

NOTICE

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2014 IL App (5th) 120242-U

NO. 5-12-0242

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,)	Fayette County.
)	
v.)	No. 10-CF-161
)	
TAMMY L. FINLEY,)	Honorable
)	S. Gene Schwarm,
Defendant-Appellant.)	Judge, presiding.

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

ORDER

¶ 1 *Held*: Where the evidence viewed in a light most favorable to the State established the elements of unlawful manufacture of cannabis, the defendant Tammy L. Finley's conviction is affirmed.

¶ 2 The defendant appeals from her conviction of the charge of unlawful manufacture of cannabis (720 ILCS 550/5(f) (West 2010)), claiming that the State did not prove her guilt beyond a reasonable doubt.

¶ 3 **FACTS**

¶ 4 In September 2010, two employees of the Fayette County sheriff's department drove to the defendant's residence south of Vandalia to execute a search warrant. The

defendant lived at the residence with her boyfriend, her son, her son's girlfriend, her daughter, and her daughter's two children. In addition to the main home, there was a trailer on the property.

¶ 5 Both law enforcement officials who executed the search warrant testified at trial. Kelvin Worker was a Fayette County sheriff's department investigator. The other officer was Larry Hallemann, a Fayette County sheriff's deputy. The defendant answered the door, and all occupants of the home stood on the porch while the officers searched the premises.

¶ 6 In the backyard of the house, behind a trampoline, Worker found three cannabis plants. In the timber at the edge of the backyard, Worker found three other plants. The men found another plant growing by a swimming pool, surrounded by other types of plants that obscured the cannabis plant from view. Finally, both men found a pot containing a plant in the backyard and a "Topsy Turvy" tomato planter hanging from the back of the house in which a cannabis plant was growing.

¶ 7 The door to the trailer located at the edge of the defendant's yard was locked. Worker was able to open a door to the trailer's water heater. When he opened that door, he smelled cannabis. Worker then asked the defendant for the key. When Worker went inside the trailer, he found a room in which several cannabis plants were hanging upside down drying.

¶ 8 Inside the home, Worker found a scale in the kitchen cupboard, and a wooden box in which there were forceps and a bag containing what appeared to be cannabis. In the

defendant's car, Worker testified that he found a notebook that contained three pages that "appeared to be a tally sheet" from cannabis sales.

¶ 9 Deputy Hallemann took photographs of the plants in the yard, the drying plants in the trailer, as well as the contents and location of the wooden box inside the house. The officers then collected all plants from the yard and the trailer, transported them to the sheriff's office, laid them out to dry, and after the plants were dried, transported them to the Illinois State Police laboratory for analysis.

¶ 10 At trial, the parties stipulated that Hope Erwin, an Illinois State Police forensic chemist, would have testified that the plants seized from the defendant's home tested positive for cannabis and weighed about 10.5 pounds (4,786 grams).

¶ 11 The defendant's son, Justin Finley, testified at trial. The Fayette County sheriff's department also charged him with unlawful manufacture of cannabis, and he pled guilty to the charge. At trial, he testified that all of the cannabis plants were his, and that he alone planted, watered, and tended to them. He obtained the trailer key and used the trailer to dry out the plants. Justin testified that he never told his mother about the plants.

¶ 12 The defendant testified that she worked a midnight shift at a company called VanSeal the night before police came to her home with the search warrant. She had no idea that there were cannabis plants in her yard. She was aware that there was a plant growing from the Topsy Turvey, but thought it was a tomato plant. She claimed that she did not know what variety of tomato it was. She acknowledged that the flowers planted around the swimming pool were her flowers and that she took care of them. The defendant admitted that she owned the home and the trailer. She intended for her

daughter and grandchildren to live in the trailer, but utilities had not yet been installed in the trailer. She confirmed that the scale found in the kitchen cabinet belonged to her, but stated that the scale was for dietary purposes. Everyone in the house had access to the closet where the officers found the wooden box, and the defendant claimed that the box did not belong to her. The notebook found in her car contained her grocery list as well as card games tally sheets.

¶ 13 At the conclusion of the trial, the jury was instructed that in order to find the defendant guilty of the charge, the State needed to establish that she knowingly manufactured cannabis and that the cannabis weighed between 2,000 and 5,000 grams. The court instructed the jury on the principle of legal accountability, stating:

"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 the offense, he knowingly solicits, aids, abets, agrees to aid, or attempts to aid the other person in the planning or commission of the offense."

The court also instructed the jury on the definition of the terms "actual possession" and "constructive possession":

"A person has actual possession when she has immediate and exclusive control over a thing. A person has constructive possession when she lacks actual possession of a thing but she has both the power and the intention to exercise control over a thing."

If two or more persons share the immediate and exclusive control or share the intention and the power to exercise control over a thing, then each person has possession."

¶ 14 The jury convicted the defendant of the charge. The court sentenced the defendant to 24 months of probation.

¶ 15 ANALYSIS

¶ 16 On appeal, the defendant argues that the State failed to prove her guilt beyond a reasonable doubt. Constitutional due process mandates that the State prove each element of the crime charged with sufficient evidence. *In re Winship*, 397 U.S. 358, 364 (1970); U.S. Const., amends. V, XIV; Ill. Const. 1970, art. I, § 2. The State must prove each element beyond a reasonable doubt. *Id.* On appeal, we must review the State's evidence in a light most favorable to the State, to reach a conclusion whether any rational trier of fact could have found the essential elements of the crime charged beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 326 (1979); *People v. Ehlert*, 211 Ill. 2d 192, 202, 811 N.E.2d 620, 625 (2004). The trier of fact must "assess the credibility of the witnesses, determine the appropriate weight of the testimony, and resolve conflicts or inconsistencies in the evidence." *People v. Graham*, 392 Ill. App. 3d 1001, 1009, 910 N.E.2d 1263, 1271 (2009). Therefore, on appeal, we must allow all reasonable inferences from the record to favor the State. *People v. Davison*, 233 Ill. 2d 30, 43, 906 N.E.2d 545, 553 (2009). When a jury reaches the determination that a defendant is guilty of the crime charged, that verdict is entitled to great weight. *People v. Schott*, 145 Ill. 2d 188, 207, 582 N.E.2d 690, 699 (1991). However, if we conclude after review that the

evidence was unreasonable and casts doubt upon the defendant's guilt, we must set the conviction aside. *Id.*

¶ 17 Guilt by accountability requires the State to prove beyond a reasonable doubt that the defendant did the following:

- "(1) solicited, ordered, abetted, agreed or attempted to aid another in the planning or commission of a crime;
- (2) participated before or during the commission of the crime; and
- (3) possessed concurrent, specific intent to promote or facilitate the offense."

People v. Tinoco, 185 Ill. App. 3d 816, 823, 541 N.E.2d 1198, 1203 (1989).

Active participation in the crime is not necessary. *People v. Taylor*, 164 Ill. 2d 131, 140, 646 N.E.2d 567, 571 (1995). The defendant is required to share the principal's criminal intent or have a common criminal plan or purpose. *Id.* The State can prove guilt by accountability with only circumstantial evidence. *People v. Evans*, 87 Ill. 2d 77, 84, 429 N.E.2d 520, 523 (1981). Guilt on an accountability basis does not require a jury to find proof beyond a reasonable doubt as to each aspect of the criminal plan, so long as the totality of the evidence convinces the jury of the defendant's guilt. *People v. Foster*, 76 Ill. 2d 365, 371, 392 N.E.2d 6, 8 (1979).

¶ 18 The defendant argues that her mere presence at the scene of a crime, even if she had some knowledge about what her son was doing, is not enough proof to establish guilt in an accountability case. She cites two cases in support of this argument.

¶ 19 In *People v. Deatherage*, 122 Ill. App. 3d 620, 621, 461 N.E.2d 631, 632 (1984), the defendant was convicted of unlawful delivery of cocaine on an accountability theory.

On appeal, the court reversed his conviction. *Id.* at 624, 461 N.E.2d at 634. The court noted that the only evidence against the defendant was his presence while the drug deal participants discussed the specifics of the deal, and the fact that he repeated the price when asked directly by his codefendant. *Id.* at 623-24, 461 N.E.2d at 633-34. The court noted that this information reflected the defendant's knowledge about the local cocaine trade, but fell short of proof of his involvement in the deal other than as an innocent bystander. *Id.* at 624, 461 N.E.2d at 634.

¶ 20 In *People v. Darnell*, 214 Ill. App. 3d 345, 347, 573 N.E.2d 1252, 1253 (1990), the defendants were convicted of unlawful delivery of a controlled substance on an accountability theory. The defendants claimed that they had no idea that a third defendant was engaged in a drug deal when they stopped in a shopping center to pick up some money. *Id.* at 363, 573 N.E.2d at 1264. On the way to the shopping center Darnell, who was driving, asked defendant Velez to get into a different car driven by defendant Swiatkowski, and to take a white bag with her into Swiatkowski's car. *Id.* Velez claimed that she neither asked Darnell about the bag, nor looked inside the bag. *Id.* Upon arrival at the shopping center, Darnell came up to the car occupied by Velez and Swiatkowski and asked Velez for the white bag, which she handed to him. *Id.* Darnell testified that Velez and Swiatkowski did not know about his drug deal. *Id.* The State argued that the court could infer by the defendants' presence at the scene of the drug delivery that they agreed to facilitate the cocaine delivery. *Id.* at 363-64, 573 N.E.2d at 1264. Noting that mere presence at the scene of a crime was not sufficient to establish guilt on an

accountability basis, the court held that the State's evidence against these two defendants was gross speculation without proof. *Id.* at 365, 573 N.E.2d at 1265.

¶ 21 The State distinguishes these two cases from the facts in this case arguing that both holdings rely upon a "reasonable hypothesis of innocence" standard of review for cases based upon circumstantial evidence. The Illinois Supreme Court has ruled that the "reasonable hypothesis of innocence" standard in circumstantial evidence cases is not correct. See *People v. Pintos*, 133 Ill. 2d 286, 291, 549 N.E.2d 344, 346 (1989). The correct standard of proof, regardless of whether the evidence is direct or circumstantial, is "reasonable doubt." *Id.*; *People v. Young*, 312 Ill. App. 3d 428, 431, 727 N.E.2d 386, 388 (2000); *People v. McPherson*, 306 Ill. App. 3d 758, 765, 715 N.E.2d 278, 284 (1999). Both *Deatherage* and *Darnell* found that the defendants were quite possibly "innocent bystanders." *Deatherage*, 122 Ill. App. 3d at 624, 461 N.E.2d at 634; *Darnell*, 214 Ill. App. 3d at 365, 573 N.E.2d at 1265. Because the "reasonable hypothesis of innocence" standard is no longer viable and the courts in both *Deatherage* and *Darnell* used that standard for the reversal of the defendants' convictions, we do not find the reasoning of these two cases to be authoritative or persuasive. Additionally, we find that the facts of this case are distinguishable.

¶ 22 This is not a case where the State had specific evidence that the defendant and her son agreed to grow cannabis. However, the circumstantial evidence at trial was sufficient to establish the defendant's accountability for the unlawful production of cannabis. The circumstantial evidence more than sufficiently established the defendant's knowledge and

observation of the growing operation. This same evidence proved that, at a minimum, she aided her son in the manufacture of cannabis.

¶ 23 The defendant was the sole owner of the home, and the trailer. She maintained control over her home and trailer. The defendant allowed her son to live with her as a guest. The evidence established that the defendant's home and trailer were used to grow cannabis. The county law enforcement officers who searched the property found numerous plants growing in several places on the defendant's property. The plants were located at the edge of the yard, by the pool, by the trampoline, in a pot in the backyard, and in a container hanging from the antenna. The defendant testified that because she worked the midnight shift, she was home during daylight, and that she did not sleep much. She testified that she spent time in her backyard, and that she tended to the various plants and flowers, including the plants by the swimming pool directly next to a cannabis plant. From the officers' testimony, as well as the photos taken at the scene, the plants were quite visible. The most obvious examples were the cannabis plant in a pot and the plant being grown in the tomato Topsy Turvey. The defendant specifically acknowledged her awareness of the Topsy Turvey planting device, and admitted that she knew what tomato plants looked like, but testified that she thought that the plant was a different form of a tomato. The plants were drying in the defendant's trailer. No one was living in the trailer at the time of the arrest. She handed the trailer key to the officers upon request. Additionally, the officers found some drug-related paraphernalia in the defendant's home in places she could access.

¶ 24 We acknowledge the defendant's argument that she knew nothing of the cannabis production and that her son was solely responsible. Her son testified accordingly. However, the jury had the ability to determine the credibility of all witnesses who testified at trial—including the credibility of her son. The jury had to determine what weight to give each witness and his or her testimony, and had to draw inferences derived from that testimony. *Graham*, 392 Ill. App. 3d at 1009, 910 N.E.2d at 1271. It was within the jury's purview to view Justin Finley's testimony with skepticism or to reject it altogether. His potential bias in trying to protect his mother would be obvious to the jury.

¶ 25 CONCLUSION

¶ 26 Construing all evidence in the light most favorable to the State, we cannot say that the jury's verdict was unreasonable and incorrect. Accordingly, we affirm the defendant's conviction.

¶ 27 Affirmed.