2015 IL App (2d) 140389-U
No. 2-14-0389
Order filed May 27, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. RICARDO CLASS, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Du Page County. No. 11-CF-1262 Honorable Robert G. Kleeman, Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices McLaren and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: The judgment was affirmed where the court properly denied defendant's motion to suppress evidence and where the State proved defendant guilty beyond a reasonable doubt of possession of a controlled substance with intent to deliver.

¶ 2 Defendant, Ricardo Class, appeals his conviction of unlawful possession of a controlled substance with intent to deliver (720 ILCS 570/401(a)(2)(B) (West 2010)). He contends that the trial court erred in denying his motion to suppress evidence, that the court committed evidentiary errors, and that the State failed to prove his guilt beyond a reasonable doubt. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On June 28, 2011, a grand jury indicted defendant for unlawful possession of a controlled substance with intent to deliver, being more than 100 but less than 400 grams of cocaine. The indictment also charged defendant with aggravated battery and resisting a police officer, but the State *nol-prossed* those charges prior to trial.

¶ 5 Defendant filed a motion to suppress evidence and quash arrest. He alleged that, on June 2, 2011, police executed a search warrant at his home in Bartlett, Illinois. He lived in the home with his mother Maria, his father Miguel Sr., his brother Miguel Jr., his sister Jacqueline, and his niece Tatiana. Defendant argued, among other things, that the search warrant was issued without probable cause, the search warrant was based on uncorroborated information from a confidential informant, police violated the knock and announce rule, and police searched a locked safe without obtaining a second search warrant.

¶ 6 At the hearing on the motion, Master Sergeant Chad Grogman of the Illinois State Police and the Du Page Metropolitan Enforcement Group (DUMEG) testified that he participated in the investigation of defendant and supervised the execution of the search warrant. According to Grogman, the complaint for the search warrant indicated that a confidential informant told police that defendant sold drugs out of his residence and that Miguel Jr. sold drugs in defendant's absence. Prior to issuance of the warrant, Grogman participated in one of four controlled purchases of cocaine from Miguel Jr. outside of the residence. Officers did not observe defendant participating in any of the controlled purchases.

¶ 7 During execution of the search warrant, Grogman knocked on the front door of defendant's residence nine times and announced the officers' presence three times. After waiting a period of time during which he heard no movement inside the house, Grogman ordered officers to breach the front door. Officers entered the house and secured the residence. Defendant,

Miguel Jr., Miguel Sr., Maria, and Tatiana were present. Grogman observed officers remove a safe from the house and open it. It contained cash and bags of cocaine.

¶ 8 Corporal Don Cummings of the Carol Stream police department testified that he heard Grogman knock nine times and announce the officers' presence three times. Cummings estimated that, between the first knock and the breach of the door, approximately 20 seconds passed. Cummings then searched the home, which was a split-level with one bedroom on the lower level. In the top drawer of a dresser in the lower-level bedroom, officers located an unlocked lockbox containing a small amount of currency and three plastic bags with a total of 87 grams of cocaine. Cummings also located a locked safe in the room, which he removed and opened using a Hooligan tool and a breaching ram. Inside the safe was a plastic bag containing 169 grams of cocaine, a second bag with 12 grams of cocaine, a black digital scale, a box of plastic sandwich bags, and a large amount of currency. Prior to opening the safe, Cummings had no information that there was contraband contained in a safe. Cummings did not obtain a separate search warrant for the safe.

¶ 9 Maria, who was 45 years old, testified that when the search warrant was executed she was in the living room with her granddaughter. She heard three quick knocks on the door, and went to answer it. As she reached for the door, it "came busting open." She never heard police announce their presence.

¶ 10 Special Agent King of the Glendale Heights police department testified consistently with Grogman and Cummings regarding how the search warrant was executed. King estimated that, between the first knock and the order to breach the door, approximately 20 seconds passed. He estimated that another 5 seconds passed before officers breached the door.

¶ 11 At the conclusion of the hearing, the court denied defendant's motion to suppress. The court found that the officers' testimony regarding the execution of the search warrant was more credible than Maria's testimony. Specifically, the court found incredible Maria's testimony that the officers knocked only three times without announcing their presence. As to probable cause to issue the search warrant, the court found that the information obtained from the confidential informant was insufficient to establish probable cause. However, the court reasoned, officers conducted four controlled purchases of cocaine from Miguel Jr. outside of the residence, which established probable cause. Finally, as to the safe, the court noted that the search warrant specifically authorized seizure of "packages, locked containers, safes, and the contents of said packages, locked containers, or safes." The court concluded that, even assuming that the warrant was invalidly issued, the officers relied on it in good faith when they opened the safe.

¶ 12 The matter proceeded to a bench trial. Corporal Cummings testified that, during the execution of the search warrant, he observed three upstairs bedrooms and one downstairs bedroom. He searched the downstairs bedroom with Special Investigator Spizzirri. The room contained a bed, a dresser, and a safe. He took the safe outside, where he forced it open, finding two plastic bags containing a total of approximately 182 grams of cocaine, a black digital scale, a box of plastic sandwich bags, and a large amount of currency. The safe also contained an account statement from Chase Bank. Cummings testified that the statement had defendant's name on it; however, defendant objected on hearsay grounds. The State then asked to strike Cumming's testimony about the presence of defendant's name, and the court granted the request.

¶ 13 Cummings testified that, in the top drawer of the dresser, he located an unlocked lockbox containing more currency and three plastic bags of cocaine. Next to the lockbox in the drawer was an Illinois identification card. The rest of the drawers contained male clothing. On top of

the dresser, Cummings observed a white digital scale, an Illinois driver's license, and two small spiral notebooks. There were no other forms of identification and no documents containing the names of any other residents of the home in the downstairs bedroom.

¶ 14 Through Cummings, the State introduced into evidence photographs of the safe before it was opened, the safe after it was opened, the items removed from the safe, and the contents of the top dresser drawer. People's Exhibit No. 2 was the photograph of the contents of the safe after it was opened. The bags of cocaine, the box of sandwich bags, and the Chase account statement are visible in the photograph. Defendant's name and address are visible on the Chase statement. Cummings testified that the photographs fairly and accurately depicted the items as they appeared on June 2, 2011. The State also introduced the bags of cocaine, the digital scales, the spiral notebooks, the Illinois identification card, and the Illinois driver's license. The identification card and the driver's license were issued to defendant.

¶ 15 On cross-examination, Cummings testified that neither the Chase statement nor the safe was taken into evidence and that no one dusted the safe for fingerprints. Also, no one photographed the top of the dresser or the downstairs bedroom in its entirety.

¶ 16 Officer Michael Harris of the Lombard police department testified that he interviewed defendant on June 2, 2011, after he was arrested. Defendant told Harris that he had a checking account with Chase Bank. He also said that he had been unemployed for over three years. On cross-examination, Harris testified that he did not ask defendant for the Chase account number.

¶ 17 Officer Jeffery Lizik of the Naperville police department testified that he assisted in the search of defendant's residence. He collected as evidence items found in the downstairs bedroom, including the bags of cocaine and the currency. The currency totaled in excess of

$12,000. On cross-examination, Lizik testified that no one documented from which room defendant's driver's license was recovered.

¶ 18 Before the State rested, it entered into a stipulation with defendant that the white substance in the plastic bags recovered from the downstairs bedroom tested positive for cocaine. The five plastic bags containing cocaine weighed a total of 263.2 grams.

¶ 19 The State rested, and the court denied defendant's motion for a directed finding. In his case-in-chief, defendant called Officer Lizik, who testified that he observed four controlled purchases of drugs in the vicinity of defendant's residence in March, April, May, and June 2011. During each transaction, Miguel Jr. exited the residence and sold drugs to an informant. No officers observed defendant at any point during the transactions. The defense rested.

¶ 20 The court found defendant guilty of possession with intent to deliver. The court expressed concern over certain aspects of the investigation, including the police officers' failure to take the bank statement into evidence or dust for fingerprints. Nevertheless, the court found that the presence of defendant's identification card in the drawer next to the lockbox and the presence of defendant's bank statement in the safe established his constructive possession of the cocaine. The court further found that the digital scales, the plastic bags, the spiral notebooks containing what appeared to be ledgers, and the currency established intent to deliver.

¶ 21 Defendant filed a posttrial motion, which the court denied. The court sentenced defendant to 10 years' imprisonment. Defendant timely appealed.

¶ 22 II. ANALYSIS

¶ 23 On appeal, defendant contends that the court erred in denying the motion to suppress, that the court erred in admitting and relying on People's Exhibit No. 2 as substantive evidence, and that the State failed to prove his guilt beyond a reasonable doubt.

¶ 24 A. Motion to Suppress

¶ 25 Defendant maintains that it was error to deny his motion to suppress because the search warrant was issued without probable cause, police violated the knock and announce rule, and police failed to obtain a second search warrant for the safe.

¶ 26 Generally, in reviewing a trial court's ruling on a motion to suppress, we accept the trial court's factual findings unless they are against the manifest weight of the evidence, and we consider *de novo* the ultimate question of whether suppression was proper. *People v. Luedemann*, 222 Ill. 2d 530, 542 (2006). However, when the issue is whether the complaint for a search warrant established probable cause, our focus in on the issuing judge's initial determination of probable cause. *People v. Brown*, 2014 IL App (2d) 121167, ¶ 23. The standard is whether the judge had a substantial basis for concluding that probable cause existed. *Brown*, 2014 IL App (2d) 121167, ¶ 23 (citing *Illinois v. Gates*, 462 U.S. 213, 236 (1983)).

¶ 27 "The existence of probable cause for a search warrant depends on the totality of the circumstances." *People v. Brown*, 2014 IL App (2d) 121167, ¶ 22. " 'A showing of probable cause means that the facts and circumstances within the knowledge of the affiant are sufficient to warrant a person of reasonable caution to believe that an offense has occurred and that evidence of it is at the place to be searched.' " *Brown*, 2014 IL App (2d) 121167, ¶ 22 (quoting *People v. Moser*, 356 Ill. App. 3d 900, 908 (2005)).

¶ 28 Defendant's contention that the search warrant was issued without probable cause lacks merit. In arguing that there was not probable cause, defendant maintains that the search warrant was based on the confidential informant's uncorroborated statement that defendant sold drugs out of the residence. Defendant further points out that, during the four controlled drug purchases, officers observed Miguel Jr. only. These considerations are irrelevant, as the issue

before the judge issuing the warrant "was whether a practical, commonsense assessment of the circumstances set forth in the complaint and affidavit showed that there existed a fair or reasonable probability that *evidence of a crime* would be found in a particular place," not "whether *defendant* committed a crime." (Emphases in original.) *Brown*, 2014 IL App (2d) 121167, ¶ 27. Thus, even assuming that the confidential informant's statement implicating defendant in drug dealing was uncorroborated, the four controlled drug transactions were more than sufficient to establish probable cause to issue the search warrant.

¶ 29 Defendant's reliance on the knock and announce rule fares no better. Other than reciting boilerplate law, defendant's only argument is that the trial court "erred in finding that there was a sufficient knock and announce, where Maria Class testified at the suppress [*sic*] hearing, she was in the living room, in close proximity to the front door with her granddaughter, sleeping on the couch, and all she heard was a slight knock." The trial court is in a superior position to determine and weigh the credibility of witnesses, observe witnesses' demeanor, and resolve conflicts in the testimony. *People v. McDonough*, 239 Ill. 2d 260, 266 (2010). At the hearing on the motion to suppress, the court found incredible Maria's testimony that officers knocked only three times without announcing their presence. It found credible the officers' testimony that Grogman knocked nine times and announced the officers' presence three times. The court's finding, which was based on the testimony of three officers who participated in the search, was not against the manifest weight of the evidence.

¶ 30 Defendant's final argument concerning the motion to suppress is that the officers should have obtained a second search warrant before opening the locked safe. He contends that defendant had a privacy interest in the contents of the safe and that the officers lacked "any

information establishing probable cause that contraband was located in the safe" or "authorization contained in the plain language of the search warrant."

¶ 31 Defendant completely ignores the language of the search warrant, which specifically authorized the officers to seize "packages, locked containers, safes, and the contents of said packages, locked containers, or safes." Defendant does not contend that this aspect of the warrant was improperly issued. Instead, he ignores this aspect of the warrant and contends that a second warrant was needed to open the safe. Because the search warrant specifically authorized the officers to seize the contents of locked containers and safes, defendant's argument fails.

¶ 32 B. Evidentiary Errors

¶ 33 Defendant raises three issues with respect to People's Exhibit No. 2, which is the photograph of the contents of the safe depicting the Chase account statement with defendant's name and address. Defendant contends that it was error for the court to rely on the photograph as substantive, rather than demonstrative, evidence. He also argues that the photograph of the statement violated the best evidence rule and the completeness doctrine (in the photograph the statement was folded such that only a portion of it was visible).

¶ 34 We first address the State's argument that defendant forfeited his evidentiary arguments concerning People's Exhibit No. 2 by failing to object to the exhibit at trial. It is well established that to preserve an evidentiary issue for appeal, both a contemporaneous trial objection and a written posttrial motion are required. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). Here, defendant did not object to the exhibit at trial. In fact, when the State offered the exhibit into evidence, defense counsel specifically stated that he had no objection. Defendant did not challenge the exhibit until he filed a posttrial motion, which was too late.

¶ 35 Defendant argues that he preserved the issue by objecting to Cummings' testimony that the account statement had defendant's name on it. This was not sufficient, because defendant objected to Cummings' testimony as hearsay, not on any of the specific grounds he raises on appeal. In order to preserve an evidentiary issue, a defendant must make a specific objection at trial. *People v. Woods*, 214 Ill. 2d 455, 470 (2005). The failure to make a specific objection "deprives the State of the opportunity to correct any deficiency." *Woods*, 214 Ill. 2d at 470. Thus, defendant's failure to object to the exhibit on any of the specific grounds he raises on appeal results in forfeiture.

¶ 36 Defendant invokes the plain error doctrine in his reply brief, which he is entitled to do. *People v. Williams*, 193 Ill. 2d 306, 347 (2000). Under the doctrine, a reviewing court may consider a forfeited issue when either (1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant; or (2) a clear or obvious error occurred, and the error is so serious that it affected the fairness of the defendant's trial and the integrity of the judicial process, regardless of the closeness of the evidence. *People v. Taylor*, 2011 IL 110067, ¶ 30.

¶ 37 In this case, even assuming *arguendo* that it was error for the trial court to rely on People's Exhibit No. 2 as substantive evidence, it is clear that defendant cannot show any prejudice resulting from the error. As we explain below, the evidence against defendant was not closely balanced. Thus, we need go no further for purposes of addressing his plain error argument. See *People v. White*, 2011 IL 109689, ¶ 134 (holding that the defendant failed to establish plain error where, even assuming that error occurred, the evidence was such that defendant could not satisfy the closely-balanced prong of plain error).

¶ 38 The offense of unlawful possession of a controlled substance with intent to deliver requires the State to prove that (1) the defendant knew of the presence of the controlled substance, (2) the controlled substance was in the defendant's immediate possession or control, and (3) the defendant intended to deliver the controlled substance. *People v. Robinson*, 167 Ill. 2d 397, 407 (1995). Proof of constructive possession is sufficient; actual possession is not required. *People v. Romero*, 189 Ill. App. 3d 749, 754 (1989). An inference of both knowledge and possession arises if it is shown that the defendant controls the premises, and the inference may be sufficient to sustain a guilty verdict absent other facts and circumstances which might raise a reasonable doubt as to guilt. *Romero*, 189 Ill. App. 3d at 754.

¶ 39 Like possession, the element of intent to deliver is usually proved by circumstantial evidence. *Robinson*, 167 Ill. 2d at 408. A number of factors are probative of intent to deliver, including the quantity of controlled substance in the defendant's possession, the manner in which the substance is packaged, the possession of large amounts of cash, and the possession of drug paraphernalia. *Robinson*, 167 Ill. 2d at 408. When the quantity of controlled substance in a defendant's possession could not reasonably be viewed as designed for personal consumption, the quantity alone can be sufficient to prove intent to deliver. *Robinson*, 167 Ill. 2d at 410-11.

¶ 40 Setting aside the bank statement containing defendant's name and address, the evidence showed that police located in the lower level bedroom of defendant's residence approximately 263 grams of cocaine, approximately $12,000 in cash, two digital scales, a box of plastic bags, defendant's Illinois identification card, and defendant's Illinois driver's license. The cocaine was packaged in a total of five plastic bags. Some of the cocaine and cash was located in an unlocked lockbox in the top dresser drawer next to defendant's identification card. Although Lizik was unsure from which room defendant's driver's license was recovered, Cummings

testified that he located the driver's license on top of the dresser, and it was Cummings who actually searched the bedroom. The remainder of the cocaine and cash was located in the locked safe found in the bedroom. Other than defendant's identification card and driver's license, no other forms of identification and no documents containing the names of any other residents of the home were located in the bedroom. Viewing this evidence in the light most favorable to the prosecution, it overwhelmingly establishes that defendant possessed the cocaine with intent to deliver.

¶ 41 Defendant heavily relies on *People v. Alicea*, 2013 IL App (1st) 112602. In that case, police recovered weapons in the front bedroom of an apartment, along with a United States treasury check addressed to the defendant. *Alicea*, 2013 IL App (1st) 112602, ¶ 6. At trial, the State also introduced a certified copy of the defendant's driver's license abstract listing his address as the apartment that was searched. *Alicea*, 2013 IL App (1st) 112602, ¶ 12. There was testimony that the defendant lived with his fiancé at a different apartment but that his monthly Veteran's Administration check still went to his prior apartment, at which his daughter resided. *Alicea*, 2013 IL App (1st) 112602, ¶¶ 14-15. His daughter testified that she took care of depositing the check each month after it arrived. *Alicea*, 2013 IL App (1st) 112602, ¶ 14.

¶ 42 In reversing the defendant's conviction of unlawful possession of a weapon by a felon, the appellate court held that there was insufficient evidence to establish that the defendant resided at the apartment or controlled the bedroom in which the weapon was found. *Alicea*, 2013 IL App (1st) 112602, ¶¶ 28-33. The court reasoned that, while the treasury check and the driver's license abstract supported the inference that the defendant resided at the apartment, the evidence was insufficient in light of the conflicting evidence regarding the defendant's residence. *Alicea*, 2013 IL App (1st) 112602, ¶ 28-30. Moreover, the court reasoned, it was "not inherently

incredible" that the defendant would have his government check sent to his old address if his daughter took care of seeing that it was deposited. *Alicea*, 2013 IL App (1st) 112602, ¶ 31. Likewise, it was reasonable that the defendant's driver's abstract would list his prior address, rather than his fiancé's address, because the defendant's name may not have appeared on the mortgage or on any bills related to the fiancé's address, which would have been necessary to obtain a driver's license with an updated address. *Alicea*, 2013 IL App (1st) 112602, ¶ 32.

¶ 43 The evidence of constructive possession is much stronger in the present case than in *Alicea*. Here, the evidence was not conflicting as to defendant's residence or his control over the downstairs bedroom. In fact, the only evidence suggesting that anyone exercised control over the downstairs bedroom was defendant's driver's license and identification card. Given that evidence, it is reasonable to infer that defendant exercised control over the room. See *People v. McCarter*, 339 Ill. App. 3d 876, 879 (2003) (holding that evidence of constructive possession was sufficient where police found two pieces of mail addressed to the defendant, along with four pictures of him, in the same dresser in which a gun and ammunition were located). The inference is supported by the presence of male clothing and a bed in the room. Unlike in *Alicea*, where there was a reasonable explanation for the presence of the defendant's government check in the front bedroom despite his residence elsewhere, it would be unreasonable to infer that defendant resided elsewhere but stored his driver's license and identification card in the downstairs bedroom. Even setting aside the Chase bank statement, the evidence of defendant's constructive possession of the downstairs bedroom is not closely balanced.

¶ 44 We reach the same conclusion with respect to intent to deliver. Defendant's only argument with respect to this element is that there was "no evidence of *capability* or *intent* [to deliver], by the evidence in the record, i.e: a photograph of a partial Chase bank statement, 2 IDs

of the Defendant, one expired, and 2 innocuous small notebooks, with no significance to the alleged crime in the record; about $12,000 in cash, a safe with contraband; a lock box with cash and contraband; and male clothing." (Emphases in original.)

¶ 45 Defendant conveniently ignores the key evidence that is probative of his intent to deliver. Specifically, in addition to the items defendant acknowledges, police located in the downstairs bedroom five plastic bags containing approximately 263 grams of cocaine, two digital scales, and a box of plastic bags. This court has held that 36.9 grams of cocaine was sufficient to support a finding of intent to deliver, because it so far exceeded the average dose for personal consumption. *Romero*, 189 Ill. App. 3d at 756. Arguably, the large quantity of cocaine in defendant's possession was sufficient by itself to establish intent to deliver. See *People v. Munoz*, 103 Ill. App. 3d 1080, 1082 (1982) (holding that it was reasonable to infer intent to deliver where police found defendant in possession of 250 grams of cocaine and no other contraband). The two digital scales, the box of plastic baggies, and the large amount of cash merely bolster the inference of intent to deliver. See *People v. Berry*, 198 Ill. App. 3d 24, 30 (1990) (upholding a finding of intent to deliver where the defendant had 3.9 grams of cocaine and $3,100 in cash on his person); *People v. DeCesare*, 190 Ill. App. 3d 934, 941 (1989) (noting that plastic baggies are evidence of intent to deliver); *Romero*, 189 Ill. App. 3d at 756 (noting that a scale was drug paraphernalia that supported an inference of intent to deliver). Like the evidence of constructive possession, the evidence of intent to deliver is not closely balanced.

¶ 46 In arguing that plain error occurred, defendant also comments that the court's reliance on People's Exhibit No. 2 as substantive evidence "effected [*sic*] the fairness and fabric of the entire trial." This appears to be a reference to the second prong of plain error; however, our supreme court has equated the second prong of plain-error review with structural error, which does not

include evidentiary errors. *People v. Watt*, 2013 IL App (2d) 120183, ¶ 38 (citing *People v. Glasper*, 234 Ill. 2d 173, 197-98 (2009)). Therefore, even assuming that it was error for the trial court to rely on People's Exhibit No. 2, defendant cannot establish plain error.

¶ 47 C. Sufficiency of the Evidence

¶ 48 Defendant also argues that the State failed to prove his guilt beyond a reasonable doubt. When presented with a challenge to the sufficiency of the evidence, it is not the function of the reviewing court to retry the defendant. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). Rather, " 'the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " (Emphasis in original.) *Collins*, 106 Ill. 2d at 261 (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). The reviewing court should not substitute its judgment for that of the trier of fact, who is responsible for weighing the evidence, assessing the credibility of witnesses, resolving conflicts in the evidence, and drawing reasonable inferences and conclusions from the evidence. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006).

¶ 49 We already have concluded that the evidence of defendant's guilt is not closely balanced. For the same reasons, we conclude that the State proved defendant's guilt beyond a reasonable doubt. In sum, the five plastic bags containing 263 grams of cocaine, the $12,000 in cash, the two digital scales, and the box of plastic baggies—all of which were located in the downstairs bedroom where defendant's driver's license and identification card were recovered—established beyond a reasonable doubt possession of a controlled substance with intent to deliver.

¶ 50 III. CONCLUSION

¶ 51 For the reasons stated, we affirm the judgment of the circuit court of Du Page County.

¶ 52 Affirmed.