

NOTICE
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2011 IL App (4th) 100520-U

Filed 10/31/11

NO. 4-10-0520

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
ANGELA ARMOUR,)	No. 10CF140
Defendant-Appellant.)	
)	Honorable
)	Heidi N. Ladd,
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Turner and Appleton concurred in the judgment.

ORDER

¶ 1 *Held:* (1) The State introduced sufficient evidence to prove defendant guilty of unlawful possession of a controlled substance with intent to deliver beyond a reasonable doubt.
(2) The trial court did not err in giving a jury instruction regarding accountability.

¶ 2 In May 2010, a jury convicted defendant, Angela Armour, of one count of unlawful possession of a controlled substance (cocaine) with intent to deliver (720 ILCS 570/401(a)(2)(A) (West 2010). In June 2010, the trial court denied defendant's posttrial motion and sentenced her to seven years' imprisonment, to be followed by three years' mandatory supervised release (MSR). Defendant appeals, arguing (1) the State failed to introduce sufficient evidence to prove her guilty of unlawful possession of a controlled substance with intent to deliver beyond a reasonable doubt, and (2) the court erred in giving a jury instruction regarding accountability. We affirm.

¶ 3

I. BACKGROUND

¶ 4 In February 2010, the State charged defendant by information with one count of unlawful possession of a controlled substance (cocaine) with intent to deliver in the amount of more than 15 but less than 100 grams (720 ILCS 570/401(a)(2)(A) (West 2010)), a Class X felony. She pleaded not guilty and requested a jury trial. The evidence before the jury consisted of two days of testimony (May 19, 2010, through May 20, 2010), several exhibits offered by the State, and a stipulation entered into by the parties. The State introduced testimony from the following members of the Rantoul police department: Rodney Sullivan, Jeremy Heath, James Schmidt, and Bradley Saltgaver. Defendant testified on her own behalf. Their testimony showed the following.

¶ 5 Officer Sullivan testified on January 29, 2010, at approximately 1:30 p.m. he was preparing to execute a search warrant for the premises of 229 Illinois Drive in Rantoul (residence). The search warrant was obtained as part of an ongoing narcotics investigation involving the residence in question. Sullivan drafted the operation plan for the search and oversaw the investigation. As officers were preparing to execute the search warrant, defendant was observed leaving the residence in a black vehicle. Sullivan instructed officers to conduct a traffic stop on the vehicle defendant was driving.

¶ 6 Sullivan proceeded to the location of the traffic stop, informed defendant he had a search warrant for the residence, and asked for a key so officers would not have to force the door open. Defendant claimed she did not have a key, and the officers were forced to gain entry by ramming the door open. It was later discovered defendant had a key to the house on her key ring, which she had in her possession when she denied having a key to the residence. Upon

forcing the door, officers secured the residence and found no one else inside the house.

Defendant was in a police squad car when officers first gained entry to the residence. Prior to being placed in the squad car, defendant was searched. No drugs were found on defendant, but officers did find \$280 in United States currency.

¶ 7 As officers processed the scene, Sullivan was informed contraband had been found in what was later identified as the master bedroom. At that point, Sullivan spoke with defendant, who was brought back into the residence from the squad car out front. Sullivan's conversation with defendant took place in the living room of the residence, and defendant was under the supervision of at least one officer at all times. After informing defendant of her *Miranda* rights (*Miranda v. Arizona*, 384 U.S. 436 (1966)), Sullivan began a conversation with her. Sullivan stated defendant immediately requested permission to call her boyfriend Herbert Leshoure, who lived at the residence with defendant, but her request was denied. After Sullivan asked defendant a few more questions, she indicated she no longer wished to speak to him, and he rejoined the search of the residence.

¶ 8 A short time later, another officer informed Sullivan defendant wanted to speak to him again. Upon making contact with defendant, she again asked Sullivan if she could contact Leshoure and was again told she could not. Defendant then told Sullivan she wished to ask Leshoure if he wanted her to take responsibility for what was found in the residence. Sullivan took this to mean she thought it would be better if one of them took the blame, rather than both of them. Sullivan told defendant it would not be prudent to take the blame for anything she was not involved in. He stated defendant acknowledged she had sold drugs to a few people in order to supplement her income and make ends meet since her unemployment compensation had

expired. On cross-examination, Sullivan stated defendant was referring to past drug sales, leading up to this point. She never affirmatively stated to Sullivan she was in possession of the cocaine found in the house. She did admit the gun found belonged to her. Sullivan did not recall defendant giving any specifics as to how often she had made such transactions or what quantity of drugs had been involved.

¶ 9 Sullivan stated defendant had been one of two targets of the search and identified Leshoure as the other target. Sullivan also stated, as the supervising officer on the scene, he had not actively participated in the search, and the evidence had been discovered by other officers. In addition, Sullivan testified he had asked defendant for the key to a safe found in the master bedroom, but defendant told him the safe was not hers and denied having a key to it.

¶ 10 Officer Heath next testified he assisted in executing the search warrant on the residence and was among the officers who entered the residence after the door was forced open, but his main duty was to sweep the inside of the residence for anyone who might be hiding inside. Upon entering the home, Heath made his way into the master bedroom, where he saw a large scale on top of a dresser. The scale had a white residue on it. Heath stated he did not collect the evidence himself but instead pointed it out to another investigator to be processed. Heath identified People's exhibit No. 3 as the scale he had seen on the dresser in the master bedroom of the residence. Finally, Heath testified scales such as the one recovered from the residence were often used by drug dealers to weigh and package narcotics.

¶ 11 Officer Schmidt testified he was involved in executing the search warrant on the residence. Because Schmidt was a member of the Metro Special Weapons and Tactics (S.W.A.T.) team, he was called upon to force the door using a battering ram. After forcing the

door, Schmidt entered the residence and assisted other officers in securing the area. After securing the residence, Schmidt was called upon to open a locked door to a closet in the master bedroom. Upon forcing the closet door open, Schmidt located a large amount of marijuana in a bag on the floor. Schmidt also saw a roll of money secured with a rubber band and some gold and silver coins sitting on a shelf. However, Schmidt did not personally recover the items for evidence.

¶ 12 While searching the closet, a blue lockbox was located, but investigators were unable to find a key. Schmidt then forced the lockbox open. Inside the lockbox Schmidt located a large amount of United States currency and a Baggie containing what he suspected to be crack cocaine. Again, Schmidt did not collect the items of evidence himself. Schmidt later located a shoe box in the attic containing several empty Baggies and small trace amounts of suspected marijuana. On cross-examination, Schmidt stated clothes were in the locked closet in the master bedroom, but he could not remember whether the items were women's clothing or men's. Also on cross-examination, Schmidt testified another unlocked closet was next to the locked closet, but he did not remember looking inside it.

¶ 13 Officer Saltgaver testified he was also involved in executing the search warrant on the residence. His role in the investigation was to photograph the scene and process the evidence. Saltgaver stated during a search the other officers would locate suspected evidence and notify him of its whereabouts, and he would then photograph and collect the evidence. Saltgaver testified he followed the proper procedure in collecting all the evidence found in the residence.

¶ 14 Upon entering the residence, Saltgaver was informed a scale had been found on a

dresser in the master bedroom. Saltsgaver then proceeded to the master bedroom. The following items were found on or inside the dresser in question and taken into evidence: (1) a large scale; (2) a plate containing cocaine residue; (3) 7.5 grams of cocaine and 8.1 grams of marijuana; and (4) three pieces of mail addressed to defendant at the residence. Saltsgaver continued processing the master bedroom and found two smaller digital scales in a wicker basket next to the bed, \$400 United States currency in another dresser, and a 9-millimeter handgun, along with 50 rounds of 9-millimeter ammunition, in a nightstand. Saltsgaver then turned his attention to the contents of the locked closet.

¶ 15 Saltsgaver testified he had not been present when the closet door was forced open, and when he entered the room to process the evidence the door to the closet was ajar. In the closet, Saltsgaver recovered \$1,250 United States currency and 349 grams of marijuana. Saltsgaver then witnessed Schmidt remove a blue lockbox from the closet and force it open. Evidence recovered from the lockbox included: (1) \$1,520 United States currency, (2) 12 grams of crack cocaine, (3) 28 grams of powder cocaine, and (4) Leshoure's checkbook. No other evidence was recovered from the master bedroom, but Saltsgaver took a measuring cup from the kitchen that field tested positive for cocaine residue into evidence. Saltsgaver stated the mixing cup was significant because it indicated someone in the house had processed powder cocaine into crack cocaine.

¶ 16 On cross-examination, Saltsgaver stated the locked closet contained a few articles of men's clothing, but no articles of women's clothing. Saltsgaver also admitted, to the best of his knowledge, no attempt had been made to collect fingerprints from any of the evidence taken from the residence that day.

¶ 17 After Saltsgaver's testimony, the trial court read a stipulation into the record. In the stipulation, the parties agreed the State's expert witness would testify People's exhibit No. 1, which was the powder cocaine recovered from the lockbox inside the locked closet, contained 24.9 grams of cocaine. After the stipulation was entered the State rested its case, pending the introduction of its exhibits. The case was then turned over to the defense, and defendant opted to testify on her own behalf.

¶ 18 Defendant testified she had lived at the residence for about two years when it was raided on January 29, 2010. She sold cocaine to friends on about three or four separate occasions. Defendant always got the cocaine from Leshoure, and she knew he kept it in the closet in the master bedroom. Defendant never paid Leshoure for the cocaine he would give her. Though defendant shared the master bedroom with Leshoure, she claimed he always kept the closet locked, and she did not have a key. Defendant never told Sullivan she was responsible for the cocaine found in the residence and claimed she did not know how much cocaine was in the closet at any given time or where Leshoure got the cocaine from. Finally, defendant admitted lying to police about not having a key to the residence when they stopped her in her car the day of the raid, but she stated she did not have keys to the closet or the lockbox found inside the closet. After defendant's testimony, the defense rested.

¶ 19 On May 20, 2010, the jury found defendant guilty of unlawful possession of 24.9 grams of cocaine with intent to deliver. On May 25, 2010, defendant filed a posttrial motion requesting a new trial. In June 2010, the court denied defendant's posttrial motion and sentenced her to seven years' imprisonment. This appeal followed.

¶ 20

II. ANALYSIS

¶ 21 On appeal, defendant argues (1) the State failed to prove her guilty of possession of a controlled substance with intent to deliver beyond a reasonable doubt, and (2) the court erred in giving a jury instruction on accountability. We disagree and affirm.

¶ 22 A. Sufficiency of the Evidence of Possession

¶ 23 Defendant first argues the State failed to introduce sufficient evidence to prove her guilty of unlawful possession of a controlled substance with intent to deliver beyond a reasonable doubt. Specifically, defendant argues the State failed to establish she had either actual or constructive possession of the 24.9 grams of cocaine found in the lockbox inside the locked closet.

¶ 24 In reviewing the sufficiency of the evidence, the question for this court is whether "after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *People v. Perez*, 189 Ill. 2d 254, 265-66, 725 N.E.2d 1258, 1264 (2000). "A conviction should not be set aside *** unless the proof is so improbable or unsatisfactory that a reasonable doubt exists about the defendant's guilt." *Perez*, 189 Ill. 2d at 266, 725 N.E.2d at 1264. We note defendant argues this court should review the evidence *de novo*, asserting this case deals with a set of settled facts and does not entail any assessment of the credibility of witnesses. See *People v. Smith*, 191 Ill. 2d 408, 411, 732 N.E.2d 513, 514 (2000). We find the jury was tasked with assessing the credibility of defendant's testimony and therefore reject defendant's request to review the evidence *de novo* and opt for the approach discussed above.

¶ 25 To prove defendant guilty of unlawful possession of a controlled substance with

intent to deliver, the State had to show (1) defendant had knowledge of the presence of the controlled substance, (2) the drugs were in the immediate possession or control of defendant, and (3) defendant intended to sell the drugs. 720 ILCS 570/401 (West 2010); *People v. Robinson*, 167 Ill. 2d 397, 407, 657 N.E.2d 1020, 1026 (1995). As the defendant only challenges the sufficiency of the evidence regarding possession, we need not address her knowledge of or intent to sell the cocaine.

¶ 26 Possession can be actual or constructive. *People v. Givens*, 237 Ill. 2d 311, 335, 934 N.E.2d 470, 484 (2010). If constructive possession can be shown, then actual possession is irrelevant. *People v. Baesz*, 345 Ill. App. 3d 50, 59, 802 N.E.2d 841, 849 (2003). Constructive possession depends on an intent and capability to maintain control and dominion over the substance and often is proved entirely by circumstantial evidence. *Id.* The fact a substance may be accessible to another person does not defeat constructive possession, as constructive possession can be joint if two or more persons share the intention and capability to exercise control. *Givens*, 237 Ill. 2d at 335, 934 N.E.2d at 484-85. Finally, the jury instruction given in the present case regarding constructive possession stated, in pertinent part:

"A person has constructive possession when he lacks actual possession of a thing but he has both the power and the intention to exercise control over a thing *either directly or through another person.*" (Emphasis added.) See Illinois Pattern Jury Instructions, Criminal, No. 4.16 (4th Ed. 2000).

¶ 27 In the case *sub judice*, defendant admitted she lived in the residence and could gain access to the drugs by asking Leshoure to give her the amount she needed. Defendant also

admitted engaging in cocaine transactions on the premises in the past. In addition, circumstantial items of evidence relating to the sale of drugs, such as scales and Baggies, were found in defendant's dresser or in places defendant had easy access to. This alone is enough evidence to allow a reasonable jury to infer defendant had the power and the intention to exert control over the cocaine *directly or through another person*.

¶ 28 In addition, the only evidence on the matter of access to the closet came from defendant's testimony, in which she stated she did not have a key. However, a reasonable jury could have found defendant's testimony unconvincing, especially in light of the fact she admitted she lied to police officers when she claimed not to have a key to her house on the day of the raid. See *People v. Jones*, 219 Ill. 2d 1, 33, 845 N.E.2d 598, 616 (2006) ("The trier of fact has the responsibility to determine the credibility of witnesses and the weight given to their testimony."). Under these circumstances, it would have been reasonable for a jury to infer defendant had access to the locked closet and the lockbox inside, even without direct evidence in the form of a key found in her possession.

¶ 29 B. Accountability Jury Instruction

¶ 30 Defendant argues the State failed to introduce any evidence to support its contention she should be held legally accountable for Leshoure's possession of the cocaine and, therefore, the trial court erred in giving the jury instruction on accountability.

¶ 31 While administering jury instructions, the trial court gave pattern jury instruction No. 5.03, which states:

"A person is legally responsible for the conduct of another person when, either before or during the commission of an offense,

and with the intent to promote or facilitate the commission of an offense, he knowingly solicits, aids, abets, agrees to aid, or attempts to aid the other person in the planning or commission of an offense." Illinois Pattern Jury Instructions, Criminal, No. 5.03 (4th ed. 2000) (hereinafter, IPI Criminal 4th No. 5.03).

The State is entitled to appropriate jury instructions in presenting its side of the case, as long as sufficient evidence is presented to warrant giving the instructions. *People v. Brown*, 406 Ill. App. 3d 1068, 1079, 952 N.E.2d 32, 41 (2011). "Only slight evidence is necessary to justify giving an instruction on accountability." *People v. Fusco*, 245 Ill. App. 3d 524, 529, 615 N.E.2d 38, 42 (1993). A trial court's decision to give an accountability instruction will not be disturbed absent an abuse of discretion. *People v. Reatherford*, 345 Ill. App. 3d 327, 344, 802 N.E.2d 340, 355 (2003). To prove the defendant possessed the intent to promote or facilitate the crime, the State must show beyond a reasonable doubt "either: (1) the defendant shared the criminal intent of the principal, or (2) there was a common criminal design." *Perez*, 189 Ill. 2d at 266, 725 N.E.2d at 1265. "Intent may be inferred from the character of defendant's acts as well as the circumstances surrounding the commission of the offense." *Id.*

¶ 32 In the present case, defendant admitted supplying drugs to her friends. Defendant also admitted she received the drugs from Leshoure and knew he kept them in the closet in the master bedroom. Defendant never paid for the drugs but received money from her customers for them. Further, according to Sullivan's testimony, on the day of the raid defendant said she needed to talk to Leshoure to discuss which one of them should take responsibility for the drugs found in his closet. In addition to testimony, the circumstantial evidence of defendant's

