2019 IL App (5th) 160193-U

NO. 5-16-0193

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Randolph County.
	)	
v.	)	No. 14-CF-166
	)	
DERRIL L. HEATH,	)	Honorable
	)	Richard A. Brown,
Defendant-Appellant.	)	Judge, presiding.

PRESIDING JUSTICE OVERSTREET delivered the judgment of the court.
Justices Welch and Moore concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court did not abuse its discretion in denying the defendant's motion for a continuance on the day of the trial; the defendant voluntarily waived his right to confront witnesses by consenting to a stipulated bench trial; the circuit court properly denied the defendant's motion to suppress evidence where probable cause supported the issuance of a search warrant on the defendant's residence; and the State presented sufficient evidence at a stipulated bench trial to establish the defendant's guilt of unlawful possession of methamphetamine with intent to deliver beyond a reasonable doubt.

¶ 2 After a stipulated bench trial, the defendant, Derril L. Heath, was convicted of one count of unlawful possession of methamphetamine with intent to deliver in violation of section 55(a)(2)(C) of the Methamphetamine Control and Community Protection Act

(Act) (720 ILCS 646/55(a)(2)(C) (West 2014)). The circuit court sentenced him to 14 years of imprisonment in the Illinois Department of Corrections. In this direct appeal of his conviction and sentence, the defendant argues: (1) that the circuit court abused its discretion in denying his newly retained counsel a short continuance in order to prepare for trial, (2) that the trial court's denial of the motion to continue made his consent to a stipulated bench trial involuntary, (3) that the trial court erred in denying his motion to quash a search warrant and suppress evidence, and (4) that the stipulated evidence was insufficient to prove him guilty beyond a reasonable doubt. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 The defendant's conviction was based on evidence obtained by police officers upon executing a search warrant on the defendant's house located at 639 Chestnut Street in Chester, Illinois. The facts leading up to the issuance of the search warrant involved controlled methamphetamine purchases that took place on August 6, 2014, in Sparta, Illinois, which is a town located 19 miles from the defendant's home.[1]

¶ 5 I. The Investigation

¶ 6 In the afternoon of August 6, 2014, Officer Ralph Jones of the Sparta Police Department arranged for a confidential informant to purchase 1.5 grams of methamphetamine for $160 from two individuals, Isaiah and Chrystal Williams. When

[1]We have referred to Google Maps in determining that Sparta is 19 miles from the defendant's house in Chester. See *People v. Clark*, 406 Ill. App. 3d 622, 633-34 (2010) (recognizing that "case law supports the proposition that information acquired from mainstream Internet sites such as Map Quest and Google Maps is reliable enough to support a request for judicial notice").

the confidential informant met with Isaiah and Chrystal to complete the purchase, they told the informant that they had more methamphetamine to sell, but that it was still "wet," meaning that it was recently produced and had not dried out. They told the informant that she could buy some of this additional methamphetamine after it dried out. While conducting the sale, Isaiah and Chrystal drove a 2005 blue Chevy Impala that was registered to the defendant and his wife, Jessica Heath. The defendant and Jessica lived at the residence located at 639 Chestnut Street in Chester, Illinois.

¶ 7 Approximately 30 minutes after this controlled methamphetamine purchase, Officer Jones called Officer Joe Jany, who was a member of the Chester Police Department's drug enforcement team. Officer Jones informed Officer Jany of the controlled drug transaction and the sellers' use of the defendant's blue Chevy Impala to make the sale. Prior to receiving Jones's call, Jany knew that the defendant lived at the 639 Chestnut Street residence with his wife, Jessica. Jany drove to the Chestnut Street residence to observe any activity at the defendant's residence. When he got there, he saw two vehicles parked at the residence: the defendant's blue Chevy Impala that Isaiah and Chrystal had used earlier to make the drug transaction in Sparta and a black Hyundai Tiburon that Jany knew was driven by the defendant's 16-year-old son. While observing activities at the residence, Jany saw Isaiah exit the house, retrieve something from the trunk of the blue Chevy Impala, and walk back inside the house.

¶ 8 Meanwhile, in Sparta, Jones had the informant arrange to make another methamphetamine purchase from Isaiah and Chrystal, with the exchange to occur at approximately 5:45 p.m. in Sparta. Back in Chester, at approximately 5:20 p.m., Jany

observed Isaiah and Chrystal leave the 639 Chestnut Street residence with a small child, get into the defendant's blue Chevy Impala, and drive away. Jany followed them to the Chester city limits and watched them leave town, driving toward Sparta. Sometime later, Jones called Jany and told him that the informant had completed another controlled purchase of 1.5 grams of methamphetamine from Isaiah and Chrystal in Sparta. Jones told Jany that Isaiah and Chrystal had left Sparta in the direction toward Chester.

¶ 9 Jany continued surveillance at the Chestnut Street residence and saw the defendant and Jessica leave the residence at approximately 6:15 p.m. At approximately 7 p.m., he saw the defendant's 16-year-old son drive up to the residence in the blue Chevy Impala with a small child and then leave to another residence located at 1106 Opdyke Street in Chester where the defendant and Jessica had previously lived.

¶ 10 The record establishes that Jany had been an employee of the Chester Police Department since 2005 and had been involved with numerous drug investigations. Through his experience, he knew that people involved in buying, distributing, and manufacturing controlled substances often kept records of their activities at the same location where they manufactured the substances, along with other materials used in the manufacturing and distribution process, including packaging materials, the raw materials used for manufacturing the illegal substances, and large quantities of cash.

¶ 11 Based on the two controlled buys in Sparta and his observations of the activities at the Chestnut Street residence, Jany concluded that there was probable cause to believe that a search of the defendant's residence at 639 Chestnut Street in Chester would result in the seizure of items used in the manufacture of methamphetamine.

¶ 12 At approximately 8 p.m. on August 6, 2014, Jany obtained a search warrant relating to persons, property, and vehicles associated with 639 Chestnut Street in Chester, Illinois, and officers from the Chester Police Department executed the search warrant that evening. The search resulted in the seizure of 60 items associated with the possession, manufacture, and distribution of illegal substances including, but not limited to, substances that tested positive for methamphetamine, a notebook containing names and cash amounts, plastic baggies, and over $9000 in cash. The officers also recovered at the residence mail addressed to the defendant and Jessica.

¶ 13 On August 8, 2014, the State charged the defendant and Jessica with several drug offenses, including unlawful possession of methamphetamine with intent to deliver in violation of section 55(a)(2)(C) of the Act (720 ILCS 646/55(a)(2)(C) (West 2014)).

¶ 14 II. The Pretrial Proceedings

¶ 15 On September 25, 2014, attorney Thomas Mansfield entered his appearance for both the defendant and Jessica. In both of their cases, he filed motions to quash the search warrant and suppress the evidence obtained from the search warrant. The motions maintained that Jany's affidavit in support of the warrant failed to establish sufficient probable cause for the issuance of the warrant because it did not include "any factual allegation or observation that any contraband was present within the residence at 639 Chestnut Street on the afternoon of August 6, 2014."

¶ 16 The circuit court scheduled a March 12, 2015, hearing on the motions, but the defendant and Jessica failed to appear for the hearing. Therefore, on March 16, 2015, on a motion filed by the State, the circuit court ordered the defendant's and Jessica's bail

bonds forfeited. The following week, however, Mansfield filed a motion alleging that the defendant contacted him on March 18, 2015, and informed him that he and Jessica failed to appear for the March 12 hearing because he misunderstood the date on which they were supposed to appear. The defendant and Jessica turned themselves in, and the court reinstated their bonds.

¶ 17 On April 9, 2015, the circuit court conducted a hearing on the defendant's and Jessica's motions to quash the search warrant and suppress evidence. The court took judicial notice of the allegations in Jany's affidavit in support of the State's complaint for the search warrant and considered arguments from counsel concerning the sufficiency of the affidavit. The circuit court denied their motions, finding that Jany had probable cause that justified the issuance of the search warrant. The circuit court explained its ruling as follows:

> "[T]he fact that [Isaiah] was driving the defendants' Chevrolet; the fact that he went to Sparta and we know there was a drug transaction that occurred; the fact that [Isaiah] said that he had more of the methamphetamine available but it was still wet; the fact that he then basically immediately returned to the defendants' home where they—I guess the Chester police were alerted; the defendants' car is parked in front of his home; and the fact that then relatively soon the car left and another drug transaction occurred, which we know of, would give the officers probable cause based on reasonable inferences that they were cooking the methamphetamine in the defendants' house on Chestnut Street."

¶ 18 On July 10, 2015, the defendant and Jessica filed waivers of their right to a jury trial. At a hearing on the same day, attorney Mansfield informed the court that they anticipated that the cases were going to be stipulated bench trials in front of Circuit Court Judge Richard A. Brown. Mansfield and the prosecutor tentatively scheduled the bench trials before Judge Brown on August 20, 2015. For reasons unexplained in the record, the court later rescheduled the bench trials to October 1, 2015. Between August 20 and October 1, 2015, the State and Mansfield exchanged discovery requests and answers.

¶ 19 On October 1, 2015, the parties appeared in court for the scheduled bench trials in front of Judge Brown. At the outset, Mansfield informed the court that he had been with the defendant and Jessica "over the past couple of weeks" and that a "fundamental difference of opinion [had] developed as to how [they] should proceed at that point, which [had] resulted in their decision to seek other counsel." Mansfield moved to withdraw as the defendant's and Jessica's attorney and asked the court to give them 21 days to obtain new counsel. When the circuit court expressed its reluctance because the case was set for trial that day, Mansfield responded that he believed the defendants' "right to counsel of their choice supersede[d] the fact that the case will have to be rescheduled."

¶ 20 Both the defendant and Jessica told the court that they agreed that Mansfield should withdraw. Jessica told the court that she planned on hiring another lawyer, had "called a couple," but they all wanted money up front. She stated that she needed to speak to her parents. The court noted that witnesses were present at the courthouse and that they were ready to start the trial, adding that it did not agree that it now had to stop the trial

from going forward merely because the defendant and Jessica wanted a new attorney on the day of the trial. The prosecutor told the court that he did not want to force Mansfield to be involved in the case if he was not getting along with his clients. The prosecutor, therefore, stated that the State had no objection to Mansfield's withdrawing from the case.

¶ 21 The court allowed Mansfield to withdraw but added that it "simply [could not] have, as busy as this Court is, lawyers getting out of the cases when all the witnesses are here and were ready to go." The court admonished the defendant and Jessica, "I'll give you 21 days to hire a lawyer, but then we're going to have to move this case forward." The court set the matters for status hearings 21 days later. The court stated that it wanted the defendant and Jessica to be present so they could discuss what their situation was with respect to legal counsel.

¶ 22 The circuit court conducted status hearings on November 2, 2015. There is no transcript of this hearing. Judge Brown entered orders appointing the public defender to represent the defendant and Jessica and scheduled status hearings for the cases on November 25, 2015.

¶ 23 Associate Judge Gene E. Gross presided over the November 25, 2015, status hearings. The public defender told the court that he had been appointed to represent the defendant and Jessica the last time they were in court but that "[they had] not had an opportunity as yet to meet in [his] office and discuss the case." He stated that the defendant and Jessica were contemplating hiring private counsel and that, as their

attorney, he needed "a little more time to prepare." The public defender asked that the bench trials be set "sometime the first week of March."

¶ 24 The prosecutor reminded the court that the cases were getting old and that the State would like the trials to be scheduled in January "due to the fact that that would give them well over a month to get together." The prosecutor added that if the cases were set at the end of January that would be almost two months away which would "give them plenty of time." Judge Gross scheduled the bench trials to be held in front of Judge Brown on January 22, 2016, which was two months from the date of the status hearings.

¶ 25 On January 22, 2016, the parties appeared in court in front of Judge Brown for the bench trials. On that day, private counsel entered an appearance on behalf of the defendant. At the outset, the prosecutor told the court that he was ready for trial and that all of the State's witnesses were present. The public defender told the court that it was his understanding that the defendant and Jessica had each hired private attorneys, that the attorney representing the defendant was present in court, and that the attorney representing Jessica was on his way to the courthouse.

¶ 26 The defendant's new attorney told the court that he understood that the case was scheduled for a bench trial that day, that he had spoken with the defendant about the matter, and that he was requesting "a very brief continuance to review the police reports, review pleadings, prepare for trial." He told the court that he explained to the defendant that there was "absolutely zero guarantee that [a continuance] would be granted [and that] this case [was] old and this would not be the opportunity for him to bob and weave to avoid trial."

¶ 27 The State objected to the continuance, noting that it was "the second time that we have all of our witnesses here."

¶ 28 Because Jessica's new attorney had not arrived, the public defender spoke on her behalf, stating that he had met with his clients only on the two occasions when they were in court. He told the court that he ordered them to come and see him, but they had not contacted him or made an effort to see him. He stated, therefore, that he was "not prepared to try the case either because [he has had] no contact with [his] clients." On behalf of Jessica, he requested the court to continue the matter so her new counsel could get to the courthouse and enter his appearance.

¶ 29 The court asked Jessica about her failure to cooperate with the public defender. Jessica told the court, "Because I knew I wasn't going to use him as my counsel. I—we thought we were going to hire one counselor, but when we got there, he said, no, we can't hire just one counselor. We have to be separate." The court then denied the motions to continue and directed the State to call its first witness.

¶ 30 III. The Stipulated Bench Trial

¶ 31 The public defender and the defendant's new counsel asked for a brief recess, which the court granted. After the recess, the prosecutor told the court that the defendant and Jessica were "prepared to conduct a stipulated bench trial." The defendant's counsel and the public defender agreed. The prosecutor stated the stipulation was as follows:

> "[I]f the matter were to proceed to trial today, our first witness would be Officer Joe Jany with the Chester Police Department. Joe Jany would testify that he appeared before a judge and obtained a search warrant for the residence and

dwelling at 639 Chestnut in Chester, Randolph County, Illinois. At that time officers executed the search warrant and a return of the search warrant would be offered into evidence as People's Exhibit 1. *** Which would show the items that were seized from the residence located at 639 Chestnut Street, which the State would mark that as People's Exhibit 1."

¶ 32 The prosecutor told the court that the evidence recovered from the residence included mail addressed to the defendant and Jessica in the master bedroom of the house, a notebook located in the master bedroom with names and cash amounts, a digital scale in the master bedroom, plastic baggies, a 12-gauge shotgun and shells, over $9000 in cash, and several bags containing a total of 25.4 grams of methamphetamine.

¶ 33 The prosecutor told the court that Isaiah and Chrystal were present in court and were prepared to testify that Jessica told them that "they were selling meth for approximately $32,000 with a cost of $6,000 for the product." The prosecutor stated, "Chrystal advised that she received the meth she herself had been caught with earlier in the day from [the defendant] and Jessica Heath." The prosecutor told the court, "Isaiah Williams also gave an interview to Officer Joe Jany, who would testify, being Isaiah himself who was here, that [the defendant] and Jessica Heath were involved in the sale and distribution of methamphetamine from the residence at 639 Chestnut Street in Chester, Randolph County, Illinois."

¶ 34 Based on the stipulation, the circuit court found the defendant and Jessica guilty of unlawful possession of methamphetamine with intent to deliver. On March 18, 2016, the circuit court sentenced the defendant to a term of 14 years in the Department of

Corrections along with 3 years of supervised release. The circuit court later denied the defendant's motion requesting a new trial and to reconsider the sentence. The defendant now appeals from his conviction and sentence.

¶ 35 ANALYSIS

¶ 36 I. Denial of the Motion to Continue

¶ 37 The first argument the defendant raises on appeal is that the circuit court abused its discretion when it denied his new attorney's oral motion for a continuance prior to the stipulated bench trial. We disagree.

¶ 38 A trial court's decision to grant or deny a motion to continue for substitution of counsel is a discretionary matter, and we will not set aside the trial court's determination unless it amounts to an abuse of discretion. *People v. Segoviano*, 189 Ill. 2d 228, 245 (2000). "The factors to be considered in evaluating a trial court's exercise of its discretion include the diligence of the movant, the right of the defendant to a speedy, fair and impartial trial, and the interests of justice." *Id*. Other factors that might be considered include whether defense counsel was unable to prepare for trial because he had been held to trial in another case, the history of the case, the complexity of the matter, the seriousness of the charges, docket management, judicial economy, and inconvenience of the parties and witnesses. *People v. Walker*, 232 Ill. 2d 113, 131 (2009). When a defendant seeks a continuance for new counsel, the factors that the court can consider also include whether the defendant articulates an acceptable reason for desiring new counsel, whether the defendant has been in continuous custody, whether the defendant has informed the trial court of his efforts to obtain new counsel, whether the defendant

has cooperated with current counsel, and the length of time the defendant has been represented by his current counsel. *People v. Burrell*, 228 Ill. App. 3d 133, 142 (1992).

¶ 39 In the present case, when the parties appeared in court for trial on October 1, 2015, the State was ready for trial and witnesses had been subpoenaed to the courthouse to testify. The court expressed reluctance to grant a continuance right before trial was scheduled to begin, but nonetheless granted the continuance to allow the defendant the opportunity to hire counsel of his choice. The court gave him 21 days to obtain counsel and warned him that, after that, it was "going to have to move this case forward." Over four weeks later, at a status hearing held on November 2, 2015, the defendant appeared in court and apparently had not obtained new counsel although he had time to do so. The court appointed the public defender to represent him and scheduled a status conference 21 days later. The public defender told the defendant to come and see him so they could prepare for trial. The defendant did not do so.

¶ 40 At the status conference held on November 25, 2015, the public defender told the court that the defendant had not met with him to discuss the case. The attorney requested more time to prepare for trial. The court scheduled the bench trial for January 22, 2016, giving the defendant and his counsel two additional months to prepare. Finally, when the defendant showed up for the January 22, 2016, bench trial, he again requested yet another continuance so his new counsel, whom he had retained and who had just entered his appearance on the day of the trial, could "review the police reports, review pleadings, prepare for trial." Again, the State was ready to proceed to trial, and witnesses were at the courthouse prepared to testify. The court denied this second request for a continuance,

and, under these circumstances, we cannot conclude that it abused its discretion in doing so.

¶ 41 After the court allowed the defendant's first attorney (Mansfield) to withdraw, the defendant had from October 1, 2015, to January 22, 2016, to hire new counsel and prepare for trial. In *People v. Friedman*, 79 Ill. 2d 341, 348 (1980), the supreme court held that the trial court did not err in denying a motion to continue when defendant had more than 2½ months to find substitute counsel but first made contact with a potential substitute only three days before trial and moved to continue on the day of trial because counsel was unavailable. Likewise, in *People v. Free*, 112 Ill. App. 3d 449, 454 (1983), the court affirmed the trial court's denial of a motion to continue when the defendant "had ample time [from December 3, 1981, when counsel was appointed, until March 2, 1982, when trial was set to begin,] to attempt to obtain counsel of his own choosing if he so wished and was able to do so." See also *People v. Belk*, 403 Ill. App. 3d 1056, 1061 (2010) ("Defendant had three months from the time counsel withdrew to the time his trial started. This was a reasonable time in which to obtain private counsel.").

¶ 42 Here, the defendant's new attorney entered his appearance on the day of the trial and told the court that the defendant understood that there was "absolutely zero guarantee that [a request to continue the trial] would be granted." The defendant's attorney told the court that he had advised the defendant "[t]hat this case [was] old and this would not be the opportunity for him to bob and weave to avoid trial." Prior to his appearance, the court had appointed the public defender to represent the defendant nearly three months

prior to the trial, but the defendant chose not to cooperate with the public defender in preparing for trial, which he could have done while looking for new counsel.

¶ 43 The defendant posted bond and remained out of custody leading up to his trial, except for the brief period in which the court revoked his bond. Therefore, he was capable of meeting with the public defender to prepare for trial or, alternatively, he had ample time to retain new counsel. "Where a defendant's request for a continuance is necessitated by his own lack of cooperation, the denial of his request will not be set aside." *People v. Watson*, 98 Ill. App. 3d 296, 303 (1981); see also *People v. Solomon*, 24 Ill. 2d 586, 590 (1962) ("the public defender was appointed as defendant's counsel approximately two weeks before trial in ample time to prepare a defense" and "[s]ince defendant utterly refused to cooperate with his counsel, he cannot now be heard to complain that the denial of the motion for continuance embarrassed his defense or prejudiced his rights"). "[A] defendant may be forced to trial where there is no showing of diligence." *People v. Trolia*, 107 Ill. App. 3d 487, 498 (1982). See also 725 ILCS 5/114-4(e) (West 2016) ("All motions for continuance are addressed to the discretion of the trial court and shall be considered in the light of the diligence shown on the part of the movant.").

¶ 44 Here, the circuit court could reasonably conclude that the defendant's refusal to cooperate with the public defender and his delay in securing private counsel were means for causing delay. *People v. Staple*, 402 Ill. App. 3d 1098, 1104 (2010). Also, in denying the defendant's motion, the circuit court properly considered prejudice to witnesses who had already appeared at the courthouse once before to testify and were now at the

courthouse a second time for trial. "A defendant cannot assert [the right to counsel] in order to, even temporarily, thwart the administration of justice or to otherwise impede the effective prosecution of a crime." *People v. Jones*, 269 Ill. App. 3d 925, 932 (1995). The defendant was warned by the court four months prior to the trial date that it was giving the defendant the opportunity to hire private counsel, but that it was "going to have to move this case forward."

¶ 45 Also, we note that the defendant's new counsel did not inform the court concerning when the defendant first contacted him about representing him in this case, when he had been retained, or whether he had an opportunity to make any preparations prior to entering his appearance. Although the defendant's new attorney requested a short continuance in order to "review the police reports, review pleadings, prepare for trial," he did not state that he was incapable of representing the defendant at a trial that day. In fact, upon entering his appearance, he emphasized to the court that he and the defendant were both aware that the court could deny the continuance request.

¶ 46 Under these facts, we cannot say that the circuit court abused its discretion in denying the defendant's second motion to continue. An abuse of discretion occurs when a circuit court's decision is "fanciful, arbitrary, or unreasonable to the degree that no reasonable person would agree with it." *People v. Ortega*, 209 Ill. 2d 354, 359 (2004). Here, the circuit court's decision to deny the defendant's second request for a continuance was not fanciful, arbitrary, or unreasonable.

¶ 47 In support of his argument that the circuit court abused its discretion in denying the motion for a continuance, the defendant cites *People v. Walker*, 232 Ill. 2d 113

(2009). We believe *Walker* is distinguishable. In *Walker*, the court concluded that there was no evidence that the continuance request was a delay tactic. The defendant's attorney had written the wrong trial date in her calendar and was unprepared for trial, but the trial court denied counsel's motion for a continuance on the sole basis that the case had been set for trial; the court did not analyze any other relevant factors. *Id.* at 127-29. The supreme court held that the trial court's denial of a continuance was reversible error because it "mechanically denied the continuance without engaging in thoughtful consideration of the specific facts and circumstances presented in this matter." *Id*. at 126. The court noted that the record did not show a pattern of delay by defense counsel and that nothing in the record suggested that defense counsel requested a continuance "to thwart the administration of justice or as a vehicle for improper delay." *Id*. at 126-28. The court stressed that the trial court's entire consideration of the request for a continuance "comprise[d] less than one page of trial transcript." *Id.* at 129.

¶ 48 The supreme court has also emphasized, however, that there is no "mechanical test, statutory or other, for determining the point at which the denial of a continuance in order to accelerate the judicial proceedings violates the substantive right of the accused to properly defend. The circumstances of each case must be weighed, particularly the reasons presented to the trial judge at the time the request is denied." *People v. Lott*, 66 Ill. 2d 290, 297 (1977).

¶ 49 The present case is distinguishable from *Walker*. Here, when the parties and witnesses appeared in court for the first bench trial, the court granted the defendant's attorney's request to withdraw from the case on the day of the trial and granted a

continuance. The court granted the defendant 21 days to hire new counsel and admonished him that it was going to move the case forward. When the court conducted a status conference over 30 days later, the defendant still had not retained counsel. The court appointed the public defender, who directed the defendant to come see him so he could begin to prepare for trial. At the next status hearing, over three weeks later, the defendant still had not retained new counsel and, in addition, he had refused to cooperate with the public defender. The court set a new trial date, giving the defendant two more months to prepare for trial or hire new counsel.

¶ 50 The record, therefore, establishes that the circuit court accommodated the defendant's request for the first continuance and accommodated his right to counsel of his choice. The court granted the defendant several additional months, but no new counsel entered an appearance or filed any motions on his behalf prior to trial until the day of the trial. The entirety of the record suggests that, in denying the second continuance, the court considered the defendant's lack of diligence, the interests of justice, the history of the case, and inconvenience to the witnesses. These are all factors that the *Walker* court held a trial court "may consider" depending on the facts of each case. *Walker*, 232 Ill. 2d at 125-26. The history of this case makes it distinguishable from *Walker*, where the trial court summarily denied a request for a continuance without considering any relevant factors. *Id.* at 126-31.

¶ 51 II. Voluntary Waiver of Right to Confront Witnesses

¶ 52 Next, the defendant argues that his stipulated bench trial was involuntary because the trial court unreasonably denied his counsel's request for a brief continuance. He

argues that his agreement to a stipulated bench trial was not a knowing and voluntary waiver of his right to confront witnesses because neither the public defender nor his newly obtained attorney was ready for trial and he was, therefore, coerced into agreeing to the stipulated bench trial after the court denied his attorney's request for a continuance. We disagree.

¶ 53 The defendant raises this issue under the plain error rule because he did not raise this issue in the proceedings below. Under the plain error rule, a reviewing court may address a forfeited claim (1) where 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, regardless of the seriousness of the error, and (2) where a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence. *People v. Harvey*, 2018 IL 122325, ¶ 15.

¶ 54 "The initial step under either prong of the plain error doctrine is to determine whether the claim presented on review actually amounts to a 'clear or obvious error' at all." *Id*. For the reasons we have explained above, the circuit court did not abuse its discretion in denying the defendant's motion to continue. The defendant was granted sufficient time to hire counsel of his choice and, in addition, the court had appointed a public defender to represent him.

¶ 55 Although the defendant claims that his newly hired counsel was unprepared to represent him during a trial, nothing in the record supports this assertion. The defendant's private counsel entered his appearance on the day of the trial, but he did not inform the

court concerning when he was hired, what discovery materials he had reviewed prior to appearing, or what other preparations he had made prior to entering his appearance. He unconditionally entered his appearance to represent the defendant with full knowledge that the circuit court might deny the continuance request. Under these facts, the record does not support the defendant's assertion that his counsel was incapable of cross-examining the State's witnesses or providing him with competent representation had the matter proceeded to a bench trial rather than a stipulated bench trial. The record, therefore, does not support the defendant's claim that plain error occurred when he agreed to stipulate to the testimony of the State's witnesses after the denial of his continuance request.

¶ 56 In addition, the record establishes that, prior to proceeding with the stipulated bench trial, the circuit court asked the defendant if he understood that he was giving up his constitutional right to confront and cross-examine the State's witnesses as a result of the stipulation. The defendant stated that he understood his right to confront witnesses, that he understood that he was giving up that right, and that he agreed to have the State introduce its evidence by stipulation rather than calling the witnesses to testify at a trial. The prosecutor described the testimony to which the State's witnesses would testify if called to testify, and the defendant's attorney agreed that, if called, the witnesses would testify as the prosecutor stated. Neither the defendant nor his attorney told the court that the defendant agreed to this procedure because the attorney would not have been able to provide the defendant with effective assistance of counsel or could not have effectively cross-examined the State's witnesses. Because the record establishes that the defendant

understood his right to confront witnesses and voluntarily gave up that right, no plain error occurred when the defendant agreed to the stipulated bench trial.

¶ 57 III. Probable Cause Supporting the Search Warrant

¶ 58 Next, the defendant argues that the circuit court erred in denying his motion to quash the search warrant and suppress evidence because the State did not present sufficient probable cause to justify the issuance of the search warrant. We disagree.

¶ 59 Appellate review of a lower court's ruling on a motion to quash a search warrant and suppress evidence presents questions of law and fact. *People v. Manzo*, 2018 IL 122761, ¶ 25. We will not reverse the circuit court's findings of fact unless they are against the manifest weight of the evidence, and we review *de novo* the ultimate question of whether the court should have granted a motion to quash the search warrant and suppressed evidence. *Id*.

¶ 60 For a search warrant to be valid, the complaint and supporting affidavit must establish "probable cause" for the issuance of the search warrant. *People v. Carlson*, 185 Ill. 2d 546, 553 (1999). Whether probable cause exists in a particular case depends on the "totality of the circumstances and facts known to the officers and court when the warrant is applied for." *People v. Free*, 94 Ill. 2d 378, 400 (1983). The "facts and circumstances within the knowledge of the affiant" must be "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." *People v. Moser*, 356 Ill. App. 3d 900, 908 (2005).

¶ 61 The judge determining whether to issue the search warrant may draw reasonable inferences from the material supplied in support of the complaint for search warrant and

is not to be confined by narrow limitations or by restrictions on the use of his or her common sense. *Id.* "It is the probability of criminal activity, rather than proof beyond a reasonable doubt, that is the standard for determining whether probable cause is present." *Manzo*, 2018 IL 122761, ¶ 29. Probable cause is not a "high bar." *Kaley v. United States*, 571 U.S. 320, 338 (2014).

¶ 62 A sworn complaint supporting a search warrant is presumed valid. *People v. McCarty*, 223 Ill. 2d 109, 154 (2006). Here, the defendant has not challenged the veracity of the statements in the complaint for the search warrant; therefore, we view those statements as true for purposes of this appeal.

¶ 63 With regard to the search of an individual's home, "[t]he critical element in a reasonable search is not that the owner of the property is suspected of crime but that there is reasonable cause to believe that the specific 'things' to be searched for and seized are located on the property to which entry is sought." *Zurcher v. Stanford Daily*, 436 U.S. 547, 556 (1978). There must be a nexus between the place to be searched and the evidence sought. *Manzo*, 2018 IL 122761, ¶ 35. In *Manzo*, the supreme court analyzed the issue of whether the facts of that case justified the issuance of a search warrant on a house in connection with controlled drug purchases that took place at locations away from the house. The court held that the facts in that case were insufficient to justify a search of the house. *Id.* ¶ 61. While we believe that *Manzo* is factually distinguishable, the *Manzo* court's analysis of the facts of that case is relevant to our analysis of the facts in the present case.

¶ 64 In *Manzo*, the complaint for the search warrant did not target the defendant but sought a warrant to search his residence. *Id.* ¶ 4. The search warrant stemmed from three undercover cocaine purchases from an individual named Casillas who was the cousin of the defendant's wife. *Id.* The purchases occurred over a period of 20 days preceding the issuance of the search warrant, and two of the purchases occurred "in the vicinity" of the defendant's residence. *Id.* ¶ 5. For one of the purchases, Casillas drove a vehicle registered to the defendant's wife at the address of the defendant's home that was the subject of the search warrant. *Id.* ¶ 6. For another purchase, surveillance officers saw Casillas exit the defendant's residence on foot and walk to meet the undercover officer at a nearby grocery store. *Id.* ¶ 8.

¶ 65 The complaint for the search warrant alleged that, based on these facts, the officers had probable cause to believe that a search of the defendant's residence would result in the seizure of cocaine, currency, drug records, drug packaging, drug paraphernalia, and other evidence related to drug crimes. *Id.* ¶ 4. The supreme court disagreed. *Id.* ¶ 36.

¶ 66 The court held that the fact that Casillas was seen leaving the defendant's house before one of the undercover buys and his use of a vehicle registered to the defendant's residence for another undercover buy failed to establish a sufficient nexus between Casillas's criminal conduct and the defendant's residence. *Id.* ¶¶ 38-39. The court noted, in part, that although Casillas used the vehicle registered to the defendant's residence, "[t]here [was] no evidence indicating where Casillas was before arriving at the drug deal in [the] vehicle. *In particular, there was no evidence that Casillas drove [the] vehicle*

directly from defendant's home to meet [the undercover officer]." (Emphasis added.) *Id.* ¶ 40.

¶ 67 The court also noted that the fact that the Casillas left the defendant's home to complete a drug sale established that he had drugs on his person when he left the defendant's house but "it [did] not follow that Casillas obtained those drugs from defendant's home as opposed to any other place." *Id.* ¶ 48. The court stated, "Without more information connecting defendant's home to the drug sale, it is equally possible to infer that Casillas had the drugs on his person when he arrived at defendant's home." *Id.*

¶ 68 Here, the facts are distinguishable because the complaint for the search warrant did, in particular, include evidence that Isaiah and Chrystal drove the defendant's vehicle directly from the defendant's home to make a sale of freshly produced methamphetamine. They made the first sale, telling the confidential informant that they had newly produced methamphetamine that would be available for purchase later, and they then returned to the defendant's residence. After officers arranged for the second buy, Isaiah and Chrystal left directly from the defendant's residence to complete the second sale. The officers observed the sellers leave the defendant's house at a time that would allow them to meet with the buyer at the arranged time given the driving distance (19 miles) to the time and place where the transaction was to take place. Again, they drove the defendant's vehicle to complete the sale. Under these facts, the evidence establishes a sufficient nexus between the defendant's residence and Isaiah and Chrystal's possession of newly produced methamphetamine for the second buy.

¶ 69 A person of reasonable caution would conclude from this evidence that there was probable cause to believe that the "wet" methamphetamine that the sellers referred to during the first controlled buy was located at the defendant's residence and, therefore, was likely to have been manufactured at the residence. Accordingly, a person of reasonable caution would also conclude that a search of the residence would likely result in the discovery of evidence of methamphetamine manufacturing and distribution.

¶ 70 Also, we note that, in *Manzo*, the supreme court found it significant that the affiant officer requesting the search warrant did not describe his experience with drug investigations and arrests. *Id.* ¶ 60. In the present case, Officer Jany testified in his affidavit that he had been an employee of the Chester Police Department since 2005 and had been involved with numerous drug investigations. Through his experience, he knew that people involved in buying, distributing, and manufacturing controlled substances often kept records of their activities at the same location where they manufactured the substances, along with other materials used in the manufacturing and distribution process, including packaging materials, the raw materials used for manufacturing the illegal substances, and large quantities of cash.

¶ 71 The facts in Officer Jany's affidavit established a nexus between the defendant's residence and the seller's criminal activity and the evidence the officers sought in requesting the search warrant. In *Manzo*, the supreme court agreed that "the fact that a dealer leaves his home to complete a drug sale makes it more likely that he possessed drugs at his home." 2018 IL 122761, ¶ 52 (citing *United States v. Aguirre*, 664 F.3d 606 (5th Cir. 2011); *United States v. Montes-Medina*, 570 F.3d 1052 (8th Cir. 2009); *United*

States v. Dessesaure, 429 F.3d 359 (1st Cir. 2005); *State v. Saine*, 297 S.W.3d 199 (Tenn. 2009); *Holmes v. State*, 796 A.2d 90 (Md. 2002)). Along this same reasoning, here, while there was no evidence that Isaiah or Chrystal lived at the defendant's house, they left the defendant's home driving the defendant's vehicle in order to sell newly produced methamphetamine. These facts make it "more likely" that the methamphetamine was produced in the defendant's home and that other items associated with its manufacture and delivery were also located in the home. The facts established a sufficient inference that the items to be seized (items associated with the manufacture and distribution of methamphetamine) would be found at the residence to be searched. Accordingly, probable cause supported the issuance of the search warrant, and the circuit court properly denied the defendant's motion to quash the search warrant and suppress evidence.

¶ 72 IV. Sufficiency of the Evidence

¶ 73 Finally, the defendant argues that the State failed to present sufficient evidence to prove his guilt beyond a reasonable doubt. We disagree.

¶ 74 "Even in a stipulated bench trial, the State must still prove the defendant's guilt beyond a reasonable doubt." *People v. Glazier*, 2015 IL App (5th) 120401, ¶ 13. "In a stipulated bench trial, the defendant stipulates to the State's evidence, not to the legal conclusion to be drawn from that evidence." *People v. Mueller*, 2013 IL App (5th) 120566, ¶ 13.

¶ 75 In reviewing the sufficiency of the evidence, our analysis focuses on 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. *Id*. It is not this court's function to retry a defendant who challenges the sufficiency of the evidence. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011). Rather, we must determine whether any rational trier of fact could have found the essential elements of the crime proved beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985).

¶ 76 After the evidence was presented in the stipulated bench trial, the circuit court found the defendant guilty of one count of unlawful possession of methamphetamine with intent to deliver in violation of section 55(a)(2)(C) of the Act (720 ILCS 646/55(a)(2)(C) (West 2014)). On appeal, the defendant argues that the evidence was insufficient because there was no evidence that he had possession and control of the contraband or that he exercised immediate and exclusive control over the area where the officers found the contraband. The defendant's argument lacks merit.

¶ 77 The defendant correctly notes that the elements the State was required to prove were: (1) that the defendant had knowledge of the presence of narcotics; (2) that the narcotics were in the immediate possession or control of the defendant; and (3) that the defendant intended to deliver the narcotics. *People v. Robinson*, 167 Ill. 2d 397, 407 (1995). The stipulated testimony of Isaiah alone established the necessary elements of possession and control. If called to testify, Isaiah would have testified that the defendant was "involved in the sale and distribution of methamphetamine from the residence at 639 Chestnut Street in Chester, Randolph County, Illinois." Likewise, Chrystal would have testified that the defendant and his wife, Jessica, "were selling meth for approximately $32,000 with a cost of $6,000 for the product." In addition, Chrystal's stipulated

testimony was that she received the methamphetamine that she had been caught with earlier in the day of the buys from the defendant and Jessica. This stipulated testimony was sufficient to establish the elements of the offense. The testimony was corroborated by the evidence recovered from the residence and the officer's observations of Isaiah and Chrystal's sale of the newly produced methamphetamine to the confidential source after leaving the defendant's residence in the defendant's vehicle.

¶ 78 CONCLUSION

¶ 79 For the foregoing reasons, we affirm the defendant's conviction and sentence.

¶ 80 Affirmed.