

2017 IL App (1st) 151397-U

No. 1-15-1397

Order filed July 12, 2017

Third Division

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).

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.
)	
v.)	No. 14 CR 157
)	
BRIAN POLK,)	Honorable
)	Stanley J. Sacks,
Defendant-Appellant.)	Judge, presiding.

JUSTICE LAVIN delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Cobbs concurred in the judgment.

ORDER

- ¶ 1 *Held:* Defendant's conviction for failure to report a change of address in violation of the Sex Offender Registration Act is reversed because the State failed to prove beyond a reasonable doubt that he remained under a duty to register as a sex offender 23 years after his underlying offense.
- ¶ 2 Following a bench trial, defendant Brian Polk was convicted of failure to report a change of address in violation of section 6 of the Sex Offender Registration Act (SORA) (730 ILCS 150/6 (West 2012)) and sentenced to four years' imprisonment. Defendant appeals, arguing that

the State failed to prove beyond a reasonable doubt that: (1) he was required to register as a sex offender pursuant to SORA; and (2) he established a new address requiring registration. For the reasons set forth herein, we reverse the judgment of the trial court.

¶ 3 Defendant was charged with two counts of failure to report a change of address in violation of section 6 of SORA (730 ILCS 150/6 (West 2012)). Count 1 charged that defendant failed to report a change of address between November 14 and November 18, 2013. Count 2 charged that defendant failed to report a change of address between February 12 and November 18, 2013. Defendant waived his right to a jury trial, and the case proceeded to a bench trial.

¶ 4 The State first proceeded by way of stipulation. The parties stipulated that, if called as a witness, Detective Ronald Jenkins would identify a SORA registration form that was filled out and signed by defendant. He would testify that defendant initialed sections of the form which informed him of his obligation to update local jurisdictions after a change in address. Defendant signed the form on January 7, 2013, and listed his address as 1845 South Springfield Avenue, Chicago.

¶ 5 Officer Estrella testified that, on November 18, 2013, she and her partners were traveling in the area of 530 South Leamington Avenue in Chicago and performed a routine traffic stop of a vehicle with an expired registration plate. Estrella identified defendant in open court as the driver of the vehicle. During the traffic stop, defendant produced a driver's license which listed his address as 1436 Fawn Court, Bolingbrook, Illinois. Defendant's license was issued on February 8, 2013. Estrella ran defendant's name through the Law Enforcement Agencies Data System (LEADS), and learned that he was a non-compliant registered sex offender. Estrella then returned to defendant's vehicle and asked him if the address listed on his driver's license was his

current address. Defendant replied in the affirmative, and informed Estrella that he had attempted to register that address, but was unable to do so because it was too close to a park. Estrella took defendant into custody and found an envelope inside defendant's car. The envelope contained a bank statement addressed to defendant at 20908 West Barrington Lane in Plainfield, Illinois. The statement was for the dates of June 22 to August 23, 2013.

¶ 6 Detective Mark Czworniak testified that he interviewed defendant on November 18, 2013. During the interview, defendant informed Czworniak that he resided at 1436 Fawn Court in Bolingbrook. Defendant told Czworniak that he had attempted to register this address but was unable to do so because it was too close to a public park. Defendant also told Czworniak that, in July of 2013, he had resided with his girlfriend at 20908 West Barrington Lane in Plainfield.

¶ 7 The State then entered into evidence a certified copy of defendant's conviction for criminal sexual assault. The certified copy indicates that defendant was convicted on June 12, 1990, and sentenced to a maximum term of 4 years' probation. It also indicates that, on September 14, 1992, defendant violated the terms of his probation and was sentenced to 4 years' imprisonment with credit for 652 days in custody.

¶ 8 Defendant testified that he first registered as a sex offender in 2000, and that, in 2013, he was a registered sex offender. On January 7, 2013, he registered as a sex offender with the Chicago Police Department and listed his address as 1845 South Springfield, where he resided with his aunt and uncle. Defendant stated that, when he was arrested on November 18, 2013, he was still residing at the 1845 South Springfield address and that he had not moved or attempted to move from this address. He testified that he did not attempt to register as a sex offender in

Bolingbrook or Plainfield. He stated that the next time he was required to register was on January 4, 2014.

¶ 9 On cross-examination, defendant acknowledged that, on January 7, 2013, he filled out and signed a SORA registration form which explained the requirement to report a change of address within three days. He also acknowledged that his driver's license listed 1436 Fawn Court in Bolingbrook as his address. He denied telling Officer Estrella that he was living at the Bolingbrook address and denied telling Detective Czworniak that he had attempted to register as a sex offender in Bolingbrook. He also denied telling Czworniak that, in July of 2013, he had moved to a house on Barrington Lane in Plainfield. When confronted with the bank statement which listed his address as 20908 West Barrington Lane, in Plainfield, defendant stated that he "never stayed" there.

¶ 10 In rebuttal, the State offered into evidence a certified copy of defendant's 2003 federal conviction for conspiracy to make false statements in the acquisition of a firearm. The certified copy indicated that defendant was initially sentenced to six years of federal custody, but that, on May 11, 2010, defendant was sentenced to 10 months' imprisonment for violating the terms of his federal supervised release. The trial court admitted the conviction into evidence "for the purpose of impeachment and for that purpose only."

¶ 11 After argument, the trial court found defendant guilty on Count 2 of the indictment, which charged a failure to report a change of address in violation of section 6 of SORA (730 ILCS 150/6 (West 2012)) between the dates of February 12 and November 18, 2013. The court found that defendant's statements to Officer Estrella and Detective Czworniak about residing in Bolingbrook, were corroborated by his driver's license, which indicated that he lived at 1436

Fawn Court in Bolingbrook, Illinois. The court also noted that defendant's statement to Czwarniak about residing in Plainfield, Illinois, was corroborated by defendant's bank statement for the period of June 22 to August 23, 2013, which listed his address as 20908 West Barrington Lane in Plainfield, Illinois. On March 30, 2015, the trial court denied defendant's motion for a new trial and sentenced him to four years' imprisonment. Defendant filed a timely notice of appeal.

¶ 12 On appeal, defendant challenges the sufficiency of the evidence to sustain his conviction. Defendant does not dispute that he was convicted of criminal sexual assault in 1990 or that SORA required him to register for a period of 10 years from his release from prison on that conviction. Rather, he argues that the State failed to prove beyond a reasonable doubt that, as of February 12, 2013, nearly 23 years after his underlying conviction, he remained under a duty to register as a sex offender under SORA.

¶ 13 The State initially responds, relying on *People v. Hughes*, 2015 IL 117242, ¶ 50, that we should decline to consider defendant's argument, as defendant did not argue this issue at the trial court, and "gave the people and the trial court every reason to believe that the issue of whether defendant was required to register was uncontested." We find *Hughes* inapplicable to the case at bar. In *Hughes*, our supreme court found that defendant forfeited any argument that his confession was involuntary by not raising those arguments at the suppression hearing and thereby giving an opportunity to the State and the trial court to, respectively, respond and consider those arguments. *Hughes*, 2015 IL 117242, ¶¶ 44-50.

¶ 14 In the instant case, unlike *Hughes*, we are presented with a sufficiency of the evidence claim. Whereas, in a hearing on a motion to suppress statements, the State responds to a

defendant's evidence and arguments, in a trial, the burden of proving all the elements of a charged offense beyond a reasonable doubt remains on the State. See *People v. Moton*, 277 Ill. App. 3d 1010, 1013 (1996) (“defendant’s failure to object to [the State’s evidence] did not absolve the State of its duty to prove the case beyond a reasonable doubt. Obviously, it is not a defendant’s responsibility to assist the prosecution by signalling [sic] gaps in the State’s evidence”). Further, our supreme court has held that “when a defendant makes a challenge to the sufficiency of the evidence, his or her claim is not subject to the waiver rule and may be raised for the first time on direct appeal.” *People v. Woods*, 214 Ill. 2d 455, 470 (2005).

¶ 15 The due process clause of the fourteenth amendment protects defendants against conviction in state courts except upon proof beyond a reasonable doubt of every fact necessary to constitute the charged crime. *People v. Brown*, 2013 IL 114196, ¶ 48; *Jackson v. Virginia*, 443 U.S. 307, 315-16 (1979). When a court reviews the sufficiency of evidence, it must determine “ ‘whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt.’ ” *People v. Cunningham*, 212 Ill. 2d 274, 279 (2004) (quoting *Jackson*, 443 U.S. at 318). A reviewing court must decide 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. *People v. Lloyd*, 2013 IL 113510, ¶ 42. This means that we must draw all reasonable inferences from the record in favor of the prosecution, and that “ ‘[w]e will not reverse a conviction unless the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant’s guilt.’ ” *Id.* (quoting *People v. Collins*, 214 Ill. 2d 206, 217 (2005)).

¶ 16 In this case, defendant was found guilty of violating section 6 of SORA (730 ILCS 150/6 (West 2012)) for failing to report a change of address between the dates of February 12 and November 18, 2013 (Count 2). In order to sustain a conviction under section 6 of SORA, the State was required to prove beyond a reasonable doubt that “defendant was subject to the reporting requirements under the Act.” *People v. Brock*, 2015 IL App (1st) 133404, ¶ 21.

¶ 17 Pursuant to SORA, any person convicted of criminal sexual assault is labeled as a sex offender. 730 ILCS 150/2(A)(1)(a), (B)(1) (West 2012). As defendant was convicted of criminal sexual assault in 1990, he is labeled as a “sex offender.” 730 ILCS 150/2(A)(1)(a), (B)(1) (West 2012). Section 6 of SORA mandates that a sex offender, who maintains a fixed residence must report in person to, and register with, the law enforcement agency of his jurisdiction within one year from the date of his last registration. 730 ILCS 150/6 (West 2012). Section 6, read together with section 3, mandates that a sex offender, who establishes a new residence, must report such a change to the appropriate law enforcement agency within 3 days. 730 ILCS 150/6, 3(b) (West 2012).

¶ 18 Sex offenders are required to register for a period of 10 years after conviction or adjudication “if not confined to a penal institution, hospital or any other institution or facility, and if confined, for a period of 10 years after parole, discharge or release from any such facility.” 730 ILCS 150/7 (West 2012). “Reconfinement due to a violation of parole, a conviction reviving registration, or other circumstances that do not relate to the original conviction or adjudication shall toll the running of the balance of the 10-year period of registration, which shall not commence running until after final parole, discharge, or release.” *Id.*

¶ 19 After viewing the evidence in the light most favorable to the prosecution, we find that the State failed to prove beyond a reasonable doubt that defendant was still under a duty to register as a sex offender in 2013. The record shows, and defendant acknowledges, that on June 12, 1990, he was convicted of criminal sexual assault and sentenced to probation. On September 14, 1992, defendant was sentenced to four years' imprisonment and given credit for 652 days in custody for violating probation. The State introduced into evidence a certified copy of defendant's 1990 criminal sexual assault conviction, which indicates that defendant was sentenced to four years' imprisonment for violating probation. Importantly, the certified copy of defendant's conviction does not reflect the date of his release from prison for the probation violation. As such, defendant's duty to register under SORA would have ended 10 years after the unknown date of his release from prison for the 1992 violation of probation, unless the 10-year period was tolled pursuant to section 7 of SORA.

¶ 20 The State argues that, in August 2003, which it alleges was within 10 years of defendant's release from prison on the 1992 violation of probation, he pled guilty to federal gun charges and was sentenced to concurrent terms of 60 and 72 months in prison. The State maintains that this conviction tolled defendant's 10-year registration period. The State also points out that, on May 11, 2010, defendant was sentenced to 10 months' imprisonment for violating the terms of his federal supervised release, which further tolled defendant's registration period.

¶ 21 We are not persuaded by the State's argument where it assumes that defendant's 2003 federal gun conviction was within 10 years of his release from prison for the 1992 violation of probation. Given the lack of proximity between defendant's 2003 conviction and his 1992

violation of probation, we cannot say beyond a reasonable doubt that the August 2003 conviction tolled defendant's 10-year registration period. Where a sex offender's duty to register has been tolled by imprisonment or extended by a subsequent conviction, the State should provide evidence of such at trial. Here, the State failed to do so.

¶ 22 Moreover, even had the State established the date of defendant's release from prison for the 1992 violation of probation, the record shows that the trial court admitted the certified copy of defendant's 2003 conviction and subsequent reconfinement for violation of parole "for the purpose of impeachment and for that purpose only." See *People v. Hester*, 271 Ill. App. 3d 954, 960 (1995) (when a defendant testifies at trial, the trial court has the discretion to admit the defendant's prior conviction for impeachment purposes pursuant to *People v. Montgomery*, 47 Ill. 2d 510 (1971)). Absent evidence at trial that defendant's registration was further tolled by reconfinement or extended by a subsequent conviction reviving registration, the evidence was insufficient to prove beyond a reasonable doubt that defendant was subject to the reporting requirements of SORA as of February 12, 2013.

¶ 23 The State nevertheless contends that, in 2003, defendant was convicted of possession of a controlled substance and failure to report change of address in violation of section 6 of SORA. The State maintains that this conviction extended defendant's registration requirement by 10 years. See 730 ILCS 150/7 (West 2012) ("The registration period for any sex offender who fails to comply with any provision of the Act shall extend the period of registration by 10 years beginning from the first date of registration after the violation"). Crucially, however, the State failed to introduce this alleged conviction into evidence altogether. This aside, we note that this conviction is also rendered suspect, for purposes of tolling defendant's 10-year registration

period, where the State failed to show that it was within 10 years of the date of defendant's release from prison for the probation violation. We note that establishing the date of defendant's release from prison for his 1992 probation violation and introducing certified copies of defendant's subsequent convictions would not have been burdensome for the State. This is evidenced by the State's admission of a certified copy of defendant's 1990 criminal sexual assault conviction. Without this information, we cannot say that the record evidence could reasonably support a finding of guilt beyond a reasonable doubt that defendant was still under a duty to register as a sex offender between the dates of February 12 and November 18, 2013.

¶ 24 Having found that the State failed to prove beyond a reasonable doubt that defendant remained under a duty to register as a sex offender, an essential element of a violation of SORA, we need not address defendant's remaining challenge to the sufficiency of the evidence.

¶ 25 For the reasons stated, we reverse defendant's conviction.

¶ 26 Reversed.