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2 United States Attorney, of
3 counsel (Terrance P. Flynn,
4 United States Attorney, Western
5 District of New York, on the
6 brief), United States Attorney's
7 Office for the Western District
8 of New York, Rochester, New
9 York, for Appellee.

10
11 PER CURIAM:
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13 Defendant-Appellant Maletha Wilson appeals from a
14 judgment of conviction entered in the United States District
15 Court for the Western District of New York (Siragusa, J.),
16 convicting her after a jury trial of two counts of knowingly
17 and intentionally making her residence available for use for
18 the purpose of unlawfully manufacturing, storing,
19 distributing, or using a controlled substance, in violation
20 of 21 U.S.C. § 856(a)(2). She shared two apartments with a
21 drug dealer, and acknowledges that there were drugs, along
22 with drug-related paraphernalia, at both premises; but she
23 argues that the evidence was insufficient chiefly on the
24 ground that the government failed to prove that she herself
25 intended that the premises would be used for the unlawful
26 purpose.
27

1 **BACKGROUND**

2 On October 3, 2002, Rochester police officers arrested
3 one Yusef Blocker outside 323 Arnett Boulevard, where he was
4 living with Wilson. Wilson allowed the police to enter her
5 apartment, told them that she wanted to check on her baby in
6 a back bedroom, and was followed there by the police.
7 There, they saw--in plain view--a razor, a plate, and two
8 plastic bags containing a white rock substance. At trial,
9 Wilson stipulated that the substance was 12.836 grams of
10 cocaine base. Also in the bedroom were unused Ziploc bags
11 and a razor blade in the baby's coat.

12 On May 7, 2004, Rochester police officers executed a
13 search warrant at 35 Jackson Street, where Wilson was then
14 living. No one was present when the officers entered and
15 found a digital scale and unused Ziploc bags in the master
16 bedroom closet. In another bedroom, the officers found a
17 cigar box containing a substance which they suspected was
18 cocaine. At trial, Wilson stipulated that the substance
19 consisted of 61.690 grams of powder cocaine and 31.648 grams
20 of cocaine base.

21 On February 23, 2005, Wilson was interviewed by a

1 special agent of the Bureau of Alcohol, Tobacco and
2 Firearms. She said that she was living with Yusef Blocker
3 in the apartment on Arnett Boulevard when it was searched in
4 October 2002, and that she was living with Blocker at 35
5 Jackson Street when it was searched in May 2004. Evidence
6 at trial also indicated that her name was on both leases.
7 The Department of Social Services paid half the rent (and
8 her mother the other half) at each location.

10 **DISCUSSION**

11 Wilson argues that the evidence against her was
12 insufficient to support her conviction. A defendant
13 challenging the sufficiency of the evidence "bears a heavy
14 burden." United States v. Griffith, 284 F.3d 338, 348 (2d
15 Cir. 2002). "Not only must the evidence be viewed in the
16 light most favorable to the government and all permissible
17 inferences drawn in its favor, but if the evidence, thus
18 construed, suffices to convince any rational trier of fact
19 of the defendant's guilt beyond a reasonable doubt," the
20 conviction must stand. United States v. Martinez, 54 F.3d
21 1040, 1042 (2d Cir. 1995) (internal citations omitted).

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I

In the main, Wilson contends that under 21 U.S.C. § 856(a)(2), the government had to prove that, in making her home available to others, it was Wilson's own purpose to allow them to engage in narcotics trafficking there. This is a fundamental misreading of subsection (a)(2).

Section 856(a)(2) makes it unlawful for a person to:

manage or control any place, whether permanently or temporarily, either as an owner, lessee, agent, employee, occupant, or mortgagee, and knowingly and intentionally rent, lease, profit from, or make available for use, with or without compensation, the place for the purpose of unlawfully manufacturing, storing, distributing, or using a controlled substance.

The law thus prohibits a person with a premises from knowingly and intentionally allowing its use for the purpose of manufacturing, storing or distributing drugs. The intent of the prohibition is "to prohibit an owner from providing a place for illegal conduct, and yet to escape liability on the basis either of lack of illegal purpose, or of deliberate ignorance". United States v. Tamez, 941 F.2d 770, 774 (9th Cir. 1991). Accordingly, "under § 856(a)(2), the person who manages or controls the building and then

1 rents to others, need not have the express purpose in doing
2 so that drug related activity take place; rather such
3 activity is engaged in by others (i.e., others have the
4 purpose).” United States v. Chen, 913 F.2d 183, 190 (5th
5 Cir. 1990). The phrase “for the purpose,” as used in this
6 provision, references the purpose and design not of the
7 person with the premises, but rather of those who are
8 permitted to engage in drug-related activities there.

9 This interpretation is compelled by the preceding
10 subsection, 856(a)(1), in which the phrase “for the purpose”
11 applies to the intent of the person with an interest in the
12 premises. That is, subsection 856(a)(1) makes it illegal
13 to:

14 knowingly open, lease, rent, use, or maintain
15 any place, whether permanently or temporarily,
16 for the purpose of manufacturing,
17 distributing, or using any controlled
18 substance.

19
20 Under Wilson’s reading, both subsections--(a)(1) and (a)(2)
21 --would proscribe the same conduct. But it would be
22 impermissible to conflate these two subsections, rendering
23 one superfluous. See Williams v. Taylor, 529 U.S. 362, 404
24 (2000) (“It is . . . a cardinal principle of statutory

1 construction that we must give effect, if possible, to every
2 clause and word of a statute." (internal citation and
3 quotation marks omitted)).

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II

6 Wilson also challenges the sufficiency of the evidence
7 to prove that she knew her residence was being used for drug
8 trafficking. Our review of the trial record discloses
9 sufficient evidence to support Wilson's conviction. A
10 cooperating witness testified that on numerous occasions, he
11 and Blocker engaged in drug manufacturing activities at both
12 of Wilson's residences, and that he overheard Blocker ask
13 Wilson for Ziploc bags and a Pyrex dish, two items used for
14 those activities. Wilson admitted to the police that she
15 knew Blocker sold drugs. And crack cocaine, cocaine powder
16 and drug paraphernalia were found in her residences,
17 including a razor and Ziploc bags in baby clothes in her
18 bedroom. Given this evidence, a reasonable jury could--and
19 did--conclude that Wilson knowingly allowed others to use
20 those residences for the manufacture, storage and
21 distribution of narcotics.

1 For the foregoing reasons, the judgment of the district
2 court is affirmed.