2018 IL App (1st) 161717-U
Order filed: December 21, 2018

FIRST DISTRICT
Fifth Division

No. 1-16-1717

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 JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 15 CR 11622
	)	
STEPHEN DURR,	)	Honorable
	)	Kevin Michael Sheehan,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hoffman and Lampkin concurred in the judgment.

ORDER

¶ 1 ***Held***: We reversed the conviction of defendant-appellant for violating the reporting requirement of section 6 of the Sex Offender Registration Act, where the State presented no evidence at trial that defendant failed to timely report his change of address.

¶ 2 Following a bench trial, the trial court convicted defendant-appellant, Stephen Durr, of violating section 6 of the Sex Offender Registration Act (SORA) (730 ILCS 150/6 (West 2018)), for failing to report his change of address within three days to the Chicago Police Department

after having previously been convicted of public indecency. On appeal, defendant contends that the State failed to prove that he did not timely report the change of address. We reverse[1].

¶ 3 The State charged defendant with violating section 6 of the SORA, which states in pertinent part:

> "If any *** person required to register under this Article changes his or her residence address *** he or she shall report in person, to the law enforcement agency with whom he or she last registered, his or her new address *** and register, in person, with the appropriate law enforcement agency within the time period specified in Section 3." *Id.*

¶ 4 Section 3 specifies a three-day time period for registering with the law enforcement agency. 730 ILCS 150/3(b) (West 2018).

¶ 5 At trial, Chicago police officer Leipzig testified that, on April 27, 2015, he was working in the criminal registration unit of the Chicago Police Department. On that day, Officer Leipzig registered defendant as a sex offender for having committed public indecency/lewd exposure. Officer Leipzig identified People's exhibit number 1 as the sex offender registration form which he had assisted defendant in filling out. The form showed that defendant registered his address as 911 North Homan Avenue in Chicago. The back of the form contained paragraphs specifying various duties required of defendant, including that he report any change of address to the Chicago Police Department within three days. Defendant initialed the paragraphs specifying his reporting duty and also signed the form.

¶ 6 Chicago police officer Nicholas Hertko testified that, at approximately 8:25 p.m., on June 22, 2015, he was working in the 19th District police station and had a conversation with Officer

[1]In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order stating with specificity why no substantial question is presented.

Tenaka. After the conversation, Officer Hertko and three other officers went to a first floor apartment located at 540 West Wellington Avenue in Chicago, looking for defendant. The officers knocked on the door, and defendant answered. Defendant told them that he had just moved into the apartment "not too long ago," and he showed them the lease that he had signed on May 6, 2015.

¶ 7 Defendant invited the officers inside his apartment. Officer Hertko observed a mattress, pillow and blanket on the floor, plates in the kitchen, and food in the refrigerator. These items indicated to the officer that defendant was residing in the apartment.

¶ 8 On cross examination, Officer Hertko testified that he saw a mattress, but no box spring, and did not see defendant sleeping on it while the officers were there. There were no chairs or television in the apartment. Officer Hertko did not collect any mail from the apartment.

¶ 9 Following Officer Hertko's testimony, the trial court admitted into evidence People's exhibit number 3; a certified copy of conviction indicating that defendant was convicted of public indecency on May 24, 2005. The State rested.

¶ 10 Defendant testified on his own behalf that he was arrested on June 22, 2015, at "the address on 540 West Wellington [hereinafter the apartment] where [he] recently occupied." Defendant stated that he had "acquired a residency" at the apartment, meaning that he had signed a lease, but that he "maintained a permanent residence at [his] mother's place" located at 911 North Homan Avenue. Defendant stated that he was not living in the apartment, and that he intended to move in at a later date when he had the money to furnish it.

¶ 11 Defendant testified that he had visited the apartment two or three days a week to check on it, drink beer, and hang out for a few hours, and then he would go back to the Homan Avenue address "for the night and everything." Defendant never spent the night at the apartment. He

kept a couple of pairs of jeans there, but the rest of his clothes were at the Homan Avenue address.

¶ 12 On cross examination, defendant testified that he signed the lease to the apartment on May 6, 2015, and paid the first month's rent ($980), plus a processing fee of a couple hundred dollars. Defendant was given the keys to the apartment and could come and go as he pleased. Defendant paid the second month's rent of $980 on June 1, 2015. Defendant admitted that he was receiving mail at the apartment and that he kept some food there. He had a mat on the floor to sit on, but he did not have a mattress or futon to sleep on.

¶ 13 Following all the evidence, the defense argued that the State failed to prove him guilty of violating section 6 of the SORA because the evidence showed that he was not residing in the unfurnished apartment and, therefore, he was not yet obligated to report a change of address. The State countered that the evidence showed that defendant had resided in the apartment since signing the lease in May 2015, where he had: paid the first two months' rent; kept food and clothes in the apartment; and received mail there. According to the State, defendant was obligated to report the change of address to the Chicago Police Department within three days of establishing residence there in May, but had failed to do so as of June 22, 2015, when the officers arrested him. The trial court agreed with the State that the evidence showed defendant *was* residing in the apartment since May, and that he had violated section 6 of the SORA by failing to report the change of address within three days to the Chicago Police Department. The trial court sentenced defendant to four years' imprisonment. Defendant filed this timely appeal.

¶ 14 Defendant contends that the State failed to prove him guilty beyond a reasonable doubt of violating the reporting requirements of section 6 of the SORA. To prove a violation of the duty to report a change of address, the State was required to prove that defendant: (1) was previously

convicted of an offense subjecting him to the SORA; (2) established a new fixed residence or temporary domicile;[2] and (3) knowingly failed to report within three days to the law enforcement agency with whom he last registered, *i.e.*, the Chicago Police Department. See 730 ILCS 150/6 (West 2018); *People v. Robinson*, 2013 IL App (2d) 120087, ¶ 14. Defendant does not dispute on appeal that the evidence at trial was sufficient to establish the first two elements, specifically, that he was previously convicted of public indecency subjecting him to the SORA, and that he established a fixed residence or temporary domicile at the apartment. Rather, defendant argues that the State failed to establish the third element by presenting no proof of his failure to timely report the change of address to the Chicago Police Department within three days of residing there.

¶ 15 Defendant failed to argue at trial that the State did not prove the third element of the offense; however, when (as here) a defendant makes a challenge to the sufficiency of the evidence, his claim is not subject to the forfeiture rule and may be raised for the first time on direct appeal. *People v. Woods*, 214 Ill. 2d 455, 470 (2005). Accordingly, we consider the issue on the merits.

¶ 16 The parties disagree on the proper standard of review. The State contends that as defendant is challenging an element of his conviction, we should review the evidence in the light most favorable to the prosecution and ask if any rational trier of fact could have found him guilty beyond a reasonable doubt. *People v. Curry*, 2018 IL App (1st) 152616, ¶ 16. Defendant counters that, as the sole question on review is whether the State adduced *any* evidence that he did not timely report his change of address—a question that does not require the weighing of

[2] "Fixed residence" means "any and all places that a sex offender resides for an aggregate period of time of 5 or more days in a calendar year." 730 ILCS 150/2 (West 2018). A "temporary domicile" is defined 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 (West 2018).

credibility or involve the resolution of any disputed facts—a question of law is presented, requiring *de novo* review. See *People v. Smith*, 191 Ill. 2d 408, 411 (2000) (where the facts are not in dispute, defendant's guilt is a question of law, which we review *de novo*). However, we need not resolve this issue, as our finding in this case would be the same under either standard.

¶ 17 In a criminal proceeding, the State bears the burden of proving each element of the offense beyond a reasonable doubt and this burden never shifts to defendant. *People v. Joiner*, 2018 IL App (1st) 150343, ¶ 70. Defendant is presumed innocent of the charges against him and does not have to prove his innocence. *Id.*

¶ 18 After reviewing the trial evidence, we agree with defendant that the State failed to meet its burden of proving him guilty beyond a reasonable doubt of violating the reporting requirement of section 6 of the SORA, as the State introduced no evidence at trial that defendant did not timely report the change of address to the Chicago Police Department. We note the State's argument that defendant began residing in the apartment sometime between May 5-10, 2015, and that he had not reported the change of address to the Chicago Police Department as of the date of his arrest, June 22, 2015 (well past the three-day reporting deadline). However, our review of the record shows that there was absolutely no testimony or other evidence that defendant had not reported his change of address by June 22, 2015; in fact, there was no testimony at all regarding the timing of when defendant reported his change of address to the Chicago Police Department, or whether or not such a report was ever delivered.

¶ 19 The State could have proven this essential element by questioning defendant, Officer Leipzig and/or Officer Hertko regarding whether and when defendant reported the change of address to the Chicago Police Department. See *e.g.*, *People v. Bell*, 333 Ill. App. 3d 35 (2002) (finding sufficient evidence that defendant did not timely report his change of address where the

officer in charge of the sex-offender registration records testified that the records showed that the sheriff's department never received a written notice from defendant regarding a change of his residence address and that defendant made no contacts of any kind with the sheriff's department during the relevant time period). However, the State never so questioned defendant, Officer Leipzig, nor Officer Hertko, nor did the State tender any documentary evidence on this issue.

¶ 20 The State argues that since defendant referred to the Homan Avenue address in his trial testimony as his "registration address," we can reasonably infer that he never reported his subsequent change of address. We disagree. Defendant was never specifically questioned about whether or not he reported his change of address to the Chicago Police Department and, therefore, his testimony never addressed, or in any way, touched on the issue. Thus, any inference that he failed to report the change of address is speculative and not based on the evidence at trial. Even under the State's proposed standard of review, where we draw all reasonable inferences from the evidence of record which are favorable to the State, we will not draw unreasonable or speculative inferences. *People v. Rankin*, 2015 IL App (1st) 133409, ¶ 19.

¶ 21 *Robinson* is informative. In *Robinson*, the evidence showed the defendant's absence from his registered address, but it did not show that he had established a fixed residence or temporary domicile somewhere else. *Robinson*, 2013 IL App (2d) 120087, ¶ 21. In reversing the defendant's conviction for violating section 6 of the SORA, the appellate court noted:

> "[T]he State appears to have simply assumed that defendant violated section 6, rather than meeting its affirmative obligation to investigate the charge. The record lacks evidence of any specific address at which defendant stayed for an aggregate period of five days or more, let alone any specific amount of time he stayed at various locations." *Id.*

The appellate court further noted that "[w]hile we allow *reasonable* inferences from the record in favor of the judgment, the quantum of proof here is insufficient to support an inference that defendant was at one specific address, for the requisite period of time." (Emphasis in original.) *Id*. ¶ 22.

¶ 22 In the present case, the State presented evidence at trial that defendant established a new fixed residence (his apartment) in May 2015, but it failed to present any evidence that he did not timely report the change of address to the Chicago Police Department. Similar to *Robinson*, the State appears to have *assumed* that its evidence that defendant had moved to a new apartment was sufficient to show that he did not report the change of address to the Chicago Police Department; however, to meet its burden of proof here, the State could not rely on such an assumption but instead was required to present affirmative evidence of defendant's failure to timely report the change of address. Also, similar to *Robinson*, which held that the State's failure to prove a section 6 violation could not be saved by making unwarranted inferences in the State's favor, the quantum of proof here was insufficient to support an inference that defendant failed to timely report the change of address.

¶ 23 For all the foregoing reasons, we reverse defendant's conviction.

¶ 24 Reversed.