2018 IL App (2d) 160019-U
No. 2-16-0019
Order filed June 19, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. JAMES C. SIMPSON, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Kendall County. No. 14-CF-93 Honorable Timothy J. McCann, Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Zenoff and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: The State proved defendant guilty beyond a reasonable doubt of unlawful delivery of cocaine within 1000 feet of a school, specifically that the property was a school: the officers' reference to the property as a school was sufficient to support that inference, and the State did not have to show that the property was actively being used as such on the date of the offense.

¶ 2 Defendant, James C. Simpson, appeals his conviction of unlawful delivery of cocaine within 1000 feet of a school (720 ILCS 570/401(c)(2), 407(b)(1) (West 2014)). He contends that the evidence was insufficient to prove beyond a reasonable doubt that Waubonsee Community College was a school on the date of the offense. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant was charged after he sold cocaine to undercover officers in several transactions. Evidence at defendant's jury trial showed that one of the transactions took place on March 25, 2014, at a Citgo gas station in Plano, Illinois. The arresting officer, who was new to the area, testified that the Citgo was located "just west of Waubonsee College." When shown an exhibit of the area, the officer testified that it included the Citgo and the college and that it accurately reflected what the location looked like on the date of the transaction. Another officer measured the distance from the Citgo to "the property of Waubonsee Community College" at 104.3 feet.

¶ 5 Another officer, Brian Oko, testified that that he been a Plano police officer for six years and was trained to know the boundaries of schools. He was familiar with Waubonsee Community College and its boundaries. Oko was shown an exhibit showing an overhead view of the area and identified "Waubonsee Community College" and the Citgo station on it. Oko specifically pointed out the college and stated that he was familiar with its boundaries because he patrolled the area on almost a daily basis. He knew of the boundaries through the city map system and described the boundaries to the jury using the exhibit. However, he was not sure of the year that the college was built. Oko also identified "the Waubonsee property" on a map that showed the boundaries marked in yellow. The exhibits shown to the officers are not in the record.

¶ 6 At the end of the State's evidence, defendant moved for a directed verdict, arguing that the State failed to prove that the college was operating as a school on the date of the drug transaction. Defendant noted that it was unclear whether "it's simply property owned by Waubonsee Community College" or whether it was "some sort of adjunct building." Defendant

noted that the exhibits showed an overhead shot "that outlines the property of Waubonsee Community College," but argued that the exhibits did not prove that the college was in fact a school. The State argued that the testimony directly identified the property as a college and that there was no legal requirement that it prove that school was in session. The court denied the motion, finding that the State had to prove only that the area was school property and that a reasonable trier of fact could find that it was.

¶ 7 The jury found defendant guilty, and defendant moved for a new trial, arguing again in part that the State failed to prove that the college was a school on the date of the transaction. The trial court denied the motion, and defendant appeals.

¶ 8 II. ANALYSIS

¶ 9 Defendant contends that the State failed to prove beyond a reasonable doubt that the college was a school on the date of the offense. He argues that no witnesses testified that the college was still a school on that date.

¶ 10 A reviewing court will not set aside a criminal conviction unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). On a challenge to the sufficiency of the evidence, " '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.) *Id.* (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). This standard applies regardless of whether the evidence is direct or circumstantial, and circumstantial evidence meeting this standard is sufficient to sustain a criminal conviction. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009). The trier of fact is responsible for resolving conflicts in the testimony, weighing the evidence, and determining

what inferences to draw, and a reviewing court ordinarily will not substitute its judgment on these matters for that of the trier of fact. *People v. Cooper*, 194 Ill. 2d 419, 431 (2000). " '[I]n weighing evidence, the trier of fact is not required to disregard inferences which flow normally from the evidence before it, nor need it search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt.' " *People v. Hardman*, 2017 IL 121453, ¶ 37 (quoting *Jackson*, 232 Ill. 2d at 281).

¶ 11 Under section 407(b)(1) of the Illinois Controlled Substances Act (the Act), delivery of a controlled substance is a Class X felony when committed within 1000 feet of the real property comprising any "school." 720 ILCS 570/407(b)(1) (West 2014). "No section of the Illinois Controlled Substances Act defines the term 'school.' " *Hardman*, 2017 IL 121453, ¶ 20 (citing 720 ILCS 570/101 *et seq.* (West 2012)). "However, the term has acquired a settled meaning through judicial construction and legislative acquiescence." *Id.* "Courts look to the definition of 'school' contained within the Criminal Code of 2012 (Criminal Code), which provides that a school 'means a public, private, or parochial elementary or secondary school, community college, college, or university and includes the grounds of a school.' " *Id.* (citing 720 ILCS 5/2-19.5 (West 2012)). Section 407(c) of the Act provides that "for violations committed in a school or within 1,000 feet of school property, the time of day, time of year and whether classes were currently in session at the time of the offense is irrelevant." 720 ILCS 570/407(c) (West 2014). Thus, our supreme court has held that the State need not demonstrate that a school was active or operational on the day of the offense. *Hardman*, 2017 IL 121453, ¶ 32.

¶ 12 Defendant recognizes that the State is not required to prove that the school was active or operational on the day of the offense, but argues that the State failed to prove that it was actually a school at all on that day.

¶ 13 In *Hardman*, there was evidence that a school was renamed, and the defendant contended that there was insufficient evidence that it was a school on the day of the offense. An officer who was familiar with the area and who had made a number of arrests in the area referred to the building as " 'Ryerson Elementary School' " on the date of the offense. *Id.* ¶ 8. Another, who measured the distance from the school to the location of a drug offense, referred to it as the " 'Laura Ward Elementary School' " and " 'formerly called Ryerson Elementary School.' " *Id.* ¶ 9. The defendant argued that there was insufficient evidence that the property was actually operating as a school on the date of the offense, suggesting that it could have been in transition or used as something else. In affirming the conviction, our supreme court distinguished cases involving churches on the basis that the statute controlling those required proof of use of the building, while the Act did not require such evidence in regard to schools. *Id.* ¶¶ 23-34. Then, addressing the sufficiency of the evidence, the court noted that the officers testified not only that the property was named as a school, but also that they were familiar with the area and knew it well enough to know that the name of the school had changed. The court held that such evidence was sufficient to allow the logical inference that the property continued to be a school despite the name change. *Id.* ¶ 44.

¶ 14 Also instructive is *People v. Toliver*, 2016 IL App (1st) 141064. There, an officer testified to his familiarity with an area and that a drug offense occurred within 1000 feet of "Lathrop Elementary School." *Id.* ¶ 5. Another officer familiar with the area circled a building on a map designated as " 'Lathrop Elementary School.' " *Id.* ¶ 7. On appeal, the defendant contended that the evidence was insufficient to show that the property was a school on the date of the offense. The First District affirmed, holding that the State was not required to prove that the school was active on the date of the offense and stressing that the officer's testimony

supported a reasonable inference that the building was indeed a school. *Id.* ¶¶ 26-27. Addressing an argument that the State failed to provide sufficient evidence of the school's status on the date of the offense, the court also noted that the defendant forfeited the matter by failing to raise it at trial and essentially stipulated to its identity as a school by referring to it as "the school" during trial. *Id.* ¶¶ 29-31. In doing so, the court repeated that whether the school was active or in operation was irrelevant and that the defendant conceded that, even if the building was vacant, it was still a school building. *Id.* ¶ 32.

¶ 15 Here, the evidence was sufficient to prove beyond a reasonable doubt that the property was a school. It was unnecessary for the State to prove that the property was in active or operational use on the date of the offense. As to its status as a school, all of the officers consistently referred to the property as Waubonsee Community College. The arresting officer, although new to the area, identified the area shown on an exhibit as the college on the date of the offense. Another officer who was familiar with the area also identified it as the college. As illustrated by *Hardman* and *Toliver*, that the area was consistently referred to as a school was sufficient to raise the inference that it was indeed a school. Further, in arguing his motion for a directed verdict, defendant essentially conceded that the area was the property of Waubonsee Community College, but argued that it could be "some sort of adjunct building." However, the Act criminalizes drug transactions within 1000 feet of "school property" without any distinction for types of buildings or their specific uses. Even if it were an adjunct building as speculated, it was still an adjunct *school* building.

¶ 16 III. CONCLUSION

¶ 17 The evidence was sufficient to prove defendant guilty beyond a reasonable doubt. Accordingly, the judgment of the circuit court of Kendall County is affirmed. As part of our

judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2016); see also *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978).

¶ 18 Affirmed.