

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

Court of Appeals of New Mexico
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STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

No. A-1-CA-42941

DIANE KAY MEDCALF,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF LINCOLN COUNTY

Daniel A. Bryant, District Court Judge

Raúl Torrez, Attorney General

Santa Fe, NM

Lee Green, Assistant Solicitor General

Albuquerque, NM

for Appellee

Bennett J. Baur, Chief Public Defender

Kathleen T. Baldrige, 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, answer brief, and reply brief, we affirm for the
3 following reasons.

4 {2} Defendant challenges the sufficiency of the evidence to support her conviction
5 for possession of a controlled substance, contending that she did not know that the
6 shoes she was wearing contained methamphetamine under one of the soles. [BIC 1]
7 Defendant argues that the State did not present sufficient evidence to convict her
8 under a constructive possession theory because the evidence did not show that she
9 knew there were drugs in the shoes. [BIC 18]

10 {3} “The test for sufficiency of the evidence is whether substantial evidence of
11 either a direct or circumstantial nature exists to support a verdict of guilty beyond a
12 reasonable doubt with respect to every element essential to a conviction.” *State v.*
13 *Montoya*, 2015-NMSC-010, ¶ 52, 345 P.3d 1056 (internal quotation marks and
14 citation omitted). Because juries are not required to accept a defendant’s version of
15 the facts, *see id.*, reviewing courts must “view the evidence in the light most
16 favorable to the guilty verdict, indulging all reasonable inferences and resolving all
17 conflicts in the evidence in favor of the verdict.” *State v. Cunningham*, 2000-NMSC-
18 009, ¶ 26, 128 N.M. 711, 998 P.2d 176. Accordingly, we disregard all evidence and
19 inferences that support a different result. *See State v. Rojo*, 1999-NMSC-001, ¶ 19,
20 126 N.M. 438, 971 P.2d 829. “We will affirm a conviction if supported by a fair

1 inference from the evidence regardless of whether a contrary inference might
2 support a contrary result.” *State v. Barrera*, 2002-NMCA-098, ¶ 10, 132 N.M. 707,
3 54 P.3d 548.

4 {4} Although Defendant asserts this is a constructive possession case, the State
5 contends that this is an actual possession case because Defendant had physical
6 control of the shoes at the time of her arrest. [AB 4-5] “When actual physical control
7 cannot be directly proven, constructive possession is a legal fiction used to expand
8 possession and include those cases where the inference that there has been
9 possession at one time is exceedingly strong.” *State v. Barber*, 2004-NMSC-019,
10 ¶ 22, 135 N.M. 621, 92 P.3d 633 (internal quotation marks and citation omitted).
11 This case, however, does not present a circumstance where “actual physical control
12 cannot be directly proven” because the evidence suggested, and Defendant does not
13 dispute, that she had actual physical control of the shoes and their contents at the
14 time of her arrest. [BIC 1] *See id.* Defendant contends that the evidence was
15 insufficient to support her conviction on the element of knowledge. [BIC 1]

16 {5} The question of “[a] defendant’s knowledge or intent generally presents a
17 question of fact for a jury to decide.” *State v. Wasson*, 1998-NMCA-087, ¶ 12, 125
18 N.M. 656, 964 P.2d 820. Further, because knowledge, like intent, “can rarely be
19 proved directly [it] often is proved by circumstantial evidence.” *State v. Durant*,
20 2000-NMCA-066, ¶ 15, 129 N.M. 345, 7 P.3d 495. Viewing the evidence in the light

1 most favorable to the verdict, we conclude that the State presented sufficient
2 evidence to support the jury's reasonable inference that Defendant knew there was
3 methamphetamine in the shoe. *See Barrera*, 2002-NMCA-098, ¶ 10. The State
4 introduced testimony that while Defendant was being released for unrelated charges
5 at a detention center, detention center officers observed a white, crystal-like powder
6 and small rocks coming out of a sole of Defendant's shoes. [BIC 2, AB 1-2] The
7 powder was tested and was confirmed to be methamphetamine, and an officer
8 present when Defendant was originally arrested also testified that Defendant was
9 wearing the same shoes at the time of her arrest. [BIC 9, 10] It was reasonable for
10 the jury to infer that Defendant knew about the shoes' contents, which were visibly
11 coming out of the shoes by the time detention center officers intended to return the
12 shoes to Defendant. *See id.*; *Montoya*, 2015-NMSC-010, ¶ 52.

13 {6} Defendant also relies on the testimony of two friends to provide an alternative
14 explanation for the origin of the drugs. [BIC 10-13, 20-21] Though Defendant's
15 friends testified that Defendant recently acquired the shoes, the jury was not required
16 to believe Defendant's friends' version of events. *See Montoya*, 2015-NMSC-010,
17 ¶ 52; *see also State v. Salas*, 1999-NMCA-099, ¶ 13, 127 N.M. 686, 986 P.2d 482
18 (noting it is for the fact-finder to resolve any conflicts and determine the weight and
19 credibility of the testimony); *State v. Morales*, 2002-NMCA-052, ¶ 33, 132 N.M.
20 146, 45 P3d 406 (explaining a jury is "entitled to disbelieve [a d]efendant's version

of the event, and rely instead on fair inferences to the contrary from the evidence”),
overruled on other grounds by *State v. Tollardo*, 2012-NMSC-008, ¶ 37 n.6, 275
P.3d 110. Accordingly, this Court does not consider the “merit of evidence that may
have supported a verdict to the contrary.” *State v. Kersey*, 1995-NMSC-054, ¶ 11,
120 N.M. 517, 903 P.2d 828 (internal quotation marks and citation omitted).

{7} Finally, Defendant cites two cases to suggest that her knowledge regarding
the methamphetamine in the shoe could not be established without corroborating
evidence, such as flight from law enforcement. [18-20] In *Morales*, a defendant’s
knowledge regarding contraband found in a car he was driving was corroborated by
his flight from law enforcement, which tended to suggest consciousness of guilt.
2002-NMCA-052, ¶ 31. Whereas in *State v. Reed*, the State failed to prove a
defendant’s knowledge that a trace amount of white powder clinging to the inside of
a cellophane wrapper was illegal contraband. 1998-NMSC-030, ¶ 15, 125 N.M. 552,
964 P.2d 113 (noting that absent corroboration, “such as drug paraphernalia,
suspicious or intoxicated behavior, positive urine sample, flight, or an admission, no
rational jury could infer” knowledge that the residue was cocaine).

{8} Unlike *Morales*, the evidence in this case established that the drugs were on
Defendant’s person—in her shoe as she walked into the jail—and not just in a car
she was driving. [BIC 1] And unlike *Reed*, Defendant was not carrying a nearly
imperceptible trace of powder; instead, she had an amount of methamphetamine

1 crystals sufficient to be introduced at trial and for the jury to see. [BIC 3; AB 2] It is
2 not the role of this Court to substitute its judgment for that of the jury who saw that
3 evidence and determined that Defendant knew about the methamphetamine crystals
4 in her shoe. *See Barrera*, 2002-NMCA-098, ¶ 10; *State v. Griffin*, 1993-NMSC-071,
5 ¶ 17, 116 N.M. 689, 866 P.2d 1156 (“This [C]ourt does not weigh the evidence and
6 may not substitute its judgment for that of the fact[-]finder so long as there is
7 sufficient evidence to support the verdict.”).

8 {9} Defendant was in control of the shoes at the time of her arrest, and a jury could
9 reasonably infer from the evidence presented at trial that she both knew about and
10 exercised control over the methamphetamine in one of those shoes. *See Montoya*,
11 2015-NMSC-010, ¶ 52; *Barrera*, 2002-NMCA-098, ¶ 10. We affirm.

12 {10} **IT IS SO ORDERED.**

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ZACHARY A. IVES, Judge

15 **WE CONCUR:**

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JENNIFER L. ATTREP, Judge

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KATHERINE A. WRAY, Judge