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2011 IL App (3d) 090256-UB

Order filed November 18, 2010
Modified Upon Denial of Rehearing July 6, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2011

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| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from the Circuit Court of the Twelfth Judicial Circuit, Will County Illinois, |
| Plaintiff-Appellee, |) | |
| v. |) | Appeal No. 3-09-0256 |
| |) | Circuit No. 08-CF-302 |
| CHARLES E. COOPER, |) | Honorable |
| Defendant-Appellant. |) | Richard Schoenstedt, Judge, Presiding. |

JUSTICE McDADE delivered the judgment of the court.
Justice Wright specially concurring.
Presiding Justice Carter dissenting.

ORDER

- ¶ 1 *Held:* Where the State failed to prove that defendant ever had actual or constructive possession of the drugs found in the underwear of a passenger in defendant's vehicle, defendant's conviction for possession with intent to deliver the drugs was reversed.
- ¶ 2 The State charged defendant, Charles E. Cooper, with possession with intent to deliver 1

to 15 grams of cocaine. Following a jury trial, the circuit court of Will County convicted defendant and sentenced him to 16 years' imprisonment. For the following reasons, we reverse.

¶ 3

BACKGROUND

¶ 4 Police stopped defendant's vehicle after observing a traffic violation. Emosha Thomas, who is not a party to this appeal, was defendant's passenger. After the police officer stopped defendant's vehicle, he observed defendant reach to the right toward the floorboard. Defendant did not disappear from view. The officer observed Thomas "almost stand[] up" in the passenger compartment of defendant's pickup truck. It appeared to the officer that Thomas was "lifting her buttocks *** off of the seat." The officer observed defendant turn his body to the right and move toward the floorboard, but the officer did not lose sight of defendant. At defendant's trial, the officer opined that defendant and Thomas moved around "like they were trying to hide something." The officer arrested defendant for driving with a revoked driver's license and searched the truck.

¶ 5 Upon searching defendant's truck following defendant's arrest for a traffic violation, the officer seized a manicure kit from the glove box. In the manicure kit, police found a razor blade coated with what the officer described as an "off-white, powdery, rockish type substance" he believed to be crack cocaine, and cocaine residue in the manicure kit. The cocaine residue weighed less than .1 gram. The officer questioned defendant about the manicure kit. Defendant told the police officer that the kit belonged to him but that others used it. The police officer informed defendant that he was under arrest for possession of a controlled substance. The officer also placed Thomas under arrest for possession of a controlled substance.

¶ 6 The police officer searched defendant's person and found two pairs of rubber latex

gloves, three sandwich baggies, and \$672. At defendant's trial, the officer testified that it was his experience that crack cocaine is purchased in \$20 "rocks" that are twisted into the corners of torn sandwich baggies. Police strip-searched Thomas. In Thomas's underwear police found a plastic baggie containing two rocks of crack cocaine weighing a total of 2.4 grams. The smaller of the two "rocks" was knotted in the corner of a plastic baggie inside the larger baggie found in Thomas's underwear. The larger "rock" was loose in the baggie found in Thomas's underwear. The officer opined that the "rocks" were similar in appearance to the residue observed in the manicure kit.

¶ 7 The trial court instructed the jury on theories of accountability, constructive possession, and the lesser-included offense of simple possession. The jury returned a guilty verdict against defendant for possession with intent to deliver the cocaine found in Thomas's underwear. Following its denial of defendant's motion for a new trial, the court sentenced defendant to 16 years' imprisonment with credit for 341 days spent in pre-trial custody, and \$1005 credit against a mandatory \$2000 drug assessment. The court denied defendant's motion to reconsider sentence.

¶ 8 This appeal followed.

¶ 9 ANALYSIS

¶ 10 Defendant argues that the evidence is insufficient to prove, beyond a reasonable doubt, that he possessed the drugs found in Thomas's underwear. Defendant argues the State failed to produce physical evidence linking him to the drugs in Thomas's underwear, or any evidence from which a reasonable trier of fact could infer he had knowledge of the existence of the drugs. The State responds it proved constructive possession beyond a reasonable doubt. Defendant

notes that because the State charged him with possession with intent to deliver between 1 and 15 grams of cocaine, his conviction cannot rest on the .1 gram of cocaine residue found in his manicure kit. The State concedes that defendant's conviction must rest on the cocaine found in the baggie in Thomas's underwear.

“To convict defendant of unlawful possession with intent to deliver, the State must establish (1) the defendant had knowledge of the presence of the controlled substance, (2) the controlled substance was in the immediate possession or control of the defendant, and (3) the defendant intended to deliver the controlled substance. [Citations.] Constructive possession may exist even when the defendant no longer physically controls the drugs, so long as defendant once had physical control over them with intent to exercise control, and he has not abandoned them and no one else had obtained possession.” *People v. Adams*, 388 Ill. App. 3d 762, 766 (2009).

Where the State must prove that the defendant has not abandoned the drugs and that no other person has obtained possession of the drugs, “[p]roof that the defendant knew the drugs were present and exercised control over them establishes that constructive possession.” *People v. Moore*, 365 Ill. App. 3d 53, 60 (2006).

¶ 11 Defendant cites *People v. Ortiz*, 196 Ill. 2d 236, 267 (2001), in support of his argument that the State failed to prove beyond a reasonable doubt that he knew what Thomas had in her underwear. There, the supreme court found that the circumstantial evidence was insufficient to

support a finding that the defendant knew of the presence of cocaine located in a secret compartment of the defendant's truck. The court held that it could not "sustain defendant's conviction on the evidence adduced in this case." *Ortiz*, 196 Ill. 2d at 267.

¶ 12 The State argues that defendant's spontaneous declaration that he allowed others to use his manicure kit proves that he, or Thomas with his knowledge, used the razor blade to cut the cocaine found in the baggie in Thomas's underwear for purposes of sale. The State also argues that the items found in the manicure kit, the baggies, cash, and latex gloves are circumstantial evidence that defendant had knowledge and possession of the drugs found in Thomas's underwear. The State asserts this evidence links defendant to the cocaine found in Thomas's underwear because that evidence gives rise to a reasonable inference that defendant used the razor blade, gloves, and baggies to cut and package the cocaine, and the cash supports finding that he and Thomas had already sold a quantity of crack cocaine. According to the State, that inference is supported by direct evidence that, in the officer's experience, drugs are packaged for sale in the same manner as one of the rocks of cocaine found in Thomas's underwear.

¶ 13 Thus, the State argues, the evidence in this case provides grounds from which to reasonably infer that defendant had knowledge of the cocaine. However, the fact that the inference is possible is not enough. The inference must be "strong enough, inevitable enough, compelling enough, to say that it supports defendant's conviction *** beyond a reasonable doubt." *People v. Saxon*, 374 Ill. App. 3d 409, 422 (2007) (McDade, J., dissenting.). See also, *People v. Caffey*, 205 Ill. 2d 52, 104 (2001) (finding that the evidence was not closely balanced where the "eyewitness testimony was corroborated by compelling circumstantial evidence, including forensic and other physical evidence"); *People v. Steading*, 308 Ill. App. 3d 934, 940

(1999) ("A fact cannot be inferred when a contrary fact could be inferred with equal certainty from the same evidence)". Defendant notes that the absence of evidence of how long the residue had been on the razor blade, or evidence directly linking the residue to the cocaine recovered from Thomas, undercuts the State's argument that defendant had knowledge of the specific drugs in Thomas's underwear. Defendant also notes the absence of evidence linking the gloves to any contact with illegal drugs whatsoever.

"When presented with a challenge to the sufficiency of the evidence, it is not the function of this court to retry the defendant.

As the United States Supreme Court observed in *Jackson v.*

Virginia, 443 U.S. 307, 319 (1979), 'the relevant question 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.'

[Citation.]" (Emphasis in original.) *People v. Collins*, 106 Ill. 2d

237, 261 (1985).

¶ 14 In all due deference to the standard of review, we find that the circumstantial evidence is not sufficient to permit a *reasonable* trier of fact to infer that defendant had knowledge of the cocaine found in Thomas's possession. We recognize that the trier of fact *did* infer that defendant had knowledge of the cocaine, but we decline to find that inference was reasonable just because "any" trier of fact made it. Too often, "appellate courts mention only the first statement from [*Collins*] and emphasize the word 'any.' The implication is that if one person in a hundred could have seen the facts the way the [trier of fact] did, we cannot interfere, although we strongly

disagree with the finding.” *People v. Minniweather*, 301 Ill. App. 3d 574, 577 (1998). That implication is false and we refuse to succumb to the temptation to affirm a criminal conviction just because there is some scintilla of evidence which might point in the direction of guilt, and a trier of fact was convinced to accept it. We must also consider whether the actual facts and inferences reasonably drawn from them are sufficient to prove guilt beyond a reasonable doubt. To approach this, or any other appeal challenging the sufficiency of the evidence, in any other way, would be an abdication of our role as a court of review in criminal cases and render criminal appeals challenging the sufficiency of the evidence either wholly superfluous or matters of rote.

¶ 15 Nor are we "retrying" defendant to reach the opposite inference. We expressly disavow any implication that we view the evidence as supporting an inference that defendant did *not* have knowledge of the cocaine and note that our disposition does not depend on so finding. The defendant never has to prove his innocence. See, e.g., *People v. Roberson*, 401 Ill. App. 3d 758, 764 (2010). We only hold that the inference that defendant *did* have knowledge of the drugs in Thomas’s possession is not supported by the facts.

“[I]f the conviction is not based on direct evidence, the court must identify the inferential steps the trier of fact must have found to reach its ultimate conclusion. Finally, *and most importantly*, the reviewing court must identify facts of record, and not suppositions, upon which each inference may reasonably be based.” (Emphasis added.) *People v. Martin*, 401 Ill. App. 3d 315, 322 (2010).

¶ 16 Here, any "inference" of defendant’s knowledge can only result from suppositions from

no more than the sole fact of the presence of cocaine residue on defendant's property and the presence of "innocuous items that are incidentally used in connection with drug possession or use" (*People v. Harrell*, 342 Ill. App. 3d 904, 911 (2003)), which is not itself a crime. See *Ortiz*, 196 Ill. 2d at 267 ("The circumstantial evidence was scant at best, and appears even weaker in light of the evidence supporting a not guilty finding"). See also *People v. Robinson*, 167 Ill. 2d 397, 415 (1995) (affirming conviction where evidence was sufficient to support an inference of intent to deliver beyond a reasonable doubt).

¶ 17 Although there is no innocent explanation for the presence of cocaine residue on defendant's property (*cf. Ortiz*, 196 Ill. 2d at 267 (finding significant evidence supporting defendant's version of events)), there are no facts supporting the inferences propounded by the State in this appeal to support a conclusion that defendant had knowledge of the drugs in Thomas's underpants. The State has taken the facts of this case and suggested that the trier of fact must have made a series of inferential steps based on those facts "to reach its ultimate conclusion." But we can identify no facts of record upon which any reasonable inferences actually leading to defendant's guilt of the crime charged can be based. Rather, the inferences required to find defendant guilty are based on suppositions about what the facts mean, rather than the facts themselves.

¶ 18 For example, even if the State's evidence did give rise to a reasonable inference that defendant was involved in drug sales generally, the State cites no evidence to connect that supposed activity to the drugs found in Thomas's underwear. That is, the State is only arguing that the circumstantial evidence proves that defendant might be a drug dealer. It is offering only supposition that defendant dealt the drugs found in Thomas's underwear. That conclusion could

only be supported by the fact of defendant's proximity to Thomas, who possessed drugs, and the inference, not fact, that defendant was, at some unknown time, involved in drug sales. "The mere presence in the vicinity of a controlled substance cannot establish constructive possession." *People v. Scott*, 367 Ill. App. 3d 283, 285 (2006), citing *People v. Adams*, 242 Ill. App. 3d 830, 833 (1993).

¶ 19 The State also argues that defendant and Thomas's "furtive movements" after police stopped their vehicle permit a reasonable inference that defendant not only had knowledge of the cocaine, but also that he once possessed it, and that defendant assisted Thomas to conceal the cocaine. Therefore, the State argues, although defendant was no longer in physical control of the cocaine, he had not abandoned it. Defendant asserts there are innocent explanations for his and Thomas's movements after police stopped their vehicle, including retrieving identification and insurance documentation. We reject the State's argument.

¶ 20 In *Ortiz*, the State similarly argued that a factor upholding defendant's conviction was his nervousness during the traffic stop. *Ortiz*, 196 Ill. 2d at 266. The supreme court held that "although nervousness does weigh in favor of a finding of knowledge, it is not in and of itself sufficient to uphold such a finding." *Ortiz*, 196 Ill. 2d at 266-267. Defendant has pointed to an innocent explanation for his behavior after police stopped his vehicle. The *Ortiz* court conceded that "a fact finder need not accept the defendant's version of events as among competing versions." *Ortiz*, 196 Ill. 2d at 267. But the court noted that a reviewing court must not abandon its

“ ‘duty to ensure that all citizens receive those rights which are applicable equally to every citizen who may find himself charged

with a crime, whatever the crime and whatever the circumstances.

When the State cannot meet its burden of proof, the defendant must go free. *** It is no help to speculate that the defendant may [be guilty]. No citizen would be safe from prosecution under such a standard.’ [Citation.]” *Ortiz*, 196 Ill. 2d at 268.

¶ 21 In light of the foregoing direction from the supreme court, we find that defendant’s conduct after the traffic stop is *itself* insufficient to meet the State’s burden to prove, beyond a reasonable doubt, that defendant knew that Thomas possessed cocaine. *Ortiz*, 196 Ill.2d at 266-267. We further find that it is not a fact upon which the jury could infer defendant’s knowledge of the cocaine. That conclusion requires a presumption that Thomas put the drugs in her underwear after police stopped the vehicle. But that presumption is just an inference that is not directly supported by any fact. The police officer could not see whether or not Thomas was putting anything in her underwear, could not see what it may have been if he could or believed he did, and the State produced no evidence that Thomas had not put the drugs there long before.

¶ 22 Defendant’s allegedly “furtive movements” have an innocent explanation. The evidence supports the equally reasonable inference--consistent with defendant’s innocence--that the drugs in Thomas’s underwear were Thomas’s for her own personal use. Even if defendant saw Thomas stuffing cocaine down her pants, that inference again only proves that defendant was in a place where drugs were found. *Scott*, 367 Ill. App. 3d at 285. The State failed to adduce any circumstantial evidence that before police stopped his vehicle defendant was aware that Thomas possessed the drugs. Defendant and Thomas’s movements, which the State argues imply that she was then hiding the cocaine, and that defendant was assisting her, is the State’s only evidence

that defendant knew of the cocaine. However, defendant's knowledge is an inference, and the facts support an equally plausible, innocent inference. The State's only direct or circumstantial evidence to elucidate the question of defendant's knowledge is the presence of drug residue on a razor blade and in a case belonging to defendant, and other innocent items. However, the state failed to link that evidence to Thomas's hiding the drugs or the drugs that police recovered.

¶ 23 Thus defendant is correct that any finding that he possessed the drugs prior to the stop or knew Thomas had the drugs before the stop when she hid them in her underwear is speculative at best. As a fact, defendant's and Thomas's movements only imply defendant's knowledge that Thomas was attempting to hide *her* cocaine. *People v. Adams*, 388 Ill. App. 3d 762, 766 (2009) ("Constructive possession may exist even when the defendant no longer physically controls the drugs, *so long as* *** no one else had obtained possession") (emphasis added). We will not reverse a defendant's conviction simply because the evidence supports a reasonable hypothesis of innocence. *People v. Schott*, 145 Ill. 2d 188, 203 (1991) ("The reasonable doubt test has taken the place of another specialized standard of review, the reasonable hypothesis of innocence test, a test which was formerly used in circumstantial evidence cases"). We are reversing defendant's conviction solely because, as demonstrated above, the evidence that defendant had knowledge of the cocaine in Thomas's underwear is "so improbable *** that it creates a reasonable doubt of the defendant's guilt." *People v. Moore*, 394 Ill. App. 3d 361, 363 (2009).

¶ 24 The State failed to prove, beyond a reasonable doubt, that defendant had knowledge of the cocaine for which he was convicted of possession with intent to deliver. Moreover, we find that the evidence is not sufficient to find that defendant had control over the drugs to support a finding of constructive possession. Defendant argued that the evidence is insufficient to support

a reasonable inference that he had access to the drugs in Thomas's underwear. We agree. The State did not adduce any evidence as to when Thomas placed the drugs in her underwear, whether defendant was aware she had done so, or whether defendant had "access" to her underwear and the drugs secreted therein. See *People v. Mason*, 213 Ill. App. 3d 163, 167 (1991) ("In the instant case, the evidence showed that the drugs were found in a jacket taken out of [a] car ***. *** There was no evidence presented to show that the jacket belonged to the defendant or that he had possession of the jacket, let alone the drugs, at any time").

¶ 25 In *Scott*, 367 Ill. App. 3d at 285, the court held that the State failed to establish that the defendant had the capability to maintain control and dominion over drugs that were found in a mailbox. The court found that the evidence at trial revealed that the "defendant never possessed or had access to the key needed to open the mailbox where the *** cocaine was later found." *Scott*, 367 Ill. App. 3d at 285. Instead, someone else had to open the mailbox with a key, and that person retained possession of the key. *Scott*, 367 Ill. App. 3d at 285. The court held that "[w]ithout the key, the mailbox containing the larger bag of cocaine was not accessible to defendant. Defendant could not control that which he could not access." *Scott*, 367 Ill. App. 3d at 285.

¶ 26 The State argues that here, the evidence supports a reasonable inference that defendant did have access to the drugs, based on the inference – not a fact – that defendant assisted Thomas to place the drugs in her underwear. The State argues that *Scott* is distinguishable because defendant's supposed furtive movements give rise to a reasonable inference – not a fact – that defendant assisted Thomas in secreting the drugs on her person, which proves both his knowledge of the drugs and a capacity to maintain dominion and control over the drugs. The

State concludes that, regardless of whether defendant assisted Thomas or not, the evidence proves beyond a reasonable doubt that defendant jointly possessed the drugs with Thomas. We disagree.

¶ 27 Like *Scott*, in this case, there is no evidence to reasonably support an inference that defendant had access to Thomas's underwear. Defendant would have to obtain Thomas's express or implicit consent *before* he could obtain access to the drugs. The State elicited no evidence that Thomas had granted that consent. Regardless, defendant would at least need Thomas's cooperation to have access to drugs in her underwear. Just as someone else had to use a key to grant defendant access to the drugs in *Scott*, here, Thomas would have to grant defendant access to the drugs in her underwear. Much like the need for a key to access the drugs in the mailbox in *Scott*, Thomas retained the "key" to the drugs in this case. This would be true regardless of whether she implicitly agreed in advance that she *would* grant defendant access to the drugs. Therefore, regardless of any knowledge that Thomas hid drugs in her underwear which could be inferred from the circumstantial evidence, the State has not met the requisite showing of defendant's control over the drugs for a finding of constructive possession.

¶ 28 In the instant case, defendant was not in actual possession of narcotics. No narcotics were found on his person or among his belongings. The State argues that the evidence proves defendant constructively possessed the cocaine on Thomas's person. However, there is no evidence directly linking defendant to the controlled substance that was in Thomas's underpants. There is no evidence from which to find that defendant can "control" access to Thomas's underwear. *Cf. People v. Adams*, 242 Ill. App. 3d 830, 832-833 (1993) (reversing conviction for possession of controlled substance in part because State failed to produce evidence defendant had

control over the premises, connecting defendant to cocaine in a cabinet on the premises, or anything to show that the defendant had ever been in the cabinet).

¶ 29 There is no evidence of when or under what circumstances Thomas came into possession of the drugs, and no direct evidence of when or under what circumstances Thomas secreted the drugs in her underwear. *Cf. Adams*, 242 Ill. App. 3d at 832-833 (reversing conviction for possession of controlled substance in part because State failed to produce evidence of who placed the cocaine or how long it had been there).

¶ 30 Rather, an “elaborate series of *** inferences” is required to explain the jury’s verdict. *Adams*, 242 Ill. App. 3d at 832-833. Under similar circumstances, this court has refused to allow the defendant’s conviction to stand. *Adams*, 242 Ill. App. 3d at 832-833. We observe here, as we have before, that “the State would have the defendant's conviction stand on his mere presence in the vicinity where cocaine was found. Such attenuated proof would set an unsettling and dangerous precedent.” *Adams*, 242 Ill. App. 3d at 832-833.

¶ 31 Alternatively, the State argues that it proved defendant guilty beyond a reasonable doubt of possession with intent to deliver by accountability for Thomas’s actions. The State asserts that because it proved defendant’s guilt by accountability, it did not have to prove that defendant actually or constructively possessed the cocaine. The State argues that the circumstantial evidence proves that defendant was legally accountable for Thomas’s act of possessing cocaine with intent to deliver.

¶ 32 Defendant responds the State failed to provide any direct link between defendant and the drugs in question, or to point to any specific act which constitutes soliciting, aiding, abetting, agreeing, or attempting to aid Thomas to possess cocaine with intent to deliver. Defendant

argues that the circumstantial evidence is insufficient to find that he committed any act that would make him legally accountable for Thomas's acts. We agree.

“[A] person is accountable for the conduct of another if ‘[e]ither before or during the commission of an offense and with the intent to promote or facilitate such commission, he solicits, aids, abets, agrees or attempts to aid, such other person in the planning or commission of the offense.’ [Citation.] Consent to the commission of the crime, or mere knowledge of it, is insufficient to constitute aiding or abetting. [Citation.] The mere presence of a defendant at the scene of the crime is also insufficient to make a defendant accountable, even if it is coupled with defendant's flight from the scene or defendant's knowledge that a crime was being committed. [Citations.] While consent, knowledge, presence or flight, each by itself, is insufficient to establish accountability, proof of active participation is not required either. [Citation.] Evidence of events both surrounding and following the commission of the offense is competent evidence to show participation in the offense itself.” *People v. Walker*, 392 Ill. App. 3d 277, 289 (2009).

¶ 33 In this case, the only evidence of either parties' conduct before or during the commission of the offense is the officer's testimony that he saw Thomas “almost stand[] up” in the passenger compartment of defendant's pickup truck and that it appeared that Thomas was “lifting her

buttocks *** off of the seat.” We have already found the evidence insufficient to support a finding that defendant knew Thomas had the drugs or that defendant had control over the drugs at any time before or after Thomas hid them. Therefore the evidence is also insufficient to prove that defendant aided in the possession of a controlled substance at any time before police stopped defendant’s vehicle.

¶ 34 Police did find drugs in Thomas’s possession and the evidence could support a reasonable inference that Thomas was hiding drugs as a result of the traffic stop. Nonetheless, the evidence is insufficient to support a finding that defendant aided Thomas in hiding the drugs. The officer speculated that defendant’s movements indicated he was trying to hide *something*. The State failed to prove that Thomas was in fact hiding the drugs when police observed her “furtive movements” in the vehicle. There is no evidence to support a conclusion that defendant hid the drugs in Thomas’s underwear for her. Thomas’s and defendant’s movements are at least equally consistent with hiding something, and police found the drugs hidden on Thomas’s person. Thus the evidence only reasonably supports finding that *Thomas* hid the drugs in question after the traffic stop.

¶ 35 Even if the circumstantial evidence does support the inference that defendant was trying to hide *something* after the traffic stop, it only reasonably supports finding that defendant was hiding the manicure kit. Defendant admitted owning the manicure kit. The trier of fact could reasonably infer that defendant had knowledge of the cocaine residue in the kit and, consequently, that he tried to hide it from police. Regardless, defendant’s admission to ownership of the manicure kit, the cocaine residue in the kit, and the inference that defendant hid the kit after the traffic stop, are all irrelevant to the question of whether the State proved

defendant guilty of possession by accountability for Thomas. This is so because the only relevant contraband is the cocaine found in Thomas's underwear.

¶ 36 Defendant's hiding his manicure kit is not an act aiding Thomas's possession of the controlled substance found in her underwear. Just as the evidence failed to prove that defendant had knowledge or control of the cocaine, any conclusion that defendant aided Thomas when she hid the drugs is not an inference based on any fact. Instead, it is pure speculation concerning defendant's movements after police stopped his vehicle. We agree with our supreme court that "[s]tanding alone, such vague and speculative testimony is by no means sufficient to support defendant's conviction." [Citation.]" *People v. Bush*, 214 Ill. 2d 318, 332 (2005).

¶ 37 Defendant's conviction for possession of a controlled substance is reversed. Defendant also argued that he is entitled to additional monetary credit against the mandatory drug assessment for time spent in pre-trial custody. The State concedes that defendant would have been entitled to an additional credit against fines for time defendant spent in custody prior to sentencing. In light of our holding that defendant's conviction must be reversed, we have no need to address this issue.

¶ 38 CONCLUSION

¶ 39 The circuit court of Will County's order is reversed.

¶ 40 Reversed.

41 JUSTICE WRIGHT, specially concurring:

¶ 42 In this case, the officer testified that defendant was outside of his truck rearranging items in the bed of the truck. When the officer stopped the truck a few hundred feet down the road, he

watched defendant bend down towards the floor board but did not lose sight of defendant.

Meanwhile, the female appeared to be moving in the truck and lifting her buttocks from the truck seat.

¶ 43 Based on these furtive movements, the officer concluded that defendant and his passenger were concealing contraband *in the truck*. The officer was correct and found a manicure kit with evidence of illegal contraband in the glovebox of the truck. The officer arrested both the defendant and the female passenger for possessing this manicure kit that contained a trace amount of cocaine. The contents of this manicure kit did not form the basis for the single charge in this case.

¶ 44 Instead, charges were filed against defendant based on rock cocaine that police found during a strip search of the female passenger at the police station. This rock cocaine, packaged in a manner consistent with distribution, was discovered in the female passenger's underpants.

¶ 45 I specially concur to make one point. We should not lose sight of the fact that this defendant was convicted based on a theory of accountability for his passenger's conduct. Here, the drugs defendant was allegedly accountable for, were buried in his female passenger's undergarments which covered her genital area.

¶ 46 Based on the unusual circumstances of this case, I agree with the authors conclusion.

47 CARTER, P.J., dissenting:

¶ 48 I respectfully dissent from the majority's order and the special concurrence in the present case regarding the sufficiency of the evidence. The appropriate standard of review for that issue is the standard set forth in *People v. Collins*, 106 Ill. 2d 237 (1985), and the cases that have

followed *Collins*. Pursuant to the *Collins* standard, a reviewing court faced with a challenge to the sufficiency of the evidence must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found the elements of the crime proven beyond a reasonable doubt. *Collins*, 106 Ill. 2d at 261; *People v. Jackson*, 232 Ill. 2d 246, 280 (2009). This same standard of review is applied by the reviewing court regardless of whether the evidence is direct or circumstantial or whether defendant received a bench or a jury trial, and circumstantial evidence meeting this standard is sufficient to sustain a criminal conviction. *Jackson*, 232 Ill. 2d at 281; *People v. Kotlarz*, 193 Ill. 2d 272, 298 (2000). When applying the *Collins* standard, a reviewing court must allow all reasonable inferences from the record in favor of the prosecution. *People v. Davison*, 233 Ill. 2d 30, 43 (2009).

¶ 49 In my opinion, in the present case, the majority and special concurrence fail to consider in favor of the State the reasonable inferences that arise from the evidence presented at defendant's trial. Rather, the majority and special concurrence discredits those inferences as either based upon speculation or because innocent inferences may also be drawn. In doing so, the majority and special concurrence ignores the standard of review. After viewing the evidence in this case under the appropriate standard of review and with all reasonable inferences drawn in favor of the State, I would affirm defendant's conviction. See *Collins*, 106 Ill. 2d at 261; *Jackson*, 232 Ill. 2d at 280.

¶ 50 For the reasons stated, I respectfully dissent from the majority's order and the special concurrence in the present case. I would affirm defendant's conviction.