

No. 1-09-2920

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of Cook County, Illinois.
Plaintiff-Appellee,)	
)	
v.	_____)	No. 07 CR 13795
)	
LISA GUNDERSON,)	Honorable James B. Linn,
)	Judge Presiding.
Defendant-Appellant.)	

JUSTICE MURPHY delivered the judgment of the court.

Justices Neville and Steele concurred in the judgment.

ORDER

HELD: Where evidence showed sufficient circumstantial evidence that any rational trier of fact could have found the essential elements of the crimes beyond a reasonable doubt, the State proved defendant guilty beyond a reasonable doubt of involuntary manslaughter of a family member and possession of a stolen motor vehicle.

Following a bench trial, defendant, Lisa Gunderson, was convicted of involuntary manslaughter of a family member (720 ILCS 5/9-3(a) (West 2008)) and possession of a stolen vehicle (720 ILCS 5/4-103(a)(1) (West 2008)). Defendant's convictions related to incidents on August 26, 2006, involving defendant and the victim, her roommate Barbara Wolf. Defendant,

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25 years' old on that date and Wolf, who would have turned 50 years' old on August 27, 2006, had an altercation that afternoon. Later that night, defendant was pulled over in Kenosha, Wisconsin, and arrested for driving while intoxicated while driving Wolf's black Mitsubishi Eclipse. On June 28, 2006, Wolf was found dead in her apartment in Chicago, Illinois.

Defendant was sentenced to concurrent terms of eight and seven years' imprisonment for the two convictions, respectively. Defendant now appeals, arguing that the State failed to prove her guilty beyond a reasonable doubt because it only presented circumstantial evidence against her. Defendant argues that without any confession, eyewitnesses or strong physical evidence linking her to the crimes, the trial court erred in finding her guilty of involuntary manslaughter of a family member and possession of a stolen vehicle. For the following reasons, we affirm defendant's convictions.

I. BACKGROUND

Defendant was charged by indictment of two counts of first degree murder and one count of possession of a stolen motor vehicle stemming from an August 26, 2006, incident with her roommate Barbara Wolf. On August 28, 2006, Wolf was found dead in her condominium on the 49th floor of Park Tower Condominiums (PTC) at 5415 North Sheridan Road, Chicago, Illinois. Following a bench trial, the trial court found defendant guilty of the lesser included offense of involuntary manslaughter of a family member. Defendant also was found guilty of possession of a stolen motor vehicle related to her unauthorized use and possession of Wolf's vehicle, a black convertible Mitsubishi Eclipse.

Following the break-up of a five-year relationship with her boyfriend, Brian Bezotte, defendant moved from Kenosha to Chicago in the summer of 2005. Defendant, who was three

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months pregnant, stayed with her brother, Dennis Gunderson, Jr., who also resided at PTC. Dennis had been close friends with Wolf for approximately seven years at this time and he introduced Wolf to defendant. He stated that defendant and Wolf, a lesbian, developed a close friendship but did not state that it advanced beyond a friendship. According to Dennis, defendant and Wolf would occasionally have verbal spats, but over the course of time the two began to drink heavily and their altercations would turn physical. Dennis remained close friends with Wolf until she was killed and spoke with her some time between noon and 4 p.m. on August 26, 2006.

Alan Pestine also lived at PTC and was friends with Wolf before defendant moved into the building. Pestine began dating defendant during the summer of 2006. At the time of trial, Pestine was still dating defendant. In addition, Pestine was living at PTC with defendant's 3-year-old child from another man and her 18-month-old child with Pestine.

Wolf did not like the fact that Pestine was dating defendant and she told him that he was not good for defendant. Pestine stated that Wolf went so far as to threaten to have others physically harm him if he continued dating defendant or informing authorities that he had violated the terms of his parole. During the afternoon of August 26, 2006, Pestine and defendant went on a date. The two had a few drinks at two different restaurants before returning to PTC at around 5 p.m. Pestine returned to his residence and he assumed that defendant returned to Wolf's residence, where defendant was living.

Hinda Meadow, a close friend of Wolf's for over 40 years testified that she talked with Wolf between 5 and 6 p.m. on August 26, 2006. Meadow called Wolf because the next day was her birthday and she wanted to see what she was doing. At around 6:30 p.m., Dennis received a voice message from defendant. Defendant sounded intoxicated and Dennis heard yelling in the

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background before he heard a bang or a thump. Defendant said something and hung up the telephone. Phone records indicated that six phone calls were placed from Wolf's telephone to defendant's brother from 7:26 p.m. to 7:35 p.m., eight calls were to defendant's father, Dennis Gunderson, Sr., between 7:35 p.m. and 9:15 p.m. that night, and two calls at 8:09 p.m. and 9:15 p.m. were made to the garage at PTC.

James Seaton and Shawol Shlimon, both valets at PTC, testified that they were working in the garage at PTC on August 26, 2006, when Shlimon received a call from defendant at around 8:30 p.m. requesting Wolf's car. Both men were familiar with defendant and Wolf. In fact, earlier in August, Wolf had sent a note that defendant was not allowed to use her car, a black Mitsubishi Eclipse convertible. Seaton told Shlimon that he would take care of the situation because Shlimon was concerned that defendant would make a scene if she was not allowed to take Wolf's car.

Defendant soon arrived in the parking garage and told Seaton that she needed Wolf's car to go to the airport. Defendant had her son, a couple of bags, diapers and clothes on hangers. Seaton informed defendant that she did not have permission to use Wolf's car and they would not retrieve the car for her. Defendant became irate and yelled at Seaton and Shlimon that she would have them fired. Defendant used the garage telephone to call Wolf's apartment, but she said that she did not get an answer.

Defendant listed some of the reasons that Wolf would not give her the car, one being that defendant would not sleep with her. Defendant informed Seaton that she would do anything to get the car and asked if there was anything she could do or anything he wanted in exchange for getting the car. James refused to give defendant the car and she went to talk with Shlimon, who was watching her baby outside the office. James called his manager and then Norvell Smith, a

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building security officer. Shlimon stated that defendant approached him and tried to kiss him, but he refused her advance and returned to the office and informed Seaton.

Smith reported to the garage immediately after receiving the call that defendant was irate at around 8:30 p.m. Smith arrived to find defendant yelling at Seaton and Shlimon. Defendant informed Smith that she needed the car to go to work, but Smith told her that she needed Wolf's permission to have the car released to her. Smith assisted defendant to the elevators with her carrying her son in a car seat and two garbage bags and a duffel bag full of her belongings. Smith noticed on the elevator that defendant smelled of alcohol. He helped her get her belongings off the elevator, but defendant refused his offer of assisting her back to Wolf's apartment.

Smith inquired into where Wolf was and defendant told him that she was at Todino's Pizzeria. After dropping defendant off, Smith went to Todino's to find Wolf. Smith was unable to find Wolf at the restaurant and none of the patrons knew where she was. Smith returned to the garage and told Seaton that Wolf's car was not to be released to defendant unless Wolf actually spoke with him to authorize her to use the car.

Darrean Jackson, a doorman at PTC, testified that he was friends with Smith and discussed this incident with Smith. Jackson testified that Smith told him that when he dropped defendant off on the 49th floor, he heard a woman yell from Wolf's apartment, "[g]et your drunk ass inside the apartment." Smith testified that he did not recall this transaction with Jackson or hearing that in the hallway.

Phone records indicated that a call was placed from Wolf's apartment to the parking garage at 9:15 p.m. and Seaton testified that the person on the phone stated that it was Wolf and that defendant could use her car. Seaton believed that it was Wolf who had called and he then

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asked Shlimon to get Wolf's car for defendant. Seaton admitted that, while he believed it was Wolf and while he had spoken to Wolf over the phone many times and knew her voice, he could not be absolutely certain that it was her. Defendant came down and left the garage in Wolf's car at 9:23 p.m. Wolf's bank records indicate that \$50 was withdrawn from the bank next door to PTC at 9:25 p.m., leaving a balance of \$14.86 in her account.

At approximately 10:17 p.m., Trooper Michael Poupart of the Wisconsin State Patrol clocked a black Mitsubishi at 85 miles per hour and pulled it over west of Kenosha, Wisconsin. In court, he identified defendant as the driver. Defendant showed signs of intoxication and Trooper Poupart gave her a field sobriety test, which she failed. Defendant also agreed to a preliminary breath sample and her blood alcohol concentration was measured at 166. He testified that defendant told him that she went to sleep at 3 p.m. with her son and took a 2.5 hour nap before having drinks at her roommate's house.

Defendant called her uncle to care for her son and she was placed into custody and transported to the Kenosha jail. Trooper Poupart did not notice any injuries on defendant. Defendant was processed by Angie Gonzalez who also testified that she did not observe any injuries and defendant did not state that she was suffering any medical problems or injuries.

Bank records for Wolf's accounts reflected additional attempts to withdraw funds from ATMs. Each of the attempted withdrawals occurred in Kenosha, Wisconsin, on August 27, 2006. The withdrawal requests were for: (1) \$100 at 2:46 a.m.; (2) \$80 at 2:47 a.m.; (3) \$60 at 2:48 a.m.; (4) \$40 at 4:14 p.m.; and \$40 at 4:32 p.m.

Dennis Gunderson, Jr., Meadow and Dan Wolf, Barbara's brother, each testified that they tried to call Wolf on August 27, 2006, to wish her a happy birthday but were unable to reach her.

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When Dan Wolf was unable to contact Barbara again on August 28, 2006, he contacted the police to request they perform a well-being check. At approximately 2:05 p.m., Michael Rupert, assistant manager of security and operations at PTC, went to Wolf's apartment to perform a well-being check. When there was no answer, Rupert entered the unit and found what appeared to be a body lying on the bedroom floor and he contacted the door staff and requested they call 911.

At approximately 3:15 p.m. on August 28, 2006, Detective Jude Martinez of the Chicago police department arrived on the scene with his partner. Martinez found Wolf lying face down, covered with a blanket that had numerous bloodstains and a chair or stepping stool on top of the blanket. Several bloodstains around the room, including on the bedroom door and light switch, some of which appeared to be partially wiped away, were swabbed by an evidence technician and found to match defendant's DNA profile. Martinez found drug paraphernalia associated with crack usage in various areas of the apartment. Martinez contacted defendant's family and interviewed Dan Wolf and Pestine that day. Detective Moriarty of the Chicago police department testified that she reviewed the messages left on Wolf's answering machine. The first message on the machine was from a female caller who said "I can't get the f----g car." The next day, Detective Martinez obtained copies of security camera footage from the elevators and parking garage and the video was entered into evidence.

Pestine called defendant on August 28, 2006, when he saw police at PTC and defendant said that she was home and Wolf was out. Pestine again called defendant when he learned of Wolf's death. Defendant was incoherent and Pestine thought she sounded intoxicated. Defendant said she would call him back and hung up the phone. Pestine told police that defendant informed her that she was in Kentucky, but stated at trial that she might have said

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Kenosha. In later conversations, defendant told Pestine that she could not remember what occurred on August 26, 2006, with Wolf, other than that they had a fight and that Wolf was high when she left.

Bezotte testified that in August 2006, defendant told him that Wolf died from an overdose. After being contacted by detectives, Bezotte agreed to wear a wire for a conversation with defendant. On April 4, 2007, Bezotte met defendant in Chicago and recorded their conversation, which was played at trial. Defendant admitted that she got into a fight with Wolf, in which Wolf cut her with a knife and she pushed Wolf. However, she stated that Wolf was alive when she left. Defendant told Bezotte that she sustained a cut to her head two days before the incident by hitting the bathroom door in Wolf's apartment.

Dennis also spoke with defendant about Wolf's death several times between the incident and February 2007. Dennis stated that his sister freely admitted to fighting Wolf on August 26, 2006, but always maintained her innocence and offered various speculative theories as to how Wolf died. Included among defendant's explanations were that Wolf: overdosed on drugs; hit her head on the sink; old age; or an unknown assailant that entered after defendant left for Kenosha.

Dr. Mitra Kalelkar testified as the State's expert in forensic pathology. On August 29, 2006, Dr. Kalelkar performed an autopsy on Wolf's body, which was 5 feet 7 inches, weighed 112 pounds and appeared to be the stated age of 50 years' old. There was a laceration on the right side of her forehead, abrasions on the forehead and hemorrhages to both eyes. The coloration of these bruises indicated to Kalelkar that they were recent injuries.

Two symmetrical bruises were identified on Wolf's lower back. They also appeared to be

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recent injuries and Dr. Kalelkar opined that they were caused by pressure or a blunt object. They were consistent with bruising from someone kneeling on her back. Additionally, numerous recent bruises were identified on various areas of Wolf's body including her elbow, back of her knees and throughout her lower legs.

Dr. Kalelkar also identified a tongue-bite wound approximately two-tenths of an inch and a hemorrhage in the posterior pharyngeal wall muscles. Dr. Kalelkar did not identify anything significantly wrong with Wolf's cardiovascular or respiratory systems, or her liver or gall bladder. Her blood alcohol level at the time of death was .156 and she had cocaine metabolite in her system, but not cocaine, at the time of her death. This indicated that she could have ingested cocaine approximately two hours before her death.

Dr. Kalelkar opined that the manner of death was homicide by asphyxia due to strangulation. Due to the symmetrical bruising to her back and legs, as well as pressure blanching on her nose, chin and knees, Dr. Kalelkar determined that this indicated that she was pushed down on the ground. The additional evidence of the positioning of her body with a stool over her legs, hemorrhages to her neck, eyes and pharyngeal muscles, as well as the tongue bite indicated to Dr. Kalelkar that she was killed by strangulation.

Defendant presented the testimony of Dr. Jeffrey Jentzen, who opined that Wolf died of asphyxia due to positional asphyxiation related to severe alcohol intoxication. Dr. Jentzen opined that because Wolf was severely intoxicated and she presented numerous bruises indicating that she suffered multiple falls, all consistent with falling while intoxicated, his theory was supported. He testified that inebriation relaxes muscles that regulate swallowing and regurgitation and this can result in aspiration or loss of control of airway. Based on the

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toxicology reports, he opined that Wolf fell while intoxicated either with the comforter over her, or someone placed the comforter on her and she passed out in a face down position that led to her asphyxiation.

Dr. Kalelkar disagreed with these conclusions. Dr. Kalelkar opined that air pockets in the comforter would have allowed Wolf to breathe and the totality of the evidence indicated otherwise. Dr. Kalelkar admitted that the hemorrhages to Wolf's eyes could have been caused by her position at death and that her airways were blocked in the position which her body was found.

At the close of evidence and before closing arguments, defendant requested that the trial court consider the lesser included offenses of second degree murder and involuntary manslaughter, including involuntary manslaughter of a family member. Following closing arguments, the trial court summarized the evidence presented and found defendant guilty of the lesser included charge of involuntary manslaughter as well as the possession of a stolen vehicle. The trial court noted the difficulty the case presented, not only to the court, but for the police and the State in assembling this case based on the circumstantial evidence available and the inferences and suggestions to be drawn. Ultimately, it concluded, giving all benefit of the doubt to defendant, the totality of evidence pointed to her guilt beyond a reasonable doubt.

The trial court recognized that defendant never confessed to killing Wolf. However, it highlighted the testimony of numerous witnesses that spoke of different stories from defendant surrounding the incident. The trial court also cited to the testimony concerning defendant's hasty and hostile actions in retrieving Wolf's car from the garage, specifically pointing to the videotape that showed defendant frantically stuffing her belongings in bags on the elevator and scheming to

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get Wolf's car from the valets. It concluded that this evidence demonstrated an extreme lack of concern for Wolf's well-being and was indicia of her guilt and reckless behavior.

The trial court further noted to the younger, stronger defendant and the much slighter and older Wolf. While there was clear evidence of alcohol and drug abuse and Wolf's falling in the past, the trial court could not accept the theory that Wolf died due to her intoxication.

Specifically, the court noted that both forensic experts were credible, but found Dr. Kalelkar more credible. Based on the totality of the evidence, Dr. Kalelkar's opinion of asphyxiation by strangulation was accepted and the circumstantial evidence presented led to the conclusion that defendant was guilty.

The trial court denied defendant's motion for new trial on both convictions of involuntary manslaughter of a family member and possession of a stolen vehicle. Defendant was sentenced to concurrent terms of eight and seven years' imprisonment, respectively for the convictions. This appeal followed.

II. ANALYSIS

Defendant asserts that the State failed to prove her guilty beyond a reasonable doubt of both involuntary manslaughter of a family member (720 ILCS 5/9-3 (West 2008)) and possession of a stolen vehicle (720 ILCS 5/4-103(a)(1) (West 2008)) and, therefore, that the convictions must be reversed. Due process requires proof beyond a reasonable doubt of every necessary fact to find a defendant guilty of a crime. *In re Winship*, 397 U.S. 358, 364 (1970). In assessing the sufficiency of the evidence to sustain a verdict on appeal we must view the evidence in the light most favorable to the prosecution to determine if "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *People v. Bush*, 214 Ill. 2d 318, 326

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(2005), citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979); *People v. Collins*, 106 Ill. 2d 237, 261 (1985).

This means that we do not retry the defendant. We must allow all reasonable inferences from the record in favor of the prosecution. *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). Assessing the credibility of the witnesses, determining the weight of testimony, and resolving inconsistencies in the evidence is the province of the trier of fact and we do not overturn such determinations lightly. *People v. Garmon*, 394 Ill. App. 3d 977, 981 (2009). We only reverse a conviction if the evidence of record is so improbable or unsatisfactory that a reasonable doubt of guilt exists. *People v. Island*, 385 Ill. App. 3d 316, 346 (2008). This standard of review applies whether the evidence of guilt is direct or circumstantial. *People v. Pollock*, 262 Ill. 2d 189, 217 (2002).

A. Involuntary Manslaughter of a Family Member

Involuntary manslaughter is committed when a person unintentionally kills a person without lawful justification when his acts, whether lawful or unlawful, cause the death or are likely to cause death or great bodily harm to the person, and the act is performed recklessly. 720 ILCS 5/9-3(a) (West 2008). Recklessness is defined as when a person “consciously disregards a substantial and unjustifiable risk that circumstances exist or that a result will follow, described by the statute defining the offense; and such disregard constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation.” 720 ILCS 5/4-6 (West 2008). The parties agree that defendant was a family member by definition because she shared the dwelling with Wolf. 725 ILCS 5/112A-3(3) (West 2008).

Defendant argues that the State’s case against her is based solely on circumstantial

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evidence and without any eyewitness testimony, physical evidence to link defendant, or any inculpatory statements, her conviction for involuntary manslaughter of a family member must be reversed. Defendant notes that she freely admitted, and admits, to having a fight with Wolf on August 26, 2006. However, she argues that the lack of evidence linking her to Wolf's death is insufficient to physically link her to the crime or to establish that she acted recklessly, the requisite intent for involuntary manslaughter.

Defendant argues that, under the State's theory of the case, there would be some form of physical evidence linking defendant to the crime. Following Dr. Kalelkar's testimony, defendant asserts that defendant would have fought the strangulation and evidence of defendant's skin would have been found in Wolf's fingernails. Furthermore, no evidence of scratches or any wounds were identified on defendant when she was arrested and booked in Kenosha.

Defendant also points to the evidence that: she called Wolf when she could not get the car from the garage; Wolf yelled out from the apartment when Smith escorted her back from the garage; and Wolf called Seaton in the garage to release her car to defendant. She argues that this shows she was clearly alive at that time and that the intervening 48 hours before Wolf's body was discovered creates reasonable doubt that defendant killed Wolf. Defendant argues that it also damages the trial court's reasoning as it attributed evidence of guilt to defendant's actions in quickly and frantically getting on the elevator and seeking Wolf's car. Furthermore, she maintains that it shows that the trial court unreasonably ignored the credible testimony of Dr. Jentzen that Wolf died due to asphyxiation related to her severe intoxication.

The State argues that the trial court was correct in concluding that the totality of the evidence supported defendant's conviction. While both sides make several unequivocal

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statements that certain pieces of evidence established or indicated that Wolf was alive or dead at certain times and there, obviously, are some gaps due to the circumstantial evidence, we agree with the State. Viewing the evidence in a light favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.

The evidence at trial showed that defendant and Wolf had a volatile relationship that included drug and alcohol abuse. It also showed that defendant did frantically try to leave PTC and attempted to coerce staff to give her Wolf's car despite Wolf's clear command not to allow defendant use of her car. Numerous calls were made to members of defendant's family from Wolf's apartment. Immediately after defendant was able to gain access to Wolf's car, she left alone with her son and money was withdrawn from Wolf's account next door to PTC. Next, defendant was stopped by police in Wisconsin and arrested for driving while intoxicated. Subsequent attempts to withdraw money from Wolf's account were made in Kenosha, Wisconsin. Wolf was not heard from again alive and her body was discovered only after a request was made for a well-being check.

The trial court made specific credibility findings concerning the key testimony at trial, that of the two forensic pathologists. Following its recap of the evidence it found compelling, the trial court opined that Dr. Kalelkar was more credible and his testimony fit the totality of the evidence presented and was more convincing. The record does not provide support for defendant's contention that this conclusion was inappropriate or that the trial court flatly "ignored" the testimony of its expert. The state of Wolf's body, in particular the bruising to the back, and the setting in which she was found supports the conclusion that Wolf died by strangulation. The trial court's conclusion that defendant acted recklessly in fighting Wolf and

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fleeing rather than getting help for her demonstrated her recklessness. Accordingly, viewing the entirety of the evidence in a light favorable to the State, defendant's conviction for involuntary manslaughter of a family member is affirmed.

B. Possession of a Stolen Vehicle

Defendant also asserts that the State failed to prove her guilty beyond a reasonable doubt of possession of a stolen vehicle. She argues that the State failed to show beyond a reasonable doubt that she did not have permission to possess Wolf's car or knew that it was stolen.

Defendant argues that Seaton testified that he received a call from Wolf's apartment and a woman stated that defendant could have Wolf's car. Seaton testified that he believed it was Wolf who had placed the call, so they released the car to defendant. Seaton did not subsequently express concern or doubt that defendant may have been the one that called. Defendant asserts that absolutely no evidence was presented to counter this testimony and establish that it was defendant who had placed the call to have the car released to herself.

There is no dispute that Wolf had told PTC staff not to release her vehicle to defendant prior to August 26, 2006, or that defendant was in possession of Wolf's car after 9:23 p.m. on that date. Therefore, the only contention in dispute is whether defendant was entitled to have possession because Wolf had called the garage staff to release the vehicle. Following the same standard of review and evidence as presented above, we agree with the State that defendant's conviction for possession of a stolen vehicle must be affirmed.

It is true that Seaton testified that he received the call from Wolf's apartment and the person on the phone said she was Wolf. However, every other inference that can be made from the evidence at trial points to the State's claim that it was not Wolf on the phone and defendant

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was not authorized to have the vehicle. The trial court considered all of this evidence and the credibility of the witnesses. Wolf provided strict instructions not to release the vehicle.

Everything in defendant's actions would lead a rational trier of fact to conclude that defendant knew that she was not authorized to have the vehicle and desperately wanted to get the vehicle to leave. The evidence was not so unrealistic, improbable or unreliable to establish a reasonable doubt of defendant's guilt of possession of a stolen vehicle.

III. CONCLUSION

For the foregoing reasons, we affirm defendant's convictions for involuntary manslaughter of a family member and possession of a stolen vehicle.

Affirmed.