

STATE V. SANDOVAL

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STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
CARLOS SANDOVAL,
Defendant-Appellant.

No. 33,952

COURT OF APPEALS OF NEW MEXICO

December 23, 2014

APPEAL FROM THE DISTRICT COURT OF LEA COUNTY, William G. Shoobridge,
District Judge

COUNSEL

Gary King, Attorney General, Santa Fe, NM, for Appellee

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

JUDGES

LINDA M. VANZI, Judge. WE CONCUR: JAMES J. WECHSLER, Judge, TIMOTHY L. GARCIA, Judge

AUTHOR: LINDA M. VANZI

MEMORANDUM OPINION

VANZI, Judge.

{1} Defendant appeals from the district court's judgment and sentence, convicting him for three counts of trafficking a controlled substance (methamphetamine), pursuant to a jury verdict. Unpersuaded by Defendant's docketing statement, we issued a notice

of proposed summary disposition, proposing to affirm. Defendant has filed a memorandum in opposition in response to our notice. We hereby accept the memorandum in opposition as timely filed. We remain unpersuaded that Defendant established error. We, therefore, affirm.

{2} On appeal, Defendant challenges the sufficiency of the evidence to support his convictions for trafficking methamphetamine. [DS 4; MIO 2-3] Defendant pursues this challenge under the demands of *State v. Franklin*, 1967-NMSC-151, ¶ 9, 78 N.M. 127, 428 P.2d 982, and *State v. Boyer*, 1985-NMCA-029, ¶ 24, 103 N.M. 655, 712 P.2d 1. [DS 2; MIO 3]

{3} Our notice observed that, contrary to our rules and case law, the recitation of the evidence presented that appears in Defendant’s docketing statement was incomplete. Relying on our interpretation of the record, we detailed the evidence that appeared to have been presented to support Defendant’s conviction. We do not repeat our analysis herein, but we note that the evidence showed Defendant’s high level of involvement in all three drug transactions, despite his contention that he did not take the money directly from the hands of the undercover agent and did not directly place the methamphetamine in the agent’s hands.

{4} In response to our notice, Defendant clarifies that the evidence upon which our notice relied was indeed presented. [MIO 1-2] Further, Defendant represents that the State presented one video and two audio recordings of the alleged transactions. [MIO 2] Defendant maintains that the jury should have accepted his truthful testimony that he buys and sells gold and old coins, which is why he had a scale, and that he did not make any money on drugs and was only helping Mr. Saenz. [MIO 2] Defendant believes that evidence was too ambiguous to support his convictions. [MIO 3]

{5} We emphasize that 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. On appeal, we do not do not indulge in the possible truthfulness 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”). Also, as we observed in our notice, the trafficking statute prohibits the “giving away of” methamphetamine. See NMSA 1978, § 30-31-20(A)(2)(c) (2006).

{6} Viewing the evidence in the light most favorable to the verdict, for the reasons stated in our notice and in this Opinion, we hold that the State presented sufficient proof of three actual transfers of methamphetamine from Defendant to the undercover agent. See, e.g., *State v. Maes*, 1970-NMCA-053, ¶¶ 26-28, 81 N.M. 550, 469 P.2d 529 (rejecting a claim that there was no proof that the defendant intended to transfer possession of heroin or that he received money for the transfer, where the evidence established “care, control and management on the part of both [the] defendants for each

transaction; that the object possessed by them was heroin and they knew it; that possession was transferred; and the transfer was for money”).

{7} IT IS SO ORDERED.

LINDA M. VANZI, Judge

WE CONCUR:

JAMES J. WECHSLER, Judge

TIMOTHY L. GARCIA, Judge