2018 IL App (2d) 160172-U
No. 2-16-0172
Order filed August 7, 2018

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Du Page County.
Plaintiff-Appellee,	)	
v.	)	No. 15-CF-518
DAVID MORENO-LOZANO,	)	Honorable Jeffrey S. Mackay,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices McLaren and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: The State proved defendant guilty beyond a reasonable doubt of unlawful possession of cocaine with intent to deliver, specifically that he knew that the cocaine was hidden in his hotel room: defendant rented the room one night at a time, paying in cash; he essentially admitted his knowledge to the police; and he reacted evasively to the police entry and later fled the jurisdiction.

¶ 2 After a jury trial *in absentia*, defendant, David Moreno-Lozano, was convicted of unlawfully possessing, with the intent to deliver, 900 grams or more of a substance containing cocaine (720 ILCS 570/401(a)(2)(D) (West 2014)) and sentenced to 25 years' imprisonment. On appeal, he contends that he was not proved guilty beyond a reasonable doubt. We affirm.

¶ 3 Defendant was charged as a principal and as an accomplice of Pablo Tirado-Castro (Castro). They were tried together by separate juries. We summarize the evidence heard by defendant's jury.

¶ 4 The State first called Brendan Behan, a Cook County sheriff's deputy. He testified as follows. On March 12, 2015, he was assigned to a regional drug investigation unit. That day, at about 9 a.m., he and investigators Kevin Enyart and James Bolek went to the Hilton hotel in Oak Brook and made their way to room 518. Behan knocked on the door. A man whom he later learned was Castro opened the door. Behan told him that the officers were there for an investigation, and he asked to talk to Castro. Castro invited them in. Behan saw defendant lying on one of the two beds. Behan explained the visit and asked both men for identification. Castro and defendant showed them their passports.

¶ 5 Behan testified that, shortly after the officers entered, Officer Aguirre joined them. The officers, defendant, and Castro communicated in English the whole time they were in the room. Defendant never said that he did not understand the officers, and he responded appropriately to their questions. In the room, Behan saw several suitcases, which contained, among other things, clothing for children and women.

¶ 6 Behan testified that he asked both men whether there were any illegal narcotics, weapons, or other contraband in the room. They said no. Behan then asked them for permission to search the room. Defendant said yes in English, and Castro nodded his head. Within half an hour, Enyart used a bottle opener to loosen the screws on a vent. When the vent was removed, Behan saw, in the compartment, eight one-kilogram packages of what appeared to be cocaine. On top of the packages was a bag containing cash. At trial, Behan identified photographs of the vent compartment and its contents; the photographs were admitted into evidence. Behan, who had

been searching elsewhere in the room, did not find any other contraband or any scales, drug-packaging materials, drug paraphernalia, or weapons.

¶ 7 Behan testified that, after the discovery, defendant and Castro were arrested and given *Miranda* warnings. Behan drove defendant to the police station. During the ride, he asked, "so whose drugs or money is that[?]" Defendant responded, " '[I]t's not mine. It's my amigo's.' "

¶ 8 Bolek testified next. His account of the entry and search was consistent with Behan's. As far as he recalled, everyone spoke English the whole time. Neither defendant nor Castro said that he did not understand the officers. The officers searched 10 or 15 minutes before discovering the cache behind the vent. They found no scales, drug paraphernalia, or weapons.

¶ 9 Enyart testified next. In part, he corroborated Behan's and Bolek's account of their entry into the room and defendant's and Castro's consent to the search. He testified further as follows.

¶ 10 When Enyart entered the room, he saw defendant, who was lying on a bed, throw an object across the room. The object hit the wall and landed under the other bed. Enyart recovered the item; it was defendant's phone. The room contained numerous suitcases, shopping bags, and articles of clothing. The officers were looking for "larger quantities" of drugs, not amounts for personal use. Their search of the bags was "more of a hand feel, not a tear everything up, get everything out." It revealed nothing incriminating. After it ended, Enyart looked at the ventilation area and noticed several nicks on the screws of the vent. There was a bottle opener on a table; he took it and approached the vent to loosen the screws. As he did so, Castro started to fidget and his face turned "flush red."

¶ 11 Enyart testified that, when he removed the vent cover, he saw a large zip-lock bundle resting on top of "possibly eight kilos of heroin or suspect[ed] cocaine." The drugs were in "brick-shaped forms, the type of cocaine that you see when they are transported for large-scale

distribution." Based on his experience, the cocaine was "hard compressed" and "of a high purity," so it could be cut to make it go further. The street value of one brick was $300,000.

¶ 12 Enyart testified that the search revealed no scales, weapons, or drug paraphernalia outside the vent compartment. This did not surprise him, because "[s]tandard couriers and large-scale traffickers *** come with their load, they move their load, and they are gone. It's already been weighed and carried out before they even get the product."

¶ 13 Imram Jivani testified as follows. He was the director of front-office operations at the Oak Brook Hilton and the keeper of records. He identified a State exhibit as a copy of a guest-billing record for room 518. Defendant originally checked in by himself on March 7, 2015, with an anticipated stay of one night. He paid in cash. On March 9, 2015, the name "Pablo Casto" [*sic*] was added. The stay was extended one day at a time, with each day's charges paid in cash.

¶ 14 Gina Romano, a forensic scientist at a state crime laboratory, testified that she tested two of the brick-shaped items that had been removed from the vent. Their total net weight was 2001.9 grams. The white powder in both packages was cocaine.

¶ 15 David Zdan, an investigator with the Du Page County State's Attorney's office, testified as follows. He assisted in attempting to locate both Castro and defendant after they had been charged. He learned that defendant had missed a court appearance on July 9, 2015, after which a warrant for his arrest issued. Defendant missed another appearance on August 10, 2015. In September and October 2015, Zdan checked the records of jails, prisons, the Chicago police department, and area morgues, but found nothing relating to defendant. In January 2016, he repeated the process and again found no trace of defendant. He could not ascertain whether defendant had left the United States for Mexico.

¶ 16 The State rested. Defendant called Maria Villalobos, who testified as follows. On March 7, 2015, she was a waitress at the hotel. A coworker at the front desk asked her to translate for defendant, who wanted to register but (according to the coworker) spoke no English. Villalobos translated for him, and he registered.

¶ 17 The jury found defendant guilty. After the trial court sentenced him to 25 years' imprisonment and denied his motion to reconsider the sentence, he timely appealed.

¶ 18 On appeal, defendant contends solely that the evidence did not prove beyond a reasonable doubt that he was guilty of possessing 900 grams or more of cocaine with the intent to deliver. Defendant concedes that he rented and occupied the hotel room and that an amount of cocaine in excess of 900 grams and consistent only with an intent to deliver was present. However, he argues that the evidence left a reasonable doubt of whether he knew that the cocaine was there. For the following reasons, we disagree.

¶ 19 When faced with a challenge to the sufficiency of the evidence, we ask only whether, after viewing all of the evidence in the light most favorable to the State, any rational fact finder could have found the elements of the offense proved beyond a reasonable doubt. *People v. Ward*, 154 Ill. 2d 272, 326 (1992); *People v. Collins*, 106 Ill. 2d 237, 261 (1985). The fact finder is responsible for determining the witnesses' credibility, weighing their testimony, and deciding on the reasonable inferences to be drawn from the evidence. *People v. Hill*, 272 Ill. App. 3d 597, 603-04 (1995). It is not our function to retry the defendant. *People v. Lamon*, 346 Ill. App. 3d 1082, 1089 (2004).

¶ 20 To obtain a conviction of defendant, the State had to prove (1) possession and (2) intent to deliver. See 720 ILCS 570/401(a)(1)(D) (West 2014). Defendant notes that, because he was not found in actual possession of the cocaine, the State had to prove constructive possession. To

convict defendant as a principal, therefore, the State was required to prove that defendant knew of the presence of the contraband and exerted immediate and exclusive control of the area where the contraband was found. See *People v. Love*, 404 Ill. App. 3d 784, 788 (2010). The element of exclusive control does not prevent joint possession of the contraband. *People v. Givens*, 237 Ill. 2d 311, 335 (2010). To convict defendant under a theory of accountability, the State had to prove that Castro knew of the presence of the cocaine and exerted immediate and exclusive control over where it was found and that, either before or after the commission of the offense, and with the intent to promote or facilitate that commission, defendant solicited, aided, abetted, agreed, or attempted to aid in the planning or commission of the offense. See 720 ILCS 5/5-2(c) (West 2014).

¶ 21 Defendant's challenge to the sufficiency of the evidence boils down to one contention: that the State did not prove that he actually knew of the presence of the cocaine. Defendant argues that the State's evidence did not eliminate the possibilities that (1) Castro placed the cocaine there without defendant's knowledge and (2) a prior guest placed the cocaine there and moved out without taking it. Defendant also notes that the officers recovered no incriminating evidence other than what was stashed in the vent, and he argues that various other facts that the State elicited and stressed in its argument did not prove his knowledge.

¶ 22 We agree with the State that the evidence, when viewed in the light most favorable to the State—including any reasonable inferences that the jury could have made—was sufficient to prove beyond a reasonable doubt that defendant knew of the cocaine. Although his occupancy of the room did not establish his guilt (see *People v. Adams*, 242 Ill. App. 3d 830, 832 (1993)), there was much more here than that. Whether any one additional consideration was sufficient to convict defendant, cumulatively they were ample to establish his guilty knowledge.

¶ 23 To begin with, defendant reserved the room in his name and paid for it—and, rather than pay for a fixed period in advance, he reserved one night, paid in cash, then extended his stay one night at a time, again paying in cash. The jury could find that his reservation of the room in his name showed his exclusive control of the premises. See *People v. Warren*, 2016 IL App (4th) 120721-B, ¶ 67. The jury could also find that he reserved the room in order to carry out a transaction at an uncertain time in the near future and then abandon the premises promptly, while minimizing his paper trail. Delivering a large quantity of cocaine was one type of transaction that fit this description. See *id.*; *People v. Yanez*, 2014 IL App (1st) 123364, ¶ 7.

¶ 24 Second, when Behan asked defendant whose cocaine it was, he did not claim surprise or suggest that he had known nothing about the cocaine until the officers discovered it. Instead, he told Behan that the cocaine belonged to his "amigo," Castro. The jury could conclude that defendant was either telling the simple truth or trying to shift the focus away from himself and toward Castro. In the former instance, defendant's statement was tantamount to an admission that he had known that the cocaine was there, as he knew that it belonged to Castro, who shared the room with him. In the latter instance, the jury could find that defendant actually brought the cocaine into the room, which would establish his knowledge with certainty. In any event, defendant's comment to Behan refutes his argument that the cocaine could have been left by some unknown former hotel guest.

¶ 25 Third, defendant's actions were consistent with guilty knowledge. When the officers entered the room, he immediately threw his phone. The jury could infer that this was an attempt to hide something or, at the least, a panicked reaction by one who knew that the presence of the police meant trouble for him. Later, after he had been charged, defendant fled the jurisdiction and was still absent as of his trial. The jury could view his flight as showing his consciousness

of guilt. See *People v. Hommerson*, 399 Ill. App. 3d 405, 410 (2010). Defendant speculates that there could have been other reasons for his flight, but the jury was not required to reject the most obvious and plausible one.

¶ 26 Defendant's attempts to overcome these varied indicia of guilty knowledge are not persuasive, given the jury's prerogative to draw reasonable inferences on a factual issue that is not normally subject to clear and direct proof (see *Love*, 404 Ill. App. 3d at 788). Defendant suggests that Castro might have placed the drugs in the room without informing him and that defendant could have gone several days without noticing what Castro had done. Aside from the evidence noted earlier, the jury could reason that, when defendant added Castro's name to the guest registration, he was not unaware that his friend, for whose accommodation he graciously paid, was carrying several million dollars' worth of cocaine.

¶ 27 Defendant also suggests that a prior guest could have placed the cocaine inside the vent cavity, then abandoned the room in an emergency. Aside from considering the evidence noted earlier, the jury could have concluded that, even if some unforeseen matter had made the prior guest leave behind several million dollars' worth of contraband, he would have at least taken some of the cash that was directly on top. The cash itself was not directly incriminating and could be hidden. Moreover, the cocaine and the money were discovered several days after defendant moved in, making even more remote the possibility that somebody left them behind for housekeepers to discover when they prepared the room for the next guest.

¶ 28 Defendant also notes that, when the police searched the room, they found no scales, packaging materials, or other indicia of drug trafficking—aside from a few million dollars' worth of cocaine packaged neatly for delivery. But, as Enyart noted, this was not surprising. For couriers who plan only to transport a finished product from one location to another, these items

would serve no purpose. Defendant was not charged with packaging cocaine but only with possessing it with the intent to deliver.

¶ 29 Defendant also emphasizes what he characterizes as proof that he did not speak or understand English. He notes Villalobos's testimony that she had to translate for him. Defendant suggests that his lack of fluency in English cast doubt on his statement to Behan and his motivations for flight. However, the jury heard testimony that defendant did understand English. His request for a translator to assist at check-in did not refute this testimony. Viewing the evidence in the light most favorable to the State, as we must, we reject defendant's characterization of the conflicting testimony on his grasp of English—whatever its nebulous bearing on the sufficiency of the proof of his guilt.

¶ 30 Defendant relies on *People v. Wolski*, 27 Ill. App. 3d 526 (1975). There, police searched a basement apartment where the defendant and his brother lived; they found less than 30 grams of marijuana. A few days later, the defendant told the police that he had not known that the marijuana had been there. At trial, he testified that he had not been at the apartment on the day of the search or the preceding day and that there were always people coming in and out of the apartment. *Id.* at 527.

¶ 31 In reversing the defendant's conviction, the appellate court relied on the rule of *People v. Dougard*, 16 Ill. 2d 603, 607 (1959), that it was required to resolve the circumstantial evidence "on the theory of innocence rather than guilt if that can reasonably be done. *Wolski*, 27 Ill. App. 3d at 528. The court reasoned that there was "no corroborating evidence linking the defendant to the contraband other than the bare fact that it was found in the apartment which he share[d] with his brother." *Id.* Thus, the State did not prove guilty knowledge. *Id.* at 529.

¶ 32 *Wolski* does not aid defendant. First, we note, it was decided under the *Dougard* rule that proof by circumstantial evidence "must so thoroughly establish the guilt of the person accused as to exclude every reasonable hypothesis of his innocence." *Dougard*, 16 Ill. 2d at 607. That standard is no longer the law, as it has been superseded by the *Collins* test for the sufficiency of the evidence. *People v. Young*, 312 Ill. App. 3d 428, 431 (2000). Second, we note, *Wolski* is distinguishable on its facts. Here, as we have set out in detail, there was evidence beyond defendant's mere joint occupancy of the room with Castro to support an inference that he knew of the contraband. His original occupancy of the room, payment in cash, daily renewals, presence in the room at the time of the search, conduct upon the investigators' entry into the room, statement after his arrest, and later flight are all facts with no parallels in *Wolski*.

¶ 33 For the foregoing reasons, the judgment of the circuit court of Du Page County is affirmed. As part of our judgment, we grant the State's request to assess defendant $50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2016); see also *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978).

¶ 34 Affirmed.