2015 IL App (1st) 122567-U

FIRST DIVISION
MARCH 30, 2015

No. 1-12-2567



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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the |
| | ) | Circuit Court of |
| Plaintiff-Appellee, | ) | Cook County. |
| | ) | |
| v. | ) | No. 11 CR 5725 01 |
| | ) | |
| EDGAR GARCIA, | ) | Honorable |
| | ) | Rickey Jones, |
| Defendant-Appellant. | ) | Judge Presiding. |

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JUSTICE CUNNINGHAM delivered the judgment of the court.
Justices Connors and Harris concurred in the judgment.

**ORDER**

¶ 1 *Held*: Trial court did not err in denying defendant's motion to suppress evidence recovered in the execution of a search warrant; evidence was sufficient to sustain defendant's convictions for unlawful possession of a controlled substance with intent to deliver, and delivery of a controlled substance.

¶ 2 Following a bench trial, the circuit court of Cook County found defendant Edgar Garcia guilty of the offense of unlawful possession of a controlled substance with the intent to deliver and the offense of delivery of a controlled substance. Subsequently, the defendant was sentenced to 15 years of imprisonment for the conviction of delivery of a controlled substance and 4 years

of imprisonment for the conviction of unlawful possession of a controlled substance with the intent to deliver.[1] On direct appeal, the defendant argues that: (1) the trial court erred in denying his pretrial motion to suppress evidence recovered from a residence pursuant to a search warrant; (2) the State failed to prove beyond a reasonable doubt that he unlawfully possessed a controlled substance with the intent to deliver; and (3) the State failed to prove beyond a reasonable doubt that he committed the offense of delivery of a controlled substance. For the following reasons, we affirm the judgment of the circuit court of Cook County.

¶ 3 BACKGROUND

¶ 4 On March 23, 2011, Chicago police officers executed a search warrant at an apartment located at 2928 North Mason Avenue in Chicago, Illinois, where they recovered a bag of cocaine and about $2,511 in cash. The police then arrested the defendant, who was found alone in the apartment. On April 15, 2011, the defendant was charged with delivery of more than 900 grams of a controlled substance (720 ILCS 570/401(a)(2)(D) (West 2010)) and possession with the intent to deliver one gram or more, but less than 15 grams, of a controlled substance (720 ILCS 570/401(c)(2) (West 2010)).

¶ 5 On March 14, 2012, the defendant filed a pretrial motion to suppress the evidence recovered from the apartment pursuant to the police search warrant (the motion to suppress). In the motion to suppress, the defendant argued that the search warrant was invalid on the basis that the "probable cause" information contained therein was illegally obtained from a codefendant. On March 14, 2012, following a hearing on the motion to suppress at which the parties presented

[1] Count 1 is a Class X felony, while Count 2 was a Class 1 felony. The record shows that during sentencing, the trial court further found that "Count 2 merges into Count 1," but did not specify whether the sentences for those counts are to be served concurrently. The mittimus also makes no mention of whether the two sentences are to be served concurrently.

arguments but no witnesses testified, the trial court denied the motion. The trial court found that the defendant lacked standing to challenge the evidence that was illegally seized from the codefendant and, thus, the use of that information to establish probable cause for the issuance of the search warrant was legitimate.

¶ 6 On June 4, 2012, a bench trial commenced. Officer Herbert Betancourt (Officer Betancourt) testified on behalf of the State that he worked in the narcotics unit of the Chicago Police Department. He testified that, at about 3 p.m. on March 22, 2011, he, along with Officers O'Donnell and Nguyen, conducted surveillance in the area of 2928 North Mason Avenue in Chicago. Officer Betancourt was positioned in an alley directly across the street from the apartment building at 2928 North Mason Avenue and he maintained constant radio contact with Officers O'Donnell and Nguyen. At approximately 4:40 p.m., Officer Betancourt observed the defendant exit the south side entrance of the apartment building carrying a square-shaped bag that appeared full and "filled to its capacity." The defendant wore a dark jacket and a baseball cap with a Michael Jordan symbol on it, and walked behind another man who had also exited the residence from the same south-side doorway. The second man was later identified as codefendant Luis Puentes (codefendant Puentes).[2] Once Officer Betancourt lost sight of the two men, he remained in radio contact with officers O'Donnell and Nguyen. A few minutes later, Officer Betancourt saw a red Acura heading southbound on North Mason Avenue. He did not see the defendant enter or exit the vehicle. At 4:50 p.m., based on radio communications with fellow officers, Officers Betancourt and Lipsey drove their police vehicle to 500 North Austin Avenue, where they executed a traffic stop of the red Acura. The driver of the red Acura, codefendant Puentes, produced an expired driver's license and was subsequently arrested for an

[2] Codefendant Luis Puentes' name is erroneously spelled "Fuentes" in the trial transcript.

outstanding active warrant against him. Codefendant Puentes was the only person found inside the red Acura. Officer Betancourt then drove the red Acura to the police station, where an inventory search was conducted on the vehicle. Officer Betancourt noticed regular items, such as CDs and chewing gum, inside the vehicle. A canine unit also performed a narcotics sniff of the red Acura, after which Officer Salizar, a "trap specialist," arrived to search the vehicle. Officer Salizar searched the center console of the vehicle by opening the top lid of the console, where a piece of carpet was found inside. Officer Salizar then lifted up the piece of carpet and discovered a metal-hinged door. Once the metal-hinged door was opened, Officer Betancourt discovered a small plastic bag of suspect cocaine, as well as six bricks of suspect cocaine which were wrapped in black tape. Officer Betancourt noted that the black tape on the bricks was "[c]onsistent with the way that kilos of cocaine are wrapped," and described the trap compartment as three feet deep. No other large items were found inside the vehicle. After discovering the suspect cocaine in the red Acura, Officer Betancourt obtained a search warrant for the first floor apartment at 2928 North Mason Avenue. At about 1:28 a.m. on March 23, 2011, Officer Betancourt and other officers executed the search warrant. The police officers knocked and announced their office, received no response, and made a forced entry through a side door. The side door was the same entrance that Officer Betancourt had observed the defendant exiting during police surveillance. Upon entry, the defendant, who was lying on a couch in the living room of the first-floor apartment, jumped up and the police detained him. The defendant was alone in the residence. The apartment unit had two bedrooms, a bathroom, a living room area adjacent to the entrance, and a kitchen. The first bedroom appeared to be a child's room, which contained some children's clothing, a bed, and a dresser. The second bedroom contained a bed, a dresser, and men's clothing. Officer Betancourt and his fellow

officers then searched the apartment. They recovered a small bag of cocaine and money in the top left dresser drawer of the second bedroom; money in the first bedroom; and a black jacket, a baseball cap with a Michael Jordan symbol on it, and a bag in the living room area. Officer Betancourt testified that the black jacket, baseball cap, and bag were the same items the defendant was previously seen wearing or carrying during the police surveillance. On cross-examination, Officer Betancourt testified that at no time prior to executing the search warrant on March 23, 2011, did he see the defendant inside the first-floor apartment. He did not recover any documents bearing the defendant's name, photographs of the defendant, or keys to the residence during the execution of the search warrant.

¶ 7 Officer Quang Nguyen (Officer Nguyen) testified that at about 3 p.m. on March 22, 2011, he and other officers, including Officers Betancourt and O'Donnell, conducted surveillance in the area of 2928 North Mason Avenue, which was a two-flat building. Officer Nguyen was positioned directly across the street from the location at 2928 North Mason, and he used a handheld video camera to record events that were pertinent to the investigation. He observed the defendant arrive at the location on foot and enter the building at 2928 North Mason Avenue. Shortly thereafter, a red Acura SUV arrived at the same location. Codefendant Puentes exited the driver's side of the vehicle and entered the same residence at 2928 North Mason Avenue. A short time later, both the defendant and codefendant Puentes exited a side door of the building. Codefendant Puentes exited first and the defendant, who was carrying a school bag over his shoulder, followed behind. Officer Nguyen described the bag as "pretty filled inside because it was pretty big." The defendant then entered the passenger side of the red Acura, while codefendant Puentes entered the driver's side of the vehicle. Officer Nguyen then observed both men "manipulating around the front of the console of the vehicle" for one to two minutes. He

could see their "heads looking downwards, down by the console and a lot of movement." The red Acura then traveled northbound on North Mason Avenue and eastbound onto another street, after which Officer Nguyen lost sight of them. At no time did Officer Nguyen see anyone besides the defendant and codefendant Puentes enter or exit the vehicle. Officer Nguyen's surveillance video was then played for the court and admitted into evidence. In the video, the defendant was wearing a black jacket and a Michael Jordan baseball cap. The video also showed that, as the men exited the residential building, the defendant carried a school bag on his right shoulder. Officer Nguyen then pointed to a specific point in the video, which he described as both men "looking into the metal console of the vehicle" while they were inside the red Acura. He stated that he did not see the defendant place the bag in the backseat of the vehicle at any point during his observations. On cross-examination, Officer Nguyen testified that, once the defendant entered the red Acura, he was only able to see the silhouette of the defendant's body. While the defendant was inside the vehicle, Officer Nguyen could not see the defendant's hands, did not actually see the console of the vehicle, did not observe the defendant opening the console, and did not see the defendant remove anything from the bag. The defendant and codefendant Puentes stayed in the vehicle for about two minutes before they drove away. Subsequently, the police made a traffic stop of the red Acura, during which Officer Nguyen saw codefendant Puentes but did not see the defendant.

¶ 8 Officer John O'Donnell (Officer O'Donnell) testified that he was part of the team that conducted surveillance at 2928 North Mason Avenue at about 3 p.m. on March 22, 2011. Officer O'Donnell was positioned in an alley north of the residence. He sat alone in a covert vehicle and used binoculars during the surveillance. Based on radio communications with Officers Nguyen and Betancourt, Officer O'Donnell noticed a red Acura SUV traveling

southbound in an alley of the 2900 block of North Mason Avenue. Officer O'Donnell was stationed about one block north of the suspects' vehicle. Officer O'Donnell observed the defendant sitting in the front passenger seat and codefendant Puentes sitting in the driver's seat of the vehicle. The suspects' vehicle then stopped in an alley at 2928 North Mason Avenue and the defendant exited the vehicle. Officer O'Donnell observed the defendant carrying a "folded up bag" in his left hand as he exited the vehicle. The "folded up bag" appeared to be the same bag that the defendant was carrying in the surveillance video. However, Officer O'Donnell stated that the bag depicted in the surveillance video appeared "full and heavy," while the bag was "folded up in [] half, as if nothing was in it" when the defendant exited the vehicle. After exiting the vehicle, the defendant walked to a nearby gangway. At about 5:06 p.m., one bag of suspect cocaine and six brick items were recovered by the police during the search of the vehicle at the police station. The brick items, which Officer O'Donnell described as suspect cocaine, were wrapped in black tape. He then inventoried the recovered items. On March 23, 2011, at about 1:28 a.m., Officer O'Donnell, along with other officers, executed a search warrant on the first-floor apartment at 2928 North Mason Avenue. The police officers entered through a side door adjacent to a gangway. The defendant was in the living room and alone in the apartment when the officers entered the premises. Officer O'Donnell recognized the defendant as the same passenger who had exited the red Acura several hours earlier. Officer Lipsey recovered packaging material, such as Ziploc bags and black Gorilla Tape, from the kitchen. Officer O'Donnell noted that the tape was the same color and consistency as the tape that was used to package the bricks of suspect cocaine recovered during the search of the red Acura. A bag containing "drug paraphernalia bags," or smaller zip bags, was also recovered from the kitchen. Officer Betacounrt recovered a small bag of cocaine, a jacket, a baseball cap, and a duffle bag.

Officer O'Donnell recognized the duffle bag as the same one that he had seen the defendant carry "folded up," and the same one that the defendant was seen carrying in the surveillance video. The jacket and the baseball cap were the same items of clothing that the defendant was wearing when he exited the red Acura. Sergeant O'Shea and Officer Betancourt both recovered bundles of currency in the apartment. A total of $2,511 in cash was recovered from the residence. On cross-examination, Officer O'Donnell stated that the cash was found in various amounts and in various places throughout the apartment. He did not photograph any of the evidence. Neither the black tape recovered from the apartment nor the black tape recovered from the bricks of suspect cocaine found in the red Acura, underwent laboratory analysis. Other than the living room, Officer O'Donnell did not see the defendant inside any other rooms in the residence.

¶ 9 Sergeant Daniel O'Shea (Sergeant O'Shea) testified to the events surrounding the execution of the search warrant. Upon entry onto the premises, Sergeant O'Shea saw the defendant in the front room of the apartment. Sergeant O'Shea then recovered two bundles of United States currency. One bundle totaling $1,000 in cash was recovered from a china cabinet in the living room, and the second bundle totaling $179 in cash was recovered from the defendant's wallet. The wallet was found in the defendant's pants. On cross-examination, he testified that there were multiple rooms in the apartment, that he never saw the defendant in either of the two bedrooms, and that the defendant was dressed when the police arrived.

¶ 10 Livier Villa (Villa) testified through a Spanish interpreter that she is the defendant's sister and that on March 23, 2011, the defendant was living in the *basement* unit of the building at 2928 North Mason Avenue. On January 6, 2012, Villa had a conversation with an investigator of the Cook County State's Attorney's Office, during which Villa told him, without specifying which apartment unit, that the defendant lived at 2928 North Mason Avenue. At about 11 a.m.

on the day of the instant trial, Villa had a conversation with the State prosecutor in the presence of another individual from the Cook County State's Attorney's Office, Matt Mulroe (Mulroe). However, Villa testified that she did not understand everything that transpired during the conversation with the State prosecutor because the conversation was in English. At trial, Villa admitted that she told the State prosecutor and Mulroe that the defendant lived in the *first floor* apartment at 2928 North Mason Avenue, but explained that she gave that response because she "thought it was some other question." On cross-examination, Villa stated that she did not have complete confidence in her English language skills and preferred to communicate in Spanish. Villa testified that the State's investigator spoke to her in English during the January 2012 conversation, and that she did not understand what the investigator asked her on that day. Villa told the investigator that she did not speak English, but the investigator did not provide a Spanish interpreter to her. The investigator did not ask her what specific apartment unit her brother lived in at 2928 North Mason Avenue.

¶ 11 Mulroe testified that he was a clerk for the Cook County State's Attorney's Office. At about 11:30 a.m. on that morning of trial, he had a conversation with Villa and the State prosecutor outside of the courtroom. During the conversation, Villa appeared to be able to speak English, and she did not ask for an interpreter. Villa agreed to speak with the prosecutor and told her that the defendant lived in the first-floor apartment at 2928 North Mason Avenue.

¶ 12 The parties stipulated that, if called to the witness stand, forensic chemists—Kathy Regan and Katherine Frost—would testify that tests performed on two of the six bricks of suspect cocaine that were recovered from the red Acura, tested positive for cocaine and the actual weight of those items was 1,780.9 grams. The total estimated weight of the six bricks of cocaine and the plastic bag of cocaine recovered from the red Acura was 5,498 grams. It is further stipulated that

the suspect narcotics seized from 2928 North Mason Avenue tested positive for cocaine and weighed 7.9 grams. The State then rested its case, and the trial court denied the defendant's motion for a judgment of acquittal.

¶ 13 The defense proceeded by way of stipulation. The parties stipulated that if called to testify, Sheila Daugherty (Daugherty), an expert in forensic science, would testify that there were no latent impressions suitable for comparison on the items inventoried from the red Acura. The defense then rested.

¶ 14 Following closing arguments, the trial court found the following witnesses to be credible: Officers Betancourt, O'Donnell and Nguyen; Sergeant O'Shea; and Mulroe. The trial court specifically found Villa to be incredible. The trial court then found the defendant guilty of the charged offenses.

¶ 15 On July 2, 2012, the defendant filed a motion for a new trial, which the trial court denied on July 23, 2012. The trial court then sentenced the defendant to 15 years of imprisonment for the conviction of delivery of more than 900 grams of a controlled substance (720 ILCS 570/401(a)(2)(D) (West 2010) and 4 years of imprisonment for the conviction of unlawful possession with the intent to deliver one gram or more, but less than 15 grams, of a controlled substance (720 ILCS 570/401(c) (2) (West 2010)). The trial court noted that the counts merged.

¶ 16 On August 3, 2012, the defendant filed a notice of appeal.

¶ 17 ANALYSIS

¶ 18 We determine the following issues on appeal: (1) whether the trial court erred in denying the defendant's pretrial motion to suppress; (2) whether the State failed to prove beyond a reasonable doubt that the defendant unlawfully possessed a controlled substance with the intent to deliver one gram or more, but less than 15 grams, of cocaine; and (3) whether the State failed

to prove beyond a reasonable doubt that the defendant committed the offense of delivery of more than 900 grams of a controlled substance.

¶ 19 We first determine whether the trial court erred in denying the defendant's motion to suppress.

¶ 20 The defendant argues that the trial court erred in denying his motion to suppress, claiming that the allegations contained in the complaint for a search warrant failed to establish a nexus between the narcotics activity and the residence searched. He also argues that the complaint for a search warrant, in an attempt to establish probable cause to search the apartment at 2928 North Mason Avenue, relied upon illegally-seized evidence from codefendant Puentes' vehicle and, thus, any evidence seized inside the apartment was "fruit of the poisonous tree." Because the search warrant lacked a sufficient basis to support a finding of probable cause, he argues, the warrant should not have been issued by the issuing judge.

¶ 21 The State responds that the trial court properly denied the defendant's motion to suppress, arguing that, based on the totality of circumstances known to Officer Betancourt as the affiant, probable cause existed to justify the issuance of the search warrant. The State specifically argues, and the defendant concedes, that the defendant lacked standing to challenge the illegality of the search of codefendant Puentes' red Acura. The State refutes as factually incorrect the defendant's claim that the cocaine seized from codefendant Puentes' vehicle was the "sole basis" used to support the search warrant. Rather, the State argues, information obtained from a confidential informant and the officer's week-long surveillance of the apartment, were also used to support the issuance of the search warrant. The State further argues that, even assuming the search warrant was invalid, the officers were justified in executing the search warrant under the "good-faith" exception and thus, evidence seized from the apartment should not be suppressed.

¶ 22 Because no evidentiary hearing was held on the motion to suppress, and we are essentially presented with the same complaint and search warrant as the trial court, our review of the order denying the defendant's motion to suppress is *de novo*, while our review of the judge's decision to issue the search warrant remains deferential. See *People v. Rojas*, 2013 IL App (1st) 113780, ¶ 16.

¶ 23 Section 114-12 of the Code of Criminal Procedure (the Code) provides that a defendant aggrieved by an unlawful search and seizure may move the court to suppress evidence so obtained on the ground that "[t]he search and seizure with a warrant was illegal because the warrant is insufficient on its face; the evidence seized is not that described in the warrant; there was not probable cause for the issuance of the warrant; or, the warrant was illegally executed." 725 ILCS 5/114-12(a)(2) (West 2010). In the case at bar, the defendant challenges the search and seizure of the apartment at 2928 North Mason Avenue on the basis that there was no probable cause for the issuance of the warrant.

¶ 24 The exclusionary rule provides for suppression of evidence obtained in contravention of the fourth amendment's protection against unreasonable searches and seizures. *Rojas*, 2013 IL App (1st) 113780, ¶ 15, citing *Mapp v. Ohio*, 367 U.S. 643, 654 (1961); *United States v. Leon*, 468 U.S. 897, 906 (1984). The purpose of the exclusionary rule is to deter officers from recklessly preparing search warrant affidavits and from obtaining warrants based on false or misleading information; suppression is warranted when it will further the purpose of the rule. *Leon*, 468 U.S. at 907-08. Probable cause, which is required for the issuance of a search warrant, measures the probability of criminal activity, rather than proof beyond a reasonable doubt. *People v. Beck*, 306 Ill. App. 3d 172, 178 (1999). Probable cause exists if the totality of the facts and circumstances known to the affiant is sufficient to warrant a person of reasonable caution to

believe that an offense occurred and that evidence of that offense is at the location to be searched. *People v. Stewart*, 104 Ill. 2d 463, 476 (1984); *People v. Lenyoun*, 402 Ill. App. 3d 787, 793 (2010). In other words, there must be an established nexus between the criminal offense, the items to be seized, and the place to be searched. *Beck*, 306 Ill. App. 3d 178-79. Reasonable inferences may be drawn to establish the nexus and direct information is not necessary. *Id.* at 179.

¶ 25 In the instant case, on March 23, 2011, Officer Betancourt filed a complaint for a warrant to search a Hispanic man known as "Huero" and the first-floor apartment located at 2928 North Mason Avenue, in order to seize cocaine, money, proof of residency, drug paraphernalia, and any evidence of illegal drug transactions. As the affiant, Officer Betancourt attested to the following facts in the complaint for search warrant: On March 10, 2011, a registered confidential informant (the informant), who had successfully worked with Officer Betancourt six times in the past year, informed Officer Betancourt that he had met with an individual known as "Huero." The informant had known "Huero" for about 5 to 6 years and had known him to receive shipments of 30 to 35 kilos of cocaine at a time for the purpose of distribution. During the meeting, "Huero" told the informant that he was "dry"—a street terminology for not having any drugs at this time—but that he would contact the informant about purchasing cocaine when he "got something in." On March 15, 2011, the informant relayed to Officer Betancourt that "Huero" had notified the informant that the shipment of narcotics was "on its way." The informant told police officers that "Huero" lived in "apartment #1" at 2928 North Mason Avenue. Officer Betancourt then showed the informant a picture of a yellow brick, two-flat building with the address "2928" affixed to the front of the building, which the informant identified as "Huero's" address. The informant specified that the first floor of the building must

be accessed by a side door. Surveillance officers observed "Huero" enter the first floor of the building at 2928 North Mason Avenue through the side door located on the south side of the residence. On one occasion, the informant met with "Huero" while officers set up surveillance in the area of the meeting in order to visually identify the target. Based on this information, police officers conducted a one-week surveillance on the residence, during which officers observed individuals arrive at the location, enter the residence, exit the residence after a short time, and leave the area. On March 22, 2011, surveillance officers observed a Hispanic male drive a red Acura to the location. The driver exited the red Acura and entered the residence. A short time later, video surveillance captured the same male driver exiting the location with a second man known as "Huero," who was carrying a black bag that appeared to contain unknown contents. The black bag was strapped to his right shoulder. Both individuals then entered the red Acura, sat in the vehicle for about 5 to 10 minutes, and made "furtive movements towards the center [console] of [the] vehicle." The red Acura, which was followed by police surveillance, then traveled southbound onto North Mason Avenue and into a west alley of North Mason Avenue, where it stopped and "Huero," whom officers later identified as the defendant, exited the passenger side of the vehicle with what appeared to be an empty bag in his right hand. "Huero" then reentered the residence. Meanwhile, officers continued to follow the red Acura and eventually made a traffic stop of the vehicle when the driver illegally passed cars on the right. The driver of the red Acura provided police officers with an expired driver's license and the police discovered an outstanding warrant against him. Subsequently, a canine officer conducted a "narcotic sniff" of the vehicle, which resulted in a "positive indication" by the canine officer, "Bert." A subsequent search of the red Acura resulted in the recovery of 6,172 grams of cocaine.

Based on these events, Officer Betancourt attested that he believed "Huero" to possess "a large amount of cocaine" in his first-floor apartment at 2928 North Mason Avenue.

¶ 26 In denying the defendant's motion to suppress, the trial court specifically found that the defendant lacked standing to challenge the evidence that was illegally seized[3] from codefendant Puentes' vehicle and, thus, the use of that information to establish probable cause for the issuance of the search warrant was legitimate.

¶ 27 The defendant argues on appeal that the evidence seized from his apartment should be suppressed, on the basis that the complaint for search warrant in the instant case relied upon illegally-seized evidence from codefendant Puentes' vehicle, which the defendant claims could not serve as probable cause to justify the issuance of the search warrant in the case at bar.

¶ 28 The fourth amendment to the United States Constitution protects "the right of the people to be secured in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const., amend IV; see Ill. Const. 1970, art. I, §6; *People v. Rosenberg*, 213 Ill. 2d 69, 77 (2004). It is well-settled that "[f]ourth [a]mendment rights are personal rights which, like some other constitutional rights, may not be vicariously asserted." *Rakas v. Illinois*, 439 U.S. 128, 134 (1978). "A person who is aggrieved by an illegal search and seizure only through the introduction of damaging evidence secured by a search of a third person's premises or property has not had any of his [f]ourth [a]mendment rights infringed." *Id.* Thus, the protections of the exclusionary rule should only benefit defendants whose own fourth amendment rights have been violated. *Id.*; *Rosenberg*, 213 Ill. 2d at 77.

[3] In a February 7, 2012 hearing in a separate case (case No. 11 CR 05725-02), the trial court granted codefendant Puentes' motion to suppress evidence obtained from his red Acura, on the basis that the evidence was illegally seized where no probable cause existed to allow the officers to search the interior of the vehicle.

¶ 29 As a matter of law, we find, and the defendant concedes, that he lacked standing to challenge the legality of the search of codefendant Puentes' vehicle and to seek suppression of the illegally-seized cocaine therein. Instead, he argues that the "ongoing underlying taint of the illegal search and seizure" of codefendant Puentes' red Acura was "transferred" to him, and he characterizes the cocaine that was seized from his apartment pursuant to the search warrant as the "fruit of the poisonous tree." In support of this argument, the defendant cites *United States v. Johnson*, 380 F. 3d 1013 (7th Cir. 2004).

¶ 30 We find the defendant's argument to be unpersuasive. First, we note that federal court decisions, other than United States Supreme Court decisions, are considered persuasive authority and not binding on this court. See *People v. Rendak*, 2011 IL App (1st) 082093, ¶ 18. Second, we find *Johnson* to be factually distinguishable from the case at bar, where *Johnson* did not involve the issuance or execution of a search warrant, but rather the illegal seizure of evidence by the police after searching the driver and passengers of a vehicle without any grounds for an arrest or a *Terry* stop, and the reviewing court found that the "inevitable discovery" and "independent source" doctrines did not apply to render admissible evidence of contraband found in the warrantless search of the automobile's trunk. See *Johnson*, F. 3d at 1014-17. We find *Johnson* to be inapplicable to this case at bar. The defendant further makes a number of arguments that because the evidence seized from his apartment was "not obtained independently of the illegal search," the evidence should have been suppressed where the cocaine that was illegally seized from codefendant Puentes' vehicle was *the only reason* the search warrant was issued by the issuing judge. We reject this contention. The defendant cites to a single page of the transcript of the March 14, 2012 hearing on his motion to suppress, in support of his characterization that the trial court, in denying his motion, "regarded the cocaine seized [from

codefendant Puentes' vehicle] as *the only reason* the search warrant was issued." However, our reading of the relevant language in the record transcripts yields a different interpretation. While the trial court found that the evidence recovered from codefendant Puentes' vehicle could legitimately be used to establish probable cause for the issuance of the search warrant, at no point did the trial court identify that as the sole basis giving rise to the probable cause that justified the search warrant.

¶ 31 Based on our review of the record, we find that at the time Officer Betancourt filed a complaint for a search warrant, sufficient information was available to him to suggest the "probability of criminal activity"; thus, probable cause existed to justify the issuance of the warrant. See *Rojas*, 2013 IL App (1st) 113780, ¶ 16 (review of the judge's decision to issue the search warrant is deferential); *Beck*, 306 Ill. App. 3d at 178. The totality of the facts and circumstances known to Officer Betancourt was sufficient to warrant his reasonable belief that an offense had occurred and that evidence of that offense was in the first-floor apartment at 2928 North Mason Avenue. See *Stewart*, 104 Ill. 2d at 476. The record shows that the complaint for a search warrant detailed the registered confidential informant's communications with the defendant prior to the execution of the search warrant, as well as the police officers' own observations during their week-long surveillance of the residence. The complaint stated that the informant, who had successfully worked with Officer Betancourt six times in the past year, met with "Huero" about the purchase of cocaine. The informant had known "Huero" for about 5 to 6 years and had known him to receive about 30 to 35 kilos of cocaine at a time for the purpose of distribution. During the meeting, "Huero" told the informant that he would contact the informant about purchasing cocaine when he "got something in." A few days later, "Huero" notified the informant that a shipment of narcotics was "on its way." The informant then gave the police

officers details about where "Huero" lived; identified a picture of his residence at 2928 North Mason Avenue; helped surveillance officers visually identify the target by meeting with "Huero" in person; and told officers how to gain access to the first-floor building. Officer Betancourt and his fellow officers also conducted a one-week surveillance of the location, during which they observed the comings and goings of different individuals—individuals who arrived at the location, entered the residence, exited the residence after a short time, and then left the area. On one specific occasion, surveillance officers observed codefendant Puentes arrive at the location in a red Acura, enter the residence, and emerge a short time later with the defendant, who carried a black bag containing unknown contents. Officers observed both men make "furtive movements towards the center [console]" of the vehicle, after which the vehicle traveled a short distance to an alley near the residence and the defendant exited the passenger side of the vehicle with an empty bag and reentered the residence. A subsequent traffic stop and search of the red Acura resulted in the recovery of 6,172 grams[4] of cocaine from a hidden compartment in the vehicle's center console. We find that, based on the totality of the circumstances, probable cause existed to support the issuance of the search warrant. It could reasonably be inferred from the totality of the facts and circumstances that the necessary nexus between the criminal offense and the residence had been established. See *Beck*, 306 Ill. App. 3d at 178-79 (there must be an established nexus between the criminal offense, the items to be seized, and the place to be searched).

¶ 32 Nonetheless, the defendant, citing *Rojas*, argues that the necessary nexus between the narcotics activity and the residence had not been established to justify the issuance of the search

[4] The complaint for a search warrant stated that 6,172 grams of cocaine were recovered from a hidden compartment in the red Acura. However, at trial, the parties stipulated that the police recovered 5,498 grams of cocaine from the red Acura.

warrant. He specifically points out that the complaint for a search warrant lacked certain information to establish the necessary nexus to support a finding of probable cause—including any indication that cocaine was observed to be inside the residence; that cocaine was stored inside the residence; that the informant had been inside the apartment; that he had seen "Huero" with drugs inside his residence; that the shipment of cocaine would be delivered to the residence; that the individuals observed coming and going during police surveillance were anything other than residents of the building. We reject the defendant's contention. In *Rojas*, the reviewing court found that the search warrant did not establish probable cause to search the defendant's home for evidence of drug activity, where the evidence consisted only of intercepted telephone conversations that to the average person would appear innocuous and did not indicate where the drug trafficking was occurring, and where a wiretapped conversation indicated that the defendant asked the alleged head of the drug trafficking organization to "come over here close to [his] house," but no direct observational evidence existed to show that they actually met or conducted any transaction, and no indication as to the nature of their meeting. *Rojas*, 2013 IL App (1st) 113780, ¶ 18. Unlike *Rojas*, police officers in the instant case directly observed the defendant exit the residence with a bag that appeared full, enter codefendant Puentes' vehicle, make "furtive movements" toward the center console of the vehicle, exit the vehicle with an empty bag, and reenter the residence. This evidence—coupled with the informant's statements to the police, police observations during the week-long surveillance of the apartment building, and the substantial amount of cocaine recovered from the red Acura—was sufficient to establish the nexus between the narcotics activity, the items to be seized, and the apartment unit. See *Beck*, 306 Ill. App. 3d at 178 (probable cause only measures the probability of criminal activity, rather

than proof beyond a reasonable doubt). Therefore, we find that probable cause existed to justify the issuance of the search warrant.

¶ 33 Moreover, even assuming, *arguendo*, that the search warrant was invalid, evidence seized from the defendant's apartment was nevertheless admissible because the police officers acted in good-faith. The good-faith exception prevents suppression of evidence obtained by an officer acting in good faith and in reliance on a search warrant that was ultimately found to be without probable cause, where the warrant was "obtained from a neutral and detached judge, *** free from obvious defects other than nondeliberate errors in preparation and contains no material misrepresentations ***, and the officer reasonably believed the warrant to be valid." 725 ILCS 5/114-12(b)(2)(i) (West 2010). There is no indication that the judge issuing the search warrant in the case at bar was anything but neutral, or that the search warrant contained obvious defects or material misrepresentations. Further, the police executing the search warrant clearly believed the warrant to be valid because, based on the events detailed in the complaint for a search warrant, they could have held an objectively reasonable belief in the existence of probable cause to search the defendant's residence. See *People v. Carlson*, 185 Ill. 2d 546, 560 (1999) (good-faith exception to the exclusionary rule applied where the police obtained an anticipatory search warrant from a neutral and detached judge; the warrant was free from obvious defects and contained no material misrepresentations; and the police could reasonably have believed the warrant to be valid); but *cf. Lenyoun*, 402 Ill. App. 3d 799-801 (good-faith doctrine did not apply to the executing officer when, viewing the "bare-bones" affidavit, neither the judge nor the officer could have held an objectively reasonable belief in the existence of probable cause to search defendant's apartment). Accordingly, we hold that the trial court did not err in denying the defendant's motion to suppress.

¶ 34 We next determine whether the State failed to prove beyond a reasonable doubt that the defendant unlawfully possessed a controlled substance with the intent to deliver one gram or more, but less than 15 grams, of cocaine.

¶ 35 The defendant argues that the trial evidence was insufficient to sustain his conviction for unlawful possession of a controlled substance with the intent to deliver one gram or more, but less than 15 grams, of cocaine. Specifically, he argues that the State failed to prove that he constructively possessed the cocaine that was recovered from the bedroom of the apartment. He further argues that the State failed to prove that he had the requisite intent to deliver the cocaine.

¶ 36 The State counters that the defendant was proven guilty beyond a reasonable doubt of unlawful possession with the intent to deliver cocaine. The State maintains that the defendant had constructive possession over the recovered cocaine, and that the evidence was sufficient to establish his intent to deliver the narcotics.

¶ 37 When the sufficiency of the evidence is challenged on appeal, we must determine " 'whether, after viewing the evidence in the light most favorable to the [State], *any* rational trier of fact could have found the essential elements of the crime beyond the reasonable doubt.' " (Emphasis in original.) *People v. Graham*, 392 Ill. App. 3d 1001, 1008-09 (2009), quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). A reviewing court affords great deference to the trier of fact and does not retry the defendant on appeal. *People v. Smith*, 318 Ill. App. 3d 64, 73 (2000). It is within the province of the trier of fact "to assess the credibility of the witnesses, determine the appropriate weight of the testimony, and resolve conflicts or inconsistencies in the evidence." *Graham*, 392 Ill. App. 3d at 1009. The trier of fact is not required to accept any possible explanation compatible with the defendant's innocence and elevate it to the status of reasonable doubt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 229 (2009). A reviewing court will

not substitute its judgment for that of the trier of fact. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). A reviewing court must allow all reasonable inferences from the record in favor of the State. *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). A criminal conviction will not be reversed "unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt as to the defendant's guilt." *Graham*, 392 Ill. App. 3d at 1009.

¶ 38 To sustain a charge of possession of a controlled substance with the intent to deliver, the State must prove that: (1) the defendant had knowledge of the presence of the controlled substance; (2) the controlled substance was in the immediate possession or control of the defendant; and (3) the defendant intended to deliver the controlled substance. *People v. Robinson*, 167 Ill. 2d 397, 407 (1995).

¶ 39 "Knowing possession" can be either actual or constructive. *People v. Brown*, 327 Ill. App. 3d 816, 824 (2002). Because the defendant was not found in actual possession of the cocaine, the State had to prove that the defendant constructively possessed it. See *People v. McCarter*, 339 Ill. App. 3d 876, 879 (2003). To establish constructive possession, the State must prove that the defendant: (1) had knowledge of the presence of the cocaine; and (2) exercised immediate and exclusive control over the area where the cocaine was found. See *id.* "Evidence of constructive possession is often entirely circumstantial." (Internal quotation marks omitted.) *Id.* "Control is established when a person has the 'intent and capability to maintain control and dominion over an item, even if he lacks personal present dominion over it.' " *People v. Spencer*, 2012 IL App (1st) 102094, ¶ 17 (quoting *People v. Frieberg*, 147 Ill. 2d 326, 361 (1992)). Control over the location where the contraband was found gives rise to an inference that the defendant possessed the contraband. See *McCarter*, 339 Ill. App. 3d at 879. "Knowledge and possession are questions of fact to be resolved by the trier of fact, whose findings should not be

disturbed upon review unless the evidence is so unbelievable, improbable, or palpably contrary to the verdict that it creates a reasonable doubt of guilt." *People v. Luckett*, 273 Ill. App. 3d 1023, 1033 (1995).

¶ 40 Viewing the evidence in the light most favorable to the State, we find that the State proved the defendant's guilt beyond a reasonable doubt. The evidence shows that in executing the search warrant, police officers found the defendant lying on the living room couch. The defendant was alone in the apartment. Officer O'Donnell recognized the defendant as the same passenger who had exited the red Acura with an empty bag several hours earlier. The apartment had two bedrooms—one of which appeared to be a child's room, and the other contained a bed, dresser, and men's clothing. In the bedroom containing men's clothing, the police recovered a bag of cocaine and money in a dresser drawer. The police also recovered money in the child's bedroom, $179 in cash on the defendant's person, and $1,000 in cash from the living room china cabinet. A total of $2,511 in cash was recovered in various places within the residence. The police also recovered from the living room area personal belongings such as a black jacket, a Michael Jordan baseball cap, and a bag—all items which officers had seen the defendant wearing or carrying during police surveillance. From the kitchen, the police recovered packaging material, such as Ziploc bags and black Gorilla Tape. Officer O'Donnell testified at trial that the tape was the same color and consistency as the tape that was used to package the bricks of cocaine recovered from codefendant Puentes' vehicle. A bag containing "drug paraphernalia bags" or smaller zip bags, were also recovered from the kitchen. Stipulated evidence at trial also showed that the cocaine seized from the defendant's apartment weighed 7.9 grams. Given this evidence, we find that the trier of fact could reasonably have concluded that the defendant had

knowledge of the presence of the recovered cocaine, and maintained control over the area where the cocaine was found.

¶ 41 Nonetheless, the defendant makes various arguments in an attempt to show that the State failed to prove beyond a reasonable doubt every element of the offense. He first asserts that the State failed to prove that he knew about the 7.9 grams of cocaine in the dresser drawer, arguing that no physical evidence linked him to the bag of cocaine, the officers never saw the defendant inside the bedroom where the cocaine was found, the defendant took no action to either conceal or discard the bag of cocaine, the size of the men's clothing was unknown, and no documents bearing the defendant's name or keys to the apartment were ever recovered. We reject the defendant's argument. Our supreme court has held that "where narcotics are found on the premises under the control of defendant, this fact, in and of itself, gives rise to an inference of knowledge and possession by him which may be sufficient to sustain a conviction for unlawful possession of narcotics, absent other facts and circumstances which might leave in the mind of the jury, or of the court where a jury is waived, a reasonable doubt as to his guilt." *People v. Nettles*, 23 Ill. 2d 306, 308-09 (1961). Here, the trial court heard testimony at trial that the defendant was found alone and lying on the couch in the apartment. Evidence was also presented that the defendant's jacket, baseball cap, and bag were found in the living room, and that the bag of cocaine and cash were found in the bedroom which contained men's clothing. There was no evidence to suggest that the bedroom was locked or that the defendant was unable to freely access all parts of the apartment. The trial court also heard the testimony of Mulroe, who testified that the defendant's sister, Villa, had previously told the State prosecutor that the defendant lived in the first-floor apartment at 2928 North Mason Avenue. Although Villa testified at trial to the contrary that the defendant lived in the *basement* unit, the trial court, as the

fact finder, found Mulroe and the officers credible and found Villa incredible. See *Graham*, 392 Ill. App. 3d at 1009 (trier of fact assesses the credibility of the witnesses, determine the appropriate weight of the testimony, and resolve conflicts or inconsistencies in the evidence). We further find the defendant's cited case, *People v. Wright*, 2013 IL App (1st) 111803, to be distinguishable from the facts of this case. In *Wright*, the reviewing court found that the State failed to prove that the defendant knowingly possessed the gun that was the basis for the charged offense, where the defendant did not live at the residence that was searched, the defendant tripped and fell in the basement area where a gun was then found underneath him, no physical evidence linked the defendant to the gun, no witness saw the defendant with a gun in his hand, and three other unidentified people were also present in the basement at that time. *Wright*, 2013 IL App (1st) 111803, ¶ 26. Unlike *Wright*, the defendant in this case, lived at the apartment, was alone at the time of the search, his personal effects were found inside the apartment, and police surveillance prior to the search revealed his exiting the residence with a black bag that was full but reentering the premises with an empty bag after meeting codefendant Puentes in the red Acura. Viewing the evidence in the light most favorable to the State, as we must, the trial court could reasonably have inferred that the defendant lived in the first-floor apartment unit, that he possessed cocaine which he transferred to the red Acura, that he also hid some of the cocaine in a dresser drawer of his bedroom, that he owned the men's clothing in the bedroom where the cocaine was found, and that he was relaxing at home on the couch when the police executed the search warrant. Thus, we find that the evidence was sufficient to prove that the defendant had knowledge of the cocaine recovered from the bedroom.

¶ 42 We are also unpersuaded by the defendant's assertion that the State failed to prove that he constructively possessed the bag of cocaine recovered from the dresser, claiming that it was not

within his immediate and exclusive control. Although the defendant cites *People v. Ray*, 232 Ill. App. 3d 459 (1992), *People v. Pugh*, 36 Ill. 2d 435 (1967), and *People v. Alicea*, 2013 IL App (1st) 112602, in support of his argument that he did not have control over the apartment, we find those cases to be inapposite. None of those cases involved a situation, like in the present case, in which the defendant was observed freely coming and going at the residence during police surveillance. In two of those cases (*Ray* and *Alicea*), other individuals were found on the premises that were the subject of the police searches, unlike the defendant in the instant case who was found alone in the apartment. Unlike *Pugh*, in which a warrant was issued to search the premises of a woman named "Patricia Plunkett" or "Patricia Davis," and the door bell bore the names of "Davis-Plunkett," but police officers found the male defendant within the premises instead, the search warrant in the instant case was issued to search the premises of a Hispanic man named "Huero"—whom surveillance officers observed meeting with codefendant Puentes in the red Acura and whom officers later identified as the defendant who was found alone in the apartment. Also unlike *Alicea*, in which there was some evidence at trial that the accused used to live on the premises but had since moved to live with his fiancée at a different location months before the search, we find that, though the defendant here did not bear the burden of proof at trial, no evidence was ever presented in his defense that he lived elsewhere. We find that it was within the trial court's province as the trier of fact to determine that the totality of the evidence at trial, sufficiently supported a finding that the defendant had the capability to maintain control and dominion over the dresser in which the cocaine was recovered and that he exercised immediate and exclusive control over the apartment unit. Notwithstanding, the defendant points out that no keys to the apartment were ever recovered, as a basis to demonstrate his lack of capability to maintain control over the premises. We reject this contention. The fact that the

police never recovered the keys to the apartment did not conclusively mean that the keys were not accessible to the defendant or that he had no control over the premises. The trier of fact is not required to accept any possible explanation compatible with the defendant's innocence and elevate it to the status of reasonable doubt. *Siguenza-Brito*, 235 Ill. 2d at 229. We decline to substitute our judgment for that of the trier of fact. Thus, the defendant's argument fails.

¶ 43 We further reject the defendant's contention that the State failed to prove that he had the requisite intent to deliver the 7.9 grams of cocaine that was recovered from the apartment. The defendant points out that the 7.9 grams of cocaine was not broken down into smaller distribution quantities, that there was no evidence of the purity of the drug or that the amount of cocaine found was inconsistent with personal use, that he was not found to be in possession of any weapons, that only a small amount of cash was found on his person, and that no scales, drug ledges, police scanners or the like were ever found in the apartment. "Because direct evidence of intent to deliver is rare, such intent must usually be proven by circumstantial evidence." *Robinson*, 167 Ill. 2d at 408. Factors considered by Illinois courts as probative of intent to deliver include whether the quantity of the controlled substance in the defendant's possession is too large to be viewed as being for personal consumption; the high purity of the drug confiscated; the possession of weapons; the possession of large amounts of cash; the possession of police scanner, beepers, or cellular telephones; the possession of drug paraphernalia; and the manner in which the substance is packaged. *Id.* However, these factors are not exhaustive, but simply examples of factors that courts may consider as probative of an intent to deliver. *People v. Bush*, 214 Ill. 2d 318, 327 (2005). Courts may consider other unspecified factors to determine whether the defendant had the intent to deliver. *Id.* at 327-28. In the case at bar, the police seized 7.9 grams of cocaine from the apartment, along with a total of $2,511 in cash, packaging

material such as Ziploc bags and black Gorilla Tape, as well as smaller "drug paraphernalia" zip bags. Evidence also showed that the informant was contacted by "Huero," who was later identified as the defendant, about the purchase of cocaine when the shipment of narcotics was "on its way." The police's week-long surveillance captured different individuals arriving at the location, entering the apartment, and exiting the residence after a short time. Moreover, surveillance officers observed the defendant exit the residence with a full bag, enter codefendant Puentes' red Acura, "[manipulate] around the front of the console of the vehicle," and exit the vehicle a short time later with the same—albeit empty—bag and reenter the residence. Six bricks of cocaine and a bag of cocaine were eventually recovered from codefendant Puentes' vehicle, and the tape used to package the bricks of cocaine was the same color and consistency as the tape found inside the defendant's apartment. While the amount of cocaine (7.9 grams) recovered from the apartment may not be considered significant, the totality of the circumstantial evidence, in the cumulative, was probative of the defendant's intent to deliver the cocaine. See *id.* at 328 (finding an "intent to deliver" despite the smaller amount of cocaine recovered by the police, where defendant was observed selling unknown items to individuals prior to the arrest). Therefore, we find that the State proved beyond a reasonable doubt that the defendant had the intent to deliver the cocaine recovered from the apartment, and that the evidence was sufficient to establish that he constructively possessed the 7.9 grams of cocaine. Accordingly, the defendant's conviction for unlawful possession of a controlled substance with the intent to deliver (1 gram or more but less than 15 grams), must stand.

¶ 44 We next determine whether the evidence at trial was sufficient to prove beyond a reasonable doubt that the defendant committed the offense of delivery of more than 900 grams of a controlled substance.

¶ 45 The defendant argues that the evidence was insufficient to prove he knowingly transferred cocaine to codefendant Puentes. He contends that the cocaine in the red Acura was recovered from a three-foot deep "trap compartment," and speculates that he could not have seen it during the short time that he was in the vehicle. He further argues that because the officers never saw what was inside the black bag, and there was no evidence that he ever opened the bag or physically transferred cocaine to codefendant Puentes, the State failed to establish his guilt beyond a reasonable doubt.

¶ 46 The State counters that the trial evidence was sufficient to sustain his conviction for delivery of more than 900 grams of cocaine. The State argues that the defendant's acts, conduct, and the surrounding circumstances, support the inference that he knew of the existence of the cocaine and had actually delivered it to codefendant Puentes.

¶ 47 To sustain a conviction for the unlawful delivery of a controlled substance, the State must prove that the defendant knowingly delivered a controlled substance. *People v. Brown*, 388 Ill. App. 3d 104, 108 (2009). Delivery is defined as "the actual, constructive, or attempted transfer of possession of a controlled substance, with or without consideration, whether or not there is an agency relationship." *Id.* Knowledge is usually proved by circumstantial evidence because it can rarely be shown by direct proof. *People v. Sanchez*, 375 Ill. App. 3d 299, 301 (2007). "Knowledge may be proved by presenting sufficient evidence from which a [trier of fact] may reasonably infer that the defendant knew of the controlled substance's existence at the place officers found it, including acts, conduct or statement, [citation omitted] and the surrounding facts and circumstances." *Id.*

¶ 48 Viewing the evidence in the light most favorable to the State, we find that the evidence sufficiently supports a finding that the defendant knowingly delivered more than 900 grams of

cocaine to codefendant Puentes. As discussed, during police surveillance, the defendant was seen exiting the residence with a bag that was "filled to its capacity" and appeared "full and heavy." The defendant then entered codefendant Puentes' vehicle, after which Officer Nguyen observed him "manipulating around the front of the console of the vehicle," and the defendant exited the vehicle a short time later with the same bag, though empty. Officer O'Donnell also testified that the tape that the police later removed from the defendant's apartment, matched the color and consistency of the tape that was used to package the six bricks of cocaine found inside codefendant Puentes' vehicle. The parties stipulated at trial that the police recovered a total of 5,498 grams of cocaine from the red Acura. Based on this evidence, the trial court could reasonably have inferred that the defendant knowingly delivered the cocaine to codefendant Puentes in the red Acura.

¶ 49 Nevertheless, the defendant argues that the evidence was insufficient to convict him because the police officers neither saw him open the bag inside the red Acura, nor saw him physically transfer the cocaine to codefendant Puentes, and thus, suggests that the bag only contained innocuous items such as the CDs and chewing gum that were also found inside the vehicle. We reject this contention. The trial court, as the trier of fact, heard all of the evidence at trial and was in the best position to determine the credibility of the officers' testimony and to determine the appropriate weight of the evidence, which we will not disturb. See *Sutherland*, 223 Ill. 2d at 242. The defendant further contends that the lack of fingerprints on the bricks of cocaine suggested that he never handled the narcotics recovered from codefendant Puentes' vehicle. We find this argument to be misleading and without merit. At trial, the parties stipulated that there were no latent impressions suitable for comparison on the items inventoried from the red Acura. This is wholly different from a situation in which fingerprints which are

suitable for comparison do not match the defendant's fingerprints. Further, the fact that the defendant's fingerprints were not found on the recovered items, did not conclusively prove that he did not knowingly deliver the cocaine to codefendant Puentes. As noted, the trial court was not required to accept any possible explanation compatible with the defendant's innocence and elevate it to the status of reasonable doubt. See *Siguenza-Brito*, 235 Ill. 2d at 229. In support of his argument, the defendant primarily relies on *People v. Ortiz*, 196 Ill. 2d 236 (2001), which we find to be misplaced. *Ortiz* involved a defendant who was hired to drive a tractor trailer truck from California to New Jersey, when an Illinois state trooper made a traffic stop of the truck and discovered a large quantity of cocaine in a hidden compartment of the truck. *Id.* at 267. At trial, the accused denied any knowledge of the drugs or the secret compartment, and his testimony was corroborated by the testimony of the State's own witness, who testified that it was not unusual for a truck driver to simply check that the load was secure before starting a trip rather than conduct a thorough search of the load. *Id.* In reversing the defendant's drug trafficking conviction, our supreme court noted that "[t]he circumstantial evidence was scant at best, and appears even weaker in light of the evidence supporting a not guilty finding." *Id.* Based on the totality of the circumstances, we cannot say that the evidence was scant or "so unbelievable, improbable, or palpably contrary to the verdict that it creates a reasonable doubt of guilt." See *Luckett*, 273 Ill. App. 3d at 1033. Accordingly, we hold that the evidence was sufficient to sustain the defendant's conviction of delivery of more than 900 grams of cocaine.

¶ 50 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 51 Affirmed.