2019 IL App (2d) 160602-U
No. 2-16-0602
Order filed April 23, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. MICHAEL TURNER, SR., Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Kane County. No. 14-CF-1797 Honorable Donald M. Tegeler, Judge, Presiding.

PRESIDING JUSTICE BIRKETT delivered the judgment of the court.
Justices Hutchinson and Zenoff concurred in the judgment.

ORDER

¶ 1 *Held*: At defendant's bench trial on drug-delivery charges, the trial court did not err in admitting text messages between defendant and informant Theresia Nite as well as phone records for defendant's cellular phone. Also, there was sufficient evidence that an area within 1,000 feet of the drug transactions between Nite and defendant was a public park, so as to support a conviction for unlawful delivery of a controlled substance within 1,000 feet of a public park (720 ILCS 570/407(b)(1) (West 2012)).

¶ 2 Defendant, Michael Turner, appeals his conviction for unlawful delivery of a controlled substance within 1,000 feet of a public park (720 ILCS 570/407(b)(1) (West 2012)), namely Indian Trail Park in Aurora. The conviction arose from controlled drug buys between defendant

and Theresia Nite, a paid informant. Defendant argues that the trial court erred in admitting screenshots of Nite's cellular phone showing text messages between her and defendant preceding one of the alleged drug buys. The court also erred, defendant asserts, in admitting records from his cellular phone carrier showing his phone usage on the dates of the buys. Finally, defendant argues that there was insufficient evidence that Indian Trail Park was a "public park" on the dates of the buys. For the reasons to follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant was charged with four counts alleging drug buys between him and Nite on July 17 and 22, 2014. Counts 1 (July 17) and 2 (July 22) each charged unlawful delivery of a controlled substance within 1,000 feet of a public park (720 ILCS 570/407(b)(1) (West 2012)), while counts 3 (July 17) and 4 (July 22) each charged unlawful delivery of a controlled substance (720 ILCS 570/401(c)(2) (West 2012)).

¶ 5 The State's first witness at defendant's bench trial was Nite. She testified that she is a recovering heroin addict. In the summer of 2014, she was a paid informant for the government. On July 16, 2014, Nite contacted federal agent Jacob Casali to discuss a prior phone conversation she had with defendant in which she agreed to purchase from him a quarter ounce of cocaine. Nite had known defendant for several years "from the streets."

¶ 6 Nite testified that, on July 17, she met with Casali and Aurora police officer Steve Stemmet. Casali and Stemmet prepared Nite for the planned drug purchase by supplying her with $350 in cash for the price of the drugs as well as equipment for secretly recording the transaction. Nite then proceeded with her common-law husband, Walter Jackson, to the apartment of Nite's friend, Tasha. Tasha lived in unit 405-A of the Indian Trail Apartments. While at Tasha's apartment, Nite contacted defendant with her cell phone. Nite identified State

exhibits 7 and 8 as screenshots from her cell phone showing text messages between her and a contact named "MT," who Nite explained was defendant. The screenshots showed the following exchange of messages occurring between 1:51 and 2:54 p.m. (defendant's messages are italicized to distinguish them from Nite's):

"- A quarter after. Dinner will be ready & im not tryin to let T knw

she begs for food.

- Erase all texts SOON as u done reading them.

- *Ok*

- It's 3:50pm right

- Hello! $350

- Hello! $350

- *Ok*

- Ill hit u soon as im close to her crib

- *Ok*

– Im here." (Emphasis added).

¶ 7 Defendant objected to admission of State exhibits 7 and 8 on the ground that the text messages were hearsay. See Ill. R. Evid. 801(c) (eff. Oct. 15, 2015) (" 'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted."). The State responded that Nite's own statements were "non-hearsay" and that defendant's statements to Nite were admissible for their "effect on this listener," *i.e.*, Nite. The trial court overruled defendant's objection and admitted the exhibits "[b]ased upon the comments of the State, that they are going to be able to tie this up as to the effect on the listener, what [Nite] did afterwards." See *People v. Gonzalez*, 379 Ill. App. 3d 941,

954 (2008) (a statement offered to show its impact on the listener's subsequent actions is not hearsay).

¶ 8 Nite was questioned about the meaning of the texts she sent. "T' referred to Tasha, "food" meant cocaine, "quarter after" meant the amount of cocaine (a quarter ounce), and "3:50" meant the price ($350). According to Nite, the purpose of the texts was to arrange a drug transaction.

¶ 9 Nite testified that, after the exchange of text messages, she waited outside Tasha's apartment for defendant to arrive. An Escalade pulled into the complex's parking lot. Nite saw defendant in the front passenger seat. Nite entered the Escalade and sat directly behind defendant. She did not recognize any of the three other occupants. Defendant made a comment to her "regarding [her] putting the amount in the phone." Nite explained to defendant that she put the amount in code, and she told him to delete the texts. After this exchange, Nite handed defendant the $350 she had received from Casali and Stemmet. Nite passed the money to defendant between the front passenger seat and the side of the car. In the same manner, defendant passed two plastic baggies of cocaine back to Nite. She then exited the Escalade.

¶ 10 After defendant left in the Escalade, Nite contacted Casali and began walking through the apartment complex to meet him. As she walked, defendant phoned her. He said that she paid $50 too much for the drugs and that he would return to drop off the overpayment. After speaking with defendant, Nite walked on and met with Casali. She handed him the baggies that she received from defendant and also returned the recording equipment. She told Casali about defendant's intent to return with her overpayment. Casali then resupplied Nite with the recording equipment, and she returned to Tasha's apartment to wait for defendant.

¶ 11 Defendant arrived, driving a large SUV different than the vehicle in which he had arrived earlier as passenger. Defendant was alone in the car. Nite entered and sat in the front passenger seat. Defendant handed her $50. They had a discussion about the prices of "soft" and "hard" cocaine. After Nite exited, she made small talk with defendant about the rims on his SUV. When defendant left, Nite went back to Casali and handed him the $50.

¶ 12 Nite testified that defendant had a beard on July 22, as he "always" did. Defendant's hair was short on July 22, as he "usually" wore it.

¶ 13 The State produced State exhibit 4, a DVD, representing that it contained the footage recorded on July 17, 2014, by Nite's hidden camera. Nite testified that she had reviewed State exhibit 4 and that it was an accurate recording of the events on July 17 that she described in her testimony.

¶ 14 The footage on State exhibit 4 is consistent with Nite's testimony about her meetings with Casali and defendant on July 17, including the details she supplied of her conversations with defendant. Notably, the front passenger in the first vehicle (allegedly, defendant) is not visible at all. The driver of the second vehicle (allegedly, defendant) is indeed visible; he is bearded and wearing glasses.

¶ 15 After the State completed its presentation as to the events of July 17, 2014, it produced State exhibit 5, another DVD, representing that it contained footage recorded on July 22, 2014, by Nite's hidden camera. Nite testified that she reviewed State exhibit 5 and that it was an accurate recording of her meeting with defendant on July 22. Unlike with State exhibit 4, the State was permitted to ask Nite questions about State exhibit 5 as it was played in court.

¶ 16 Nite testified that, on July 22, she met with Casali and Stemmet about another intended purchase of cocaine (again, a quarter ounce) from defendant. Nite was provided cash for the

purchase as well as the same video recording equipment as before. Nite then walked to Tasha's apartment, called defendant, and left a voicemail. Defendant returned her call and said that he was on his way. Nite then went outside and approached a parked SUV driven by defendant. Nite entered the vehicle and sat on the rear driver's side seat behind defendant. No one else was inside the car. Nite passed $300 to defendant between the front driver's seat and the side of the car, and he passed baggies of cocaine back to her in the same way. After exiting the SUV, Nite returned to Tasha's apartment and contacted Casali. When she met Casali later, she handed over the cocaine and recording equipment.

¶ 17 State exhibit 5 generally corroborates Nite's movements as she described them in her testimony. The only visible part of the driver of the SUV is a hand passing between the driver's seat and the side of the vehicle. A male voice—presumably, the driver's—is audible but is too faint for one to make out any words.

¶ 18 The footage from both July 17 and 22 shows Nite making several trips past an area that has playground equipment, a sandbox, and a basketball court. Children are seen playing in the area. The area has a sign reading, "Indian Trail Park, Fox Valley Park District." As she walks toward the area on July 17, Nite can be heard inviting children to the "park."

¶ 19 During Nite's testimony, the State moved to admit State exhibit 9, which comprised records for a cellular phone account held in defendant's name. The records itemized incoming and outgoing calls for the period from June 17 to August 16, 2014, and included a certification from a Sprint employee attesting that the call log was kept in the ordinary course of business.

¶ 20 Defendant objected that State exhibit 9 was irrelevant to any issue raised so far in the case. The State responded that State exhibit 9 was relevant because the phone number appearing on the screenshots of Nite's phone in State exhibits 7 and 8 was the same number on defendant's

account. The State also asserted that the records confirmed phone calls between defendant and Nite on July 17 and 22. The court admitted State exhibit 9 "for the limited purpose as to who owns [the] phone number" appearing on the screenshots in State exhibits 7 and 8. The court would not "not *** accept [State exhibit 9] for the basis that certain phone calls were made to other phone numbers," because the court "[didn't] have any evidence to that effect at this point."

¶ 21 Casali testified that he is a special agent with the Bureau of Alcohol, Tobacco, and Firearms. In the summer of 2014, Casali was involved in a drug-related investigation of which defendant was a target. As part of the investigation, Casali utilized paid informant Nite. Casali identified the phone number by which he would contact Nite.

¶ 22 On July 17, 2014, Casali and Stemmet met with Nite and Jackson. After reviewing text messages from defendant on Nite's phone, Casali searched Nite, Jackson, and their vehicle. Casali then gave Nite $350 in cash and recording equipment. Nite and Jackson departed, and Casali followed them to unit 405-A East Indian Trail Road and began surveillance. Stemmet conducted surveillance from a different location.

¶ 23 At about 3:28 p.m., Casali saw Nite exit the rear passenger door of a gold Escalade parked in the lot near unit 405-A (he had not observed her enter the Escalade). After Nite exited, the Escalade left. Casali later met Nite. He searched her and collected the recording equipment as well as the cocaine she had purchased from defendant. Nite informed Casali that defendant had called and said she overpaid for the cocaine. Casali then returned the recording equipment to Nite and followed her as she walked back to unit 405-A. He observed her enter the front passenger side of a black Escalade. After Nite exited, she met with Casali and handed him $50 and the recording equipment.

¶ 24 Casali testified that, on July 22, 2014, he and Stemmet met with Nite in connection with another controlled buy from defendant. After searching Nite, he provided her with recording equipment and $300 in cash. Nite walked to unit 405-A, and both Casali and Stemmet assumed surveillance locations. Casali observed Nite enter the rear driver's side of a blue Suburban. After Nite exited the Suburban, Casali followed the vehicle to BC Sandwiches, where it parked. Casali observed defendant exit the driver's side of the vehicle. Defendant had no beard that day.

¶ 25 Stemmet testified that he has been an Aurora police officer for 18 years. On July 17 and 22, 2014, he and Casali conducted surveillance of controlled buys of cocaine between Nite and defendant at Indian Trail Apartments, which Stemmet described as "a public housing complex *** with a park attached to it." Stemmet testified that, through his years with the Aurora police department, he was familiar with both Indian Trail Apartments and the attached park. According to Stemmet, the park has playground equipment and is open to the general public. Stemmet knew, from signage at the park and police department records, that the park is run by a government entity, namely the Fox Valley Park District.

¶ 26 Stemmet testified that the vehicles in which Nite purchased drugs on July 17 and 22 were parked in the same area of the apartment complex's parking lot. Using a measuring tool, Stemmet determined that the distance between the park and the area where the vehicles were parked was less than 1,000 feet.

¶ 27 After Stemmet's testimony, the State moved for reconsideration of the trial court's ruling that State exhibit 9 would not be admitted for the purpose of showing that Nite and defendant phoned each other. Defense counsel asked the court to affirm its prior ruling:

> "My argument is that there was no corroboration. I would persist in that argument. I understand over my objection the officer was allowed to testify to the phone number

> where he reached Theresia Nite, but I don't have a recollection that she testified to placing three phone calls. These are all showing up—I am not sure if they are showing up as incoming. They are not noted as incoming. They are noted as just Naperville, Illinois, at line 21, 22, and 24.
>
> I don't think that the State has laid the proper foundation for the admission of these call detail sheets in regards to those three calls. There was no testimony as to time. Those don't appear to be incoming. They appear to be possibly outgoing. From looking at these records, it's really hard to tell whether they are outgoing or incoming unless they are denoted incoming.
>
> I have a continuing objection to the admission of these records. [Nite] never testified as to what her number was on the date in question. We don't know if she had more than one phone."

¶ 28 The trial court ruled that it would admit State exhibit 9 only with respect to five itemized calls on July 17 and 22, 2014.

¶ 29 Defendant was the sole witness for the defense. He testified that, on July 7, 2014, he underwent surgery to prepare him for dialysis treatment. A fistula was put in his left arm and a catheter in his chest. Following the surgery, defendant was unable to use his left arm for three months. Though he "wasn't supposed to be driving," defendant drove a car by using his right hand to turn the wheel.

¶ 30 Defendant testified that, on July 16, 2014, Tasha Dailey called him to say that Nite wanted to talk with him. Defendant had known Nite for 15 years but had not spoken to her in 5 years. After speaking with Dailey, defendant spoke by phone with Nite. She wanted to speak with him but did not say why. Later that day, when defendant went to Tasha's apartment, Nite

asked him to cash a check for $20,000. When defendant declined, Nite asked if he would loan her money. Defendant told Nite that he had no money on him and that she should call him tomorrow. The next day, July 17, Nite texted him. Defendant drove to Indian Trial Apartments and met Nite. She asked for a $200 or $300 loan, but he loaned her only $50.

¶ 31 Defendant denied that he sold drugs to Nite on July 17. He further testified that he had no contact with Nite after July 17.

¶ 32 The State referenced State exhibit 9 to impeach defendant's testimony that he had not heard from Nite for five years prior to July 16 and that he had no contact with her after July 17. The State specifically referred defendant to records of calls on July 15 and 22. In response, defendant either denied the calls occurred or denied any memory of speaking with Nite on those dates.

¶ 33 The State also cross-examined defendant about the text messages that Nite sent him. We quote that exchange (State exhibits 7 and 8 are explicitly mentioned about halfway through the exchange, but it appears defendant was referencing them from the beginning):

> "Q. You stated you had contact with her on the phone. Did you have text message conversations with her?
>
> A. Just that text you see.
>
> Q. And she was talking about $350; correct?
>
> A. First I thought she was talking about 3:50 p.m.
>
> Q. And then she put 350 with a dollar sign; correct?
>
> A. I guess that's what is on there.
>
> Q. These were text messages between you and Theresia; correct?
>
> A. I guess that's Theresia.

Q. You didn't know who—you are saying you guess that was Theresia. You don't know if it was her?

A. It could have been her. I don't know if that was her on the other end or not.

Q. You said the words, 'Okay'; correct?

A. Just, 'Okay.'

Q. You didn't ask, 'Who is this'?

A. I just said, 'Okay.'

Q. So you just said, 'Okay,' to somebody you didn't know who it was?

A. I do it to a lot of people, 'Okay.'

Q. You met with her earlier that day prior to giving her the 50 dollars; correct?

A. No.

MR. WHITFIELD [assistant State's Attorney]: Just so the record is clear, I am going to show the defendant [State exhibits 7 and 8].

BY MR. WHITFIELD:

Q. I am showing you People's 7 to your right and 8 to your left. Do you recognize these text messages?

A. Yeah.

Q. These are the text messages you sent with the words, 'Okay,' for the ones you sent; correct?

A. Correct.

Q. Nowhere in these text messages is there any mention of 50 dollars; is that correct?

A. I see money there.

Q. My question is whether there was a mention of 50 dollars?

A. No, because it was my money she wanted to borrow."

¶ 34 The trial court found defendant guilty on counts 1 and 3 (relating to July 17, 2014) but not guilty on counts 2 and 4 (relating to July 22, 2014)). The court determined that Nite's testimony as to the events of July 17 was sufficiently corroborated by the text messages and the video footage. The court further found that Indian Trail Park was a public park, based on the video footage and Stemmet's testimony.

¶ 35 The court, however, held that the State did not prove the alleged drug buy on July 22. The court found: (1) Nite "was completely impeached on whether or not [the] defendant on July 22nd had a beard"; (2) the video footage "show[e]d nothing in relation to [the] case" because the conversation in the SUV was inaudible; and (3) Nite could not be believed in the absence of corroboration because she was "a known heroin addict *** working for the federal and local governments for cash."

¶ 36 Defendant filed a posttrial motion, which the trial court denied. Defendant was sentenced on count 1 to six years of imprisonment.

¶ 37 Defendant filed this timely appeal.

¶ 38 II. ANALYSIS

¶ 39 A. Text Messages

¶ 40 For his first two contentions on appeal, defendant claims that the trial court erred in admitting certain evidence. Generally, rulings on the admissibility of evidence are reviewed for abuse of discretion. *People v. McRae*, 2011 IL App (2d) 090798, ¶ 25.

¶ 41 First, defendant claims that the trial court erred in admitting State exhibits 7 and 8, which Nite identified as screenshots of her phone showing an exchange of text messages between her

and defendant on July 17, 2014. We affirm the admission of the text messages, but on a different ground than the trial court relied on.

¶ 42 We quote again the text messages between Nite and defendant:

"- A quarter after. Dinner will be ready & im not tryin to let T knw

she begs for food.

- Erase all texts SOON as u done reading them.

- *Ok*

- It's 3:50pm right

- Hello! $350

- Hello! $350

- *Ok*

- Ill hit u soon as im close to her crib

- *Ok*

- Im here." (Emphasis added).

There was no dispute at trial that defendant sent the italicized texts.

¶ 43 " 'Hearsay' " is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Ill. R. Evid. 801(c) (eff. Oct. 15, 2015). Hearsay is generally inadmissible. Ill. R. Evid. 802 (eff. Jan. 1, 2011). By definition, a statement offered for a purpose other than to prove the truth of the matter asserted is not subject to the hearsay bar. *In re Charles W.*, 2014 IL App (1st) 131281, ¶ 35. Nite testified that the messages she sent contained code for the quantity and price of the drugs she planned to buy from defendant on July 17. In moving for admission of the messages, the State argued that it was offering them, not to establish the truth of the matters asserted therein, but to show their

effect on Nite's subsequent course of conduct. See *Gonzalez*, 379 Ill. App. 3d at 954 (a statement offered to show its impact on the listener's subsequent actions is not hearsay). The trial court accepted those grounds and admitted the text messages into evidence. The flaw in those grounds, however, was that the course of conduct the State intended to prove was the very criminal activity charged. The State's case depended not on the mere fact that the texts were sent, but on whether the texts were, as Nite testified, setting up a drug buy. See *Northbrook Bank & Trust Co. v. 2120 Division LLC*, 2015 IL App (1st) 133426, ¶ 46 ("The hearsay rule bans in-court repetition of extrajudicial utterances only when they are offered to prove the truth or falsity of their contents and does not apply to statements offered merely to show that they were made."). In closing argument, the State contended—based on the Nite's testimony, the video footage, and the text messages—that Nite purchased drugs from defendant according to the terms encoded in the text messages: a quarter ounce of cocaine for $350 (or $300, as corrected by defendant). See *People v. Lawler*, 142 Ill. 2d 548, 558 (1991) (out-of-court statements were hearsay because the State in closing argument relied on the statements as true). In keeping with the State's theory of the case, the trial court cited the text messages as substantive evidence that Nite purchased drugs from defendant on July 17.

¶ 44 We need not, however, definitively opine on whether the text messages were admissible on the particular grounds that the State proffered and the trial court accepted. We may affirm the admission of evidence on any basis appearing in the record regardless of whether the trial court relied on it. *People v. Gumila*, 2012 IL App (2d) 110761, ¶ 56. In our view, the text messages were admissible in their entirety as the out-of-court statements of a party opponent, defendant.

¶ 45 An out-of-court statement by a party-opponent is categorically not hearsay and, therefore, is admissible irrespective of the purpose for which it is offered. Ill. R. Evid. 801(d)(2) (eff. Oct.

15, 2015). A statement by a party-opponent includes, *inter alia*, "the party's own statement, in either an individual or a representative capacity" or "a statement of which the party has manifested an adoption or belief in its truth." Ill. R. Evid. 801(d)(2)(A), (B) (eff. Oct. 15, 2015). Defendant's OKs are naturally construed as endorsements of Nite's statements.

¶ 46 We note defendant's equivocal testimony about the text messages. Initially, he implied that he knew, at the time he received the messages, that Nite was the sender. Later, he claimed not to have known at the time who was sending the messages and that his OKs did not signal otherwise. In our view, the text messages were admissible based on the common-sense import of defendant's OKs. His testimony about the messages pertained simply to the weight of that evidence.

¶ 47 Because a sound alternative basis was available for admission of the text messages, we find no error.

¶ 48 B. Phone Records

¶ 49 Defendant argues that the trial court erred in admitting State exhibit 9, the Sprint call records for defendant's cellular phone.

¶ 50 Defendant concedes that "the call detail report was certified as a business record," and that "[b]usiness records are generally admissible if the proponent of the records demonstrates that the records were made in the regular course of business." Defendant contends that the records were nonetheless inadmissible because the State failed to supply foundation. Defendant's argument is two-pronged. First, linking foundation with "corroboration," defendant maintains that foundation for the phone records was lacking because there was no testimony as to who made the itemized calls, when they were made, or what was discussed. Defendant's sole authority in support of this argument is a reference to the definition of "foundation," *i.e.*,

" 'evidence or testimony that establishes the admissibility of other evidence.' " *People v. Bush*, 214 Ill. 2d 318, 333 (2005) (quoting Black's Law Dictionary 682 (8th ed. 2004)). Such a definition hardly illuminates the issues at hand; in particular, it provides no support for a crucial premise in defendant's contention, namely the linkage of foundation with corroboration. What defendant really seems to be challenging is the probative value of the phone records. In any case, defendant has forfeited his contention for failure to cite any useful authority. See Ill. S. Ct. R. 341(h)(7) (eff. Nov. 1, 2017).

¶ 51 Defendant's second point on foundation is that the State failed to meet the particular foundational requirements for computer-generated records. This argument is forfeited because defendant did not raise it below (see *People v. Enoch*, 122 Ill. 2d 176, 186 (1988)), and he does not rely on the plain-error rule as a basis for bypassing the forfeiture rule here (*People v. Thompson*, 238 Ill. 2d 598, 613 (2010)).

¶ 52 C. The Public Park Element

¶ 53 Defendant's final claim on appeal is that the State failed, on count 1, to prove that Indian Trail Park was a "public park" within the meaning of section 407(b)(1) of the Illinois Controlled Substances Act (Act) (720 ILCS 570/407(b)(1) (West 2012)).

¶ 54 When faced with a challenge to the sufficiency of the evidence to support a criminal conviction, the reviewing court must view the evidence in the light most favorable to the prosecution and determine whether any rational trier of fact could have found the elements of the crime proven beyond a reasonable doubt. *People v. Yeoman*, 2016 IL App (3d) 140324, ¶ 18.

¶ 55 In *People v. Morgan*, 301 Ill. App. 3d 1026 (1998), this court was required to determine what constitutes a "public park" per section 407(b)(1) and what manner of proof is necessary to satisfy that element in a given case. The parties in *Morgan* were at odds over whether Bedrosian

Park in Waukegan was a public park. This court found no definition of "public park" in the Act nor any cases attempting to define the term for purposes of the Act. We did note that, in other contexts, "park" was defined as "a piece of ground in a city or village set apart for ornament or to afford the benefit of air, exercise or amusement." (Internal quotations omitted.) *Id.* at 1031.

¶ 56 We rejected the defendant's position that the only manner in which the State can prove the existence of a public park is though official documentation showing that the space was a legally dedicated park. Instead, we accepted as sufficient the testimony of a Waukegan police officer that Bedrosian Park was a public park. We noted that the officer was familiar with the nature of Bedrosian Park, which he described as "a small area open to the public, measuring approximately 100 feet by 100 feet and containing one or two basketball courts and some playground equipment." *Id.* at 1028. The officer also testified that, in his 10-year career as a Waukegan police officer, he made 100 drug arrests in Bedrosian Park. *Id.* at 1028, 1032. We accepted the officer's testimony as sufficient because "[i]t is generally understood that persons living and working in the community are familiar with various public places in the neighborhood, such as the location of streets, buildings, and the boundaries of counties and town lots." *Id.* at 1032. Though we regarded the officer's testimony as sufficient of itself to establish that Bedrosian Park was a public park, we remarked that the defendant, in his testimony, referred to Bedrosian Park as a "park" and claimed that he had played basketball there. *Id.* at 1032.

¶ 57 Defendant submits that the present case is closer factually to our more recent decision in *People v. Cadena*, 2013 IL App (2d) 120285. The defendant in *Cadena* was convicted under section 407(b)(1) of delivering a controlled substance within 1,000 feet of a church, namely Evangelical Covenant Church (ECC) in Belvidere. On appeal, the defendant argued that the State failed at trial to prove that, on the date of the offenses, ECC was a "church *** or other

building *** used primarily for religious worship" (720 ILCS 570/407(b)(1) (West 2008)). The State claimed that there was sufficient proof in the testimony of the police officer who conducted surveillance on the controlled drug purchases for which the defendant was charged. The officer testified he had been a Belvidere police officer for 27 years. During his testimony, the officer was asked whether ECC " 'is an active church.' " *Id.* ¶ 6. He answered yes. *Id.*

¶ 58 We found two deficiencies in the officer's testimony. First, it was unclear if the officer was testifying that ECC was an active church as of trial or as of the dates of the offenses. Second, even if the officer could be taken as testifying that ECC was an active church on the dates of the offenses, his opinion was still inadequate because "there was no evidence of *how* [he] knew this information." (Emphasis in original.) *Id.* ¶ 17. Citing *Morgan*, the State urged that the officer's "experience on the police force was sufficient for the jury to infer that he was familiar with [ECC] and its activities." *Id.* We interpreted *Morgan* differently:

> "*Morgan* requires more than the bare facts that the witness is a police officer with a certain number of years of service; it requires the demonstration and explanation of how the witness is familiar with the enhancing location (park, school, church, or the like).
>
> In contrast, here, the State failed to present testimony from someone with personal knowledge that the church was active on the dates of the offenses, 'a fact that the State could have easily established by eliciting testimony from someone affiliated with the church.' [Citation.] Even a neighbor, or a police officer who testified to being familiar with the church from having regularly patrolled the neighborhood, would have had sufficient personal knowledge to testify as to the church's active status. However, 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.* ¶¶ 17-18.

¶ 59 The case at hand has a type of proof not presented in *Morgan* or *Cadena*: contemporary video footage of the area alleged to be a "public park." The area is shown to have playground equipment, a sandbox, and a basketball court. There are children playing in the area, which Nite, on the video, refers to as the "park." A sign reads "Indian Trail Park, Fox Valley Park District." There was also Stemmet's testimony that he was familiar with Indian Trail Park from his time as an Aurora police officer and knew that it was open to the general public. He also knew from police records, and the park's own signage, that the park was operated by a government entity, namely the Fox Valley Park District. We hold that there was sufficient evidence that Indian Trail Park was a public park on July 17, 2014.

¶ 60 III. CONCLUSION

¶ 61 For the foregoing reasons, we affirm the judgment of the circuit court of Kane County. 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).

¶ 62 Affirmed.