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IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

Court of Appeals of New Mexico
Filed 11/10/2026 10:26 AM
Mark Reynolds

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v. **No. A-1-CA-43589**

KENNETH POLSON,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF OTERO COUNTY
Angie K. Schneider, District Court Judge

Raúl Torrez, Attorney General
Santa Fe, NM

for Appellee

Bennett J. Baur, Chief Public Defender
Kathleen T. Baldridge, Assistant Appellate Defender
Santa Fe, NM

for Appellant

MEMORANDUM OPINION

DUFFY, Judge.

{1} Defendant appeals his conviction, following a jury trial, for possession of a controlled substance. [BIC 1; RP 220] On appeal, Defendant challenges the sufficiency of the evidence supporting his conviction. [BIC 7] "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). The reviewing court "view[s] 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." *State v. Cunningham*, 2000-NMSC-009, ¶ 26, 128 N.M. 711, 998 P.2d 176 (internal quotation marks, and citation omitted). We disregard all evidence and inferences that support a different result. *State v. Rojo*, 1999-NMSC-001, ¶ 19, 126 N.M. 438, 971 P.2d 829.

{2} We look to the jury instructions to determine what the jury was required to find in order to convict Defendant. *See State v. Holt*, 2016-NMSC-011, ¶ 20, 368 P.3d 409 ("The jury instructions become the law of the case against which the sufficiency of the evidence is to be measured." (alterations, internal quotation marks, and citation omitted)). Here, the jury was instructed that the State had to prove that (1) "[D]efendant had methamphetamine in his possession"; (2) "[D]efendant knew it was methamphetamine, or believed it to be methamphetamine, or believed it to be some drug or other substance the possession of which is regulated or prohibited by law"; and (3) "[t]his happened in New Mexico on or about" September 30, 2023. [RP 176] Defendant disputes only that there was sufficient evidence for the jury to conclude that Defendant knew he possessed methamphetamine. *Cf. State v. Jimenez*, 2017-NMCA-039, ¶ 48, 392 P.3d 668 ("Under either an actual possession or

constructive possession theory, the two key elements the [s]tate must establish are knowledge and control.").

{3} According to Defendant's brief in chief, an officer knocked on Defendant's door in order to serve an active arrest warrant. [BIC 1] Defendant answered the door and informed the officer that he was home alone and that he had not seen his girlfriend, Stacy Dukes, "in a couple of days." [Id.] Defendant stepped out onto the porch wearing "long swimming trunk-type shorts." [BIC 2] Another officer arrived on the scene, verified the existence of the warrant, and arrested Defendant. [BIC 2] During a search incident to arrest, that officer discovered a baggie in the right front pocket of Defendant's shorts, which was later confirmed to contain methamphetamine. [BIC 3] The 11.13 net grams of methamphetamine found in the baggie was described "as a medium-sized rock, the kind one would find in gravel, but not physically heavy." [BIC 4]

{4} The officer who performed the search asked Defendant what was in the baggie and Defendant replied that "it looks like dope to me." [BIC 3] Defendant also stated "god dammit" and "fuck!" [Id.] After advising Defendant of his *Miranda* rights, the officer again asked what was in the baggie and Defendant claimed he did not know. [Id.] Despite previously claiming he had not seen Ms. Dukes for several days, Defendant stated that she had brought him the shorts the previous day, he had not noticed there were pockets in the shorts, he had put them on and had worn them all

night, and he did not know that they contained the baggie of methamphetamine. [BIC 3-4]

{5} To affirm, "we must explain how the jury might have reasoned that" Defendant knew the baggie contained methamphetamine. *State v. Reed*, 1998-NMSC-030, ¶ 14, 125 N.M. 552, 964 P.2d 113 (internal quotation marks and citation omitted); *see State v. Wasson*, 1998-NMCA-087, ¶ 12, 125 N.M. 656, 964 P.2d 820 ("A defendant's knowledge or intent generally presents a question of fact for a jury to decide. Further, since a defendant's intent is rarely subject to direct proof, it may be proven by circumstantial evidence." (citation omitted)). "A jury may infer knowledge . . . from the defendant's actions, statements, or conduct, and from circumstantial evidence connecting the defendant to the object." *State v. Martinez*, 2020-NMCA-043, ¶ 54, 472 P.3d 1241.

{6} After the baggie was discovered by the officers, Defendant, who testified he previously pleaded no contest to possessing methamphetamine and that he previously used methamphetamine but had not been using it within the last year [BIC 6], stated that it looked like it contained "dope" to him. Additionally, Defendant made two exclamations in response to the baggie being discovered that the jury could have inferred established consciousness of guilt. *See McKay v. Davis*, 1982-NMSC-122, ¶ 14, 99 N.M. 29, 653 P.2d 860 ("It is well established that evidence of one's consciousness of guilt is relevant and admissible."). Defendant also changed the time

frame for when Ms. Dukes had been at the home after the officers discovered the baggie, which is also evidence of consciousness of guilt. *See State v. Martinez*, 1999-NMSC-018, ¶ 30, 127 N.M. 207, 979 P.2d 718 ("A change in a defendant's story to the police may constitute evidence of a consciousness of guilt."). Lastly, the jury could have inferred Defendant knew the baggie was in the shorts because the methamphetamine that the baggie contained was gravel sized, which could make it difficult to not notice particularly given the amount of time Defendant stated he was wearing the shorts. Indeed, while he was testifying, the jury asked if Defendant could demonstrate where the pocket containing the baggie was located on the shorts. [BIC 6] We therefore conclude based on the above that there was sufficient evidence before the jury to support the jury's finding that Defendant knew that he possessed methamphetamine.

{7} Defendant contends that he presented the jury with "an alternate and credible version of the facts." [BIC 11] However, as Defendant acknowledges, "[c]ontrary evidence supporting acquittal does not provide a basis for reversal because the jury is free to reject [the d]efendant's version of the facts." *See Rojo*, 1999-NMSC-001, ¶ 19.

{8} To the extent Defendant relies on *Reed*, we conclude that case is inapplicable in this circumstance. *Reed* involved the defendant's possession of a cellophane cigarette wrapper, which was later found to have a trace amount of cocaine on its

inside surface. 1998-NMSC-030, ¶ 7. However, "[t]he amount of cocaine in the wrapper was not immediately apparent to the human eye" and there was no evidence that the defendant "knew the wrapper had a white residue in it or that the residue was cocaine." *Id.* ¶ 16. This is contrary to the case at hand where there was evidence demonstrating that Defendant knew the baggie contained methamphetamine, as we have explained above.

{9} Accordingly, we affirm Defendant's conviction.

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

MEGAN P. DUFFY, Judge

WE CONCUR:

SHAMMARA H. HENDERSON, Judge

JANE B. YOHALEM, Judge