

STATE V. CHAVEZ

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STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
ASHLEY CHAVEZ,
Defendant-Appellant.

NO. A-1-CA-37550

COURT OF APPEALS OF NEW MEXICO

December 12, 2018

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

COUNSEL

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

Bennett J. Baur, Chief Public Defender, Brian Parrish, Assistant Appellate Defender,
Santa Fe, NM, for Appellant

JUDGES

LINDA M. VANZI, Chief Judge. WE CONCUR: M. MONICA ZAMORA, Judge, EMIL J.
KIEHNE, Judge

AUTHOR: LINDA M. VANZI

MEMORANDUM OPINION

VANZI, Chief Judge.

{1} Defendant Ashley Chavez has appealed from a conviction for trafficking a controlled substance. We previously issued a notice of proposed summary disposition in

which we proposed to affirm. Defendant has filed a memorandum in opposition. After due consideration, we remain unpersuaded. We therefore affirm.

{2} Defendant has raised one issue, challenging the sufficiency of the evidence to support her conviction. [DS 3; MIO 3] As previously described, [CN 2-3] the State presented evidence that a law enforcement officer arranged a meeting with Defendant at a specified location, where Defendant handed the officer a baggie containing methamphetamine in exchange for an agreed sum. [MIO 1-2] This evidence provides adequate support for the jury's verdict. *See, e.g., State v. Rael*, 1999-NMCA-068, ¶ 27, 127 N.M. 347, 981 P.2d 280 (observing that an officer's testimony concerning undercover purchases of controlled substances supplied sufficient evidence to support convictions for trafficking), *rev'd on other grounds sub nom. Rael v. Blair*, 2007-NMSC-006, 141 N.M. 232, 153 P.3d 657; *State v. Castleman*, 1993-NMCA-019, ¶¶ 2, 19, 116 N.M. 467, 863 P.2d 1088 (observing that the testimony of an undercover officer describing his purchase of a controlled substance from the defendant was sufficient to support a conviction for trafficking).

{3} In her memorandum in opposition Defendant continues to argue that the State's evidence was insufficient to establish her knowledge that the substance was methamphetamine. [MIO 4-6] We remain unpersuaded. "Proof of knowledge is sufficient if the evidence discloses some conduct from which the fact finder may fairly infer defendant's knowledge that the substance sold or distributed was a controlled substance." *State v. Martinez*, 1986-NMCA-069, ¶ 7, 104 N.M. 584, 725 P.2d 263. In this case, as we previously observed, the testimony of the undercover officer describing the arrangement of the controlled buy, including the slang communications with Defendant, as well as the meeting and the officer's ultimate receipt of the methamphetamine from Defendant at the preselected location, was sufficient to support a rational inference of knowledge. *See, e.g., id.*, ¶¶ 3-7 (observing that a defendant's knowledge may be proved by his conduct or by other circumstantial evidence, and holding that the evidence was sufficient to convict where the circumstances of a transaction indicated a mutual understanding between the defendant and the undercover officer that the substance being sold was a controlled substance).

{4} Finally, we understand Defendant to suggest that the officer's testimony about the text communications preceding the transaction should be given no weight, because the State failed to conclusively establish that Defendant was the recipient. [MIO 4-5] However, "the weight and effect of the evidence, including all reasonable inferences to be drawn from both the direct and circumstantial evidence is a matter reserved for determination by the trier of fact." *State v. McGhee*, 1985-NMSC-047, ¶ 17, 103 N.M. 100, 703 P.2d 877. To the extent that Defendant's argument may suggest a sufficiency challenge based on foundational concerns, [MIO 4-5] we perceive no merit. *See generally* Rule 11-104(A) NMRA (providing that hearsay may be considered for purposes of authentication); *cf. State v. O'Kelley*, 1994-NMCA-033, ¶ 16, 118 N.M. 52, 878 P.2d 1001 (explaining that when considering a challenge to the sufficiency of the evidence to support a verdict, the appellate court considers all the evidence admitted, including evidence that may have been admitted improperly).

{5} Accordingly, for the reasons stated in our notice of proposed summary disposition and above, we affirm.

{6} IT IS SO ORDERED.

LINDA M. VANZI, Chief Judge

WE CONCUR:

M. MONICA ZAMORA, Judge

EMIL J. KIEHNE, Judge