

**STATE V. ALLEN**

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**STATE OF NEW MEXICO,  
Plaintiff-Appellee,  
v.  
JOSEPH ALLEN,  
Defendant-Appellant.**

NO. A-1-CA-37385

COURT OF APPEALS OF NEW MEXICO

December 13, 2018

APPEAL FROM THE DISTRICT COURT OF LEA COUNTY, Mark Sanchez, District  
Judge

**COUNSEL**

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**JUDGES**

LINDA M. VANZI, Chief Judge. WE CONCUR: MICHAEL E. VIGIL, Judge, M. MONICA  
ZAMORA, Judge

**AUTHOR:** LINDA M. VANZI

**MEMORANDUM OPINION**

**VANZI, Chief Judge.**

{1} Defendant Joseph Allen is appealing his conviction for conspiracy to commit  
forgery. We issued a calendar notice proposing to reverse. The State has filed a

memorandum in opposition, and Defendant has filed a memorandum in support. We reverse Defendant's conviction.

{2} Defendant's sole issue in this appeal has challenged the sufficiency of the evidence to support his conviction. A sufficiency of the evidence review involves a two-step process. Initially, the evidence is viewed in the light most favorable to the verdict. Then the appellate court must make a legal determination of "whether the evidence viewed in this manner could justify a finding by any rational trier of fact that each element of the crime charged has been established beyond a reasonable doubt." *State v. Apodaca*, 1994-NMSC-121, ¶ 6, 118 N.M. 762, 887 P.2d 756 (internal quotation marks and citations omitted).

{3} Here, the State alleged that Defendant had conspired to commit forgery. [RP 87] In support, the State presented evidence that Defendant and another individual, Steve Bouton (Bouton), drove up to a residential mailbox, with Defendant driving and Bouton the passenger. [DS 2; MIO 2] Defendant reached into the mailbox and handed Bouton the contents, which included checks that were later altered. [DS 2-3; MIO 2] The checks were contained in envelopes that did not indicate that checks were inside. [DS 3] Three of the checks were altered to be made payable to Bouton and one check was made payable to two other individuals. [DS 2-3] When later confronted about the incident, Defendant denied that he had agreed with Bouton to commit the crime, but he did admit that he knew that Bouton had committed forgery in the past. [DS 5; MIO 3]

{4} "Conspiracy consists of knowingly combining with another for the purpose of committing a felony within or without this state." NMSA 1978, § 30-28-2(A) (1979). A conspiratorial agreement may be proved by circumstantial evidence, and "the agreement can be nothing more than a mutually implied understanding that can be proved by the cooperative actions of the participants involved." *State v. Roper*, 2001-NMCA-093, ¶ 8, 131 N.M. 189, 34 P.3d 133; see also *State v. Gallegos*, 2011-NMSC-027, ¶ 45, 149 N.M. 704, 254 P.3d 655 (noting that conspiracy is a clandestine crime, and a jury may infer the existence of an agreement based on conduct and the surrounding circumstances).

{5} In this case, the State seemed to have relied heavily on Defendant's comment that he knew that Bouton had previously been involved with forgery. However, in *State v. Maldonado*, 2005-NMCA-072, ¶ 11, 137 N.M. 699, 114 P.3d 379, this Court reversed a conspiracy conviction even though the defendant knew that he was selling pseudoephedrine to someone who used this product to manufacture methamphetamine. This knowledge was insufficient to establish that the defendant shared an intent to achieve the illicit objective. *Id.* Like the defendant in *Maldonado*, Defendant here may have suspected that Bouton would do something illegal with the mail, although the State's own evidence indicated that the mail did not indicate that there were checks inside. [DS 3] The State argues that *Maldonado* is distinguishable because it involved a legal sale, instead of a criminal act, i.e. the theft of mail. [MIO 4-5] However, even if the jury could reasonably infer that Defendant agreed with Bouton to steal mail, this is short of proof of an objective of what to do with the mail. See *State v.*

*Vigil*, 2010-NMSC-003, ¶ 20, 147 N.M. 537, 226 P.3d 636 (reversing a conviction because the “chain of inferences” supporting the verdict amounted to no more than “guess or conjecture” and stating that the jury may not speculate to reach the conclusions necessary to the verdict). Although the State relies on Defendant’s knowledge that Bouton had committed forgery in the past to argue that the agreement was complete upon the taking of the mail [MIO 5-7], this would also have been true in *Maldonado*—an argument that this Court has rejected.

{6} For the reasons set forth above, we reverse Defendant’s conviction.

{7} IT IS SO ORDERED.

**LINDA M. VANZI, Chief Judge**

**WE CONCUR:**

**MICHAEL E. VIGIL, Judge**

**M. MONICA ZAMORA, Judge**