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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: 01/03/2012  
RUTH A. WILLINGHAM,  
CLERK  
BY: GH

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, ) 1 CA-CR 10-0911  
)  
Appellee, ) DEPARTMENT A  
)  
v. ) MEMORANDUM DECISION  
)  
MEDINA ANN STEVENS, ) (Not for Publication -  
) Rule 111, Rules of the  
Appellant. ) Arizona Supreme Court)  
)

Appeal from the Superior Court in Mohave County

Cause No. CR2010-00309

The Honorable Steven F. Conn, Judge

**AFFIRMED IN PART, REVERSED AND REMANDED IN PART**

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**T I M M E R**, Presiding Judge

¶ Medina Ann Stevens appeals her convictions and  
resulting dispositions for possession of dangerous drugs and

possession of drug paraphernalia. Stevens argues the trial court committed reversible error by (1) permitting the State to utilize the invocation of her Fourth Amendment rights as substantive evidence of her guilt, (2) admitting evidence of a prior act, and (3) failing to enter a judgment as a matter of law acquitting her of the charges due to insufficient evidence. We address the initial issue in an opinion filed concurrently with this decision. For the reasons set forth in that opinion and for the reasons that follow, we reverse Stevens' conviction and resulting disposition for possession of dangerous drugs but affirm her conviction and resulting disposition for possession of drug paraphernalia.

## **DISCUSSION<sup>1</sup>**

### **I. The admission of other-act evidence**

¶2 Stevens argues the trial court erred when it admitted evidence she attempted to persuade Son to assist with drug sales after January 2010, which was within two months of the events underlying the charged offenses.<sup>2</sup> Stevens asserts there was no

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<sup>1</sup> We set forth the factual and procedural background of this case in our companion opinion.

<sup>2</sup> The State argues this issue was not preserved for appeal. Our review of the record indicates that while Stevens did not seek preclusion of this evidence in her motion in limine nor raise any objection to the testimony at issue, the trial court did rule on the admissibility of this evidence in its consideration of the motion in limine. Therefore, we treat the issue as preserved.

clear and convincing evidence that she tried to persuade Son to assist with drug sales. Stevens further argues any such evidence was not probative of her knowledge of the drugs at issue.

¶13 We review the admission of evidence pursuant to Arizona Rule of Evidence ("Rule") 404(b) for an abuse of discretion. *State v. Van Adams*, 194 Ariz. 408, 415, ¶ 20, 984 P.2d 16, 23 (1999). Evidence of prior acts is admissible if relevant and admitted for a proper purpose, such as to prove motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. *Id.* This list, however, is illustrative, not exclusive. *State v. Wood*, 180 Ariz. 53, 62, 881 P.2d 1158, 1167 (1994). "For other act evidence to be admissible, [however], it must be shown by the clear and convincing standard that the act was committed and that the defendant committed it." *State v. Prion*, 203 Ariz. 157, 163, ¶ 37, 52 P.3d 189, 195 (2002).

¶14 As Stevens notes, the trial court did not explicitly find clear and convincing evidence that Stevens committed the other act or that the probative value of the evidence outweighed the danger of unfair prejudice. We may, however, independently review the factors necessary for the admission of other act evidence pursuant to Rule 404(b) when, as here, the trial court fails to explicitly provide its analysis on the record prior to

the admission of evidence. See *State v. Mott*, 187 Ariz. 536, 545, 931 P.2d 1046, 1055 (1997) (holding supreme court would independently review the admission of other-act evidence even though the trial court failed to balance the probative value versus the danger of unfair prejudice despite the defendant's objection); *State v. Connor*, 215 Ariz. 553, 563, ¶ 32, 161 P.3d 596, 606 (App. 2007) (as long as the decision to admit the other-act evidence is supported by the facts before the court, the trial court's decision will be affirmed on appeal unless a clear abuse of discretion appears).

¶15 Son told a detective Stevens attempted to persuade him to assist with the sale and/or delivery of drugs sometime after January 2010. The State argued this information was admissible pursuant to Rule 404(b) to show Stevens' knowledge and control. The trial court agreed but limited the evidence to events that occurred within a "couple of months" of the charged offenses.

¶16 At trial, Son initially testified Stevens did not "do anything" to get him "involved in what she was doing" after January 2010. When the prosecutor asked Son about voice messages from Stevens after January 2010 and whether she asked him to "do something with drugs," Son claimed he did not remember. Son later testified twice he did not remember telling police that Stevens had left him voice messages asking Son to sell or deliver drugs. Minutes after Son testified, a detective

testified that Son told him Stevens had left Son voice messages in which she tried to persuade Son to "deliver" drugs.

¶17 The trial court did not abuse its discretion by admitting this evidence. First, the record contains sufficient evidence to find under the clear and convincing standard that Stevens attempted to persuade Son to assist in the sale or delivery of drugs. Son repeatedly testified he did not remember if he told police Stevens attempted to persuade him to assist in the sale or delivery of drugs. Minutes later, the detective who interviewed Son testified that Son had, in fact, told him that Stevens left voice messages in which she attempted to persuade Son to assist in the sale or delivery of drugs. While the detective did not identify a time frame for when Son claimed Stevens left these messages, Stevens did not object to this omission, and the examination of Son on this issue was always in the context that Stevens left the messages after January 2010. Further, the probative value of this evidence was not outweighed by the danger of unfair prejudice. Stevens' defense was mere presence. She argued the drugs and paraphernalia found in her house belonged to Son and/or Son's girlfriend. The other-act evidence was relevant to prove Stevens knowingly possessed and/or controlled the drugs and paraphernalia found in her

house. There is nothing in the record to suggest the evidence was unfairly prejudicial.<sup>3</sup>

## II. Sufficiency of the evidence

¶8 Stevens argues the trial court erred by failing to enter a judgment as a matter of law because insufficient evidence supported her convictions. "To set aside a jury verdict for insufficient evidence it must clearly appear that upon no hypothesis whatever is there sufficient evidence to support the conclusion reached by the jury." *State v. Arredondo*, 155 Ariz. 314, 316, 746 P.2d 484, 486 (1987) (citation omitted); *see also State v. Soto-Fong*, 187 Ariz. 186, 200, 928 P.2d 610, 624 (1996) (citation omitted) ("Reversible error based on insufficiency of the evidence occurs only where there is a complete absence of probative facts to support the conviction."). Evidence sufficient to support a conviction "is such proof that reasonable persons could accept as adequate and sufficient to support a conclusion of [a] defendant's guilt beyond a reasonable doubt." *State v. Fulminante*, 193 Ariz. 485, 493, ¶ 24, 975 P.2d 75, 83 (1999) (internal citations omitted).

¶9 Stevens was convicted of possession of dangerous drugs and possession of drug paraphernalia. Arizona Revised Statutes ("A.R.S.") section 13-3407 provides in relevant part that a

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<sup>3</sup> Stevens did not request an instruction limiting the jury's consideration of the other-act evidence.

person shall not knowingly possess a "dangerous drug." A.R.S. § 13-3407(A)(1) (2010).<sup>4</sup> Methamphetamine is a "dangerous drug" under Arizona law. A.R.S. § 13-3401(6)(b)(xiii) (2010). Section 13-3415, A.R.S., provides in relevant part that it is unlawful for a person to use or possess with intent to use drug paraphernalia to process, prepare, test, analyze, pack, repack, store, contain, or conceal an illicit drug. A.R.S. § 13-3415(A) (2010). Finally, "'Possess' means knowingly to have physical possession or otherwise to exercise dominion or control over property." A.R.S. § 13-105(33) (2010).

¶10 We construe the evidence in the light most favorable to sustaining the verdicts and resolve all reasonable inferences and conflicts in the evidence against Stevens. *State v. Greene*, 192 Ariz. 431, 436, ¶ 12, 967 P.2d 106, 111 (1998); *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989). The evidence admitted at trial showed that during the fight between Stevens and Son, Stevens held a type of pipe commonly used to smoke methamphetamine. That pipe belonged to Stevens. When police searched Stevens' house, they found three scales in Stevens' bedroom. Each scale was a type commonly used to weigh illicit drugs and laboratory tests revealed methamphetamine residue on one of the scales. The other two scales were not

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<sup>4</sup> Absent material revisions after the date of an alleged offense, we cite a statute's current version.

tested. During the search, police also found plastic baggies and a metal container in Stevens' bedroom. The baggies and container were types commonly used to store illicit drugs and the metal container contained methamphetamine residue. Police also found a purple baggie in the bedroom in which Son and his girlfriend stayed. The baggie contained a useable amount of methamphetamine. The purple baggie, however, did not belong to either Son or his girlfriend.

¶11 The determination of the credibility of witnesses and the weight to be given any item of evidence is a matter for the jury. See *State v. Cid*, 181 Ariz. 496, 500, 892 P.2d 216, 220 (App. 1995). While reasonable persons could differ, the evidence cited above was sufficient to permit a jury to find beyond a reasonable doubt that Stevens was guilty of possession of dangerous drugs and possession of drug paraphernalia. Further, while some of the evidence may have been circumstantial, "[t]he probative value of evidence is not reduced because it is circumstantial." *State v. Murray*, 184 Ariz. 9, 31, 906 P.2d 542, 564 (1995).

#### CONCLUSION

¶12 For the foregoing reasons and those set forth in our companion opinion, we reverse Stevens' conviction and resulting disposition imposed for possession of dangerous drugs and remand



for a new trial. We affirm Stevens' conviction and resulting disposition imposed for possession of drug paraphernalia.

/s/  
Ann A. Scott Timmer, Presiding Judge

CONCURRING:

/s/  
Patrick Irvine, Judge

/s/  
Daniel A. Barker, Judge