

gram or more but less than 15 grams, and more than 3 grams" of heroin. At trial, Chicago Police Officer Cantore testified that he and his partner were conducting surveillance on North Monticello at approximately 12:45 p.m. on January 29, 2013. Cantore observed an individual climb into the side window of an abandoned building at 614 North Monticello, then exit the window and enter a blue van. Cantore followed the van to Central Park and Huron, where the individual left the van and gave a green and tan "golf ball size item" to a person on the corner, later identified as defendant. Defendant tore plastic from the object and walked to 635 North Monticello, also an abandoned building, where he placed the "items" underneath a board in the rear yard and left. Cantore radioed defendant's description and direction to other officers, and recovered seven tin foil packets encased in green and tan "digital camo tape" from underneath the board. Officers placed defendant in custody and Cantore identified him, but the blue van was not located.

¶ 4 Cantore and Officer Herrera went to 614 North Monticello and entered the abandoned building through the side window. Inside, they found a white shopping bag containing 30 tin foil packets encased in the same green and tan "digital camo tape" as the packets Cantore found at 635 North Monticello. They also found 244 tin foil packets "encased in black and white checkered tape." The items recovered at both addresses were inventoried at the police station, where Cantore and Herrera interviewed defendant. Herrera advised defendant of his *Miranda* rights and he indicated that he understood. Defendant "admitted he was working packs[] *** in conjunction with two individuals named Bumpy and Rio." He stated that "when he runs out of packs, he calls Bumpy and Rio who drive the blue van" and "go and get him fresh packs to sell

on the streets." Cantore opined that the items recovered at 614 and 635 North Monticello were "packaged for distribution."

¶ 5 On cross-examination, Cantore testified that he never observed defendant at 614 North Monticello. He did not see the person who entered the window carry anything from the building or engage in hand-to-hand transactions with the driver of the blue van. According to Cantore, defendant did not tender currency when he received the "golf ball size item" and did not engage in any other transactions.

¶ 6 The State entered a stipulation between the parties that Officer Herrera would testify regarding the chain of custody of the recovered drugs. The parties further stipulated that Paula Bosco Szum, a forensic chemist at the Illinois State Police Crime Lab, would testify that the seven packets from 635 North Monticello and the 30 packets in "digital tape" from 614 North Monticello weighed 3.1 grams and 13.7 grams, respectively, and tested positive for heroin. Seventy of the 244 packets wrapped in "black and white checkered tape," weighing 15.9 grams, were also tested and contained heroin.

¶ 7 The court denied defendant's motion for directed finding.

¶ 8 The court found defendant guilty of both counts of possession of heroin with intent to deliver. The court stated that Officer Cantore "was very credible" and that "the statement and the observations of the officer are clear enough to support a conviction for intent to deliver."

Additionally, the court stated:

**** [I]t is also clear to me that the observations of the officer are sufficient corroboration to show that the defendant is engaged in a conspiracy to deliver drugs with these other two individuals, and particularly the fact that at least some, and significant,

actually, amount of drugs are found back in the house, in the abandoned building at 635 Monticello, and they're packaged in the same manner as the packets the defendant received from the individual in the van who crawled out the window."¹

¶ 9 Defense counsel filed a motion for new trial, arguing, *inter alia*, that the State failed to prove that defendant had constructive possession of the drugs found at 614 North Monticello. Counsel submitted that no evidence showed that defendant knew about or controlled the drugs found at that location. The court denied the motion, stating that it "did not consider this a constructive possession case," but rather, "an accountability case." The court merged the counts and sentenced defendant to six years' imprisonment.

¶ 10 On appeal, defendant contends that the State failed to prove that he was accountable for possession with intent to deliver the heroin found at 614 North Monticello. According to defendant, no evidence, including his statement to Officer Cantore, showed that he was at 614 North Monticello, controlled the building, or knew that drugs were kept there. Additionally, defendant argues that no evidence showed that he maintained contact with Bumpy or Rio, had the "concurrent intent" to possess the drugs they kept at 614 North Monticello, or was anything more than their "customer." Defendant also submits that his failure to report the drugs does not show his accountability because he did not know the drugs were at the house. Thus, although he concedes that he possessed the heroin found at 635 North Monticello, he claims that he was not "involved in a criminal design to possess and sell" all the heroin at 614 North Monticello, and therefore, was not proven guilty under an accountability theory.

¹ Prior to sentencing, the court stated that defendant was "not found guilty of conspiracy."

¶ 11 The State, in response, contends that defendant was proven guilty under an accountability theory where the evidence showed that he "worked together" with Bumpy and Rio to sell heroin. The State argues that the fact defendant was not seen at 614 North Monticello is irrelevant where he admitted that Bumpy and Rio brought him heroin to sell, and Cantore observed an individual retrieve heroin from that address and bring it to defendant.

¶ 12 In reply, defendant maintains that no evidence established that he knew the drugs at 614 North Monticello existed and, therefore, he could not have been accountable for them. Consequently, defendant submits that he was, at most, accountable for "discrete amounts of drugs given to him during periodic transactions with Bumpy and Rio," and lacked knowledge of a "criminal design" regarding the rest of the drugs.

¶ 13 As an initial matter, the parties dispute the standard of review. Relying on *People v. Chirchirillo*, 393 Ill. App. 3d 916 (2009), defendant argues that *de novo* review applies because, taking the pertinent facts as true, the issue concerns whether the facts established the elements of possession with intent to deliver under an accountability theory. The State maintains that defendant's claim depends on the facts presented and the credibility of the witnesses and, therefore, *de novo* review is improper. For the following reasons, we agree with the State.

¶ 14 In *Chirchirillo*, the defendant was charged with unlawful use of a weapon by a felon under an accountability theory. *Chirchirillo*, 393 Ill. App. 3d at 916-17. The evidence showed that she was a convicted felon, but no evidence showed that the codefendant, who possessed the weapon, was a convicted felon. *Chirchirillo*, 393 Ill. App. 3d at 917-18. Because the issue on appeal was whether uncontested facts established the elements of the underlying offense, *de novo* review applied. *Chirchirillo*, 393 Ill. App. 3d at 921. In the present case, however, defendant

does not challenge whether uncontested facts established the elements of possession of a controlled substance with intent to deliver. Rather, he argues that the evidence was insufficient to establish his accountability. As this is a question of fact, we apply the standard of review set forth by the United States Supreme Court in *Jackson v. Virginia*, 443 U.S. 307, 318-19 (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" (emphasis in original)). We note, however, that the outcome is identical under either standard. See *People v. White*, 2016 IL App (2d) 140479, ¶ 19 ("under either standard, we determine that defendant was proved guilty beyond a reasonable doubt").

¶ 15 The standard of review on a challenge to the sufficiency of the evidence is whether, 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. Brown*, 2013 IL 114196, ¶ 48 (citing *Jackson*, 443 U.S. at 318-19). The reviewing court will not retry the defendant or substitute its judgment for that of the trier of fact on questions involving conflicts in the testimony, the credibility of witnesses, or the weight of the evidence. *Brown*, 2013 IL 114196, ¶ 48. To sustain a conviction, "[i]t is sufficient if all of the evidence taken together satisfies the trier of fact beyond a reasonable doubt of the defendant's guilt." *People v. Hall*, 194 Ill. 2d 305, 330 (2000). A defendant's conviction will be reversed only if the evidence is so unreasonable, improbable or unsatisfactory that there remains a reasonable doubt of the defendant's guilt. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009).

¶ 16 To sustain a conviction for possession of a controlled substance with intent to deliver, the State must prove the defendant had knowledge of the presence of the drugs, the drugs were in the

defendant's immediate control or possession, and the defendant intended to deliver the drugs. 720 ILCS 570/401 (West 2012); *People v. Pittman*, 2014 IL App (1st) 123499, ¶ 15. Here, defendant contends that the State failed to prove his guilt under an accountability theory.

¶ 17 A defendant is legally accountable for another person's criminal conduct when "either before or during the commission of an offense, and with the intent to promote or facilitate that commission, he or she solicits, aids, abets, agrees, or attempts to aid that other person in the planning or commission of the offense." 720 ILCS 5/5-2(c) (West 2012). To establish that a defendant intended to promote or facilitate a crime, "the State may present evidence that either (1) the defendant shared the criminal intent of the principal, or (2) there was a common criminal design." *People v. Fernandez*, 2014 IL 115527, ¶ 13.

¶ 18 Under the common design rule, "where two or more persons engage in a common criminal design or agreement, any acts in the furtherance of that common design committed by one party are considered to be the acts of all parties to the design or agreement and all are equally responsible for the consequences of the further acts." *People v. Perez*, 189 Ill. 2d 254, 267 (2000). Relevant factors in determining a defendant's accountability include whether he was present during the offense, fled from the scene, maintained "close affiliation with his companions" after the offense, or failed to report the crime. *Perez*, 189 Ill. 2d at 267. These factors "are not required for a finding of accountability and are instead used as considerations." *People v. Johnson*, 2014 IL App (1st) 122459-B, ¶ 152. However, "[e]vidence that the defendant voluntarily attached himself to a group bent on illegal acts, with knowledge of its design, also supports an inference that he shared the common purpose and will sustain his conviction for an offense committed by another." *Perez*, 189 Ill. 2d at 267.

¶ 19 Viewing the evidence in the light most favorable to the State, a rational trier of fact could find that defendant knowingly engaged in a common criminal design to sell heroin, and therefore, was accountable for possession with intent to deliver the drugs found at 614 North Monticello. Officer Cantore testified that he observed an individual climb into the window of an abandoned building at 614 North Monticello, then exit the window and enter a blue van. The van drove to a corner, where the individual met defendant and gave him seven tin foil packets of heroin wrapped in green and tan tape, which defendant placed underneath a board in the yard of 635 North Monticello, another abandoned building. He "admitted he was working packs[] *** in conjunction with two individuals named Bumpy and Rio," and stated that "when he runs out of packs, he calls Bumpy and Rio who drive the blue van" and "go and get him fresh packs to sell on the streets." Officers found 274 tin foil packets of heroin at 614 North Monticello, including 30 tin foil packets encased in the same tape as the packets recovered at 635 North Monticello.

¶ 20 Here, defendant's inculpatory statement, along with Cantore's observations, establish that he "voluntarily attached himself" to other individuals engaged in a common criminal design to possess and deliver heroin. *Perez*, 189 Ill. 2d at 267. Consequently, he was accountable for "any acts in the furtherance of that common design" (*Perez*, 189 Ill. 2d at 267), including the other individuals' conduct in storing drugs for distribution at 614 North Monticello. See *People v. Ivy*, 2015 IL App (1st) 130045, ¶ 45 (finding that accountability requires evidence that "someone with whom defendant shared a common criminal design committed the act for which defendant is being held accountable"). Although defendant maintains that the common criminal design was limited to "periodic transactions" involving "discrete" quantities of heroin, "[t]he decision as to

which of competing inferences to draw from the evidence is the responsibility of the trier of fact.” *People v. Green*, 339 Ill. App. 3d 443, 452 (2003); see also *People v. Pintos*, 133 Ill. 2d 286, 291 (1989) (prosecution is not required to discount every reasonable hypothesis of innocence). The evidence at trial showed defendant's involvement in a common criminal design to possess and deliver heroin, and therefore, was sufficient to sustain his conviction, under an accountability theory, for the heroin kept at 614 North Monticello by the other parties to the design.

¶ 21 Relying on *People v. Raya*, 250 Ill. App. 3d 795 (1993), however, defendant argues that he should not be held accountable for drugs possessed by his "supplier." In *Raya*, the defendant asked a supplier to bring cocaine to a party and was convicted of possession with intent to deliver under an accountability theory. *Raya*, 250 Ill. App. 3d at 798-99. We found the evidence insufficient to establish that the defendant had the intent to deliver, noting that, under section 5-2(c)(2) of the Criminal Code, a person is not accountable for an offense where "his or her conduct was inevitably incident to its commission." *Raya*, 250 Ill. App. 3d at 801; Ill. Rev. Stat. 1991, ch. 38, ¶ 5-2. As the defendant's request for cocaine was "inevitably incident" to the supplier providing the drugs, he could not be accountable for the supplier's possession with intent to deliver. *Raya*, 250 Ill. App. 3d at 801. We stated that "[i]f this defendant can be held criminally responsible for having the intent to deliver narcotics *under the facts in this record*, then every person who solicits drugs from a supplier or source for his own personal ingestion could be held accountable for the possession with the intent to deliver of the supplier." (Emphasis added.) *Raya*, 250 Ill. App. 3d at 800-01.

¶ 22 Here, unlike in *Raya*, no evidence suggested that defendant requested heroin for personal use. *Raya*, 250 Ill. App. 3d 799-800. To the contrary, defendant's conduct in accepting a package of seven packets of heroin, hiding the items beneath the board in the yard of an abandoned building, and walking away, along with his inculpatory statement, all indicated his knowledge and participation in a common criminal design to sell heroin. Therefore, defendant was accountable for "the acts of all parties" in furtherance of that design, including the acts of the parties who stored and retrieved the heroin at 614 North Monticello. *Perez*, 189 Ill. 2d at 267. *Raya*, therefore, is inapposite and does not necessitate a different outcome in the present case.

¶ 23 For the foregoing reasons, we affirm the judgment of the trial court.

¶ 24 Affirmed.