

¶ 4

I. BACKGROUND

¶ 5 In September 2011, the State charged defendant with criminal drug conspiracy. The case proceeded to a jury trial, at which the State presented the following evidence.

¶ 6 Detective James Ferguson testified that in July 2011, Normal police department officers arrested Tina Bice for delivery of 1.5 grams of heroin. Bice agreed to serve as a confidential informant, and she provided Ferguson with the names of her heroin suppliers: Antwone Creater and Michael Foy. Ferguson began investigating those two men and determined that Foy was supplying heroin to Creater. Creater lived in Peoria, but he often went to Bloomington to buy heroin from Foy.

¶ 7 On September 6, 2011, at Ferguson's behest, Bice agreed to participate in a controlled purchase of heroin from Creater. Bice used her cellular phone to contact Creater, who told her that he would be coming to Bloomington that day and he could sell her heroin when he was in town. That afternoon, Ferguson met with Bice, who was accompanied by Federal Bureau of Investigation Special Agent Greg Catey. Ferguson then searched Bice's person and car to ensure that she was not in possession of any drugs or money, and provided her with \$150 in prerecorded currency for the purpose of purchasing heroin from Creater. During the meeting, Bice received a call on her cellular phone from Creater. Ferguson overheard Creater tell Bice to go to 1303 Elm Street in Bloomington to buy heroin from him.

¶ 8 Ferguson contacted other police officers and requested that they set up surveillance at that address. After the surveillance was in place, Bice drove her car to the Elm Street location. Ferguson, with Catey as a passenger, followed Bice.

¶ 9 Detective Kevin Kreger made a video recording of the activity outside 1303 Elm

Street, which was shown to the jury. The video, shot from inside Kreger's car several houses away, showed defendant standing in the front yard outside 1303 Elm Street talking with an unidentified white male and a man whom police later identified as George Rhodes.

Approximately four minutes into the video, a car appeared on the street in front of the house. Creater emerged from the house, walked to the car, leaned into the passenger window, exchanged something with the driver, and then walked back inside the house. Defendant was standing in the front yard approximately 20 feet away from the car.

¶ 10 Shortly thereafter, Bice arrived, parked her car on the street in front of the house, and walked to the front door where Creater was standing using a cellular phone. The video showed Bice speaking with Creater in the front yard near defendant. Bice testified that Creater told her that they would need to go to another person's house to get heroin. Bice also testified that she and Creater were talking "not very loud, where other people could hear it." Throughout this time, Creater appeared to be speaking with someone on his cellular phone. For a period of approximately one minute, Bice, defendant, Rhodes, the unidentified white male, and Creater stood in a circle in the front yard while Creater spoke with someone on his cellular phone. During that minute, everyone except for Creater appeared to be standing idly by, watching and listening as Creater spoke. After that phone conversation ended, Creater and Bice walked into the street near Bice's car and spoke again. Bice then got into her car and handed Creater the \$150 in prerecorded currency through the driver's side window. Creater, defendant, Rhodes, and the other unidentified male then got inside defendant's car and defendant drove the car away. Bice followed defendant's car and Ferguson followed Bice's car.

¶ 11 While Bice was following defendant's car, she received a phone call from Creater,

who told her that instead of going to another person's house, they would be going to Eastland Mall to get heroin from Foy. Bice then called Ferguson to inform him that she gave the prerecorded currency to Creater and that they were going to the mall to get the heroin from Foy. Ferguson told Bice to park somewhere out in the open.

¶ 12 Bice parked on the outer edge of the mall parking lot, and defendant parked directly adjacent to her. Ferguson parked in a hospital parking lot across the street from the mall and watched defendant, Creater, and Rhodes exit defendant's car and walk toward the mall.

¶ 13 From Ferguson's car, Catey videotaped the activity in the parking lot. The State played four noncontiguous portions of video for the jury. The first portion showed defendant and Rhodes sitting on a bench outside of the mall while Creater walked away from them into the mall.

¶ 14 Approximately 20 to 30 minutes after arriving at the mall and going inside, Creater returned to Bice's car alone. Bice testified that Creater told her he was waiting for Foy to arrive. The video then showed Creater walk several parking spaces away from Bice's car and get into the backseat of another car, in which Foy was riding.

¶ 15 The driver of that car pulled out of the parking spot and drove the car through the mall parking lot and out of view of Catey's video camera. In the next portion of video, that car reappeared and drove to the bench where defendant and Rhodes were sitting. After Creater got out of the car, he, defendant, and Rhodes walked back to the area of Bice's car. Defendant got into the driver's seat of his car and Rhodes got into the backseat. Creater sat in Bice's car. Bice testified that Creater told her that he had obtained heroin from Foy, but that it was all in one chunk and he needed to weigh it out into smaller units before he could sell it to her. For

approximately 7 1/2 minutes, defendant and Rhodes sat in defendant's car while Creater sat in Bice's car in the adjacent parking spot.

¶ 16 While defendant and Rhodes were sitting in defendant's car and Creater was sitting in Bice's car, Catey saw defendant and Rhodes "looking around in different directions" and "not only looking over at the car where the drug deal [was] taking place, but also looking in other directions, conducting countersurveillance." Kreger stated that he saw defendant "visually scanning the parking lot" and "moving his head side to side." Ferguson described this countersurveillance behavior as, "they sit there and look all around in the parking lot, and those are the types of things we observed from the point of leaving 1303 Elm over to the mall."

¶ 17 Eventually, Creater got out of Bice's car and into the empty passenger seat of defendant's car. Creater pointed in the direction of one of the parking lot's exits, and defendant drove out of the parking lot through that exit. Bice followed in her car. Bice called Ferguson to inform him that she would be following Creater to another location so that he could weigh out the heroin. Ferguson told Bice to stop following defendant's car. Officers then initiated traffic stops of defendant's car and the car Foy was riding in. After arresting defendant, Creater, Rhodes, and Foy, the officers discovered that Creater had heroin on his person and Foy was in possession of the prerecorded currency that Ferguson had earlier provided to Bice.

¶ 18 During an interview with defendant at the police station later that day, defendant told Ferguson that he drove Creater from Peoria to Bloomington because he owed Creater money for heroin that Creater provided to him several days earlier. When Ferguson asked defendant if he knew that Creater was coming to Bloomington to sell heroin, "[defendant] said he figured [Creater] was coming over here to make some moves, to sell some heroin, but he never asked

him directly that day, are you going to Bloomington to sell heroin?" Ferguson testified that defendant was not in possession of any drugs or currency when he was arrested.

¶ 19 On this evidence, the jury found defendant guilty of criminal drug conspiracy. In April 2012, the trial court denied defendant's motion for a new trial. Thereafter, the court sentenced defendant to 10 years' imprisonment.

¶ 20 This appeal followed.

¶ 21 II. STATE PRESENTED SUFFICIENT EVIDENCE

¶ 22 Defendant argues that the State failed to present sufficient evidence to sustain his conviction. Specifically, he contends that (1) the evidence failed to establish the existence of an agreement between him and Creater to deliver heroin and (2) the testimony of Ferguson, Catey, and Kreger regarding countersurveillance does not withstand scrutiny. We disagree.

¶ 23 A. Standard of Review

¶ 24 When presented with a challenge to the sufficiency of the evidence, " '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.' " (Emphasis in original.) *People v. Collins*, 106 Ill. 2d 237, 261, 478 N.E.2d 267, 277 (1985) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). "Under this standard, a reviewing court must allow all reasonable inferences from the record in favor of the prosecution." *People v. Bush*, 214 Ill. 2d 318, 326, 827 N.E.2d 455, 460 (2005). "This standard applies in *all* criminal cases, regardless of the nature of the evidence." *Id.*

¶ 25 B. Elements of the Offense and the State's Burden of Proof

¶ 26 The State charged defendant with committing the offense of criminal drug

conspiracy (720 ILCS 570/405.1 (West 2010)) in that he "knowingly and with the intent that the offense of unlawful delivery of a controlled substance be committed in violation of 720 ILCS 570/401(D)[(a)(1)] [(West 2010)] agreed with co-conspirator Antwone Creater to the commission of that offense and that an act in furtherance of that agreement was committed ***."

¶ 27 "To establish a *prima facie* case of conspiracy, the State must prove that two or more persons intended to commit a crime, that they engaged in a common plan to accomplish the criminal goal and that an act or acts were done by one or more of them in furtherance of the conspiracy." *People v. Garth*, 353 Ill. App. 3d 108, 121, 817 N.E.2d 1085, 1096 (2004) (citing *People v. Melgoza*, 231 Ill. App. 3d 510, 521, 595 N.E.2d 1261, 1270 (1992)). "Mere knowledge of or acquiescence in an illegal act neither constitutes conspiracy nor suffices to give rise to an inference of conspiracy." *People v. Testa*, 261 Ill. App. 3d 1025, 1027-28, 633 N.E.2d 1361, 1364 (1994). However, conspiracy need not be proved by an express agreement. *People v. McChristian*, 18 Ill. App. 3d 87, 91, 309 N.E.2d 388, 391 (1974). "Because of the clandestine nature of conspiracy, the courts have permitted broad inferences to be drawn from the circumstances, acts and conduct of the parties." *Garth*, 353 Ill. App. 3d at 121, 817 N.E.2d at 1096. "The existence of an agreement between coconspirators to do a criminal act may be inferred from all of the surrounding facts and circumstances, including the acts and declarations of the accused." *Id.*

¶ 28 C. The State's Evidence

¶ 29 In this case, the State presented uncontroverted direct evidence that (1) Creater agreed to sell heroin to Bice, (2) Creater told Bice that he needed to go to Eastland Mall to purchase heroin from Foy before he could sell it to Bice, (3) Bice gave prerecorded currency to

Creater, (4) defendant drove Creater to Eastland Mall where Creater met with Foy, (5) Creater left the mall in possession of heroin, and (6) Foy left the mall in possession of the prerecorded currency that Ferguson provided to Bice.

¶ 30 The State also presented defendant's statement to Ferguson that defendant (1) drove Creater to Bloomington because he owed Creater money for heroin and (2) "figured" Creater was going to Bloomington to sell heroin. The video evidence showed defendant present and within earshot of Creater and Bice during the time that Bice testified she was talking to Creater about purchasing heroin. Immediately after Creater told Bice that he needed to go somewhere else to buy heroin to sell to her, Creater got into defendant's car and defendant drove Creater directly to Eastland Mall. Defendant does not dispute that Creater purchased heroin at the mall.

¶ 31 Although—as is true of many conspiracy cases—the State did not present direct evidence of an agreement, the evidence was nevertheless sufficient to allow the jury to reasonably infer that an agreement to deliver heroin existed between defendant and Creater. Specifically, the jury could have reasonably inferred that defendant would not have driven Creater from Peoria to Bloomington, then from 1303 Elm Street to the mall, absent an agreement to deliver heroin.

¶ 32 In his brief to this court, defendant attacks Ferguson's credibility by pointing out that, contrary to Ferguson's testimony, defendant never entered the mall and, therefore, could not have conducted countersurveillance in the mall. However, this fact works against defendant because it shows that defendant went to the mall to do something other than actually visit the mall. The fact that defendant never entered the mall provides circumstantial evidence that he

knew that he and Creater were not going on a shopping trip. Likewise, defendant's willingness to wait leisurely outside while Creater went into the mall and met with Foy in the parking lot indicates that defendant agreed to give Creater a ride to the mall so that Creater could conduct a heroin transaction. The jury was left with no other reasonable explanation for defendant's willingness to act as Creater's chauffeur that day.

¶ 33 Defendant also attempts to attack Ferguson's credibility by pointing to Ferguson's "candid admission" on cross-examination that his conclusions about defendant's countersurveillance activities "could be incorrect." We find this argument singularly unpersuasive. A credible witness is not one who claims infallibility. Ferguson's willingness to recognize his own limitations did nothing to undermine his credibility. Although we conclude that reliance upon Ferguson's testimony regarding countersurveillance is not necessary to sustain defendant's conviction, we flatly reject defendant's assertion that Ferguson's testimony was rendered unreliable by his admission that he could be incorrect.

¶ 34 Finally, although defendant does not specifically argue this point in his brief, we note that defendant's act of driving Creater to the mall, as well as Creater's purchase of heroin from Foy, both constituted acts in furtherance of the conspiracy to deliver heroin.

¶ 35 We conclude that the State's evidence was sufficient to prove beyond a reasonable doubt that defendant agreed with Creater to commit the offense of delivery of a controlled substance, and that an act in furtherance of the conspiracy occurred.

¶ 36 III. CONCLUSION

¶ 37 For the reasons stated, we affirm defendant's conviction. As part of our judgment,

we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 38 Affirmed.