2017 IL App (4th) 150798-U

NO. 4-15-0798

FILED
November 6, 2017
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.	)	McLean County
JAFARIA DEFORREST NEWTON,	)	No. 15CF8
Defendant-Appellant.	)	
	)	Honorable
	)	Robert L. Freitag,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Knecht and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding the evidence was sufficient to prove beyond a reasonable doubt that (1) defendant was guilty of unlawful delivery of a controlled substance, and (2) the delivery occurred within 1,000 feet of a church.

¶ 2 After a jury trial, defendant, Jafaria Deforrest Newton, was convicted of two counts of unlawful delivery of a controlled substance, one of those for delivery within 1,000 feet of a church. The trial court merged the convictions and sentenced defendant to eight years in prison. Defendant appeals, arguing the evidence was insufficient to prove (1) he directly and knowingly participated in the drug transaction, and (2) the church was operating as a church on the date of the transaction. We find the State sufficiently proved both offenses. Accordingly, we affirm.

¶ 3 I. BACKGROUND

¶ 4 This case centers on two drug transactions arranged by the Bloomington police department using two different confidential informants. The first controlled buy was conducted on December 22, 2014, with informant Karrie Robbins. The second transaction was conducted on January 1, 2015, with informant Jorge Rodriguez, a/k/a Sepi. Based on these transactions, on January 2, 2015, the State filed charges against defendant, alleging he knowingly and unlawfully delivered less than one gram of cocaine to Robbins (720 ILCS 570/401(d)(i) (West 2014) (count II)). The State alleged the transaction occurred within 1,000 feet of the First Christian Church, 401 West Jefferson Street, at the corner of North Roosevelt Avenue and Jefferson Street, Bloomington (720 ILCS 570/407(b)(2) (West 2014) (count I)). The State also alleged defendant committed the same offenses, this time delivering less than one gram of cocaine to informant "Sepi" (count IV) within 1,000 feet of the First Christian Church (count III). Superseding indictments were filed on January 7, 2015.

¶ 5 We summarize only the testimony from defendant's June 2015 jury trial relevant to this appeal. Robbins, who admitted she was a 47-year-old drug addict working as a confidential informant, testified she suggested to Bierbaum, a vice detective with the Bloomington police department, that she purchase drugs from Sepi, who lived at 410 North Roosevelt Avenue, at the corner of Roosevelt Avenue and Market Street. After arranging the transaction on December 22, 2014, she went to Sepi's house. Approximately 15 minutes after she got there, two black men arrived: a shorter one with dreadlocks and a taller one with short hair wearing a red hoodie. She said the shorter man introduced himself as "Dreads." She identified defendant as the man known as "Dreads." Robbins said Sepi and the taller man went into the kitchen, leaving her and defendant in the living room. She said defendant stayed in the

living room the entire time. The two men stayed in the residence for only 5 to 10 minutes. After the men left, Sepi gave Robbins the package of crack cocaine.

¶ 6 Next, Bierbaum testified as the case agent for both controlled buys. Speaking specifically about the January 1, 2015, transaction, he said this was "essentially the same investigation as the first buy that occurred on December 22[, 2014]." As a result of the earlier transaction, the police arrested Sepi. Sepi then agreed to work with them as a confidential source. Bierbaum set up surveillance inside Sepi's house using a video camera. Sepi called his drug contact and ordered crack cocaine. After conducting relevant searches, Bierbaum gave Sepi $150 of prerecorded money. After the transaction, Sepi gave Bierbaum three small bags of purported crack cocaine. Bierbaum field tested and weighed the substance and watched the surveillance video recording of the transaction. The video was published to the jury.

¶ 7 Bierbaum said he spoke with defendant during a recorded interview at the police station after defendant's arrest. Defendant explained he had the marked money because "his buddy had given it to him so that he could buy liquor later on." Defendant said he had no knowledge of a drug transaction; "he had not watched any drug deal happen." He also said he was not present during the transaction on December 22, 2014. Sepi was unavailable to testify at the trial because, according to Bierbaum, Sepi had absconded to Puerto Rico.

¶ 8 Bierbaum testified he had located the First Christian Church at the corner of West Jefferson Street and North Roosevelt Avenue in relation to Sepi's residence at 410 North Roosevelt Avenue using a buffer map generated by the police department. According to this map, the church was within 1,000 feet of Sepi's residence, approximately one and a half blocks away. Using a calibrated measuring wheel, Bierbaum said he measured the distance between Sepi's residence and the church at 518.07 feet. He said in his professional and personal

experience he has had the occasion to drive or walk past this church. The following exchange occurred:

> "Q. Now back on December 22nd, was this property a church?
>
> A. Yes.
>
> Q. How do you know that it was a church?
>
> A. It had signs out for—signage for a church, as well as cars coming and going. I didn't go to church on that day, but I didn't park in the parking lot during this investigation because a lot of the cars [were] coming and going. And unfortunately, we often get our own police department call[ed] on us for suspicious activity if we park in business parking lots when people are coming and going. So since the cars were coming and going from that church at that time, I didn't make it a practice to park in that parking lot.
>
> Q. On January 1st, to your knowledge, was that property still operating as a church?
>
> A. As far as I could tell. Again, I didn't go to church there that day, but I did see vehicles coming and going from the parking lot. And again, I parked very close to that church but not in that parking lot. It would have been an ideal place, but not with the cars coming and going from there.
>
> Q. Now to your knowledge, present day, is it still operating as a church today?
>
> A. As far as I know."

¶ 9 Bloomington police officer Stephen Brown testified he conducted surveillance of Sepi's residence during the January 1, 2015, controlled buy. He watched two males enter the

residence and exit soon after. Brown then got a call to assist with searching the suspects who had been arrested. Officer Justin Shively was already at the scene and handed Brown $150 he had recovered from the ground near defendant. Brown took the money to the police station to compare serial numbers. Brown said: "[I]f I recall correctly, there [were] two $50 bills that matched the serial number—the serial numbers matched the buy money that was used." The prosecutor showed Brown the documentation of the prerecorded buy money used in the January 1, 2015, transaction. He said he could not recall whether there was another $50 bill or other denominations. The prosecutor showed Brown the exhibit containing the money. Brown opened the exhibit and indicated he had misspoke earlier. He said there was "actually a hundred dollar bill *** and then two 20's and a 10 to make it 150," not two $50 bills. All of the bills matched the prerecorded buy money used in the controlled transaction on January 1, 2015. On cross-examination, Brown reviewed the report he had prepared on January 14, 2015, which indicated he had recorded two $50 bills. He claims that report was "written in error, basically."

¶ 10 Officer Shively testified he was dispatched to assist in the suspects' arrests. During his pursuit, Shively yelled at the suspects, later identified as defendant and Suggs, to get on the ground. They both complied. Shively said as defendant got on the ground, he reached his hand out and dropped something in the sewer grate. Using his flashlight, Shively saw in the sewer "a bundled up amount of US currency that was sitting on a bunch of leaves and sticks and everything else." The money was photographed before being handed over to Bierbaum. The State rested.

¶ 11 Defendant moved for a directed verdict, arguing the State proved only that defendant was present for the two controlled buys but failed to prove defendant's further involvement or accountability in the transactions. The trial court denied the motion.

¶ 12 Defendant called Richard Suggs as a witness. Suggs said he and defendant had been friends for several years. Suggs admitted his involvement in the drug transactions, but said defendant had no part in either transaction. Defendant accompanied Suggs everywhere because Suggs did not want defendant, who was staying at his house, to stay there without him. On the dates of the transactions, Suggs told defendant they needed to "make a run real quick, somebody owed [Suggs] some money." He did not tell defendant why the person owed him money or that they would be involved in a drug transaction. Suggs said on January 1, 2015, he and Sepi made the transaction in Sepi's kitchen. Defendant was not in the kitchen and, as far as Suggs knew, defendant could not see what was going on. Suggs said defendant took the money because Suggs had asked him to buy some liquor with it. Defendant never asked Suggs why Sepi owed him money.

¶ 13 On cross-examination, Suggs admitted he had prior drug-related convictions. He also admitted he had told Bierbaum that defendant "knew what was going on," but that was only after Bierbaum had badgered him during questioning. Suggs said he finally just told Bierbaum what he wanted to hear—that is, yes, defendant knew what was going on. But, he said, regardless of what he had told Bierbaum, he had not told defendant "it was a drug deal." Defendant rested.

¶ 14 The jury found defendant not guilty of counts I and II related to the controlled buy on December 22, 2014, and guilty of counts III and IV related to the controlled buy on January 1, 2015. Defendant filed a motion for a new trial, challenging the sufficiency of the evidence. After denying defendant's motion, the trial court merged defendant's convictions and sentenced him to eight years in prison.

¶ 15 This appeal followed.

¶ 16 II. ANALYSIS

¶ 17 Defendant claims the State failed to prove (1) him guilty beyond a reasonable doubt of unlawful delivery of a controlled substance, and (2) the transaction occurred within 1,000 feet of a church. We disagree and affirm, finding the evidence, when viewed in a light most favorable to the prosecution, was sufficient to support the jury's verdicts.

¶ 18 With regard to his first claim of error, defendant argues no evidence showed he directly participated in the drug transaction on January 1, 2015. He explains he was in possession of the buy money only at Suggs' request to purchase liquor. He claims the fact he had the money at the time he was arrested did not prove he assisted in the planning of, or should be held accountable for, the drug transaction.

¶ 19 A criminal 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. *People v. Givens*, 237 Ill. 2d 311, 334 (2010). When presented with a challenge to the sufficiency of the evidence, it is not the function of this court to retry the defendant. Rather, 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. *Givens*, 237 Ill. 2d at 334. We, as the reviewing court, must allow all reasonable inferences from the record in favor of the prosecution. *Givens*, 237 Ill. 2d at 334.

¶ 20 The theory of accountability holds a defendant responsible for another's conduct if "(1) defendant solicited, aided, abetted, agreed or attempted to aid another person in the planning or commission of the offense; (2) this participation [took] place either before or during commission of the offense; and (3) [the act was performed] with the concurrent, specific intent to facilitate or promote the commission of the offense." *People v. Saldana*, 146 Ill. App. 3d 328, 334-35 (1986). "Mere presence at the scene of a crime, even the knowledge that a crime is being

committed, or negative acquiescence is not enough to constitute a person as a principal, but one may aid and abet without actively participating in the overt act." *Saldana*, 146 Ill. App. 3d at 335.

¶ 21 Defendant, citing *People v. Deatherage*, 122 Ill. App. 3d 620 (1984), argues there was insufficient evidence to find him guilty under a theory of accountability. In *Deatherage*, the defendant was present at the home during the drug transaction and answered a question about the price. However, the defendant did not participate in the drug transaction. It was possible he was merely an innocent bystander. *Deatherage*, 122 Ill. App. 3d at 624. The appellate court held the defendant's presence was not enough to sustain an unlawful delivery conviction on a theory of accountablility. See *Deatherage*, 122 Ill. App. 3d at 623-24. The court found no evidence of an agreement between the two sellers. *Deatherage*, 122 Ill. App. 3d at 623.

¶ 22 In contrast to *Deatherage*, however, defendant here, as the video recording indicated, seemed to be a primary participant, not merely Suggs' tag-along companion. The video evidence suggested it was reasonable to assume defendant had participated in the planning of the transaction because he immediately, without hesitation, picked up the money from the table as soon as Sepi set it down.

¶ 23 Although Suggs testified defendant knew nothing of the transaction and only accompanied him to Sepi's house, the jury was free to interpret the evidence as it saw fit. The jury may consider the reasonableness of the defense offered and may reject that evidence when it finds it contradictory, unlikely, or improbable in light of other facts before it. *People v. Eliason*, 117 Ill. App. 3d 683, 696 (1983). It is clear from our review of the video recording of the controlled buy on January 1, 2015, that defendant was more involved in, or at least more aware of, the transaction than Suggs let on. According to the video, defendant entered Sepi's residence

first and walked immediately over to stand in front of Sepi, who was seated on the couch. Suggs entered behind defendant and stood next to him in front of Sepi. Sepi's body blocked everyone's hand movements but it was clear Sepi leaned down and then immediately defendant leaned down and picked up cash. At the time, Suggs was removing his gloves. All three moved in the same direction and disappeared off camera. Defendant appeared back in view for a few seconds and looked toward the direction from which he had come. Defendant then walked that direction again off camera. He appeared again, walking toward the front door immediately followed by Sepi and then Suggs.

¶ 24 Viewing this evidence in the light most favorable to the prosecution, we find the video recording reasonably supported the interpretation that defendant was not an innocent bystander, merely waiting for his friend in another room, but was an active participant in the transaction. Defendant moves through the residence with the other two, appearing as a knowing and willing participant in the transaction. It seemed apparent from this video that it was defendant's job to get the money from Suggs. We find this video evidence, coupled with Shively's testimony that he saw defendant attempt to conceal the money, supported the jury's verdict finding defendant guilty under the theory of accountability.

¶ 25 Defendant also argues the State did not prove beyond a reasonable doubt that there was a church within 1,000 feet of the site of the transaction. Again, 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. *Givens*, 237 Ill. 2d at 334.

¶ 26 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 less than one gram of any substance

containing cocaine. A violation of section 401(d)(i) is a Class 2 felony, which is punishable by a term of imprisonment of not less than three years and not more than seven years. 730 ILCS 5/5-4.5-35 (West 2014). Section 407(b)(1) of the Act enhances a section 401(c) (720 ILCS 570/401(c) (West 2014)) offense to a Class X 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)(1) (West 2014). A Class X felony is punishable by a term of imprisonment of not less than 6 years and not more than 30 years. 730 ILCS 5/5-4.5-25 (West 2014).

¶ 27 To prove the unlawful delivery of a controlled substance within 1,000 feet of a church, the State must prove, beyond a reasonable doubt, that the building in question was "used primarily for religious worship" on the date of the offense. 720 ILCS 570/407(b)(2) (West 2014). As this court mentioned in *People v. Sims*, 2014 IL App (4th) 130568, ¶ 106, it would be reasonable to assume that since several additional years of imprisonment could be riding on the issue of whether the building actually operates as a church (see 720 ILCS 570/407(b)(2) (West 2014); 730 ILCS 5/5-4.5-35, 5-4.5-25 (West 2014)), the State would " 'elicit[ ] testimony from someone affiliated with the church,' " like a pastor or parishioner. However, as we most often see, that does not happen, and we are left with the question of whether a police officer's conclusory testimony qualifies as proof, beyond a reasonable doubt, that the building in question was used primarily as a place for religious worship. *Sims*, 2014 IL App (4th) 130568, ¶ 106 (quoting *People v. Ortiz*, 2012 IL App (2d) 101261, ¶ 11).

¶ 28 In *Sims*, we reviewed the seemingly contradictory opinions of other districts regarding what is required to prove that a building was actually operating as place for religious worship. See *Sims*, 2014 IL App (4th) 130568, ¶¶ 107-133. See also *People v. Foster*, 354 Ill.

App. 3d 564, 568 (2004) (holding that nomenclature is enough); *People v. Cadena*, 2013 IL App (2d) 120285, ¶ 17 (holding that the name is not enough; the State must prove how the police officer knew what the building was being used for); *People v. Boykin*, 2013 IL App (1st) 112696, ¶ 15 (holding that the name is not enough but involved a school, not a church). We declined to follow *Cadena* and *Boykin*, and instead followed *Foster*, which found that, after viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could reasonably infer that, if the building houses a religious organization that has "church" in its name, then it is a church within the meaning of the applicable statute. "According to *Foster*, all a police officer has to do is refer to the building by a proper name with the term 'church' in it—'New Hope Church,' for example—and that proves, beyond a reasonable doubt, that the building was used primarily for religious worship on the date of the offense." *Sims*, 2014 IL App (4th) 130568, ¶ 107.

¶ 29 Bierbaum testified that in his personal experience, as well as in his professional experience as a Bloomington police officer, the First Christian Church, at the intersection of West Jefferson Street and North Roosevelt Avenue, was "as far as [he knew]" operating as a church on December 22, 2014, January 1, 2015, and on the date of his testimony. As we noted in *Sims*, a police officer's testimony may be sufficient to convince a jury that, based on the officer's familiarity with areas within his jurisdiction, it is reasonable to assume he knows whether a given church was active on a particular date. In *Sims*, 2014 IL App (4th) 130568, ¶ 138, we said: "How or whether buildings are used would seem to be of particular interest to a police officer on the lookout for crack houses and methamphetamine laboratories." When we look at the evidence in this case in the light most favorable to the prosecution, we find a rational trier of fact could have believed Bierbaum's testimony that he was familiar with the neighborhood and that the building

housing the First Christian Church on West Jefferson Street was in use as a church on the dates of the drug offense.

¶ 30 III. CONCLUSION

¶ 31 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its $75 statutory assessment against defendant as costs of this appeal.

¶ 32 Affirmed.