

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

Court of Appeals of New Mexico

Filed 7/31/2026 10:10 AM



Mark Reynolds

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

No. A-1-CA-43259

JOVAN SALAZAR,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF LEA COUNTY

Michael H. Stone, District Court Judge

Raúl Torrez, Attorney General

Santa Fe, NM

for Appellee

Bennett J. Baur, Chief Public Defender

Mary Barket, Assistant Appellate Defender

Santa Fe, NM

for Appellant

MEMORANDUM OPINION

MEDINA, Chief Judge.

{1} Defendant appeals her conviction for possession of a controlled substance.

[MIO 7] We entered a calendar notice, proposing to affirm. Defendant filed a

memorandum in opposition, which we have duly considered. Unpersuaded, we

affirm.

1 {2} In her memorandum, Defendant continues to challenge the sufficiency of the
2 evidence supporting her conviction for possession of a controlled substance
3 (fentanyl). [MIO 7-13] “The test for sufficiency of the evidence is whether
4 substantial evidence of either a direct or circumstantial nature exists to support a
5 verdict of guilty beyond a reasonable doubt with respect to every element essential
6 to a conviction.” *State v. Montoya*, 2015-NMSC-010, ¶ 52, 345 P.3d 1056 (internal
7 quotation marks and citation omitted). The reviewing court “view[s] the evidence in
8 the light most favorable to the guilty verdict, indulging all reasonable inferences and
9 resolving all conflicts in the evidence in favor of the verdict.” *State v. Cunningham*,
10 2000-NMSC-009, ¶ 26, 128 N.M. 711, 998 P.2d 176. We disregard all evidence and
11 inferences that support a different result. *State v. Rojo*, 1999-NMSC-001, ¶ 19, 126
12 N.M. 438, 971 P.2d 829.

13 {3} Testimony at trial established that officers were dispatched to the location of
14 a suspicious vehicle. [MIO 3] When the officers contacted the individuals in the
15 vehicle, Defendant was seated in the rear passenger seat of the vehicle. [MIO 5]
16 While conducting an inventory search of the vehicle, the officers located a metal
17 container shaped as a hand grenade in the rear passenger area near where Defendant
18 had been seated, which contained fentanyl. [MIO 4] Located near the grenade-
19 shaped container was a purse, a makeup bag, and aluminum foil. [Id.] Inside the
20 purse was Defendant’s identification, methadone, a glass pipe with burnt residue, a

1 plastic container with four plastic pipes with burnt residue, burnt foil, and other
2 items. [MIO 3]

3 {4} Defendant challenges the jury's determination that she was in constructive
4 possession of the fentanyl because she did not have knowledge or control over it.
5 *See State v. Phillips*, 2000-NMCA-028, ¶ 8, 128 N.M. 777, 999 P.2d 421
6 ("Constructive possession exists when the accused has knowledge of drugs or
7 paraphernalia and exercises control over them."). Defendant asserts that "there was
8 no direct evidence of either knowledge or control over" the fentanyl because
9 Defendant did not admit ownership, no one testified at trial that the fentanyl
10 belonged to her or about when it was placed there, the fentanyl was not found in
11 Defendant's purse, there was no evidence that Defendant accessed the grenade-
12 shaped container, and other individuals had access to the vehicle where the grenade-
13 shaped container was located. [MIO 10; RP 103] *See* UJI 14-3130 NMRA (defining
14 possession). Despite the lack of direct evidence that Defendant had knowledge and
15 control of the fentanyl contained within the grenade-shaped container, possession
16 can be proven with circumstantial evidence. *See State v. Chandler*, 1995-NMCA-
17 033, ¶ 10, 119 N.M. 727, 895 P.2d 249 ("Proof of possession of illegal drugs may
18 be established by circumstantial as well as direct evidence."). Additionally, in
19 constructive possession cases such as this, "constructive possession need not be
20 exclusive." *Id.* However, the mere presence of the fentanyl is not enough to support

1 an inference of constructive possession. *See Phillips*, 2000-NMCA-028, ¶ 8.

2 “Additional circumstances or incriminating statements are required.” *Id.*

3 {5} In our calendar notice, we proposed to conclude that such additional
4 circumstances are present in this case, and we see no basis to doubt that proposed
5 conclusion. [CN 4] *Cf. State v. Morales*, 2002-NMCA-052, ¶ 29, 132 N.M. 146, 45
6 P.3d 406 (“When a conviction is based on constructive rather than actual possession,
7 this Court must be able to articulate a reasonable analysis that the jury might have
8 used to determine knowledge and control.”), *overruled on other grounds by State v.*
9 *Tollardo*, 2012-NMSC-008, ¶ 37 n.6, 275 P.3d 110. As we have noted, the
10 investigating officers located the fentanyl in a container where Defendant was seated
11 in the rear passenger seat of the vehicle. Nearby, they also located aluminum foil
12 and a purse containing burnt foil, methadone, drug paraphernalia, and most
13 critically, Defendant’s identification. Based on our standard of review, the jury could
14 have inferred that the purse containing evidence of drug use and drug paraphernalia
15 belonged to Defendant based on the presence of her identification. *See State v.*
16 *Barber*, 2004-NMSC-019, ¶ 28, 135 N.M. 621, 92 P.3d 633 (holding that the most
17 telling fact linking the defendant to the methamphetamine was a business card that
18 was similar to the one located in the defendant’s wallet). The jury could then have
19 inferred that Defendant knew about and controlled the fentanyl in the nearby
20 grenade-shaped container based on the contents of Defendant’s purse along with its

1 proximity to her location when the officers arrived. *See State v. Bauske*, 1974-
2 NMCA-078, ¶¶ 8-10, 86 N.M. 484, 525 P.2d 411 (holding that the defendant
3 constructively possessed a controlled substance that was found in a police car in an
4 eyeglass case left by the defendant's wife based, in part, on evidence of drug use and
5 the presence of paraphernalia located in the car they had been traveling in); *State v.*
6 *Muniz*, 1990-NMCA-105, ¶¶ 15-17, 110 N.M. 799, 800 P.2d 734 (concluding that
7 the defendant constructively possessed marijuana when a book that the defendant
8 used for his drug transactions was kept in the residence, the defendant used the
9 bedroom where the marijuana was found, and the marijuana was found packed for
10 distribution). We therefore conclude there was substantial evidence establishing
11 Defendant's constructive possession over the fentanyl.

12 {6} Defendant's remaining contentions concern an alternative interpretation of the
13 evidence presented to the jury. [MIO 12-13] However, we do not reinterpret the
14 evidence before the jury to reach an alternative conclusion as long as there is
15 substantial evidence supporting the jury's determination. *See Rojo*, 1999-NMSC-
16 001, ¶ 19 ("Contrary evidence supporting acquittal does not provide a basis for
17 reversal because the jury is free to reject [the d]efendant's version of the facts.");
18 *State v. Sutphin*, 1988-NMSC-031, ¶ 21, 107 N.M. 126, 753 P.2d 1314 ("An
19 appellate court does not evaluate the evidence to determine whether some hypothesis
20 could be designed which is consistent with a finding of innocence."). Because we

1 conclude there was substantial evidence supporting the only element in dispute, we
2 affirm Defendant's conviction for possession of a controlled substance.

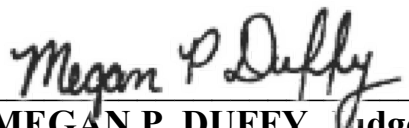
3 {7} Defendant next contends that the prosecutor committed misconduct during
4 closing argument when the prosecutor invoked her oath of office. [MIO 16]
5 However, Defendant's memorandum indicates that "[t]rial counsel was unable to
6 recall exactly what the prosecutor said" or the grounds for why the district court
7 overruled Defendant's objection. [MIO 6] Defendant further concedes that this issue
8 is difficult to analyze given the limited record available on the summary calendar
9 and invites this Court to place this case on the general calendar so that Defendant
10 may develop the issue. Consequently, we understand Defendant's request to be
11 based on the need to search through the transcripts of the proceedings only for the
12 possibility of error. "It has long been recognized by this [C]ourt that the appellate
13 rules do not allow appellate counsel to pick through the record for possible error."
14 *State v. Sheldon*, 1990-NMCA-039, ¶ 5, 110 N.M. 28, 791 P.2d 479. We therefore
15 decline Defendant's request to place this case on the general calendar.

16 {8} Accordingly, and for the reasons stated in our calendar notice, we affirm.

17 {9} **IT IS SO ORDERED.**

18 
19 **JACQUELINE R. MEDINA, Chief Judge**

1 **WE CONCUR:**

2 
3 **MEGAN P. DUFFY, Judge**

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5 **ZACHARY A. IVES, Judge**