

STATE V. PADILLA

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**STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
GABRIELLE PADILLA,
Defendant-Appellant.**

No. 33,887

COURT OF APPEALS OF NEW MEXICO

January 29, 2015

APPEAL FROM THE DISTRICT COURT OF OTERO COUNTY, James Waylon Counts,
District Judge

COUNSEL

Hector H. Balderas, Attorney General, Santa Fe, NM, for Appellee

Law Offices of the Public Defender, Jorge A. Alvarado, Chief Public Defender, Tania Shahani, Assistant Appellate Defender, Santa Fe, NM, for Appellant

JUDGES

JONATHAN B. SUTIN, Judge. WE CONCUR: MICHAEL E. VIGIL, Chief Judge,
CYNTHIA A. FRY, Judge

AUTHOR: JONATHAN B. SUTIN

MEMORANDUM OPINION

SUTIN, Judge.

{1} Defendant appeals from the district court's judgment and sentence, entered after a jury trial, convicting Defendant for shoplifting and conspiracy to commit shoplifting and suspending Defendant's three-year sentence. Unpersuaded that Defendant's docketing

statement demonstrated error in the district court, we issued a notice of proposed summary disposition, proposing to affirm. Defendant has responded to our notice with a memorandum in opposition. We have considered Defendant's response and remain unpersuaded that she has demonstrated error. Therefore, we affirm.

{2} On appeal, Defendant challenges the sufficiency of the evidence to support her convictions for shoplifting and conspiracy to commit shoplifting. Our notice detailed our standard of review and the evidence presented by the State; we do not repeat this analysis herein. In response to our notice, Defendant does not contend that our recitation of the evidence the State presented was inaccurate. Rather, Defendant recounts and emphasizes evidence that might cause us to question the State's characterization of events at trial. [MIO 1-5] On appeal, however, this Court does not indulge in the possible truthfulness or persuasiveness of a version of events that contradicts the jury's verdict. *See State v. Cunningham*, 2000-NMSC-009, ¶ 26, 128 N.M. 711, 998 P.2d 176 (stating that we "view 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"). It is for the fact-finder to resolve any conflict in the testimony of the witnesses and to determine where the weight and credibility lie. *See State v. Salas*, 1999-NMCA-099, ¶ 13, 127 N.M. 686, 986 P.2d 482.

{3} Defendant argues that the legal deficiency in the State's case is its failure to prove that Defendant had the *mens rea* required for shoplifting—the intent to take merchandise without payment—or the *mens rea* required for conspiracy—an agreement or intent to commit shoplifting. [MIO 7-11] Defendant contends that the State's evidence of Defendant's *mens rea* was Mr. Esquero's and Mr. Quintanilla's hunch that Defendant was acting suspiciously and that a mere hunch does not establish her intent beyond a reasonable doubt. [MIO 8, 11] We disagree that the State presented only a mere, baseless hunch. As we described in more detail in our notice, the State presented circumstantial evidence of a scheme between Defendant and Ms. Aragon to steal the TV. Testimony was presented describing their suspicious behavior indicating an intent to steal the TV. Evidence was also presented that Defendant knew the store and its electronics department because she worked there before the incident. There were two videos introduced into evidence: one showing the women working in concert, Defendant talking to a cashier, while Ms. Aragon pushed the cart with the TV in the direction of the exit in the garden area; and the other video, showing the women pushing the cart toward the exit, and Mr. Esquero confronting them before they left the store. [RP 157-59; DS unnumbered 2] Also, the State presented evidence of Defendant's inability to pay for the TV. [RP 159; DS unnumbered 2]

{4} "[I]ntent is subjective and is almost always inferred from other facts in the case, as it is rarely established by direct evidence." *State v. Guerra*, 2012-NMSC-027, ¶ 13, 284 P.3d 1076 (internal quotation marks and citation omitted); *see also State v. Castañeda*, 2001-NMCA-052, ¶ 21, 130 N.M. 679, 30 P.3d 368 ("Since the element of intent involves the state of mind of the defendant it is seldom, if ever, susceptible to direct proof, and may be proved by circumstantial evidence." (internal quotation marks and citation omitted)). Viewing the evidence in the light most favorable to the verdict and

indulging in inferences that only support the verdict, we hold that sufficient circumstantial evidence of Defendant's intent was presented to support her convictions.

{5} We, therefore, affirm the district court's judgment and sentence.

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

JONATHAN B. SUTIN, Judge

WE CONCUR:

MICHAEL E. VIGIL, Chief Judge

CYNTHIA A. FRY, Judge