2017 IL App (1st) 143471-U
No. 1-14-3471 & 1-14-3472 (cons.)

THIRD DIVISION
February 8, 2017

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. SOTERO SALAZAR, Defendant-Appellant.	)	Appeal from the Circuit Court of Cook County. No. 11 CR 15358 The Honorable Kenneth J. Wadas, Judge Presiding.
THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. RUBEN SALAZAR, Defendant-Appellant.	)	Appeal from the Circuit Court of Cook County. No. 11 CR 15358 The Honorable Kenneth J. Wadas, Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Lavin concurred in the judgment.

ORDER

¶ 1 *Held:* The defendants' convictions for possession of cannabis with the intent to deliver were affirmed where (1) the trial court properly denied the defendants' motion to suppress,

because exigent circumstances justified the officers' entry onto the warehouse property and the cannabis was seized under the plain-view doctrine; (2) the State presented sufficient evidence that the defendants knowingly possessed the cannabis; and (3) the defendants' sentences were not excessive.

¶ 2 Following a bench trial, the defendants, Sotero Salazar ("Sotero") and Ruben Salazar ("Ruben") (collectively, the "defendants"), were each convicted of eight counts of possession of cannabis with the intent to deliver, in violation of sections 5(f) and 5(g) of the Illinois Cannabis Control Act ("Act") (720 ILCS 550/5(f), (g) (West 2010)). Sotero was sentenced to 15 years' imprisonment, and Ruben was sentenced to 14 years' imprisonment. In this consolidated appeal, the defendants argue that the trial court erred in denying their motion to suppress evidence, the State failed to prove them guilty beyond a reasonable doubt, and their sentences were excessive. For the reasons that follow, we affirm.

¶ 3 BACKGROUND

¶ 4 On September 27, 2011, the defendants, along with five other men—Manuel Marquez Sanchez, Andres Calderon, Daniel Saucedo, Jesus Munoz, and Salvador Lopez (collectively, the "co-defendants"), were charged with seven counts of possessing with the intent to deliver more than 5,000 grams of cannabis in violation of section 5(g) of the Act (counts 1 through 7), and one count of possessing with the intent to deliver more than 2,000 grams but not more than 5,000 grams of cannabis in violation of section 5(f) of the Act (count 8).

¶ 5 Motion to Suppress

¶ 6 The defendants filed a "Joint Motion to Quash and Suppress Evidence" ("motion to suppress"). The defendants alleged that the police, without a warrant or other legal justification, entered the gated and locked warehouse lot on which the defendants were located to effectuate the defendants' arrests and search the premises. The defendants argued that the officers' actions violated the fourth amendment of the United States Constitution and Article I, Section 6 of the

Illinois Constitution. Accordingly, they requested that the trial court quash their arrests and suppress any evidence obtained as a result of the allegedly illegal searches and seizures.

¶ 7 An evidentiary hearing was held on the defendants' motion to suppress. At that hearing, Fermin Damian testified that in August 2011, he leased three warehouses on a lot at 1038 South Kolmar, Chicago ("warehouse property"), from Bulmaro Rayes. He then sublet to the defendants the rights to park their business equipment on the lot and store materials and tools in one of the warehouses. In exchange, he charged them $150.00 per month. Damian testified that he gave the defendants keys to the warehouse and to the locked fence around the property and that the defendants had the right to come and go from the property as they pleased.

¶ 8 Andres Calderon, one of the other men charged in the indictment with the defendants, testified that he was present at 1038 South Kolmar in the early morning hours of August 22, 2011. While there, at approximately 4:00 a.m., a semi-truck arrived at the warehouse property. Calderon testified that he assisted in unloading storage pods from that semi-truck into the warehouse by using chains to affix the storage pods to the forklift operated by Sotero. Later on the morning of August 22, Calderon returned to the warehouse. He denied that any of the storage pods were opened at that time, that there were bales of cannabis on the floor of the warehouse, or that any vans on the property were loaded with cannabis. Calderon testified that at some point while in the warehouse, people started yelling for everyone to run, so he did. Calderon ran out of the warehouse and climbed the fence at the back of the warehouse. When he got to the top of the fence, he saw two men with guns standing near the train tracks outside the property. One of the men told him to jump down from the fence, and Calderon complied, landing outside the fence around the warehouse property. He was then placed under arrest and keys that unlocked the storage pods inside the warehouse were found in his pocket.

¶ 9 Officer Patrick Keating of the Chicago Police Department testified next. Keating testified that he had worked for the Chicago Police Department for more than 25 years, 15 of which he spent working in the narcotics division. During that time, he had been involved in several hundred narcotics investigations, including investigations involving the bulk movement of cannabis.

¶ 10 In the latter part of August 2011, Keating received information from a confidential informant regarding a shipment of cannabis arriving in Chicago. More specifically, the informant told Keating that a large amount of cannabis was to be delivered to Chicago via semi-truck and trailer over the weekend of August 20 and 21, 2011. The informant also stated that cargo vans were going to be utilized in the breakdown and distribution of the cannabis. The informant gave Keating the physical descriptions of two men who were to be involved in the shipment and the license plate number of a van they would be using. According to the informant, the men could most likely be located in the area of 18th Street and 49th Avenue in Cicero.

¶ 11 On August 20, 2011, Keating and fellow officers began to investigate the information provided by the confidential informant. After running the license plate number given by the informant, which was linked to an Astrovan, the officers conducted surveillance in the area of 18th Street and 49th Avenue and were able to locate two men that fit the physical descriptions given by the informant. Keating observed the men on the night of August 20 when they parked a white GMC Savannah van one block from 1635 South 49th Avenue, the registered address of the Astrovan with the license plate number provided by the informant. The men then walked to 1635 South 49th Avenue. One of the men was later identified as Louis Lopez ("Louis"); the other man was not identified.

¶ 12 The following morning, officers observed the Astrovan with the license plate number identified by the informant. The Astrovan was driven by an individual later identified as Juan Rodriguez and Louis rode as a passenger. The men drove to a Walgreens store where they went inside and stood near the windows facing the parking lot while Louis spoke on his cell phone. After standing inside the Walgreens for about ten minutes without doing any shopping, the men left the store and returned to the parking lot. Rodriguez returned to the Astrovan, but Louis approached a black Chevy Tahoe in the lot and spoke with the driver of that vehicle. When Louis emerged from between the Tahoe and the next vehicle, officers observed him carrying a clear plastic bag with a brown paper bag inside. Officers believed that Louis had just received U.S. currency from the driver of the Tahoe.

¶ 13 Rodriguez and Louis then returned to 1635 South 49th Avenue in the Astrovan. As they were walking down the sidewalk to the residence, two black men walked passed them going in the opposite direction. Prior to the black men approaching, Louis had been carrying the plastic bag freely in his left hand. As they approached, however, Louis used his right hand to cover the bag, such that he was now holding it with both hands. Once the two black men passed Louis, he released the bag with his right had so that it was again carried freely in his left.

¶ 14 Later that day, around noon, the officers observed Rodriguez and Louis exit the residence and drive the Astrovan to the Savannah that had been parked a block away the previous night. When they arrived, Louis opened the rear doors of the Savannah and stood in the cargo area, "messing with" the passenger side taillight. Rodriguez then got into the cargo area of the van and removed the entire taillight. Based on his past experience, Keating believed that the men were attempting to repair the Savannah in preparation of using the van to transport narcotics, so

as to avoid being stopped by police for a broken taillight or burned out turn signal. The police then observed the men go to an auto parts store and return to continue working on the Savannah.

¶ 15 Around 4:10 p.m., Louis and Rodriguez exited the residence at 1635 South 49th Avenue. Louis got into the Savannah and Rodriguez got into the Astrovan, and they drove to a vacant lot where Louis was observed talking on his cell phone and looking around the lot as if waiting for someone. The men then relocated both vehicles to a gas station where they waited for ten minutes before being met by a green and white minivan that appeared to have once been a taxi. One of the passengers got out of the minivan and in behind the wheel of the Savannah. Louis spoke with this new driver before getting into the Astrovan with Rodriguez and returning to 1635 South 49th Avenue.

¶ 16 The new driver of the Savannah, followed by the green and white minivan, proceeded to approximately 1038 South Kolmar—the warehouse property—where he parked the Savannah and then got into the green and white minivan. The minivan then drove to the area of 23rd and Fairfield. There, the Savannah's driver got out and spoke with three or four men that were standing on Fairfield near the alley. The Savannah's driver proceeded to get in behind the wheel of a white Chevy Express cargo van that was parked in the alley. One of the other men also got into the Express, while a third got behind the wheel of a black Buick. The Buick drove back to where the Savannah was parked, slowed down, and then circled the block. While the Buick was circling the block, the Savannah's driver and his passenger arrived in the Express and parked next to the Savannah. The passenger got out of the Express and into the Savannah. The Express and the Savannah then circled the area together.

¶ 17 When the vehicles returned to the area where the Savannah had originally been parked, they stopped. The driver of the Express exited the vehicle and walked over to where the black

Buick was now parked. After speaking with the driver of the Buick, the driver of the Express got back into the van and proceeded to drive onto the warehouse property, along with the Savannah. Six or seven minutes later, the drivers of the Express and the Savannah exited the property and got into the Buick, which then drove away.

¶ 18 Based on what the police had observed, Keating believed the warehouse property at 1038 South Kolmar to be the location where the cannabis shipment was to arrive. Accordingly, the officers ceased following the vehicles and stationed themselves to watch the warehouse property. From the location that Keating assumed, he observed three cargo vans parked on the north section of the warehouse property—the Express, the Savannah, and a third white cargo van. This north section of the property was secured behind a second, interior gate on the larger warehouse property.

¶ 19 After setting up surveillance at the warehouse property, the officers observed the same man who had dropped off the Express driving a white Ford Econoline cargo van. He parked the Econoline on the warehouse property and then left again in the same black Buick previously observed. An hour later, a pickup truck and a white Astrovan arrived. The Astrovan was parked near the front, exterior gate, and its driver left the property in the pickup truck. Approximately 15 minutes later, the green and white minivan appeared at the property. One of the minivan passengers moved the recently delivered Astrovan further onto the warehouse property, got back into the minivan, and left. According to Keating, there was, at this point, six cargo vans located on the warehouse property—two Econolines, two Expresses, one Savannah, and one Astrovan.[1]

¶ 20 At approximately 9:15 p.m. that evening, officers observed a burgundy Toyota Tundra arrive and enter the north section of the warehouse property. In the Tundra were the defendants.

[1] We note that preceding Keating's testimony that there were six cargo vans parked on the property, he testified to the specific observations of only five vans.

While there, Sotero moved a Bobcat to the northeastern part of the property and a telescopic forklift to the northwest corner of the property. At about 9:30 p.m., while the defendants were still on the warehouse property, a police officer not involved in the investigation made a stop outside the fence of the warehouse property. In doing so, that officer used his spotlight, which illuminated the yard of the warehouse property. When that happened, the warehouse yard light went off. The defendants then walked to the front entrance of the warehouse property and looked down the street to where the unrelated police activity was occurring. A few minutes later, the defendants left the warehouse property and met with Bulmaro Rayes, who had been waiting outside the warehouse property in a Chevy Trailblazer. The three men proceeded to a nearby bar and grill. Forty-five minutes later, all of the men left.

¶ 21 At approximately 3:15 a.m. the morning of August 22, 2011, police observed the Tundra return to the warehouse property. This time, however, it was occupied only by Sotero. Ten minutes later, the green and white minivan also returned. Four people got out of the minivan. The minivan then left the property and parked on Grenshaw, directly in line with the front, exterior gate to the warehouse property. The driver of the minivan shut the engine and lights off and climbed into the backseat. Based on his training and experience, Keating believed the driver of the minivan was conducting counter-surveillance, watching for police. At 3:40 a.m., a gold Toyota Camry drove down Kolmar, made a U-turn and parked near the front, exterior gate of the warehouse property. Right after that, a blue Pontiac Grand Prix also arrived and proceeded through the front gate of the warehouse property. Thereafter, an individual, later identified as Salvador Lopez, exited the warehouse property, approached the Camry, retrieved a couple of heavy chains from the Camry's trunk, and returned to the northern portion of the warehouse property.

¶ 22 Around 3:50 a.m., Sotero appeared to call a meeting. He motioned with his hands, and everyone that had been dropped off at the property gathered around him. He spoke in Spanish to them, and it appeared that he was giving them instructions, because he was pointing and speaking with everyone at attention. After speaking with the other individuals on the property, Sotero moved the telescopic forklift a bit further south on the property.

¶ 23 Ten minutes later, a semi-truck stopped in front of the front entrance of the warehouse property. Sotero approached the driver of the semi and conversed with him, after which Sotero returned to the lot, and the semi-truck entered the property. Keating observed Sotero direct the semi-truck with his hands as it backed into the northern portion of the warehouse property. Calderon opened the rear doors to the truck's trailer. Sotero walked inside the warehouse momentarily and the warehouse yard light went out.

¶ 24 Sotero then moved the telescopic forklift closer and rolled up his shirt sleeves. Calderon and another man got into the back of the trailer with the chains Salvador Lopez had brought from the Camry. Keating could hear the metal chains moving inside the trailer. After Calderon and the other man exited the trailer, Sotero guided the forklift into it. Calderon and the other man went back into the trailer and Keating could again hear movement and chains. Calderon and the other man again exited the trailer. Keating could then hear screeching metal before seeing a large self-storage pod pulled out of the trailer on the forklift. Based on Keating's previous experience unloading semi-trailers using a forklift, it was his opinion that the manner in which Sotero and the others unloaded the trailer was unsafe and reckless: it was done in the dark, using only a flashlight; none of the individuals were wearing safety shoes or helmets; and the pod was carelessly loaded onto the forklift, evidenced by the fact that it was moving while on the forklift.

¶ 25 The pod was then placed inside the warehouse. The other individuals who were in the yard removed the chains from the pod and returned them to the trailer so that they could be used to unload the remaining pods. Ultimately, six storage pods were removed from the trailer and placed inside the warehouse.

¶ 26 Afterwards, the semi left the warehouse property, and the gate was shut and locked. Four of the cargo vans were also moved in front of the gate, so as to block anyone from entering. The green and white minivan returned. Several of the individuals got into the minivan, and after having a conversation with Sotero, the driver of the minivan drove away. Sotero and another individual got into the Tundra and left the warehouse property.

¶ 27 Believing that narcotics had been delivered in the semi-truck, the officers continued surveillance on the warehouse property. By this time, there were approximately seven or eight officers involved in the surveillance.

¶ 28 At about 7:35 a.m., the Tundra returned, carrying Sotero and Ruben, and proceeded into the northern portion of the warehouse property. Shortly thereafter, three individuals were dropped off by the blue Grand Prix and another three by a white Astrovan. Keating testified that he believed there were approximately seven or eight individuals on the warehouse property at that time.

¶ 29 After everyone arrived, one of the Express vans on the property was backed into the warehouse, everyone went inside, and the door was slid closed. At approximately 8:20 a.m., the defendants exited the warehouse and Sotero closed the door behind them. The defendants remained in the yard, talking and looking around. At about 9:04 a.m., the Express was driven out of the warehouse and parked along the fenceline. The driver, later identified as Jesus Munoz, got out and returned to the warehouse.

¶ 30 The defendants went back inside the warehouse with Munoz. While the defendants were in the warehouse, another person backed the Savannah into the warehouse. The defendants then left the warehouse and Sotero closed the door. While the Savannah was in the warehouse, the defendants remained in the yard. Twenty to twenty-five minutes later, Manuel Marquez Sanchez ("Marquez"[2]) drove the Savannah out of the warehouse and parked it along the same fenceline as the Express.

¶ 31 Marquez and the defendants returned to the warehouse and went inside. During that time, one of the Econoline vans was backed into the warehouse. After that, the defendants again exited the warehouse, and Sotero closed the door. Fifteen minutes later, the defendants went back inside the warehouse for just one minute and then exited. Ten to twelve minutes later, Sotero had a conversation with Marquez outside the warehouse door. During this conversation, Sotero walked to the west side of the warehouse and pointed south. After the conversation was over, Sotero walked to the gates, unlocked them, and opened them. While Sotero did that, Marquez got back into the Savannah, left the warehouse property, and drove north on Kolmar. Sotero closed and locked the gate behind Marquez.

¶ 32 Believing the Savannah to be loaded with narcotics, the officers decided to conduct an investigatory stop of it. The officers' plan was to perform an investigatory stop of the Savannah and use the narcotics canine that was on standby to conduct a sniff of the vehicle. If the canine alerted on the van, the officers intended to secure the premises of the warehouse property and obtain a search warrant.

¶ 33 In accordance with this plan, Officer Thomas Cunningham conducted the stop one and a half blocks east of Kolmar on Fillmore. Upon stopping the van, Cunningham stated over the

[2] We refer to Mr. Sanchez as Marquez because that is how the witnesses referred to him in their testimony.

radio that as he approached the Savannah, he could smell the odor of marijuana from the van. Cunningham also stated over the radio that he was going to call the stand-by canine, after which Cunningham reported over the radio that the dog had alerted on the van and that there were bales of cannabis wrapped in green cellophane inside the van.

¶ 34 As Cunningham was conducting the stop of the Savannah, other officers in the area mistook which van to stop and attempted to stop another, different white van driven by Louis Lopez. In that attempt, the sounds of squealing tires and sirens could be heard. Sotero, appearing to have heard the commotion, walked from the warehouse to the fenceline and looked out near where the Savannah had been stopped on Fillmore. After looking out the fence, Sotero walked quickly back to the warehouse, saying "policia, policia." Keating testified that this was not supposed to happen.

¶ 35 The warehouse door slid open and people started running out. Sotero attempted to shut the warehouse door, but from where Keating was located near railroad tracks outside the warehouse property, he could see two green cellophane-wrapped bales inside on the warehouse floor. Based on his experience and Cunningham's reports over the radio, Keating believed the bales he observed to contain cannabis. Keating advised the other officers of his observation over the radio, so that they would be aware that the individuals on the lot were likely to flee. At this point, no officer had entered the warehouse property. Although people on the property were starting to scurry, no one had left the property and the officers were attempting to get into position to prevent that from happening.

¶ 36 Ultimately, Munoz and Salvador Lopez ran out of the warehouse and headed toward the south side of the lot. Realizing, however, that Sotero had locked the gate, they turned back north and then acted as if they did not know what to do. Ruben, Calderon, and an unidentified

individual jumped the fence at the north end of the warehouse property. The unidentified individual ran northeast and got away. Keating intercepted Ruben and Calderon on the north side of the fence and placed them under arrest. It was as Keating was arresting Ruben and Calderon that officers first entered the warehouse property.

¶ 37 After placing Ruben and Calderon under arrest, Keating took them back to where the Savannah traffic stop occurred. Keating then proceeded to the warehouse property, which had been secured by other officers. During the process of securing the warehouse, officers found Saucedo hiding in the warehouse yard. When Keating arrived, the door to the warehouse was open. Keating could not say whether Sotero had been successful in his attempt to close the warehouse door, but he testified that Officer Frank Gomez had made entry into the warehouse to look for additional people who might have been hiding inside. Gomez had done so in an effort to secure the scene. As he approached, Keating could smell a strong odor of cannabis emanating from the warehouse.

¶ 38 Inside the warehouse, officers observed the six storage pods, which were all unlocked and opened. Next to one of these pods were 12 bales. Behind another pod were 32 bales. Although four of the pods had been emptied, two of them had bales inside of them. The Econoline, which remained inside the warehouse, had its back door open. One bale was sitting on the ground near the van and others had been loaded inside the van. Outside the warehouse, a canine performed scent detections on the vans parked on the property. In the Express van the officers had observed being driven into the warehouse and later parked along the fence, there was additional suspected cannabis found.

¶ 39 At no point prior to conducting the search of the warehouse property did the officers attempt to obtain a search warrant.

¶ 40 Cunningham also testified at the motion to suppress hearing. Cunningham testified that he was a police officer with the Chicago Police Department's narcotics division and had been since 1998. In that time, he had participated in several hundred narcotics investigations.

¶ 41 On August 22, 2011, he conducted an investigatory stop of the Savannah at approximately 4443 West Fillmore Street by activating the emergency light on his vehicle's dashboard. As he approached the Savannah, Cunningham asked the driver to step out of the vehicle. The driver complied and, as he did so, Cunningham could smell an overwhelming odor of raw cannabis coming from the Savannah. Based on his past experience, the odor was immediately recognizable to Cunningham as raw cannabis. Cunningham reported the odor over his radio. To Cunningham's knowledge, at the time he radioed that he smelled cannabis in the Savannah, no officers had yet entered the warehouse property. Cunningham also requested that a canine come to the scene. Once there, the canine alerted positive to the exterior and interior of the van. Cunningham then opened the rear cargo doors of the Savannah and observed hundreds of bundles of plant material wrapped in green cellophane. Cunningham believed the plant material to be cannabis. Cunningham again radioed this information to his fellow officers.

¶ 42 Like Keating did, Cunningham testified that the officers' original plan was to conduct an investigatory stop of the Savannah. If the officers could verify that the van contained cannabis, they intended to secure the premises of the warehouse property and obtain a search warrant. While Cunningham was tailing the Savannah with the intention of stopping it, however, other police units tried to stop another vehicle, resulting in the use of lights and sirens. Cunningham could hear the sirens from where he was. Based on what he heard over the radio, the sirens alerted the people on the warehouse property, resulting in multiple foot chases. Because the

individuals under investigation were then aware of the police presence, Cunningham stopped the Savannah within view of the warehouse property, so as not to lose the Savannah.

¶ 43 When Cunningham returned to the warehouse property, officers were still attempting to secure the area.

¶ 44 Following the testimony of the witnesses, the defendants argued that their fourth amendment rights were violated when the officers entered the warehouse property without consent or a warrant. According to the defendants, the officers had ample probable cause and opportunity to obtain a search warrant, but failed to do so. To the extent that exigent circumstances applied, the defendants argued that the officers created the exigency themselves. Finally, the defendants argued that although Keating observed some bales from his vantage point outside of the warehouse property, the plain-view doctrine alone could not justify the officers' warrantless entry onto the warehouse property.

¶ 45 The trial court denied the defendants' motion to suppress, finding that the pivotal question was whether the officers had created the exigency. The trial court concluded that they had not. According to the trial court, to do so would have been foolish, as the physical layout of the warehouse property—with multiple buildings and multiple entrances and exits—and the fact that there were multiple people on the property would have increased the likelihood that suspects would have escaped. In addition, the trial court concluded that the sirens and lights that caused the individuals on the property to flee were the result of a miscommunication between officers and were not intentionally activated in an attempt to trigger a mass exodus. Finally, the trial court disagreed that the officers had sufficient probable cause to obtain a search warrant prior to confirming that the Savannah contained cannabis.

¶ 46 The defendants filed a motion to reconsider, which the trial court denied.

¶ 47 Trial

¶ 48 Waiving their rights to a jury trial, the defendants proceeded to a bench trial. At that trial, Keating's testimony was, in all relevant aspects, substantively the same as the testimony he gave at the hearing on the defendants' motion to suppress. Accordingly, his testimony will not fully repeated here, except where it differs or further explains his previous testimony.

¶ 49 At trial, Keating also testified that after the Chevy Express van was backed into the warehouse, officers observed Marquez, Salvador Lopez, Calderon, Munoz, Daniel Saucedo, and the defendants conversing in the middle of the warehouse yard before they all entered the warehouse. In addition, Keating testified that as Sotero and Ruben were milling about the yard while the various vans were inside the warehouse, Sotero had in his hand what appeared to be a whip or a rope.

¶ 50 At no point during his surveillance of the warehouse property did Keating observe Sotero or Ruben open or look in any of the storage pods or vans.

¶ 51 According to Keating's trial testimony, when he entered the warehouse property after arresting Ruben and Calderone, the officers believed the premises to be secured, but Saucedo was later found hiding in the warehouse yard behind an oil tank.

¶ 52 Finally, Keating testified that officers recovered the two bundles of cannabis Keating observed on the warehouse floor from his vantage point by the railroad tracks, 79 bundles of cannabis were recovered from storage pod number M0000012, 65 bundles of cannabis from storage pod number M000010XO, 32 bundles from the rear of the warehouse behind one of the pods, multiple bales of cannabis from the Econoline inside the warehouse, and 196 bundles of cannabis from the Express parked near the fenceline.

¶ 53 Officer Brian Luce gave the following testimony at trial. He was a police officer with the Chicago Police Department, Bureau of Organized Crime, narcotics division. He had been with the Chicago Police Department for about 16 years and had been involved in over 1,000 narcotics investigations.

¶ 54 At approximately 7:30 a.m. on August 22, 2011, he was conducting surveillance in the area of 1038 South Kolmar in Chicago. He was posted just west of the warehouse property in an elevated position near the railroad tracks. At about 7:55 a.m., he observed a Chevy Express van backed into the warehouse, after which he observed a group of individuals conversing in the warehouse lot. Among that group were the defendants, Calderon, Salvador Lopez, and Saucedo.

¶ 55 At about 8:19 a.m., he observed the defendants exit the warehouse and walk to the middle of the west portion of the warehouse lot. Both defendants were constantly looking up and down the warehouse lot, "canvassing the lot." Sotero kept paying special attention to or looking in the direction of the locked gate on the south end of the lot. Around 9:05 a.m., the Express was driven out of the warehouse by Munoz and parked near the east fence. The defendants then reentered the warehouse, as did Munoz. Four minutes later, Marquez backed the GMC Savannah van into the warehouse. The defendants exited the warehouse, resumed their position in the middle of the warehouse lot and continued to canvas the lot. Sotero was holding a rope in his hand at the time. After 20 minutes, Marquez pulled the Savannah out of the warehouse and parked it along the east fence. Marquez returned to the warehouse and entered it with the defendants.

¶ 56 At about 9:30 a.m., a Ford Econoline was backed into the warehouse. From his vantage point, Luce could see all the way from the back windows of the van through the front windows. It appeared that the van was empty except for some Styrofoam cups in cupholders at the front of

the van. After the Econoline was backed into the warehouse, the defendants exited the warehouse. Luce did not see where Ruben went, but he observed Sotero speak with Marquez near the sliding door to the warehouse. During the conversation, Sotero pointed south toward the interior gate separating the north and south portions of the warehouse property. Sotero and Marquez then separated, with Marquez returning to the Savannah and Sotero going to the locked gate to which he had pointed. Sotero opened the gate and Marquez drove the Savannah off the warehouse property. After the Savannah left, Sotero locked the gate again and walked back towards the warehouse. At that point, it was approximately 9:58 a.m.

¶ 57 The officers' plan at that time was to conduct a stop of the Savannah, which they believed to contain narcotics. After the Savannah left the warehouse property, Luce heard sirens and screeching tires, but he could not see the source of those sounds. When those sounds occurred, Sotero walked to the east side of the warehouse property and looked through a metal grated area of the fence. He then started walking back toward the warehouse, yelling "policia, policia." When he got to the warehouse, Sotero slid open the warehouse door and Calderon and Saucedo ran out of the warehouse and toward the locked south gate where they stopped before turning around and running back toward the middle of the yard. Munoz and Salvador Lopez then ran out of the warehouse. Calderon, Saucedo, Munoz, and Salvador Lopez then all ran north. Sotero, in the meantime, was sliding the warehouse door closed.

¶ 58 Luce relocated to north of the warehouse property so that he could see where everyone ran. Keating was also in the same area. After relocating, Luce observed a person in a gray shirt running east from the warehouse property. Luce never saw that person again and that person was never identified.

¶ 59 Luce testified that at no point did he observe the defendants look into, open, remove anything from, or put anything into any of the vans.

¶ 60 Sergeant Thomas Horton of the Organized Crime Narcotics Division of the Chicago Police Department testified that at about 3:15 a.m. on August 22, 2011, he was conducting surveillance approximately 150 feet outside the gate leading onto the warehouse property off of South Kolmar. At that time, Horton observed a burgundy Toyota Tundra driven by Sotero arrive at the warehouse property. Sotero got out of the truck, opened the gate, and then drove onto the lot. At 3:35 a.m., a white and green minivan arrived outside the gate to the warehouse property and four individuals got out of the minivan and entered the warehouse property. The minivan then drove down Kolmar, circled the block, before parking directly in front of Horton on Grenshaw. The driver climbed into the back of the minivan and appeared to Horton to be conducting countersurveillance. Horton could see that every time a car drove into the area, the driver of the minivan would pick up his head and get on his cell phone.

¶ 61 Ten minutes after the minivan arrived, Horton observed Salvador Lopez exit the warehouse property, approach a gold Toyota Camry, remove a large chain from the trunk of the Camry, and return to the warehouse property. The Camry then drove away.

¶ 62 At approximately 4:10 a.m., a semi-truck arrived at the warehouse property. Sotero exited the property, walked up to the driver's side of the cab of the semi, and then directed the semi onto the warehouse property. Sotero stood behind the semi and motioned the semi in by signaling with his hands in the semi's mirrors. A little over an hour later, at approximately 5:18 a.m., the driver of the minivan returned to the driver's seat, pulled the minivan up to the gate of the warehouse property, and picked up four individuals that came out of the lot. After that, Sotero exited the property in the Tundra, accompanied by an unidentified individual. At 7:30

a.m. Sotero returned to the warehouse property in the Tundra, again accompanied by someone Horton could not identify.

¶ 63 At about 9:58 a.m., Horton observed a white work van leave the warehouse property. Horton learned from his fellow officers that Cunningham conducted a traffic stop of that van. At that time, Horton observed a Chevy Blazer and a black Escalade—both of which were believed to be associated with the warehouse property—speed away from the property. Based on radio communication from Luce, Horton drove his vehicle to the corner of Kolmar and Grenshaw in anticipation of additional vans leaving the warehouse property. If that happened, Horton was prepared to block the driveway.

¶ 64 Hearing that people were running inside the warehouse property, Horton pulled through the exterior gate to the warehouse property and observed that Luce had Sotero, Salvador Lopez, and Munoz at gunpoint. Sotero, Salvador Lopez, and Munoz were on the warehouse property, but Luce was outside the property fence on the railroad embankment. Because the second, interior gate leading to the northern portion of the property was locked, Horton climbed over the fence, making him the first officer who entered onto the northern portion of the warehouse property. When he got over the fence, Horton observed Sotero, Salvador Lopez, and Munoz standing right inside the gate. Horton ordered the three men to the ground. After doing so, Horton found a set of keys within a couple of feet of Sotero.

¶ 65 The big sliding door to the warehouse was open when he entered the lot and Horton could see two bales of cannabis on the floor inside the warehouse. The bales were approximately two feet by two feet in size and wrapped in green cellophane. Because Horton was the only officer on the lot and because he did not know whether there was anyone else inside the warehouse, he

used the keys he found near Sotero to unlock the south, interior gate to allow Officer Frank Gomez into the northern portion of the property.

¶ 66 After Horton's testimony, the parties entered a number of stipulations into evidence. First, the parties stipulated that if called to testify, Officer Robert Berman of the Chicago Police Department would testify that on August 22, 2011, he recovered a .38 caliber pistol and eight .38 caliber live rounds of ammunition from the Toyota Tundra parked outside the warehouse. Berman would also testify that on that same day, he was with Cunningham during the traffic stop of the Savannah driven by Marquez. From that van, he and Cunningham recovered 91 bundles of packaged plant material wrapped in green cellophane. Berman would also testify that on that day he recovered a set of keys from the pocket of Calderon and those keys opened the padlocks on the storage pods found inside the warehouse.

¶ 67 Next, the parties stipulated that if called to testify Officer Francisco Gomez of the Chicago Police Department would testify that at approximately 7:36 a.m. on August 22, 2011, he observed the defendants arrive at the front gate of the warehouse property in the Toyota Tundra. Ten minutes later, Gomez observed a blue Pontiac arrive at the warehouse property. Calderon, Saucedo, and another unidentified male exited the Pontiac and entered the warehouse property. After another ten minutes, Gomez observed Marquez, Munoz, and Salvador Lopez arrive in a white astrovan.

¶ 68 Gomez would also testify that at approximately 10:00 a.m. that day, Horton opened the second, interior gate of the warehouse property, allowing Gomez to enter. When Gomez entered, Horton was the only other officer inside the northern portion of the warehouse property. At that time, the door to the warehouse was ajar, and Gomez observed two bundles of compressed plant

material wrapped in green cellophane on the floor of the warehouse in front of a Ford Econoline van. Gomez recovered those two bundles.

¶ 69 The parties also stipulated that if called to testify again, Luce would testify that on August 22, 2011, he recovered 196 bundles of compressed plant material wrapped in cellophane from the Chevy Express van parked outside of the warehouse.

¶ 70 The parties stipulated that if called to testify, Cunningham's testimony would be the same as it was at the hearing on the defendants' motion to suppress. The parties also stipulated that Cunningham would testify that on August 22, 2011, he recovered multiple bundles of compressed plant material wrapped in green cellophane. Specifically, he recovered 97 bundles of compressed plant material wrapped in green cellophane from inside the Econoline parked inside the warehouse. He recovered 12 bundles of compressed plant material wrapped in green cellophane from the floor of the warehouse. He recovered 79 bundles of compressed plant material from inside storage pod M0000012 inside the warehouse. He recovered 65 bundles of compressed plant material wrapped in green cellophane from storage pod M000010FO inside the warehouse. He recovered 32 bundles of compressed plant material wrapped in green cellophane from the rear of the warehouse. From each of these recoveries, he sent one bundle of compressed plant material to the crime lab for testing.

¶ 71 Finally, the parties stipulated that if called to testify, Arthur Weathers, a forensic chemist at the Illinois State Police Crime Lab, would testify that the samples of compressed plant material that he received all tested positive for the presence of cannabis. The total weight of the tested bundles of plant material was 72,334 grams. The total weight of the untested bundles of plant material was 5,171,785 grams.

¶ 72 Following closing arguments, the trial court found both defendants guilty of all counts. In doing so, the trial court noted that it found Keating "exceptionally, highly credible," stating that Keating "was the best police witness [the trial court had] ever heard testify in any criminal case in [its] 38 years in criminal law." The trial court found that common sense dictated that it would require a crew of men to unload five million grams of cannabis, unload the bundles, and placed them into separate vans. Accordingly, the trial court concluded that although not all of the men involved performed the same tasks, they were all involved in and accountable for the receipt, unloading, and attempted distribution of the cannabis. With respect to the mental culpability of the men involved, the trial court found significant not only the testimony that a strong odor of cannabis could be detected coming from the warehouse, but also the fact that the men unloaded the storage pods in the dark without proper safety precautions, indicating a consciousness of guilt. Taken with the defendants' flight, the trial court found the totality of these circumstances sufficient to find the defendants guilty beyond a reasonable doubt.

¶ 73 The defendants filed a motion for new trial, but the trial court denied it.

¶ 74 Sentencing

¶ 75 The defendants' sentencing hearing took place on September 2, 2014. At that hearing, the defendants presented a number of live witnesses, who all testified to the defendants' characters as hard-working, caring, family and community men. Numerous letters were also submitted to the trial court in support of the defendants. In aggravation, the State called Sergeant Frederico Andaverde, who testified as an expert in the street value of cannabis. Andaverde testified that the street value of the 72,334 grams of the tested cannabis was $734,000.00. The street value of the other, untested 5,244,119 grams was approximately $52,000,000.00. Based on the pictures that Andaverde viewed of the seized cannabis, it was not yet ready for street sales,

but was still packaged in bulk amounts. The wholesale value of the tested amount of cannabis would have been approximately $25,000.00.

¶ 76 After hearing all of the evidence submitted in aggravation and mitigation, the trial court sentenced Sotero to 15 years' imprisonment on counts 1 and 8 of the indictment, with the sentences to run concurrently. The trial court also imposed a street value fine of $100,000.00. Counts 2 through 7 merged with count 1. The trial court sentenced Ruben to 14 years' imprisonment on counts 1 and 8, with the sentences to run concurrently. The trial court also imposed a street value fine of $100,000.00 on Ruben. Counts 2 through 7 merged with count 1. In imposing the sentence, the trial court noted that it found the defendants to be key players in the offense, although the evidence suggested that Ruben's role was slightly less than Sotero's.

¶ 77 Following an unsuccessful motion to reconsider the sentence, the defendants filed this timely appeal.

¶ 78 ANALYSIS

¶ 79 On appeal, the defendants argue that the trial court erred in denying their motion to suppress evidence, the State failed to prove them guilty beyond a reasonable doubt, and their sentences are excessive. We address each of their contentions in turn but hold that none of them warrant reversal.

¶ 80 Motion to Suppress

¶ 81 The defendants first argue on appeal that the trial court erred in denying their motion to suppress, because the officers involved had sufficient time to obtain a search warrant before the "raid" of the warehouse property and because the search was not otherwise justified by exigent circumstances or the plain-view doctrine. We conclude that the trial court did not err in denying the defendants' motion to suppress because the officers' initial entry onto the warehouse

property was justified by exigent circumstances, and the cannabis was discovered in plain view during the officers' protective sweep of the premises following their entry.

¶ 82 We use a two-part standard in reviewing a trial court's decision on a motion to suppress. First, we review the trial court's findings of fact for clear error; in other words we may reject the trial court's factual findings only if they are against the manifest weight of the evidence. *People v. Harris*, 228 Ill. 2d 222, 230 (2008). In doing so, we must be mindful to give due weight to any inferences the trial court might have drawn from the facts. *Id.* Second, as the reviewing court, we may draw our own conclusions as to what relief should be granted based on the established facts as they relate to the issues presented. *Id.* Accordingly, we review *de novo* the trial court's ultimate decision on whether suppression is warranted. *Id.* In reviewing the propriety of the trial court's ruling on a motion to suppress, we may take into consideration evidence presented at trial, and we may affirm the trial court's decision on any basis supported by the record. *People v. Ward*, 371 Ill. App. 3d 382, 413-14 (2007).

¶ 83 The fourth amendment of the United States Constitution, which applies to the states through the fourteenth amendment to the United States Constitution, protects the right of people to be free from unreasonable searches and seizures. *People v. Krinitsky*, 2012 IL App (1st) 120016, ¶ 28. This right to be free from unreasonable searches and seizures extends beyond one's home and to the commercial property of a business owner or operator. *New York v. Burger*, 482 U.S. 691, 699 (1987). Searches or seizures performed without a warrant are presumed unreasonable, absent an applicable exception to the warrant requirement. *Kentucky v. King*, 563 U.S. 452, 459.

¶ 84 One of the exceptions to the warrant requirement is the presence of exigent circumstances that render reasonable the warrantless entry onto private property to effectuate an arrest. Courts have considered the following factors in determining whether such exigent circumstances exist:

> "whether[] (1) the crime under investigation was recently committed; (2) there was any deliberate or unjustified delay by the police during which time a warrant could have been obtained; (3) a grave offense was involved, particularly a crime of violence; (4) there was reasonable belief that the suspect was armed; (5) the police officers were acting on a clear showing of probable cause; (6) there was a likelihood that the suspect would escape if he was not swiftly apprehended; (7) there was strong reason to believe the suspect was in the premises; and (8) the police entry was made peaceably, albeit nonconsensually."

People v. McNeal, 175 Ill. 2d 335, 345 (1997). These factors are merely guidelines and are not to be applied rigidly in every case. *Id.* Rather, the guiding principle is reasonableness, which must be determined by looking at the totality of the circumstances facing the officers at the time the entry was made. *Id.* at 345-46. Such circumstances should militate against delay and justify the officers' decision to proceed without a warrant. *Id.* at 346.

¶ 85 Addressing each of the factors in turn, we conclude that exigent circumstances existed, such that the officers' entry onto the warehouse property was reasonable and justified. First, the crime under investigation had just been committed. The defendants and their associates were in the process of loading the vans with cannabis for distribution at the time that the officers made entry onto the warehouse property.

¶ 86 Second, the officers were acting on a clear showing of probable cause. At the time Horton—the first officer to enter the warehouse property—made entry, the officers had observed a semi-truck deliver six storage pods, which were unloaded in the dark in the early morning

hours and in an unsafe, amateurish manner. They also observed three separate cargo vans backed into the warehouse for varying periods of time, while the defendants canvassed the warehouse lot. They conducted an investigatory stop of one of those vans, and a narcotics canine alerted on the van for the presence of cannabis. They observed the occupants of the warehouse property begin to flee upon the discovery of the police presence, and, finally, they observed two bales of plant material inside the warehouse. These facts were more than sufficient to establish probable cause for the arrests of the defendants and their associates.

¶ 87 Next, there was most certainly a likelihood that the defendants and their associates would have escaped if not swiftly apprehended. All were attempting to flee the premises at the time that they were arrested. In fact, Ruben and Calderone were caught while scaling the exterior fence of the warehouse property, most likely in an attempt to escape in the same manner as their gray-shirted cohort was able to do. The officers also had strong reason to believe that the defendants and their associates were on the premises, because all of them had been seen in the previous few hours on the warehouse property.

¶ 88 Most of the remaining factors do not apply—this was not a crime of violence, there was no evidence suggesting the officers believed at the time that the defendants or their associates to be armed, and an officer scaling a fence amidst the chaos of fleeing men does not clearly qualify as a peaceable entry. The final factor—whether there was a deliberate or unjustified delay by police in which they could have obtained a warrant—does not cut clearly one way or the other. Although the evidence does support a conclusion that the officers did, in fact, choose to forego obtaining a warrant sooner, the United States Supreme Court's decision in *King*—discussed more fully below—indicates that officers are under no obligation to obtain a warrant at the earliest possible moment and that law enforcement might have valid reasons for refraining from

immediately obtaining a warrant. Moreover, once the defendants and their associates began to flee, the officers were no longer in a position to obtain a search warrant before all of the men escaped. Even assuming, however, as the defendant's argue, that the officers' failure to obtain a warrant sooner was unjustified, we nevertheless conclude that, in this case, those factors that militate in favor of a finding of exigent circumstances significantly outweigh all of the other factors. Accordingly, exigent circumstances existed justifying the officers' entry onto the warehouse property in order to effectuate the arrests of the defendants and their associates.

¶ 89 The defendants argue that the exigent circumstances exception should not apply in this case because the officers created the exigency by "plann[ing] to converge on the Kolmar address without securing a search warrant" and by making "unnecessary noise" during the attempt to stop the incorrect van, thereby alerting the defendants and creating the commotion that followed. First, the accusation that the officers intended all along to "converge" on the warehouse property without obtaining a search warrant is mere speculation on the part of the defendants and unsupported by anything in the record. Although it is undisputed that the officers did not attempt to obtain a warrant prior to their entry onto the warehouse property, all testimony from the officers was that they intended to stop the Savannah, confirm the presence of cannabis, secure the premises, and obtain a warrant. The defendants offered no evidence to the contrary, and the trial court found Keating's testimony extremely credible. See *People v. Sorenson*, 196 Ill. 2d 425, 431 (2001) (the trial court's factual determinations and credibility assessments are given deference because the trial court is "in a superior position to determine and weigh the credibility of witnesses, observe the witnesses' demeanor, and resolve conflicts in the witnesses' testimony"). Second, the only evidence presented regarding the attempted stop of the wrong van is that it was a mistake and that it was not supposed to happen. Again, the defendants offered

nothing to contradict this evidence by the State, other than unsupported allegations that it was an intentional ploy intended to smoke the defendants out of the warehouse property. Accordingly, we have no basis on which to disturb the trial court's factual finding that the sirens and screeching tires were the unintentional result of a miscommunication.

¶ 90 Moreover, the United States Supreme Court has held that police create an exigency when they engage or threaten to engage in conduct that violates the fourth amendment. *King*, 563 U.S. at 462. "[C]ourts require something more than mere proof that fear of detection by the police caused the destruction of evidence. An additional showing is obviously needed because, as the Eighth Circuit has recognized, 'in some sense the police always create the exigent circumstances.' " *Id.* at 461, quoting *United States v. Duchi*, 906 F.2d 1278, 1284 (8th Cir. 1990).

¶ 91 In *King*, an officer in pursuit of a suspected drug dealer lost sight of the man when the man entered an apartment. The officer did not see which apartment the man went into, but knew it was one of two doors. From one of the doors, the officer could smell the odor of marijuana smoke. Officers approached the door and banged on it, announcing their station. Once the officers started banging on the door, they could hear people moving things inside, causing them to believe that drug-related evidence was being destroyed. The officers then kicked in the apartment door and found the defendant, along with drugs and drug paraphernalia. *King*, 563 U.S. at 456-57. The defendant argued that the officers created the exigency by knocking on the door of the apartment and announcing their station. *Id.* at 468. The Supreme Court held that the officers did not create the exigency by knocking on the door, because they did not gain entry by means of an actual or threatened violation of the fourth amendment. *Id.* at 469. In fact, the Supreme Court went on to specifically state that "the exigent circumstances rule applies when

the police do not gain entry to premises by means of an actual or threatened violation of the Fourth Amendment." *Id.* at 469.

¶ 92 Likewise, in this case, the officers did not gain entry to the warehouse property by violating or threatening to violate the defendants' fourth amendment rights prior to the officers' entry onto the warehouse property. The officers gained entry because the defendants and their associates became frightened by the officers' attempts to stop vehicles associated with the activities occurring on the warehouse property—traffic stops that neither of the defendants contends were violations of the fourth amendment. The fact that the defendants had a negative reaction to the police presence outside of the warehouse property does not make the officers' actions unlawful.

¶ 93 Having concluded that exigent circumstances existed to justify the officers' entry onto the warehouse property to effectuate the arrests of the defendants and their associates, we turn now to the question of whether the officers were justified in their warrantless seizure of the cannabis. According to the evidence presented at the hearing on the motion to suppress and at trial, cannabis was discovered inside the Savannah stopped outside the warehouse property, inside the warehouse, and inside the Express van parked in the warehouse yard. The defendants did not seek to suppress any of the cannabis recovered from the Savannah. Upon reviewing the record, we conclude that the record supports the conclusion that the cannabis found inside the warehouse and the Express were found in plain view as the officers effectuated the arrests of the defendants and their associates and conducted a protective sweep of the premises.

¶ 94 The plain view doctrine permits the seizure of evidence discovered by an officer who, although not looking for evidence against the defendant, inadvertently comes across the incriminating object. *Coolidge v. New Hampshire*, 403 U.S. 443, 466 (1971). For a seizure

under the plain view doctrine to be justified, three requirements must be met: "(1) the officer must be lawfully present in the location from which he can plainly see the evidence; (2) it must be 'immediately apparent' that the object in plain view is evidence; and (3) the officer must have a lawful right of access to the object itself." *People v. Pierini*, 278 Ill. App. 3d 974, 977 (1996).

¶ 95 The evidence indicates that after the defendants and their associates began to flee the warehouse property, Ruben and Calderon were arrested by Keating just outside the north fence of the property. Sotero, Salvador Lopez, and Munoz were arrested by Horton just inside the south, interior gate to the north portion of the warehouse property. An unidentified individual in a gray shirt escaped over the railroad tracks on the north side of the property, and Marquez was, of course, detained during the stop of the Savannah. Thus, after everyone else had been accounted for, the whereabouts of Saucedo remained unknown.

¶ 96 Although the defendants claim that the warehouse property was secure before any search of the warehouse was conducted, Horton testified at trial that upon entering the warehouse property, the door to the warehouse was open, and he did not know whether there was anyone else inside the warehouse. In addition, Keating testified that Gomez entered the warehouse in order to look for any additional people that might be inside and to secure the scene. Ultimately, Saucedo was found in the yard hiding behind an oil tank. Accordingly, although it appears that the warehouse property was secure—or at least close to it—by the time Keating finally entered it, nothing in the record suggests that it was secure before the officers entered the warehouse building.

¶ 97 When Keating arrived at the scene, there were numerous bundles of suspected cannabis lying around the warehouse—97 in the Econoline parked in the warehouse, 2 on the warehouse floor next to the Econoline, 12 on the warehouse floor next to one of the storage pods, 79 in one

open storage pod and 65 in another, and 32 on the warehouse floor at the rear of the warehouse. Although Keating testified that he did not know who opened the storage pods, he testified that they were open and *unlocked* when he arrived, suggesting that they had not been forcibly opened by officers using crowbars or other means. In addition, Calderon testified that he had the keys to the storage pods at the time of his arrest outside the warehouse fence, thereby making it impossible for the pods to have been unlocked by an officer prior to Keating's arrival.

¶ 98 Here, the first and third requirements of the plain view doctrine are both satisfied on two bases. First, as discussed, the officers were justified in entering the warehouse property on the basis of exigent circumstances to effectuate the arrests of the defendants and their associates. See *id.* at 979 (exigent circumstances gave officer lawful right to access the evidence). Because Saucedo remained unaccounted for after the arrests of the defendants, Calderon, Salvador Lopez, and Munoz, the police, acting on the same exigent circumstances that justified their entry onto the premises to arrest the others, were justified in continuing to look for Saucedo, including in the warehouse and Express parked in the warehouse yard. Given the placement of the bundles of cannabis around the warehouse floor, in open storage pods, and in vans, any respectable search for Saucedo would have resulted in the officers' inadvertent discovery of the contraband.

¶ 99 Likewise, Saucedo's absence, the fact that multiple people had been seen coming and going from the warehouse property over the previous 24 hours, the officers' belief that they were observing the receipt and distribution of a large quantity of cannabis, and the fact that it was unknown who, if anyone, remained on the premises after the officers entered the property, justified the officers in conducting a protective sweep of the warehouse property. To protect officers' interest in making sure that other people do not launch an unexpected attack, officers may, incident to an arrest, conduct a protective sweep, *i.e.*, a quick and limited search of the

premises to insure officer safety. *Id.* at 979-80. This search, however, must be limited to a cursory visual inspection of those places in which a person may be hiding and may last only so long as necessary to dispel the reasonable suspicion of danger. *Id.* at 980. Certainly, the warehouse, the Econoline within it, and the Express parked in the warehouse yard are all places from which Saucedo or some other individual could have launched an attack on the officers and, thus, the officers' inspection of them fall within the scope of a protective sweep. As with a search for Saucedo to effectuate his arrest, any protective sweep worth its salt would have necessarily resulted in the discovery of the cannabis piled about the warehouse floor and stacked in the open storage pods and vans.

¶ 100 Because the officers were lawfully present at the places where they viewed the cannabis and because they had a lawful right of access to the cannabis, the only remaining question is whether it was "immediately apparent" that the cannabis was evidence. We conclude that it was. The officers observed bales and bundles of compressed plant material wrapped in green cellophane, a strong odor of raw cannabis emanated from the warehouse, and the officers were in the process of investigating a tip from a confidential informant that a large shipment of cannabis would be arriving. Taken together, we cannot imagine a situation under which it would not have been "immediately apparent" to any reasonable officer that the bales and bundles discovered in the warehouse and the Express were evidence.

¶ 101 In sum, we conclude that exigent circumstances justified the officers' entry onto the warehouse property and that those same exigent circumstances, along with the need to preserve officer safety through a protective sweep, justified the officers' further entry into the warehouse and Express van in search of Saucedo and any other suspects. During that search, the officers would not have been able to avoid discovering the massive amounts of cannabis in the

warehouse (on the floor, in the open pods, and in the Econoline van) and Express van, such that the seizure of that cannabis was justified under the plain view doctrine.

¶ 102 Finally, the defendants argue that the trial court should have granted their motion to suppress because the officers had sufficient probable cause and opportunity to obtain a search warrant prior to their "raid" on the warehouse lot. In making this argument, the defendants thoroughly explain their position that the officers had sufficient probable cause to justify the issuance of a search warrant once they observed the arrival and unloading of the semi-truck at the warehouse. In doing so, the defendants attempt to disprove the trial court's position that confirmation that the delivered material was cannabis was necessary prior to the issuance of a search warrant.

¶ 103 What the defendants do not do, however, is cite any authority in support of their contention that officers are required to seek a search warrant immediately upon receipt of the bare minimum of evidence necessary to support a finding of probable cause. See Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008) (requiring the appellant's brief to include "[a]rgument, which shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on"); see also *People v. Macias*, 2015 IL App (1st) 132039, ¶ 88 ("Contentions supported by some argument, but no authority do not meet the requirements of Supreme Court Rule 341(h)(7)."). Rather, in the cases cited by the defendants, any references to delays by officers in obtaining warrants were made only as a single factor in assessing whether there existed exigent circumstances to justify the warrantless search, not as a bright-line rule under the fourth amendment. See, e.g., *Krinitsky*, 2012 IL App (1st) 120016, ¶ 30; *People v. Wilson*, 86 Ill. App. 3d 637, 643 (1980).

¶ 104 In any case, the Supreme Court of the United States has rejected any requirement that officers must seek a search warrant at the earliest possible time. *King*, 563 U.S. at 467 ("Faulting the police for failing to apply for a search warrant at the earliest possible time after obtaining probable cause imposes a duty that is nowhere to be found in the Constitution."). The Supreme Court identified numerous reasons why officers might not seek a search warrant immediately, but those of potential relevance here are as follows:

> "Third, law enforcement officers may wish to obtain more evidence before submitting what might otherwise be considered a marginal warrant application. Fourth, prosecutors may wish to wait until they acquire evidence that can justify a search that is broader in scope than the search that a judicial officer is likely to authorize based on the evidence then available. And finally, in many cases, law enforcement may not want to execute a search that will disclose the existence of an investigation because doing so may interfere with the acquisition of additional evidence against those already under suspicion or evidence about additional but as yet unknown participants in a criminal scheme."

Id. Accordingly, the defendants' contention that the trial court should have granted their motion to suppress simply because the officers had sufficient probable cause to obtain a search warrant prior to entering the warehouse property fails.

¶ 105 Because the officers were not required to obtain a search warrant at the earliest possible moment—even assuming they had sufficient probable cause to obtain a warrant upon delivery of the storage pods—and because the officers were justified in their entry onto the warehouse property and the cannabis was discovered in plain view during that justified entry, we conclude that the trial court did not err in denying the defendants' motion to suppress.

¶ 106 Sufficiency of the Evidence

¶ 107 Next, both Sotero and Ruben argue that the State failed to prove them guilty beyond a reasonable doubt of possession of cannabis with the intent to deliver. More specifically, both defendants argue that the State failed to prove that they knowingly possessed the cannabis. The record, however, contains sufficient evidence from which the trial court could have found the defendants guilty.

¶ 108 In a challenge to the sufficiency of the evidence, we will not reverse a criminal conviction unless the evidence "is so improbable or unsatisfactory that it creates a reasonable doubt as to the defendant's guilt." *People v. Moore*, 2015 IL App (1st) 140051, ¶ 19. The question we are charged with answering is whether, when viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48. It is not our function to retry the defendant and we must remember that it is the trier of fact's province to assess credibility and assign the appropriate weight to the testimony. *People v. Maldonado*, 2015 IL App (1st) 131874, ¶ 18. All reasonable inferences are to be made in favor of the State, but where the record supports conflicting inferences, the resolution of the conflict is best left to the trier of fact. *People v. Jones*, 2014 IL App (3d) 121016, ¶ 19.

¶ 109 Section 5 of the Act makes it unlawful for a person to knowingly possess cannabis with the intent to deliver. 720 ILCS 550/5. To sustain a conviction for this offense, the State must prove the following elements: (1) the defendant had knowledge of the presence of cannabis; (2) the cannabis was in the defendant's immediate possession or control; and (3) the defendant intended to deliver the cannabis. *People v. Bui*, 381 Ill. App. 3d 397, 419 (2008). The

defendants contest only the sufficiency of the evidence presented on the first two elements—their knowledge of the cannabis and their possession or control over the cannabis.

¶ 110 With respect to their knowledge of the cannabis, both argue that the State failed to prove that they knew that the storage pods and cellophane bundles contained cannabis, because there was no evidence that either of the defendants opened or looked into any of the storage pods, loaded the vans, looked in the vans, or otherwise would have known of the contents of the storage pods or cellophane bundles. In circumstances such as these, knowledge is rarely susceptible to direct proof and must, instead, be established by circumstantial evidence, *i.e.*, "evidence of acts, statements or conduct of the defendant, as well as the surrounding circumstances, which supports the inference that he knew of the existence of narcotics at the place where they were found." *Id.*

¶ 111 Here, the State presented sufficient evidence from which a reasonable trier of fact could have found that the defendants knew that the cellophane bales and bundles contained cannabis. First, both defendants entered the warehouse as each van was backed into the warehouse and once again 15 minutes after the Econoline van entered the warehouse. Given the vast number of bales and bundles found lying around the warehouse when the police entered a short time later, the trial court could have found that there would have been insufficient time for all of the bales to have been removed from the storage pods between the time the defendants made their final exit from the warehouse and the time that the police entered the property, such that it could have reasonably been inferred that the bales were unloaded and lying around the warehouse in plain view while the defendants were inside. Second, multiple officers testified regarding the overwhelming cannabis odor emanating from the warehouse and the Savannah van. If this odor was as overwhelming and as immediately noticeable as the officers claimed—and there was no

evidence presented to the contrary—the defendants could not have avoided it on the numerous occasions they entered the warehouse.

¶ 112 Moreover, the defendants' secretive and furtive behavior, coupled with their subsequent flight from police strongly suggests they were both aware of the illegal nature of the cellophane-wrapped plant material. See *People v. Ingram*, 389 Ill. App. 3d 897, 901 (2009) (the defendant's flight from the car supported the inference that he possessed the gun found in the car). During their first trip to the warehouse property, when Sotero moved the forklifts into place, Sotero and Ruben reacted to police presence outside of the property by turning off the warehouse yard light and looking out the fence slats at the outside activity and then ceasing any further activity on the property. During the process of loading the vans, the defendants walked around the warehouse yard in a manner that was described by Luce as "canvassing" the yard. When screeching tires and sirens alerted Sotero to the presence of the police outside the warehouse property, he returned to the warehouse, calling "policia, policia," which caused all of the other men inside and outside the warehouse—including Ruben—to attempt to flee the premises. Ruben in particular went to the extent of scaling the north fence in an effort to escape capture. In the meantime, Sotero attempted to close the warehouse door, which could be interpreted as an attempt to hide evidence of the illicit activity taking place inside the warehouse.

¶ 113 With respect to Sotero only, he participated in unloading the storage pods. While that alone does not prove his knowledge of the pods' contents, the fact that the pods were unloaded in the dark, early morning hours by the light of only a flashlight suggests that the men did not want to draw attention to their activities.

¶ 114 Taken together, there was more than sufficient evidence for the trial court to reasonably conclude that the defendants had knowledge of the presence of cannabis on the warehouse property.

¶ 115 The defendants also argue that the State failed to prove that they possessed any control over the warehouse property where the cannabis was found, and Ruben additionally contends that the State did not present any evidence that he had any control or interest in the cannabis specifically. As discussed above, one of the elements the State must prove to sustain a conviction for possession of cannabis with the intent to deliver is that the defendant possessed or controlled the cannabis at issue. Possession can be actual or constructive. Actual possession occurs when the defendant exercises present personal dominion of the cannabis. *People v. Schmalz*, 194 Ill. 2d 75, 82 (2000). Constructive possession, on the other hand, does not require actual personal present dominion over the cannabis, but instead requires "an intent and capability to maintain control and dominion" over the cannabis. *People v. Frieberg*, 147 Ill. 2d 326, 361 (1992).

¶ 116 The defendants' contention that the State failed to prove them guilty beyond a reasonable doubt because it did not present evidence that the defendants controlled the warehouse property fails because although a defendant's control over the premises where narcotics are found gives rise to the inference that the defendant had the requisite knowledge and possession of the narcotics (*id.*), control of the premises where the narcotics are found is not a necessary element of constructive possession (*People v. Tates*, 2016 IL App (1st) 140619, ¶ 20). "A defendant's lack of control of the premises will not preclude a finding of guilt if the circumstantial evidence supports an inference that the defendant intended to control the contraband inside." *Id.* Accordingly, even if the defendants are correct in their claim that the State did not present any

evidence of their control over the warehouse property, that failure would not necessarily be sufficient grounds on which to reverse the defendants' convictions.

¶ 117 The relevant question is whether the defendants intended and had the capability to maintain control and dominion over the cannabis at issue. Here, there was more than sufficient evidence to permit the trial court to make such a finding as to both defendants. Officers observed Sotero speaking with the semi-truck driver who delivered the storage pods and directing the semi in backing into the warehouse property. Immediately prior to the unloading of the semi-truck, Sotero was observed calling a meeting of all the individuals on site, during which time, Sotero spoke to all the men. Although the officers did not learn the content of what Sotero told the men, after Sotero finished speaking, all of the men proceeded to play their respective parts in the unloading of the semi-truck, allowing a trier of fact to reasonably conclude that Sotero had directed the men in the unloading of the storage pods. Sotero operated the forklift used to offload each of the six storage pods—which the trial court could reasonably infer contained all of the cannabis later discovered in the warehouse and the vans—from the semi and placed them into the warehouse one by one.

¶ 118 When everyone—including both defendants—returned to the warehouse property later that day, as each van was backed into the warehouse, the defendants entered the warehouse for periods of time ranging from a couple of minutes to up to approximately 25 minutes. Although none of the testifying officers were able to say what, exactly, the defendants did while in the warehouse, the timing of their entry into the warehouse each time a van was backed in and the fact that each van was filled with cannabis when it exited the warehouse reasonably suggests that the defendants' entry into the warehouse served some purpose in facilitating the loading and distribution of the cannabis. After each van was backed in, the defendants proceeded to exit the

warehouse and "canvass" the warehouse yard, looking around. Sotero had a rope or whip in his hand while he canvassed the yard, and Luce testified that Sotero paid special attention to the south, interior gate.

¶ 119 Finally, officers observed Sotero speaking with Marquez before Marquez drove the Savannah van off the warehouse property. During that conversation, Sotero pointed to the south gate, after which Sotero opened the gate and Marquez drove the Savannah van out. Sotero then again locked the gate.

¶ 120 From this evidence, there can be no question that Sotero exercised an intent to maintain control and dominion over the cannabis. Although the cannabis was not in his presence at all times, the trial court could easily have found that Sotero exercised control and dominion over the cannabis by directing and participating in the unloading of the storage pods, monitoring the loading of the cannabis into the vans, guarding the warehouse property—and thus the cannabis—against outsiders by patrolling the warehouse yard, and controlling entry and exit from the south, interior gate.

¶ 121 With respect to Ruben, although the evidence of his intent to exercise to maintain control and dominion over the cannabis is not as great as that against Sotero, there is nevertheless sufficient evidence to sustain his conviction. Specifically, Ruben's repeated entry into the warehouse with Sotero after each van was backed in, like with Sotero, suggests that his presence served some purpose in facilitating the task of loading the vans for distribution as opposed to engaging in idle chit chat with the men performing the actual loading. In addition, Ruben's actions of canvassing the warehouse yard while the vans were being loaded belies his claim that he just happened to be present at the same place where cannabis was located. Instead, Ruben's canvassing indicates that he was facilitating the operation by making sure outsiders—cops or

other strangers—did not come in or detect what was going on inside the warehouse. Certainly, the act of excluding others from accessing the cannabis necessarily indicates an intent and ability by Ruben to exercise control and dominion over the cannabis.

¶ 122 Ruben relies heavily on *Tates* to argue that his mere presence at the warehouse property does not support a finding that he constructively possessed the cannabis. In *Tates*, during the execution of a search warrant, the defendant was found near a dining room table on which clumps of suspected narcotics and packaging materials were found in plain view. *Tates*, 2016 IL App (1st) 140619, ¶ 5. The defendant was not seen touching or holding the contraband, and there was no other evidence presented connecting the defendant to the contraband. *Id.* ¶ 24. Accordingly, this court found that absent additional circumstantial evidence of control, the defendant's knowledge of and presence near the narcotics was insufficient to support a finding of constructive possession. *Id.* ¶ 28.

¶ 123 Ruben contends that even if he knew of the cannabis on the warehouse property, his mere presence on the property is like the mere presence of the defendant in *Tates* near the dining room table—insufficient to support a finding of constructive possession. Ruben's argument fails, however, as a result of his mischaracterization of his activities on the warehouse property. The evidence in *Tates* was only that the defendant was found near the dining room table containing the contraband. There was no other evidence presented about what the defendant was doing at the time he was observed by the officers. In contrast, as discussed above, the evidence presented at trial suggests that Ruben facilitated the process of preparing the cannabis for distribution when he entered the warehouse every time a van was backed in for loading and when he canvassed the warehouse yard while the vans were being loaded. Thus, unlike the defendant in *Tates*, Ruben

was not merely existing in the same general vicinity as the cannabis, but instead actively participating in the overall enterprise.

¶ 124 Although neither of the defendants argues that the possession of the contraband by other defendants somehow negates their exclusive possession, we do note that exclusive possession does not preclude joint possession. So long as all individuals share either immediate and exclusive control or the intention and power to exercise control, then each is deemed to have possession of the contraband. *Schmalz*, 194 Ill. 2d at 82. After all, "[t]o hold otherwise would enable persons to escape criminal liability for possession of contraband by the simple expediency of inviting others to participate in the criminal enterprise." *People v. Williams*, 98 Ill. App. 3d 844, 849 (1981).

¶ 125 In sum, we conclude that the State presented sufficient evidence from which the trial court could reasonably find that both of the defendants knowingly possessed the cannabis at issue.

¶ 126 Sentencing

¶ 127 Finally, the defendants argue that they received excessive sentences because the trial court failed to adequately consider mitigating factors in the defendants' favors and because their sentences were unjustly disparate from those imposed on the co-defendants, who were tried with the defendants. Neither of these arguments has merit.

¶ 128 First, the defendants argue that the trial court failed to consider numerous mitigating factors when imposing the defendants' sentences. More specifically, Sotero argues that the trial court failed to consider his pre-sentence investigation report, his rehabilitation potential, the lack of guns involved in the offense, the fact that no one was injured in the offense, his clean criminal record, and his community, charitable, and family status. Likewise, Ruben argues that the trial

court failed to consider the lack of physical harm or violence involved in the offense, Ruben's "minimal" participation in the offense, his familial and employment status, and his rehabilitation potential. Sotero also takes issue with the fact that the trial court did not elaborate on which mitigating factors did apply, did not specify which of the defendants was likely to re-offend, and did not provide an evidentiary basis for the conclusion that Sotero played a "key role" in the offense. Both defendants request that we reduce their sentences to six years' imprisonment.

¶ 129 Sections 5-5-3.2(a) and 5-5-3.1(a) of the Unified Code of Corrections (730 ILCS 5/5-5-3.2(a) (West 2010); 730 ILCS 5/5-5-3.1(a) (West 2010)) provide extensive lists of factors that should be considered by trial courts in aggravation and mitigation when imposing sentences on criminal defendants. In weighing these factors, the trial court's determination of an appropriate sentence is afforded great deference in light of its superior position of assessing the credibility of the witnesses and the strength of the evidence presented at the sentencing hearing. *People v. Ramos*, 353 Ill. App. 3d 133, 137 (2004). Accordingly, even if we may have balanced the aggravating and mitigating factors differently than the trial court, we will not disturb the sentence imposed by the trial court unless it is "fanciful, arbitrary, or unreasonable to the degree that no reasonable person would agree with it." *Id.* Where the sentence imposed falls within the statutory sentencing guidelines, it is presumed proper. *Id.*

¶ 130 Here, the defendants' sentences fell within the statutory sentencing guidelines for the offenses of which the defendants were convicted and, thus, are presumed proper. See 730 ILCS 5/5-4.5-25(a) (West 2010) (providing for a sentencing range of 6 to 30 years for Class X felonies, such as violations of 720 ILCS 550/5(g)); 720 ILCS 5/5-4.5-30(a) (West 2010) (providing for a sentencing range of 4 to 15 years for Class 1 felonies, such as violations of 720 ILCS 550/5(f)).

¶ 131 The defendants' primary contention—that the trial court did not consider various mitigating factors—must fail because, absent evidence to the contrary, we must presume that the trial court considered all of the mitigating factors presented to it. *Ramos*, 353 Ill. App. 3d at 138. Evidence and argument were submitted to the trial court on all of the mitigating factors that the defendants claim the trial court did not consider, and the defendants have failed to present anything on appeal to overcome the presumption that the trial court considered all of the mitigating evidence before it. Rather, the defendants rely solely on their sentences to support their claims that the trial court must have failed to consider the mitigating evidence. This, however, is not sufficient to rebut the presumption that the trial court considered all of the mitigating evidence presented to it. *Id.* at 138.

¶ 132 Sotero attempts to bolster his contention by arguing that the trial court failed to articulate which mitigating factors applied, did not identify which of the defendants it thought might re-offend, and did not provide a factual basis for its conclusion that Sotero played a "key role" in the offense. Even assuming that all of Sotero's claims are well taken, they are insufficient to justify altering the sentence imposed by the trial court. The trial court is under no obligation to articulate the process by which it determined the appropriateness of the sentence imposed; nor is it obligated to recite the mitigating factors it considered in determining an appropriate sentence. *Id.*

¶ 133 The defendants also argue that because they were not as actively involved in the offense as the co-defendants, their sentences are excessive when compared to those of their co-defendants. As the Fourth District aptly put it:

> "While defendants similarly situated should not receive grossly disparate sentences, equity in sentencing is not required for all participants in the same crime. [Citation.] The

> difference may be justified by the relative character and history of the codefendants, the degree of culpability [citation], rehabilitative potential, or a more serious criminal record. [Citation.] Nor is disparity between the sentences of a defendant who pleaded guilty or one who chose to go to trial automatically suspect [citation], for a trial court may properly grant leniency to the defendant who pleads guilty and thereby insures prompt and certain application of correctional measures, acknowledges his guilt, and demonstrates a willingness to assume responsibility for his conduct. [Citation.] In short, it is not the fact of disparity which controls, but the reason for the disparity."

People v. Foster, 199 Ill. App. 3d 372, 393 (1990).

¶ 134 Although the defendants have provided us with the length of the sentences imposed on their co-defendants by way of citations to the website for the Illinois Department of Corrections (as opposed to citations to the actual sentencing orders), they have failed to provide any record upon which we can review the reasoning of the trial court in imposing the various sentences. Thus, even if we were to assume that the Illinois Department of Corrections' website accurately reflects the sentences imposed on the co-defendants, the absence of the transcripts of the co-defendants' sentencing hearings prevents us from comparing the reasons for the co-defendants' sentences to the reasons for the defendants' sentences. Without a sufficient record, we are unable to consider this issue. See *id.* (concluding that it was unable to review the defendant's contention that he received an unjustly disparate sentence from his co-defendant, where the defendant failed to provide a transcript of his co-defendant's sentencing hearing, thereby preventing the court from comparing the reasons underlying the different sentences).

¶ 135 In sum, we conclude that the defendants have failed to overcome the presumption that their sentences were proper and that the trial court considered all of the mitigating evidence

presented to it. In addition, we are unable to review the defendants' contention that their sentences are unjustly greater than those of the co-defendants, because the defendants failed to present a sufficient record on which we can compare the reasoning for the defendants' sentences to the reasoning for the co-defendants' sentences.

¶ 136 CONCLUSION

¶ 137 For the foregoing reasons, the judgment of the Circuit Court of Cook County is affirmed.

¶ 138 Affirmed.