

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2015 IL App (4th) 130328-U
NO. 4-13-0328

FILED
June 8, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Adams County
WILLIAM K. ZABRISKIE,)	No. 12CF356
Defendant-Appellant.)	
)	Honorable
)	Thomas J. Brannan,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justice Steigmann concurred in the judgment.
Presiding Justice Pope concurred in part and dissented in part.

ORDER

- ¶ 1 *Held:* While the State's evidence was sufficient for the jury to find the anhydrous ammonia was brought across state lines, defendant was denied effective assistance of counsel where counsel failed to object to the State using impeachment evidence as substantive evidence.
- ¶ 2 After a February 2013 trial, a jury found defendant, William K. Zabriskie, guilty of methamphetamine conspiracy. Defendant filed two posttrial motions. At a joint April 2013 hearing, the Adams County circuit court denied defendant's posttrial motions and sentenced him to eight years' imprisonment. Defendant appeals, arguing (1) the State failed to prove defendant guilty beyond a reasonable doubt of methamphetamine conspiracy and (2) he was denied effective assistance of counsel because trial counsel failed to object to (a) the prosecutor's use of impeachment evidence as substantive evidence, (b) irrelevant and prejudicial evidence, and (c) inadmissible hearsay showing defendant was in a national database monitoring pseudoephedrine

purchases. We reverse and remand.

¶ 3

I. BACKGROUND

¶ 4

In June 2012, the State charged defendant with three counts of methamphetamine trafficking (720 ILCS 646/56 (West 2012)) and three counts of unlawful methamphetamine conspiracy (720 ILCS 646/65(a) (West 2012)). At the beginning of defendant's February 13, 2013, trial, the State announced it would only be trying defendant on count V and would dismiss the other five counts. Count V alleged that on June 12, 2012, defendant committed unlawful methamphetamine conspiracy "in that he, with the intent that the offense of methamphetamine trafficking *** be committed, agreed with another to commit that offense and committed an act in furtherance of that offense in that he traveled from the State of Missouri to the State of Illinois to deliver anhydrous ammonia."

¶ 5

The evidence presented at defendant's February 2013 trial relevant to the issues on appeal follows. Master Sergeant Patrick Frazier testified about his work on the methamphetamine problem in Illinois and the creation of the Illinois State Police's "meth response team." Master Sergeant Frazier also explained the National Pseudoephedrine Law Enforcement Exchange (NPLEX) database, the three different methods of manufacturing methamphetamine, and the nature of anhydrous ammonia. He also testified that, when making methamphetamine with anhydrous ammonia, the other materials include pseudoephedrine, lithium found in AA batteries, water, coffee filters, and a solvent. Moreover, Master Sergeant Frazier explained how people steal anhydrous ammonia from storage tanks and noted anhydrous ammonia could be found at farmers' co-ops "in the middle of Adams County anywhere." Last, he explained the different ways methamphetamine could be ingested, including with a syringe, which is referred to as "banging."

¶ 6 Inspector Tom Pickett testified he first met Justin Kohl a couple months before June 2012, when Kohl was suspected of buying pseudoephedrine pills and using methamphetamine. Kohl agreed to work as an informant, and the police did not arrest him. On June 10, 2012, Kohl called Inspector Pickett and told him he had a man, Caleb Colliver, wanting to bring five gallons of anhydrous ammonia to Quincy in return for \$2,000. Inspector Pickett learned Kohl had met with Colliver several days before at a gas station in West Quincy, which Inspector Pickett confirmed by obtaining video footage from the gas station. As to Colliver's offer, Inspector Pickett told Kohl to call him back and say he wanted the anhydrous ammonia and to have the person meet him at a bar in Quincy. The next day, Colliver did not show up to meet Kohl, and Inspector Pickett instructed Kohl to call him if he heard anything else from Colliver.

¶ 7 On June 12, 2012, Inspector Pickett received a call from Kohl, who stated Colliver had called and said he was 15 minutes away from Kohl's residence. Inspector Pickett notified other members of the West Central Illinois Drug Task Force as well as the Quincy police department, and he and Inspector Nick Hiland went to Kohl's house around 7 p.m. While the inspectors were at Kohl's house, Kohl received another call from Colliver. Inspector Pickett heard a male, whom he believed to be Colliver, ask Kohl "if everything was cool and that he and his homie would be there, I think it was, in five minutes or something." Kohl indicated he did not know Colliver was going to have someone with him. After waiting a few minutes, Inspector Pickett observed an older four-door car pull up in front of Kohl's house and then back into the driveway. Colliver, who had been driving the car, exited the vehicle. He walked to the garage and, upon noticing no one was there, started walking toward the house. At that point, Inspectors Pickett and Hiland exited the house, yelling "police" and telling Colliver to get on the ground.

Colliver ran about 15 yards and then complied.

¶ 8 While Inspector Hiland dealt with Colliver, Inspector Pickett saw two people in the vehicle. The vehicle's doors were closed, and the windows were shut. Defendant was the person in the front passenger seat, and John Morton was in the backseat. Neither Morton nor defendant complained of any ailments when they were removed from the car. Inspector Pickett also observed the car was "very cluttered." According to Inspector Pickett, what was later determined to be a fire extinguisher filled with anhydrous ammonia was in the backseat and partially covered by a black trash bag. The fire extinguisher was visible from the passenger side of the car. Inspector Pickett also noted a strong chemical odor coming from the vehicle, which he had encountered in the past when dealing with methamphetamine labs. Due to the smell, Inspector Pickett opened all of the doors to the vehicle.

¶ 9 The police searched the car. The fire extinguisher had an altered valve and a strong ammonia smell. Underneath the driver's seat of the car was a mason jar that had a cloudy liquid and was emanating a chemical odor. Inside a "glass case" on the car's center console was a syringe and a corner-cut Baggie that contained methamphetamine. Located in the car's glove compartment were lithium batteries, which are used in manufacturing methamphetamine. On the car's floorboard was a 12-inch-tall thermos that contained coffee filters with a blue chunky material. Inspector Pickett believed the blue substance was methamphetamine. Also, the car's trunk had a gas mask, and the backseat had a brown tool bag that contained numerous fittings for something like a propane tank. One of the fittings was dark blue, and generally, when metal hits anhydrous ammonia, the metal turns a bluish green color.

¶ 10 The police took all three men into custody. Inspector Pickett ran defendant's name through the NPLEX database. The report indicated defendant was on a pill watch from the

Pettis County jail in Missouri. Inspector Pickett also interviewed defendant that night.

Defendant stated he did not know what was going on and did not use methamphetamine. In his prior dealings with Kohl, he had never heard Kohl mention defendant's name, and defendant was not on the video of Kohl's meeting with Colliver at the West Quincy gas station.

¶ 11 Inspector Hiland testified Colliver's car circled the block once before it backed into Kohl's driveway. He, too, noted the smell emanating from Colliver's car. (Officers Richard Short and James Brown also testified about the strong odor in the car.) Inspector Hiland also sat in on Inspector Pickett's interviews of defendant and Colliver. Defendant denied knowledge of everything in the vehicle. Colliver admitted to being involved in methamphetamine-related transactions in Kansas City, Missouri, and a prior delivery of anhydrous ammonia in Quincy. Colliver also stated he picked up defendant in the Kansas City area and Morton in Hannibal, Missouri.

¶ 12 Sergeant Jason Garthous arrived on the scene later and assisted with cleaning up the methamphetamine-related items. The fire extinguisher was heavy, and he estimated it contained about five gallons of anhydrous ammonia. Sergeant Garthous testified he was able to withdraw anhydrous ammonia from the fire extinguisher without manipulating the valve, which meant the fire extinguisher was emanating fumes and was very dangerous.

¶ 13 At the close of the State's case and outside the presence of the jury, the prosecutor asked the court to take judicial notice of Colliver's case (*People v. Colliver*, No. 12-CF-354 (Cir. Ct. Adams Co.)) as proof of one of the elements of the offense, which was the element that the anhydrous ammonia was brought into Illinois from Missouri. The prosecutor believed he needed it to make a *prima facie* case. Defense counsel objected and stated he did not think it was a proper way for the State to help prove its case. The trial court took judicial notice of the case for

the limited purpose sought by the State, and the jury did not hear the evidence. Defense counsel then moved for a directed verdict, which the trial court denied.

¶ 14 Defendant presented the testimony of Ashley Lilly, his girlfriend and the mother of his child, and Colliver. Lilly testified that, late on July 11, 2012, Colliver came over and said he need defendant to help him with some work up north. Defendant told her he was going to work with Colliver and Colliver needed his help. They left about 11:30 p.m. The next day, Lilly received a call around 4:30 p.m. from Colliver's telephone, which seemed to have been accidentally dialed. She could hear loud girls and music in the background. Lilly then called defendant and talked with him. She did not hear any background noise when talking with defendant. Defendant stated he did not know where he was and was ready to come home. Lilly told him to call her if he needed her to pick him up. Lilly did not hear back from defendant until around 11 p.m., at which time defendant was in the Adams County jail.

¶ 15 Colliver testified he met defendant through Colliver's wife, and they had been friends for about 10 years. In June 2012, Colliver was living in Higginsville, Missouri, which was an hour east of Kansas City. He discussed his prior transaction with Kohl. Colliver brought 1 1/2 gallons of anhydrous ammonia to Kohl's home. Kohl only paid him \$300 of the agreed \$500. Colliver "hung out" with Kohl and drove around town, waiting on the rest of the money. While they were "hanging out," Kohl told Colliver he could get \$500 a gallon for anhydrous ammonia in the Quincy area. Colliver was only getting \$100 a gallon where he lived. Eventually, Colliver met Kohl at the West Quincy Ayerco gas station, but Colliver did not receive all of the money from Kohl. After the meeting with Kohl, Colliver first testified, "Then I left and I went home. I left there, went across the river." He later stated, "I left. I crossed back over the bridge, went back towards like Marblehead. I was driving around earlier that day, like I

said. I had seen a couple of tanks out by a farmer's house. I went back that evening. My old lady was driving. I stole anhydrous, anhydrous." When asked where he stole the anhydrous ammonia, he noted it was the first time he was in Illinois and it was off a gravel road. After he stole the anhydrous ammonia, he took the gravel road right before the bridge going into Marblehead and set the tank with the anhydrous ammonia off in the bushes about three feet from the road. Colliver's reason for hiding the anhydrous ammonia in Illinois was so he would not have to cart it all the way from Kansas City or wherever he might be the next time Kohl called him.

¶ 16 About five days later, Kohl called and offered Colliver \$2,000 for five gallons of anhydrous ammonia. Colliver agreed and arranged to meet Kohl on June 11 but did not make it. Around 9 a.m. on June 12, 2012, Colliver and defendant left for Hannibal to meet Morton. Colliver testified he had asked defendant to come along and meet some girls. He denied telling defendant about the sale of the anhydrous ammonia. It was about a four-hour drive to Hannibal. According to Colliver, defendant slept most of the way to Hannibal. Once in Hannibal, Colliver dropped defendant off with a girl that just had a baby, and Colliver left with another girl for about five hours. While gone, Colliver made a batch of methamphetamine and used some of it. Colliver had some methamphetamine-making supplies in Hannibal because he went there every three to five days. Eventually, defendant texted Colliver that he was ready to leave, and Colliver went and picked up defendant. Colliver then went to pick up Morton, who was on the beach along the Illinois side of the river. Defendant again fell asleep, and Colliver decided it was a good time to deliver the anhydrous ammonia.

¶ 17 Colliver went to the gravel road and picked up the tank of anhydrous ammonia. Colliver explained he had been handling anhydrous ammonia since he was 15 and denied a smell

was in the car. He texted Kohl and told him he had two buddies with him and needed to quickly do the exchange. Colliver pulled into Kohl's driveway and went to the garage. No one was there, and he looked over at the house. All of a sudden, the police started coming out from all over. Colliver again denied telling defendant about his transaction with Kohl. Colliver described the trip to defendant as "a vacation away from [his] old lady."

¶ 18 Colliver also testified he was currently serving a 15-year sentence for unlawful methamphetamine conspiracy to traffic anhydrous ammonia. He had pleaded guilty to the charge. Colliver called it a "plea of convenience," noting "it was mine; it was my fault. I did the crime." In 2007, Colliver had been convicted of distribution of controlled substance and later burglary in the second degree in Johnson County, Missouri. In 2009, he was convicted of felony resisting arrest in Pettis County, Missouri.

¶ 19 Additionally, Colliver testified he had met with Inspector Pickett the Tuesday before his trial. When asked if he told Inspector Pickett that defendant knew what Colliver was all about, Colliver responded, "Absolutely not." He also denied complaining to Inspector Pickett about defendant not putting money into his prison commissary account. On cross-examination, Colliver also denied needing protection from others during the anhydrous-ammonia transaction. Moreover, he denied talking to defendant in jail about this case. Colliver explained they were housed in different parts of the jail and could not talk to each other.

¶ 20 In rebuttal, the State called Inspector Pickett. He testified that, when he asked Colliver if he had a conversation with defendant before they left Kansas City, Colliver stated "he couldn't remember a conversation that they had, but he did say that [defendant] knows what he's about, what he always does or what he's always doing with the drugs." Pickett further explained that Colliver noted "he had been doing drugs since he was 14 and that [defendant] knows what

he's doing, what he's always done." No instruction was given to the jury that indicated the aforementioned testimony could only be used for impeachment purposes.

¶ 21 In his initial closing argument, the prosecutor recognized he did not have a recording of Colliver and defendant entering into an agreement. He then noted the following: "Perhaps in the one or two moments of clarity that Caleb Colliver had on that stand he said one thing. '[Defendant] knows what I'm all about. He knows what I do. He knows what I've done.' " Defense counsel did not object and then, in his closing argument, he noted Colliver denied making that statement to Inspector Pickett. During his rebuttal argument, the prosecutor made the following argument:

"How do you show an agreement short of having a contract or something of that, or a recording? How do you show an agreement? You do it by the actions of the individuals, by what you find; if you will, the circumstantial evidence in the case.

[Defendant] made the choice of coming with Caleb Colliver. He's known him, known what he's about. Those were Caleb Colliver's words to Officer Pickett, 'He knew what I was about.' "

The prosecutor also noted Colliver's guilty plea to the same charge and the lack of credibility of Colliver and defendant's reason for going on the trip. Again, no jury instruction was given limiting the jury's consideration of Colliver's alleged prior inconsistent statement to Inspector Pickett as only impeachment evidence.

¶ 22 At the conclusion of the trial, the jury found defendant guilty of unlawful methamphetamine conspiracy. Defendant filed two posttrial motions. One challenged the

sufficiency of the evidence, and the other asserted defendant was entitled to a judgment notwithstanding the verdict in his favor or a new trial because the jury was allowed to consider without any limitations Colliver's prior inconsistent statement to Inspector Pickett. At a joint April 12, 2013, hearing, the trial court denied both posttrial motions and sentenced defendant to eight years' imprisonment.

¶ 23 On April 26, 2013, defendant filed a timely notice of appeal in sufficient compliance with Illinois Supreme Court Rule 606 (eff. Feb. 6, 2013). Thus, this court has jurisdiction of this appeal under Illinois Supreme Court Rule 603 (eff. Feb. 6, 2013).

¶ 24 II. ANALYSIS

¶ 25 A. Sufficiency of the Evidence

¶ 26 Defendant first asserts the State failed to prove him guilty beyond a reasonable doubt of unlawful methamphetamine conspiracy. The State disagrees. When presented with a challenge to the sufficiency of the evidence, a reviewing court's function is not to retry the defendant. *People v. Givens*, 237 Ill. 2d 311, 334, 934 N.E.2d 470, 484 (2010). Rather, we consider " '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. Davison*, 233 Ill. 2d 30, 43, 906 N.E.2d 545, 553 (2009) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). Under that standard, a reviewing court must draw all reasonable inferences from the record in the prosecution's favor. *Davison*, 233 Ill. 2d at 43, 906 N.E.2d at 553. Further, we note a reviewing court will not overturn a criminal conviction "unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." *Givens*, 237 Ill. 2d at 334, 934 N.E.2d at 484. Additionally, our supreme court has recognized a criminal conviction may be based solely

on circumstantial evidence. *People v. Brown*, 2013 IL 114196, ¶ 49, 1 N.E.3d 888. We note "the same standard of review applies whether the evidence is direct or circumstantial." *Brown*, 2013 IL 114196, ¶ 49, 1 N.E.3d 888.

¶ 27 Section 65(a) of the Methamphetamine Control and Community Protection Act (Act) (720 ILCS 646/65(a) (West 2012)) provides the following:

"A person engages in a methamphetamine conspiracy when:

(1) the person intends to violate one or more provisions of this Act;

(2) the person agrees with one or more persons to violate one or more provisions of this Act; and

(3) the person or any party to the agreement commits an act in furtherance of the agreement."

In this case, the State alleged defendant agreed to commit the offense of methamphetamine trafficking. Under section 56(a) of the Act (720 ILCS 646/56(a) (West 2012)), a person commits methamphetamine trafficking when, except for purposes as authorized by this Act, he or she "knowingly brings, or causes to be brought, into this State methamphetamine, anhydrous ammonia, or a methamphetamine precursor for the purpose of manufacture or delivery of methamphetamine or with the intent to manufacture or deliver methamphetamine." Count V of the information asserted the act committed was "travel[ing] from the State of Missouri to the State of Illinois to deliver anhydrous ammonia."

¶ 28 Here, defendant asserts the State failed to show the anhydrous ammonia was brought into Illinois from Missouri. While Colliver both told Inspector Pickett and testified at trial he obtained the anhydrous ammonia from a farm in Illinois, the circumstantial evidence

suggested otherwise. Defendant, Colliver, and Morton all lived in Missouri. Colliver had only been in Illinois twice, the first time he met with Kohl and when he was arrested in this case. Colliver also testified he went to Hannibal, which is in Missouri, every three to five days to make methamphetamine and kept some equipment for making methamphetamine there. Colliver and defendant first went to Hannibal and stayed there four to five hours, during which Colliver made a batch of methamphetamine on a back road.

¶ 29 Additionally, when Colliver first discusses his meeting with Kohl at the Ayerco in West Quincy, which is in Missouri, he stated he left and went home. He then stated he went back across the river when the meeting with Kohl ended. Later on, Colliver explained that, when the meeting ended, he went back across the river and drove toward Marblehead, which is in Illinois. Outside Marblehead, he stole some anhydrous ammonia and hid it in bushes off a gravel road near the bridge going into Marblehead. Colliver explained that, when he was waiting on more money from Kohl, he had driven around and spotted a farmer's anhydrous tanks. The jury could have found Colliver's story about crossing the river back into Illinois after the meeting at the West Quincy Ayerco lacked credibility. No reason existed for Colliver to hide the anhydrous ammonia in Illinois when he frequently traveled to nearby Hannibal and used the anhydrous ammonia to make his own methamphetamine. Also, his first statement that he went home after the Ayerco meeting makes sense because he was already back in Missouri, where he lived.

¶ 30 Accordingly, we find the circumstantial evidence in this case was sufficient for the jury to find beyond a reasonable doubt the anhydrous ammonia was brought into Illinois from Missouri.

¶ 31 B. Effective Assistance of Counsel

¶ 32 Defendant also asserts he was denied effective assistance of counsel in this case.

This court analyzes ineffective-assistance-of-counsel claims under the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Evans*, 186 Ill. 2d 83, 93, 708 N.E.2d 1158, 1163 (1999). To obtain reversal under *Strickland*, a defendant must prove (1) his counsel's performance failed to meet an objective standard of competence and (2) counsel's deficient performance resulted in prejudice to the defendant. *Evans*, 186 Ill. 2d at 93, 708 N.E.2d at 1163.

¶ 33 To satisfy the deficiency prong of *Strickland*, the defendant must demonstrate counsel made errors so serious and counsel's performance was so deficient that counsel was not functioning as "counsel" guaranteed by the sixth amendment (U.S. Const., amend. VI). Further, the defendant must overcome the strong presumption the challenged action or inaction could have been the product of sound trial strategy. *Evans*, 186 Ill. 2d at 93, 708 N.E.2d at 1163. To satisfy the prejudice prong, the defendant must prove a reasonable probability exists that, but for counsel's unprofessional errors, the proceeding's result would have been different. *Evans*, 186 Ill. 2d at 93, 708 N.E.2d at 1163-64.

¶ 34 One of defendant's ineffective-assistance-of-counsel allegations was defense counsel's failure to object to the State's improper use of impeachment testimony as substantive evidence and to have the trial court instruct the jury on the proper use of impeachment testimony. The impeachment testimony at issue was Colliver's alleged prior inconsistent statement to Inspector Pickett that defendant "knows what he's about, what he always does or what he's always doing with the drugs." The prosecutor mentioned that statement as substantive evidence in both his closing and rebuttal arguments. The State asserts this issue is forfeited because defense counsel did not object at trial. However, on appeal, defendant is arguing ineffective assistance of counsel based on counsel's failure to object at trial, and thus this issue is not forfeited. On the merits, the State agrees the impeachment testimony was not substantive

evidence but asserts defendant was not prejudiced because the error did not create a reasonable probability of a different result due to the overwhelming evidence of guilt.

¶ 35 We disagree with the State's assessment the evidence of defendant's guilt was overwhelming. The existence of an agreement between Colliver and defendant was all circumstantial. Coconspirator Colliver denied defendant knew about his intent to sell anhydrous ammonia to Kohl and testified the anhydrous ammonia was stolen in Illinois. The evidence also showed Kohl met only Colliver the first time and did not know Colliver would be bringing anyone with him the second time. Moreover, defendant did not attempt to flee the scene when the police came out of Kohl's house, and when later questioned by police, defendant denied both knowing what was going on and being a methamphetamine user. The evidence of guilt consisted primarily of the fact defendant traveled across Missouri with his long-time friend Colliver, who had a long history of being involved with methamphetamine. Defendant was then present in Colliver's car, which had a strong chemical odor and had methamphetamine-related items all over it, including the fire extinguisher full of anhydrous ammonia that was visible from defendant's seat.

¶ 36 Since the evidence of defendant's guilt was not overwhelming, Colliver's alleged prior inconsistent statement to Pickett could have been significant in proving beyond a reasonable doubt defendant's intent to participate in Colliver's plan to sell anhydrous ammonia to Kohl in Illinois. The likelihood that statement played a role in defendant's guilty verdict is even greater given the State highlighted the statement in its closing and rebuttal arguments. The first thing the prosecutor mentioned that showed an agreement was Colliver's alleged statement about defendant knowing what Colliver was about. The error was further exacerbated by the fact the jury did not receive Illinois Pattern Jury Instructions, Criminal, No. 3.11 (4th ed. 2000), which

would have told the jury to consider Colliver's prior inconsistent statement "only for the limited purpose of deciding the weight to be given the testimony you heard from the witness in this courtroom." Therefore, a reasonable probability does exist a different result would have happened if the alleged prior inconsistent statement was not treated as substantive evidence.

¶ 37 "Where, as here, defendant was deprived of effective assistance of counsel but the evidence was nevertheless sufficient to convict, the proper remedy is to reverse defendant's conviction and remand the matter for a new trial." *People v. Young*, 306 Ill. App. 3d 350, 356, 716 N.E.2d 312, 316 (1999). Since we have found defendant is entitled to a new trial on this claim of ineffective assistance of counsel, we do not address defendant's other claims of ineffective assistance of counsel. However, the record does show some egregious errors occurred during defendant's trial that we feel must be addressed.

¶ 38 First, we note a trial court cannot take judicial notice of a codefendant's "file" during the State's case in chief. Our supreme court has clearly held a codefendant's confession, admission, guilty plea, or conviction related to the same offense is inadmissible for the purpose proving the defendant guilty. *People v. Sullivan*, 72 Ill. 2d 36, 42, 377 N.E.2d 17, 20 (1978). The reason for such a rule is "[a] defendant who is separately tried is entitled to have his guilt or innocence determined upon the evidence against him without being prejudged according to what has happened to another." *Sullivan*, 72 Ill. 2d at 42, 377 N.E.2d at 20. Second, a "prima facie" case does not exist in criminal law. If the State did not present evidence establishing the anhydrous ammonia was brought from Missouri to Illinois without the codefendant's guilty plea, then defendant's motion for a directed verdict should have been granted. Additionally, we note the charging instrument itself fails to properly state the offense on which defendant was tried. Count V of the information alleged defendant committed unlawful methamphetamine conspiracy

based on him agreeing with another to commit the offense of methamphetamine trafficking by "travel[ing] from the State of Missouri to the State of Illinois to deliver anhydrous ammonia." However, the offense of methamphetamine trafficking requires the person to knowingly bring the anhydrous ammonia into the State of Illinois. See 720 ILCS 646/56 (West 2012). Thus, the information should have alleged the anhydrous ammonia was brought into the State of Illinois from the State of Missouri.

¶ 39

III. CONCLUSION

¶ 40 For the reasons stated, we reverse defendant's conviction and sentence and remand this case to the Adams County circuit court for a new trial.

¶ 41 Reversed and remanded.

¶ 42 Presiding Justice Pope concurring in part and dissenting in part.

¶ 43 I agree with the majority there were egregious errors committed during defendant's trial. I also agree we should reverse defendant's conviction, but I dissent in part because I do not think defendant should be retried. The State introduced Colliver's criminal case to establish the anhydrous was brought into Illinois from Missouri. Defendant properly objected to the procedure employed by the State to prove an element of the offense. There was no other evidence at that point in the trial to prove the anhydrous was brought from Missouri to Illinois. But for the improper admission of Colliver's case, the defendant's motion for a directed verdict should have been granted. The jury did not hear the trial court take judicial notice of the co-defendant's case and thus, in the State's case in chief, there was no evidence before the jury to prove a crucial element of the offense.

¶ 44 I agree with the majority, the trial court should have allowed the motion for a directed verdict. By erroneously allowing the State's request to take judicial notice of a co-defendant's case and by erroneously denying defendant's motion for a directed verdict, defendant's counsel was faced with the decision of whether to put on any evidence in defense. If he had declined to do so, we would be reversing without remand. It is unjust, in my opinion, to allow the State a second chance to convict defendant when it did not charge him correctly or prove him guilty with only admissible evidence. Without the erroneously admitted evidence, the State failed to prove an essential element of the offense.

¶ 45 Additionally, I disagree with the majority's conclusion the circumstantial evidence introduced by defendant's questioning of Colliver was sufficient to sustain a conviction. The majority points out "[t]he evidence of guilt consisted primarily of the fact defendant traveled across Missouri with his long-time friend Colliver, who had a long history of being involved

with methamphetamine." *Supr.* ¶ 35. The evidence clearly showed Colliver was the person selling and transporting anhydrous. Defendant's riding in a car with Colliver, even knowing Colliver had a history of drug use, is insufficient evidence of a conspiracy to engage in methamphetamine trafficking. Accordingly, I would outright reverse defendant's conviction and bar retrial.