No. 122958

IN THE
SUPREME COURT OF ILLINOIS

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| PEOPLE OF THE STATE OF ILLINOIS, | ) | On Appeal from the Appellate Court of Illinois, Fourth Judicial District, |
| Plaintiff-Appellee, | ) | No. 4-15-0798 |
| v. | ) | There on Appeal from the Circuit Court of the Eleventh Judicial Circuit, McLean County, Illinois, No. 15-CF-8 |
| JAFARIA DEFORREST NEWTON, | ) | |
| Defendant-Appellant, | ) | The Honorable Robert L. Freitag, Judge Presiding. |

**BRIEF OF PLAINTIFF-APPELLEE**
**PEOPLE OF THE STATE OF ILLINOIS**

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**ORAL ARGUMENT REQUESTED**

E-FILED
4/10/2018 10:43 AM
Carolyn Taft Grosboll
SUPREME COURT CLERK

## POINTS AND AUTHORITIES

## NATURE OF THE CASE

Defendant was convicted of one count of delivery of a controlled substance within 1000 feet of a church and one count of delivery of a controlled substance and sentenced to eight years in prison. 9R133-34; 4SR14-15.[1] For the first time on appeal, defendant argued that the People presented insufficient evidence that the crime occurred within 1000 feet of a church. A12. The appellate court affirmed. A15. This Court allowed defendant leave to appeal.

No question is raised on the pleadings.

## ISSUE PRESENTED FOR REVIEW

Whether the People presented sufficient evidence that the First Christian Church of Bloomington was, in fact, a church.

## STATEMENT OF FACTS

A McLean County grand jury indicted defendant on charges of unlawful delivery of a controlled substance related to drug transactions on two dates: December 22, 2014 and January 1, 2015. 1R22-25. The indictment alleged that the crimes occurred within 1000 feet of the First Christian Church in Bloomington, Illinois, in violation of 720 ILCS 570/407(b)(2), which provides enhanced penalties for conducting drug sales in

[1] Citations to Volumes 1 through 10 of the record appear as "_R_"; Supplemental Volumes 1 through 4 as "_SR_"; the People's trial exhibits (Volume 11) as " Peo. Exh. _"; and defendant's brief and appendix as "Def. Br. __," and "A__," respectively.

close proximity to certain sensitive locations. *Id*. The case was tried in June 2015.

**December 22, 2014 Drug Transaction**

Karrie Robbins, a police informant, testified that she participated in the December drug transaction, a controlled buy of crack cocaine. 2SR33-35. Robbins arranged the purchase by calling Jorge Rodriguez, whom she knew as "Sepi," and from whom she had purchased drugs in the past. 2SR32-36. The police sent Robbins to Sepi's apartment with a camera attached to her purse. 2SR36-37. Inside the apartment, Robbins and Sepi talked briefly, until two men arrived — a taller man with a red hoodie and shorter man with dreadlocks. 2SR38-40. Robbins identified defendant as the shorter man, who introduced himself as "Dreads" and whom Robbins had seen once before. 2SR40-42. The taller man was later identified as Richard Suggs. 3SR145. Robbins gave Sepi cash that she had been given by the police. 2SR35, 39. Police had prerecorded the serial numbers on the bills. 3SR113-14. Sepi and the taller man went into the kitchen, while Robbins and defendant remained in the living room, talking. 2SR42. Moments later, defendant and Suggs left, and Sepi gave Robbins drugs, keeping a portion for himself. 2SR42-43.

Video footage recorded by the camera attached to Robbins's purse shows defendant and Suggs arriving at Sepi's apartment. Peo. Exh. 4. Defendant has a brief conversation with Robbins as Sepi and Suggs talk in the kitchen. *Id*. Then defendant and Suggs leave. *Id*. A police officer who

had been stationed across the street testified that he observed the two men arrive by car at Sepi's apartment and leave a few minutes later. 2SR69-71.

**January 1, 2015 Drug Transaction**

Police did not arrest defendant and Suggs after the December transaction. However, they did arrest Sepi, who agreed to become a confidential informant and set up additional controlled drug transactions with his suppliers. 3SR126. On January 1, 2015, police were at Sepi's apartment when he called to arrange a sale of crack cocaine for that evening. 3SR129. They placed a video camera in the apartment and aimed it at the front door, and they gave Sepi $150 in prerecorded cash. 3SR130-32. Shortly after officers left Sepi's apartment, police observed defendant and Suggs arrive at the apartment on foot. 3SR182-83. They were inside for only a few minutes before leaving again and walking away. *Id*. Police arrested the two men a couple blocks from Sepi's apartment. 9R24-25. As the arresting officer approached, he observed defendant throw something in a nearby sewer. *Id*. The officer reached into the sewer and recovered a wad of cash — the $150 that police had given Sepi. 9R25-26; 3SR188-90. Sepi gave police three small bags of crack cocaine. 3SR138.

Because he had fled to Puerto Rico before the trial, Sepi was not available to testify about the transaction. 3SR127-28. But the jury saw the video footage of defendant and Suggs inside Sepi's apartment. Peo. Exh. 5. Defendant is seen walking into the apartment first, grabbing the $150 cash

from Sepi's table, and counting it. *Id.*; *see also* Peo. Exh. 5-1. The three men walk off screen for a few moments. Peo. Exh. 5. Defendant is then seen standing alone by the door briefly before he and Suggs depart together. *Id.*

**Evidence that the Transactions Occurred Within 1000 Feet of a Church**

Detective Jared Bierbaum, the Bloomington Police officer leading these operations, testified that the two controlled transactions took place within 1000 feet of a church. Detective Bierbaum identified the First Christian Church on a map of the neighborhood; it was located just a couple of blocks south of Sepi's apartment. 3SR160-61; Peo. Exh. 3. He testified that he had walked and driven past the church in both his "professional and personal experience." 3SR161. Bierbaum was a detective in the Vice Unit for three years, and before that he was a patrol officer in Bloomington. 3SR93. As a vice detective, Bierbaum investigated drug cases by setting up controlled drug purchases, conducting surveillance, and talking with members of the community about drug activity in McLean County. 3SR94-95.

Bierbaum testifed that, based on his observations, the church was in operation on the dates of the two drug transactions.

> Q. Now back on December 22nd, was this property a church?
>
> A. Yes.
>
> Q. How do you know that it was a church?
>
> A. It had signs out for – signage for a church, as well as cars coming and going. I didn't go to church on that day, but I didn't park in the parking lot during this investigation because a lot of

> the cars are coming and going. And unfortunately, we often get our own police department called on us for suspicious activity if we park in business parking lots when people are coming and going. So since the cars were coming and going from that church at that time, I didn't make it a practice to park in that parking lot.
>
> Q. On January 1st, to your knowledge, was that property still operating as a church?
>
> A. As far as I could tell. Again, I didn't go to church there that day, but I did see vehicles coming and going from the parking lot. And again, I parked very close to that church but not in that parking lot. It would have been an ideal place, but not with the cars coming and going from there.
>
> Q. Now to your knowledge, present day, is it still operating as a church today?
>
> A. As far as I know.

3SR161-62. Bierbaum testified that he measured the distance between Sepi's apartment at 410 North Roosevelt and the front door of the church as 518 feet. 3SR162-68. In taking the measurement, Bierbaum walked onto church property, right up to the front doors of the building. 3SR164.

Bierbaum took a photograph of the church's sign, located at the corner of Roosevelt and Jefferson. 3SR164-65. The photo, which was admitted into evidence, shows a sign reading "First Christian Church" and containing an image of a red goblet with a white cross. 2SR167; Peo. Exh. 2-3. The photograph also depicts a door to the church with a lit, electric lantern attached to the building just to the left of the door. Peo. Exh. 2-3.


The church sign and door are also visible in the video footage of the December 22, 2014 transaction captured by the camera on Robbins's purse. As Robbins left Sepi's apartment that night, she walked south past the church, and although the image is too dark to make out the words on the sign, the video shows the lighted shape of the goblet on the sign as well as the lantern next to the church door. Peo. Exh. 4.

Defendant made no objection to Bierbaum's testimony concerning the church or to any of the exhibits; nor did defendant cross-examine Bierbaum about the church. 3SR159-72.

**Motion for Directed Verdict and Defendant's Case**

At the close of the People's case, defendant made an oral motion for a directed verdict, arguing that the People had proved only that defendant was present for the two drug transactions, not that he had participated or been complicit. 9R30-34. Defendant did not argue that the People failed to prove that the transactions occurred within 1000 feet of a church. The circuit court denied the motion. 9R34-36.

The defense presented two witnesses. Suggs testified that defendant had no part in the drug transactions. 9R44. According to Suggs, he and defendant, who was homeless, met a couple of years before the trial, and Suggs allowed defendant to stay with him at the home of Suggs's girlfriend in Normal, Illinois. 9R43-44, 55. When Suggs went out, he brought defendant with him, so that defendant would not be left alone with Suggs's girlfriend and daughter. 9R44-45. Suggs told defendant that Sepi owed him money but did not explain why, and Suggs gave defendant the $150 in cash to go to a liquor store and buy alcohol for the two men. 9R61-62.

Defendant's girlfriend also testified that, when she met defendant in the fall of 2014, he was moving around and staying with different friends. 9R38-41.

**Closing Arguments, Verdict, and Sentencing**

In closing, defendant argued that the People failed to prove beyond a reasonable doubt that he had personally participated in the drug

transactions. 9R96-106. He made no argument about the transactions taking place within 1000 feet of a church.

The jury acquitted defendant of charges relating to the December 22, 2014 transaction. 9R133-34. But with respect to the January 1, 2015 transaction, they convicted defendant of one count of unlawful delivery of a controlled substance within 1000 feet of a church and one count of unlawful delivery of a controlled substance. *Id*.

At sentencing, the circuit court recognized that the two counts merged and sentenced defendant only on the more serious offense. 4SR14-15. Because of defendant's prior convictions, the court was required to sentence him as a Class X offender, even though he had been convicted of a Class 1 felony. 2R2; *see also* 730 ILCS 5/5-4.5-95(b) (2014); 720 ILCS 570/407(b)(2) (2014). The Class X sentencing range was six to thirty years in prison, 730 ILCS 5/5-4.5-25(a) (2014), and the circuit court sentenced defendant to eight years. 4SR14-15.

**Motion for a New Trial and Appeal**

Following the verdict, defendant filed a motion for a new trial. 1R140-42. He challenged the sufficiency of the evidence, alleging deficiencies in the People's case, but made no argument that the evidence failed to show that drug transaction had occurred within 1000 feet of the church. *Id*.

On appeal, defendant argued for the first time that the evidence was insufficient to show that the drug transaction occurred within 1000 feet of a

church. A12. The appellate court affirmed. A15. This Court granted defendant's petition for leave to appeal.

## ARGUMENT

### I. The Evidence Was Sufficient to Prove that Defendant's Drug Sale Occurred Within 1000 Feet of a Church.

This Court should affirm defendant's conviction because Detective Bierbaum's testimony was sufficient to prove that defendant participated in the sale of a controlled substance within 1000 feet of a church. In considering a sufficiency challenge, this Court employs the familiar standard of *Jackson v. Virginia*, 443 U.S. 307 (1979), asking whether any rational trier of fact could have found the required elements of the crime beyond a reasonable doubt. *People v. Gonzalez*, 239 Ill. 2d 471, 478 (2011). In doing so, all reasonable inferences from the evidence must be drawn in the People's favor. *Id*. The same standard applies whether the evidence is direct or circumstantial. *People v. Gilliam*, 172 Ill. 2d 484, 515 (1996). The jury is the ultimate arbiter of issues of credibility or weight of the evidence. *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009). And the testimony of a single witness, if positive and credible, is sufficient to convict, even if it is contradicted by the defendant. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). "This Court will not reverse a criminal conviction unless the evidence is so unreasonable, improbable, or so unsatisfactory as to justify a reasonable doubt of the defendant's guilt." *People v. Hardman*, 2017 IL 121453, ¶ 34 (internal quotations omitted).

Here, the evidence more than sufficed for the jury to conclude that defendant sold drugs within 1000 feet of a church on January 1, 2015, as required by § 407(b)(2). Detective Bierbaum testified that the First Christian Church of Bloomington was located just south of Sepi's apartment, where the drug transactions took place. 3SR159-61. Bierbaum was familiar with the church from both his personal and professional experience, which included at least three years as a detective and patrol officer for the Bloomington Police. 3SR93-95, 161. Bierbaum measured the distance from the church to Sepi's front door as approximately 518 feet. 3SR168. The jury saw a map of the church's location (showing that the church building takes up most of an entire square block) and a photograph of the church sign, door, and lawn. Peo. Exhs. 2-3 & 3. And Bierbaum testified that the church appeared to be in use on the dates of the two transactions because he observed the sign out front and cars coming and going from the church parking lot. 3SR161-62.

This evidence was sufficient for the jury to find defendant guilty of unlawful delivery of a controlled substance within 1000 feet of a church. There was nothing unreasonable, improbable, or unsatisfactory about the jurors' conclusion. The appellate court correctly held that, viewing the evidence in the light most favorable to the People, a rational juror could believe Detective Bierbaum's testimony that the building was an active church on January 1, 2015. A14-15. The judgment should be affirmed.

## II. Neither Statute nor Case Law Requires the People to Present "Particularized Evidence."

The Court should reject defendant's suggestion that the People were required to meet some additional burden of presenting "particularized evidence" that "First Christian Church was used primarily for religious worship, on January 1, 2015." Def. Br. 14. Defendant never precisely defines what he means by "particularized evidence" but insists that Detective Bierbaum's testimony fell short of this measure. Neither the text of § 407(b)(2) nor this Court's case law establishes a more stringent standard of review than the ordinary *Jackson* test.

Section 407(b)(2) says nothing about "particularized evidence." Defendant gleans such a requirement from the statutory language that provides enhanced penalties for drug deals occurring in proximity to "the real property comprising any church, synagogue, or other building, structure, or place *used primarily for religious worship*." 720 ILCS 570/407(b)(2) (2014) (emphasis added). From this, he argues that it is insufficient for the People to present testimony that a building is a church — they must also present testimony that the church is used primarily for worship. Def. Br. 11-14. But the statute says nothing about a separate evidentiary requirement to prove "worship." Indeed, on the most natural reading of § 407(b)(2), "used primarily for religious worship" modifies the residual category "other building, structure, or place"; it does not (superfluously) modify "church." The dictionary definition of church is "a building set apart for public, esp.

Christian worship." *See Webster's Third New International Dictionary*, at 404 (1993). It follows that, if a jury can infer that a building is a church, by definition, it also must be able to infer that the building is used primarily for worship.

In an analogous case, this Court rejected a sufficiency challenge in an armed robbery prosecution where the People had to prove that the defendant was armed with a firearm. *People v. Wright*, 2017 IL 119561, ¶¶ 76-77. "Firearm" was defined by statute as "'any device, by whatever name known, which is designed to expel a projectile or projectiles by the action of an explosion, expansion of gas or escape of gas' but specifically excluding, among other items, any pneumatic gun, spring gun, paint ball gun, or BB gun." *Id.* ¶ 71 (quoting 430 ILCS 65/1.1 (2010); 720 ILCS 5/2-7.5 (2010)). The Court held that the jury was entitled to believe the testimony of witnesses who observed what appeared to be a firearm. *Id.* ¶¶ 76-77. The People were not required to present additional evidence that the firearm used in the crime met the technical statutory definition in all respects. *Id. See also People v. Washington*, 2012 IL 107993, ¶¶ 35-37 (witness's testimony that assailant had gun was sufficient to prove assailant carried "dangerous weapon" within the meaning of the statute).

The appellate court cases cited by defendant in support of his argument, Def. Br. 15-16, are distinguishable. In *People v. Ortiz* and *People v. Fickes*, the appellate court held the evidence insufficient to prove that a

drug transaction occurred within 1000 of a church because the People presented no testimony that the alleged church was in operation on the date of the offense. *Ortiz*, 2012 IL App (2d) 101261, ¶ 11; *Fickes*, 2017 IL App (5th) 140300, ¶¶ 23-24 By contrast, here, Detective Bierbaum testified that the church was in use on the dates of both drug sales. 3SR161-62. So under the reasoning of *Ortiz* and *Fickes*, the evidence against defendant sufficed.

And *People v. Cadena* actually supports the People's argument because there the appellate court held that a detective's testimony that a drug sale occurred within 1000 feet of Evangelical Covenant Church "supports the inference that the building in question was in fact a church." 2013 IL App (2d) 120285, ¶ 15. Nonetheless, the conviction was reversed because the People had conceded that they were required to present additional "proof regarding *how* the building was used," and the court thought they had failed to do so. *Id.* (emphasis in original). No such concession was made here.

Just last year in *People v. Hardman*, 2017 IL 121453, ¶ 34, this Court rejected an argument that it should require "particularized evidence" to establish that a drug sale occurred within 1000 feet of a school. Instead, the Court held that a rational juror could accept the testimony of two detectives that they were familiar with the area and that the building at 646 North Lawndale was a school at the time of the offense. *Id.* ¶¶ 44-45. The same rule should apply whether the building is a school, a church, or any other location with which a lay witness could reasonably be familiar.

To be sure, in rejecting the need for "particularized evidence," the Court distinguished *Ortiz*, *Cadena*, and *Fickes*, because those cases each "involved the statutory enhancing location of a church," rather than a school. *Hardman*, 2017 IL 121453, ¶ 31. But to the extent that certain language in *Hardman* can be read as endorsing defendant's argument that, under § 407(b), "particularized evidence" is required to prove that a church is used for worship, the discussion was unnecessary to *Hardman*'s holding and should be treated as dicta. *See Hardman*, 2017 IL 121456, ¶¶ 31-33. As explained above, there is no basis for a separate requirement to prove "worship."

To the extent defendant relies on *Jackson,* his proposed rule ignores the "broad discretion" *Jackson* leaves to juries "in deciding what inferences to draw from the evidence presented at trial." *Coleman v. Johnson*, 566 U.S. 650, 655 (2012). Courts of review are not empowered to retry a defendant on appeal, and testimony should be found insufficient "only where the record evidence compels the conclusion that no reasonable person could accept it beyond a reasonable doubt." *People v. Cunningham*, 212 Ill. 2d 274, 279-80 (2004).

This is especially true where, as here, there was no factual dispute at trial about how the church was being used. *See Washington*, 2012 IL 107993, ¶ 36 (jury could reasonably infer that defendant possessed gun, given lack of factual dispute at trial). Defendant neither cross-examined Detective

Bierbaum about the church, put on rebuttal evidence, nor argued to the jury that Bierbaum's testimony was incredible. Instead, defendant waited to assert the lack of evidence until appeal, so there was no reason for the jury to question Bierbaum's testimony — and no opportunity for the People to introduce additional evidence, if it had been required.[2]

## III. Defendant's Belated Challenge to the Foundation for Detective Bierbaum's Testimony Is Forfeited and Meritless.

Defendant also argues that Detective Bierbaum failed to establish sufficient personal knowledge of the operations of First Christian Church to testify that it was a church. Def. Br. 16-17. Although defendant suggests that he is challenging the sufficiency of the People's evidence, *id*., in fact his argument is an untimely attack on the admissibility of Bierbaum's testimony. Illinois Rule of Evidence 602 prevents a witness from testifying about a matter unless the witness can demonstrate personal knowledge. Ill. R. Evid. 602. The proper way to attack such a deficiency is through an objection to

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[2] Defendant's trial counsel had good reasons for focusing his efforts on alternate arguments. A brief investigation would have revealed that the First Christian Church has been active in Bloomington since 1837, and that its current sanctuary at 401 West Jefferson Street was constructed in 1949. *See* First Christian Church, Our History, http://www.blmfcc.com/our-history.html (last visited April 10, 2018). Counsel likely also recognized that defendant would face the same sentencing range regardless of whether the building was a church. Because of defendant's prior convictions, his conviction for delivery of a controlled substance within 1000 feet of a church under § 407(b)(2), a Class 1 felony, was treated as a Class X offense. 2R2. But the Class X enhancement also would have applied to a conviction for delivery of a controlled substance under § 401(d), a Class 2 felony. *See* 730 ILCS 5/5-4.5-95(b) (providing for Class X sentencing for a defendant convicted of a third Class 1 or Class 2 felony).

the lack of foundation. *People v. Lewis*, 165 Ill. 2d 305, 335 (1995). Defendant may not recharacterize his objection as a *Jackson* challenge on appeal. *People v. Woods*, 214 Ill. 2d 455, 471 (2005) (rejecting forfeited foundation objection despite attempt to label it as sufficiency challenge). Such a maneuver would permit defendant — who neither objected to Bierbaum's testimony nor raised the lack of foundation in a post-trial motion — to circumvent the ordinary forfeiture rule, which does not apply to sufficiency challenges. *Id.* at 470-71 (citing *People v. Enoch*, 122 Ill. 2d 176 (1988)). The lack of objection "deprive[d] the State of the opportunity to correct any deficiency in the foundational proof at the trial level." *Id.* And under *Jackson*, defendant would be entitled to an acquittal; whereas, the proper remedy for a violation of Rule 602 would be a new trial. *Id.* Accordingly, this Court should reject defendant's forfeited challenge to the foundation of Bierbaum's testimony.

Regardless of how the argument is characterized, Detective Bierbaum adequately established personal knowledge sufficient to support his testimony that the First Christian Church was, in fact, a church. It requires no specialized skills or knowledge for a lay witness, who lives or works in the community, to identify a building as a church. And Bierbaum testified that he had years of experience as a detective and patrol officer in the Bloomington community, 3SR93-95, and was familiar with the First Christian Church from his "professional and personal experience," 3SR161.

In *People v. Sims* — another § 407(b) prosecution from Bloomington — the appellate court persuasively explained that a narcotics officer working in that community could reasonably "say whether a given church was active":

> Bloomington is not so large that such knowledge would be unattainable or implausible. . . . How or whether buildings are used would seem to be of particular interest to a police officer on the lookout for crack houses and methamphetamine laboratories.

2014 IL App (4th) 130568, ¶ 138. As in *Sims*, Detective Bierbaum's experience more than sufficed to establish personal knowledge that the First Christian Church operated as a church.

And although it is true, as defendant argues, that buildings that once housed churches can become abandoned or be converted to other uses, Def. Br. 22-23, a trier of fact need not "search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt," *Hardman*, 2017 IL 121453, ¶ 37. First Christian Church showed no signs of having been abandoned, and if Detective Bierbaum were mistaken that First Christian Church operated as a church, defendant could have contested the evidence at trial and made his argument to the jury. But because the jury's verdict was not unreasonable, improbable, or unsatisfactory, *id.*, this Court should affirm.

## CONCLUSION

This Court should affirm the judgment of the appellate court.

April 10, 2018

Respectfully submitted,

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**RULE 341(c) CERTIFICATE OF COMPLIANCE**

I certify that this brief conforms to the requirements of Rule 341(a) and (b). The length of this brief, excluding the pages contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is eighteen pages.

/s/ Jason F. Krigel
Jason F. Krigel
Assistant Attorney General

## PROOF OF SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On April 10, 2018, the **Brief of Plaintiff-Appellee People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, which provided notice to the following registered parties:

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Additionally, upon its acceptance by the court's electronic filing system, the undersigned will mail 12 copies of the brief to the Clerk of the Supreme Court of Illinois, 200 East Capitol Avenue, Springfield, Illinois 62701.

/s/ Jason F. Krigel
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