

substance (cocaine) (720 ILCS 570/401(c)(2) (West 2008)). Defendant's second trial (he was awarded a new trial following the conclusion of the first) commenced in March 2011.

¶ 7 It is not disputed a drug transaction occurred. We will discuss only the facts relevant to a determination of whether defendant is guilty of unlawful delivery of a controlled substance under an accountability theory.

¶ 8 A. The State's Case

¶ 9 Inspector Mike Willis, a Pontiac police officer assigned to the Livingston County Proactive Unit, testified on August 19, 2009, he participated in a controlled drug detail between James Allen, a confidential source, and Carlos Casani. Willis provided Allen with \$400 in documented currency for the purchase of approximately seven grams of cocaine. Willis drove Allen to a vacant home at 213 Renfrew Street in Dwight, the address where Allen and Casani agreed to meet. Willis observed a white minivan pull up and watched as Allen approached, the passenger door opened, and the dome light came on. Two people were in the van, but Willis did not actually see the transaction take place. Approximately one minute later, Allen returned to Willis with the cocaine. Prior to this transaction, Willis was unfamiliar with defendant.

¶ 10 James Allen, the confidential source, testified he approached the van as Casani opened the passenger door. Casani's hand was tucked down at his side. After Allen approached, Casani moved his hand to his lap revealing a "little sandwich Baggie" wrapped in a napkin. The package was small enough to be hidden in the palm of the hand. Allen gave Casani the money and requested Casani count it, which he did. According to Allen, defendant, the driver, appeared nervous and did not speak to Allen or Casani during the brief one-minute transaction. Allen had never spoken to or met defendant before.

¶ 11 Deputy Sam Fitzpatrick, a police officer working with the Proactive Unit, was directed by Inspector Mike Nolan to stop defendant's vehicle. Deputy Fitzpatrick caught sight of defendant as defendant turned into an alley. Deputy Fitzpatrick activated his lights. Defendant pulled into his driveway, exited his vehicle, and was walking to his house when he was apprehended.

¶ 12 Inspector Nolan, a Dwight police officer working with the Proactive Unit, was assigned to observe the drug transaction from his vehicle parked across the street. He was not close enough to see the faces of the van's occupants. When the van left, Inspector Nolan followed the vehicle closely as it turned on several streets and into an alley, where it increased its speed. He continued to follow the vehicle, losing sight of it for a second or two. According to Inspector Nolan, a more direct route was available to defendant's house.

¶ 13 Inspector Nolan was unable to stop defendant's vehicle himself because he was in an undercover police car without lights, sirens, or other insignia that would indicate it was a police vehicle.

¶ 14 After defendant was taken into custody, Inspector Nolan questioned him at the Dwight police station. According to Inspector Nolan, defendant told him he had laid down around 9:30 p.m. and a short time later, heard a knock on his window. Defendant recognized the person knocking as Casani. Casani asked defendant to give him a ride to RR Donnelley's. Defendant agreed to give Casani a ride. On the way to RR Donnelley's, Casani told defendant to "take a right so [he] could drop off a sack." Casani instructed defendant to pull off to the side of the road in front of 213 Renfrew Street. Defendant did. The passenger door of the minivan opened and defendant saw Casani had a bag filled with what appeared to be cocaine in his hand.

Defendant watched Casani hand it to the unknown male (James Allen) and listened as Casani counted the money. Following a brief conversation between Casani and Allen, defendant reported to Inspector Nolan he left the area. After leaving, defendant told Casani if he " 'gets popped for this he is going to be pissed.' " Defendant then saw headlights in the mirror and noticed he was being followed. Defendant told Casani to jump out when he turned left in the alley after which defendant proceeded home. According to Inspector Nolan, defendant told Nolan he knew what "a sack" meant.

¶ 15 On cross-examination, Inspector Nolan agreed he did not verify at what point during the drive Casani made the comment about "dropping off the sack" and acknowledged it could have been made after defendant turned onto Renfrew Street.

¶ 16 Defendant reduced his statement to writing and it was published to the jury. In his written statement, defendant writes, as he was driving toward RR Donnelley's, Casani

"said to turn right so he could drop off a sack. He said pull over right here at which time a man walked up to my vehicle before I stopped. I knew this was not good but it soon got much worse[. H]e pulled out what appeared to be a few hundred dollars and Carlos pulled out a chunk of what appeared to be cocaine approximately the size of a rubber 'bouncing ball' you would get out of a coin machine. Inside I panicked but immediately pulled away and told him if I get popped I'm gonna be pissed. That's all that was said until I told him 'we're being followed when I turn left you jump out[.]' "

¶ 17 After the defense rested, the State called Inspector Nolan as a rebuttal witness. When asked to specify exactly what defendant told him Casani had said, Inspector Nolan stated defendant told him, Casani "needed to drop off a sack so turn right here, which [Casani] did and then a few minutes later pulled to the side of the road as instructed." On cross-examination, defense counsel asked, "at no point did you verify through either [defendant] or through Carlos where they were in relation to Renfrew [S]treet when Carlos said he needed to drop off the sack. Is that right?" Inspector Nolan answered, "[t]hat's correct." Defense counsel then asked, "Could have been just as after they turned onto Renfrew [S]treet. You don't know that because you never asked; did you?" Inspector Nolan responded, "No."

¶ 18 B. Defendant's Case

¶ 19 Defendant testified he had been sleeping when he was awakened by knocking on his window. He thought his wife had locked herself out of the house so he got up and unlocked the door. Casani was at the door. He knew Casani from living in the same community and because he had went to school with defendant's younger brother. The last time defendant had seen Casani was in passing at a bar six months prior. In the last 10 years, defendant had approximately 4 total contacts with Casani. On one occasion, defendant had given Casani a ride to his mother's house.

¶ 20 Initially when Casani asked for a ride, defendant declined because he was sleeping and defendant assumed Casani wanted a ride to his mother's, approximately 40 minutes away. After Casani explained he just needed a ride to RR Donnelley's, defendant agreed to drive him. Defendant grabbed his keys, leaving his wallet, cell phone, and identification behind.

¶ 21 As defendant was driving east on Waupansie, which goes directly to RR

verdict, arguing the State failed to present any evidence defendant knowingly partook or assisted Casani either before or during the commission of the offense. The trial court denied the motion, noting while defendant may not have known when he left his house a drug transaction would occur, the evidence presented by the State would support a jury's verdict at some point before the actual drug transaction, defendant became aware of what was to take place.

¶ 25 At the close of all evidence, defense counsel renewed his motion for a directed verdict, arguing "there is absolutely no evidence that the State has presented of any planning on my, on our client's part in the commission of this offense or that he knowingly engaged in any criminal activity at the time that he drove the vehicle." The trial court denied the motion for the same reasons it gave previously.

¶ 26 D. The Jury's Verdict

¶ 27 Based on this evidence, the jury found defendant guilty of unlawful delivery of a controlled substance (cocaine).

¶ 28 This appeal followed.

¶ 29 II. ANALYSIS

¶ 30 Neither party disputes a drug transaction occurred. The only issue is whether the State proved defendant had the requisite intent to promote, facilitate, solicit, aid, abet, agree to aid, or attempt to aid Casani in Casani's plan to sell cocaine to Allen. We affirm.

¶ 31 When the sufficiency of the evidence for a criminal conviction is in dispute, we determine whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 278, 818 N.E.2d 304, 307 (2004). It is not the

appellate court's function to retry the defendant. *People v. Collins*, 106 Ill. 2d 237, 261, 478 N.E.2d 267, 277 (1985). The determination of the weight to be given the witnesses' testimony, their credibility, resolution of inconsistencies and conflicts in the evidence, and reasonable inferences to be drawn from the testimony are the responsibility of the trier of fact. *People v. Sutherland*, 223 Ill. 2d 187, 242, 860 N.E.2d 178, 217 (2006). For a reviewing court to set aside a criminal conviction on grounds of insufficient evidence, the evidence submitted must be so unreasonable, improbable, or unsatisfactory as to create a reasonable doubt of the defendant's guilt. *People v. Rowell*, 229 Ill. 2d 82, 98, 890 N.E.2d 487, 496-97 (2008).

¶ 32 To sustain a conviction of unlawful delivery of a controlled substance (cocaine) based on accountability, the State must prove the following beyond a reasonable doubt: "(1) the defendant solicited, ordered, abetted, agreed or attempted to aid another in the planning or commission of the delivery; (2) the defendant's participation took place before or during the commission of the delivery[;] and (3) the defendant had the concurrent, specific intent to promote or facilitate the commission of the offense." *People v. Deatherage*, 122 Ill. App. 3d 620, 624, 461 N.E.2d 631, 633-34 (1984); see also 720 ILCS 5/5-2 (West 2008). When a defendant's involvement rests solely on circumstantial evidence, the facts must be inconsistent with any reasonable hypothesis of innocence. *People v. Evans*, 87 Ill. 2d 77, 83, 429 N.E.2d 520, 522-23 (1981). A defendant's mere presence at the scene does not render him accountable; rather, there must be proof of defendant's intent to aid, abet, or attempt to aid or abet another in the preparation of the crime. *Id.* at 83, 429 N.E.2d at 522.

¶ 33 It is undisputed defendant drove Casani to the location where the drug transaction occurred. The question is at what point in time defendant became aware of Casani's plan to

deliver cocaine.

¶ 34 Defendant cites *People v. Darnell*, 214 Ill. App. 3d 345, 573 N.E.2d 1252 (1990), and *Deatherage*, 122 Ill. App. 3d 620, 461 N.E.2d 631 to support his contention the evidence was insufficient to prove him guilty beyond a reasonable doubt.

¶ 35 In *Darnell* and *Deatherage*, the defendants were found guilty of unlawful delivery of a controlled substance under an accountability theory. The appellate court reversed the convictions after finding the evidence insufficient to prove the defendants aided, abetted, or attempted to aid others in the planning or commission of the delivery. In both cases, the evidence against the defendants was entirely circumstantial. In *Darnell*, the defendants were present at the scene and had been in actual possession of the cocaine for a few minutes, but the appellate court found no evidence either defendant knew the bag contained cocaine or a crime was being committed. Further, the court stated mere speculation the defendants may have opened the bag was insufficient to support a guilty verdict. *Darnell*, 214 Ill. App. 3d at 367, 461 N.E.2d at 1266-67. In *Deatherage*, while the defendant was present at the home during the drug transaction and seemed knowledgeable of the local cocaine trade, the defendant did not participate in the drug transaction and it was possible he was merely an innocent bystander.

Deatherage, 122 Ill. App. 3d at 624, 461 N.E.2d at 634.

¶ 36 We find *Darnell* and *Deatherage* are distinguishable from the instant case. In *Darnell*, no evidence was presented to show the defendants knew the bag held cocaine or that defendant Darnell was going to conduct a drug transaction. In *Deatherage*, the only evidence provided by the State was the defendant was present at the house where the drug transaction occurred. This is a close case, unlike *Darnell and Deatherage*, but the evidence is not entirely

circumstantial as defendant gave a written statement. Based upon defendant's remarks to Inspector Nolan during questioning as stated in Nolan's testimony and his written statement, a jury could have found defendant was not merely an innocent bystander. Inspector Nolan testified, based on his questioning of defendant, Casani told defendant to "turn right so he could drop off a sack." In his written statement, published to the jury, defendant states, Casani "said to turn right so he could drop off a sack. He said pull over right here at which time a man walked up to my vehicle before I stopped." At trial, defendant testified contrary to his written statement. He testified Casani did not make the statement until after he had stopped the vehicle. Inspector Nolan further testified defendant told him he knew what a sack was. Defendant testified he could make assumptions as to what a sack meant, but he "definitely did not know it meant he was dropping off a big chunk of cocaine which it turned out to be."

¶ 37 The jury had to determine the credibility of defendant and Inspector Nolan as well as to resolve any inconsistencies and conflicts in the evidence. In viewing the evidence in the light most favorable to the State, we hold a rational trier of fact could have found Inspector Nolan and defendant's written statement taken the night of the drug transaction more credible than defendant's trial testimony and, thus, found defendant guilty of unlawful delivery of a controlled substance under an accountability theory.

¶ 38 Because we determine a reasonable trier of fact could have found defendant guilty based solely on the aforementioned evidence, we need not discuss defendant's alleged flight from the crime scene noted by the State.

¶ 39 III. CONCLUSION

¶ 40 We affirm. As part of our judgment, we award the State its \$50 statutory

assessment against defendant as costs of this appeal.

¶ 41 Affirmed.