSA 1978, Sections 30-31-22 (A)(2) (2011, amended 2021) and 30-28-2 (1979). Defendant's convictions arise from strips of Suboxone that law enforcement discovered in two envelopes that were mailed to Defendant by a former inmate acquaintance while Defendant was confined in jail, combined with several recorded phone calls between Defendant and the former inmate acquaintance. We conclude that the evidence did not support the conviction for bringing contraband into a jail and therefore reverse that conviction. Otherwise, we affirm.

DISCUSSION

{2} Because this is a memorandum opinion and the parties are familiar with the relevant facts, we move directly to our analysis. On appeal, Defendant argues that (1) his double jeopardy rights were violated; (2) he was entitled to a jury instruction on attempt to bring contraband into the jail; and (3) insufficient evidence supported the conviction for bringing contraband into the confines of the jail. Before oral argument, we asked the parties to additionally address whether sufficient evidence supported Defendant's conviction for conspiracy and whether the evidence established all of the elements set forth in Section 30-22-14(B). *See State v. Jade G.*, 2007-NMSC-010, ¶ 24, 141 N.M. 284, 154 P.3d 659 (outlining the three exceptions to the "general rule" that "propositions of law not raised in the trial court cannot be considered sua sponte by the appellate court," including when "it is necessary to do

so in order to protect the fundamental rights of [a] party" (internal quotation marks and citations omitted)); *State v. Vallejos*, 2000-NMCA-075, ¶ 29, 129 N.M. 424, 9 P.3d 668 (determining that the sufficiency of the evidence "involves a question of fundamental error or the fundamental rights of the defendant").

{3} We first questioned whether the offense of conspiracy to distribute controlled substances required the State to prove that Defendant had the intent to distribute controlled substances beyond his own purchase and whether the evidence established such an intent. "In order to be convicted of conspiracy, the defendant must have the requisite intent to agree and the intent to commit the offense that is the object of the conspiracy." *State v. Trujillo*, 2002-NMSC-005, ¶ 62, 131 N.M. 709, 42 P.3d 814. In the context of conspiracy to traffic or distribute, based on the authority provided by the parties at oral argument, New Mexico law suggests that the buyer is required to share the seller's intent to distribute controlled substances beyond the purchase of drugs for the buyer's own use. *Cf. State v. Rael*, 1999-NMCA-068, ¶ 13, 127 N.M. 347, 981 P.2d 280 (noting in the context of racketeering that "[a] buyer who seeks to obtain drugs for personal use normally does not share a common purpose with a seller who seeks to distribute drugs for profit"); *State v. Pinson*, 1995-NMCA-045, ¶ 7, 119 N.M. 752, 895 P.2d 274 (reasoning that the crime of trafficking a controlled substance does not include "[p]urchasing or receiving" among the prohibited acts). Federal law refers to this proposition as the

"buyer-seller" rule. *See United States v. Ivy*, 83 F.3d 1266, 1285-86 (10th Cir. 1996) (explaining that "the purpose of the buyer-seller rule is to separate consumers, who do not plan to redistribute drugs for profit, from street-level, mid-level, and other distributors, who do intend to redistribute drugs for profit, thereby furthering the objective of the conspiracy"). We need not, however, adopt the "buyer-seller" rule.

{4} Here, the evidence established the requisite intent regardless of whether we apply the buyer-seller rule. The parties do not dispute on appeal that Defendant had the requisite intent to agree with the seller to purchase the Suboxone. Further review of the first jail call also reveals sufficient evidence from which the jury could have inferred that Defendant's agreement to distribute controlled substances extended beyond his own purchase with the involvement of a third inmate. *See State v. Trujillo*, 2012-NMCA-092, ¶ 5, 287 P.3d 344 ("The relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." (internal quotation marks and citation omitted)). Accordingly, we have satisfied ourselves that a reasonable jury could have found sufficient evidence of the elements of conspiracy to distribute. *See State v. Bahney*, 2012-NMCA-039, ¶ 25, 274 P.3d 134 ("[O]ur review of the trial record must defer to the jury's fundamental role as fact[-]finder yet satisfy our autonomous responsibility to ensure that jury decisions are supportable by evidence in the record, rather than mere guess or

conjecture." (omission, internal quotation marks, and citation omitted)). As we explain, however, we reverse Defendant's conviction for bringing contraband into a jail for lack of sufficient evidence.

{5} It is this Court's duty to ensure that "a rational jury *could* have found beyond a reasonable doubt the essential facts required for a conviction." *State v. Sanders*, 1994-NMSC-043, ¶ 12, 117 N.M. 452, 872 P.2d 870 (internal quotation marks and citation omitted). We generally measure the sufficiency of the evidence against the instructions given to the jury. *State v. Sivils*, 2023-NMCA-080, ¶ 28, 538 P.3d 126. In the present case, the jury was instructed as follows:

> For you to find . . . [D]efendant guilty of [b]ringing contraband into a jail, as charged in Count 2, the State must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:
>
> 1. [D]efendant knowingly and voluntarily *carried, transferred or deposited* [S]uboxone (buprenorphine) into the jail;
>
> 2. This happened in New Mexico on or about the 19th day of December, 2020 through the 22nd day of December 2020.

Construing the evidence "in a light most favorable to the verdict," the evidence did not establish that Defendant "carried, transferred, or deposited" contraband into the jail. *See id.* ¶ 27.

{6} The statutory language indicates that the evidence must show that Defendant acted in one of the listed ways. *See Carry*, *Black's Law Dictionary* (12th ed. 2024) (defining "carry" as "[t]o convey or transport"); *Deposit*, *Black's Law Dictionary*

(12th ed. 2024) (defining "deposit" as "[t]he act of giving money or other property to another who promises to preserve it or to use it and return it in kind"); *Transfer*, *Black's Law Dictionary* (12th ed. 2024) (defining "transfer" as "[a] conveyance of property or title from one person to another"). The evidence demonstrated that another person mailed contraband to the jail for Defendant, but the mail was intercepted by the warden before Defendant received it. No evidence established that Defendant, himself, carried, transferred, or deposited the contraband into the jail—a conclusion that is reinforced by the State's argument during closing that the criminal act was completed because Defendant "caused it to be deposited." The only act that the State proved Defendant committed in this regard was agreeing to receive the contraband at the jail.

{7} The State maintained at oral argument that Defendant's request to receive the contraband in the jail was sufficient to establish that the contraband was carried by an "innocent agent" or that the jury could have convicted Defendant based on a theory of accessory liability. For support, the State cited *State v. Faggard*, 1918-NMSC-133, 25 N.M. 76, 177 P. 748; *State v. Archuleta*, 1970-NMCA-131, 82 N.M. 378, 482 P.2d 242; and *State v. Curry*, 1988-NMCA-031, 107 N.M. 133, 753 P.2d 1321. These theories suggest that a defendant might be convicted of the charged crime even though another person's act completed the crime. *See Faggard*, 1918-NMSC-133, ¶ 4; *Archuleta*, 1970-NMCA-131, ¶¶ 10, 12; *see also State v. Carrasco*,

1997-NMSC-047, ¶ 6, 124 N.M. 64, 946 P.2d 1075 ("In New Mexico, '[a] person may be charged with and convicted of the crime as an accessory if [that person] procures, counsels, aids or abets in its commission and although [that person] did not directly commit the crime and although the principal who directly committed such crime has not been prosecuted or convicted.'" (quoting NMSA 1978, § 30-1-13 (1972))). The State argues that the jury could have reasonably inferred the facts necessary to support one of these theories.

{8} But again, our task is to determine whether the evidence supported the verdict based on the instruction received by the jury. *See Sivils*, 2023-NMCA-080, ¶ 28. The jury was not instructed on an innocent agent theory or accomplice liability. While the State argued in closing that the elements were satisfied because Defendant "caused" the contraband to be deposited in the jail, the jury was instructed that *Defendant* "knowingly and voluntarily carried, transferred, or deposited [S]uboxone (buprenorphine) into the jail." The jury did not receive an instruction on the elements of accessory liability. *See Carrasco*, 1997-NMSC-047, ¶ 9 ("In New Mexico, a jury must find a community of purpose for *each* crime of the principal."); UJI 14-2822 NMRA (setting forth the elements of accessory liability that the State must prove "beyond a reasonable doubt"). Nor was the jury instructed that it could impute the act of carrying, transferring, or depositing the contraband to Defendant under an "innocent agent" theory. *See Maxey v. United States*, 30 App. D.C. 63, 75 (1907)

(acknowledging that an act performed by an innocent agent is the act of the principle if the jury finds that the principle commanded or procured the act). Based on the instruction that was given, the jury had to find that Defendant "carried, transferred, or deposited" the contraband. As we have explained, no evidence supported that conclusion.

{9} We observe, and the parties appear to agree, that the jury instruction for this charge was erroneous. *Compare* § 30-22-14(A) (setting forth the elements of bringing contraband onto the grounds of a prison), *with* § 30-22-14(B) (setting forth the elements of bringing contraband into the confines of a jail). We need not, however, determine whether fundamental error resulted. Had we considered the jury instruction and determined that an error resulted from the instruction that justified a new trial, the next step would have been to consider whether double jeopardy prevented retrial. *See State v. Rosaire*, 1996-NMCA-115, ¶ 20, 123 N.M. 250, 939 P.2d 597. To do that, we would have measured the sufficiency of the evidence against the erroneous instruction—as we have already done in the present case. *See id.* And as we have explained, based on the instruction given to the jury, the evidence was insufficient.

CONCLUSION

{10} We reverse Defendant's conviction for bringing contraband into a jail. We remand for the conviction to be vacated and for resentencing. Because the remaining

issues on appeal relate to the reversed conviction, we do not address those arguments and otherwise affirm.

{11} **IT IS SO ORDERED.**

Katherine A. Wray

KATHERINE A. WRAY, Judge

WE CONCUR:

Megan P Duffy

MEGAN P. DUFFY, Judge

SHAMMARA H. HENDERSON, Judge