

NOTICE

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2019 IL App (4th) 170284-U

NO. 4-17-0284

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

May 6, 2019

Carla Bender

4th District Appellate Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	McLean County
REGINALD EARL BROWN,)	No. 15CF565
Defendant-Appellant.)	
)	Honorable
)	Scott D. Drazewski,
)	Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Presiding Justice Holder White and Justice Turner concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court vacated defendant’s conviction, finding the State’s evidence failed to prove beyond a reasonable doubt that defendant’s unlawful delivery of a controlled substance occurred within 1000 feet of residential public housing property. The court also remanded for the trial court to enter judgment on defendant’s conviction for unlawful delivery of a controlled substance and for resentencing.

¶ 2 In January 2017, the trial court found defendant, Reginald Earl Brown, guilty of single counts of unlawful delivery of a controlled substance within 1000 feet of residential public housing property and unlawful delivery of a controlled substance. Defendant filed a motion for a new trial, which the court denied. In March 2017, the court sentenced defendant to eight years in prison.

¶ 3 On appeal, defendant argues the State failed to prove him guilty beyond a reasonable doubt of delivering a controlled substance within 1000 feet of residential public housing property. We vacate and remand with directions.

¶ 4

I. BACKGROUND

¶ 5 In May 2015, a grand jury indicted defendant on two counts of unlawful delivery of a controlled substance within 1000 feet of public housing property (counts I and III) (720 ILCS 570/407(b)(2) (West 2014)) and two counts of unlawful delivery of a controlled substance (counts II and IV) (720 ILCS 570/401(d)(i) (West 2014)). In counts I and III, the State alleged defendant knowingly and unlawfully committed the offense of delivery of a controlled substance while within 1000 feet of public housing property owned, operated, and managed by the City of Bloomington Public Housing Authority, specifically the Wood Hill Towers public housing property at 104 East Wood Street, in that he delivered to a confidential police source less than one gram of a substance containing cocaine on April 13, 2015 (count I), and April 27, 2015 (count III). In counts II and IV, the State alleged defendant knowingly and unlawfully delivered to a confidential police source less than one gram of a substance containing cocaine on April 13, 2015 (count II), and April 27, 2015 (count IV). All four counts indicated defendant was subject to mandatory Class X sentencing due to his prior record. Defendant pleaded not guilty.

¶ 6 In January 2017, defendant's bench trial commenced. John Walsh testified he is a cocaine addict and has been convicted of possession of a controlled substance (1997 and 2003), aggravated home repair fraud (2009), and driving on a suspended or revoked license (2016). Walsh stated he had worked as a confidential informant to provide names of drug dealers to police officers and to participate in controlled drug buys. Between April 2015 and July 2016, the Bloomington Police Department paid him \$2002.32 for his work. Prior to April 2015, Walsh met a man named Reggie and purchased cocaine from him.

¶ 7 On April 13, 2015, Walsh received \$100 from Bloomington police detective Kevin Raisbeck to purchase crack cocaine from Reggie, whom Walsh identified in court as

defendant. Walsh drove to defendant's residence on East Street and gained entry. Once inside, Walsh saw defendant and another couple. Defendant made a phone call, and then Walsh gave him \$100 and drove him to another residence to purchase crack cocaine. Once they returned to defendant's residence, defendant divided the crack cocaine and gave Walsh his share. Walsh left, met with Raisbeck, and gave him the crack cocaine.

¶ 8 On April 27, 2015, Walsh met with Raisbeck to set up another purchase with defendant. Raisbeck outfitted Walsh with a recording device as well as \$100 to purchase crack cocaine. Walsh then drove to the residence on East Street, spoke with defendant about purchasing crack cocaine, and defendant said he would have to wait while he made some phone calls. At that time, a woman named Lori and a man named Dan were also present. Defendant left with Lori, came back, and then they left again. Before defendant left the second time, Walsh gave him \$100 and eventually received a bag of crack cocaine. Thereafter, Walsh met with Raisbeck and gave him the bag.

¶ 9 Detective Raisbeck testified he conducted a controlled drug buy with Walsh on April 13, 2015. Raisbeck searched Walsh and his vehicle, provided him with \$100 in prerecorded funds, and outfitted him with a video camera. Walsh then proceeded to defendant's residence at 1003 South East Street in Bloomington. Later, Walsh returned with "one small bag of crack cocaine," identified as exhibit No. 2, which weighed 0.2 grams and was worth about \$20. Raisbeck stated the video camera did not capture anything regarding the drug transaction.

¶ 10 Raisbeck also testified regarding the controlled drug buy with Walsh on April 27, 2015. Raisbeck searched Walsh and his vehicle, provided him with \$100, and outfitted him with an audio and video recorder. Walsh traveled to 1003 South East Street and returned with a

“[s]mall bag of purported crack cocaine,” identified as exhibit No. 4, which was worth about \$20. Police arrested defendant the next day.

¶ 11 Bloomington police lieutenant Robert Wall testified he conducted surveillance of defendant’s residence during the April 13, 2015, transaction. He observed defendant and a confidential source leave the residence and get into a vehicle. Wall followed the vehicle and saw defendant enter a residence at 601 East Washington Street in Bloomington. Eventually, defendant exited the residence and returned to the vehicle. The occupants then proceeded to 100 South East Street. Wall testified he also conducted surveillance of the April 27, 2015, transaction and observed the confidential source exit the residence at 1003 South East Street.

¶ 12 Bloomington police detective Jared Bierbaum testified he conducted surveillance of the residence at 1003 South East Street on April 13, 2015. He observed the confidential source arrive at the residence, meet with defendant, and go inside. The two men later exited the residence and entered the confidential source’s vehicle. On April 27, 2015, Bierbaum conducted surveillance on the residence at 1003 South East Street and observed the confidential source go inside. Defendant exited the residence with a female and then returned. Defendant entered the residence, and the confidential source left a short time later.

¶ 13 Bloomington police detective Manuel Hernandez testified he took measurements in regard to the residence at 1003 South East Street. He stated there was a public housing building known as Wood Hill Towers (South) operating within 1000 feet of 1003 South East Street. Hernandez noted the property has “a big sign in front saying Bloomington Housing Authority.” Hernandez took a picture of the sign (exhibit No. 7), which states “Housing Authority of the City of Bloomington, Illinois” and “Administrative Office 104 E. Wood St.”

Hernandez used a measuring wheel from 1003 South East Street to Wood Hill Towers (South) and found it to be 827 feet and 11 inches.

¶ 14 Denise Hanley, a forensic scientist with the Illinois State Police, testified she conducted laboratory tests on two State exhibits. As to exhibit No. 2, she found it consisted of 0.1 grams of a substance containing cocaine. She also tested exhibit No. 4 and found it consisted of 0.2 grams of a substance containing cocaine.

¶ 15 Defendant exercised his right not to testify, and the defense did not present any evidence. Following closing arguments, the trial court found exhibit Nos. 2 and 4 consisted of substances containing cocaine and defendant's residence was located within 1000 feet of public housing property. The court found the State's evidence insufficient to prove defendant guilty beyond a reasonable doubt as to the first transaction charged in counts I and II. The court did, however, find defendant guilty of counts III and IV involving the April 27, 2015, transaction.

¶ 16 In January 2017, defendant filed a motion for a judgment of acquittal or, in the alternative, a motion for a new trial. The trial court denied the motion. At the March 2017 sentencing hearing, the court noted count IV merged with count III. The court then sentenced defendant to eight years in prison on count III. Defendant filed a motion to reconsider the sentence, which the court denied. This appeal followed.

¶ 17 **II. ANALYSIS**

¶ 18 Defendant argues the State failed to prove beyond a reasonable doubt that he delivered a controlled substance within 1000 feet of a residential public housing property. We agree.

¶ 19 “ ‘When reviewing a challenge to the sufficiency of the evidence in a criminal case, the relevant inquiry is whether, when 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.’ ” *People v. Ngo*, 388 Ill. App. 3d 1048, 1052, 904 N.E.2d 98, 102 (2008) (quoting *People v. Singleton*, 367 Ill. App. 3d 182, 187, 854 N.E.2d 326, 331 (2006)). The trier of fact has the responsibility to determine the credibility of witnesses and the weight given to their testimony, to resolve conflicts in the evidence, and to draw reasonable inferences from that evidence. *People v. Jackson*, 232 Ill. 2d 246, 281, 903 N.E.2d 388, 406 (2009). “A conviction will be reversed only where the evidence is so unreasonable, improbable, or unsatisfactory that it justifies a reasonable doubt of the defendant’s guilt.” *People v. Belknap*, 2014 IL 117094, ¶ 67, 23 N.E.3d 325.

¶ 20 In the case *sub judice*, count III alleged defendant committed the offense of unlawful delivery of a controlled substance within 1000 feet of public housing property owned, operated, and managed by the City of Bloomington Public Housing Authority, specifically the Wood Hill Towers public housing property. See 720 ILCS 570/407(b)(2) (West 2014). Section 407(b)(2) of the Illinois Controlled Substances Act (Act) (720 ILCS 570/407(b)(2) (West 2014)) provides that delivering a controlled substance “within 1,000 feet of *** residential property owned, operated or managed by a public housing agency” is a Class 1 felony.

¶ 21 In *People v. Dorris*, 265 Ill. App. 3d 156, 157, 638 N.E.2d 279, 280 (1994), this court examined the phrase “residential property” as used in section 407(b)(1) of the Act. There, the defendant sold crack cocaine to an undercover police officer approximately 500 feet from a scattered-site public housing unit. *Dorris*, 265 Ill. App. 3d at 156, 638 N.E.2d at 280. At the time of the offense, the building was vacant and undergoing reconstruction, and it would not be ready for residential use for several months. *Dorris*, 265 Ill. App. 3d at 157, 638 N.E.2d at 280. The jury found the defendant guilty of possession with the intent to deliver more than one gram

of a controlled substance within 1000 feet of public housing property. *Dorris*, 265 Ill. App. 3d at 157-58, 638 N.E.2d at 280.

¶ 22 On appeal, the defendant argued section 407(b)(1) of the Act did not apply because the property was scattered-site housing, vacant, and under construction. *Dorris*, 265 Ill. App. 3d at 157, 638 N.E.2d at 280. This court found that, although the housing unit was undergoing construction and vacant at the time of the offense, “the building’s owner clearly intended it to be used as a residence upon completion of the construction.” *Dorris*, 265 Ill. App. 3d at 159, 638 N.E.2d at 281. Thus, the court held section 407(b)(1) “encompasses unoccupied residential buildings under construction.” *Dorris*, 265 Ill. App. 3d at 159, 638 N.E.2d at 281.

¶ 23 In this case, the State’s evidence failed to show Wood Hill Towers (South) was used as a residence at the time of the offense or that the building’s owner or operator ever intended it to be used as a residence. The only evidence concerning the building came from Detective Hernandez. He stated the property has “a big sign in front saying Bloomington Housing Authority.” Hernandez took a picture of the sign (exhibit No. 7), which states “Housing Authority of the City of Bloomington, Illinois” and “Administrative Office 104 E. Wood St.” As the State concedes now on appeal, there was no testimony or evidence showing that anyone lived, or intended to live, in the building. Thus, the State failed to prove defendant guilty beyond a reasonable doubt of unlawful delivery of a controlled substance within 1000 feet of residential public housing property. Accordingly, we vacate defendant’s conviction on count III. We remand for the trial court to enter judgment on defendant’s conviction for unlawful delivery of a controlled substance (count IV) and for resentencing on that conviction. See *People v. Boykin*, 2013 IL App (1st) 112696, ¶ 17, 1 N.E.3d 936.

¶ 24

III. CONCLUSION

¶ 25 For the reasons stated, we vacate and remand with directions.

¶ 26 Vacated and remanded with directions.