

No. 1-15-0501

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County
)	
)	No. 14 CR 04368
v.)	
)	
WILLIE LUCKETT,)	Honorable
)	Charles P. Burns,
Defendant-Appellant.)	Judge, Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Cunningham and Delort concurred in the judgment.

ORDER

¶ 1 *Held:* The judgment of the circuit court is reversed where the State did not present sufficient evidence to establish that the defendant resided or was temporarily domiciled in Chicago for a period of three or more days.

¶ 2 Following a bench trial, the defendant, Willie Lockett, was convicted of failure to register as a sex offender in violation of section 3(a)(1) of the Sex Offender Registration Act (Act) (730 ILCS 150/3(a)(1) (West 2012)). He was sentenced to six years' imprisonment to be followed by a three-year term of mandatory supervised release (MSR). On appeal, the defendant argues that the evidence was insufficient to prove him guilty beyond a reasonable doubt where it failed to

1-15-0501

show that he was: (1) residing or temporarily domiciled in Chicago; (2) not already registered in any other municipality in Illinois; and (3) required to register as a sex offender due to his registration period being extended or tolled. He also argues that the circuit court failed to award him the proper amount of presentence incarceration credit and improperly imposed several fees that were actually fines. For the following reasons, we reverse.

¶ 3 Due to an incident occurring on February 19, 2014, the defendant was charged by indictment with one count of failing to register as a sex offender with the Chicago police department within three days of establishing a residence or temporary domicile in Chicago in violation of section 3(a)(1) of the Act (730 ILCS 150/3(a)(1) (West 2012)). The indictment alleges that the defendant failed to register between August 12, 2013, and February 19, 2014. It also states that he was previously convicted of failure to register as a sex offender "UNDER CASE NUMBER 06CR—25555." The defendant was also charged with one count of knowingly loitering within 500 feet of a school "WHILE PERSONS UNDER THE AGE OF 18 WERE PRESENT IN THE BUILDING" in violation of section 11-9.3(b) of the Criminal Code of 1961 (720 ILCS 5/11-9.3(b) (West 2012)).

¶ 4 The case proceeded to a bench trial, at which the following evidence was adduced.

¶ 5 The State introduced a certified copy of the defendant's 1997 conviction for criminal sexual assault (case number 95 CR 3496901), which showed that he was sentenced to four years' imprisonment on July 17, 1997. The parties stipulated that, if "an agent from the Illinois Department of Corrections" (IDOC) was called to testify, he:

"would identify the defendant in open court and testify that the defendant was released from [IDOC] custody on August 9th of 2013 and was notified pursuant to the [Act] of his requirements to register by the date of August 12th of 2013 with the police agency in the city *** where he was going to be domiciled."

1-15-0501

The parties also stipulated that the IDOC agent would identify the Notification Form (Form) "that was used to advise the defendant of his registration obligations," and would verify that it was a true and accurate copy. The IDOC agent would further state that he "went over each of the requirements on the second page, and the defendant initialled [*sic*] each of [them], including the fact that his registration obligation was due by August 12th of 2013." He would also testify that the defendant signed an acknowledgement at the bottom of the second page. The circuit court asked defense counsel whether she was also "stipulating to the foundation for" the Form and she answered affirmatively.

¶ 6 After the certified copy of the defendant's 1997 conviction, the IDOC agent's stipulated testimony, and the Form were admitted into evidence, the State called Officer Jose Barrios to testify. Officer Barrios stated that, at approximately 10:40 a.m. on February 19, 2014, he was patrolling with his partner, Officer Pat Cane, when he noticed the defendant "loitering in front of" a preschool, Diana's Playpen of Little Geniuses (Diana's Playpen), located at 6236 South Western Avenue in Chicago. Because Diana's Playpen was in "a violence zone," he approached the defendant and conducted a "field interview." According to Officer Barrios, after searching the police database, he discovered that the defendant was a sex offender who was "delinquent in registration." When he asked the defendant for his address, the defendant stated that it was "2449 West 63rd Street in Chicago." Thereafter, he took the defendant into custody.

¶ 7 On cross examination, Officer Barrios admitted that he did not "know exactly whether [the defendant] resided at" 2449 West 63rd Street and that the defendant did not tell him whether he was temporarily domiciled there.

¶ 8 Detective William Murawski testified that he interviewed the defendant on February 19, 2014. During the interview, the defendant admitted that he was "a convicted sex offender," but stated that "he wasn't able to register" because "he didn't have a birth certificate or Social

1-15-0501

Security card or [something] to that effect." Detective Murawski stated that, when he asked the defendant the last time he registered as a sex offender, the defendant told him it had been "roughly two years, but *** he wasn't certain." Detective Murawski further testified that the defendant told him that he was only in front of Diana's Playpen "for a few minutes" and that he was not aware it was a preschool. According to Detective Murawski, on February 26, 2014, he visited Diana's Playpen to confirm that it was a "[f]unctioning, operational occupied preschool."

¶ 9 On cross examination, Detective Murawski and defense counsel engaged in the following colloquy regarding the defendant's address:

"Q. *** Officer, did you speak to [the defendant] about where he resided?

A. Yes.

Q. And did he at any point tell you that he was domiciled at the residence he gave you?

A. I believe he said he was homeless at times as well. I am not sure if I had a hard address for him.

Q. So you are not sure whether or not he in fact gave you a physical residence, correct?

A. At this particular time, no. I would have to review my notes."

¶ 10 Sergeant Maria Jacobson, who was assigned to the criminal registration section of the Chicago police department, testified that, after searching the registration system, she did not find any record of the defendant having registered as a sex offender between August 12, 2013 (three days after his release from prison), and February 19, 2014 (the date of his arrest). There was also no indication that he "came and told [the Chicago police department] that he was moving out [of] the jurisdiction of Chicago." However, the police department's records showed that the defendant was registered as a sex offender in Chicago "at one time." Sergeant Jacobson admitted

1-15-0501

that the criminal registration section does not have access to records showing that a sex offender is registered in another Illinois city.

¶ 11 After the State rested, the defense moved for a directed finding, arguing that the State failed to prove that the defendant resided or was temporarily domiciled in Chicago. According to counsel, the defendant "was in fact homeless;" therefore, if he was going to be charged with anything, it should have been for failure to report weekly pursuant to section 6 of the Act (730 ILCS 150/6 (West 2012)). The circuit court denied the motion as to the charge of failure to register; however, it granted the motion as to the charge of knowingly loitering within 500 feet of a school while persons under the age of 18 were present. The defense then rested its case without presenting evidence.

¶ 12 The circuit court found the defendant guilty of failure to register as a sex offender. In so holding, the court explained:

"I have heard no testimony whatsoever that [the defendant] was domiciled anyplace besides the City of Chicago. The evidence is that when he was arrested, he stated an address on 63rd Street. While he might have been homeless and while I understand [defense counsel's] argument that the[State has] not proven where he was living, there is a definition in the statute that talks about an individual who lacks a fixed address or temporary domicile, that they need to register within three days after ceasing that fixed residence. And if they lack a fixed residence, they need to report weekly to include other locations where a person is staying."

¶ 13 In December 2014, the defendant filed a motion for a new trial, arguing, *inter alia*, that the State failed to prove him guilty beyond a reasonable doubt of failure to register as a sex offender because it did not establish that he resided or was temporarily domiciled in Chicago "for

1-15-0501

more than 3 days." The circuit court denied the motion, explaining that it did not "believe it's incumbent upon the State to prove where in fact [the defendant] lived as an element of the offense;" instead, "the element of the offense is the failure to register." At the sentencing hearing in January 2015, the court sentenced the defendant to six years' imprisonment with a three-year MSR term. This appeal followed.

¶ 14 The defendant's first assignment of error is that the evidence was insufficient to prove him guilty beyond a reasonable doubt of failing to register as a sex offender in violation of section 3(a)(1) of the Act. More specifically, he argues that the State failed to prove that he: (1) resided or was temporarily domiciled in Chicago; (2) was not already registered in any other municipality in Illinois; and (3) had a duty to register as a sex offender because his registration period had been extended or tolled. In response, the State contends that it proved beyond a reasonable doubt that the defendant had a duty to register as a sex offender between August 12, 2013, and February 19, 2014, that he resided in Chicago for more than three days, and that, despite this, he did not register in Chicago.

¶ 15 A reviewing court will not overturn a defendant's conviction unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of his guilt. *People v. Givens*, 237 Ill. 2d 311, 334 (2010). When presented with a sufficiency-of-the-evidence challenge, it is not the function of the reviewing court to retry the defendant. *Id.* Rather, the relevant question is " 'whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " (Emphasis in original.) *People v. Davison*, 233 Ill. 2d 30, 43 (2009) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). The reviewing court should not substitute its judgment for that of the trier of fact; instead, "[t]he weight to be given the witnesses' testimony, the credibility of the witnesses, resolution of inconsistencies and conflicts in the evidence, and reasonable

1-15-0501

inferences to be drawn from the testimony are the responsibility of the trier of fact." *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006).

¶ 16 We first address the defendant's contention that the State failed to prove him guilty beyond a reasonable doubt because it did not establish that he resided or was temporarily domiciled in Chicago for three or more days. The State argues that it presented sufficient evidence to prove that the defendant resided in Chicago because he did not register as a sex offender between August 12, 2013 (three days after his release from prison), and February 19, 2014 (the date of his arrest); and he had previously registered in Chicago and did not notify the Chicago police department that he was moving away. We agree with the defendant.

¶ 17 The State charged the defendant with violating section 3(a)(1) of the Act, which provides that a sex offender:

"shall register *** with the chief of police in the municipality in which he *** resides or is temporarily domiciled for a period of time of 3 or more days, unless the municipality is the City of Chicago, in which case he or she shall register at the Chicago Police Department Headquarters." 730 ILCS 150/3(a)(1) (West 2012).

The Act defines "residence and temporary domicile" as "any and all places where the sex offender resides for an aggregate period of time of 3 or more days during any calendar year." 730 ILCS 150/3(a) (West 2012).

¶ 18 In *People v. Gomez*, 2017 IL App (1st) 142950, ¶ 1, the defendant was found guilty of failing to register as a sex offender pursuant to section 3(a)(1) of the Act. On appeal, the defendant's conviction was reversed based upon a finding that the State failed to prove that he resided in Chicago for three days prior to his arrest. *Id.* ¶ 20. In so holding, the *Gomez* court

1-15-0501

reasoned that, although the defendant may have been in Chicago on the date of his arrest, that fact did not:

"prove that he had resided in Chicago both on that day and at least two other days in that calendar year, to reach the necessary three-day *** element under the statute. Without any evidence placing [the] defendant's residence in Chicago for at least three days, the State failed to prove that [he] permanently resided, or was temporarily domiciled, in Chicago. As such, the State failed to prove that [the] defendant was required to register in Chicago." *Id.*

¶ 19 The *Gomez* court rejected the State's argument that the trier of fact could have inferred that the defendant resided in Chicago for three or more days because: (1) he did not register as a sex offender within three days of his release from prison; (2) there was no record of him registering in Chicago or anywhere else; and (3) he previously attempted to register in Chicago using a Chicago address. *Gomez*, 2017 IL App (1st) 142950, ¶ 21. The court explained:

"While the law does require [the] defendant to register within three days of his release from prison, and the evidence showed that [he] never registered anywhere, [he] was not charged with failing to register within three days of his prison release or with failing to comply with annual registration (or even with failing to register weekly if homeless). *** He was charged with failing to register *in Chicago*. True, it is well within the realm of possibility that [the] defendant moved to Chicago for three days or longer after he was released from prison, but it is just as possible that he did not." (Emphasis in original.) *Id.* ¶ 22.

We find the reasoning in *Gomez* persuasive.

¶ 20 In this case, the defendant was arrested in Chicago and, at that time, he told Officer Barrios that his address was 2449 West 63rd Street. However, Officer Barrios did not know

1-15-0501

whether the defendant "resided" or was temporarily domiciled at that address. Based upon the holding in *Gomez*, we find that this evidence was insufficient to prove that the defendant resided or was temporarily domiciled in Chicago for three or more days as is required to sustain a conviction under section 3(a)(1) of the Act. See also *People v. Wlecke*, 2014 IL App (1st) 112467, ¶ 21 (holding that the evidence was insufficient to prove that the defendant lacked a "fixed residence" where the record was devoid of "any evidence of [his] presence (or absence) at either of the two addresses given by him *** for an aggregate period of five days or more."). At most, the evidence in this case showed that the defendant was present in Chicago for one day; the day he was arrested.

¶ 21 We also do not believe that the following evidence was sufficient to sustain the defendant's conviction: (1) the defendant being notified of his sex-offender-registration requirement following his release from prison; (2) the defendant previously registering in Chicago and never informing the Chicago police department he was moving away; and (3) the defendant being homeless. Like the defendant in *Gomez*, the defendant here was charged with violating section 3(a)(1) of the Act, which required the State to prove that he lived in Chicago for three or more days. He was not charged with failing to register within three days of his release from prison (730 ILCS 150/3(c)(4) (West 2012)), with failing to report a change of address (730 ILCS 150/6 (West 2012)), or with failing to register weekly if he was homeless (*Id.*). Regardless of whether the defendant may have violated other provisions of the Act, the evidence presented did not show that he resided or was temporarily domiciled in Chicago for three or more days, and consequently, the State did not prove him guilty beyond a reasonable doubt of violating section 3(a)(1) of the Act. We, therefore, reverse the defendant's conviction and sentence, and need not address his other assignments of error.

¶ 22 Reversed.