

2017 IL App (2d) 150705-U
No. 2-15-0705
Order filed November 8, 2017

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Lake County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 14-CF-793
)	
GUYAN K. BURNETT,)	Honorable
)	Daniel B. Shanes,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Presiding Justice Hudson and Justice Spence concurred in the judgment.

ORDER

¶ 1 *Held:* The State failed to prove beyond a reasonable doubt that defendant, on two occasions, delivered drugs within 1,000 feet of a church: although the officer testified that the location of each offense was within that distance of a church, there was no evidence that the churches existed and were used primarily for religious worship when the offenses were committed; thus, we remanded for sentencing for unenhanced delivery.

¶ 2 Following a jury trial, defendant, Guyan K. Burnett, was convicted of two counts of unlawful delivery of a controlled substance within 1,000 feet of a church (720 ILCS 570/401(d)(i), 407(b)(2) (West 2014)) and sentenced to concurrent terms of nine years' imprisonment. Defendant timely appealed and argues that the evidence was insufficient to prove

that the offenses were committed within 1,000 feet of a church. He asks that we reduce his convictions to the lesser included offense of unlawful delivery of a controlled substance (720 ILCS 570/401(d)(i) (West 2014)) and remand for resentencing. For the reasons that follow, we grant defendant's request.

¶ 3

I. BACKGROUND

¶ 4 The relevant evidence at trial established that, on two separate occasions, Waukegan police officer Michael Sliozis witnessed defendant deliver heroin to police informant Thomas Mason. Sliozis testified that the first drug transaction occurred on January 29, 2014. Sliozis drove Mason to a parking area near "16th and Glenn" in North Chicago. After defendant arrived in a vehicle, Sliozis observed Mason purchase heroin from defendant through the window of defendant's vehicle. Sliozis and Mason then returned to the police station, where Mason identified defendant from a photo lineup. Defendant was not arrested that day.

¶ 5 Sliozis was asked by the State whether he had done "any further investigation" as to the location of the drug transaction. Sliozis responded that he had checked to see if there was a church within 1,000 feet of the location. Thereafter, the following colloquy occurred:

"Q. Mike, what church was nearby?

A. That was the First Corinthian Missionary Baptist Church.

Q. How did you determine this from the deal location to the church?

A. A wheel and also a calculating map for it.

Q. What do you mean by wheel?

A. So basically it's a giant wheel. It has a handle on it, it rolls and tells the distance from where you started to where you finished.

Q. What was the distance?

A. The distance to that one was approximately 569 feet from that church.

Q. Are you measuring from the point where the transaction actually occurred?

A. Yes, with the wheel, yes.”

¶ 6 Sliozis testified that the second transaction took place on February 6, 2014. Sliozis drove Mason to meet defendant at “11th and Glenn” in North Chicago. Sliozis parked his vehicle on the side of the road, and when defendant arrived he parked his vehicle in front of Sliozis’s vehicle. Sliozis observed Mason approach defendant’s vehicle and conduct a drug transaction through defendant’s window. When Mason returned to Sliozis’s vehicle, they drove to the police station, where Mason again identified defendant from a photo lineup.

¶ 7 Once again, Sliozis was asked whether he did further investigation, and the following colloquy occurred:

“Q. On February 6th did you do any further investigating into that location where the drug deal went down with regard to churches.

A. Yes, to see if there was churches within a thousand feet range from there.

Q. And was there?

A. Yes.

Q. What church?

A. That was Eglesia Evangelical Baptista Church.¹

Q. How did you determine the distance?

A. Again, through mapping with the wheel again.

Q. What was the distance?

¹ The proper name is “Iglesia Evangelica Bautista Church.” We use that name hereinafter.

A. That one was approximately 864 feet.”

¶ 8 Following trial, defendant was convicted of two counts of unlawful delivery of a controlled substance within 1,000 feet of a church (720 ILCS 570/401(d)(i), 407(b)(2) (West 2014)) and sentenced to concurrent terms of nine years’ imprisonment. Defendant timely appealed.

¶ 9

II. ANALYSIS

¶ 10 On appeal, defendant argues only that the evidence was insufficient to prove that the buildings identified by Sliozis as churches were operating as churches on the dates of the offenses.

¶ 11 We review claims of insufficient evidence to determine “ ‘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 (1985) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). A conviction will not be set aside unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant’s guilt. *Id.* “[I]t is not the function of this court to retry the defendant.” *Id.* The trier of fact must assess the credibility of the witnesses and the weight of their testimony, resolve conflicts in the evidence, and draw reasonable inferences from that evidence, and this court will not substitute its judgment for that of the trier of fact on these matters. *People v. Ortiz*, 196 Ill. 2d 236, 259 (2001).

¶ 12 Section 401(d)(i) of the Illinois Controlled Substances Act (Act) (720 ILCS 570/401(d)(i) (West 2014)) makes it a crime to deliver “any other amount” of a narcotic drug. A violation of section 401(d)(i) is a Class 2 felony, which is punishable by a term of imprisonment not less than 3 years and not more than 7 years. 730 ILCS 5/5-4.5-35(a) (West 2014). Section 407(b)(2) of the

Act enhances a section 401(d) (720 ILCS 570/401(d) (West 2014)) offense to a Class 1 felony if the violation occurs “within 1,000 feet of the real property comprising any church, synagogue, or other building, structure, or place used primarily for religious worship.” 720 ILCS 570/407(b)(2) (West 2014). A Class 1 felony is punishable by a term of imprisonment of not less than 4 years and not more than 15 years. 730 ILCS 5/5-4.5-30(a) (West 2014). Here, however, in light of his criminal history, defendant was sentenced as a Class X offender, subject to 6 to 30 years’ imprisonment. See 730 ILCS 5/5-4.5-25(a), 5-4.5-95(b) (West 2014).

¶ 13 Defendant contends that the State failed to present sufficient evidence to prove beyond a reasonable doubt that First Corinthian Missionary Baptist Church and Iglesia Evangelica Bautista Church were operating as churches on the dates of the offenses. In support, defendant relies on two cases from our district: *People v. Ortiz*, 2012 IL App (2d) 101261, and *People v. Cadena*, 2013 IL App (2d) 120285. We address each in turn.

¶ 14 In *Ortiz*, the defendant was convicted of unlawful delivery of a controlled substance within 1,000 feet of a church. *Ortiz*, 2012 IL App (2d) 101261, ¶ 1. On appeal, he argued that the evidence was insufficient to show that the building near the drug transaction at issue was a church. *Id.* At trial, the investigating officer testified that he measured the distance between the drug transaction and the Emmanuel Baptist Church. *Id.* ¶ 5. He determined that distance to be 705 feet. *Id.* The officer did not testify to the date on which he measured this distance. *Id.* ¶ 11. The State offered into evidence photographs showing the Emmanuel Baptist Church but offered no testimony as to when the photographs were taken or whether they “accurately represented the building as it appeared on the date of the offense.” *Id.* In finding this evidence insufficient, we emphasized that the issue before us was “not simply whether the evidence established beyond a reasonable doubt that the building *** was a ‘church *** or other building *** used primarily

for religious worship.’ ” *Id.* (quoting 720 ILCS 570/407(b)(1) (West 2008)). Rather, we explained that the question was “whether the evidence established beyond a reasonable doubt that the building was such a building *on the date of the offense.*” (Emphasis in original.) *Id.* Finding that there was no way of knowing whether the church existed on the date of the drug transaction (and noting that the State could have easily established that fact), we reversed the defendant’s conviction of unlawful delivery of a controlled substance within 1,000 feet of a church. *Id.* ¶ 11. We restored and affirmed his conviction of unlawful delivery of a controlled substance, and we remanded the cause for sentencing on that conviction. *Id.* ¶ 15.

¶ 15 In *Cadena*, we relied on *Ortiz* to reverse convictions of delivery of a controlled substance within 1,000 feet of a church. *Cadena*, 2013 IL App (2d) 120285, ¶ 18. In *Cadena*, the only evidence indicating that the “Evangelical Covenant Church” was being used as a church on the dates of the three undercover drug transactions was a police officer’s “affirmative response to the leading question, ‘[I]s that a church that is an active church?’ ” *Id.* ¶ 16. We found that the question had no “temporal context” and could have referred to the time of trial, rather than to the dates of the offenses. *Id.* We further found that, even if the officer’s response could be taken to mean that the church was active on the dates of the offenses, there was no evidence presented to establish how the officer knew that information. *Id.* ¶ 17. We rejected the State’s argument that the jury could infer that the officer was familiar with the church and its activities solely because he was an experienced police officer. *Id.* As in *Ortiz*, we noted that the State could have presented testimony from someone with personal knowledge that the church was active on the dates of the offenses, such as “a neighbor, or a police officer who testified to being familiar with the church from having regularly patrolled the neighborhood,” but that it failed to do so. *Id.* ¶ 18. We concluded that “because the State failed to present evidence from anyone demonstrating

personal knowledge as to whether the church was operating as such on the dates of the offenses, *no* rational trier of fact could have found the enhancement beyond a reasonable doubt.” (Emphasis in original.) *Id.*

¶ 16 Here, as in *Ortiz* and *Cadena*, the State failed to present evidence that First Corinthian Missionary Baptist Church and Iglesia Evangelica Bautista Church were operating as “churches” on the date of the offenses. First, with respect to the January 29 drug transaction, Sliozis testified only that he measured the distance between the drug transaction and First Corinthian Missionary Baptist Church and determined it to be 569 feet. As in *Ortiz*, he did not state when this measurement was conducted. Given the absence of any temporal context for the measurement, there is no evidence from which any trier of fact could have concluded that First Corinthian Missionary Baptist Church was a church when the January 29 drug transaction occurred. See *Ortiz*, 2012 IL App (2d) 101261, ¶ 11. Therefore, we reduce defendant’s conviction on this offense to the lesser included offense of unlawful delivery of a controlled substance and remand for resentencing.

¶ 17 Turning to the February 6 drug transaction, Sliozis testified that he measured the distance between the drug transaction and Iglesia Evangelica Bautista Church, determining it to be 864 feet. And, unlike with the January 29 drug transaction, Sliozis testified that he conducted this measurement on the date of the offense. However, Sliozis did not provide any testimony upon which to base a conclusion that Iglesia Evangelica Bautista Church was used primarily for religious worship on the date of the offense. He testified only that Iglesia Evangelica Bautista Church was a church.

¶ 18 Nevertheless, the State asserts that the jury could have reasonably inferred that Iglesia Evangelica Bautista Church was a “church, *** or other building *** used primarily for

religious worship.” 720 ILCS 570/407(b)(2) (West 2014). According to the State, this inference could be reasonably drawn from Sliozis’s “long career as a narcotics officer for the Waukegan Police Department,” Sliozis’s “repeated arrest[s] [of] individuals in the City of North Chicago,” and “the proper name of [the] church.” In support of this argument, the State relies on *People v. Sims*, 2014 IL App (4th) 130568, where the court affirmed the defendant’s convictions of two counts of unlawful delivery of a controlled substance within 1,000 feet of a church. However, *Sims* is readily distinguishable.

¶ 19 In *Sims*, one of the investigating officers testified that a church called “Joyful Gospel Church” was located 696 feet away (as determined by the officer’s use of a measuring wheel) from where the drug transaction at issue occurred. *Id.* ¶ 70. The officer testified that he was familiar with the neighborhood where the drug transaction occurred. *Id.* ¶ 66. He testified that the church had been in the neighborhood for the entire 10-year period that he had worked as an officer in the city of Bloomington. *Id.* He also specifically testified that the church was open on the day of the offense. *Id.* ¶ 66. In addition, the State offered into evidence a photograph of the church, and the officer testified that the photograph accurately represented the way the church appeared on the date of the offense. *Id.* ¶ 67.

¶ 20 On appeal, the defendant argued that the evidence was insufficient because the officer did not explain how he knew that the building was used primarily for religious worship on the date of the offense. *Id.* ¶ 132. In response, the State argued that, whenever the proper name of a building includes the word “church,” a police officer’s reference to the building by using its proper name is proof beyond a reasonable doubt that the building is used primarily as a place of worship. *Id.* ¶ 130.

¶ 21 The State’s argument in *Sims* was premised on *People v. Foster*, 354 Ill. App. 3d 564, 566-68 (2004), wherein the First District held that, for purposes of section 407(b), the parties’ stipulation that a witness “would testify he measured the distance from 4310 West Crystal Street to the New Hope Church located at 4255 Division Street” and that the distance “measured 580 feet” was sufficient to sustain the defendant’s conviction, because “a rational trier of fact could have inferred New Hope Church was a church used primarily for religious worship based on its name.”

¶ 22 The *Sims* court found for the State, purporting to follow *Foster*; however, a review of its decision shows that the *Sims* court required more than nomenclature alone. In determining whether the evidence in the record supported an inference that the testifying officer had sufficient personal knowledge to testify that the building was used as a church on the relevant date, the *Sims* court emphasized the fact that he had been a police officer in Bloomington for 10 years and the fact that he had been assigned to the narcotics unit for the past 5½ years. *Sims*, 2014 IL App (4th) 130568, ¶ 134. The court noted that a narcotics officer’s work necessarily entailed “spending a lot of time on the streets, doing controlled purchases and surveillance and keeping an eye on neighborhoods.” *Id.* ¶ 138. As such, the court explained, “[h]ow or whether buildings are used would seem to be of particular interest” to a narcotics officer. *Id.* The court concluded:

“Therefore, when we look at the evidence in the light most favorable to the prosecution, a rational trier fact could have believed [the officer’s] testimony that he was familiar with the neighborhood *** and that the building at that address was in use as a church on the dates of the drug offenses.” *Id.*

¶ 23 *Sims* is readily distinguishable primarily because, unlike the officer in *Sims*, Sliozis never testified that Iglesia Evangelica Bautista Church was functioning primarily as a place of worship on the date of the offense or any other time. He testified only that he measured the distance from the offense to Iglesia Evangelica Bautista Church. Even if Sliozis had testified that Iglesia Evangelica Bautista Church was an active church on the date the offense, this testimony, without more, would not have been sufficient. Again, unlike in *Sims*, Sliozis never testified that he was familiar with the church or with the neighborhood where the arrest occurred. Indeed, Sliozis testified that he worked for the Waukegan police department but the arrest occurred in North Chicago. Although Sliozis confirmed that he had made previous arrests in North Chicago, he provided no testimony as to where those arrests had occurred.

¶ 24 Based on the foregoing, we find that, because the State failed to present evidence as to whether the buildings identified as churches were operating as such on the dates of the offenses, no rational trier of fact could have found the enhancing element beyond a reasonable doubt.

¶ 25 III. CONCLUSION

¶ 26 For the reasons stated, we modify defendant's convictions of unlawful delivery of a controlled substance within 1,000 feet of a church (720 ILCS 570/401(d)(i), 407(b)(2) (West 2014)) to convictions of unlawful delivery of a controlled substance (720 ILCS 570/401(d)(i) (West 2014)). We remand the cause for resentencing. We note, however, that defendant remains subject to Class X sentencing. See 730 ILCS 5/5-4.5-95(b) (West 2014).

¶ 27 Affirmed as modified; cause remanded.