FIRST DIVISION
January 18, 2011

No. 1-07-1683

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 03 CR 12526
	)	
JERRY WARREN,	)	Honorable
	)	Dennis J. Porter,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hall and Justice Lampkin concurred in judgment.

O R D E R

Held: Defendant's conviction for criminal drug conspiracy was affirmed where the evidence supported the trial court's finding that defendant conspired to the delivery of and possession with intent to deliver a controlled substance. The denial of defendant's motion for a continuance to substitute counsel on the first day of trial was affirmed where the trial court correctly found that the motion was made for purposes of delay. The denial of defendant's motion to suppress was affirmed where the "automobile exception" to the warrant requirement justified the officer's search of defendant's truck.

Defendant, Jerry Warren, appeals his conviction of criminal drug conspiracy. Defendant contends: (1) the circuit court erred in denying his motion on the first day of trial for a continuance to substitute counsel; (2) the circuit court erred in denying his pretrial motion to suppress evidence;

and (3) the State failed to prove him guilty of criminal drug conspiracy beyond a reasonable doubt. We affirm.

The State charged defendant with possession with intent to deliver 100 grams or more but less than 400 grams of a substance containing heroin. 720 ILCS 570/401(a)(1)(B) (West 2002). The State also charged defendant and 10 other persons with criminal drug conspiracy in that they intended and agreed with each other to commit the following offenses in violation of section 401(a)(1)(A), (B), (C), and (D) of the Illinois Controlled Substances Act (720 ILCS 570/401 (a)(1)(A), (B), (C), (D) (West 2002)): delivery of 100 grams or more but less than 400 grams of a substance containing heroin; possession with intent to deliver 100 grams or more but less than 400 grams of a substance containing heroin; delivery of 15 grams or more but less than 100 grams of a substance containing heroin; possession with intent to deliver 15 grams or more but less than 100 grams of a substance containing heroin; possession with intent to deliver 400 grams or more but less than 900 grams of a substance containing heroin; and possession with intent to deliver more than 900 grams of a substance containing heroin.

The criminal drug conspiracy charge against defendant stemmed from a long-term narcotics investigation of Charles Patton and his associates. This investigation led to multiple electronic surveillance orders (wiretaps) on telephones used by Mr. Patton and his employee, Torrick Hall. The State filed a motion, pursuant to *United States v. Santiago*, 582 F. 2d 1128 (7th Cir. 1978), arguing for the admission of co-conspirators' statements at trial. The circuit court granted the *Santiago* motion.

Prior to trial, defendant filed a motion to quash arrest and suppress evidence. At the hearing

on the motion, Lieutenant Robert Grapenthein testified he was the supervisor of Operation Big Man, the narcotics investigation targeting Charles Patton. Lieutenant Grapenthein had been a police officer for 32 years, the majority of which time he spent in narcotics investigations, and he was familiar with the slang and coded language used by narcotics dealers and users. On March 24, 2003, at approximately 6:59 p.m., police intercepted a phone call between Mr. Patton and defendant. During the conversation, defendant informed Mr. Patton, "I'm a rotate with you in the mornin', man. I'm talkin' about all the way." Lieutenant Grapenthein interpreted the statement to mean that the two men were going to meet the following day and take part in a narcotics transaction, at a level higher than they had done in the past.

Lieutenant Grapenthein testified that the following day, March 25, defendant and Mr. Patton engaged in a series of phone calls setting up their meeting. By 1 p.m., they had arranged for defendant to meet with Mr. Patton's colleague, Shawn Jones, at a Starbucks coffee shop in Hyde Park located near a salon where Mr. Patton would be getting his hair braided. Lieutenant Grapenthein directed Officer John Rawski and Officer Homero Ramirez to Hyde Park to conduct surveillance.

Officer Ramirez testified that at approximately 12:55 p.m., he saw defendant drive a black Ford pickup truck to the northwest corner of 53rd and Harper Streets. Thereafter, Mr. Jones approached the vehicle. Defendant got out, and he and Mr. Jones walked to the back of the truck, where defendant pulled out a black plastic bag containing "what appeared to be a rectangular shoe box style box." Then they walked across the street and out of sight. Officer Ramirez turned left onto 53rd Street, where he saw defendant and Mr. Jones standing inside a doorway of a building containing a hair salon.

Officer John Rawski testified he thereafter saw Mr. Jones holding a brown bag under his right arm and walking toward defendant's pickup truck at approximately 1:23 p.m. Mr. Jones entered the passenger seat of the truck, where he remained for approximately 30 seconds. When Mr. Jones exited the pickup truck, he no longer had the brown bag with him. As soon as Mr. Jones exited, defendant drove northbound on Harper's Court.

Officer Rawski testified to his conclusion that Mr. Patton had set up a deal to deliver heroin to defendant, and that Mr. Jones made the delivery in the brown bag. Officer Rawski's conclusion was based on the officers' observations plus the wiretapped phone calls and his knowledge of the entire investigation. On cross-examination, Officer Rawski admitted he never saw what was inside the brown bag.

Officer Daniel Gutierrez testified he was assigned to follow defendant's pickup truck after it left the area of 53rd and Harper Streets. Officer Gutierrez followed the truck as it traveled west on the Eisenhower expressway and exited at First Avenue. The truck eventually turned west on Roosevelt Road and then turned north on Second Avenue, where it pulled over toward the end of the block. Officer Gutierrez was in radio communication with Officer Fryer and Commander Cronin, who pulled up behind the truck on Second Avenue.

Officer Michael Fryer testified that after parking his car behind defendant's pickup truck on Second Avenue, he and Commander Cronin exited their vehicle. Commander Cronin called out to defendant and asked if they could speak to him. Defendant turned around and responded, “Sure.” Commander Cronin informed defendant they were Cook County sheriff officers who were helping the Maywood police department investigate shootings in the area. Officer Fryer testified they falsely

portrayed themselves to defendant as Cook County sheriff officers because they did not want to compromise their investigation of Mr. Patton.

Officer Fryer testified Commander Cronin then inquired whether defendant had any guns on him and defendant said no. Thereafter, Commander Cronin asked defendant if they could look in his pickup truck and defendant gave them permission to do so, responding, "Sure, go ahead." Officer Fryer entered the vehicle and searched the interior. He found a brown plastic bag on the floor located directly behind the center console. The discovery of the brown bag was significant because the surveillance officers in Hyde Park had stated that defendant had been involved in a transaction in which a man brought a brown plastic bag to defendant's pickup truck and then left without the bag. Officer Fryer looked inside of the brown bag and found a closed canister. He opened the lid of the canister and discovered two chunks of an off-white powdery substance that he considered to be suspect heroin. Officer Fryer then closed the canister and put the bag and the canister underneath his jacket. He signaled to Commander Cronin, and the two officers left the scene without placing defendant under arrest.

Officer Fryer denied that he or Commander Cronin ever put their hands on their guns while speaking with defendant. He also denied taking defendant's keys from him.

Commander Cronin testified similarly to Officer Fryer.

Defendant testified that on March 25, 2003, he drove his black Ford pickup truck from Hyde Park to his aunt's residence in Maywood. Defendant parked his vehicle in front of his aunt's home, exited the vehicle, and began walking up the driveway. Two men approached him and identified themselves as officers with the sheriff's department. One of the officers placed his hand on his gun

and ordered defendant to "come here." Then they inquired whether defendant was aware of any shootings in the area and asked him if he possessed any guns. Defendant responded negatively to both questions. Despite his denials, one of the officers took defendant's car keys from his hands and informed defendant, "I'm gonna search your vehicle to see if you have any guns. If you don't have any guns, I'm going to let you go." Defendant testified he did not give the officers permission to search his vehicle and did not voluntarily provide the officers with his car keys. After taking defendant's car keys, the officer then handed the keys to his partner and subsequently ordered defendant to face away from the vehicle during its search. Defendant was permitted to leave after one of the officers stated, "Well, you don't have any guns, so I guess you can go."

Following all the testimony, defendant argued that the officers had no probable cause to search his pickup truck on March 25, 2003. The circuit court determined that the wiretapped phone conversations between defendant and Mr. Patton, coupled with the officers' testimony regarding defendant's transaction with Mr. Jones, established probable cause to search defendant's vehicle. Therefore, the circuit court denied the motion to suppress.

The circuit court proceeded to conduct simultaneous but separate bench trials for defendant and two of his 10 co-defendants, Shawn Jones and Terrance Sanders. Co-defendant Torrick Hall testified as a witness for the State. Mr. Hall testified he was a sophomore in college when he began working for Mr. Patton in the heroin distribution business. Three persons, "Francis," "Abe," and "Eba," supplied Mr. Patton with heroin. Mr. Hall's job was to tape, mix, and bag the heroin and then sell the bags to persons primarily on the west side of Chicago.

Mr. Hall testified that Mr. Patton introduced him to defendant approximately two years

before Mr. Hall's arrest. The prosecutor asked Mr. Hall about defendant's relationship with Mr. Patton, and Mr. Hall replied, "I believe they did business together and they were friends." The prosecutor asked what kind of business they did together, and Mr. Hall responded, "Heroin distribution together. [Defendant] would buy from [Mr. Patton.]" Mr. Hall also testified he had assisted Mr. Patton in delivering heroin to defendant.

Mr. Hall testified that in the early afternoon on March 16, 2003, Mr. Patton came by Mr. Hall's house and picked him up. Mr. Patton drove them to the Shell station at 111th Street, where they were going to meet defendant. As they were driving to the Shell station, Mr. Hall noticed two balls of heroin on the console. Each ball looked like it contained 100 grams of heroin.

Mr. Hall testified they arrived at the Shell station in the afternoon and defendant pulled up sometime later. Defendant entered Mr. Patton's vehicle and they drove away, leaving Mr. Hall behind at the Shell station. Upon their return, defendant got out and Mr. Hall entered Mr. Patton's vehicle. Mr. Hall and Mr. Patton then drove to Mr. Hall's house. Along the way, Mr. Hall observed that the two balls of heroin were gone and that there was approximately $8,000 on the console. Mr. Hall testified the $8,000 had come from defendant.

Mr. Hall testified to a series of phone calls that occurred on March 24 and March 25, 2003. Mr. Hall recognized the voices on the phone call of March 24, 2003, as belonging to defendant and Mr. Patton. During that phone call, defendant told Mr. Patton, "I'm a rotate with you in the mornin', man. I'm talkin' about all the way." During the March 25, 2003, phone calls, Mr. Patton told defendant to meet him in Hyde Park, and he gave defendant directions to a Starbucks coffee shop. In another phone call on March 25, 2003, Mr. Patton told Sean Jones to "go stand in front of

Starbucks so he can see you and bring him upstairs for me." Mr. Jones also set up a hair braiding appointment for Mr. Patton that same day.

Officer Ramirez and Officer Rawski testified similarly to their testimony at the hearing on the motion to suppress regarding defendant's meeting with Mr. Jones in Hyde Park. Officer Ramirez described how Mr. Jones approached defendant in his pickup truck, after which they went to the back of the truck where defendant retrieved a black plastic bag. Defendant and Mr. Jones then entered a doorway to a building at 1459 East 53rd Street that contained a store and a hair salon. Officer Rawski testified about Mr. Jones entering defendant's pickup truck with a brown bag and exiting after 30 seconds without the brown bag.

Commander Cronin and Officer Fryer testified similarly to their testimony at the hearing on the motion to suppress regarding their encounter with defendant in Maywood and their recovery of a canister with two large rocks of suspect narcotics from his pickup truck. The parties stipulated that the contents of the two large rocks tested positive for heroin and weighed 195.3 grams.

Commander Cronin identified recordings of two phone calls from March 25, 2003. In the first phone call, defendant told Mr. Patton "[t]hey took the motherf***ing paint, man." In the second phone call, defendant again complained to Mr. Patton about the officers taking his "paint." Lieutenant Grapenthien testified the term "paint" referred to the heroin seized from defendant's pickup truck.

Mr. Hall testified that on March 25, 2003, he brought a black bag to Anthony Scott Wilson, a friend of Mr. Patton's wife, Inita. Mr. Wilson testified that on March 27, 2003, he rented a storage locker with Mrs. Patton. Mr. Wilson unloaded boxes into the locker, including a box containing the

black bag. On May 2, 2003, Mr. Wilson and Mr. Patton put more items in the locker. At one point, Mr. Patton asked where the "music" was. Mrs. Patton told him it was in the box with the black bag. Mr. Patton ripped the tape off the box, took a yellow envelope out of the black bag, and took the envelope with him. Then they drove to Mr. Hall's house. Mr. Hall testified Mr. Patton dropped off a small cell phone box with him that morning. The cell phone box contained 900 grams of heroin.

On May 8, 2003, police officers executed multiple search and arrest warrants in relation to their investigation of Mr. Patton's heroin distribution business. Police arrested Mr. Hall in his sister's apartment. The parties stipulated Detective Patrick Ford would testify he recovered a yellow strip of tape containing 250 tinfoil packets from Mr. Hall's pocket. The contents of 170 of the 250 tinfoil packets tested positive for heroin, weighing 15.3 grams. In a kitchen closet, officers recovered colored tapes, sifters, mix and other narcotics paraphernalia. Officers also recovered nine bags of powder, which tested positive for heroin with a total weight of 725.7 grams.

Officers took Mr. Hall to his house in Dolton. Officer Whitmore testified he found a golf bag in the garage that contained two clear plastic bags with a white powder inside. The golf bag also contained two bundles of tinfoil packets. One bundle contained 302 tinfoil packets and the other bundle contained 200 tinfoil packets. The contents of the plastic bags and the tinfoil packets tested positive for heroin with a total weight of 165.1 grams. Officers also recovered a nine-millimeter handgun in a closet and two safes containing approximately $39,000 in cash.

Special Agent Christopher Carlson of the Internal Revenue Service, who was working in conjunction with the Chicago police department on the narcotics investigation, eventually discovered the storage locker rented by Anthony Wilson and Inita Patton. After obtaining a search warrant,

Special Agent Carlson opened the locker with a key recovered from the Pattons' dining room table and discovered a black bag inside. The bag contained 63 plastic bags of suspect narcotics. Of these, 16 bags were tested. The contents of those 16 bags tested positive for heroin and weighed 1,576.1 grams.

Officer Daniel Jensen testified he arrested defendant on May 8, 2003, outside of his apartment building. Officers went with defendant inside his apartment so that he could retrieve some clothes. Officer Jensen did not observe any drugs or drug paraphernalia inside the apartment. The officers transported defendant to the police station.

Commander Cronin testified he met with defendant at approximately 10 p.m at the police station on the day of his arrest. Commander Cronin informed defendant of his *Miranda* rights, and defendant agreed to speak with him. Defendant admitted to Commander Cronin that he had bought heroin two or three times from Mr. Patton at his residence at 440 Wabash Avenue. In each instance, defendant informed the doorman he was there to see Mr. Patton, after which defendant entered and retrieved the heroin from Mr. Patton's apartment. Defendant admitted he resold the heroin "by weight," meaning "in grams instead of bags." Defendant told Commander Cronin that persons who break the heroin down into bags and sell at the street level make more money but also get in more trouble. Defendant also stated that when Commander Cronin and Officer Fryer took the heroin from his truck on March 25, 2003, he knew "the heat or the trouble was with [Mr. Patton] because he has been messing around the street like that."

Following all the testimony, the circuit court convicted defendant of criminal drug conspiracy, finding that the State had proved the multiple objects of the conspiracy: (1) the delivery

of and possession with intent to deliver 100 grams or more but less than 400 grams of a substance containing heroin; (2) the delivery of and possession with intent to deliver 15 grams or more but less than 100 grams of a substance containing heroin; (3) possession with intent to deliver 400 grams or more but less than 900 grams of a substance containing heroin; and (4) possession with intent to deliver more than 900 grams of a substance containing heroin. The most serious of these underlying offenses was possession with intent to deliver more than 900 grams of a substance containing heroin, which carries a sentence of not less than 15 years and not more than 60 years in prison. See 720 ILCS 570/401(a)(1)(D) (West 2002). The circuit court sentenced defendant to 20 years' imprisonment. See 720 ILCS 570/405.1(c) (West 2002) (a term of imprisonment imposed for criminal drug conspiracy "shall be not less than the minimum nor more than the maximum provided for the offense which is the object of the conspiracy.") Defendant filed this appeal.

First, defendant contends the circuit court erred in denying his request on the first day of trial for a continuance to allow him to substitute Steven Greenberg as new counsel. Specifically, defendant asserts that the circuit court's denial constituted an abuse of discretion because his request was not an attempt to delay trial proceedings or thwart justice; rather, it stemmed from his dissatisfaction with his private counsel, Steven Muslin, who had been representing him in these criminal proceedings. In addition, he argues the continuance would have only constituted a slight inconvenience to the court.

The sixth amendment of the United States constitution guarantees criminal defendants the right to counsel. U.S. Const., amend. VI. ("In all criminal prosecutions, the accused shall enjoy the right * * * to have the Assistance of Counsel for his defence"); see also Ill. Const. 1970, art. 1, § 8

("In criminal prosecutions, the accused shall have the right to appear and defend in person and by counsel.") Moreover, "[t]he right to retained counsel of *one's choice* 'has been regarded as the root meaning of the constitutional guarantee' in the sixth amendment." (Emphasis added). *People v. Tucker*, 382 Ill. App. 3d 916, 919 (2008), quoting *United States v. Gonzalez-Lopez*, 548 U.S. 140, 147-48 (2006). Although the right to counsel of one's choice is fundamental, this right is not absolute and may be limited. *Tucker*, 382 Ill. App. 3d at 920. A defendant cannot invoke his fundamental right to counsel of his choice and seek a continuance as a means to delay trial and thwart the effective and efficient administration of justice. *Tucker*, 382 Ill. App. 3d at 920. Accordingly, the circuit court must balance a defendant's fundamental right to counsel of his choice against judicial effectiveness, and the outcome of a defendant's motion ultimately depends upon the unique facts and circumstances present in each case. *Tucker*, 382 Ill. App. 3d at 920. In examining a circuit court's ruling on a defendant's request for a continuance, reviewing courts will consider several factors: the defendant's diligence, the defendant's right to a fair, speedy and impartial trial, and the interests of justice. *People v. Segoviano*, 189 Ill. 2d 228, 245 (2000). A circuit court's decision to grant or deny a defendant's request for a continuance to permit the substitution of counsel is a matter of discretion and, accordingly, its ruling on such a request will not be disturbed absent an abuse of that discretion. *Segoviano*, 189 Ill. 2d at 245.

Defendant cites several cases, *People v. Bingham*, 364 Ill. App. 3d 642 (2006), *People v. Young*, 207 Ill. App. 3d 130 (1990), *People v. Washington*, 195 Ill. App. 3d 520 (1990), and *People v. Payne,* 46 Ill. 2d 585 (1970), in support of his argument that the circuit court abused its discretion in denying his motion for a continuance to substitute counsel on the date set for simultaneous but

separate bench trials for defendant, Shawn Jones, and Terrance Sanders. In each of the cases cited by defendant, the reviewing court found that the circuit court abused its discretion in the denial of such a motion for a continuance to substitute counsel on the day of trial. Specifically, in *Bingham*, the appellate court found an abuse of discretion where the case had only been pending three months, where there was no indication of any prior attempt by the defendant to delay the proceedings or that the purpose of the motion was dilatory, and where the circuit court failed to conduct an inquiry into the circumstances and purposes of the motion for a continuance. *Bingham*, 364 Ill. App. 3d at 645. In *Young*, the appellate court found an abuse of discretion where the circuit court failed to conduct an adequate inquiry into how prepared new counsel was for trial and of how lengthy a continuance was needed. *Young*, 207 Ill. App. 3d at 134-35. In *Washington*, the appellate court found an abuse of discretion where the circuit court summarily denied the motion without conducting any inquiry into the stated reason for the request for the continuance, and where there was no indication in the record of any prior attempt by defendant to delay the proceedings, or that the request for a continuance was a delaying tactic. *Washington*, 195 Ill. App. 3d at 525. In *Payne*, the supreme court found an abuse of discretion where the circuit court threatened to raise defendant's bond if he failed to assent to immediate trial, and where the circuit court made no effort to ascertain the reasonableness of defendant's request for a continuance. *Payne*, 46 Ill. 2d at 587-88.

Unlike in *Bingham*, where the case had been pending for only three months at the time the motion for a continuance was made, defendant's case here had been pending for almost three years at the time he made his motion for a continuance to substitute Mr. Greenberg as counsel. Thus, *Bingham* is inapposite, as the motion for a continuance there had been made in a relatively timely

fashion, whereas the circuit court here correctly determined that defendant's motion for a continuance was untimely.

Also, *Bingham*, *Young*, *Washington*, and *Payne* are inapposite because the circuit court here conducted an adequate inquiry into the reasonableness of defendant's request for a continuance. Specifically, the court inquired from the parties as to why it was just hearing about the motion for a continuance to substitute counsel on the first day of trial on March 27, 2006. Mr. Fevurly, an attorney from Mr. Greenberg's office, explained to the court that defendant had been having unidentified "problems" with his current trial counsel, Mr. Muslin, and that Mr. Muslin had only agreed to withdraw from the case three days earlier, on Friday. Mr. Fevurly conceded that Mr. Greenberg "should have got the court more involved than he did." The prosecutor informed the court that Mr. Greenberg had never given any indication there was going to be a motion for substitution of counsel until the previous Friday. The circuit court asked defendant if he wanted to say anything in support of the motion, and he responded that he had written down his reasons for new counsel on a piece of paper. The record is unclear as to whether defendant handed the paper to the court. Neither defendant nor his current or proposed counsel read the paper into the record, nor is the paper part of the common law record on appeal. We resolve any doubts arising from the incompleteness of the record against defendant as the appellant. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984).

The circuit court also inquired as to the extent of discovery in the case. Mr. Muslin responded that there were nine binders of discovery, with each binder containing between 500 and 1,000 pages. Mr. Muslin stated he would be willing to help Mr. Greenberg sort through all the discovery so that the cause could quickly proceed to trial, and he estimated that only "about four"

pages related to defendant. The circuit court expressed reasonable skepticism about Mr. Greenberg's ability to quickly proceed to trial, noting that since the case was three-years-old with thousands of pages of discovery he had yet to examine, Mr. Greenberg would be unlikely to be ready for trial for "months and months." Also, Mr. Greenberg was not available to be questioned about his preparation for trial, as he was out of town and unable to return that day. The circuit court denied the motion for a continuance after a more than adequate inquiry, finding it had been made for purposes of delay.

The circuit court did not abuse its discretion in denying defendant's motion for a continuance to substitute counsel on the first day of trial. The facts and circumstances show that Mr. Muslin had represented defendant for the three years his case had been pending. During those three years, defendant never informed the court of any problems he was having with Mr. Muslin. Mr. Muslin had been involved in all facets of defendant's case, including filing a motion to reduce bail, filing a motion to quash arrest and suppress evidence, and responding to the State's *Santiago* motion. Both Mr. Muslin and defendant appeared in court on January 26, 2006, along with counsel for Shawn Jones and Terrance Sanders, and they all agreed to a trial date of March 27, 2006. On March 27, 2006, Mr. Jones and Mr. Sanders answered ready for trial; however, defendant moved for a continuance to substitute Mr. Greenberg as counsel, citing unidentified "problems" with Mr. Muslin. Mr. Greenberg was not present at the hearing on the motion, nor had he yet reviewed the thousands of pages of discovery or the thousands of wiretapped phone calls. Defendant gave no indication when Mr. Greenberg would be ready for trial. On these facts and circumstances, the granting of defendant's motion for a continuance would have thwarted the effective and efficient administration of justice.

Defendant contends *People v. Jackson*, 216 Ill. App. 3d 1 (1991), compels a different result. In *Jackson*, the appellate court held "where private counsel has been retained or counsel's appearance is on file, it is an abuse of discretion to deny a continuance and to proceed to trial without the presence of defendant's chosen counsel or verifying the claim of employment of counsel." *Jackson*, 216 Ill. App. 3d at 7. Defendant contends, pursuant to *Jackson*, the circuit court here should have granted the continuance so as to allow him to proceed to trial with his newly chosen counsel, Mr. Greenberg.

We disagree. In *Jackson*, the appellate court found no abuse of discretion in the circuit court's denial of defendant's trial-day request for a continuance to retain private counsel. The appellate court noted the defendant: (1) had not identified his private counsel; (2) never indicated prior to the afternoon the trial was scheduled to begin that he wanted to retain private counsel; and (3) did not submit to the court a definite time period within which he would be ready to proceed to trial. *Jackson*, 216 Ill. App. 3d at 7. The appellate court held "[w]here defendant fails to articulate an acceptable reason for desiring new counsel and is already being represented by an experienced, court-appointed criminal lawyer, it is not an abuse of discretion to deny defendant's trial-day request for a continuance." *Jackson*, 216 Ill. App. 3d at 7.

In the present case, defendant already was being represented by Mr. Muslin, a private attorney with 33 years' experience. At the hearing on his motion for a continuance, defendant failed to articulate for the record his reasons for desiring Mr. Greenberg as his new counsel. As in *Jackson*, defendant never indicated to the court prior to the first day of trial that he wanted to retain new counsel, and at the hearing on his motion he failed to give a definite time period within which Mr.

Greenberg would be ready to proceed to trial. Mr. Greenberg was not even available at the hearing on the motion for a continuance to address the court's concerns. Accordingly, the circuit court here did not abuse its discretion in denying defendant's trial-day motion for a continuance to substitute counsel.

Next, defendant contends the circuit court erred in denying his motion to suppress. He alleges the warrantless search of his vehicle was unlawful and not subject to any exception to the warrant requirement.

When analyzing a circuit court's ruling on a motion to suppress evidence, the reviewing court applies the two-part standard of review adopted by the United States Supreme Court in *Ornelas v. United States*, 517 U.S. 690, 699 (1996). Under this standard, the reviewing court gives great deference to the circuit court's factual findings and will reverse those findings only if they are against the manifest weight of the evidence. *People v. Lovejoy*, 235 Ill. 2d 97, 129 (2009). The reviewing court reviews *de novo* the circuit court's ultimate legal ruling as to whether suppression is warranted. *Lovejoy*, 235 Ill. 2d at 130.

The fourth amendment of the United State Constitution provides the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause * * *." U.S. Const., amend. IV. The purpose of this constitutional guarantee, which is made applicable to the states through the due process clause of the fourteenth amendment, is to recognize and protect the legitimate expectation of privacy that people possess with respect to their persons, homes, and belongings. *People v. James*, 163 Ill. 2d 302, 311 (1994). The Illinois State Constitution contains

a similar provision protecting against unreasonable searches and seizures. Ill. Const. 1970, art. I, § 6.

A warrantless search and seizure is considered *per se* unreasonable and is prohibited unless it falls within a specific delineated exception. *People v. Stroud*, 392 Ill. App. 3d 776, 803 (2009); *People v. Parker*, 354 Ill. App. 3d 40, 45 (2004). One such exception is the "automobile exception." Pursuant to the automobile exception, a police officer may conduct a warrantless search of a vehicle if he has probable cause to believe the stopped vehicle contains contraband or evidence of criminal activity. *Stroud*, 392 Ill. App. 3d at 803; *Parker*, 354 Ill. App. 3d at 45. Probable cause to search the vehicle exists where the totality of the facts and circumstances known to the officer at the time of his search, in light of the officer's experience, would cause a reasonably prudent person to believe that a crime occurred and that evidence of the crime is located in the automobile. *Stroud*, 392 Ill. App. 3d at 803; *Parker*, 354 Ill. App. 3d at 45. The scope of such a warrantless search extends to every part of the vehicle and its contents that may conceal the object of the search. *Stroud*, 392 Ill. App. 3d at 803; *Parker*, 354 Ill. App. 3d at 45.

In the present case, the totality of the facts and circumstances gave Officer Fryer probable cause on March 25 to search defendant's pickup truck as well as the brown bag and canister contained therein. These facts and circumstances include: the wiretapped phone calls in which defendant agreed to meet Mr. Patton in Hyde Park on March 25 to conduct a narcotics transaction; and Officer Rawski's observations of defendant engaging in an apparent narcotics transaction that day in which Mr. Patton's associate, Mr. Jones, brought a brown plastic bag to defendant's pickup truck and then left without the bag. Officer Rawski's observations of defendant's apparent narcotics

transaction were relayed to Officer Fryer, who was one of the officers working on the narcotics investigation targeting Mr. Patton. As Officer Fryer had probable cause to believe defendant's pickup truck contained contraband, the automobile exception entitled him to conduct a warrantless search of the vehicle and of the brown bag and closed canister inside the vehicle.

Defendant argues the automobile exception should not apply here because his truck was immobile at the time of the search. Defendant contends that the automobile exception is premised on the inherent mobility of an automobile and the possibility that the failure to make an immediate search would lead to the disappearance of the contraband. Defendant points out that in the present case there was no possibility he would be able to move the truck (and any contraband inside) at the time of the search, because he already had parked the truck and walked several feet away.

In support of his argument, defendant cites *People v. Emert*, 1 Ill. App. 3d 993 (1971), and *Coolidge v. New Hampshire*, 403 U.S. 443 (1971). In *Emert*, the appellate court held that the automobile exception did not justify a warrantless search of a vehicle several days after defendant had been arrested and the vehicle towed to a body shop. In *Coolidge*, the United States Supreme Court held that the automobile exception did not justify a warrantless search two days after the defendant had been arrested and the vehicle towed to the police station. In both *Emert* and *Coolidge*, the time lag between the arrest and the search gave the State adequate time to secure a warrant and, therefore, the respective courts held that the State could not use the automobile exception to justify its failure to secure a warrant.

Emert and *Coolidge* are inapposite, as the officer in the present case searched defendant's pickup truck right after he parked it on the street and did not otherwise arrest defendant or move the

vehicle prior to the search. Unlike *Emert* and *Coolidge*, there was no appreciable time lag between the stop and the search. *People v. DeLuna*, 334 Ill. App. 3d 1 (2002), is more analogous. In *DeLuna*, Officer Lewellen was executing a search for drugs in a second-floor apartment when he looked out the window and saw the defendant exit a car in the building's parking lot 25 to 30 feet away. *DeLuna*, 334 Ill. App. 3d at 4. Defendant engaged in a series of movements leading the officer to believe he had placed 1000 kilos of cocaine in his waistband. *DeLuna*, 334 Ill. App. 3d at 4. About 30 seconds later, defendant knocked on the door of the apartment. Officer Lewellen conducted a pat-down search of defendant and discovered a package of suspect cocaine. *DeLuna*, 334 Ill. App. 3d at 4-5. The officer thereafter went downstairs and outside and searched defendant's vehicle and discovered a large, clear plastic bag containing a white chunky substance, five smaller bags containing a white substance and $4,370 in cash. *DeLuna*, 334 Ill. App. 3d at 5. On appeal from his conviction, the appellate court held that the officer had probable cause to search the car under the automobile exception. Justification for the search was not defeated by the fact the car was immobilized, or by the fact the car's contents could not have been tampered with during the time necessary to obtain a warrant. *DeLuna*, 334 Ill. App. 3d at 17-19.

In the present case, Officer Fryer had probable cause to search defendant's pickup truck for contraband under the automobile exception, and he searched the truck at the first available opportunity and at the location where it had been parked by defendant. As in *DeLuna*, the automobile exception justified the search despite the fact the truck was immobilized and its contents could not have been tampered with during the time necessary to obtain a warrant.

Defendant cites several cases addressing the doctrine of a search incident to an arrest (see

e.g., *People v. Stehman*, 203 Ill. 2d 26 (2002), *New York v. Belton*, 453 U.S. 454 (1981), and *Chimel v. California*, 395 U.S. 752 (1969)), and he argues the search of his pickup truck was not justified under that doctrine. We need not address this issue because, as discussed, the search was justified under the automobile exception. The present case does not concern the scope of a search incident to an arrest.

Finally, defendant contends the State failed to prove him guilty of criminal drug conspiracy beyond a reasonable doubt. It is not the function of the reviewing court to retry defendant when presented with a challenge to the sufficiency of the evidence. *People v. Evans*, 209 Ill. 2d 194, 209 (2004). The relevant inquiry is "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." (Emphasis in original.) *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). Under this standard, the trier of fact remains responsible for determining the credibility of the witnesses, the weight to be given their testimony, and the reasonable inferences to be drawn from the evidence. *People v. Ross*, 229 Ill. 2d 255, 272 (2008).

Section 405.1 of the Illinois Controlled Substances Act (the Act) states in pertinent part:

> "A person commits criminal drug conspiracy when, with the intent that an offense set forth in Section 401, Section 402, or Section 407 of this Act be committed, he agrees with another to the commission of that offense. No person may be convicted of conspiracy to commit such an offense unless an act in furtherance of such agreement is alleged and proved to have been committed by him or by a co-conspirator." 720 ILCS 570/405.1 (West 2002).

In the present case, the underlying offenses to the conspiracy charge were: (1) the delivery

of and possession with intent to deliver 100 grams or more but less than 400 grams of a substance containing heroin; (2) the delivery of and possession with intent to deliver 15 grams or more but less than 100 grams of a substance containing heroin; (3) possession with intent to deliver 400 grams or more but less than 900 grams of a substance containing heroin; and (4) possession with intent to deliver more than 900 grams of a substance containing heroin. These offenses are set forth in section 401 of the Act (720 ILCS 570/401 (West 2002)).

The existence of an agreement between co-conspirators to perform a criminal act may be inferred from all the surrounding facts and circumstances, including the acts and declarations of the accused. *People v. Garth*, 353 Ill. App. 3d 108, 121 (2004). Due to the clandestine nature of conspiracy, courts have permitted broad inferences to be drawn from the circumstances, acts and conduct of the parties. *Garth*, 353 Ill. App. 3d at 121.

Viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could find defendant here was an active participant in the criminal drug conspiracy headed by Mr. Patton. Specifically, Mr. Hall testified that defendant and Mr. Patton were friends who were in the heroin distribution business together and that Mr. Hall had assisted Mr. Patton in delivering heroin to defendant. The State presented evidence of two specific narcotics transactions, one on March 16, 2003, in which defendant paid Mr. Patton approximately $8,000 for 200 grams of heroin, and another on March 25, 2003, in which defendant received 195.3 grams of heroin from Mr. Patton's colleague, Mr. Jones, in return for a black bag containing undisclosed contents. Additionally, Commander Cronin testified to defendant's statement on May 8, 2003, in which defendant admitted buying heroin from Mr. Patton two or three times at Mr. Patton's residence and then reselling the

heroin.

Defendant contends we should not consider the alleged narcotics transaction of March 16, 2003, because there were no eyewitnesses thereto. We disagree, as the totality of the evidence supports the finding that Mr. Patton delivered heroin to defendant on that date. Specifically, Mr. Hall saw defendant meet with Mr. Patton on March 16 and enter his vehicle. They drove off together. Upon their return, Mr. Hall noticed that the heroin he had previously observed inside Mr. Patton's vehicle was gone. Mr. Hall also observed approximately $8,000 on the console that had not been there prior to defendant's entrance into the vehicle. Based on this evidence, the trier of fact could conclude defendant engaged in a narcotics transaction with Mr. Patton on March 16, 2003.

Defendant contends Mr. Hall's testimony against him was incredible and unbelievable and the product of a plea agreement with the State in which he agreed to testify truthfully against his co-defendants and to plead guilty to possession of more than 15 grams of heroin with intent to deliver. The plea agreement specified that the State would recommend a sentence of 10 years' imprisonment and that his attorney would have the option of asking for six years' imprisonment. Defendant contends this plea agreement casts doubt on Mr. Hall's testimony regarding defendant's meeting with Mr. Patton on March 16, 2003. Defendant points out that a surveillance officer near the scene testified at trial he saw no such meeting. However, the credibility of the witnesses is a matter for the trier of fact to determine. *People v. Steidl*, 142 Ill. 2d 204, 226 (1991). In the present case, the circuit court heard Mr. Hall's testimony and knew of his plea agreement. At the conclusion of the trial, the court stated:

"I thought the officers who testified were all credible. And generally I thought Torrick Hall

> was very credible. It seems to me his testimony is corroborated, at least in most particulars, by either the physical evidence or by the testimony of the police officers or by the phone calls or the video tapes. And by his demeanor in testifying, I thought he was very credible."

We will not substitute our judgment for the circuit court's credibility determination. *People v. Sutherland*, 155 Ill. 2d 1, 17 (1992).

Defendant also argues that at most the State proved a buyer-seller relationship between defendant and Mr. Patton and that such a relationship is not enough to prove a conspiracy to distribute drugs. Defendant cites *United States v. Kozinski*, 16 F. 3d 795, 808 (7th Cir. 1994), in which the court of appeals held that a buyer-seller relationship between two persons does not, by itself, establish a conspiracy, and that a conspiracy requires an agreement to commit some other crime beyond the crime constituted by the sale agreement itself.

In *Kozinski*, the court of appeals noted several relevant factors in determining whether the parties to a narcotics transaction are co-conspirators sharing an interest in the redistribution of the narcotics. Such factors include: transactions in large quantities of drugs; prolonged cooperation between the parties; and the extent to which the transactions are standardized. *Kozinski*, 16 F. 3d at 808. In the present case, defendant and Mr. Patton engaged in multiple transactions involving large quantities of drugs (approximately 200 grams of heroin at a time) and had a cooperative relationship as evidenced by defendant's phone call to Mr. Patton warning him of the officers who took the heroin from the pickup truck. Two or three of the transactions were made in the same standardized manner: defendant went to Mr. Patton's residence at 440 Wabash Avenue, informed the doorman he was there to see Mr. Patton, the doorman called up to Mr. Patton, and then defendant

retrieved the heroin from Mr. Patton's apartment. All of this evidence, coupled with Mr. Hall's testimony regarding defendant and Mr. Patton being engaged in the heroin distribution business together, and defendant's admission to reselling the heroin he procured from Mr. Patton, supports the circuit court's finding that defendant was engaged in the charged criminal drug conspiracy.

Defendant contends, though, that the State failed to prove him guilty of criminal drug conspiracy where he was only heard on four out of the thousands of wiretapped phone calls, and where all four of those phone calls relate to a single narcotics transaction occurring on March 25, 2003, in Hyde Park. None of those calls contain any evidence of defendant's knowledge of any other part of Mr. Patton's drug distribution operation. Defendant also argues he is heard on the calls expressing confusion about Mr. Patton's location in Hyde Park and his unfamiliarity with Mr. Patton's associate, Mr. Jones, thereby casting even further doubt on defendant's role in the criminal drug conspiracy.

As discussed above, the four phone calls are not the only evidence against defendant. In addition to those phone calls, Mr. Hall testified to defendant's participation in the heroin distribution with Mr. Patton and in the specific narcotics transactions on March 16, 2003, and March 25, 2003, involving approximately 200 grams of heroin apiece. Police officers testified to defendant's participation in the narcotics transaction on March 25, 2003, and to the recovery of almost 200 grams of heroin from defendant's pickup truck. Finally, defendant made admissions of guilt indicating his awareness of, and participation in, the criminal drug conspiracy headed by Mr. Patton. Specifically, defendant admitted making multiple purchases of heroin from Mr. Patton that he resold by weight and he referenced the street-level sellers in Mr. Patton's organization and the "heat" on Mr. Patton

from his distribution of drugs onto the street.

Viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could find defendant guilty of the criminal drug conspiracy charge.

For the foregoing reasons, we affirm the circuit court.

Affirmed.