

STATE V. REEVES

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STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
LACOSTA MARY REEVES,
Defendant-Appellant.

No. 33,767

COURT OF APPEALS OF NEW MEXICO

December 8, 2014

APPEAL FROM THE DISTRICT COURT OF MCKINLEY COUNTY, Grant L. Foutz,
District Judge

COUNSEL

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

L. Helen Bennett, P.C., Linda Helen Bennett, Albuquerque, NM, for Appellant

JUDGES

LINDA M. VANZI, Judge. WE CONCUR: JAMES J. WECHSLER, Judge, M. MONICA ZAMORA, Judge

AUTHOR: LINDA M. VANZI

MEMORANDUM OPINION

VANZI, Judge.

{1} Defendant challenges the sufficiency of the evidence to support her conviction for aggravated burglary, tampering with evidence and conspiracy to commit aggravated burglary. This Court issued a calendar notice proposing to affirm, and Defendant has

filed a memorandum in opposition. Having duly considered that memorandum, we remain unpersuaded and now affirm Defendant's convictions.

{2} Defendant's memorandum in opposition takes issue with this Court's citation to *Tallman v. ABF (Arkansas Best Freight)*, 1988-NMCA-091, ¶ 3, 108 N.M. 124, 767 P.2d 363, *modified on other grounds by Delgado v. Phelps Dodge Chino, Inc.*, 2001-NMSC-034, 131 N.M. 272, 34 P.3d 1148, for the proposition that it is not the role of this Court to weigh the credibility of live witnesses. [MIO 1] In particular, Defendant complains that, because *Tallman* was a civil case, involving proof by a preponderance of the evidence, the appellate standard recited in that case should not be applied in a criminal case. [MIO 2]

{3} Defendant is correct that different standards of proof apply in civil and criminal trials. Thus, when this Court reviews the sufficiency of the evidence to support a criminal conviction, the proper question to address is whether any rational jury "could have found the essential elements of the crime *beyond a reasonable doubt*." *State v. Cunningham*, 2000-NMSC-009, ¶ 26, 128 N.M. 711, 998 P.2d 176 (emphasis added) (internal quotation marks and citation omitted). That difference, however, does not alter this Court's ability to assess the credibility of witnesses, because, regardless of whether civil or criminal proceedings are involved, "[a]n appellate court does not observe the demeanor of live witnesses, cannot see a shift of the eyes, sweat, a squirm, a tear, a facial expression, or take notice of other signs that may mean the difference between truth and falsehood to the fact finder." *Tallman*, 1988-NMCA-091, ¶ 7. Thus, in both civil and criminal cases, this Court is in no position to weigh the credibility of witnesses. See *State v. Salas*, 1999-NMCA-099, ¶ 13, 127 N.M. 686, 986 P.2d 482 (recognizing, in a criminal case, that it is for the trier of fact to determine where the weight and credibility lay); *State v. Frazier*, 1913-NMSC-016, ¶ 9, 17 N.M. 535, 131 P. 502 (noting, over one hundred years ago, that "[i]t is for the jury to . . . determine where the weight and credit lay").

{4} In this case, the facts were determined by a jury that had the opportunity to observe the testimony of the witnesses at trial, and it is the limited role of this Court to determine whether that testimony, if accepted as true, was sufficient to support a conviction. Thus, this Court "must 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." *Cunningham*, 2000-NMSC-009, ¶ 26. Because the State presented evidence of every element of the crimes charged and a reasonable jury could have found, beyond a reasonable doubt, that Defendant committed those crimes, we affirm the judgment and sentence entered below.

{5} IT IS SO ORDERED.

LINDA M. VANZI, Judge

WE CONCUR:

JAMES J. WECHSLER, Judge

M. MONICA ZAMORA, Judge