

No. 1-10-1832

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 10 CR 3641
	)	
CHRISTOPHER SHAW,	)	Honorable
	)	John J. Moran, Jr.,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE FITZGERALD SMITH delivered the judgment of the court.  
Presiding Justice Lavin and Justice Pucinski concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Defendant's conviction for delivery of a controlled substance within 1000 feet of a school is reversed because the State failed to prove that the offense did in fact occur within 1000 feet of a school. Defendant's conviction for delivery of a controlled substance is reinstated and the cause is remanded to the trial court for resentencing. Upon remand for resentencing, defendant must be sentenced to a three-year period of mandatory supervised release, as required for Class X sentencing.
- ¶ 2 Following a bench trial, defendant Christopher Shaw was convicted of delivery of a controlled substance (less than one gram of heroin) within 1000 feet of a school and the lesser included offense of delivery of less than one gram of heroin. He was convicted on both counts

but was sentenced only on the greater offense to a Class X term of 10 years in prison and a three year term of mandatory supervised release. On appeal defendant contends that he was not proven guilty of the greater offense of delivery of heroin within 1000 feet of a school. He also contends that his mandatory supervised release term must be reduced to two years, the term applicable to the underlying felony.

¶ 3 At trial, Chicago police officer Joseph Sullivan testified that on January 23, 2010, he was a member of a tactical team conducting a narcotics surveillance in the area of 4550 North Sheridan in Chicago. Officer Sullivan described 4550 North Sheridan as "basically" the intersection of Wilson and Sheridan. Located at that intersection were a McDonald's, the Uptown Baptist Church, and a number of apartment buildings. When asked if there was a school in the area he replied that the Uplift Community School was located "at 900 on Wilson." Using binoculars, Officer Sullivan saw Tonya Moore approaching different people in the area and engaging in short conversations with them.

¶ 4 About 15 minutes into his surveillance, Officer Sullivan saw Moore begin talking to defendant "[a]t 4550 on North Sheridan." The officer described them as "standing directly in front of Uptown Baptist Church." Defendant took a crumpled piece of white paper from his pocket, "unraveled" it, and showed Moore a rounded white object inside of it. From his position across the street, Officer Sullivan then saw defendant hand the crumpled piece of paper to Moore, who placed it in her waistband. In turn, Moore gave defendant several paper bills, which defendant placed in his left front pants pocket. Defendant then walked southbound on Sheridan and Moore walked northbound on Sheridan. Believing this to be a narcotics transaction, Officer Sullivan radioed his enforcement officers a description of these two individuals and the directions they had gone. He then saw two of his officers approach Moore as she began to enter the McDonald's parking lot.

¶ 5 One of these officers, Meredith Esposito, testified that she recovered a crumpled piece of paper from Moore's waistband. The paper contained a knotted bag filled with white powdery substance which Officer Esposito believed was possibly heroin. She testified that she kept this substance in her possession until she inventoried it at the police station, where it was labeled, assigned an inventory number, and placed in a sealed lock box.

¶ 6 After Moore's arrest, defendant was stopped by other officers at 4533 North Sheridan. Chicago police officer Alfredo Dominguez testified that a fellow officer, Patel, performed a custodial search of defendant, revealing that he had numerous single dollar bills in his left front pants pocket. Officer Sullivan, who had identified defendant to these other officers, testified that the amount of money recovered from defendant was 15 single dollar bills.

¶ 7 The parties entered into a stipulation establishing that the white powdery substance recovered was tested and found to consist of less than .1 gram of heroin.

¶ 8 Defendant testified on his own behalf, asserting that he was innocent and had merely offered to assist Moore by letting her use his State identification card in order to pawn some items. He claimed that he was arrested on the sidewalk for no reason. He did confirm that he possessed 15 single dollar bills when he was arrested.

¶ 9 For impeachment purposes it was stipulated that defendant had two prior convictions for possession of a controlled substance with intent to deliver and one prior conviction for possession of a stolen motor vehicle.

¶ 10 After final arguments, the trial court found defendant guilty of both counts but then at sentencing stated that judgment was being entered only on the greater offense of delivery of a controlled substance within 1000 feet of a school. The court sentenced defendant to 10 years in prison, with three years of mandatory supervised release.

¶ 11 Defendant first contends that the State failed to prove that he delivered the heroin within 1000 feet of a school. Specifically, he contends that the State failed to prove that the narcotics delivery which took place in front of the Uptown Baptist Church at approximately 4550 North Sheridan Road occurred within 1000 feet of the grounds of the Uplift Community School. It was the State's burden to prove this and every element of the crime beyond a reasonable doubt. *People v. Carpenter*, 228 Ill. 2d 250, 264 (2008). We must determine whether, when viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 279 (2004).

¶ 12 The only evidence in the record as to the distance between the drug transaction and the school was Officer Sullivan's testimony that the transaction occurred "at 4550 on North Sheridan," "directly in front of Uptown Baptist Church," and that the Uplift Community School was located "at 900 on Wilson." No measurements were made, and there was no testimony as to the distances between these points. The State argues that "Sheridan and Wilson intersect at 3550 [sic] North Sheridan Road and 1000 West Wilson Avenue, a block west of 900 West Wilson, where the Uplift Community School is located."<sup>1</sup> It then argues that from this information it can be reasonably inferred that since the school was only one block away, it was within 1000 feet. But the State did not elicit any evidence as to where the two streets intersect or that the drug transaction occurred exactly at that intersection.

¶ 13 Recognizing the lack of evidence in the trial court, the State asks us to take judicial notice of the distances involved using Google Maps. A reviewing court may take judicial notice of the distance between two locations. *People v. Deleon*, 227 Ill. 2d 322, 326 (2008); *Dawdy v. Union*

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<sup>1</sup>This appears to be a typographical error; the State likely means 4550 North Sheridan Road.

*Pacific Railroad Co.*, 207 Ill. 2d 167, 177-78 (2003). Courts have used Google Maps as the source of such judicial notice. See *People v. Stiff*, 391 Ill. App. 3d 494, 503-04 (2009) (reversing trial court's ruling that victim's naming of perpetrator of crime against him, burning him with gasoline, was not admissible excited utterance where Google Maps showed that distance the victim traveled before making his statement was only 295 feet).

¶ 14 The Google Map appended to the State's brief shows the distance between the intersection of Wilson and Sheridan and the school to be .1 mile which would be 528 feet. However, the officer did not testify that the transaction took place at the intersection of Wilson and Sheridan, which intersect at 4600 North Sheridan. Instead, the officer testified that it occurred at 4550 North Sheridan, directly in front of Uptown Baptist Church. Our own research of Google Maps reveals that it lists the distance between 4550 North Sheridan and 900 West Wilson as .2 mile, which would be 1056 feet, a distance greater than the statutorily required distance of 1000 feet or less. Similarly, it lists the distance between "Uptown Baptist Church" and 900 West Wilson as .2 mile. Google Maps, <http://www.maps.google.com>. Taking judicial notice, using the State's own cited reference source, appears to negate the State's claim. We are mindful that the officer's testimony likely included approximations, but it clearly established that the transaction occurred on Sheridan Road, some distance south of the intersection of Wilson and Sheridan. What is missing is evidence of the distance between that point and the school in question. Distance is an element of the offense and must be proven beyond a reasonable doubt. That did not happen in this case. Accordingly, we reverse defendant's conviction for delivery of a controlled substance within 1000 feet of a school and reinstate his conviction for delivery of a controlled substance.

¶ 15 Because the conviction we are reinstating is for a lesser included offense, and because we cannot determine from the record what effect the aggravating factor of the proximity of a school

to the offense may have had on the sentencing judge, we remand for a new sentencing hearing. *People v. Bourke*, 96 Ill. 2d 327, 332 (2000); *People v. Durdin*, 312 Ill. App. 3d 4, 9-10 (2000).

¶ 16 Defendant also contends that although he was subject to Class X sentencing because of prior convictions, the enhancement should not apply to his sentence of mandatory supervised release, which should therefore be for the two-year period applicable to the Class 2 offense of delivery of a controlled substance rather than the three-year period imposed upon his Class X sentencing. Defendant relies upon *People v. Pullen*, 192 Ill. 2d 36 (2000). In *Pullen*, the defendant was sentenced as a Class X offender because of his prior convictions. He received an aggregate term of 30 years in prison, which was two years greater than that permissible for extended-term sentences for two Class 2 offenses, which is what his convictions were for. Our Supreme Court held that because defendant's actual convictions were for Class 2 crimes, the maximum enhanced sentences should be those prescribed for Class 2 crimes. *Pullen*, 192 Ill. 2d at 46. This issue has repeatedly been decided contrary to defendant's contentions and we find no basis for deviating from that line of authority. *People v. Lampley*, 405 Ill. App. 3d 1, 13-14 (2010) (distinguishing *Pullen*); *People v. Lee*, 397 Ill. App. 3d 1067, 1072-73 (2010) (distinguishing *Pullen*); *People v. Watkins*, 387 Ill. App. 3d 764, 766-67 (2009). Whatever sentence is imposed upon defendant after remand, it shall include the mandatory supervised release period of three years for enhanced Class X sentencing.

¶ 17 For the reasons set forth in this order, we reverse defendant's conviction and sentence for delivery of a controlled substance within 1000 feet of a school, we reinstate his conviction for delivery of a controlled substance (less than one gram of heroin), and we remand for resentencing with directions.

¶ 18 Reversed in part, reinstated in part, and remanded with directions.