2018 IL App (1st) 152044-U

No. 1-15-2044

Order filed June 28, 2018

Fourth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 14 CR 3174
	)	
FELICIA CANNADY,	)	Honorable
	)	Thomas J. Byrne,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE ELLIS delivered the judgment of the court.
Justices McBride and Gordon concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's convictions for delivery of a controlled substance within 1,000 feet of a school and possession of a controlled substance with intent to deliver within 1,000 feet of a school affirmed where the evidence sufficiently established that the building was operating as a school; mittimus amended to correct name of offense.

¶ 2 Following a jury trial, defendant Felicia Cannady was convicted of delivery of a controlled substance within 1,000 feet of a school, and possession of a controlled substance with intent to deliver within 1,000 feet of a school. The trial court sentenced defendant to concurrent

terms of six years' imprisonment. On appeal, defendant acknowledges that she was proven guilty of delivery of a controlled substance and possession of a controlled substance with intent to deliver. She contends, however, that the State failed to prove that she committed the offenses within 1,000 feet of a school because it failed to present any evidence that the building at issue was operating as a school on the date of the offense. Defendant also contends that her mittimus should be amended to correct the name of one of the offenses of which she was convicted. We affirm and correct the mittimus.

¶ 3 In light of defendant's acknowledgement that she was proven guilty of delivery of a controlled substance and possession of a controlled substance with intent to deliver, a limited discussion of the evidence sustaining those convictions is sufficient. Because defendant's only challenge to her convictions is whether the evidence established that the building at issue was a school, we focus our factual summary on the evidence presented about that school.

¶ 4 The evidence at trial established that shortly after 6 p.m. on January 19, 2014, Chicago police narcotics officer Nestor DeJesus approached Raymond Jackson as he stood at the corner of Kostner Avenue and Monroe Street. DeJesus asked Jackson for five "blows," referring to heroin. Jackson directed DeJesus to defendant, who was standing 10 to 15 feet away. Defendant handed DeJesus five blue-tinted Ziploc bags containing heroin. DeJesus gave defendant $50 in prerecorded funds. DeJesus left the area and radioed his team that he had made a positive buy.

¶ 5 From a surveillance point, police sergeant Ivan Shavers observed DeJesus make the drug purchase, and continued watching defendant and Jackson after DeJesus left the area. Shavers observed two additional occurrences where a person exited a vehicle, approached Jackson, was directed to defendant, and engaged in a narcotics transaction with defendant. After the second

transaction, defendant and Jackson walked across Kostner Avenue and came within a few feet of Shavers. Jackson then handed defendant a clear plastic bag containing 13 blue-tinted Ziploc bags of heroin. Defendant handed Jackson money. As defendant and Jackson walked back towards Kostner Avenue, enforcement officers arrived on the scene and detained them. Defendant dropped the bag of narcotics to the ground, and it was recovered by Officer Marc Lapadula. DeJesus drove past the scene and identified defendant and Jackson, who were then arrested.

¶ 6 At the police station, Lapadula searched Jackson and recovered $1,278, including $40 of the prerecorded funds. Officer Kathleen McCann searched defendant and recovered $50, including a $10 bill from the prerecorded funds.

¶ 7 Forensic chemist Sara Reeder tested the five blue-tinted bags purchased by DeJesus and found them positive for 1.5 grams of heroin. She also tested 11 of the 13 blue-tinted bags recovered by Lapadula and found them positive for 3.2 grams of heroin.

¶ 8 In regards to the evidence pertaining to the school, the record shows that the prosecutor asked Officer DeJesus if a school was located near the intersection of Kostner and Monroe. DeJesus replied "[y]es." When asked what type of school it was, he replied "[i]t's an elementary school." DeJesus testified that the school was located "one city block south" of the intersection.

¶ 9 DeJesus further testified that he was familiar with the neighborhood, and that the team of officers had made several previous narcotics purchases at that particular corner and down the street. DeJesus described the area as a combination of residential and commercial properties. He explained that Monroe Street was mainly residential, but there were several stores on Kostner Avenue. DeJesus agreed that the neighborhood was largely African-American. DeJesus identified photographs of the intersection, noting the location where the purchase occurred.

¶ 10 Sergeant Shavers explained that he selected that particular location for surveillance because the convenience store at that intersection was known for narcotics sales, and he had purchased narcotics there in the past. He stated "it is a place that we know is notorious for narcotics trafficking."

¶ 11 Ron Ryan, an investigator with the Cook County State's Attorney's Office, was assigned to measure the distance from 4410 West Monroe Street to 4409 West Wilcox Street in July 2014. Ryan acknowledged that a school was located at the corner of Wilcox Street and Kostner Avenue, and the endpoint of his measurement was the property line of the school. The distance was 473 feet. Ryan identified a photograph of the school and testified that it was the Hefferan Elementary School. The photograph, admitted into evidence, published to the jury and contained in the record on appeal, depicts the two-story school situated on the corner and extending down both Wilcox Street and Kostner Avenue. A large blue sign on the corner in front of the school identifies it as the "HEFFERAN ELEMENTARY SCHOOL." The American flag flies from the flagpole in front of the school with the City of Chicago flag flying underneath it.

¶ 12 The jury found defendant guilty of delivery of a controlled substance, possession of a controlled substance with intent to deliver, and the counts charging defendant with committing those offenses within 1,000 feet of a school. The trial court merged the two lesser offenses into the counts alleging that the offenses occurred within 1,000 feet of a school. The court sentenced defendant to concurrent terms of six years' imprisonment.

¶ 13 On appeal, defendant contends that the State failed to prove her guilty beyond a reasonable doubt of committing the offenses within 1,000 feet of a school because there was no evidence that the building at issue was operating as a school on the date of the offense.

Defendant acknowledges that Officer DeJesus testified that he was familiar with the area, but argues that he did not explain how, nor did he state that he had personal knowledge of the building. Defendant asserts that neither DeJesus nor Ryan testified that the building was operating as a school on the date of the offense.

¶ 14 When defendant claims that the evidence is insufficient to sustain his conviction, this court must determine whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the elements of the offense proved beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48; *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979). This standard applies whether the evidence is direct or circumstantial, and does not allow this court to substitute its judgment for that of the fact finder on issues involving witness credibility and the weight of the evidence. *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009). Under this standard, all reasonable inferences from the evidence must be allowed in favor of the State. *People v. Lloyd*, 2013 IL 113510, ¶ 42.

¶ 15 As the trier of fact, the jury is responsible for determining the credibility of the witnesses, weighing the evidence, resolving conflicts in the evidence, and drawing reasonable inferences therefrom. *Jackson*, 232 Ill. 2d at 281. In weighing the evidence, the jury is not required to disregard the inferences that naturally flow from that evidence, nor must it search for any possible explanation consistent with innocence and raise it to the level of reasonable doubt. *Id.* We will not reverse a criminal conviction based upon insufficient evidence unless the evidence is so improbable or unsatisfactory that there is reasonable doubt as to defendant's guilt. *People v. Givens*, 237 Ill. 2d 311, 334 (2010).

¶ 16 To prove defendant guilty of delivery of a controlled substance as charged in this case, the State was required to show that she knowingly delivered between 1 and 15 grams of a substance containing heroin, and she did so within 1,000 feet of the Helen M. Hefferan Elementary School. 720 ILCS 570/401(c)(1) (West 2014); 720 ILCS 570/407(b)(1) (West 2014). To prove defendant guilty of possession of a controlled substance with intent to deliver as charged, the State was required to show that she knowingly possessed between 1 and 15 grams of a substance containing heroin, she intended to deliver the drugs, and she did so within 1,000 feet of the Helen M. Hefferan Elementary School. 720 ILCS 570/401(c)(1) (West 2014); 720 ILCS 570/407(b)(1) (West 2014). The statute expressly provides that for offenses occurring within 1,000 feet of a school, the time of day, the time of year, and whether classes were in session at the time of the offense are irrelevant. 720 ILCS 570/407(c) (West 2014). Our supreme court has found that the term "school," as used in the statute, includes "any public or private elementary or secondary school, community college, college or university." (Internal quotation marks omitted.) *People v. Young*, 2011 IL 111886, ¶¶ 13-16.

¶ 17 Defendant argues that the State failed to prove "that the building was actually functioning as a school at the time of the offense." But in a decision handed down after briefing in this case, the Illinois Supreme Court *rejected* the notion that, "for purposes of demonstrating that an offense took place within 1000 feet of a school under section 407(b), the State must present particularized evidence that a building is an 'active' or 'operational' school on the day of the offense." *People v. Hardman*, 2017 IL 121453, ¶ 34. Rather than having to prove the particularized use of the property as a school, the supreme court held that it was sufficient to show that the property was named as a school, combined with "the testimony of two officers

with demonstrated familiarity with the area due to their having worked in the area for years," each of whom testified that the property was a school at the time of the offense. *Id*. ¶ 45.

¶ 18 That is very nearly our factual situation. The record shows that the testimony from Officer DeJesus established that he was familiar with the area, and specifically, with the elementary school at issue. DeJesus expressly testified that "an elementary school" was located "one city block south" of the intersection where the drug purchase occurred. DeJesus further testified that he was familiar with the neighborhood, and that the team of officers had made several previous narcotics purchases at that particular corner and down the street. DeJesus described the area as a combination of residential and commercial properties. He further explained that Monroe Street was mainly residential, but there were several stores on Kostner Avenue. He also testified that the neighborhood was largely African-American.

¶ 19 Sergeant Shavers's testimony also showed that the narcotics team was familiar with that area. Shavers explained that he selected that particular location for surveillance because the convenience store at that intersection was known for narcotics sales, he had purchased narcotics there in the past, and it was "a place that we know is notorious for narcotics trafficking."

¶ 20 In addition to DeJesus' testimony, Investigator Ryan testified that the Hefferan Elementary School was located at the corner of Wilcox Street and Kostner Avenue, 473 feet from the location of the drug offenses. He identified the school in a photograph that was published to the jury. The photograph depicts the two-story school situated on the corner and extending down both streets. A large blue sign in front of the school identifies it as the "HEFFERAN ELEMENTARY SCHOOL." The photograph shows the American and City of

Chicago flags flying from the flagpole in front of the building, suggesting that the school was, in fact, operational.

¶ 21 Viewed in the light most favorable to the State, this evidence was sufficient to allow the jury to conclude that defendant committed the offenses within 1,000 feet of a school.

¶ 22 Defendant also contends that her mittimus should be amended to correct the name of the offense of which she was convicted under Count 2. Defendant asserts that the mittimus incorrectly indicates that her conviction for Count 2 was for manufacture or delivery of a controlled substance when, in fact, Count 2 was for possession of a controlled substance with intent to deliver. The State responds that the mittimus is correct, because the statute under which defendant was convicted is entitled "Manufacture or delivery unauthorized by Act." 720 ILCS 570/401 (West 2014).

¶ 23 Section 401 allows for two different offenses: manufacture or delivery of a controlled substance, and possession with intent to manufacture or deliver a controlled substance. 720 ILCS 570/401 (West 2014). The indictment charged defendant with two separate offenses under section 401. In Count 1, defendant was charged with delivery of a controlled substance. In Count 2, she was charged with possession of a controlled substance with intent to deliver. As discussed above, for Count 1, the State had to prove that defendant knowingly delivered heroin, and for Count 2, it had to prove that she knowingly possessed heroin with the intent to deliver it.

¶ 24 Because defendant was charged with and convicted of two separate offenses, we agree that the mittimus should accurately reflect the separate offenses. Accordingly, pursuant to our authority (Ill. S. Ct. R. 615(b)(1) (eff. Aug. 27, 1999); *People v. McCray*, 237 Ill. App. 3d 396, 406 (1995)), we direct the clerk of the circuit court to amend the mittimus to reflect that for

Count 2, defendant was convicted of the offense of possession of a controlled substance with intent to deliver.

¶ 25 We affirm defendant's convictions and sentences and amend the mittimus.

¶ 26 Affirmed; mittimus amended.