2013 IL App (2d) 111115-U
No. 2-11-1115
Order filed April 24, 2013

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Kane County.
Plaintiff-Appellee,	)	
v.	)	No. 10-CF-953
STEPHEN E. BUTLER,	)	Honorable Timothy Q. Sheldon
Defendant-Appellant.	)	Judge, Presiding.

PRESIDING JUSTICE BURKE delivered the judgment of the court.
Justices Jorgensen and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: The State proved defendant guilty beyond a reasonable doubt of possession of a controlled substance with intent to deliver within 1,000 feet of a church.

¶ 2 Defendant, Stephen E. Butler, was indicted on May 15, 2010, after he delivered cocaine to a confidential informant in two transactions in July 2009. For the first transaction, defendant was convicted of unlawful delivery of 1 to 15 grams of cocaine within 1,000 feet of a church (720 ILCS 570/407(b)(1) (West 2010)), and unlawful delivery of a controlled substance (720 ILCS 570/401(c)(2) (West 2010)). For the second transaction, defendant was convicted of unlawful

delivery of 1 to 15 grams of cocaine within 1,000 feet of a public park (720 ILCS 570/407(b)(1) (West 2010)), and unlawful delivery of a controlled substance (720 ILCS 570/401(c)(2) (West 2010)). The trial court imposed an eight-year sentence on each conviction, with the sentences to be served concurrently. The court then merged the convictions into the Class X felony of unlawful delivery of a controlled substance within 1,000 feet of a church.

¶ 3 On appeal, defendant argues that the State did not prove beyond a reasonable doubt that there was a church within 1,000 feet of the site of the offense. He asks us to reverse his conviction of unlawful delivery of a controlled substance within 1,000 feet of a church and to remand the cause for sentencing on his conviction of unlawful delivery of a controlled substance. We affirm.

¶ 4 I. FACTS

¶ 5 Section 401(c)(2) of the Illinois Controlled Substances Act (Act) (720 ILCS 570/401(c)(2) (West 2010)) makes it a crime to deliver 1 gram or more but less than 15 grams of any substance containing cocaine. A violation of section 401(c)(2) is a Class 1 felony, which is punishable by a prison term of not less than 4 years and not more than 15 years. 730 ILCS 5/5-8-1(a)(4) (West 2010). Section 407(b)(1) of the Act enhances an offense committed under section 401(c) (720 ILCS 570/401(c) (West 2010)) 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 2010). A Class X felony is punishable by a prison term of not less than 6 years and not more than 30 years. 730 ILCS 5/5-8-1(a)(3) (West 2010).

¶ 6 In this case, defendant concedes that he violated section 401(c)(2) of the Act, but he challenges the jury's finding that he committed the offense within 1,000 feet of a church.

Accordingly, defendant seeks a reduction in his conviction from a Class X felony to a Class 1 felony. Because the only issue on appeal is whether defendant committed the offense within 1,000 feet of a church, we confine our recitation of the facts to the building identified by the State as a church.

¶ 7 First, Aurora Police Officer Jason Russell testified that, on July 1, 2009, he went to the public housing complex at 414 Montgomery Road in Aurora, where the controlled cocaine purchase from defendant took place. Russell testified that he was familiar with the area and that Abundant Life Church is at 402 Sherman Avenue, which is near the complex. In January 2010, Russell measured the distance from the site of the offense to the church to be 711 feet. Russell also testified that he took a series of photographs of the area, including two of the church. The photographs, which were admitted, show a building called "Abundant Life Church." The building's front wall contains glass block in the shape of a cross and "1959" engraved in the lower right corner. A sign in front of the building shows the days and times of service and the pastors' names. The sign also says "Experience God's Presence." Russell testified that the photographs of the church were accurate, but he did not say whether the church appeared that way on the date of the offense.

¶ 8 Second, Special Agent Larry Lapp of the FBI also testified to his involvement in the controlled cocaine purchase from defendant on July 1, 2009. Lapp testified that he was familiar with the area as it existed on the date of the offense. Lapp stated, "[t]here's a church that's just kind of down the street but kind of behind that [public housing] complex." Lapp also identified the Abundant Life Church in the photographs. Lapp testified the church was north of the public housing complex and that the photographs of the church accurately reflected the area of the transaction on the date of the offense.

¶ 9 Third, Shakira Shaw, the confidential informant who assisted the agents in the cocaine purchase, testified that she was familiar with the area and recognized the church in the photograph. Shaw testified that the photograph accurately depicted the church as it appeared on July 1, 2009, the date on which she bought cocaine from defendant.

¶ 10 II. ANALYSIS

¶ 11 A. Standard of Review

¶ 12 Defendant argues that the State failed to prove him guilty beyond a reasonable doubt of unlawful delivery of 1 to 15 grams of cocaine within 1,000 feet of a church (see 720 ILCS 570/407(b)(1) (West 2010)). When considering a challenge to a criminal conviction based upon the sufficiency of the evidence, a reviewing court does not retry the defendant. *People v. Smith*, 185 Ill. 2d 532, 541 (1999). "When reviewing 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.) *People v. Bishop*, 218 Ill. 2d 232, 249 (2006) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)); *People v. Collins*, 106 Ill. 2d 237, 261 (1985). "Testimony may be found insufficient under the *Jackson* standard, but only where the record evidence compels the conclusion that no reasonable person could accept it beyond a reasonable doubt." *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004).

¶ 13 Our duty is to carefully examine the evidence while giving due consideration to the fact that the court and jury saw and heard the witnesses. The testimony of a single witness, if it is positive and the witness credible, is sufficient to convict. *Smith*, 185 Ill. 2d at 541. The credibility of a witness is within the province of the trier of fact, and a jury's finding on such matters is entitled to

great weight, but the determination is not conclusive. We will reverse a conviction where the evidence is so unreasonable, improbable, or unsatisfactory as to create a reasonable doubt of the defendant's guilt. *Smith*, 185 Ill. 2d at 542.

¶ 14 Defendant advocates a departure from this traditional standard of review. He argues that his claim "does not entail any assessment of the credibility of the witnesses, but only the determination whether [*sic*] a certain set of facts sufficed to meet the State's burden of proof," and therefore, we must review his conviction *de novo*. Defendant relies on *People v. Smith*, 191 Ill. 2d 408, 411 (2000), in which the supreme court reviewed the sufficiency of the evidence *de novo*. Smith was convicted of armed violence based on testimony that, as the police approached an apartment building, they saw Smith drop a handgun from a window. The gun, which was not loaded, slid down the roof to the ground, where it was recovered. Once inside the apartment, the police found cocaine and cannabis in the living room and Smith, alone, in a bedroom with the window screen punched out. *Smith*, 191 Ill. 2d at 411.

¶ 15 On appeal, Smith did not challenge the officers' testimony or the evidence supporting the drug felonies that were the basis of the armed violence conviction. Rather, he argued that he could not be convicted of armed violence because the evidence was insufficient to prove that he was "armed with a dangerous weapon." *Smith*, 191 Ill. 2d at 414 (Rathje, J., specially concurring) (citing 720 ILCS 5/33A-2 (West 1992)). The supreme court concluded that, "[b]ecause the facts are not in dispute, defendant's guilt is a question of law, which we review *de novo*." *Smith*, 191 Ill. 2d at 411.

¶ 16 This case is easily distinguishable from *Smith*, where no inferences were drawn from the evidence and the issue on appeal was purely legal. Here, defendant asserts that Abundant Life Church was not operating as a church on the date of the offense. This is a factual question that turns

not only on the credibility of the witnesses, but also on inferences to be drawn from all the evidence. Thus, we decline defendant's invitation to depart from our traditional method of reviewing the sufficiency of the evidence in criminal cases.

¶ 17 B. Sufficiency of the Evidence

¶ 18 Defendant argues that the State failed to prove that the Abundant Life Church was a "church *** or other building *** used primarily for religious worship" (720 ILCS 570/407(b)(1) (West 2010)). Specifically, defendant argues that the evidence failed to establish beyond a reasonable doubt that the building was such a building on July 1, 2009, the date of the offense.

¶ 19 Defendant argues that *People v. Ortiz*, 2012 IL App (2d) 101261, compels reversal of his conviction. Like defendant, Ortiz appealed his conviction of unlawful delivery of a controlled substance within 1,000 feet of a church, arguing that the evidence failed to prove beyond a reasonable doubt that the building at issue was a church on the date of the offense. *Ortiz*, 2012 IL App (2d) 101261, ¶ 3. We concluded that the evidence did not. A police officer testified that the distance from the drug transaction to the building, the Emmanuel Baptist Church, was less than 1,000 feet; but the officer did not testify to the date on which he conducted the measurement. Photographs of the building were admitted into evidence; and while the photographs created an inference that the building was used primarily as a church, there was no testimony to establish when the photographs were taken. No witness testified that the photographs accurately represented the building as it appeared on the date of the offense. Thus, we concluded there was no way of knowing whether the church existed on the date of the offense, even though the State could have easily established that fact by eliciting testimony from someone affiliated with the church. *Ortiz*, 2012 IL App (2d) 101261, ¶ 11. Accordingly, we reversed Ortiz's conviction of unlawful delivery of a

controlled substance within 1,000 feet of a church, restored and affirmed his conviction of unlawful delivery of a controlled substance, and remanded the cause for sentencing on that conviction. *Ortiz*, 2012 IL App (2d) 101261, ¶ 15.

¶ 20 *Ortiz* is factually distinguishable from this case. Here, Russell testified that the Abundant Life Church was less than 1,000 feet from the drug transaction and that he took photographs of the area, including of the church. The photographs, which were admitted, show a building called "Abundant Life Church" with a front wall containing glass block in the shape of a cross. A sign in front of the building shows the days and times of service and the pastors' names and says "Experience God's Presence." The photographs of the building created an inference that the building was used primarily as a church. See *People v. Foster*, 354 Ill. App. 3d 564, 568 (2004) (finding that "a rational trier of fact could have inferred New Hope Church was a church used primarily for religious worship based on its name").

¶ 21 Although Russell testified that he took the measurement and the photographs of the area several months after the offense, Lapp and Shaw each testified that the photographs accurately showed the building as it appeared on the date of the offense. Also, one of the photographs shows "1959" engraved on the front of the building, which creates the inference that the building was constructed in that year. Unlike in *Ortiz*, the State offered testimony to establish when the photographs were taken and that the photographs accurately represented the building as it appeared on the date of the offense. Even though the State easily could have elicited testimony from someone affiliated with the church to show the church existed on the date of the offense, we conclude that the evidence presented supports the jury's implicit finding of that fact. "Examining the trial evidence in the light most favorable to the State, we believe a rational trier of fact could have found the

essential elements of the crime beyond a reasonable doubt." See *People v. Jordan*, 218 Ill. 2d 255, 270 (2006).

¶ 22 III. CONCLUSION

¶ 23 For the reasons stated, the judgment of the circuit court of Kane County is affirmed.

¶ 24 Affirmed.