

2013 IL App (2d) 120101-U
No. 2-12-0101
Order filed September 18, 2013

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Kane County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 11-CF-1632
)	
DEREK GARCIA,)	Honorable
)	Allen Anderson,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Presiding Justice Burke and Justice Schostok concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's conviction of delivery of a controlled substance within 1,000 feet of a school was affirmed (1) where the evidence was sufficient to establish that St. Catherine School was a school on the date of the offense, to establish that the school was within 1,000 feet of the drug transaction, and to prove defendant guilty under a theory of accountability; (2) where the trial court's evidentiary rulings were not an abuse of discretion; and (3) where defendant was not denied the effective assistance of counsel.

¶ 2 Defendant, Derek Garcia, appeals his conviction of unlawful delivery of a controlled substance within 1,000 feet of a school (720 ILCS 570/401(c)(2), 407(b)(1) (West 2010)). On appeal, defendant argues that the State failed to prove him guilty beyond a reasonable doubt, that

certain of the trial court's evidentiary rulings were an abuse of discretion, and that he was denied the effective assistance of counsel. For the following reasons, we affirm.

¶ 3

I. BACKGROUND

¶ 4 On October 12, 2011, a grand jury returned a three-count indictment against defendant. Count I alleged that, on July 27, 2011, defendant committed the offense of unlawful delivery of a controlled substance, being more than 1 but less than 15 grams of cocaine, within 1,000 feet of a school (720 ILCS 570/401(c)(2), 407(b)(1) (West 2010)). Counts II and III charged unlawful delivery of a controlled substance (720 ILCS 570/401(c)(2) (West 2010)) and unlawful possession of a controlled substance (720 ILCS 570/402(c) (West 2010)), respectively. Prior to trial, the State nol-prossed counts II and III.

¶ 5 On the morning of trial, defendant filed a motion *in limine* to exclude a photograph of a sign in front of St. Catherine School. The sign had permanent letters that read, "St. Catherine of Siena Catholic Church & School," and had movable black letters that read, "Registration Open Pre K and Most Grades," along with a phone number. According to defendant, the message stating that registration was open was inadmissible hearsay. The court denied the motion.

¶ 6 Village of Carpentersville police officer Chris Bognetti was the first witness at defendant's jury trial. Officer Bognetti testified that, on July 27, 2011, he was working undercover as a member of the department's gang and drug unit. At around 3:54 p.m., he called a cell phone number and a male answered. When the State asked the officer the name of the person to whom he spoke, defense counsel objected, based on lack of foundation and hearsay. Defense counsel argued that, if the State were eliciting testimony that Officer Bognetti spoke to defendant on the phone, there was inadequate foundation for the testimony. If the State were eliciting testimony that the person on the phone

identified himself as “David,” then the testimony would be hearsay. The court overruled the objection, informing the jury that its ruling was subject to the State’s being able “to tie up the specific information that has anything to do with this defendant.”

¶ 7 Officer Bognetti testified that the male voice on the phone identified himself as “David.” The officer told David he was looking for “some coke,” which was slang for cocaine. David asked how much. The officer said he had \$100, and David said that would buy him a gram and a half. Officer Bognetti and David arranged to meet in the parking lot of the McDonald’s on Route 31 in West Dundee, Illinois, south of Route 72.

¶ 8 Officer Bognetti briefed the members of his team about the drug operation and left for the McDonald’s. At approximately 4:19 p.m., as Officer Bognetti was pulling into the McDonald’s parking lot in an undercover red pickup truck, he received a call from the cell phone number he had called earlier. This time, a female voice was on the phone. The female told the officer she was in a black Nissan, and the officer saw a woman in a black Nissan speaking on a cell phone. The officer parked his truck two spots from the Nissan, and the woman, who was later identified as Oraphan Soontornpadungsin, exited her vehicle and approached the window of the truck. Officer Bognetti handed Oraphan \$100, and she handed him a plastic bag containing a white powder that later tested positive for cocaine. Officer Bognetti testified that he saw defendant seated in the passenger seat of the black Nissan from which Oraphan exited.

¶ 9 Officer Bognetti alerted his team that the drug transaction was complete, and officers conducted a traffic stop of the Nissan on Route 31. Both Oraphan and defendant were arrested.

¶ 10 Officer Bognetti next testified that he returned to the McDonald’s parking lot approximately one week later, on August 4, 2011, to measure the distance from the drug transaction to St. Catherine

School. The officer testified that he measured the distance using a Durawheel measuring device, which he calibrated before and after conducting the measurement. He began measuring on the sidewalk on Route 31 directly in front of the parking spot in which he parked the red truck on July 27, 2011. He walked north on the sidewalk until he reached a parking lot that permitted access to St. Catherine School. The officer then turned westbound, walked through the parking lot, and stopped measuring approximately one foot past the property line, which was marked by a chain across the driveway to the school. The distance was 994 feet. Officer Bognetti testified that he could not have measured in a straight line from the drug transaction to the school because houses were in the way.

¶ 11 The State then asked Officer Bognetti to identify People's Exhibits Nos. 5 and 6. The officer identified People's Exhibit No. 5 as a photograph of the exterior of St. Catherine School, which he took on August 4, 2011. The exterior of the building contained large letters that read, "Saint Catherine School." People's Exhibit No. 6 was a photograph of a sign on the north side of the school, which Officer Bognetti also took on August 4, 2011. The sign had permanent letters that read, "St. Catherine of Siena Catholic Church & School," and had movable black letters that read, "Registration Open Pre K and Most Grades," along with a phone number. According to the officer, both photographs fairly and accurately depicted the school as it appeared on August 4, 2011. The State did not ask the officer whether the photographs fairly and accurately depicted the school as it appeared on July 27, 2011. When the State moved to admit People's Exhibits Nos. 5 and 6 into evidence, defense counsel objected to Exhibit No. 6 only, on the same basis raised in defendant's earlier motion *in limine*. The trial court admitted both exhibits.

¶ 12 Lastly, Officer Bognetti testified that St. Catherine School was a school and that he was familiar with the school because he grew up in the area and patrolled it frequently as a police officer. He further testified that the location at which he stopped measuring with the Durawheel was on the grounds of the St. Catherine School.

¶ 13 On cross-examination, defense counsel asked Officer Bognetti about his police report, which he completed on July 28, 2011. The officer admitted that, in the report, he listed the distance between the McDonald's and St. Catherine School as 875 feet. On redirect, the officer explained that he measured the 875 feet using the Google Earth computer application, which allowed him to measure a straight line between the McDonald's and the school.

¶ 14 Following Officer Bognetti's testimony, outside of the jury's presence, the trial court *sua sponte* indicated that it was prepared to strike the officer's testimony about his phone conversation with David because the State had not tied up the conversation by showing that "David" was in fact defendant. The State argued that another witness's testimony would show that David was in fact defendant, or, alternatively, that the testimony was admissible under the coconspirator exception to hearsay (see Ill. R. Evid. 801(d)(2)(E) (eff. Jan. 1, 2011)).¹ Specifically, the State argued that, even if David were not defendant, David's statements on the phone were made in furtherance of the drug transaction. The trial court accepted the State's coconspirator argument and declined to strike Officer Bognetti's testimony regarding the phone conversation. The court further reasoned that it was for the jury to decide whether David was in fact defendant.

¹The "coconspirator exception" technically is not a hearsay exception; rather, a statement of a coconspirator is excluded from the definition of hearsay. Ill. R. Evid. 801(d)(2)(E) (eff. Jan. 1, 2011).

¶ 15 The State next read a stipulation that there was a proper chain of custody and that, if called to testify as a forensic scientist, Barbara Shuman would have testified that the substance in the plastic bag that Oraphan gave to Officer Bognetti was cocaine weighing 1.8 grams.

¶ 16 Detective John Spencer next testified that he participated in the undercover drug transaction at the McDonald's on July 27, 2011. He and Sergeant Kreutzer parked in the northernmost section of the parking lot in an undercover vehicle. Detective Spencer observed Officer Bognetti pull into the parking lot and park. He then observed Oraphan Soontornpadungsin exit the driver's side of a black four-door Nissan, speak with Officer Bognetti for approximately 30 seconds, then return to her vehicle. Detective Spencer saw a second individual in the Nissan, whom he identified as defendant.

¶ 17 The State next called Officer Joseph Murphy. Officer Murphy testified that on July 27, 2011, while the undercover drug transaction was taking place, he was positioned in an unmarked squad car several blocks north of the McDonald's. Once he was notified by Sergeant Kruetzer that an arrest was to be made, he traveled southbound on Route 31 and pulled over a black Nissan Altima. He arrested Oraphan Soontornpadungsin, who was driving, and defendant, who was in the passenger seat. He also found United States currency on the edge of the driver's seat of the Altima.

¶ 18 Officer Murphy further testified that, later that evening, he was present with defendant in the booking area of the police station. According to Officer Murphy, defendant told the officer that he knew he had "screwed up" and asked if he was under arrest. Officer Murphy responded that he was under arrest in connection with a narcotics investigation. Later, when walking defendant to the holding area, unsolicited by any questioning from Officer Murphy, defendant said, " 'I know I screwed up, I told the guy I was somebody else and used a different name, I brought her to the deal

but it was her coke.’ ” On cross-examination, Officer Murphy testified that defendant did not say to whom he was referring when he said, “ ‘I told *the guy* I was somebody else.’ ” (Emphasis added.)

¶ 19 The State rested. After the trial court denied defendant’s motion for a directed verdict, the defense rested without presenting any evidence. The jury returned a guilty verdict.

¶ 20 Defendant filed a posttrial motion, in which he argued, among other things, that (1) the court erred in admitting People’s Exhibit No. 6 because it contained hearsay, (2) the court erred in admitting Officer Bognetti’s testimony regarding his phone conversation with “David” because it was hearsay, and (3) the State failed to prove defendant guilty beyond a reasonable doubt. The trial court denied the motion. Defendant timely appealed.

¶ 21 II. ANALYSIS

¶ 22 On appeal, defendant argues that (1) the State failed to prove him guilty beyond a reasonable doubt, (2) the trial court abused its discretion in making certain evidentiary rulings, and (3) he was denied the effective assistance of counsel.

¶ 23 A. Sufficiency of the Evidence

¶ 24 Defendant offers three arguments to support his contention that the State failed to prove him guilty beyond a reasonable doubt. First, defendant argues that the State failed to prove that St. Catherine School was a school on the date of the drug transaction. Second, defendant argues that the State failed to prove that St. Catherine School was within 1,000 feet of the drug transaction. Third, defendant argues that the State failed to prove that he was legally accountable for Orphan’s actions.

¶ 25 When presented with a challenge to the sufficiency of the evidence, it is not the function of the reviewing court to retry the defendant. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). 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 reviewing court should not substitute its judgment for that of the trier of fact, who is responsible for weighing the evidence, assessing the credibility of witnesses, resolving conflicts in the evidence, and drawing reasonable inferences and conclusions from the evidence. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). However, a reviewing court must set aside a defendant’s conviction if a careful review of the evidence reveals that it was so unreasonable, improbable, or unsatisfactory as to create a reasonable doubt of the defendant’s guilt. *People v. Evans*, 209 Ill. 2d 194, 209 (2004).

¶ 26 (1) St. Catherine School was a School on the Date of the Offense

¶ 27 Defendant argues that the State failed to prove beyond a reasonable doubt that St. Catherine School was a “school” within the meaning of section 407(b) of the Illinois Controlled Substances Act (Act) (720 ILCS 570/407(b) (West 2010)), or that it was a school on the date of the offense.

¶ 28 In support of his first argument, defendant relies on *People v. Young*, 2011 IL 111886, in which the supreme court held that a preschool did not qualify as a “school” for purposes of the Act. *Young*, 2011 IL 111886, ¶¶ 16, 19. The court relied on *People v. Goldstein*, 204 Ill. App. 3d 1041 (1990), and *People v. Owens*, 240 Ill. App. 3d 168 (1992), in which the Fifth and First Districts, respectively, interpreted the word “school” in the Act to mean “ ‘any public or private elementary or secondary school, community college, college or university.’ ” *Young*, 2011 IL 111886, ¶¶ 13-16 (quoting *Goldstein*, 204 Ill. App. 3d at 1045-48). According to defendant, the State failed to prove that St. Catherine School fell within any of these categories.

¶ 29 The State responds by citing *People v. Foster*, 354 Ill. App. 3d 564 (2004), where the court held that “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 568. According to the State, where a building is by name a school, it is reasonable for a trier of fact to infer that the building is in fact a school. The State further argues that Officer Bognetti testified based on his familiarity with the area that St. Catherine School was a school and that People’s Exhibit No. 6, which depicted the sign that read, “Registration Open Pre K and Most Grades,” supported the inference that St. Catherine School was a school within the scope of the Act.

¶ 30 We agree with the State. After briefing was completed in this case, this court decided *People v. Cadena*, 2013 IL App (2d) 120285, in which we discussed an apparent discrepancy between the First District’s holding in *Foster* and this court’s holding in *People v. Sparks*, 335 Ill. App. 3d 249 (2002). *Cadena*, 2013 IL App (2d) 120285, ¶ 15. We noted that, in *Sparks*, this court held that a Salvation Army chapel was a “church” for purposes of the Act because “the undisputed evidence established that the sole purpose of the chapel was to conduct religious services.” *Cadena*, 2013 IL App (2d) 120285, ¶ 14. We further noted that, while *Sparks* required “at least some information as to church activities” in order to prove that a building was a church, *Foster* held that “nomenclature alone is sufficient.” *Cadena*, 2013 IL App (2d) 120285, ¶ 15. However, because the State in *Cadena* conceded that nomenclature alone was insufficient to establish that the building at issue was a church, we did not attempt to resolve the discrepancy between *Foster* and *Sparks*. *Cadena*, 2013 IL App (2d) 120285, ¶ 15 n.1.

¶ 31 Here, although the State’s reliance on *Foster* may be misplaced (in light of *Cadena*), the State relied on more than mere nomenclature to prove that St. Catherine School was a school. As the State

argues, it also presented Officer Bognetti's testimony and People's Exhibit No. 6, which supported the inference that St. Catherine School was a school within the scope of the Act. Officer Bognetti grew up in the area, had been a police officer in the area for seven years, and patrolled the area frequently, and he knew St. Catherine School to be a school. People's Exhibit No. 6 depicted a sign that read, "Registration Open Pre K and Most Grades." The sign implied that the school was not just a preschool but at least an elementary (grade) school. Based on this evidence, a rational trier of fact could have concluded that St. Catherine School was a school within the scope of the Act.

¶ 32 Defendant also argues that the State did not establish that St. Catherine School was a school on the date of the offense. Defendant relies on *People v. Ortiz*, 2012 IL App (2d) 101261, in which this court held that the State failed to establish that the church at issue was a church on the date of the offense. *Ortiz*, 2012 IL App (2d) 101261, ¶ 11. In *Ortiz*, the State presented testimony from a police officer that the distance between a drug transaction and Emmanuel Baptist Church was less than 1,000 feet, but the officer did not testify to the date he measured the distance. *Ortiz*, 2012 IL App (2d) 101261, ¶ 11. The State also presented photographs of the church, but presented no testimony as to when the photographs were taken. *Ortiz*, 2012 IL App (2d) 101261, ¶ 11. This court reasoned that it had "no way of knowing whether Emmanuel Baptist Church existed on January 7, 2009," the date of the drug transaction. *Ortiz*, 2012 IL App (2d) 101261, ¶ 11.

¶ 33 In *Cadena*, this court relied on *Ortiz* and reversed a defendant's three convictions of unlawful delivery of a controlled substance within 1,000 feet of a church (720 ILCS 570/407(b)(1) (West 2008)). *Cadena*, 2013 IL App (2d) 120285, ¶ 18. The State's only evidence indicating that Evangelical Covenant Church was being used as a church on the dates of the three undercover drug transactions was a police officer's "affirmative response to the leading question, '[I]s that a church

that is an active church?’ ” *Cadena*, 2013 IL App (2d) 120285, ¶ 16. The question had no “temporal context” and could have referred to the time of trial, rather than to the dates of the offenses. *Cadena*, 2013 IL App (2d) 120285, ¶ 16. Further, there was no evidence of how the officer would have known that the church was an active church on the dates of the offenses. *Cadena*, 2013 IL App (2d) 120285, ¶ 17.

¶ 34 This case is distinguishable from *Ortiz* and *Cadena*. Here, the State elicited testimony from Officer Bognetti that he took the photographs contained in People’s Exhibits Nos. 5 and 6 on August 4, 2011, which was one week after the offense. Exhibit No. 5 is a photograph of a brick building with large letters reading, “Saint Catherine School.” Exhibit No. 6 is a photograph of a sign with permanent lettering that reads, “St. Catherine of Siena Catholic Church & School,” and with moveable lettering that reads, “Registration Open Pre K and Most Grades.” Officer Bognetti’s testimony as to the date these pictures were taken distinguishes this case from *Ortiz*, in which the State presented no testimony at all as to when the photographs of the church at issue were taken. *Ortiz*, 2012 IL App (2d) 101261, ¶ 11.

¶ 35 Officer Bognetti further testified that, based on his background growing up in the area and patrolling the area as a police officer, he knew that St. Catherine School was a school. His testimony distinguishes this case from *Cadena*, in which, in addition to providing no “temporal context” to an officer’s testimony, the State presented no evidence of the officer’s familiarity with the area or with the church at issue at the time of the drug transaction. *Cadena*, 2013 IL App (2d) 120285, ¶ 17. Here, not only did the State offer at least some temporal context—the officer took the photos on August 4, 2011—the State offered the basis for the officer’s personal knowledge that St. Catherine School was a school. Given that part of the basis for the officer’s knowledge was that he had grown

up in the area, his testimony permitted the reasonable inference that St. Catherine School was a school on July 27, 2011. See *Cadena*, 2013 IL App (2d) 120285, ¶ 18 (“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.”); see also *People v. Morgan*, 301 Ill. App. 3d 1026, 1032 (1998) (“It 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.”). In sum, although it would have been preferable for the State to ask Officer Bognetti, or some other witness with personal knowledge, whether St. Catherine School was a school on the date of the offense, based on the evidence presented, a rational trier of fact could have reached that conclusion.

¶ 36 (2) Drug Transaction was Within 1,000 Feet of the School

¶ 37 Defendant also argues that the State failed to establish beyond a reasonable doubt that the drug transaction took place within 1,000 feet of St. Catherine School. He argues that the State offered no basis for Officer Bognetti’s testimony that the chain across the driveway to St. Catherine School marked the school’s property line, and that the State presented no evidence of where the property line actually was located. According to defendant, the jury had no way of knowing how far St. Catherine School was from the point at which the officer stopped measuring.

¶ 38 Section 407(b)(1) requires, in pertinent part, that the State prove that the drug transaction took place “within 1,000 feet of the real property comprising any school.” 720 ILCS 570/407(b)(1) (West 2010). Defendant cites no case holding that the State must establish the exact legal boundaries

of a school in order to prove beyond a reasonable doubt a defendant's guilt under section 407(b)(1) of the Act. In fact, the case law suggests the opposite.

¶ 39 In *People v. Edmonds*, 325 Ill. App. 3d 439 (2001), the court affirmed a defendant's conviction of possession of a controlled substance with intent to deliver on a public way within 1,000 feet of a school (720 ILCS 570/401(c)(2), 407(b)(1) (West 1998)). *Edmonds*, 325 Ill. App. 3d at 447. One of the issues on appeal was whether the State proved beyond a reasonable doubt that the defendant possessed the drugs within 1,000 feet of a high school. *Edmonds*, 325 Ill. App. 3d at 446. A police officer testified that he measured to a concrete slab on the school's property that was approximately 20 feet from the sidewalk and within 50 feet of the school building. *Edmonds*, 325 Ill. App. 3d at 442. The distance measured 752 feet. *Edmonds*, 325 Ill. App. 3d at 447. On appeal, the court reasoned that, although the officer "did not know the exact legal boundaries of the high school," his testimony was sufficient to prove the "within 1,000 feet" element beyond a reasonable doubt. *Edmonds*, 325 Ill. App. 3d at 447. The court in *Edmonds* relied in part on *People v. Clark*, 231 Ill. App. 3d 571 (1992), in which the court affirmed a defendant's conviction where the State elicited testimony from an officer that the distance between the defendant's location and a school "was equivalent to the distance from home plate to second base." *Edmonds*, 325 Ill. App. 3d at 446 (quoting *Clark*, 231 Ill. App. 3d at 574).

¶ 40 Officer Bognetti testified that he measured from the sidewalk directly in front of the location of the drug transaction to approximately one foot past a chain blocking the entrance to the parking lot of St. Catherine School. The officer testified that he was familiar with the grounds of St. Catherine School and that the point at which he stopped measuring was on school grounds. Further, Officer Bognetti traced the route he measured on a map shown to the jury, which is not included in

the record on appeal. Officer Bognetti testified that, as he measured the distance, he had to turn westbound off of the sidewalk and walk through a parking lot. The officer testified that he was unable to measure in a straight line because houses were in the way. The jury was able to infer that, had Officer Bognetti been able to measure in a straight line, the distance would have been shorter than 994 feet. Supporting this inference was Officer Bognetti's testimony on cross-examination—elicited by defense counsel—that he wrote in his police report that the distance was only 875 feet. On redirect, he explained that, using the Google Earth computer application, he was able to measure a straight line between the McDonald's and the school. Even without the testimony regarding his Google Earth calculation, however, Officer Bognetti's testimony was sufficient to establish the “within 1,000 feet” element beyond a reasonable doubt. See *Edmonds*, 325 Ill. App. 3d at 447 (noting that an officer was not required to “know the exact legal boundaries of the high school” in order to testify to the distance to the school).

¶ 41 (3) Defendant was Legally Accountable

¶ 42 Defendant next argues that the State failed to prove him guilty of the offense under a theory of accountability. Defendant contends that “there is absolutely not a shred of evidence” that defendant aided, abetted, or otherwise assisted in the planning or commission of the offense. He further contends that “[t]here is not a shred of evidence” that defendant was the male who identified himself as David on the phone. Although defendant acknowledges his statements to Officer Murphy in the police department, he contends that those statements are not evidence of his guilt. Regarding the “I screwed up” statement, defendant contends the statement could have referred to simply being in Orphan's car. Regarding the “I told the guy I was somebody else and used a different name” statement, defendant contends that he may have lied to one of the officers at the scene about his

identity. Regarding the “I brought her to the deal but it was her coke” statement, defendant contends that the statement “simply does not make any logical sense considering the facts of the case where [defendant was] merely the passenger of Oraphan’s vehicle.”

¶ 43 A person is legally accountable for another’s criminal conduct when “[e]ither before or during the commission of an offense, and with the intent to promote or facilitate such commission, he solicits, aids, abets, agrees, or attempts to aid, such other person in the planning or commission of the offense.” 720 ILCS 5/5-2(c) (West 2006). “To prove that the defendant possessed the intent to promote or facilitate the crime, the State must present evidence which establishes beyond a reasonable doubt that either: (1) the defendant shared the criminal intent of the principal, or (2) there was a common criminal design.” *People v. Perez*, 189 Ill. 2d 254, 266 (2000). Words of agreement are not necessary to establish a common criminal design or purpose. *People v. Taylor*, 164 Ill. 2d 131, 141 (1995). Rather, knowledge of and participation in the criminal scheme are sufficient. *Perez*, 189 Ill. 2d at 267. Where a common criminal design or purpose is established, any acts in furtherance of the common design are considered to be acts of all parties to the design and all are equally responsible for the consequences of the further acts. *Perez*, 189 Ill. 2d at 267. However, mere presence at the scene of a crime and knowledge that a crime is being committed are insufficient to establish accountability. *Taylor*, 164 Ill. 2d at 140.

¶ 44 Viewing the evidence in the light most favorable to the State (*Collins*, 106 Ill. 2d at 261), the evidence overwhelmingly established defendant’s guilt under a theory of accountability. Officer Bognetti testified that, around 3:54 p.m., he called a cell phone number, spoke to a male, and arranged to meet at the McDonald’s on Route 31 in West Dundee. Less than 30 minutes later, as Officer Bognetti was pulling into the McDonald’s parking lot in an undercover vehicle, he received

a phone call from the same cell phone number he had just called. This time, a woman who was later identified as Oraphan Soontornpadungsin was on the phone. Defendant was in the passenger seat of the car driven by Oraphan. Oraphan gave the officer 1.8 grams of cocaine in exchange for \$100. Following the drug transaction, after defendant and Oraphan were arrested, defendant said to Officer Murphy in the police station, “ ‘I know I screwed up,’ ” and “ ‘I brought her to the deal but it was her coke.’ ” Even ignoring any evidence pertaining to the substance of Officer Bognetti’s telephone conversation with the male who identified himself as David, and without having to decide whether the evidence established that defendant was in fact David, a rational trier of fact easily could have inferred from the remaining evidence that defendant had knowledge of and participated in the drug transaction. The critical evidence was defendant’s statement that he “ ‘brought her to the deal,’ ” which, contrary to defendant’s assertion, is not illogical simply because defendant rode in the passenger seat of Oraphan’s car. The statement implies that defendant arranged the deal between Oraphan and the officer.

¶ 45

B. Evidentiary Rulings

¶ 46 Defendant next argues that the trial court abused its discretion when it permitted Officer Bognetti to testify that St. Catherine School was a school, when it permitted Officer Bognetti to testify to his phone conversation with David, and when it admitted People’s Exhibits Nos. 5 and 6 into evidence. We review evidentiary rulings for an abuse of discretion. *People v. Garcia-Cordova*, 2011 IL App (2d) 070550-B, ¶ 82. A trial court abuses its discretion where its decision is arbitrary, fanciful, or unreasonable, or where no reasonable person would take the trial court’s view. *Garcia-Cordova*, 2011 IL App (2d) 070550-B, ¶ 82.

¶ 47

(1) Officer Bognetti’s Testimony that St. Catherine School was a School

¶ 48 Defendant argues that the trial court erred in admitting Officer Bognetti's testimony that St. Catherine School was a school. According to defendant, the officer's testimony was inadmissible because it "was inadmissible hearsay" and because it "could only be based on hearsay."

¶ 49 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. Jan. 1, 2011). Here, Officer Bognetti's testimony that St. Catherine School was a school was made in court; therefore, it was not hearsay. Nevertheless, as the State points out in its brief, the "underlying concern" of defendant's argument seems to be that Officer Bognetti's testimony lacked adequate foundation, because his testimony was "based on hearsay." A lay witness's testimony cannot be based on hearsay, because a lay witness may only testify to matters within the witness's personal knowledge. See Ill. R. Evid. 602 (eff. Jan. 1, 2011); see also *People v. Forcum*, 344 Ill. App. 3d 427, 444 (2003) ("If the court had required the prosecution to lay a foundation, it would have demonstrated that his testimony was not based on his personal knowledge of defendant's statement but was based on hearsay that he had learned from the victim."). Yet, again, defendant's argument lacks merit. The State laid an adequate foundation for Officer Bognetti's testimony when it presented evidence that the officer grew up in the area, had been a police officer in the area for seven years, and patrolled the area frequently. See *Cadena*, 2013 IL App (2d) 120285, ¶ 18 ("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."); see also *Morgan*, 301 Ill. App. 3d at 1032 ("It 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.”). In short, Officer Bognetti was qualified to testify based on his personal knowledge that St. Catherine’s was a school, and his testimony was neither hearsay nor based on hearsay. See *People v. Thompson*, 327 Ill. App. 3d 1061, 1066 (2002) (holding that witness with personal knowledge of the status of a public housing development was qualified to testify to the status of property).

¶ 50 (2) Phone Conversation with “David”

¶ 51 Defendant also argues that the trial court erred in admitting Officer Bognetti’s testimony concerning his telephone conversation with the male who identified himself as David. According to defendant, the court erroneously determined that the testimony was not hearsay on the basis that it was the statement of a coconspirator.

¶ 52 The State responds that the testimony was admissible as an admission of a party opponent (Ill. R. Evid. 801(d)(2)(A) (eff. Jan. 1, 2011)). To support the inference that David was in fact defendant, the State relies on defendant’s admission to Officer Murphy that he “ ‘told the guy [he] was somebody else and used a different name.’ ”²

¶ 53 We agree with the State that Officer Bognetti’s testimony was admissible because the State presented sufficient circumstantial evidence that the male who identified himself as David was defendant. Officer Bognetti testified that, when he called the cell phone number around 3:54 p.m., he spoke to a male who identified himself as David. Less than 30 minutes later, when the officer spoke to Oraphan on the same cell phone number, defendant was in the passenger seat of the car driven by Oraphan. After he was arrested, defendant said to Officer Murphy, “ ‘I told the guy I was somebody else and used a different name, I brought her to the deal but it was her coke.’ ” Taken together, the State’s circumstantial evidence permitted a reasonable inference that defendant was

²Because defendant did not file a reply brief, he has not responded to the State’s argument.

David. See *People v. Edwards*, 144 Ill. 2d 108, 167-68 (1991) (holding that recordings of telephone ransom calls were admissible where the State offered compelling circumstantial evidence that the voice on the phone was the defendant); *People v. Goodman*, 347 Ill. App. 3d 278, 289 (2004) (“[E]ven if a witness is unable to identify a caller’s voice, the caller’s identity can be established through other circumstantial evidence.”). Accordingly, the trial court did not abuse its discretion in admitting Officer Bognetti’s testimony regarding his conversation with David, because the conversation was admissible as an admission of a party opponent (Ill. R. Evid. 801(d)(2)(A) (eff. Jan. 1, 2011)). This was not a situation in which there was no evidence whatsoever supporting the inference that the out-of-court declarant was the defendant. See *Redmond v. Austin*, 188 Ill. App. 3d 220, 224-25 (1989) (holding that a witness’s testimony about an unknown and unidentified declarant’s statements at the scene of an accident were inadmissible as an admission by a party opponent, where the witness testified that he did not know who had made the statement). As the trial court reasoned, once the evidence was admitted, it became the jury’s responsibility to weigh the evidence and decide whether the State had in fact proven that defendant was David. *Sutherland*, 223 Ill. 2d at 242. Because we have determined that the testimony was admissible as an admission of a party opponent, we need not address defendant’s argument that it was not admissible as the statement of a conspirator.

¶ 54 (3) People’s Exhibits Nos. 5 and 6

¶ 55 Defendant next contends that the trial court erred in admitting “several photographs of St. Catherine’s” because the photographs contained inadmissible hearsay. In his one paragraph argument, defendant fails to cite a single authority in support of his contentions. As a result, defendant has forfeited the issue of the admissibility of the photographs, and we decline to address

it. Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008); *In re Marriage of Petrik*, 2012 IL App (2d) 110495, ¶ 38 (“The appellate court is not a depository in which the appellant may dump the burden of argument and research.” (Internal quotation marks omitted.)).

¶ 56 C. Ineffective Assistance of Counsel

¶ 57 Defendant’s final argument on appeal is that he was denied the effective assistance of counsel. Defendant argues that defense counsel was ineffective in the following ways: (1) counsel failed to demand strict proof that St. Catherine School was in fact a school, (2) counsel failed to demand strict proof of delivery within 1,000 feet of the school, (3) counsel made no meaningful objection to hearsay testimony regarding the property’s status as a school and regarding the results of Officer Boggetti’s Google Earth calculations, and (4) counsel never asked for a lesser-included-offense instruction during the jury instruction conference.

¶ 58 To succeed on an ineffective assistance of counsel claim, a defendant must show both (1) that counsel’s performance fell below an objective standard of reasonableness and (2) that the deficient performance prejudiced the defendant in that, but for counsel’s deficient performance, there is a reasonable probability that the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 687-88, 694 (1984). Regarding the first prong, there is a “strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.” *Strickland*, 466 U.S. at 689; *People v. Coleman*, 2011 IL App (1st) 091005, ¶ 13. A defendant must overcome the presumption that counsel’s conduct “ ‘might be considered sound trial strategy.’ ” *Strickland*, 466 U.S. at 689 (quoting *Michel v. Louisiana*, 350 U.S. 91, 101 (1955)). Regarding the second prong, “[a] reasonable probability that the result would have been different

is a probability sufficient to undermine confidence in the outcome of the proceeding.” *People v. Colon*, 225 Ill. 2d 125, 135 (2007) (citing *Strickland*, 466 U.S. at 694).

¶ 59 Defendant’s ineffective-assistance-of-counsel arguments fail on several bases. First, other than boilerplate case law, defendant cites no authority to support his arguments, and, except for his fourth argument, he presents his arguments in a conclusory, bullet-point-style list, without any supporting analysis. Therefore, defendant has forfeited his first three ineffective-assistance-of-counsel arguments. Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008); *In re Marriage of Petrik*, 2012 IL App (2d) 110495, ¶ 38.

¶ 60 Second, regarding his fourth ineffective-assistance-of-counsel argument (that counsel should have asked for a lesser-included-offense instruction), defendant has failed to satisfy the first *Strickland* prong, that counsel’s performance fell below an objective standard of reasonableness. Although the defendant is entitled to choose whether to submit a lesser-included-offense instruction to the jury (*People v. Brocksmith*, 162 Ill. 2d 224, 229 (1994)), there is no indication in the record that defendant desired one in this case. Moreover, a decision not to request a lesser-included-offense instruction may be considered part of a sound trial strategy. See *People v. Walton*, 378 Ill. App. 3d 580, 589 (2007) (“[c]ounsel’s decision to advance an ‘all-or-nothing defense’ has been recognized as a valid trial strategy [citations] and is generally not unreasonable unless that strategy is based upon counsel’s misapprehension of the law.”).

¶ 61 Third, defendant has failed to satisfy *Strickland*’s prejudice prong. As we discussed above, the State proved defendant guilty beyond a reasonable doubt. In light of the evidence against him, defendant fails to establish how he could have been found guilty of a lesser-included offense had defense counsel requested a lesser-included-offense instruction.

¶ 62

CONCLUSION

¶ 63 For the foregoing reasons, the judgment of the circuit court of Kane County is affirmed.

¶ 64 Affirmed.