2016 IL App (1st) 140457-U

FIRST DIVISION
MARCH 28, 2016

No. 1-14-0457

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 12 CR 18881
	)	
CHARLES EDWARDS,	)	Honorable
	)	Matthew E. Coghlan,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Liu and Justice Connors concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for possession of a controlled substance with intent to deliver within 1,000 feet of a school affirmed over challenge to the sufficiency of the evidence; mittimus corrected; order reflecting fines and fees corrected.

¶ 2 Following a bench trial, defendant Charles Edwards was found guilty of possession of a controlled substance (heroin) with intent to deliver within 1,000 feet of a school, then sentenced to 10 years in prison. On appeal, defendant contends that the State failed to present sufficient evidence to prove that he committed the crime within 1,000 feet of a school. He thus requests that his conviction be reduced to possession of a controlled substance with intent to deliver, and

that his case should be remanded to the circuit court for resentencing. Alternatively, he requests this court to correct his mittimus to reflect the offense for which he was convicted. He also requests this court to correct the order reflecting fines, fees and costs.

¶ 3 The charges filed against defendant in this case arose from an incident that occurred on the evening of September 12, 2012, on the west side of Chicago. At trial, Chicago Police officer John Sandoval testified that he had been a police officer for seven years. He was assigned to the Tenth District "[t]he whole time of [his] career," and he detailed the geographic parameters of the district. About 6:45 p.m. on the day in question, he was on routine patrol with the tactical team, accompanied by Officers Loaiza and Honda, and they were travelling northbound on Harding Avenue in an unmarked car. As their vehicle reached the 1200 block of the street, Officer Sandoval observed defendant approach two unknown men and speak to them briefly. Defendant then accepted an unknown amount of money from each of the individuals and tendered a small object from his hand to each person.

¶ 4 At this point, the officers believed they had identified two hand-to-hand narcotics transactions, and they drove toward defendant, who looked in the direction of the car and started running. Officer Sandoval testified that he jumped out of the car and pursued defendant on foot through various streets and over several fences. As Officer Sandoval pursued defendant, he heard Officer Loaiza "call out" the chase over the police radio. At one point, defendant ran through a vacant lot on the east side of Pulaski Avenue, threw numerous white objects on the sidewalk, and continued running. Shortly thereafter, a police car pulled up in front of defendant and blocked his path, he surrendered, and Officer Loaiza arrested him. Several officers responded to the scene, including Officers Acevedo and Alonzo. Officer Sandoval observed Officer Honda recover

eight, small, clear, zip-lock bags containing a white powdery substance, from the area where defendant had dropped the objects. Officer Sandoval then saw Officer Honda give those bags, which had a batman logo on them, to Officer Acevedo for inventory.

¶ 5 Officer Sandoval also identified several photographs of the crime scene and the adjacent area that were published to the jury. The following colloquy occurred between Officer Sandoval and the State's Attorney.

> "[State's Attorney]: I'm going to show you *** People's Exhibit Number 9. Do you know what that's a picture of?
>
> [Officer Sandoval]: That's a elementary school, Chicago public school, at Grenshaw and Pulaski.
>
> [State's Attorney]: Do you know that name of that school?
>
> [Officer Sandoval]: Frazier Elementary
>
> [State's Attorney]: I'm going to just show you People's Exhibit Number 10. What is that photograph of?
>
> [Officer Sandoval]: The sign of the grade school, Frazier Elementary.
>
> * * *
>
> [State's Attorney]: Now, do all of these photos truly and accurately depict the locations that you described and how they appeared on September 12, 2012?
>
> [Officer Sandoval]: That's correct."

¶ 6 Chicago police officer Shawn Alonzo testified that he responded to the scene with his partner when they heard the radio call for a chase in pursuit. His testimony was substantially similar to that of Officer Sandoval. He added that he performed a custodial search of defendant, and in his front left pocket, found "a large, * * * ball or wad of United States currency." When he attempted to put the money in order, three small plastic bags containing a white powdery substance fell out of the wad. He gave those items, and the cash, totaling $157, to Officer Acevedo for inventory. The cash was returned to defendant per department policy.

¶ 7 Chicago police officer Jason Acevedo testified that he followed proper procedures in inventorying the eight bags given to him by Officer Sandoval and three bags given to him by Officer Alonzo, and that the bags were heat-sealed and assigned unique inventory numbers.

¶ 8 Investigator Thomas Finn testified that he was employed by the Cook County State's Attorney's Investigations Bureau, and he received an assignment on May 17, 2013, to measure the distance between 1201 South Harding Avenue and Frazier Elementary School, located at 4207 West Grenshaw Street. Using a calibrated measuring wheel, he ascertained that the distance between the two locations was 567 feet. He further testified that People's Exhibit Number 9 was a picture of the northeast corner of Frazier Elementary School, and People's Exhibit Number 10 depicted the actual sign that said "Frazier Preparatory Academy," and that the pictures depicted the locations truly and accurately as he saw them on May 17, 2013.

¶ 9 Forensic chemist for the Illinois State Police, Julia Edwards, testified that she was qualified to testify as an expert in the area of forensic chemistry, and that using calibrated equipment and tests commonly accepted in her field, she ascertained that the aforementioned 11

plastic bags tested positive for the presence of 4.4 grams of heroin. The State then rested its case, and the court denied defendant's motion for a directed finding and his motion for a mistrial.

¶ 10 The defense called Officer Luis Loaiza, who testified that he was working on the surveillance mission on the day in question, and his testimony was substantially similar to that of Officer Sandoval. He added that at the preliminary hearing, he testified that he was a short distance away from Officer Sandoval when they observed defendant, however, this was a mistake, and that he was actually in the car with Officer Sandoval at that time. The defense then rested.

¶ 11 Following closing arguments, the court instructed the jury, *inter alia*, that to sustain a charge of possession of a controlled substance with intent to deliver, the State must prove:

> "[f]irst, that the defendant knowingly possessed with intent to deliver a substance containing heroin, a controlled substance. And second, that the possession with intent to deliver took place on a public way within 1,000 feet of real property comprising a school, and third, that the substance was one gram or more but less than 15 grams."

¶ 12 The jury subsequently returned a verdict of guilty on the charge of possession of a controlled substance with intent to deliver. The trial court denied defendant's motion for judgment of acquittal or new trial, and sentenced him to a term of 10 years in prison as a Class X offender, followed by three years of mandatory supervised release (MSR). The court noted that defendant was entitled to credit for 461 days of presentence custody, and assessed defendant fines and fees in the amount of $3,684. We allowed defendant's late notice of appeal.

¶ 13 On appeal, defendant does not dispute that he possessed heroin with the intent to deliver, or that he did so within 567 feet of a location called "Frazier Elementary School."[1] He contends, rather, that the State was required, but failed to establish that the location was "operating as a school" on the date in question, and therefore could not meet its burden to prove defendant guilty of the sentencing enhancement.

¶ 14 The State asserts that defendant's contentions, although couched as sufficiency of the evidence arguments, are actually challenges to the foundation of the evidence regarding the sentence enhancing locality's operation as a school on the date of the offense. Since defendant failed to object to the evidence at trial, the State maintains that defendant's arguments are forfeited. The State also argues that, in any event, Officer Sandoval and Investigator Finn's testimony provided sufficient evidence from which a rational trier of fact could infer that the enhancing locality was a school on the date of the offense.

¶ 15 We observe that regardless of whether defendant's claim attacks the foundation or the sufficiency of the evidence, the question before us is whether the testimony, even lacking a foundation, could persuade any rational trier of fact, beyond a reasonable doubt, that on September 12, 2012, the building was a school. *People v. Sims*, 2014 IL App (4th) 130568, ¶ 137 (noting that the lack of a foundational objection results in the testimony becoming part of the evidence and is to be given its natural probative effect.). In answering that question, we allow all reasonable inferences from the record in favor of the prosecution if "it would be reasonably

[1] We note that the charging instrument indicates the name of the school as "Frazer" Elementary, whereas all other relevant documents and testimony use the spelling "Frazier." For the sake of consistency, we use the latter spelling.

defensible to draw that inference from the evidence presented in the trial." *Id.* We will not overturn a conviction unless the evidence is so unreasonable, improbable, or unsatisfactory that it creates a reasonable doubt of defendant's guilt. *People v. Wheeler*, 226 Ill. 2d 92, 115 (2007).

¶ 16 To sustain a conviction for possession of narcotics with intent to deliver, the State must prove that defendant knew of the narcotics; that the narcotics were in defendant's immediate possession or control; and that defendant intended to deliver them. 720 ILCS 570/401(d) (West 2012); *People v. Ellison*, 2013 IL App (1st) 101261, ¶ 13. Possession of narcotics with intent to deliver, a Class 2 felony, can be enhanced to a Class 1 felony if the violation occurs, *inter alia*, "within 1,000 feet of the real property comprising any school," (720 ILCS 570/407(b)(2) (West 2012)), and where, as here, the State seeks such an enhancement, it must prove, beyond a reasonable doubt, that the building in question was a "school" on the date of the offense. *Sims*, 2014 IL App (4th) 130568, ¶ 106.

¶ 17 The term "school" is not defined by the provisions of the Illinois Controlled Substances Act (Act), however, we find instructive *People v. Sims*, 2014 IL App (4th) 130568, in which the Fourth District of this court upheld the defendant's conviction on two counts of unlawful delivery of a controlled substance within 1,000 feet of a church. In *Sims*, a police officer with 10 years of experience in Bloomington, more than half of which was spent in the narcotics unit, testified that defendant committed the drug offense near a location called "New Hope Church," and that the location had been a church for as long as he could remember. Relying on *People v. Foster*, 354 Ill. App. 3d 564, 568 (2004), the court found that a rational trier of fact could have inferred that the location "was a church used primarily for religious worship based on its name," and further, that given the officer's experience, a rational trier of fact could have believed that he was familiar

with the neighborhood and accept his testimony that the building in question was a church on the date of the offenses. *Sims*, 2014 IL App (4th) 130568, ¶¶ 133-38.

¶ 18 Similarly, in this case, Officer Sandoval testified that he had been a police officer in the Tenth District for the duration of his seven-year career. He described the geographic parameters of the district, which included the school located at the corner of Grenshaw Avenue and Pulaski Street, and testified that it was a "Chicago public school," called "Frazier Elementary School" on the date of the crime. He identified photographs of the school, and its sign, logo, and mascot on the day in question. He further testified that the photographs reflected the building in the same condition as the date of the offense. We also observe that Investigator Finn, who took measurements for the State's Attorney Investigations Bureau, testified that on May 17, 2013, using properly calibrated equipment, he ascertained the distance between Frazier Elementary School, or Frazier Preparatory Academy and 1201 South Harding Street, the location where defendant was observed engaging in two hand-to-hand narcotics transactions, to be 567 feet.

¶ 19 Taken as a whole, and in a light most favorable to the prosecution, this evidence and the reasonable inferences drawn from it could allow the jury to find beyond a reasonable doubt that the location was a school on the date of the offense. *Sims*, 2014 IL App (4th) 130568, ¶ 138. Defendant contends, nevertheless, that Officer Sandoval's testimony about the location's name, by itself, was insufficient to allow the jury to infer that the building was a school. He asserts that courts have "held that nomenclature alone is not enough to prove that a school or a church was actually in operation on a certain date," and cites to *People v. Cadena,* 2013 IL App (2d) 120285, for support.

¶ 20 To the contrary, we observe that defendant's argument was recently rejected by this court in *Sims*, 2014 IL App (4th) 130568, ¶ 133. The Fourth District declined to follow *Cadena* because the State conceded there that nomenclature alone was not sufficient to prove that a church was being used for religious purposes as its name implied. By contrast, no such concessions were made in *Sims* or the instant case. *Since Cadena* was not reliable authority on that point, the court in *Sims* elected to follow *Foster*, which held that a rational trier of fact could have inferred an enhancing locality was a church used primarily for religious worship based on its name. *Sims*, 2014 IL App (4th) 130568, ¶ 133 citing *Foster*, 354 Ill. App. 3d at 568.

¶ 21 Defendant contends, nonetheless, that *Sims* can be distinguished because the officers there "specifically [testified] that the church was open on the date of the offense[,]" whereas Officer Sandoval failed to do so. We note, however, that the court's decision in *Sims* did not hinge on the officer's affirmative response to the prosecutor's question of whether the church was "open" on the date in question. Instead, as we noted above, the court relied on the officer's testimony that the church existed on the date in question, and that he was familiar with the area. Officer Sandoval's testimony in this case is no different.

¶ 22 Defendant further contends that the State was required to provide additional testimony that the school was "operational" or "active" on the day in question. We observe, however, that there is no requirement in the statute that the State provide specific evidence that a school be "operational" or "active" on the date of the offense in order for it to qualify as a sentence enhancing locality. The cases cited to by defendant, *People v. Ortiz*, 2012 IL App (2d) 101261, and *Cadena*, 2013 IL App (2d) 120285, are both cases involving *churches*, and are therefore inapposite for that proposition. This is because the Act draws a distinction between churches and

schools. The relevant subsections of section 407(b) which enhance the penalty for drug violations near religious sites penalize crimes which occur "within 1,000 feet of the real property comprising any church, synagogue, or other building, structure, or place *used primarily for religious worship*[,]" (emphasis added), whereas, there is no similar requirement that the building, structure, or place must be *used* primarily for educational purposes with respect to a school. 720 ILCS 570/407(b)(2)-(6) (West 2012).

¶ 23 Moreover, section 407(c) of the Act specifically states that for sentence enhancements relating to violations committed in, on, or within 1,000 feet of a school, "the time of day, time of year and whether classes were currently in session at the time of the offense is irrelevant." 720 ILCS 570/407(c) (West 2012). There is no similar saving clause in section 407 for churches or houses of worship, which indicates the legislature's awareness that many school buildings are closed at night, on weekends and holidays, or during the summer vacation months, yet children are drawn to them, and thus must be considered "schools" for purposes of the enhancing statute. See *People v. Daniels*, 307 Ill. App. 3d 917, 929 (1999) ("[C]hildren tend to congregate on school property even when school is not in session.").

¶ 24 We further note that the jury was instructed to find defendant guilty if they found that he knowingly possessed between 1 and 15 grams of heroin with intent to deliver it "on a public way within 1,000 feet of real property comprising a school." There was no requirement in the instructions that the school be "operational." As such, we find unpersuasive defendant's argument that the State was required to prove that the school was "active" or "operational" on the day in question.

¶ 25 We also find *Ortiz* and *Cadena* distinguishable because there was no evidence presented in those cases that the enhancing localities, the churches, existed on the date of the offense, and this lack of temporal evidence was a determinative factor in both cases. See *Ortiz*, 2012 IL App (2d) 101261, ¶¶ 5, 11-13 (holding that the State presented insufficient evidence to prove that the "Emmanuel Baptist Church" existed on the date of the offense); *Cadena*, 2013 IL App (2d) 120285, ¶ 16 (holding that testimony presented without temporal context was insufficient to prove that the "Evangelical Covenant Church" was active on the dates of the offenses). Here, however, the evidence clearly shows, and defendant does not dispute, that Officer Sandoval's testimony established the existence of Frazier Elementary School on the date of the offense.

¶ 26 Defendant's attempt to analogize his case to *People v. Boykin*, 2013 IL App (1st) 112696 fails for the same reason. In *Boykin*, defendant was convicted of delivery of a controlled substance within 1,000 feet of a school, and this court found that the evidence was insufficient to prove beyond a reasonable doubt that "Our Lady of Peace" was a school on the date of the offense. There was no evidence showing how the testifying officers had personal knowledge of that building on the date of the offense, such as testimony that they lived in the area or regularly patrolled the neighborhood, and there were no signifiers such as "Academy" or "Elementary" or "School" that would identify the location as a school. *Boykin*, 2013 IL App (1st) 112696, at ¶¶ 15-16.

¶ 27 Here, by contrast, Officer Sandoval testified in this case that he had been assigned to the Tenth District for his entire career of seven years, and he was familiar with the parameters of the district, which included Frazier Elementary School. It is well settled that persons living and working in a community are familiar with various public places in the neighborhood, such as the

location of streets and buildings (*People v. Morgan*, 301 Ill. App. 3d 1026, 1031-32 (1998)), and thus, a rational trier of fact could find that Officer Sandoval was familiar with the property in question and knew that it was a school on the date of the offense. *Sims*, 2014 IL App (4th) 130568, ¶ 137. Moreover, unlike *Boykin*, the property here is identified as "Frazier Elementary School," and there can be no confusion regarding its purpose. *Id*.

¶ 28 Thus, the evidence presented in this case, and the reasonable inferences drawn from it, could allow a rational trier of fact to find beyond a reasonable doubt that the location was a school on the date of the offense. We therefore conclude that the State proved the enhancement element of the offense, and affirm defendant's conviction. *Sims*, 2014 IL App (4th) 130568, ¶ 138.

¶ 29 Having so found, we grant defendant's request that his mittimus be corrected to indicate that he was convicted of possession of heroin within 1,000 feet of a school with intent to deliver, instead of "manufacture or delivery" as it currently states. *People v. Brown*, 255 Ill. App. 3d 425, 438-39 (1993).

¶ 30 Finally, defendant challenges the propriety of a number of the fees and fines he was assessed, which we review *de novo*. *People v. Price*, 375 Ill. App. 3d 684, 697 (2007). The record shows that the trial court assessed fees and fines in the amount of $3,684.

¶ 31 Defendant contends, the State concedes, and we agree, that defendant spent 463 days in pre-sentence custody, rather than the 461 days noted in his mittimus. As such, he is entitled to a credit of $5-per-day for the 463 days, amounting to a total of $2,315, which can offset certain fees (725 ILCS 5/110-14 (eff. Jan. 1, 2005)). Similarly, the parties and this court agree that defendant's $250 DNA ID system fee should be vacated. The DNA ID fee was improperly

assessed against defendant because he had already been registered in the DNA databank for his prior felony convictions. *People v. Marshall*, 242 Ill. 2d 285, 301-02 (2011).

¶ 32 Defendant contends that the $2 State's Attorney automation fee and the $2 public defender automation fee are "fines," and therefore his pre-sentence custody credit should be used to offset those amounts. The State disagrees, and responds that defendant's request is precluded by *People v. Rogers*, 2014 IL App (4th) 121088, *as modified on denial of reh'g* (Aug. 20, 2014), in which the Fourth District appellate court held that the State's Attorney automation fee (55 ILCS 5/4–2002.1(c) (eff. Jun. 1, 2012)), is a fee because it is intended to reimburse the State's Attorneys for their expenses related to automated record-keeping systems, and therefore not offset by pre-sentence custody credit. *Id.* at ¶ 30 (citing *People v. Warren*, 2014 IL App (4th) 120721, ¶ 108). We find *Rogers* to be well-reasoned, and decline to depart from it. Accordingly, we hold that defendant is not entitled to credit for the State's Attorney automation fee.

¶ 33 Although *Rogers* did not directly address the $2 public defender automation fee, the statutory language for the public defender automation fee is identical to that of the State's Attorney automation fee statute, with the exception that the former fee benefits the Cook County Public Defender (see 55 ILCS 5/3-4012 (eff. Jun. 1, 2012)), and therefore the reasoning in *Rogers* is equally applicable. As such, defendant is not entitled to credit for the public defender automation fee either. *Rogers*, 2014 IL App (4th) 121088 ¶ 30.

¶ 34 In sum, we find that defendant's $250 DNA ID fee must be vacated. However, the $2 State's attorney records automation fee and the $2 public defender records automation fee were properly assessed against him. Accordingly, the total of fines, fees and costs assessed against defendant should have been $3,434. However, and based on the fines offset by his pre-sentence

custody credit, the mittimus should be corrected to reflect that after application of the appropriate credit, defendant owes $1,119.[2]

¶ 35 Pursuant to our authority under Supreme Court Rule 615(b) (1) (eff. Aug. 27, 1999), we direct the clerk of the circuit court to correct the mittimus to include the correct order imposing fines, fees and costs as indicated. We affirm the judgment in all other respects.

¶ 36 Affirmed; mittimus corrected.

[2] We note that although defendant argues that the $2 State's attorney records automation fee and the $2 public defender records automation fee are improper, he nonetheless requests that his total fine amount be reduced to $1,119, the amount which includes the contested fees.