

No. 1-10-1005

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
)	the Circuit Court
Plaintiff-Appellee,)	of Cook County
)	
v.)	No. 09 CR 10025 (01)
)	
CAROLINE JOHNSON,)	Honorable
)	Garritt E. Howard,
Defendant-Appellant.)	Judge Presiding.

JUSTICE CAHILL delivered the judgment of the court.
Presiding Justice Robert E. Gordon and Justice Lampkin concurred in the judgment.

ORDER

- ¶ 1 **Held:** Defendant's conviction for delivery of a controlled substance under an accountability theory was affirmed. The court did not err in admitting certain statements under the coconspirator's exception to the hearsay rule. Defendant affirmatively waived review of her claim that the State failed to maintain a chain of custody over the narcotics evidence in the case. Defendant's jury waiver was valid.
- ¶ 2 Following a bench trial, defendant Caroline Johnson was found guilty of delivery of a controlled substance and sentenced to six years in prison. On appeal, she contends that: (1) the

State failed to prove her guilty of delivery of a controlled substance under an accountability theory; (2) the court erred in admitting hearsay statements under the coconspirator's exception to the hearsay rule; (3) the State failed to maintain a chain of custody over the package of narcotics seized by the police; and (4) defendant did not knowingly, voluntarily and intelligently waive her right to a jury trial. We affirm.

¶ 3 At trial, Officer John Bueno testified that he was working as an undercover tactical officer with the Des Plaines police on April 27, 2009. Bueno received information on a possible narcotics transaction and drove in an undercover car to the Super 8 Motel in Prospect Heights.

¶ 4 When Bueno arrived he met Dwight Reid in the parking lot. Reid was driving a white four-door Chevy with Texas license plates. The court overruled defendant's objection to Bueno's testimony about what he and Reid discussed and said it would not consider it as evidence against defendant. Bueno then testified that he and Reid discussed the possible "purchase of a kilo of cocaine for approximately \$30,000." Reid told Bueno to meet him at the Forest Lodge Motel in Forest Heights in 15 minutes.

¶ 5 Bueno drove to the Forest Lodge Motel and met Reid in the parking lot. Reid told Bueno to go to room 111 and Bueno complied. Bueno saw Reid standing at the door of room 111 with defendant to Reid's left and Freddie Richardson to Reid's right. Bueno spoke to Reid briefly about the "transaction" they "were trying to negotiate."

¶ 6 Defense counsel made a continuing objection to "anything regarding *transaction, cocaine, money, being delivered, transacted.*" (Emphasis in original.) The court overruled the objection and said that it would not "consider it for the truth of the matter asserted, just how

[Bueno] conducted his investigation" and that "[i]t also could be offered as part of a co-conspirator's statement, in furtherance of a conspiracy" but the court "[would not] know" until further evidence was presented.

¶ 7 In the presence of defendant and Richardson, Bueno had a conversation with Reid about the sale of cocaine. Bueno said he and Reid "were trying to figure out how much I was willing to buy and how much he was willing to sell and for how much." Bueno asked Reid to show him narcotics before he would consider giving him money. Reid told Bueno to step into his motel room. Bueno declined because he did not feel safe. Reid then went into the room for about 10 minutes.

¶ 8 During this time defendant and Richardson continued to stand at the doorway of the motel room. Defendant told Bueno to step into the room to see Reid and Bueno replied that he felt unsafe going into the room alone. Defendant told Bueno that "it was safe to do so and that [he] should." Bueno declined to do so and said he was leaving. Defendant then went into the room and spoke to Reid, and Reid came out of the room and told Bueno "to purchase his cocaine." Bueno did not see defendant and Reid inside the room together. Bueno told Reid that he was going to leave because he did not see any cocaine. Bueno then left the Forest Lodge Motel.

¶ 9 About 10 minutes later defendant called Bueno and told him that the transaction with Reid "did not go well because [Reid] was nervous." Bueno recognized the voice as defendant's from the conversation he had with her 10 minutes before. Defendant urged Bueno to return to "do business" with Reid because Reid "was serious now" and Bueno should "try to complete the

transaction" before Reid left town. Bueno had never done "any other sort of business" with defendant before April 27, 2009. Defendant did not mention cocaine or narcotics on the phone. Bueno told defendant to have Reid call him back.

¶ 10 Reid called Bueno and asked if he was willing to buy his cocaine, and Bueno responded that he was interested but there would be no transaction because he did not see any cocaine.

¶ 11 On April 28, 2009, Bueno was again working as an undercover officer. He called Reid and asked if Reid was still willing to sell him narcotics. Reid said he was, and the two agreed to meet at the Forest Lodge Motel where Bueno was to purchase three ounces of cocaine from Reid for \$5,000.

¶ 12 Bueno went to the Forest Lodge Motel in an undercover car at about 3:15 p.m on April 28, 2009. Bueno exited the car and waited in the parking lot. Reid and defendant came out from behind the motel and walked up to Bueno. Reid was standing to Bueno's right and defendant was standing to Bueno's left. While defendant and Reid were two or three feet away from Bueno, Bueno asked Reid if he had the cocaine. Reid said yes and "flashed" him some cocaine from his coat pocket. Bueno then told Reid that the money for the cocaine was in the center console area of Bueno's car.

¶ 13 Defendant remained standing near Reid during this conversation and was, according to Bueno's testimony, "looking around, checking." Bueno said defendant was specifically looking inside a nearby laundry room. Bueno told Reid to put the cocaine in the center console area and remove the money left there. Bueno watched Reid remove the cocaine from his pocket, place it in the center console, remove the \$5,000 from the center console and place it in his pocket.

Throughout the transaction defendant continued to stand next to Bueno, on his left.

¶ 14 Bueno then gave an "arrest signal" to observing officers, and defendant and Reid were placed under arrest. Bueno recovered the narcotics Reid placed in the center console of his car and \$5,000 from Reid's person. A subsequent search of the white car Reid arrived in revealed a handgun and "more narcotics." The items Reid sold to Bueno in defendant's presence were brought back to the police station and inventoried by Officer Lave. The amount of cocaine sold to Bueno in defendant's presence was about 84 to 85 grams. Bueno never saw defendant handle the cocaine.

¶ 15 On cross-examination Bueno said that he told the grand jury he saw Richardson, Reid and defendant together inside the motel room on April 28, 2009.

¶ 16 Deputy Chief Richard Rozkuszka testified that he was conducting surveillance across the street from the Forest Lodge Motel at 3:15 p.m. on April 28, 2009, as part of Officer Bueno's surveillance team. He saw defendant walk up with Reid to Bueno's undercover car but never saw defendant enter the car.

¶ 17 At some point Rozkuszka was given a prearranged signal that a transaction had occurred. He drove across the street into the Forest Lodge Motel parking lot and saw two of his detectives and Bueno arresting defendant and Reid. Rozkuszka and the other officers then went to arrest Richardson, who was found sitting in a white Chevrolet Malibu with Texas license plates. Rozkuszka had seen Reid driving the same car the day before. A search of the car recovered a loaded .45 caliber pistol behind the passenger seat, eight grams of cannabis from the center console and cocaine in the trunk. Rozkuszka said that the cocaine found in the trunk was

"eventually inventoried by an Officer Lave" and sent to the crime lab for testing.

¶ 18 On cross-examination Rozkuszka said that neither he nor other officers made written notes or took photographs or recordings while on surveillance on April 27 and 28, 2009.

¶ 19 No further evidence was presented. The parties stipulated that the item from the center console of Bueno's undercover car was recovered and inventoried by Officer Lave "under JSL *** 02" and "was the result of the transaction between undercover [O]fficer Bueno and Mr. [Reid] and [defendant]." The item was inventoried in a sealed condition and sent to the Illinois State Police crime lab. Forensic chemist Stella Johnson would testify she received the item in a sealed condition. The item contained white chunky powder, weighed 82.8 grams and tested positive as cocaine. Johnson resealed the item and sent it to the Des Plaines police department. The parties stipulated that "[a]t all times the chain of custody was in full force and effect *** regarding the item that was recovered from the center console."

¶ 20 The parties also stipulated to the two items recovered from the car trunk. Both were sent to the crime lab in a sealed condition by Officer Lave. One of the packages was marked "JSL 01." Johnson received the packages and opened and weighed one of them. The opened package contained white chunky powder, weighed 174.3 grams and tested positive for cocaine. The other package containing white chunky powder was not analyzed. The marijuana recovered from the car was marked as "JSL 06," weighed 7.2 grams and tested positive as cannabis.

¶ 21 The court found defendant guilty of delivery of a controlled substance under an accountability theory and sentenced her to six years in prison. The court found Officer Bueno "to be a very credible witness" and said that it was clear "defendant was an active participant in

this narcotics[] transaction."

¶ 22 On appeal, defendant first contends that the State failed to prove her guilty of delivery of a controlled substance under an accountability theory because she was merely present at the scene and her conduct did not facilitate the transaction between Officer Bueno and Dwight Reid.

¶ 23 The standard of review on a challenge to the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Ross*, 229 Ill. 2d 255, 272, 891 N.E.2d 865 (2008). It is not the function of the reviewing court to retry the defendant or substitute its judgment for that of the trier of fact. *People v. Collins*, 214 Ill. 2d 206, 217, 824 N.E.2d 262 (2005). The trier of fact assesses the credibility of the witnesses, determines the appropriate weight of the testimony and resolves conflicts or inconsistencies in the evidence. *People v. Naylor*, 229 Ill. 2d 584, 614, 893 N.E.2d 653 (2008). The trier of fact is not required to disregard inferences that flow from the evidence or search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt. *People v. McDonald*, 168 Ill. 2d 420, 447, 660 N.E.2d 832 (1995).

¶ 24 The court here found defendant guilty of delivery of a controlled substance under a theory of accountability. 720 ILCS 570/401(a)(2)(A) (West 2008). A defendant is legally accountable for the criminal conduct of another when: (1) the defendant solicited, ordered, abetted, agreed or attempted to aid another in the planning or commission of the crime; (2) the defendant's participation took place before or during the commission of the crime; and (3) the defendant had the concurrent intent to promote or facilitate the commission of the crime. 720

ILCS 5/5-2(c) (West 2008); *People v. Perez*, 189 Ill. 2d 254, 266, 725 N.E.2d 1258 (2000).

¶ 25 To prove a defendant's intent to promote or facilitate the crime, the State must present evidence establishing beyond a reasonable doubt that: (1) the defendant shared the criminal intent of the principal; or (2) there was a common criminal design. *Perez*, 189 Ill. 2d at 266. Accountability may be established through a defendant's knowledge of and participation in a criminal scheme, even if there is no evidence he directly participated in the criminal act itself. *Perez*, 189 Ill. 2d at 267. A defendant's mere presence at the scene of a crime does not render him or her accountable for an offense. *Perez*, 189 Ill. 2d at 268.

¶ 26 Here, the evidence establishes that defendant was an active participant in the commission of the narcotics transaction between Officer Bueno and Dwight Reid. Bueno met Reid at the Super 8 Motel and discussed the possible "purchase of a kilo of cocaine for approximately \$30,000." Bueno was instructed to go to the Forest Lodge Motel where he met Reid, defendant and Richardson outside a motel room. In the presence of defendant, Bueno spoke with Reid about how much cocaine he was willing to buy and for how much Reid was willing to sell it. Reid told Bueno to step into his motel room, but Bueno declined. Defendant then encouraged Bueno to complete the transaction by telling him that it was "safe" to enter the room and "that [he] should." See *People v. Tinoco*, 185 Ill. App. 3d 816, 823, 541 N.E.2d 1198 (1989) (a factfinder may infer a defendant's accountability from his or her approving presence at the scene of a crime and conduct showing a design on the defendant's part to aid in the offense). When Bueno again declined to enter the room and said he was leaving, defendant went inside the motel room to speak with Reid. Reid then came out and in defendant's presence, told Bueno to

purchase the cocaine. After Bueno left the Forest Lodge Motel, defendant called him and said the transaction with Reid "did not go well because [Reid] was nervous" and Bueno should "come back to the motel" to "do business" because Reid "was serious now." It is reasonable to infer that defendant was referring to the narcotics transaction because Bueno had never spoken to defendant about other "business."

¶ 27 When Bueno returned to the motel the next day, defendant was, according to Bueno's testimony, "looking around" and "checking" from two or three feet away while Bueno purchased three ounces of cocaine from Reid for \$5,000. Defendant's actions could imply she was not merely present at the scene but served as a lookout during the transaction. See *People v. Traylor*, 201 Ill. App. 3d 86, 89, 559 N.E.2d 286 (1990). We note that Bueno's testimony at trial was largely unimpeached and the court found him "to be a very credible witness."

¶ 28 *People v. Deatherage*, 122 Ill. App. 3d 620, 421 N.E.2d 631 (1984), is distinguishable because the evidence there showed only "that the defendant was present and that he may have known about the transaction." *Deatherage*, 122 Ill. App. 3d at 624. In contrast, here it is clear that defendant intended to aid in the crime by repeatedly encouraging Officer Bueno to complete the narcotics transaction with Reid and serving as a "lookout" during the exchange. We disagree with defendant's characterization that she was merely present while Reid negotiated and completed the transaction with Bueno. Viewing the evidence in the light most favorable to the prosecution, we believe a rational trier of fact could have found defendant intended to and did aid Reid in selling the cocaine to Bueno. The trial court correctly found her guilty of delivery of a controlled substance under an accountability theory.

¶ 29 Defendant next contends that the court erred in admitting Dwight Reid's hearsay statements to Officer Bueno under the coconspirator's exception to the hearsay rule because the State failed to prove through independent evidence that defendant and Reid were engaged in a conspiracy.

¶ 30 We review the trial court's evidentiary rulings for an abuse of discretion. *People v. Leak*, 398 Ill. App. 3d 798, 824, 925 N.E.2d 264 (2010). An abuse of discretion occurs where the court's ruling is arbitrary, fanciful or unreasonable, or where no reasonable person would take the view adopted by the court. *Leak*, 398 Ill. App. 3d at 824.

¶ 31 Under the coconspirator exception to the hearsay rule, a declaration by one coconspirator is admissible against all coconspirators where the declaration was made during the course of and in furtherance of the conspiracy. *Leak*, 398 Ill. App. 3d at 824-25 (citing *People v. Kliner*, 185 Ill. 2d 81, 140, 705 N.E.2d 850 (1998)).

¶ 32 For this hearsay exception to apply, the State must prove by a preponderance of the evidence, independent of the coconspirator's hearsay statements, that: "(1) two or more persons intended to commit a crime; (2) they engaged in a common plan to accomplish the criminal goal; and (3) an act or acts were done by one or more of them in furtherance of the conspiracy." *Leak*, 398 Ill. App. 3d at 825. "Because of the clandestine nature of conspiracy, Illinois courts permit broad inferences to be drawn from the circumstances, acts and conduct of the parties,' and the suspicious nature of the activities of alleged co-conspirators can be sufficient to prove a joint venture." *People v. Cook*, 352 Ill. App. 3d 108, 125, 815 N.E.2d 879 (2004) (quoting *People v. Batrez*, 334 Ill. App. 3d 772, 783-84, 778 N.E.2d 1182 (2002)).

¶ 33 We believe Officer Bueno's non-hearsay testimony established by a preponderance of the evidence that, independent of Reid's hearsay statements, a conspiracy existed between Reid and defendant. As discussed above, defendant was waiting with Reid at the Forest Lodge Motel on April 27, 2009, and was present while Bueno discussed the cost and quantity of the narcotics transaction with Reid. See *Tinoco*, 185 Ill. App. 3d at 823. After Reid stepped into the motel room, defendant remained at the door and then told Bueno to step into the room because "it was safe to do so and that [he] should." When Bueno refused, defendant went into the room. Shortly after, Reid emerged and told Bueno to purchase the narcotics, again in front of defendant. After Bueno left, defendant called him and told him to return to "do business" with Reid because Reid "was serious now" and Bueno should "try to complete the transaction" before Reid left town. Because Bueno had never done "business" with defendant before, it is reasonable to infer defendant was referring to the narcotics transaction. The next day, defendant was again with Reid, stood two or three feet away from him and was "looking around" while the narcotics transaction took place.

¶ 34 We believe Reid's hearsay statements were properly admitted under the coconspirator exception because the evidence, independent of Reid's hearsay statements, shows that Reid and defendant were actively involved in the conspiracy to deliver narcotics. The court's decision to admit Reid's hearsay statements was not against the manifest weight of the evidence.

¶ 35 Next, defendant contends that the State failed to prove beyond a reasonable doubt that the item recovered from Bueno's car was the same item tested for the presence of a controlled substance, resulting in a "complete breakdown" in the chain of custody. Defendant argues there

was a complete breakdown in the chain of custody because: (1) it is unknown how Officer Lave obtained the items he inventoried and sent to the crime lab for testing; (2) Officers Bueno and Roskuzska did not testify to inventory numbers being attached to the items; and (3) it is unknown which item was recovered from the center console of Bueno's car and whether that item was tested.

¶ 36 To sustain a conviction for delivery of a controlled substance, the State must prove that the material recovered from the defendant is in fact a controlled substance. *People v. Woods*, 214 Ill. 2d 455, 466, 828 N.E.2d 247 (2005). Such evidence may be introduced through a chain of custody, and the State bears the burden of establishing a sufficiently complete custody chain to make it improbable that the evidence has been subject to tampering or accidental substitution. *Woods*, 214 Ill. 2d at 467.

¶ 37 "[T]he State establishes a *prima facie* showing that the chain of custody for controlled substances is sufficient by meeting its burden to establish that reasonable protective measures were taken to ensure that the evidence has not been tampered with, substituted or altered between the time of seizure and forensic testing. After the State establishes a *prima facie* case, the burden then shifts to the defendant to produce evidence of actual tampering, alteration or substitution." *Woods*, 214 Ill. 2d at 468.

¶ 38 " 'Once the State has established the probability that the evidence was not compromised, and unless the defendant shows actual evidence of tampering or substitution, deficiencies in the chain of custody go to the weight, not admissibility, of the evidence.' " *Woods*, 214 Ill. 2d at 467 (quoting *People v. Bynum*, 257 Ill. App. 3d 502, 510, 629 N.E.2d 724 (1994)).

¶ 39 Further, a defendant may waive the necessity of proof of a chain of custody by entering into a stipulation with respect to the evidence. *Woods*, 214 Ill. 2d at 468 (citing *People v. Holloman*, 46 Ill. 2d 311, 318, 263 N.E.2d 7 (1970)). A defendant is generally precluded from attacking or contradicting facts to which he or she stipulated. *Woods*, 214 Ill. 2d at 469.

¶ 40 Here there is no dispute that defendant failed to object at trial or raise the alleged error in a posttrial motion. "[A] challenge to the chain of custody is an evidentiary issue that is generally subject to waiver on review if not preserved by defendant's making a specific objection at trial and including this specific claim in his or her posttrial motion." *Woods*, 214 Ill. 2d at 471.

¶ 41 In urging us to review this issue as plain error, defendant relies on *Woods*, where our supreme court stated "that under limited circumstances a challenge to the chain of custody may be properly raised for the first time on appeal if the alleged error rises to the level of plain error." *Woods*, 214 Ill. 2d at 471. The court explained that such limited circumstances are confined to "those rare instances where a complete breakdown in the chain of custody occurs" because "[w]hen there is a complete failure of proof, there is no link between the substance tested by the chemist and the substance recovered at the time of the defendant's arrest." *Woods*, 214 Ill. 2d at 471-72.

¶ 42 Here, a complete breakdown in the chain of custody did not occur. We believe the State satisfied its burden of establishing that reasonable protective measures were employed to protect the evidence and that it is unlikely the evidence was tampered with, substituted or altered between the time of seizure and forensic testing. Officer Bueno testified that he saw Reid remove the cocaine from his pocket and place it in the center console of Bueno's undercover car.

After the arrest signal was given, Bueno recovered the cocaine Reid had placed in the center console. Bueno specifically said he brought the cocaine Reid sold him back to the police station where it was inventoried by Officer Lave. Officer Rozkuszka testified that he separately recovered two packages from the trunk of the white car. As suggested by the State, we agree that the separate recovery of the narcotics reduced the risk that the cocaine recovered from the white car would be mistaken for the cocaine recovered from the center console of Bueno's car.

¶ 43 Also, defendant stipulated that the item recovered from the center console of Bueno's undercover car was inventoried by Officer Lave, received in sealed condition by the Illinois State Police crime lab, tested positive for cocaine and was the result of the transaction between Bueno, Reid and defendant. The parties stipulated that "[a]t all times the chain of custody was in full force and effect *** regarding the item recovered from the center console." It is apparent from the record that it was defendant's intention to remove a dispute with respect to the chain of custody or the chemical composition of the recovered substance. See *Woods*, 214 Ill. 2d at 468-69, 474 ("[t]he primary rule in the construction of stipulations is that the court must ascertain and give effect to the intent of the parties").

¶ 44 While it is true that the police officers did not testify to specific inventory numbers in this case, we believe the State made a *prima facie* showing that the chain of custody was sufficient. No claim was made during trial that the evidence had been tampered with, altered or substituted, and defense counsel placed the State in a position of believing that the sufficiency of the chain of custody was not at issue. See *Woods*, 214 Ill. 2d at 475. There was not a complete breakdown in the chain of custody, and we agree with the State that defendant affirmatively waived review of

this issue.

¶ 45 Finally, defendant contends that she did not knowingly, voluntarily and intelligently waive her right to a jury trial because: the court did not explain what a jury trial was or the difference between a jury trial and a bench trial; and defendant was a foreign national with no experience with the American criminal justice system.

¶ 46 Before trial, the following exchange took place between the court, defense counsel and defendant:

"THE COURT: Counsel, I see you have tendered an executed jury waiver.

[DEFENSE COUNSEL]: I have, your Honor.

THE COURT: Ms. Johnson, does this form contain your signature?

[DEFENDANT]: Yes.

THE COURT: Do you understand, by signing this form, you're waiving your right to a jury trial?

[DEFENDANT]: Yes.

THE COURT: Jury trial is waived. Are there any preliminary motions?"

¶ 47 Although the parties agree that defendant failed to preserve this issue for appeal, an alleged violation of the right to a jury trial is properly considered under the plain error rule. *People v. Bracey*, 213 Ill. 2d 265, 270, 821 N.E.2d 253 (2004). We first review the issue to determine whether error occurred. *People v. Bannister*, 232 Ill. 2d 52, 65, 902 N.E.2d 571 (2008). Where, as here, the facts are not in dispute, we determine the propriety of the jury

waiver as a question of law and apply a *de novo* standard of review. *In re R.A.B.*, 197 Ill. 2d 358, 362, 757 N.E.2d 887 (2001).

¶ 48 A criminal defendant's right to a trial by jury includes the right to waive a jury trial. *People ex. rel. Daley v. Joyce*, 126 Ill. 2d 209, 222, 533 N.E.2d 873 (1988). A valid jury waiver requires that the defendant make the waiver knowingly and understandingly. *Bannister*, 232 Ill. 2d at 65; 725 ILCS 5/103-6 (West 2008).

¶ 49 The court must explain the ramifications of a jury waiver when the facts and circumstances show that a defendant may not understand what the right to a jury trial entails. *People v. Phuong*, 287 Ill. App. 3d 988, 995-96, 679 N.E.2d 425 (1997) ("[t]he trial court is warned to be particularly careful to ascertain whether a jury waiver is made knowingly where a defendant does not speak English"). There is no requirement that the trial court provide the defendant with a specific admonition or advice for a jury waiver to be found valid. *Bannister*, 232 Ill. 2d at 66.

¶ 50 "Generally, a jury waiver is valid if it is made by defense counsel in defendant's presence in open court, without an objection by defendant." *Bracey*, 213 Ill. 2d at 270; see also *People v. Hoover*, 87 Ill. App. 3d 743, 748, 410 N.E.2d 195 (1980) ("an express waiver in open court of the right to jury trial by defense counsel in defendant's presence is binding upon defendant").

¶ 51 Here, we find that defendant effectively waived her right to a jury trial. At pretrial appearances on December 3, 2009, and February 8, 2010, defense counsel indicated to the court that the trial would be a bench trial. Before trial, defendant appeared in court in the presence of her attorney. That the waiver was already signed by defendant suggests she discussed the

consequences of the waiver with her attorney. The court asked if the waiver form contained defendant's signature and if she understood she was waiving her right to a jury trial. Defendant replied "Yes" without objection to both inquiries. See *Hoover*, 87 Ill. App. 3d at 748. There is nothing in the record to show that defendant did not understand what the right to a jury trial entails.

¶ 52 We find *Phuong* distinguishable because in that case the defendant spoke limited English and the jury waiver form was translated by a Chinese interpreter. *Phuong*, 287 Ill. App. 3d at 991, 996. There the court stated: "[w]e simply are not convinced that the mere translation of the language of the waiver form adequately conveyed its meaning to defendant." *Phuong*, 287 Ill. App. 3d at 996. Such concerns were not present here where defendant spoke English and nothing in the record shows an interpreter translated the jury waiver form. *People v. Sebag*, 110 Ill. App. 3d 821, 443 N.E.2d 25 (1982), is also distinguishable because the defendant in that case was without the benefit of counsel when he waived his right to a jury trial. *Sebag*, 110 Ill. App. 3d at 829.

¶ 53 We believe defendant's jury waiver was constitutionally valid. Having found no error, there can be no plain error.

¶ 54 For the aforementioned reasons, defendant's conviction for delivery of a controlled substance is affirmed.

¶ 55 Affirmed.