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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 9/24/2013
RUTH A. WILLINGHAM,
CLERK
BY: mjt

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) 1 CA-CR 12-0695
)
Appellee,) DEPARTMENT B
)
v.) **MEMORANDUM DECISION**
) (Not for Publication - Rule
JOAN CATHERINE OVERTURF,) 111, Rules of the Arizona
) Supreme Court)
Appellant.)
)

Appeal from the Superior Court in Mohave County

Cause No. S8015CR201101244

The Honorable Steven F. Conn, Judge

AFFIRMED

Thomas C. Horne, Arizona Attorney General Phoenix
By Joseph T. Maziarz, Chief Counsel Criminal Appeals
and Adele Ponce, Assistant Attorney General
Attorneys for Appellee

Barbara Cook-Hamp, Mohave County Legal Advocate Kingman
By Jill L. Evans, Mohave County Deputy Legal Advocate
Attorneys for Appellant

N O R R I S, Judge

¶1 Joan Overturf appeals her convictions and sentences for possession of dangerous drugs for sale (methamphetamine), two counts of possession of drug paraphernalia

(methamphetamine), and possession of marijuana. Overturf argues the State failed to present sufficient evidence she knowingly possessed the drugs and drug paraphernalia found in a locked shed next to her house. We disagree. The record here reflects sufficient evidence to support the convictions;¹ therefore, we affirm. See *State v. Soto-Fong*, 187 Ariz. 186, 200, 928 P.2d 610, 624 (1996) ("Reversible error based on insufficiency of the evidence occurs only where there is a complete absence of probative facts to support the conviction." (quoting *State v. Scott*, 113 Ariz. 423, 424-25, 555 P.2d 1117, 1118-19 (1976))).

¶2 Possession -- the ability to exercise dominion or control over property -- can either be actual or constructive. Ariz. Rev. Stat. ("A.R.S.") § 13-105(34), (35) (Supp. 2012); *State v. Ottar*, 232 Ariz. 97, 99, ¶ 5, 302 P.3d 622, 624 (2013). Constructive possession applies when the property is not found on the defendant's person or in his or her presence, but is found in a place under his or her dominion or control and when it can be reasonably inferred the defendant had actual knowledge of the existence of the property. *State v. Villavicencio*, 108 Ariz. 518, 520, 502 P.2d 1337, 1339 (1972). Two or more persons may jointly possess a prohibited object. *State v. Carroll*, 111

¹We view the facts in the light most favorable to sustaining the jury's verdict and resolve all reasonable inferences against Overturf. *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989).

Ariz. 216, 218, 526 P.2d 1238, 1240 (1974) (possession need not be "[e]xclusive, immediate and personal").

¶13 Here, the officers who searched the shed found over 27 grams of methamphetamine in a box on the floor. In a nightstand or desk-type piece of furniture in the shed, they also found a scale with methamphetamine and marijuana residue, two pipes used for ingesting methamphetamine that had burnt residue on them, and 57 grams of marijuana. After finding the drugs and drug paraphernalia, the officers arrested Overturf and then questioned her at the police station.²

¶14 At the police station, Overturf initially told the interrogating officers the drugs belonged to her boyfriend, but later said they were hers and his by referring to them as "ours." She explained she used methamphetamine, she and her boyfriend had been selling methamphetamine for three or four months from in and out of the house, and had been selling to two or three customers. She also admitted her fingerprints would probably be on the drugs in the shed and explained she and her boyfriend were storing the marijuana for their supplier.

²Overturf lived with her boyfriend and his mother. Police arrested them as well.

¶15 Overturf also told the interrogating officers how often she and her boyfriend received deliveries (around every three weeks), the quantity per delivery (about an ounce each time), why they were selling (to get an extra amount of the drugs for themselves or a monetary bonus), and the selling prices for each pre-packaged amount (\$40 for 40s, \$60 for 60s, and \$100 to \$120 for "teeners"). Overturf explained she usually received the methamphetamine pre-packaged to sell and was surprised the methamphetamine found in the box was not packaged, although she acknowledged that sometimes her boyfriend would package the methamphetamine.

¶16 Although at trial Overturf acknowledged making these statements to officers, she explained she made the statements because she "had to take the blame" and because her boyfriend had "priors" and they would "let him and his mom go" if she just told them the drugs were hers. It was up to the jury to decide, however, whether to believe her trial testimony or to believe the statements she made to the interrogating officers. *State v. Cid*, 181 Ariz. 496, 500, 892 P.2d 216, 220 (App. 1995) ("finder-of-fact, not the appellate court . . . determines the credibility of witnesses"). Further, Overturf also acknowledged at trial that she had possessed the paraphernalia. Specifically, she testified she and her boyfriend arranged to have the pipes put in the shed to get them out of the house

because they were worried about being "raided." Based on the foregoing evidence, the State presented sufficient probative facts to support the convictions. *Soto-Fong*, 187 Ariz. at 200, 928 P.2d at 624.

¶7 Nevertheless, Overturf argues on appeal the State failed to present sufficient evidence she knowingly possessed the drugs and drug paraphernalia because police did not conduct DNA or fingerprint testing on the items found in the shed. "While [s]he would be free to argue that if [her] prints were not on the [items seized] [s]he had never touched [them], a finder of fact would be under no compulsion to accept that conclusion." *State v. Torres*, 162 Ariz. 70, 75-76, 781 P.2d 47, 52-53 (App. 1989). The absence of Overturf's fingerprints would have been suggestive only and would not have proved her innocence. *See id.*

