No. 122958

IN THE

SUPREME COURT OF ILLINOIS

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

BRIEF AND ARGUMENT FOR DEFENDANT-APPELLANT

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ORAL ARGUMENT REQUESTED

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POINT AND AUTHORITIES

The State failed to prove beyond a reasonable doubt that, on January 1, 2015, First Christian Church was an active church used primarily for religious worship.

A.

Section 407(b)(2) required the State to demonstrate, with particularized evidence, that First Christian Church was used primarily for religious worship on January 1, 2015.

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B.

Bierbaum's testimony failed to establish that he was sufficiently familiar with First Christian Church to provide particularized evidence showing it was used primarily for religious worship on January 1, 2015.

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NATURE OF THE CASE

Following a jury trial, Jafaria Newton was convicted of unlawful delivery of a controlled substance within 1,000 feet of a church and was sentenced to eight years in prison.

This is a direct appeal from the judgment of the appellate court. No issue is raised challenging the charging instrument.

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ISSUE PRESENTED FOR REVIEW

Whether the State failed to prove beyond a reasonable doubt that, on January 1, 2015, First Christian Church was an active church used primarily for religious worship.

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JURISDICTION

Following a jury trial on June 17, 2015, Jafaria Newton was convicted of unlawful delivery of a controlled substance within 1,000 feet of a church. The trial court sentenced him on July 30, 2015. (C. 145) Newton filed a motion to reconsider sentence, which the trial court denied after a hearing on October 2, 2015. (Vol. X, R. 6) On October 7, 2015, Newton filed a timely notice of appeal. (C. 187)

On November 6, 2017, the Fourth District of the Illinois Appellate Court issued an order affirming Newton's conviction. *People v. Newton*, 2017 IL App (4th) 150798–U, ¶ 1. On December 4, 2017, Newton filed a petition for leave to appeal. On January 18, 2018, this Court granted Newton's petition for leave to appeal.

Jurisdiction therefore lies in this Court pursuant to Article VI, Section 6, of the Illinois Constitution, and Supreme Court Rules 302, 315, 606, 612.

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STATUTES AND RULES INVOLVED

Section 206(b)(4) of the Illinois Controlled Substances Act classifies as a Schedule II controlled substance any substance containing cocaine. 720 ILCS 570/206(b)(4) (2014) (eff. Jan. 1, 2012).

Section 401(d) of the Illinois Controlled Substances Act provides in relevant parts:

> "Any person who violates this Section with regard to any other amount of a controlled substance *** classified in Schedules I or II, or an analog thereof, *** is guilty of a Class 2 felony." 720 ILCS 570/401(d) (2014) (eff. Jan. 1, 2013).

Section 407(b)(2) of the Illinois Controlled Substances Act provides in relevant parts:

> "Any person who violates *** subsection (d) of Section 401 [of this Act] within 1,000 feet of the real property comprising any church, synagogue, or other building, structure, or place used primarily for religious worship *** is guilty of a Class 1 felony, the fine for which shall not exceed $250,000." 720 ILCS 570/407(b)(2) (2014) (eff. Sept. 11, 2005).

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STATEMENT OF FACTS

The State charged Jafaria Newton with two counts of unlawful delivery of less than one gram of cocaine. (C. 12, 16) The information alleged that the unlawful deliveries occurred on December 22, 2014, and January 1, 2015. (C. 12, 16) Additionally, the State charged Newton with making the unlawful deliveries within 1,000 feet of First Christian Church, in violation of Section 407(b)(2) of the Illinois Controlled Substances Act. (C. 10, 14) Following a jury trial, Newton was found guilty of the unlawful delivery made on January 1, 2015, and not guilty of the delivery made on December 22, 2014. (Vol. IX, R. 133–34) The trial court sentenced him to eight years in prison. (Supp. Vol. IV, R. 14–15)

On appeal, Newton argued that the evidence was insufficient to prove that: (1) he directly and knowingly participated in January 1, 2015 delivery; and (2) the delivery was within 1,000 feet of a church used primarily for religious worship. *People v. Newton*, 2017 IL App (4th) 150798–U, ¶ 2. The appellate court affirmed Newton's conviction. *Id.* at ¶ 31. This Court granted leave to appeal to determine whether the evidence was sufficient to prove that the January 1, 2015, delivery was within 1,000 feet of a church used primarily for religious worship.

Relevant Trial Testimony and Facts

Following his arrest for the December 22, 2014, drug transaction, Jorge Rodriguez, also known as "Sepi," agreed to assist the police in arresting "his drug sources." (Supp. Vol. III, R. 111–12, 118, 126, 128) Using Sepi's house, located at 410 North Roosevelt in Bloomington, Detective Jared Bierbaum arranged a controlled buy held on January 1, 2015. (Supp. Vol. III, R. 128–29) As a result of the controlled buy, Newton was arrested. (Vol. IX, R. 23–26)

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Bierbaum's direct examination took up seventy-five pages of the trial transcript. (Supp. Vol. III, R. 92–168) His direct testimony is the only testimony relevant to the issue presented. Bierbaum stated that he was employed "with the Bloomington Police Department Vice Unit,*** going on [his] third year as *** a vice detective." (Supp. Vol. III, R. 93). Prior to joining the Vice Unit, he stated that he "was a patrol officer on second shift with the Bloomington Police Department." (Supp. Vol. III, R. 93)

Bierbaum stated that he was "familiar" with First Christian Church, located at 610 Roosevelt Street. (Supp. Vol. III, R. 159) He identified People's Exhibit # 3 as "a 1,000-foot buffer map generated by Bloomington Police Department to show where 410 North Roosevelt, [Sepi's house], is in relation to any churches or schools within 1,000 feet of that location." (Supp. Vol. III, R. 159; *see also* Vol. XI, People Ex. # 3) He identified 410 North Roosevelt in the middle of the red circle, and First Christian Church "maybe a block, a block and a half straight south." (Supp. Vol. III, R. 161)

As part of Bierbaum's testimony, the following colloquy occurred:

> "[**The State**]: Okay. Now in both your professional and personal experience, have you had occasion to drive past or walk past or see the First Christian Church?
>
> [**Bierbaum**]: Yes.
>
> [**The State**]: Now back on December 22nd, was this property a church?
>
> [**Bierbaum**]: Yes.
>
> [**The State**]: How do you know that it was a church?
>
> [**Bierbaum**]: 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

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> a lot of the cars [were] 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.
>
> [**The State**]: On January 1st, to your knowledge, was that property still operating as a church?
>
> [**Bierbaum**]: 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.
>
> [**The State**]: Now to your knowledge, present day, is it still operating as a church today?
>
> [**Bierbaum**]: As far as I know." (Supp. Vol. III, R. 161–62)

Bierbaum also testified that he measured the distance from Sepi's house to First Christian Church using "a measuring wheel." (Supp. Vol. III, R. 163) The distance measured was "518 feet and 7 inches." (Supp. Vol. III, R. 167) Bierbaum also identified People's Exhibit # 2–3 as depicting "a sign out to the front of the church." (Supp. Vol. III, R. 167; *see also* Vol XI, People's Ex. # 2–3) The sign is a stone monolith with carved letters spelling: "First Christian Church." (Vol. XI, People's Ex # 2–3) Bierbaum stated that he took the measurement to First Christian Church and the picture in People's Ex # 2–3 "earlier" in the year when Newton's trial was held—namely in 2015. (Supp. Vol. III, R. 163) He testified on June, 16, 2015. (Supp. Vol. III, R. 1) January 1, 2015, was a Thursday.

The jury found Newton guilty of both "the offense of unlawful delivery of a controlled substance within one thousand feet of a church," Count 3 of the information, and of the offense of simple "unlawful delivery of a controlled substance," Count 4 of the information, for the January 1, 2015, drug transaction.

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(Vol. IX, R. 134) At sentencing, the trial court stated: "There will be no sentence entered on Count 4 as it's based on the same act, and therefore merges into Count 3." (Supp. Vol. IV, R. 15) Newton filed a *pro se* motion for reconsideration of sentence, and his counsel also filed a motion to reconsider sentence. (C. 157, 167–68) After a hearing, the motions were denied. (Vol. X, R. 6)

The Appellate Court's Decision

On appeal, Newton argued that "the State failed to prove *** the [January 1, 2015] transaction occurred within 1,000 feet of a church." *People v. Newton*, 2017 IL App (4th) 150798–U, ¶ 17. The Fourth District of the Illinois Appellate Court disagreed and affirmed his conviction. *Id.* The court held "that, after viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could reasonably infer that, if the building houses a religious organization that has "church" in its name, then it is a church within the meaning of the applicable statute. *Id.* at ¶ 28. The court ruled that "all a police officer has to do is refer to the building by a proper name with the term 'church' in it *** and that proves, beyond a reasonable doubt, that the building was used primarily for religious worship on the date of the offense." *Id.* The court then noted: "Bierbaum testified that in his personal experience, as well as his professional experience as a Bloomington police officer, the First Christian Church *** was operating as a church on *** January 1, 2015." *Id.* at ¶ 29. Thus, the court found that "a rational trier of fact could have believed Bierbaum's testimony that he was familiar with the neighborhood and that the building housing the First Christian Church *** was in use as a church on the dates of the drug offense." *Id.*

This Court granted Newton leave to appeal on January 18, 2018.

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ARGUMENT

The State failed to prove beyond a reasonable doubt that, on January 1, 2015, First Christian Church was an active church used primarily for religious worship.

Jefaria Newton was charged and convicted of one count of of unlawful delivery of less than one gram of cocaine within 1,000 feet of First Christian Church, in violation of Section 401(d) and Section 407(b)(2) of the Illinois Controlled Substances Act. (C. 14) (Vol IX, R. 134) Section 407(b)(2) of the Act requires the State to demonstrate that the purported church was "used primarily for religious worship," on the date of the offense. *People v. Hardman*, 2017 IL 121453, ¶ 33. At trial, the State's only evidence on this issue was Detective Jared Bierbaum's testimony that he believed the church was active as such, based on seeing "signage for a church" and cars using the parking lot. (Supp. Vol. III, R. 161–62) Bierbaum's testimony, however, was not sufficiently particularized to demonstrate he had personal knowledge of the church's active status equal to those of a "neighbor" or "someone affiliated with the church." *Hardman*, 2017 Il 121453, ¶ 33; *People v. Fickes*, 2017 IL App (5th) 140300, ¶ 27; *People v. Cadena*, 2013 IL App (2d) 120285, ¶ 18. As a result, the State failed to prove beyond a reasonable doubt that, on January 1, 2015, First Christian Church was an active church used primarily for religious worship.

STANDARD OF REVIEW

The due process clause protects defendants against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which they are charged. U.S. CONST. amend. XIV; ILL. CONST., 1970, art. 1, § 2; *In re Winship*, 397 U.S. 358, 364 (1970). Furthermore, other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed

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statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt. *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000). In reviewing the sufficiency of the evidence in a criminal case, the relevant inquiry "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 offense beyond a reasonable doubt." *Hardman*, 2017 IL 121453, ¶ 37. However, whether Section 407(b)(2) "requires the State to present particularized evidence of a building's use involves a question of statutory interpretation subject to *de novo* review." *Id.* at ¶ 19.

AUTHORITIES AND ANALYSIS

Section 401(d) of the Illinois Controlled Substances Act makes it a crime to deliver less than one gram of any substance containing cocaine. 720 ILCS 570/401(d) (2014). A violation of Section 401(d) is a Class 2 felony, which is punishable by a term of no less than three years but no more than seven years in prison. 730 ILCS 5/5–4.5-35 (2014). Section 407(b)(2) enhances a Section 401(d) offense to a Class 1 felony if the violation occurs "within 1,000 feet of the real property comprising any church, synagogue, or other building, structure, or place used primarily for religious worship." 720 ILCS 570/407(b)(2) (2014).

At trial, the State's only evidence on whether First Christian Church was an active "church" used primarily for religious worship was Bierbaum's testimony. (Supp. Vol. III, R. 159–68) Bierbaum testified that he was "familiar" with First Christian Church. (Supp. Vol. III, R. 159) He also testified that on January 1, 2015, the date of the offense, the property was operating as a church: "as far as I can tell," based on seeing "signage for a church" and cars using the parking lot. (Supp. Vol. III, R. 161–62) He stated that he noticed the grass had been mowed and the sign was in good condition. (Supp. Vol. III, R. 164)

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However, Bierbaum's testimony was insufficient to establish, beyond a reasonable doubt, that Newton was guilty of delivery of a controlled substance within 1,000 feet of a church "used primarily for religious worship." 720 ILCS 570/407(b)(2). First, Section 407(b)(2) required "the State to demonstrate," with particularized evidence, that First Christian Church "was used primarily for religious worship." *Hardman*, 2017 IL 121453, ¶ 33 (noting the provisions of Section 407(b), including 407(b)(2), "require the State to demonstrate," with particularized evidence, "that [a] purported church 'was used primarily for religious worship'"). And second, Bierbaum's testimony failed to establish that he was "sufficiently familiar" with First Christian Church to provide particularized evidence showing it was used primarily for religious worship on January 1, 2015. *Fickes*, 2017 IL App (5th) 140300, ¶ 27; *Cadena*, 2013 IL App (2d) 120285, ¶ 18.

A.

Section 407(b)(2) required the State to demonstrate, with particularized evidence, that First Christian Church was used primarily for religious worship on January 1, 2015.

Whether Section 407(b)(2) requires the State to present particularized evidence of a building's use involves a question of statutory interpretation subject to *de novo* review. *Hardman*, 2017 IL 121453, ¶ 19. The cardinal rule of statutory construction is to ascertain and give effect to the legislature's intent. *Id.* The best indication of legislative intent is the statutory language, given its plain and ordinary meaning. *Id.* The plain and ordinary language of Section 407(b)(2) provides for an aggravated penalty for drug violations occurring "within 1,000 feet of the real property comprising any church, synagogue or other building, structure, or place used primarily for religious worship." 720 ILCS 570/407(b)(2).

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Applicable to this provision is the doctrine of *ejusdem generis*, which provides that "when a statutory clause specifically describes several classes of persons or things and then includes 'other persons or things,' the word 'other' is interpreted as meaning 'other such like.'" *People v. Davis*, 199 Ill. 2d 130, 138 (2002). The doctrine operates such that the "other persons or things" not listed "may be read [as] not of a quality superior to or different from *** those specifically enumerated." *People v. Capuzi*, 20 Ill. 2d 486, 493–94 (1960). Thus, under the doctrine, the word "other" must be read as showing the legislative intent that the more general uses of a "building, structure, or place," be of the same quality as a "church" or "synagogue," within the meaning of Section 407(b)(2). *See, e.g.*, *Davis*, 199 Ill. 2d at 138–39 (applying the doctrine to determine whether a pellet or BB gun is a dangerous weapon within the meaning of the armed violence statute).

Nonetheless, the legislature added the limiting clause "used primarily for religious worship" immediately following the general terms. 720 ILCS 570/407(b)(2). In construing a statute, each clause of the statute, if possible, must be given reasonable meaning and not rendered superfluous." *People v. Botruff*, 212 Ill. 2d 166, 175 (2004). Accordingly, in determining the legislative intent, this Court may properly consider not only the language of the statute, but also the reason and necessity for the law, the evils sought to be remedied, and the purpose to be achieved. *Id.* The purpose and aim of the Section 407(b)(2) place of worship enhancement was to create a protected zone around such places. *People v. Falbe*, 189 Ill. 2d 635, 647–48 (2000).

In *People v. Falbe*, the trial court held the place of worship enhancement "unconstitutionally vague." *Falbe*, 189 Ill. 2d at 639. The trial court "reasoned [that] the purpose of the statute was not served when applied to [the] defendants."

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Id. In reversing the trial court's judgement, this Court explained that "places of worship *** are frequented by those who may be least able or willing to deal with drug trafficking and the crimes associated with it." *Id.* at 643. This Court further explained:

> "The *** purpose of the statute is to deter narcotics activity, protecting those the legislature deemed in need of protection through harsher punishment for drug traffickers who commit certain offense within close proximity of sensitive areas where the vulnerable population may be located. *** Places of worship reach out and extend an invitation to the public; doors are unlocked; security is relaxed. The very ideals of those who worship there can make them vulnerable in the same sense that school children, the poor, and the aged may be at risk." *Falbe*, 189 Ill. 2d at 647–48 (internal citations and quotations marks omitted).

Thus, this Court found Section 407(b)'s place of worship enhancement "sufficiently definite to give fair warning as to what conduct is prohibited, and [to] provide adequate standards for law enforcement officers and triers of fact in the application of its provisions." *Falbe*, 189 Ill. 2d at 641. Yet, if a building does not function primarily as a place of worship on the date of an alleged offense, the concerns this Court expressed in *Falbe* for validating the enhancement are not present. *People v. Fickes*, 2017 IL App (5th) 140300, ¶ 25. Accordingly, without the requirement of particularized evidence on the place of worship enhancement, defendants' due process rights are violated. U.S. CONST. amend. XIV; ILL. CONST., 1970, art. 1, § 2; *In re Winship*, 397 U.S. at 364; *Apprendi*, 530 U.S. at 490.

Equally applicable here is the principle that phrases in a statute should be construed in light of other relevant provisions and not in isolation. *People v. Bradford*, 2016 IL 118674, ¶ 15. Section 407(b)(2) also provides for school locality enhancements. 720 ILCS 570/407(b)(2). However, Section 407(c) makes clear that the State need not demonstrate that a building was active or operational as a school on the date of the offense. *Hardman*, 2017 IL 121453, ¶ 32 (citing 720 ILCS

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570/407(c) (2012)). Section 407(c) does not create such an exception for places of worship. *Id.* The absence of this exception *vis-à-vis* places of worship shows that the legislature intended the clause relating to the primary use of such places be given its full effect. *Id.* at ¶ 33; *see also People v. Goossens*, 2015 IL 118347, ¶ 12 ("when the legislature uses certain language in one instance of a statute and different language in another part, we assume different meanings were intended."). Thus, in light of all relevant principles of statutory construction, Section 407(b)(2) required the State to demonstrate, with particularized evidence, that First Christian Church was used primarily for religious worship, on January 1, 2015. 720 ILCS 570/407(b)(2).

This reading of Section 407(b)(2) is consistent with this Court's reasoning in *People v. Hardman* regarding the place of worship enhancement. *Hardman*, 2017 IL 121453, ¶ 33. In *Hardman*, the defendant was convicted of one count of possession of a controlled substance with intent to deliver within 1,000 feet of a school. *Id.* at ¶ 1. On appeal, the defendant argued "that the State failed to prove that he committed the offense within 1,000 feet of a school." *Id.* Before this Court, the defendant argued: "To establish that an offense occurred within 1,000 feet of a school, *** the State must prove beyond a reasonable doubt that the building at issue was an active or operational 'school' at the time of the offense." *Id.* at ¶ 18. Specifically, the defendant contended: "To do so, ***, requires that the State present particularized evidence, based on a witness's personal knowledge of an enhancing location's actual use at the time of the offense." *Id.* In support of his position, the defendant cited several appellate court cases addressing Section 407(b)'s place of worship enhancement provisions. *Id.* at ¶¶ 23–29.

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This Court stated that the cases the defendant cited did not support his position. *Hardman*, 2017 IL 121453, ¶ 31. This Court explained that "each of [those] cases involved the statutory enhancing location of a church." *Id.* This Court further explained that "Subsections 407(b)(1)–(6) provide for aggravated penalties for drug violations occurring 'within 1,000 feet of the real property comprising any church, synagogue, or other building, structure, or place used primarily for religious worship;'" whereas those subsections "do not speak to any 'use' requirement in the context of a school locality enhancement." *Id.* Thus, this Court stated that the provisions of Section 407(b), including 407(b)(2), "require the State to demonstrate," with particularized evidence, "that [a] purported church 'was used primarily for religious worship.'" *Id.* at ¶ 33.

Similarly, several appellate court cases have held that the place of worship enhancement requires "proof regarding *how* the building was used." *Cadena*, 2013 IL App (2d) 120285, ¶ 15 (emphasis in original) (citing *People v. Sparks*, 335 Ill. App. 3d 249, 256 (2d Dist. 2002) (concluding "the legislature intended the term 'church' to mean a 'place used primarily for religious worship'")); *see also Fickes*, 2017 IL App (5th) 140300, ¶ 19 ("the State must prove beyond a reasonable doubt that the building in question was functioning primarily as a place of worship on the date of the offense"); *People v. Ortiz*, 2012 IL App (2d) 101261, ¶ 11 ("the issue is whether the evidence established beyond a reasonable doubt that the building was [used primarily for religious worship] on the date of the offense"). These cases and this Court's opinion in *Hardman* are consistent with the plain language and purpose of Section 407(b)(2). *Falbe*, 189 Ill. 2d at 644–45, 646–49. Consequently, Newton's right to due process required the State to demonstrate, with particularized evidence, that First Christian Church was an active church used primarily for

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religious worship on the date in question: January 1, 2015. U.S. CONST. amend. XIV; ILL. CONST., 1970, art. 1, § 2; *In re Winship*, 397 U.S. at 364; *Apprendi*, 530 U.S. at 490.

B.

Bierbaum's testimony failed to establish that he was sufficiently familiar with First Christian Church to provide particularized evidence showing it was used primarily for religious worship on January 1, 2015.

The appellate court here noted: "Bierbaum testified that in his personal experience, as well as in his professional experience as a Bloomington police officer, the First Christian Church, at the intersection of West Jefferson Street and North Roosevelt Avenue, was as far as he knew operating as a church on December 22, 2014, January 1, 2015, and on the date of his testimony." *Newton*, 2017 IL App (4th) 150798–U, ¶ 29. Thus, the court found: "a rational trier of fact could have believed Bierbaum's testimony that he was familiar with the neighborhood and that the building housing the First Christian Church on West Jefferson Street was in use as a church on the dates of the drug offense." *Id.* However, the appellate court was wrong as Bierbaum's testimony failed to establish that he was "sufficiently familiar" with the primary use of First Christian Church on January 1, 2015. *Fickes*, 2017 IL App (5th) 140300, ¶ 27; *Cadena*, 2013 IL App (2d) 120285, ¶ 18 (citing *Ortiz*, 2012 IL app (2d) 101261, ¶ 11).

Generally, in reviewing the sufficiency of the evidence in a criminal case, the relevant inquiry "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 offense beyond a reasonable doubt." *Hardman*, 2017 IL 121453, ¶ 37. Thus, "where the finding of guilt depends on eyewitness testimony, [this

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Court] must decide whether, in light of the record, a fact finder could reasonably accept the testimony as true beyond a reasonable doubt." *People v. Cunningham*, 212 Ill. 2d 274, 279 (2004). However, where the issue only presents the question of whether a settled set of facts sufficed to prove guilt, the standard of review is *de novo* because the question is a purely legal one. *See, e.g.*, *Bradford*, 2016 IL 118674, ¶¶ 14–15 (whether undisputed facts satisfy the "without authority remains within a building" element of burglary is a question of statutory construction reviewed *de novo*).

At issue here is whether Bierbaum's testimony was sufficiently "particularized" to demonstrate that First Christian Church was "used primarily for religious worship" on January 1, 2015. *Hardman*, 2017 IL 121453, ¶ 33. Bierbaum testified that "in both [his] professional and personal experience, [he] had occasion to drive past or walk past or see the First Christian Church." (Supp. Vol. III, R. 161) Bierbaum also stated that he was "familiar" with First Christian Church. (Supp. Vol. III, R. 159) Nonetheless, Bierbaum's testimony failed to state particular facts establishing that he "had sufficient personal knowledge to testify as to the church's active status." *Cadena*, 2013 IL App (2d) 120285, ¶ 18. Actually, Bierbaum testified that his knowledge was based on seeing "signage for a church," cars in the parking lot, and the grass having been mowed. (Supp. Vol. III, R. 161–62) He did not testify that he had become acquainted with the building from regularly patrolling the neighborhood, conducting significant numbers of arrest in the area, or communicating with the active congregation. *Cadena*, 2013 IL App (2d) 120285, ¶ 18. Furthermore, it can be imputed from his use of only generally apparent visual facts that he had no personal knowledge of whether First Christian Church was used primarily as a place of religious worship.

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In *People v. Cadena*, the defendant was convicted of unlawful delivery of a controlled substance within 1,000 feet of a church, namely the Evangelical Covenant Church. *Cadena*, 2013 IL App 120285, ¶ 1. At trial, the State presented the testimony of a police officer with twenty-seven years of service and "involved in the surveillance of the controlled purchases" leading to the defendant's arrest. *Id.* at ¶ 6. The State asked the officer whether Evangelical Covenant Church was "an active church;" to which the officer answered: "Yes." *Id.* The appellate court reversed. *Id.* at ¶ 20.

The appellate court stated that, after seventy-five pages of direct testimony, "there was no evidence of *how* [the officer] knew" the building was an active church. *Cadena*, 2013 IL App (2d) 120285, at ¶¶ 6, 17 (emphasis in original). The court explained that the State could have "easily" met this requirement "'by eliciting testimony from someone affiliated with the church' [or] with personal knowledge that the church was active on the dates of the offenses." *Id.* at ¶ 18 (quoting *Ortiz*, 2012 IL App (2d) 101261, ¶ 11). The court ruled: "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." *Id. Cadena* requires police officers, even with lengthy years of service, to provide particularized testimony regarding their personal knowledge of the active status of a purported church. *Id.* The court found that the officer did not demonstrate that he was sufficiently familiar with the building or the neighboring community. *Id.* at ¶ 13.

Similarly, although Bierbaum stated that he was "familiar" with First Christian Church, he failed to testify as to *how* he became "familiar" with it. *Cadena*, 2013 IL App (2d) 120285, at ¶ 17. After seventy-five pages of direct testimony,

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Bierbaum's only support regarding his familiarity with the building is that he occasionally drove or walked past it. (Supp. Vol. III, R. 161) Relying solely on *People v. Sims*, 2014 IL App (4th) 130568, the appellate court found Bierbaum's occasional and limited interactions with First Christian Church sufficient to allow the jury to believe "that he was familiar with the neighborhood and the building" at issue. *Newton*, 2017 IL App (4th) 150798–U, ¶ 29 (citing *Sims*, 2014 IL App (4th) 130568, ¶ 138).

In *Sims*, the State presented the testimony of a Bloomington police officer, "assigned to the narcotics unit," in support of the place of worship enhancement. *Sims*, 2014 IL App (4th) 130568, ¶ 134. The officer stated that, "as long as he could remember, and at the time," the building known as the "Joyful Gospel Church *** was open the day he and the prosecutor were talking about." *Id.* The appellate court found that "it seems reasonable to infer that, in [the officer's] particular line of work, one would become familiar with Bloomington, such that one could say wether a given church was active." *Id.* at ¶ 138. Applying this analysis to Newton's case, the court below held that "all a police officer has to do is refer to the building by a proper name with the term 'church' in it *** and that proves, beyond a reasonable doubt, that the building was used primarily for religious worship on the date of the offense." *Newton*, 2017 IL App (4th) 150798–U, ¶ 28. Thus, the court found: "a rational trier of fact could have believed Bierbaum's testimony that he was familiar with the neighborhood and that the building housing the First Christian Church on West Jefferson Street was in use as a church on the dates of the drug offense." *Id.* at ¶ 29.

Sims, however, is unpersuasive. First, therein the appellate court relied on *People v. Foster*, 354 Ill. App. 3d 564 (1st Dist. 2004), and "found that 'a rational

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trier of fact could have inferred [a building] was a church used primarily for religious worship *based* on its name.'" *Sims*, 2014 IL App (4th) 130568, ¶ 133 (emphasis added) (quoting *Foster*, 354 Ill. App 3d at 568). In light of the particularized evidence requirement, nomenclature—or the inclusion of the word "church" in a name—is not enough to establish that a building was "used primarily for religious worship." *Hardman*, 2017 IL 121453, ¶ 33; *see also Fickes*, 2017 IL App (5th) 140300, ¶ 22 (distinguishing *Foster* because therein the parties' stipulated to the evidence regarding the place of worship enhancement). And second, the court also relied on the ideal knowledge a hypothetical narcotics officer with lengthy years of street experience and significant numbers of drug arrests may have acquired, without any showing of how the testifying officer would have acquired this knowledge. *Sims*, 2014 IL App (4th) 130568, ¶¶ 134, 138. In *Sims*, the officer only testified to the length of his service and two controlled purchases using a confidential informant living in the area. *Id.* at ¶¶ 51–57. There was nothing in his testimony, nor in the confidential informant's testimony, to support an inference that during their collaboration the officer became "sufficiently familiar" with the area in question. *Id.* Even less so here, Bierbaum's testimony failed to show that he had become "sufficiently familiar" with the primary use of First Christian Church. He testified that his knowledge was based entirely on seeing "signage for a church" and cars using the parking lot. (Supp. Vol. III, R. 161–62)

Officers' testimony on the basis for their knowledge regarding the active status of a purported church must show that they were "sufficiently familiar" with the community surrounding the building at issue. *Fickes*, 2017 IL App (5th) 140300, ¶ 27. In *People v. Fickes*, the State provided the testimony of a local police officer and a county sheriff deputy to support the place of worship enhancement. *Fickes*,

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2017, IL App (5th) 140300, ¶¶ 6–7. The appellate court found "that there was no direct testimony from the two officers that they were familiar with the area in question on the date of the offense." *Id.* at ¶ 23. The court explained that the local officer never stated that he had "been a patrol officer" or that because of his duties "he was familiar *** with the area in question, as opposed to other areas of" the particular jurisdiction. *Id.* As to the sheriff deputy, the court stated "he did not testify *** that he had ever patrolled [the] area before or since the date of the offense." *Id.* The court ruled that the officers' testimony failed to carry the State's burden of showing that they were "sufficiently familiar with the area in question *** on the date of the offense." *Id* at ¶ 27.

Assessing Bierbaum's testimony, there is nothing demonstrating he was "sufficiently familiar" with First Christian Church and its vicinity. He simply answered "yes" when the State asked him whether he "had occasion to drive past or walk past or see the First Christian Church." (Supp. Vol. III, R. 161) Admittedly, Bierbaum had been a patrol officer and worked with confidential sources. (Supp. Vol. III, R. 93) However, he never stated that he had developed close ties and working connections with members of the community surrounding First Christian Church or 410 North Roosevelt. *Fickes*, 2017 IL App (5th) 140300 ¶ 23. He also never stated that he regularly patrolled the area, conducted a significant number of arrests therein, or acquired personal knowledge regarding First Christian Church's operations or activities. *Id.*; *Cadena*, 2013 IL App (2d) 120285, at ¶ 18. In fact, he specifically testified that the basis of his knowledge that First Christian Church was a church was the sign and the cars in the parking lot. (Supp. Vol. III, R. 161–62) Bierbaum's testimony was thin and conclusory, failing to provide particularized evidence of his familiarity with the primary use of the building housing First Christian Church.

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Bierbaum's testimony that he knew that First Christian Church was operating as a church on January 1, 2015, because he saw "signage for a church," cars using the parking lot, the grass having been mowed, and the sign being in good condition is actually further proof that he was not familiar with the building's use as a church. (Supp. Vol. III, R. 161–62, 164) Otherwise he would have related that he knew of the building's primary use from his work in the neighborhood and that it held religious services at specific times, under the leadership of a pastor he knew personally. *Cadena*, 2013 IL App (2d) 120285, at ¶ 18. Nothing in his statement showed that, on January 1, 2015, the building was operating as a church "used primarily for religious worship." *Fickes*, 2017 IL App (5th) 140300, ¶ 24.

For one, whether a building is cared for and the grass is mowed only indicates that the building is currently maintained. It provides no indication on the operations or activities held within. People's Ex. 2–3 only shows that the name of the building was, at the time the picture was taken, "First Christian Church." (Vol. XI, People's Ex# 2–3) Nomenclature alone is not enough to establish that a building was "used primarily for religious worship." *Hardman*, 2017 IL 121453, ¶ 33; *see also Fickes*, 2017 IL App (5th) 140300, ¶ 22. The sign does not list the name of a pastor or reverend; nor does it provide a schedule of when religious services are held. (Vol. XI, People's Ex# 2–3) There is nothing in the sign suggesting that services were held on or about January 1, 2015. (Vol. XI, People's Ex # 2–3)

Bierbaum testified that he took the picture in People Ex. 2–3 in 2015, sometime earlier than June 16, 2015, but not necessarily on January 1, 2015. (Supp. Vol. III, R. 163) Even if it was the same sign he had seen on January 1, 2015, there is nothing in the picture that particularly demonstrates that the building was operating as a church "used primarily for religious worship." *Cadena*, 2013

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IL App (2d) 120285, ¶ 18. The sign is a stone monolith with carved letters. (Vol. XI, People's Ex # 2–3) It is unlikely that such a sign is easily altered or removed. It "is common sense that churches and other entities cease to operate while their physical structures and signs can remain unchanged." *Fickes*, 2017 IL App (5th) 140300, ¶ 24. Equally so, "a building that once housed a church might still be referred to [as such] even if it no longer functioned primarily as one." *Id.* It is entirely possible that the congregation that once operated First Christian Church still had ownership of the building, maintaining its premises and upkeep without using it primarily for religious worship. *Id.* Only a person "sufficiently familiar" with the building's activities could testify to the difference. *Id.* at ¶ 27; *Cadena*, 2013 IL App (2d) 120285, at ¶ 18.

Finally, Bierbaum stated that, on January 1, 2015, he saw cars using the parking lot of First Christian Church. (Supp. Vol. III, R. 162) However, he indicated that he did not go to church on that date. (Supp. Vol. III, R. 162) Nor did he testify that he was a member of the active congregation. Yet, he indicated that he did not use First Christian Church's parking lot because of the same concerns arising out of using the parking lot of any other business. (Supp. Vol. III, R. 162) As far as Bierbaum knew, the building at issue may well have been the auxiliary offices of a larger entity known as the "First Christian Church." Equally so, the cars in the parking lot may well have not been from persons attending church services. Bierbaum's testimony does not demonstrate that he had personal knowledge of the church's active status equal to those of a "neighbor" or "someone affiliated with the church." *Cadena*, 2013 IL App (2d) 120285, at ¶ 18. As a result, Bierbaum's testimony failed to establish that he was "sufficiently familiar" with First Christian Church to provide particularized evidence showing it was used primarily for religious

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worship on January 1, 2015. *Fickes*, 2017 IL App (5th) 140300, ¶ 27. And consequently, the State's evidence fell short of the particularized evidence required to prove beyond a reasonable doubt that Newton's unlawful delivery occurred within a 1,000 feet of a "church *** used primarily for religious worship." *Hardman*, 2017 IL 121453, ¶ 33.

CONCLUSION

Thus, the State failed to prove beyond a reasonable doubt that, on January 1, 2015, First Christian Church was an active church used primarily for religious worship.

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CONCLUSION

Therefore, Jafaria Newton respectfully requests that this Court reverse the appellate court's judgment, vacate his conviction for the enhanced offense of delivery of a controlled substance within 1,000 feet of a church, reduce his conviction to the lesser-included offense of delivery of a controlled substance, a Class 2 felony, and remand for re-sentencing.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I, Sonthonax B. SaintGermain, certify that this brief conforms to the requirements of Supreme Court Rule 341(a) and (b). The length of this brief, excluding pages containing 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 25 pages.

/s/Sonthonax B. SaintGermain
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No. 122958

IN THE

SUPREME COURT OF ILLINOIS

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

NOTICE AND PROOF OF SERVICE

Lisa Madigan, Attorney General, 100 W. Randolph St., Chicago, IL 60601, mglick@atg.state.il.us;

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Jafaria Deforrest Newton, Register No. K79062, Lincoln Correctional Center, P.O. Box 549, Lincoln, IL 62656

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 February 20, 2018, the Brief and Argument was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the defendant-appellant in an envelope deposited in a U.S. mail box in Springfield, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Brief and Argument to the Clerk of the above Court.

E-FILED
2/20/2018 11:00 AM
Carolyn Taft Grosboll
SUPREME COURT CLERK

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APPENDIX TO THE BRIEF

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Report of Proceedings

Exhibits - (Vol. XI)

People's - 1A, 1B, 1C, 6-8 & 11A

Defendant's - 1 & 2

Small envelope - People's 4, 5, 11 & 15

Large envelope - People's 2, 2-1, 2-2, 2-3, 3, 4-1, 4-2, 4-3, 5-1, 5-2, 10, 12A & 12B

Supp. Report of Proceedings

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NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2017 IL App (4th) 150798-U

NO. 4-15-0798

FILED
November 6, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
JAFARIA DEFORREST NEWTON,	)	No. 15CF8
Defendant-Appellant.	)	
	)	Honorable
	)	Robert L. Freitag,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Knecht and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding the evidence was sufficient to prove beyond a reasonable doubt that (1) defendant was guilty of unlawful delivery of a controlled substance, and (2) the delivery occurred within 1,000 feet of a church.

¶ 2 After a jury trial, defendant, Jafaria Deforrest Newton, was convicted of two counts of unlawful delivery of a controlled substance, one of those for delivery within 1,000 feet of a church. The trial court merged the convictions and sentenced defendant to eight years in prison. Defendant appeals, arguing the evidence was insufficient to prove (1) he directly and knowingly participated in the drug transaction, and (2) the church was operating as a church on the date of the transaction. We find the State sufficiently proved both offenses. Accordingly, we affirm.

¶ 3 I. BACKGROUND

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¶ 4 This case centers on two drug transactions arranged by the Bloomington police department using two different confidential informants. The first controlled buy was conducted on December 22, 2014, with informant Karrie Robbins. The second transaction was conducted on January 1, 2015, with informant Jorge Rodriguez, a/k/a Sepi. Based on these transactions, on January 2, 2015, the State filed charges against defendant, alleging he knowingly and unlawfully delivered less than one gram of cocaine to Robbins (720 ILCS 570/401(d)(i) (West 2014) (count II)). The State alleged the transaction occurred within 1,000 feet of the First Christian Church, 401 West Jefferson Street, at the corner of North Roosevelt Avenue and Jefferson Street, Bloomington (720 ILCS 570/407(b)(2) (West 2014) (count I)). The State also alleged defendant committed the same offenses, this time delivering less than one gram of cocaine to informant "Sepi" (count IV) within 1,000 feet of the First Christian Church (count III). Superseding indictments were filed on January 7, 2015.

¶ 5 We summarize only the testimony from defendant's June 2015 jury trial relevant to this appeal. Robbins, who admitted she was a 47-year-old drug addict working as a confidential informant, testified she suggested to Bierbaum, a vice detective with the Bloomington police department, that she purchase drugs from Sepi, who lived at 410 North Roosevelt Avenue, at the corner of Roosevelt Avenue and Market Street. After arranging the transaction on December 22, 2014, she went to Sepi's house. Approximately 15 minutes after she got there, two black men arrived: a shorter one with dreadlocks and a taller one with short hair wearing a red hoodie. She said the shorter man introduced himself as "Dreads." She identified defendant as the man known as "Dreads." Robbins said Sepi and the taller man went into the kitchen, leaving her and defendant in the living room. She said defendant stayed in the

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living room the entire time. The two men stayed in the residence for only 5 to 10 minutes. After the men left, Sepi gave Robbins the package of crack cocaine.

¶ 6 Next, Bierbaum testified as the case agent for both controlled buys. Speaking specifically about the January 1, 2015, transaction, he said this was "essentially the same investigation as the first buy that occurred on December 22[, 2014]." As a result of the earlier transaction, the police arrested Sepi. Sepi then agreed to work with them as a confidential source. Bierbaum set up surveillance inside Sepi's house using a video camera. Sepi called his drug contact and ordered crack cocaine. After conducting relevant searches, Bierbaum gave Sepi $150 of prerecorded money. After the transaction, Sepi gave Bierbaum three small bags of purported crack cocaine. Bierbaum field tested and weighed the substance and watched the surveillance video recording of the transaction. The video was published to the jury.

¶ 7 Bierbaum said he spoke with defendant during a recorded interview at the police station after defendant's arrest. Defendant explained he had the marked money because "his buddy had given it to him so that he could buy liquor later on." Defendant said he had no knowledge of a drug transaction; "he had not watched any drug deal happen." He also said he was not present during the transaction on December 22, 2014. Sepi was unavailable to testify at the trial because, according to Bierbaum, Sepi had absconded to Puerto Rico.

¶ 8 Bierbaum testified he had located the First Christian Church at the corner of West Jefferson Street and North Roosevelt Avenue in relation to Sepi's residence at 410 North Roosevelt Avenue using a buffer map generated by the police department. According to this map, the church was within 1,000 feet of Sepi's residence, approximately one and a half blocks away. Using a calibrated measuring wheel, Bierbaum said he measured the distance between Sepi's residence and the church at 518.07 feet. He said in his professional and personal

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experience he has had the occasion to drive or walk past this church. The following exchange occurred:

"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 [were] coming and going. And unfortunately, we often get our own police department call[ed] 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."

¶ 9 Bloomington police officer Stephen Brown testified he conducted surveillance of Sepi's residence during the January 1, 2015, controlled buy. He watched two males enter the

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residence and exit soon after. Brown then got a call to assist with searching the suspects who had been arrested. Officer Justin Shively was already at the scene and handed Brown $150 he had recovered from the ground near defendant. Brown took the money to the police station to compare serial numbers. Brown said: "[I]f I recall correctly, there [were] two $50 bills that matched the serial number—the serial numbers matched the buy money that was used." The prosecutor showed Brown the documentation of the prerecorded buy money used in the January 1, 2015, transaction. He said he could not recall whether there was another $50 bill or other denominations. The prosecutor showed Brown the exhibit containing the money. Brown opened the exhibit and indicated he had misspoke earlier. He said there was "actually a hundred dollar bill *** and then two 20's and a 10 to make it 150," not two $50 bills. All of the bills matched the prerecorded buy money used in the controlled transaction on January 1, 2015. On cross-examination, Brown reviewed the report he had prepared on January 14, 2015, which indicated he had recorded two $50 bills. He claims that report was "written in error, basically."

¶ 10 Officer Shively testified he was dispatched to assist in the suspects' arrests. During his pursuit, Shively yelled at the suspects, later identified as defendant and Suggs, to get on the ground. They both complied. Shively said as defendant got on the ground, he reached his hand out and dropped something in the sewer grate. Using his flashlight, Shively saw in the sewer "a bundled up amount of US currency that was sitting on a bunch of leaves and sticks and everything else." The money was photographed before being handed over to Bierbaum. The State rested.

¶ 11 Defendant moved for a directed verdict, arguing the State proved only that defendant was present for the two controlled buys but failed to prove defendant's further involvement or accountability in the transactions. The trial court denied the motion.

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¶ 12 Defendant called Richard Suggs as a witness. Suggs said he and defendant had been friends for several years. Suggs admitted his involvement in the drug transactions, but said defendant had no part in either transaction. Defendant accompanied Suggs everywhere because Suggs did not want defendant, who was staying at his house, to stay there without him. On the dates of the transactions, Suggs told defendant they needed to "make a run real quick, somebody owed [Suggs] some money." He did not tell defendant why the person owed him money or that they would be involved in a drug transaction. Suggs said on January 1, 2015, he and Sepi made the transaction in Sepi's kitchen. Defendant was not in the kitchen and, as far as Suggs knew, defendant could not see what was going on. Suggs said defendant took the money because Suggs had asked him to buy some liquor with it. Defendant never asked Suggs why Sepi owed him money.

¶ 13 On cross-examination, Suggs admitted he had prior drug-related convictions. He also admitted he had told Bierbaum that defendant "knew what was going on," but that was only after Bierbaum had badgered him during questioning. Suggs said he finally just told Bierbaum what he wanted to hear—that is, yes, defendant knew what was going on. But, he said, regardless of what he had told Bierbaum, he had not told defendant "it was a drug deal." Defendant rested.

¶ 14 The jury found defendant not guilty of counts I and II related to the controlled buy on December 22, 2014, and guilty of counts III and IV related to the controlled buy on January 1, 2015. Defendant filed a motion for a new trial, challenging the sufficiency of the evidence. After denying defendant's motion, the trial court merged defendant's convictions and sentenced him to eight years in prison.

¶ 15 This appeal followed.

¶ 16 II. ANALYSIS

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¶ 17 Defendant claims the State failed to prove (1) him guilty beyond a reasonable doubt of unlawful delivery of a controlled substance, and (2) the transaction occurred within 1,000 feet of a church. We disagree and affirm, finding the evidence, when viewed in a light most favorable to the prosecution, was sufficient to support the jury's verdicts.

¶ 18 With regard to his first claim of error, defendant argues no evidence showed he directly participated in the drug transaction on January 1, 2015. He explains he was in possession of the buy money only at Suggs' request to purchase liquor. He claims the fact he had the money at the time he was arrested did not prove he assisted in the planning of, or should be held accountable for, the drug transaction.

¶ 19 A criminal conviction will not be set aside unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. *People v. Givens*, 237 Ill. 2d 311, 334 (2010). When presented with a challenge to the sufficiency of the evidence, it is not the function of this court to retry the defendant. 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. *Givens*, 237 Ill. 2d at 334. We, as the reviewing court, must allow all reasonable inferences from the record in favor of the prosecution. *Givens*, 237 Ill. 2d at 334.

¶ 20 The theory of accountability holds a defendant responsible for another's conduct if "(1) defendant solicited, aided, abetted, agreed or attempted to aid another person in the planning or commission of the offense; (2) this participation [took] place either before or during commission of the offense; and (3) [the act was performed] with the concurrent, specific intent to facilitate or promote the commission of the offense." *People v. Saldana*, 146 Ill. App. 3d 328, 334-35 (1986). "Mere presence at the scene of a crime, even the knowledge that a crime is being

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committed, or negative acquiescence is not enough to constitute a person as a principal, but one may aid and abet without actively participating in the overt act." *Saldana*, 146 Ill. App. 3d at 335.

¶ 21 Defendant, citing *People v. Deatherage*, 122 Ill. App. 3d 620 (1984), argues there was insufficient evidence to find him guilty under a theory of accountability. In *Deatherage*, the defendant was present at the home during the drug transaction and answered a question about the price. However, the defendant did not participate in the drug transaction. It was possible he was merely an innocent bystander. *Deatherage*, 122 Ill. App. 3d at 624. The appellate court held the defendant's presence was not enough to sustain an unlawful delivery conviction on a theory of accountablility. See *Deatherage*, 122 Ill. App. 3d at 623-24. The court found no evidence of an agreement between the two sellers. *Deatherage*, 122 Ill. App. 3d at 623.

¶ 22 In contrast to *Deatherage*, however, defendant here, as the video recording indicated, seemed to be a primary participant, not merely Suggs' tag-along companion. The video evidence suggested it was reasonable to assume defendant had participated in the planning of the transaction because he immediately, without hesitation, picked up the money from the table as soon as Sepi set it down.

¶ 23 Although Suggs testified defendant knew nothing of the transaction and only accompanied him to Sepi's house, the jury was free to interpret the evidence as it saw fit. The jury may consider the reasonableness of the defense offered and may reject that evidence when it finds it contradictory, unlikely, or improbable in light of other facts before it. *People v. Eliason*, 117 Ill. App. 3d 683, 696 (1983). It is clear from our review of the video recording of the controlled buy on January 1, 2015, that defendant was more involved in, or at least more aware of, the transaction than Suggs let on. According to the video, defendant entered Sepi's residence first and walked immediately over to stand in front of Sepi, who was seated on the couch. Suggs

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entered behind defendant and stood next to him in front of Sepi. Sepi's body blocked everyone's hand movements but it was clear Sepi leaned down and then immediately defendant leaned down and picked up cash. At the time, Suggs was removing his gloves. All three moved in the same direction and disappeared off camera. Defendant appeared back in view for a few seconds and looked toward the direction from which he had come. Defendant then walked that direction again off camera. He appeared again, walking toward the front door immediately followed by Sepi and then Suggs.

¶ 24 Viewing this evidence in the light most favorable to the prosecution, we find the video recording reasonably supported the interpretation that defendant was not an innocent bystander, merely waiting for his friend in another room, but was an active participant in the transaction. Defendant moves through the residence with the other two, appearing as a knowing and willing participant in the transaction. It seemed apparent from this video that it was defendant's job to get the money from Suggs. We find this video evidence, coupled with Shively's testimony that he saw defendant attempt to conceal the money, supported the jury's verdict finding defendant guilty under the theory of accountability.

¶ 25 Defendant also argues the State did not prove beyond a reasonable doubt that there was a church within 1,000 feet of the site of the transaction. Again, we review claims of insufficient evidence to determine 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. *Givens*, 237 Ill. 2d at 334.

¶ 26 Section 401(d)(i) of the Illinois Controlled Substances Act (Act) (720 ILCS 570/401(d)(i) (West 2014)) makes it a crime to deliver less than one gram of any substance containing cocaine. A violation of section 401(d)(i) is a Class 2 felony, which is punishable by a

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term of imprisonment of not less than three years and not more than seven years. 730 ILCS 5/5-4.5-35 (West 2014). Section 407(b)(1) of the Act enhances a section 401(c) (720 ILCS 570/401(c) (West 2014)) offense to a Class X felony if the violation occurs "within 1,000 feet of the real property comprising any church, synagogue, or other building, structure, or place used primarily for religious worship." 720 ILCS 570/407(b)(1) (West 2014). A Class X felony is punishable by a term of imprisonment of not less than 6 years and not more than 30 years. 730 ILCS 5/5-4.5-25 (West 2014).

¶ 27 To prove the unlawful delivery of a controlled substance within 1,000 feet of a church, the State must prove, beyond a reasonable doubt, that the building in question was "used primarily for religious worship" on the date of the offense. 720 ILCS 570/407(b)(2) (West 2014). As this court mentioned in *People v. Sims*, 2014 IL App (4th) 130568, ¶ 106, it would be reasonable to assume that since several additional years of imprisonment could be riding on the issue of whether the building actually operates as a church (see 720 ILCS 570/407(b)(2) (West 2014); 730 ILCS 5/5-4.5-35, 5-4.5-25 (West 2014)), the State would " 'elicit[ ] testimony from someone affiliated with the church,' " like a pastor or parishioner. However, as we most often see, that does not happen, and we are left with the question of whether a police officer's conclusory testimony qualifies as proof, beyond a reasonable doubt, that the building in question was used primarily as a place for religious worship. *Sims*, 2014 IL App (4th) 130568, ¶ 106 (quoting *People v. Ortiz*, 2012 IL App (2d) 101261, ¶ 11).

¶ 28 In *Sims*, we reviewed the seemingly contradictory opinions of other districts regarding what is required to prove that a building was actually operating as place for religious worship. See *Sims*, 2014 IL App (4th) 130568, ¶¶ 107-133. See also *People v. Foster*, 354 Ill. App. 3d 564, 568 (2004) (holding that nomenclature is enough); *People v. Cadena*, 2013 IL App

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(2d) 120285, ¶ 17 (holding that the name is not enough; the State must prove how the police officer knew what the building was being used for); *People v. Boykin*, 2013 IL App (1st) 112696, ¶ 15 (holding that the name is not enough but involved a school, not a church). We declined to follow *Cadena* and *Boykin*, and instead followed *Foster*, which found that, after viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could reasonably infer that, if the building houses a religious organization that has "church" in its name, then it is a church within the meaning of the applicable statute. "According to *Foster*, all a police officer has to do is refer to the building by a proper name with the term 'church' in it—'New Hope Church,' for example—and that proves, beyond a reasonable doubt, that the building was used primarily for religious worship on the date of the offense." *Sims*, 2014 IL App (4th) 130568, ¶ 107.

¶ 29 Bierbaum testified that in his personal experience, as well as in his professional experience as a Bloomington police officer, the First Christian Church, at the intersection of West Jefferson Street and North Roosevelt Avenue, was "as far as [he knew]" operating as a church on December 22, 2014, January 1, 2015, and on the date of his testimony. As we noted in *Sims*, a police officer's testimony may be sufficient to convince a jury that, based on the officer's familiarity with areas within his jurisdiction, it is reasonable to assume he knows whether a given church was active on a particular date. In *Sims*, 2014 IL App (4th) 130568, ¶ 138, we said: "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." When we look at the evidence in this case in the light most favorable to the prosecution, we find a rational trier of fact could have believed Bierbaum's testimony that he was familiar with the neighborhood and that the building

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housing the First Christian Church on West Jefferson Street was in use as a church on the dates of the drug offense.

¶ 30 III. CONCLUSION

¶ 31 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its $75 statutory assessment against defendant as costs of this appeal.

¶ 32 Affirmed.

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IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT
McLEAN COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS
VS.
JAFARIA DEFORREST NEWTON

CASE NO: 15 CF 8
JUDGE: ROBERT FREITAG

NOTICE OF APPEAL

Joining Prior Appeal / (Separate Appeal) / Cross Appeal
(circle one)

An Appeal is taken from the order or judgment described below:

1. Court to which Appeal is taken:
ILLINOIS APPELLATE COURT
FOURTH JUDICIAL DISTRICT
PO BOX 19206
SPRINGFIELD, IL 62794-9206

Email:
N/A

FILED
McLEAN COUNTY
OCT 07 2015
CIRCUIT CLERK

2. Name of Appellant and address to which Notices shall be sent:
JAFARIA DEFORREST NEWTON, K79062
13423 E 1150TH AVE
ROBINSON, IL 62454

N/A

3. Name and address of appellant's attorney on appeal:
ILLINOIS APPELLATE DEFENDER
MICHAEL J. PELLETIER
400 WEST MONROE, SUITE 303
P.O. BOX 5240
SPRINGFIELD, IL 62705-5240

Email:
4thDistrict@osad.state.il.us

If appellant is indigent and has no attorney, does he want one appointed? **YES**

4. Date of order of judgment: **10/2/15**

5. Offense of which convicted: **UNLAWFUL DELIVERY OF A CONTROLLED SUBSTANCE WITHIN 1000 FEET OF A CHURCH AND UNLAWFUL DELIVERY OF A CONTROLLED SUBSTANCE**

6. Sentence: **8 YEARS IN IDOC**

7. If appeal is not from a conviction, nature of order appealed from: **CONVICTION, SENTENCE, AND DENIAL OF MOTION TO RECONSIDER SENTENCE**

8. If the appeal is from a judgment of a circuit court holding unconstitutional a statue of the United States or of this state, a copy of the court's findings made in compliance with Rule 18 shall be appended to the notice of appeal.

Don R Everhart Jr
Don R. Everhart, Jr., Circuit Clerk

Rebecca Dodson
Deputy

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