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BISHOP, J. dissenting. The central issue in this appeal is whether the trial court drew impermissible inferences in concluding, from the proven predicate facts, that the defendant, Hector Fermaint, violated the terms of his probation by the criminal possession of narcotics. Relying on decisional law that states that a court may not draw an inference of possession from mere spatial or temporal proximity or from furtive movements alone, the majority has determined that the court's conclusion of possession was unwarranted. Because I believe the court was entitled to reach the conclusion that the defendant possessed narcotics, I would affirm the court's finding of a violation of probation.

The underlying predicate facts found by the court may be summarized as follows. On May 1, 2001, Officer Jerry Chrostowski of the New Britain police department received a telephone call from a confidential informant that Kara Laliberte was in the Pinnacle Heights housing project and was in possession of cocaine. The informant also told Chrostowski that Laliberte was in her Honda Accord, accompanied by two males, and he identified one of the males as ''Hector,'' Laliberte's boyfriend. After locating Laliberte and the Honda, watching the automobile for five to fifteen minutes and observing the car leave the area, Chrostowski called over the police radio for a marked police vehicle to stop the Honda.

Officer Raymond Grzegorzek, who was in a marked cruiser, stopped the Honda. Immediately in back of the marked cruiser was Chrostowski's car. Grzegorzek informed Chrostowski that he had observed the occupants of the car engaging in furtive movements. As Chrostowski approached the vehicle, he observed a lot of furtive movements between the backseat passenger, later identified as the defendant, and Laliberte. When the headlights of the cruiser were on the Honda, Chrostowski saw the defendant make a bending movement from the backseat toward Laliberte, who was seated in the front passenger seat. As Officer Christopher Brody, who was working with Chrostowski, approached the Honda, he observed Laliberte putting something down her pants. Chrostowski approached the defendant, and noticed, with the aid of his flashlight, several crumbs of a rock like substance on the seat next to the defendant. Believing the crumbs to be crack cocaine, Chrostowski asked the other officers to escort the driver and passengers from the car. Chrostowski collected the crumbs found on the backseat and field tested them. They tested positive for the presence of cocaine. The Honda was searched, and a small amount of green leafy substance was found in the front carpet area of the car. That substance tested positive for marijuana. A plastic bag

with a large rock like substance was found in Laliberte's pants. It tested positive for crack cocaine. Laliberte also had $120 in cash concealed in her bra. An address book was recovered from the defendant containing names of people that were familiar to the arresting officers from prior drug transactions and drug arrests.[1] The book also contained other names and personal information of the defendant. No drugs were found on the person of the defendant who was carrying $2 at the time.

On the basis of those factual findings, the court found ''that the defendant had knowing possession and control of the crack cocaine crumbs observed and seized by Officer Chrostowski,'' and that ''the evidence that the defendant was observed bending toward Kara Laliberte after he saw the police were behind him, and the furtive movements [that] the officers observed the defendant and Ms. Laliberte [engage] in as the officers approached the car, led to a reasonable inference that the defendant bent forward and handed the larger piece of crack cocaine to Kara Laliberte, which she concealed in her pants.'' Finally, on the basis of those inferences, the court found that ''the evidence adduced at the violation of probation hearing was reliable and probative, and establishes by a fair preponderance of the evidence that the defendant possessed narcotics on May 1, 2001, and thereby violated a condition of his probation.''

I begin my analysis basically. In legal parlance, the term ''inference'' is defined as ''a permissible deduction from the evidence before the court which the [finders of fact] may accept, reject, or accord such probative value as they desire . . . [a] permissible deduction which the trier of the facts may adopt, without an express deduction of law to the effect . . . [i]n a proper sense, the thing proved . . . [n]ot guesswork.'' Ballentine's Law Dictionary (3d Ed. 1969). In common language, an ''inference'' is defined as ''the act or process of inferring or deriving a conclusion from facts or premises.'' Webster's II New Riverside University Dictionary (1994). In plain terms, an inference is simply a deduction or conclusion based on proven facts.

Our tradition is to give deference on appeal to the inferences drawn by fact finders. Our Supreme Court has opined: ''The trier may draw whatever inferences from the evidence or facts established by the evidence it deems to be reasonable and logical.'' (Internal quotation marks omitted.) *State* v. *Berger*, 249 Conn. 218, 224, 733 A.2d 156 (1999). The ability to draw inferences is, of course, not unbounded. We are instructed that ''[i]t is within the province of the jury to draw reasonable and logical inferences from the facts proven. . . . The jury may draw reasonable inferences based on other inferences drawn from the evidence presented. . . . Our review is a fact based inquiry limited to determine whether the inferences drawn by the jury are so unreasonable as to be unjustifiable.'' (Citations omitted; inter-

nal quotation marks omitted.) *State* v. *Ford*, 230 Conn. 686, 692, 646 A.2d 147 (1994). Thus, from our decisional law, we know that the trier may draw whatever inferences from the facts it deems to be reasonable and logical, including inference of inferences, and those inferences will be found, on appeal, to be reasonable as long as they are not so unreasonable as to be unjustifiable. Additionally, our Supreme Court has noted that ''no clear line of demarcation exists between a permissible inference and an impermissible speculation . . . .'' (Citation omitted; internal quotation marks omitted.) *State* v. *Torres*, 242 Conn. 485, 501, 698 A.2d 898 (1997).

In assessing whether the line has been crossed, we are not, however, totally without guidance. We know that ''[p]roof of a material fact by inference from circumstantial evidence need not be so conclusive as to exclude every other hypothesis. It is sufficient if the evidence produces in the mind of the trier a reasonable belief in the probability of the existence of the material fact. . . . Thus, in determining whether the evidence supports a particular inference, we ask whether that inference is so unreasonable as to be unjustifiable. . . . In other words, an inference need not be compelled by the evidence; rather, the evidence need only be reasonably susceptible of such an inference. Equally well established is our holding that a jury may draw factual inferences on the basis of already inferred facts. . . . Moreover, [i]n viewing evidence which could yield contrary inferences, the jury is not barred from drawing those inferences consistent with guilt and is not required to draw only those inferences consistent with innocence.'' (Internal quotation marks omitted.) *State* v. *Niemeyer*, 258 Conn. 510, 518–19, 782 A.2d 658 (2001). Finally, in assessing the reasonableness of inferences drawn by a fact finder, we accord the trier the right to use common sense and to draw from experience. See *State* v. *Ford*, supra, 230 Conn. 693.

In reaching its determination that the trial court drew impermissible inferences, the majority, I believe, has incorrectly relied on cases readily distinguishable and has distinguished a case that is persuasively akin to the facts at hand. Additionally, I believe that in assessing whether the predicate facts warranted the inference of possession, the majority incorrectly reviewed each fact in isolation without regard to the cumulative weight of all the facts.

In reversing the judgment, the majority relies on *State v. Brunori*, 22 Conn. App. 431, 578 A.2d 139, cert. denied, 216 Conn. 814, 580 A.2d 61 (1990), and *In re Benjamin C.*, 22 Conn. App, 458, 577 A.2d 1117 (1990). Because the factual underpinnings of both *Brunori* and *In re Benjamin C.* are dissimilar to the facts at hand, I believe that reference to them is not helpful to an analysis of whether the court in this instance drew impermissible inferences. In *Brunori*, a defendant con-

victed of unlawful possession of narcotics, appealed on the ground of evidentiary insufficiency. *State* v. *Brunori*, supra, 432. This court agreed and reversed the judgment. Id. In that case, the defendant had been standing on a street adjacent to a building and had been seen bending down near the location at which the police then found narcotics and drug paraphernalia. Id., 433. In reversing the defendant's conviction, this court determined that the defendant could have bent down for a variety of nonculpable reasons, and that the narcotics and paraphernalia were found in an area accessible to an indeterminate number of people. Id., 439–40. Thus, we concluded, those facts were an insufficient basis from which the fact finder could infer that the defendant was in possession of narcotics and drug paraphernalia. Id., 440. In reaching its conclusion, the *Brunori* court was particularly mindful that the drugs and drug related materials were found in a public space. The court commented: ''[I]t is well settled that if the contraband is found in a place where the defendant does not have exclusive possession, the presence of the defendant near the contraband without more is insufficient to support an inference of possession. . . . Under such circumstances, the state must offer some additional evidence that would tend to buttress an inference of possession.'' (Citation omitted.) Id., 436. The court continued: ''We consider this proof requirement to hold true especially where, as here, the contraband was found in a public area. Unlike contraband found either in an automobile with multiple passengers or in shared premises, contraband found in a public area could have been secreted there by virtually anyone.'' Id. Unlike a street corner, the inside of a car is a confined space. This court was right in *Brunori* to recognize the difference between constructive possession in a public space and constructive possession in an automobile. In citing *Brunori*, my colleagues in the majority have ignored that significant difference.

Similarly, the majority cites *In re Benjamin C.*, supra, 22 Conn. App. 458, for the proposition that evidence that the defendant leaned over as if to tie his shoelaces while standing on a public sidewalk in an area with a history of heavy drug activity was, alone, without further evidence linking him to the drugs, an insufficient indicator that he was is in possession of drugs found under the siding of a nearby house. In that case, this court concluded: ''Bending over as if to tie one's shoe is one of those innocent gestures that can be mistaken for a guilty movement. The motivation for such an action may run the whole spectrum from the most legitimate to the most heinous. It is because of this danger that the law requires more than a mere furtive gesture to constitute probable cause for a search or arrest, let alone proof beyond a reasonable doubt for conviction.'' *In re Benjamin C.*, supra, 462. Unlike *In re Benjamin C.*, in this case, the defendant's furtive gesture of leaning

forward toward the front seat passenger, seen in the context of the entire incident and in combination with other factors, warranted the inference of possession. As noted by the court, during the incident, the defendant and Laliberte acted furtively and looked back at the approaching police. Furthermore, the police discovered crack cocaine adjacent to the defendant who was the sole backseat passenger, they took an address book from the defendant containing names of individuals known to the police from prior drug arrests and transactions, and they discovered additional crack cocaine in Laliberte's pants. These facts comprise a totality of circumstances, from which I believe the court reasonably drew the inference of possession.

Dismissed by the majority as not pertinent is *State* v. *Delarosa*, 16 Conn. App 18, 547 A.2d 47 (1988). Contrary to my colleagues' view, I believe the facts of *Delarosa* and those at hand are strikingly akin. In *Delarosa*, in which this court affirmed the defendant's conviction of possession of narcotics with intent to sell, the defendant, like the defendant in this case, was the lone backseat passenger in a car in which there was also a driver and a front right seat passenger. Id., 21. In *Delarosa*, during a routine motor vehicle stop, a polce officer observed white power, later proven to be cocaine, on the floor where the defendant was seated. Id. In this case, the police discovered cocaine on the rear seat adjacent to the defendant. When the officer in *Delarosa* began to question the vehicle's occupants about the powder, he noted that the defendant appeared fidgety and nervous and that he continually wiped his nose. Id. In this case, the defendant kept glancing back toward the approaching police, and he leaned forward toward the front seat passenger in whose pants pocket cocaine later was discovered. Additionally, in *Delarosa*, the officer noted a trail of white powder leading from the right front floor to the area of the seat belt recoil receptacle where a clear plastic bag containing cocaine was discovered, and the officer discovered a beeper on the person of one of the front seat occupants. Id. Subsequently, a search of the vehicle's trunk revealed additional bags of cocaine wrapped in newspaper contained in a grocery bag. Id., 22. In my view, the differences between the facts in *Delarosa* and the facts at hand relate to evidence of sale rather than simple possession. The evidence of possession in *Delarosa* was on a par with the evidence confronted by the trial judge in this case whose factual determination the majority rejects.

Finally, while I agree that furtive movement alone is insufficient proof of possession and that proximity to drugs alone is insufficient evidence of possession, my colleagues in the majority fail to embrace the bedrock principle that in drawing the inference of possession, a trier is entitled to assess the totality of the circumstances. See *State* v. *Polanco*, 69 Conn. App. 169, 178, 797 A.2d 523 (2002). Thus, in assessing the defendant's

furtive movements, his looking back at the police and his leaning down toward Laliberte, who put something in her pants and in whose pants cocaine was discovered, while each action alone may be an insufficient basis for the inference of possession, the trier was entitled to consider, and did consider, the significance of the defendant's furtive movements in the broader context of the discovery of crack cocaine on the rear seat, of which the defendant was the lone passenger, and the defendant's possession of an address book containing names familiar to the police from prior drug transactions and arrests in deducing from all the evidence that the defendant was in possession of narcotics. As this court concluded in *Brunori*, in analyzing whether an inference is supported by the facts, we must look to the cumulative effect of the evidence. The court stated: ''We are well aware that [w]here a group of facts [is] relied upon for proof of an element of the crime it is their cumulative impact that is to be weighed in deciding whether the standard of proof . . . has been met . . . .'' (Internal quotation marks omitted.) *State* v. *Brunori*, supra, 22 Conn. App. 440.

In sum, on the basis of my review of pertinent decisional law, I believe the trial court drew the permissible inference that the defendant was in possession of narcotics from the proven facts. In reversing the court's decision, I believe the majority has failed to accord to the trial court the latitude of fact-finding our tradition demands. Finally, I believe, that in parsing the individual predicate facts to determine that each fact alone was insufficient to warrant an inference of possession, the majority has failed to accord proper latitude to the right and responsibility of the trial court to view all the evidence cumulatively in determining whether the evidence, in toto, justified an inference of possession. Because I agree that the court correctly discharged its responsibility and reasonably made its determination, I would affirm its finding that the defendant violated the terms of his probation.

Because I would affirm the court's determination that the defendant violated the terms of his probation, I, unlike the majority, must reach the second issue raised by the defendant on appeal, which is that the delay in holding his probation revocation hearing violated General Statutes § 53a-32 (a), and his constitutional rights to due process and a speedy trial.

The following additional facts are relevant to the defendant's claim. The defendant was arrested on a charge of violation of probation on August 25, 2001, and found to be in violation of probation after a hearing conducted on January 22, 2004. Thus, nearly two and one-half years passed between arrest and adjudication. On that basis, the defendant now claims that the delay between the arraignment and his hearing violated § 53a-32 (a), and his constitutional rights to due process and

a speedy trial.

Section 53a-32 (a) provides, in relevant part, that upon a defendant's arrest for a violation of probation, "the court shall cause the defendant to be brought before it without unnecessary delay for a hearing on the violation charges . . . ." In *State* v. *Toler*, 192 Conn. 321, 471 A.2d 643 (1984), our Supreme Court set forth enumerated factors to be considered in determining whether a delay between arraignment for a violation of probation and hearing constituted an unnecessary delay. The court reviewed the "[l]ength of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant." (Internal quotation marks omitted.) Id., 324. In the case at hand, the record is devoid of any assertion by the defendant of his statutory right to be heard without unnecessary delay, nor does the record reveal that he objected to the passage of time between arraignment and hearing. Additionally, the record reflects that while the probation violation charge against the defendant was pending, he had other charges pending against him, including felony murder, and that all of his files had been consolidated for pretrial discussion purposes. The record also reveals that many of the continuances on the defendant's then pending charges, including this matter, were continued at his request or with his assent.[2]

As to his statutory claim, the defendant has provided this court with no basis, either by a review of the record or by cogent argument, to determine that he was prejudiced by the lapse of time between his arraignment and the violation of probation hearing.

In addition to his statutory claim, the defendant asserts that the delay in the proceedings deprived him of his constitutional rights to due process and to a speedy trial. These claims, too, fail because the record is not adequate for review. Recognizing that he did not assert in the trial court any right to a speedy trial and that he made no claim that the passage of time between arraignment and hearing deprived him of due process, the defendant now seeks review under *State* v. *Golding*, 213 Conn. 233, 239–40, 567 A.2d 823 (1989). In order to achieve review of an unpreserved constitutional claim, however, the record provided to this court on appeal must be adequate for review. As I have noted, however, the defendant has provided this court with some but not all of the transcripts of his several court appearances while this and other matters in which he was a defendant were pending.[3]

Finally, the defendant seeks plain error review. See Practice Book § 60-5. I would decline to grant such review. Although I would agree that the passage of twenty-nine months between arraignment and hearing on a violation of probation charge is a substantial time period, the time factor, alone, is an inadequate basis for a determination that a defendant's rights have been

prejudiced. As our Supreme Court has noted, a substantial delay between arrest and trial may be a sufficient basis to warrant inquiry into other factors regarding the delay, but the passage of time, alone, is not sufficient to determine a violation of the right to a speedy trial. See *State* v. *Gasparro*, 194 Conn. 96, 99–100, 480 A.2d 509 (1984), cert. denied, 474 U.S. 828, 106 S. Ct. 90, 88 L. Ed. 2d 74 (1985). ''Plain error review is reserved for truly extraordinary situations where the existence of the error is so obvious that if affects the fairness and integrity of and public confidence in the judicial proceedings.'' (Internal quotation marks omitted.) *State* v. *Taylor*, 239 Conn. 481, 502, 687 A.2d 489 (1996), cert. denied, 521 U.S. 1121, 117 S. Ct. 2515, 138 L. Ed. 2d 1017 (1997). I do not believe this is such a situation.

For the reasons given, I respectfully dissent.

[1] Although the majority notes that the police discovered an address book containing names of people familiar to the police, I think it has some significance that the names were familiar to the police ''from prior drug arrests—or drug investigations,'' as the court stated.

[2] I note that although the defendant has provided this court with some transcripts of his various court appearances while this case and others were pending and that the state has augmented the defendant's filings, this court has not been furnished with all the transcripts of the defendant's court appearances on this matter between arraignment and hearing. Consequently, this court is unable to determine definitely the reason for each continuance. I note, as well, that it is the appellant's responsibility to furnish a record adequate for review of the issues he raises on appeal. *New Haven Savings Bank* v. *Mongillo*, 67 Conn. App. 799, 801, 789 A.2d 547 (2002).

[3] From the record provided, however, I note that many of the continuances were granted at the defendant's request or with his concurrence.