

NOTICE
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2012 IL App (5th) 090303-U
NO. 5-09-0303
IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Marion County.
)	
v.)	No. 08-CF-258
)	
CHARLES S. COOK,)	Honorable
)	Patrick J. Hitpas,
Defendant-Appellant.)	Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.
Presiding Justice Donovan and Justice Spomer concurred in the judgment.

ORDER

- ¶ 1 *Held:* The defendant's conviction for manufacturing methamphetamine was supported by sufficient evidence. Trial court did not abuse its discretion in admitting for the limited purpose of showing his knowledge and intent evidence that the defendant ingested methamphetamine.
- ¶ 2 The defendant, Charles S. Cook, appeals his conviction for participation in methamphetamine manufacturing (720 ILCS 646/15(a)(2)(C) (West 2008)). He argues that (1) the evidence was not sufficient to prove him guilty beyond a reasonable doubt and (2) the trial court abused its discretion by admitting evidence that he smoked methamphetamine. We affirm.
- ¶ 3 The charges against the defendant stem from a stop of a vehicle he was driving. During the course of the stop, sheriff's deputies discovered two baggies of methamphetamine and two items of drug paraphernalia in the possession of one of the passengers in the vehicle, Marla Taylor. Further investigation led to a search of Taylor's grandmother's trailer, where

police found various items used in the manufacture of methamphetamine. Taylor, the defendant, and the other passenger, Howard Wayne Howell, had been at the trailer just prior to the stop. All three were charged with participation in methamphetamine manufacturing (720 ILCS 646/15(a)(2)(C) (West 2008)). However, Taylor pled guilty to possession of methamphetamine (720 ILCS 646/60(b)(1) (West 2008)) and use of property for methamphetamine manufacturing (720 ILCS 646/35 (West 2008)) pursuant to a negotiated plea agreement which included her testimony against Howell and the defendant.

¶ 4 Howell and the defendant were tried together. Neither testified. The State's primary witness at their trial was Marla Taylor. She testified that when the events at issue took place, she was dating Howell. She knew the defendant because he was a friend of Howell's. She testified that on the night they were arrested, the defendant and Howell arrived at her home to return some golf clubs that they had borrowed from her earlier in the day. She estimated that they arrived at her house at approximately 9 or 10 p.m. They visited until 10:30 or 11, and then they all went for a ride. She stated that they just "drove around" in the country for some time before going to Taylor's grandmother's trailer at the Sportsman's Club near Salem, Illinois.

¶ 5 Taylor had a key to the trailer. She explained that she had borrowed the key so that she could spray for spiders in the trailer for her grandmother, Marie Pitts. She further explained that, although she did not have her own key to the trailer, she was allowed to use the trailer on weekends whenever she wished. She had gone there many times to take her children fishing on the lake.

¶ 6 Taylor testified that when she, Howell, and the defendant arrived at Pitts's trailer, they went inside to drink soda and talk. At some point, Taylor left the trailer to use the outhouse. As she left, she saw the defendant going to sleep on the sofa. When Taylor came out of the outhouse, Howell was outside waiting for her. They went for a walk together by the lake,

which was three or four lots away from Pitts's trailer. Taylor estimated that she and Howell spent about 20 minutes at the lake before returning to the trailer. She stated that they then sat together on a bench before going inside.

¶ 7 Taylor testified that when she and Howell went back into the trailer, it was hazy and had a chemical smell. She saw the defendant sitting at the table doing nothing. Asked what she thought was going on, Taylor replied, "I don't know, I just had a bad feeling." At this point, Taylor told Howell and the defendant that they needed to leave. One of the men told her that they should empty the trash before leaving, but Taylor told them not to do so because they needed to leave immediately. She testified that they left with her and said nothing more about the need to empty the trash. The State's Attorney asked Taylor about a statement that she gave to police approximately two months after the incident. Taylor acknowledged that in her statement, she told police that she saw the defendant pour water into a Coca-Cola bottle that was in the trash can. She explained that this occurred before she told them that they needed to leave immediately.

¶ 8 Taylor next testified about the stop. She stated that shortly after leaving the trailer, they came to a roadblock. She testified that they drove around a police car set up to block traffic, but then turned the car around and headed in the opposite direction. Before they were pulled over, Howell handed her two baggies of methamphetamine. Taylor testified that she told him to give her the baggies because she believed that she was less likely to be searched than the two men. She testified that she also grabbed a pipe and an electronic scale that were "in the middle" of the car and hid them in her purse. She then tried to hide her purse under the seat, and one of the sheriff's deputies saw her attempting to hide her purse when they were stopped.

¶ 9 Taylor acknowledged that the State dismissed a charge of participation in methamphetamine manufacturing against her in exchange for her testimony against Howell

and the defendant. She pled guilty to charges of possession of methamphetamine and allowing the use of property for methamphetamine manufacturing, and was sentenced to probation.

¶ 10 On cross-examination, Taylor testified that she told police that she knew nothing about manufacturing methamphetamine. In response to questioning by defense counsel, however, she admitted that she was smoking what she knew to be methamphetamine in the car the night they were stopped.

¶ 11 At this point, the State's Attorney objected and requested a sidebar conference. The State argued that defense counsel's questioning constituted a violation of the court's earlier ruling on a motion *in limine*. Just prior to trial, the defendant made an oral motion *in limine* to exclude evidence that the defendant and Howell were smoking methamphetamine in the car. The court granted the motion. The State argued the court's ruling encompassed evidence that *any* of the three were smoking methamphetamine in the car. The State further argued that Taylor's testimony that she was smoking methamphetamine would be misleading unless the State was permitted to ask Taylor who provided the methamphetamine and whether the defendant and Howell were also smoking. The court agreed and ruled that the State could ask Taylor about smoking in the car "and all the surrounding circumstances." The court subsequently clarified this ruling, stating that it was admitting the evidence for the limited purpose of showing the defendant and Howell's intent, motive, design, or knowledge.

¶ 12 Taylor further testified on cross-examination that she purchased 96 ephedrine tablets two weeks prior to the night of the arrest, and that she purchased 96 more ephedrine tablets the day before the arrest. She admitted that she knew that ephedrine was used in manufacturing methamphetamine. She could not remember why she had made the first purchase; she stated that she may have had a cold. She testified, however, that she made the second purchase at Howell's request.

¶ 13 Counsel questioned Taylor about various items used in the manufacture of methamphetamine and whether these items were in the trailer. She testified that some of the items counsel asked her about were items that her grandmother ordinarily kept on hand in the trailer; for example, she thought that there were Mason jars, iodized salt, and coffee filters in the trailer. She also testified that she saw what is commonly called a "generator"—a bottle with plastic tubing coming out of it. This was the Coca-Cola bottle in the trash can. Taylor denied seeing other items used for manufacturing methamphetamine in the trailer—such as battery strips, starting fluid, and ephedrine tablets. She acknowledged that Howell and the defendant did not know what items were kept in the trailer and testified that she did not see them bring any of these items into the trailer.

¶ 14 Taylor testified that it was her idea to go to her grandmother's trailer that night. She further testified that although she borrowed the key to the trailer so she could spray for spiders, she never did spray the trailer. She admitted that she was high when the events at issue took place and that she "did [her] best" to remember the details when she gave a statement to police two months later.

¶ 15 On redirect examination, Taylor was asked who gave her the methamphetamine she was smoking in the car. She replied, "They had it." She stated that she thought it was the defendant's methamphetamine, but she was not certain. She further testified that the defendant, too, was smoking. The State's Attorney asked Taylor to clarify her previous testimony regarding who handed her the two baggies of methamphetamine. As previously discussed, she testified on direct that Howell handed her the methamphetamine after she suggested that he do so. On redirect, she stated that she did not remember whether Howell or the defendant actually handed her the baggies.

¶ 16 Charles Tolbert, a resident of the Sportsman's Club, testified that he saw a car he did not recognize parked outside Marie Pitts's trailer. He went to check on the trailer. He did

not see anyone, but he smelled a strange odor and called the police to report it.

¶ 17 Deputy Kevin Cripps testified that he and Deputy Hannah Castleman were responding to a motor vehicle accident when Cripps received a call from dispatch requesting that they go to the Salem Sportsman's Club to investigate a suspected meth lab. He then received a second call from dispatch informing him that the same resident called back to report that the vehicle he had seen at Pitts's trailer had left the Sportsman's Club with its headlights off. At some point, Deputy Cripps got a description of the vehicle from dispatch. He testified that the defendant's vehicle matched the description.

¶ 18 Deputy Cripps explained that he and Deputy Castleman erected a roadblock to allow a vehicle involved in the accident to be cleared from the roadway. He used his squad car to block one side of the blocked-off area, and Deputy Castleman used her squad car to block the other end. Because there was a curve in the road, the two deputies could not see each other, but they were in contact by radio. Deputy Cripps testified that as they were wrapping up their investigation of the accident, Deputy Castleman contacted him and told him that a vehicle had gone around her roadblock. Deputy Cripps saw the car approach him, then turn around. Deputy Castleman contacted him again by radio and told him that she was going to initiate a stop of the vehicle because it had a loud muffler and had run around her roadblock.

¶ 19 Deputy Castleman pulled over the defendant's car, and Deputy Cripps arrived to provide backup. While Castleman went to her squad car to run license and warrant checks, Cripps approached the passenger side of the vehicle. He saw Taylor attempt to hide something under the seat. When he shined a flashlight into the car, he saw that she was attempting to hide a glass pipe and an electronic scale. He asked Taylor to step out of the car and asked her if she had anything else. He testified that Taylor admitted that she had drugs hidden in her bra. He further testified that Deputy Castleman returned to the defendant's vehicle at about this time, and she retrieved two baggies of what appeared to be

methamphetamine from Taylor's bra. Deputy Cripps explained that the methamphetamine in one of the baggies was wet, which indicated that it had been freshly made.

¶ 20 Deputy Cripps testified that when the defendant and Howell got out of the vehicle, he could smell ether. He explained that ether is a smell associated with the manufacture of methamphetamine. He testified that he did not smell any ether when Taylor got out of the car. No additional contraband was found in the car or on either Howell or the defendant.

¶ 21 The deputies contacted Marie Pitts, who gave them permission to search her trailer. The Illinois State Police Meth Response Team arrived and found coffee filters, iodized salt containers, tubing, and a hydrochloric generator in the trailer. In the trash can, they found loose powder which was a by-product of the methamphetamine manufacturing process. They also found coffee filters with residue of the same substance in them. Deputy Cripps explained that the various items used in manufacturing methamphetamine had to be destroyed due to the hazard they posed. He admitted that no effort was made to take any fingerprints from any of the items found in the trailer or from the pipe or scale found on Marla Taylor.

¶ 22 Deputy Castleman also testified. Her testimony was mostly consistent with that of Deputy Cripps. However, while Deputy Cripps testified that he did not smell any ether at all until the defendant and Howell stepped out of the car, Deputy Castleman testified that she did smell ether when Taylor alone was outside of the vehicle. She testified, however, that the smell was much stronger when the defendant and Howell exited the vehicle.

¶ 23 The jury was instructed that evidence that the defendant and Howell had smoked methamphetamine in the car could only be considered for the limited purpose of establishing their motive, intent, knowledge, or design. The jury found the defendant and Howell guilty. The court subsequently sentenced the defendant to 16 years in prison. This appeal followed.

¶ 24 The defendant first argues that the evidence was not sufficient to prove him guilty

beyond a reasonable doubt. We review such claims in the light most favorable to the prosecution and determine whether any reasonable trier of fact could find all the elements of the crime charged beyond a reasonable doubt. *People v. Sanchez*, 115 Ill. 2d 238, 260, 503 N.E.2d 277, 284 (1986). In addition, it is not the function of a reviewing court to retry the defendant. Instead, we give deference to the jury's determinations regarding the credibility of witnesses and the inferences to be drawn from their testimony. *People v. McLaurin*, 184 Ill. 2d 58, 79, 703 N.E.2d 11, 21 (1998). We will not set aside a defendant's conviction "unless the evidence is so improbable or unsatisfactory that a reasonable doubt of the guilt of the defendant remains." *McLaurin*, 184 Ill. 2d at 79, 703 N.E.2d at 21. Applying that standard to the case before us, we find that the evidence was sufficient to support the defendant's conviction.

¶ 25 The defendant's argument to the contrary has two components. First, he argues that Marla Taylor's testimony was not credible for two reasons—(1) she was a codefendant who testified pursuant to a negotiated plea agreement, and (2) she admitted that she was high on methamphetamine when the events at issue took place. Second, the defendant argues that even assuming Taylor's testimony to be true, she did not testify to seeing the defendant actually do anything to manufacture the methamphetamine; her testimony only places the defendant at the scene. We reject both of these contentions.

¶ 26 The defendant correctly points out that the testimony of a codefendant or accomplice is subject to suspicion. This is because an accomplice may have motives to testify falsely against the defendant, including malice toward the defendant or promises of leniency from the prosecution. *McLaurin*, 184 Ill. 2d at 79, 703 N.E.2d at 21. However, the defendant acknowledges that even the uncorroborated testimony of an accomplice witness is sufficient to support a conviction if it convinces the jury of the defendant's guilt beyond a reasonable doubt. *McLaurin*, 184 Ill. 2d at 79, 703 N.E.2d at 21.

¶ 27 Here, the jury heard that Taylor pled guilty to lesser charges in the matter in exchange for her testimony and was sentenced to probation. The jury was also properly instructed that the testimony of an accomplice should be treated with suspicion. Thus, jurors were able to evaluate Taylor's testimony in light of these issues and determine what to believe and what to disregard. It is also worth noting that a rational jury could disbelieve Taylor's testimony that she did not participate in manufacturing methamphetamine herself but still believe that the defendant and Howell were involved.

¶ 28 In addition, we find that although much of Taylor's testimony about the specific sequence of events is not corroborated by other evidence, the circumstantial evidence does support a reasonable inference that the defendant was manufacturing methamphetamine at Marie Pitts's trailer. For example, there is undisputed evidence that the defendant took evasive measures. He drove the vehicle out of the Sportsman's Club with its headlights off, and he turned around at the roadblock, rather than stopping. These actions support the inference that he was involved in illegal activity at the trailer, whether acting alone or with Taylor and Howell.

¶ 29 Furthermore, both deputies testified that the smell of ether was much stronger on the defendant than it was on Taylor. In fact, Deputy Cripps testified that he did not smell ether on Taylor at all. We acknowledge that the smell of ether only indicates that the defendant was present while methamphetamine was being manufactured. Deputy Cripps testified that the smell can be absorbed on a person's clothing from the haze in the air while methamphetamine is being "cooked." However, the fact that the odor was stronger on the defendant than on Taylor shows that she spent less time inside the trailer during the process than he did, which makes the idea that Taylor acted alone in manufacturing the methamphetamine implausible.

¶ 30 The defendant also challenges the credibility of Taylor's testimony on the basis that

she admitted to being high when the events at issue occurred. This is relevant to her ability to perceive and recall the events with clarity. See *People v. Collins*, 106 Ill. 2d 237, 270, 478 N.E.2d 267, 281 (1985). Taylor admitted that she was unable to recall certain details of the events that transpired, such as how much time she spent outside the trailer with Howell or what time they arrived at the trailer. How much weight to give the remainder of her testimony in light of her admitted difficulty remembering such details was a matter for the jury to determine. See *McLaurin*, 184 Ill. 2d at 79, 703 N.E.2d at 21; *People v. Ray*, 83 Ill. App. 3d 1029, 1033, 404 N.E.2d 1073, 1076 (1980).

¶ 31 The defendant's final argument regarding the sufficiency of the evidence is that Taylor's testimony was too vague to allow jurors to find that he participated in manufacturing methamphetamine beyond a reasonable doubt. We disagree. The defendant is correct that Taylor did not specifically testify to seeing the defendant or Howell making methamphetamine. However, she did testify that she left the trailer alone and returned to find it filled with a chemical haze that was not there before she left. She further testified that the defendant remained in the trailer while she and Howell went for a walk by the lake.

¶ 32 It is also important to emphasize that Taylor's testimony was not the only evidence the jury had to consider. As noted, one baggie of methamphetamine was still wet, indicating that it had been recently manufactured. In addition, Deputies Cripps and Castleman both testified that the defendant smelled more strongly of ether than did Taylor. As previously discussed, this testimony supports a finding that the defendant spent more time inside the trailer during the manufacturing process, thereby negating any inference that Taylor acted alone. This evidence along with the evidence that the defendant drove evasively is sufficient to allow the jury to find that the defendant participated in the manufacture of methamphetamine. The jury, as finder of fact, is in the best position to determine what reasonable inferences necessarily flow from the evidence. *McLaurin*, 184 Ill. 2d at 79, 703 N.E.2d at 21. Viewing

the totality of the evidence in the light most favorable to the prosecution, we find that it was sufficient to sustain the defendant's conviction beyond a reasonable doubt.

¶ 33 The defendant next argues that the trial court erred in allowing in evidence that he smoked methamphetamine with Marla Taylor the night they were arrested. We disagree.

¶ 34 Evidence that a defendant has committed crimes other than the offense charged is generally inadmissible. *People v. McGee*, 268 Ill. App. 3d 582, 586, 645 N.E.2d 329, 332 (1994). However, such evidence is admissible if it is relevant to prove " 'any fact material to the prosecution.' " *People v. Cortes*, 181 Ill. 2d 249, 283, 692 N.E.2d 1129, 1144 (1998) (quoting *People v. Stewart*, 105 Ill. 2d 22, 62, 473 N.E.2d 840, 860 (1984)). The evidence may be relevant, for example, to show a defendant's motive or intent. It may also be relevant if invited or acquiesced to by the defendant. *McGee*, 268 Ill. App. 3d at 586, 645 N.E.2d at 332. Even if relevant, other-crimes evidence should not be admitted if its potential for prejudice "substantially outweighs its probative value." *People v. Norwood*, 362 Ill. App. 3d 1121, 1129, 841 N.E.2d 514, 522 (2005) (citing *People v. Illgen*, 145 Ill. 2d 353, 365, 583 N.E.2d 515, 519 (1991)).

¶ 35 The admissibility of other-crimes evidence is within the trial court's sound discretion. We will not reverse absent a clear abuse of that discretion. *Norwood*, 362 Ill. App. 3d at 1129, 841 N.E.2d at 522. A court abuses its discretion if its decision is arbitrary or unreasonable. *Norwood*, 362 Ill. App. 3d at 1129, 841 N.E.2d at 523 (citing *Illgen*, 145 Ill. 2d at 364, 583 N.E.2d at 519).

¶ 36 Here, as previously noted, the trial court initially granted the defendant's motion *in limine* to exclude evidence that he had been smoking methamphetamine in the car before he was arrested. However, once the defendant elicited testimony that Marla Taylor was smoking from the pipe, the court ruled that he had opened the door to such evidence. The defendant argues that the court erred in this ruling. He points out that evidence of a witness's

intoxication is relevant to show that the witness's ability to accurately perceive and recall the events at issue was impaired. See *Collins*, 106 Ill. 2d at 270, 478 N.E.2d at 281. He argues that a defendant cannot "open the door" to improper evidence by eliciting testimony that is relevant and admissible. See *People v. Gorosteata*, 374 Ill. App. 3d 203, 222, 870 N.E.2d 936, 952 (2007) (applying the "invited error" doctrine to an improper closing argument and explaining that in that context, the rule is limited to remarks made in response to an improper argument by the defense).

¶ 37 The State, by contrast, points out that a defendant can invite the use of other-crimes evidence simply by making it relevant to the case. See, e.g., *Cortes*, 181 Ill. 2d at 284, 692 N.E.2d at 1144 (where a defendant made his alleged inability to speak and understand English an issue, the prosecution could refute this with evidence that he was able to communicate in English with a public defender in a previous trial even though that showed the jury that he had been prosecuted for other crimes); *People v. Wilson*, 46 Ill. 2d 376, 381, 263 N.E.2d 856, 859 (1970); *Norwood*, 362 Ill. App. 3d at 1130, 841 N.E.2d at 524 (evidence of a defendant's drug use was relevant to show that friction between the defendant and his mother over his drug use was his motive for murdering her); *McGee*, 268 Ill. App. 3d at 586, 645 N.E.2d at 333 (evidence of the nature of prior contacts between a defendant and a police officer was relevant once the defendant put forth evidence that he had previously filed a complaint against the officer, giving the officer a motive to testify falsely).

¶ 38 Here, the defense attempted to show that the defendant knew nothing about methamphetamine and was merely an innocent bystander to Marla Taylor's crimes. Evidence that he was smoking methamphetamine was relevant to refute this allegation and demonstrate his knowledge. Moreover, once jurors heard evidence that Marla Taylor was smoking methamphetamine in the car, excluding evidence that she was not the only one doing so would leave jurors with a false impression. The State had the right to elicit testimony to

counter that impression.

¶ 39 In addition, as the court noted, it was difficult to "try the case in a vacuum" with no reference at all to the methamphetamine smoked in the car. The fact that a small glass pipe containing methamphetamine was found in the car was an important part of the narrative of the investigation. Seeing Taylor attempt to hide the pipe and an electronic scale was what initially raised Deputy Cripps's suspicion. As the State correctly points out, even if the motion *in limine* had been adhered to, jurors likely would have concluded that all three occupants of the vehicle were smoking from the pipe. This logical inference is bolstered by Taylor's testimony that the pipe was "in the middle" of the car, where all three occupants had access to it.

¶ 40 We must also consider whether the prejudice from the evidence substantially outweighs its probative value. Here, several factors minimized the potential for prejudice. First, as noted, evidence that the pipe was in the car would likely have led to the inference that the defendant had smoked methamphetamine anyway. In addition, the prosecution did not emphasize the fact that the defendant smoked methamphetamine. Moreover, the court gave a limiting instruction. Jurors are presumed to understand and follow the instructions they are given. *People v. Richardson*, 2011 IL App (5th) 090663, ¶ 23, 956 N.E.2d 979, 985. We find these factors sufficient to limit any prejudice that might flow from admission of the testimony. We find no abuse of discretion.

¶ 41 We conclude that the evidence was sufficient to prove the defendant guilty beyond a reasonable doubt, and we find no error in the court's decision to admit testimony that the defendant smoked methamphetamine in the car along with Taylor. We therefore affirm his conviction.

¶ 42 Affirmed.