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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
Plaintiff-Appellee,)	of Kane County.
v.)	
KYLE D. ABRAHAM,)	No. 08-CF-2270
Defendant-Appellant.)	Honorable
	Allen M. Anderson,
	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Bowman and Birkett concurred in the judgment.

ORDER

Held: Where the State proved beyond a reasonable doubt that defendant delivered a controlled substance within 1,000 feet of a building used primarily for religious worship, defendant's conviction of unlawful delivery of a controlled substance within 1,000 feet of a church was affirmed.

¶ 1 Following a jury trial, defendant, Kyle D. Abraham, was convicted of unlawful delivery of a controlled substance within 1,000 feet of a church (720 ILCS 570/401(c)(2), 407(b)(1) (West 2006)) and sentenced to 80 months' imprisonment. Defendant argues on appeal that the State failed to prove him guilty beyond a reasonable doubt. We affirm.

¶ 2 BACKGROUND

¶ 3 On April 14, 2009, defendant was indicted on one count of unlawful delivery of 1 or more but less than 15 grams of a substance containing cocaine, a controlled substance, within 1,000 feet of a church (720 ILCS 570/401(c)(2), 407(b)(1) (West 2006)) and one count of unlawful delivery of 1 or more but less than 15 grams of a substance containing cocaine, a controlled substance (720 ILCS 570/401(c)(2) (West 2006)). The charges stemmed from a September 13, 2007, undercover operation during which defendant sold approximately three grams of a substance containing cocaine to a member of the Illinois State Police North Central Narcotics Task Force (task force). Defendant was tried by a jury in November 2009. The following relevant evidence was adduced at trial.

¶ 4 Dennis Carroll of the Kane County sheriff's office testified that he was working with the task force on September 13, 2007. Defendant sent him a text message that evening offering to sell him cocaine. Carroll did not respond and defendant sent another text message about one hour later. Carroll called defendant, and they arranged to meet so that Carroll could purchase one-eighth of an ounce of cocaine from defendant. Carroll tried to persuade defendant to meet at a gas station, but defendant insisted on meeting in a residential area in Batavia, Illinois, at the corner of Logan and Park Streets. When Carroll arrived there, defendant entered Carroll's truck and handed him a plastic bag containing "two white, chalky pieces." Carroll began driving and returned the bag to defendant, asking him to weigh it on a scale that Carroll had in the truck. On defendant's request, Carroll stopped the vehicle and turned on the truck's dome light. Defendant weighed the bag and returned it to Carroll. Carroll gave defendant \$140 and drove around the block back to the intersection of Logan and Park, where defendant exited the vehicle.

¶ 5 Officer Charles Pierce of the St. Charles police department testified that he was the case agent on the task force investigating defendant. During Pierce's testimony, the court admitted People's exhibits 2, 3, and 4—photographs of the Logan Street Baptist Church building and sign.

Pierce identified the building and the sign, and said that he had “pass[ed] by that location and viewed that location several times in September of 2007.” He could not provide specific dates and had never entered the building. Pierce testified that the exhibit photos “fairly and accurately represent[ed]” how the building and the sign had appeared in September 2007. Pierce measured a distance of 632 feet from the intersection of Logan and Park Streets to the Logan Street Baptist Church using a calibrated measuring wheel.

¶ 6 The State also presented testimony on the chain of custody, weight, and content of People’s exhibits 1 and 1A, a state police evidence bag and the bag of cocaine that defendant sold Carroll, which were admitted. After the State rested, defendant moved for a directed verdict, which the court denied. Defendant did not testify or otherwise present evidence.

¶ 7 The jury found defendant guilty of both counts and the court subsequently sentenced him to 80 months’ imprisonment, fines, and fees on count I, and nol-prossed count II. Following the court’s denial of defendant’s posttrial motion and his motion to reconsider sentence, defendant timely appealed.

¶ 8 ANALYSIS

¶ 9 Defendant argues that the State failed to prove him guilty beyond a reasonable doubt. A defendant’s conviction will not be set aside “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). It is not the function of the reviewing court to retry the defendant. *Collins*, 106 Ill. 2d at 261. Rather, “ ‘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.) *Collins*, 106 Ill. 2d at 261 (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). The trier of fact must assess the credibility of the

witnesses and the weight of their testimony, resolve conflicts in the evidence, and draw reasonable inferences from that evidence. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). This court will not substitute its judgment for that of the trier of fact on these matters. *People v. Ortiz*, 196 Ill. 2d 236, 259 (2001); *People v. Martin*, 408 Ill. App. 3d 891, 894 (2011). “We will not reverse a conviction unless the evidence is so unreasonable, improbable or unsatisfactory that it raises a reasonable doubt of defendant’s guilt.” *People v. Evans*, 209 Ill. 2d 194, 209 (2004).

¶ 10 Acknowledging the general applicability of the *Collins* standard of review on challenges to the sufficiency of the evidence, defendant maintains that our review here should be *de novo* because “the jury was in no special position to draw inferences” from the photographic evidence, “so its conclusion that the building was primarily a place of worship deserves no deference.” See *People v. Smith*, 191 Ill. 2d 408, 411 (2000) (holding that, where the facts were undisputed, the defendant’s guilt presented a question of law to be reviewed *de novo*); *People v. Gibson*, 403 Ill. App. 3d 942, 949 (2010) (holding that, where the facts were uncontested, the defendant’s challenge to the sufficiency of the evidence should be reviewed *de novo*). While the State’s evidence included documentary evidence in the form of photographs, the State also presented Pierce’s testimony about the photographs and the building. The jury was in the best position to assess Pierce’s credibility, the weight to be given his testimony, and the reasonable inferences to be drawn therefrom. *Sutherland*, 223 Ill. 2d at 242. Accordingly, we apply the *Collins* standard of review, but note that, even if we were to apply a *de novo* standard of review, we would still affirm defendant’s conviction.

¶ 11 Defendant’s sole challenge to the sufficiency of the evidence is that the State failed to prove beyond a reasonable doubt that the building identified as the Logan Street Baptist Church was a church within the meaning of section 407(b)(1) of the Illinois Controlled Substances Act (Act) (720 ILCS 570/407(b)(1) (West 2006)). Section 401(c)(2) of the Act provides that any person who

knowingly delivers “1 gram or more but less than 15 grams of any substance containing cocaine” is guilty of a Class 1 felony. 720 ILCS 570/401(c)(2) (West 2006). Section 407(b)(1) of the Act enhances the classification of a section 401(c) offense 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.”

¶ 12 The Act does not define the word “church,” but this court held that the legislature intended “church” to mean “a place used primarily for religious worship.” *People v. Sparks*, 335 Ill. App. 3d 249, 256 (2002). The word “church” need not be included in a building’s official title to establish that the building is a church. *Sparks*, 335 Ill. App. 3d at 256. However, where the structure at issue is, by name, a church, a rational trier of fact could infer that the building is a church used primarily for religious worship. *People v. Foster*, 354 Ill. App. 3d 564, 568 (2004).

¶ 13 Viewing the evidence presented at trial in the light most favorable to the State, we conclude that the State met its burden. People’s exhibit 2 was a photograph of a sign that read:

“The Empowerment Fellowship
Logan Street Baptist Church
Sunday School Worship Service
8:30 a.m. 10:00 a.m.

Bible Study
Wednesday—7:00 p.m.

‘People Empowered to Serve God’ ”

During his testimony, Pierce identified People’s exhibit 2 as a photograph of “the sign for the Logan Street Baptist Church.” The sign’s content indicated that the building was a “church.” Pierce also identified People’s exhibit 4 as a photograph of the north side of the church. The side of the building in that photo had stained glass windows—a traditional physical characteristic of a church.

See *Sparks*, 335 Ill. App. 3d at 256 (noting that, while not required under the statute, “certain traditional physical characteristics such as a steeple and stained glass may help a fact finder identify a place as a church”). We further note that Pierce referred to the building as a church several times throughout his testimony. In *Foster*, the court held that, where the parties stipulated that, if called, an officer would testify that he measured the distance from the drug transaction to the New Hope Church, “a rational trier of fact could have inferred New Hope Church was a church used primarily for religious worship based on its name.” *Foster*, 354 Ill. App. 3d at 566, 568. Thus, the evidence in the present case was sufficient to allow a rational trier of fact to conclude that the building was a place primarily used for worship.

¶ 14 Moreover, the sign here included a time for “worship” at 10 a.m. Given the location of the worship time next to the Sunday school time, and without indicating a different day of the week (as the bible study on Wednesdays), it is reasonable to infer that weekly worship occurred on Sundays at 10 a.m. Accordingly, because a rational trier of fact could have found that the building was a church used primarily for religious worship within the meaning of the Act, the evidence was sufficient to support defendant’s conviction. See *Sparks*, 335 Ill. App. 3d at 256 (“If the State proves that the primary use of the place in question is for religious purposes, then the enhancement provision applies.”).

¶ 15 Defendant argues that, under *Sparks*, the State failed to prove its case because it did not provide testimony from anyone associated with the Logan Street Baptist Church. In *Sparks*, the State presented the testimony of the Salvation Army chapel’s minister as to the religious services he conducted at the chapel. *Sparks*, 335 Ill. App. 3d 251. Based on that evidence, the court held that the State had proved beyond a reasonable doubt that the chapel was a church within the meaning of

the Act. *Sparks*, 335 Ill. App. 3d 256-57. Although *Sparks* stands for the proposition that such testimony may be sufficient, it does not render this type of testimony necessary.

¶ 16 In his reply brief, defendant asks this court not to “adopt the poor reasoning of *Foster*.” He asserts that it is “not uncommon for churches to close, or for church buildings to be repurposed, while still bearing the name of the church engraved or carved on the outer wall of the building.” Defendant suggests that, under *Foster*, such a former church would qualify as a church under the Act simply because it bore the word church. We disagree. *Foster* merely stands for the proposition that a rational trier of fact could infer that a building labeled as a “church” is a church primarily used for religious worship. *Foster* does not compel the conclusion that every building with a “church” name on it is used primarily for worship regardless of other circumstances. In any event, defendant’s concern is irrelevant because the sign here was a freestanding sign by the street; it was not engraved or carved into the building itself.

¶ 17 Defendant finally argues that the State offered no evidence to show that the building was being used as a church at the time of his offense because it failed to present evidence as to when the photographs were taken or when the sign was erected. People’s exhibit 3 was a photograph of the front of a brick building; exhibit 4 appears to be the side of the same building. Officer Pierce identified the building in the photos as the Logan Street Baptist Church. In both of these photos, the grass is cut and the bushes are neatly trimmed. Officer Pierce testified that the exhibit photos “fairly and accurately represent[ed]” how the building and the sign appeared in September 2007. That the grounds were maintained and the sign was in place at the time of the offense would allow a rational trier of fact to find that the building was currently being used as a church, regardless of whether Pierce actually observed worship services or entered the building himself.

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

¶ 19 Affirmed.