ILLINOIS OFFICIAL REPORTS

Appellate Court

***People v. Dumas*, 2013 IL App (2d) 120561**

Appellate Court Caption	THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. JAMES E. DUMAS, Defendant-Appellant.
District & No.	Second District Docket No. 2-12-0561
Filed	April 12, 2013
Held (*Note: This syllabus constitutes no part of the opinion of the court but has been prepared by the Reporter of Decisions for the convenience of the reader.*)	The denial of defendant's petition for a certificate of innocence pursuant to section 2-702 of the Code of Civil Procedure was upheld, notwithstanding the fact that his convictions for unlawful possession of a controlled substance and unlawful possession of a controlled substance with intent to deliver were reversed on appeal, since defendant had to show his actual innocence by a preponderance of the evidence in order to prevail on his petition, and the mere reversal of his convictions due to the failure to prove his guilt beyond a reasonable doubt was insufficient, especially when his convictions arose from the steps he voluntarily took to arrange a drug transaction with an undercover police officer.
Decision Under Review	Appeal from the Circuit Court of Kane County, No. 09-CF-75; the Hon. James C. Hallock, Judge, presiding.
Judgment	Affirmed.

Counsel on Appeal	James E. Dumas, of Gilbert, Arizona, appellant *pro se*.
	Joseph H. McMahon, State's Attorney, of St. Charles (Lawrence M. Bauer and David A. Bernhard, both of State's Attorneys Appellate Prosecutor's Office, of counsel), for the People.
Panel	JUSTICE SCHOSTOK delivered the judgment of the court, with opinion. Justices Zenoff and Hudson concurred in the judgment and opinion.

OPINION

¶ 1 Defendant, James E. Dumas, appearing *pro se*, appeals the trial court's order denying his petition for a certificate of innocence under section 2-702 of the Code of Civil Procedure (735 ILCS 5/2-702 (West 2010)). We affirm.

¶ 2 I. BACKGROUND

¶ 3 On March 11, 2009, defendant was indicted on charges of unlawful possession of a controlled substance (720 ILCS 570/402(a)(2)(D) (West 2008)) and unlawful possession of a controlled substance with the intent to deliver (720 ILCS 570/401(a)(2)(D) (West 2008)). On October 9, 2009, a bench trial commenced.

¶ 4 Detective Mario Elias testified that he was an Elgin police officer and worked undercover in drug enforcement. On September 19, 2008, he met defendant at an IHOP restaurant in Elgin to discuss future narcotics transactions. Defendant told Elias that he was looking for a consistent supplier of cocaine if the price was right. In response, Elias stated that he could supply a kilogram of cocaine for $26,000. Defendant indicated that he intended to resell the same kilogram for $28,000. Elias told defendant that he was expecting a shipment to arrive any day and that he would call defendant when it came in.

¶ 5 On September 22, 2008, Elias called defendant, and they made arrangements to meet the next day to discuss the cocaine purchase. On September 23, 2008, Elias met defendant in the parking lot of the same IHOP restaurant. The meeting did not last long. Defendant told Elias that he was waiting on friends to arrive from Detroit who were going to purchase the cocaine from him. Defendant wanted a sample of the cocaine, to see the quality. Elias refused to break down the cocaine for sampling but assured defendant that it was of good quality. Elias offered to stay with defendant and his friends, at the time of the sale, until they determined whether they were satisfied with the quality of the cocaine. Although defendant continued to ask for a sample, he eventually agreed to try to work it out with his friends.

¶ 6 Numerous phone calls then took place to arrange the sale, and defendant continued to

request a sample. The sale was arranged to take place on September 24, 2008. The plan was for defendant to show the money and Elias to show the cocaine, and then to do an exchange.

¶ 7 On September 24, 2008, defendant and Elias met in the parking lot of a supermarket. Elias arrived first, exited his car, and opened the hood to make it look like he was doing something. When defendant arrived, he exited his car and approached Elias. Elias asked defendant if he was ready to go. Defendant insisted on seeing the cocaine, and they both entered Elias's vehicle, where they went back and forth over the sampling issue. A transcript of the conversation in the car indicated that defendant did not wish to actually try the cocaine but that he wanted to see it in order to verify the amount. Elias exited the vehicle to retrieve from his trunk a black bag containing the cocaine. He then reentered his car and handed defendant the bag. Defendant opened the bag, took out the kilogram of cocaine, and looked at it. He then put it back in the bag and handed the bag to Elias. Elias testified that defendant was not, at any point, free to leave with the cocaine and that he had no intention of letting defendant have the cocaine without seeing the money first.

¶ 8 Defendant exited the vehicle to make a phone call to his friends. After the phone call, defendant told Elias that he was nervous about doing the transaction in the parking lot and that he wanted to go somewhere else. Elias put the cocaine back in the trunk and asked to see the money. Defendant said that the money was at a house on the east side of Elgin and that he wanted to go there to complete the transaction, because his friends also had to at least see the cocaine before buying. Elias told defendant that he would follow him, and they both entered their cars. Elias followed defendant for about two blocks but did not follow him any further. Elias met up with surveillance units a short time later at the Elgin police department and gave the cocaine to Officer Chris Jensen. Elias testified that he would never allow a suspect to change the location of a drug transaction, because it would be too hard to control the situation and there was a risk of being robbed or killed.

¶ 9 Jensen testified that he was in the parking lot on September 24, 2008, when Elias met defendant. Jensen could not see defendant and Elias when they were inside Elias's vehicle. He followed defendant for a short time after they left the lot, but ultimately he stopped because defendant would have noticed him. The plan had been to arrest defendant when he produced the money. Jensen acknowledged that defendant was not arrested until January 2009. This was because the police wanted to confer with the Kane County State's Attorney. The police also wanted to see if a subsequent transaction would materialize, but it did not. Jensen opined that they "absolutely" could have arrested defendant at the scene.

¶ 10 On October 23, 2009, the trial court found defendant guilty of both counts. The trial court ruled that, when defendant had the cocaine in his hands inside Elias's vehicle, defendant had exclusive contact and control over the substance and could have left the car with it. The court merged the convictions and sentenced defendant to 15 years' incarceration, along with imposing a street-value fine and a statutory drug assessment.

¶ 11 Defendant appealed and we reversed, holding that the State had not proved beyond a reasonable doubt that defendant possessed the cocaine. *People v. Dumas*, 2011 IL App (2d) 100006-U, ¶ 29. We noted that the mere fact that defendant could have exited the car with the cocaine did not establish possession, because defendant never exercised any actual

dominion or control over it. *Id.* ¶ 27.

¶ 12 On April 3, 2012, defendant filed a petition for a certificate of innocence. The trial court denied the petition on the basis that, under section 2-702(g)(4), defendant failed to prove that he did not by his own conduct voluntarily cause or bring about his conviction. 735 ILCS 5/2-702(g)(4) (West 2010). Defendant appeals.

¶ 13 II. ANALYSIS

¶ 14 Defendant contends that the trial court misapplied section 2-702(g)(4) and wrongly determined that he voluntarily caused or brought about his conviction. The State argues that, to obtain a certificate of innocence, a defendant must prove that he is actually innocent and did not engage in conduct that led to his conviction.

¶ 15 To obtain a certificate of innocence under section 2-702, a defendant must prove by a preponderance of the evidence that:

> "(1) [he] was convicted of one or more felonies by the State of Illinois and subsequently sentenced to a term of imprisonment, and has served all or any part of the sentence;
>
> (2)(A) the judgment of conviction was reversed or vacated, and the indictment or information dismissed or, if a new trial was ordered, either [he] was found not guilty at the new trial or [he] was not retried and the indictment or information dismissed; ***
>
> (3) [he] is innocent of the offenses charged in the indictment or information ***; and
>
> (4) [he] did not by his *** own conduct voluntarily cause or bring about his *** conviction." 735 ILCS 5/2-702(g) (West 2010).

¶ 16 Section 2-702 makes available an avenue to obtain a finding of innocence so that the defendant may obtain relief against the State for wrongful incarceration through the court of claims. See 735 ILCS 5/2-702(a) (West 2010); *Betts v. United States*, 10 F.3d 1278, 1283 (7th Cir. 1993) (noting that, under a similar federal statute, "[a] certificate of innocence serves no purpose other than to permit its bearer to sue the government for damages").

¶ 17 "The fundamental rule of statutory interpretation is to give effect to the intent of the legislature." *People v. Fields*, 2011 IL App (1st) 100169, ¶ 18. "The best indicator of legislative intent is the language of the statute, which must be given its plain and ordinary meaning." *Id.* "If the language in the statute is clear and unambiguous it must be applied as written without resorting to extrinsic aids of construction." *Id.* "Whether or not a petitioner is entitled to a certificate of innocence is generally committed to the sound discretion of the court." *Rudy v. People*, 2013 IL App (1st) 113449, ¶ 11. However, "[t]he interpretation of a statute is a question of law that is reviewed *de novo*." *Fields*, 2011 IL App (1st) 100169, ¶ 18.

¶ 18 The First District has stated that "the plain language of section 2-702 shows the legislature's intent to distinguish between a finding of not guilty at retrial and actual innocence of the charged offenses." *Id.* ¶ 19. This means that the defendant must prove by a preponderance of the evidence that he is "actually innocent," as opposed to circumstances in which the State presented insufficient evidence to convict. See *Rudy*, 2013 IL App (1st)

113449, ¶¶ 14-15. This view is in line with the interpretation of a similar federal statute, under which the court "must consider whether the petitioner is truly innocent–that is, whether he committed the acts charged and, if so, whether those acts constituted a criminal offense [citations]–but the court makes that determination independent of the outcome of the trial or appeal, taking into account not only whether the petitioner was innocent but also whether he may be deemed responsible for his own prosecution." *Betts*, 10 F.3d at 1283 (citing 28 U.S.C. § 2513(a)(2) (1988)). The *Betts* court further interpreted this to mean that "before the petitioner can be said to have caused or brought about his prosecution *** he must have acted or failed to act in such a way as to mislead the authorities into thinking he had committed an offense." *Id.* at 1285. This is because the statute "compensates only the truly innocent, making it 'necessary to separate from the group of persons whose convictions have been reversed, those few who are in fact innocent of any offense whatever.' " *United States v. Racing Services, Inc.*, 580 F.3d 710, 712 (8th Cir. 2009) (quoting *Betts*, 10 F.3d at 1284).

¶ 19 As the First District noted, section 2-702 requires a defendant to show by a preponderance of the evidence that he is actually innocent and that he did not act in a way that brought about his conviction. A mere reversal for failure to prove guilt beyond a reasonable doubt will not suffice. This is bolstered by the legislative history, in which it was stated that section 2-702 is to benefit "men and women that have been falsely incarcerated through no fault of their own." 95th Ill. Gen. Assem., House Proceedings, May 18, 2007, at 12 (statements of Representative Flowers). Here, defendant voluntarily caused or brought about his own conviction. As the trial court noted, the record shows that defendant took multiple steps to arrange a drug sale with Elias, which ultimately led to his arrest and conviction. Accordingly, we affirm.

¶ 20 III. CONCLUSION

¶ 21 Defendant voluntarily brought about or caused his own conviction. Accordingly, the judgment of the circuit court of Kane County is affirmed.

¶ 22 Affirmed.