2018 IL App (4th) 160536-U

NO. 4-16-0536

FILED
November 27, 2018
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Mason County
EDWARD K. LAFONTAINE,	)	No. 15CF109
Defendant-Appellant.	)	
	)	Honorable
	)	Alan D. Tucker,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Presiding Justice Harris and Justice Turner concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding the evidence of record showed defendant was not confined in the nursing home where he resided.

¶ 2 Defendant, Edward K. Lafontaine, appeals from his conviction and sentence for violating the Sex Offender Registration Act (Act) (730 ILCS 150/3 (West 2014)). On appeal, defendant argues this court should reverse his conviction because the State failed to prove he was not confined in a nursing home or, in the alternative, disprove his affirmative defense that he was not required to register because he was confined in a nursing home. We affirm.

¶ 3 I. BACKGROUND

¶ 4 A. Information

¶ 5 In July 2015, the State charged defendant by information with violating the Act

(730 ILCS 150/3 (West 2014)). Specifically, the State alleged "defendant is a sex offender required to register his current address within [three] days of establishing a residence or temporary domicile, and defendant resided in Havana, Illinois, since April 27, 2015[,] without registering his current address with the Havana City Police Department."

¶ 6 B. Bench Trial

¶ 7 In May 2016, the trial court held a bench trial, at which defendant proceeded *pro se*. Prior to hearing evidence, defendant asserted "[i]f you're under medical care you're not subject to registering" under the Act. Defendant also asserted, citing section 5 of the Act (730 ILCS 150/5-5 (West 2014)), "a hospital or a care facility" was "not a place to register at" and he "never stepped a foot on Mason County property lands in [his] lifetime without escort by medical or law enforcement." In response to this assertion, the court stated, "[w]ell, that will be a fact that will have to come out in the trial, and we'll deal with that as an affirmative defense that you may be able to interpose in this case."

¶ 8 In his opening statement, defendant asserted, in part, "the law and sex offense states that someone that's in medical care is not required to register until three days after they're released back to health."

¶ 9 The State called Jeremiah Hindahl, a police officer with the Havana Police Department, to testify. Officer Hindahl testified he received information indicating defendant, who was a sex offender out of Texas with a lifetime registration, had been using an alias and residing at the Havana Health Care Center nursing home. On July 23, 2015, Officer Hindahl and approximately three or four other officers went to the nursing home. Officer Hindahl brought with him a printout from the Texas Department of Public Safety Sex Offender Registry, which

was admitted into evidence over defendant's objection. The printout showed a photograph of defendant and stated defendant was a lifetime registrant and had previously used various aliases including the one used at the nursing home. Officer Hindahl located and spoke with defendant. Officer Hindahl testified defendant acknowledged he was a sex offender and stated he had been residing at the nursing home since April 27, 2015.

¶ 10 Officer Hindahl testified defendant had not registered with the Havana Police Department. The State inquired into defendant's ability to register:

> "[STATE]: And was [defendant] confined at the Havana Area Nursing Home, or was he free to come and go if he chose?
>
> [OFFICER HINDAHL]: He was not confined.
>
> [STATE]: Was he there for healthcare, physical healthcare basically, or do you know why he was there?
>
> [OFFICER HINDAHL]: I did not know why he was there.
>
> [STATE]: Was he in any way restricted from leaving that facility at any time?
>
> [OFFICER HINDAHL]: Not that I know of, no.
>
> [STATE]: So he wasn't under lockdown or shackled to the bed or—
>
> * * *
>
> [OFFICER HINDAHL]: No.
>
> [STATE]: Was he court ordered to be at that hospital to your knowledge?

[OFFICER HINDAHL]: No."

¶ 11 The State presented a certified document from Cameron County, Texas, case No. 96-CF-1627-B, which indicated defendant was convicted on March 24, 1997, of a sexual assault that occurred on March 27, 1995. The certified document was admitted into evidence over defendant's objection.

¶ 12 Defendant presented Officer Hindahl's statement of probable cause and case report and a criminal history record from the Illinois State Police. The documents were admitted into evidence. Defendant also testified on his own behalf. Defendant testified, in part, as follows:

> "The fact is—I'm—if I was required to register as a sex offender, I am not required while I'm in medical care. That's in [section 5-5 of the Act (730 ILCS 150/5-5 (West 2014))]. It should be three days after I was released, or—I can't think of the word they use. They say all cured. When I had left the hospital I'd have three days or other care facility."

Defendant further testified he had never registered as a sex offender as he believed he was not required to do so.

¶ 13 In closing argument, the State asserted defendant was a sexual predator who violated the Act by failing to register with the Havana Police Department within three days of establishing his residence at the Havana nursing home. The State acknowledged defendant mentioned section 5-5 of the Act (730 ILCS 150/5-5 (West 2014)) but asserted the statute required confinement by the Department of Corrections or the Department of Human Services as opposed to "hospitalization such as you're sick and need your appendix removed and so you go

to the hospital." The State further asserted defendant "was not confined at the Havana Area Nursing Home, he was simply there with some follow[-]up treatment for his healthcare."

¶ 14 In response, defendant argued, in part, the State misinterpreted the statute. Defendant asserted the statute applied to a nursing home, stating "I believe to start out with it does talk about hospital, and it's not talking about the state hospital." Defendant further asserted he was confined at the nursing home, stating:

> "I was actually not allowed to go anywhere out of the building whatsoever except for into the courtyard area to smoke three or four times a day. I was restricted to the building, period, the entire time I was there."

¶ 15 After considering the evidence and arguments presented, the trial court found defendant guilty as charged. In rendering its decision, the court noted defendant "seem[ed] to assert [an] affirmative defense under [section 5-5 of the Act (730 ILCS 150/5-5 (West 2014))]." The court concluded any such "defense" did not "appl[y] in this particular case." The court found defendant was "free to leave" the nursing home and "could have walked out *** at any time." The court further found, while the nursing home "may be a secure facility to prevent people from wandering, *** it is not a facility in the ordinary meaning of a penal or a treatment facility."

¶ 16 C. Sentencing Hearing

¶ 17 Following a July 2016 sentencing hearing, the trial court sentenced defendant to 30 months' imprisonment.

¶ 18 This appeal followed.

¶ 19 II. ANALYSIS

¶ 20 On appeal, defendant argues, citing section 3(c)(4) of the Act (730 ILCS 150/3(c)(4) (West 2014)), this court should reverse his conviction because the State failed to prove he was not confined in a nursing home or, in the alternative, disprove his affirmative defense that he was not required to register because he was confined in a nursing home. The State disagrees, maintaining this court should affirm defendant's conviction because (1) section 3(c)(4) "was intended to apply to persons who were committed or incarcerated" and not to "residents of nursing homes," and (2) the record evidence shows defendant was not confined.

¶ 21 Due process requires the State to prove each element of a criminal offense beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 278, 818 N.E.2d 304, 307 (2004). When a defendant sufficiently raises an affirmative defense, the State must also disprove that defense beyond a reasonable doubt. *People v. Bennett*, 2017 IL App (1st) 151619, ¶ 33, 96 N.E.3d 74. A reviewing court will not overturn a conviction unless the evidence is "so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt." *People v. Collins*, 214 Ill. 2d 206, 217, 824 N.E.2d 262, 267-68 (2005).

¶ 22 The Act requires an individual who has been convicted of a crime defining him or her as a sex offender or sexual predator to register with the chief of police in the municipality in which he or she resides. 730 ILCS 150/3(a) (West 2014). The time period to complete registration is prescribed in subsections 3(b) and 3(c). *Id.* Subsection 3(b) requires the individual, regardless of any initial, prior, or other registration, to register in person within three days of establishing a residence or temporary domicile in any county. 730 ILCS 150/3(b) (West 2014). Subsection 3(c) provides additional time periods to register for particular circumstances. See 730

ILCS 150/3(c)(1)-(4) (West 2014). Subsection 3(c)(3) provides: "Except as provided in subsection (c)(4), any person convicted on or after January 1, 1996, shall register in person within 3 days after the entry of the sentencing order based upon his or her conviction." 730 ILCS 150/3(c)(3) (West 2014). Subsection 3(c)(4) provides: "Any person unable to comply with the registration requirements of this Article because he or she is confined, institutionalized, or imprisoned in Illinois on or after January 1, 1996, shall register in person within 3 days of discharge, parole[,] or release." 730 ILCS 150/3(c)(4) (West 2014).

¶ 23 Defendant, relying on section 3(c)(4), contends confinement in a nursing home relieves a sex offender or sexual predator from his or her responsibility to register until three days after his or her release from that nursing home. The State disagrees with defendant's contention, maintaining section 3(c)(4) "was intended to apply to persons who were committed or incarcerated" and not to "residents of nursing homes." Based on the record presented, we need not resolve this issue.

¶ 24 Assuming, *arguendo*, an individual could be considered "confined" in a nursing home for purposes of section 3(c)(4), it is clear defendant was not confined in this case. Officer Hindahl personally visited the nursing home where defendant resided and then spoke with defendant. When asked if defendant was confined or free to come and go if he chose, Officer Hindahl testified defendant "was not confined." Officer Hindahl further testified defendant was not under lockdown, shackled to the bed, restricted from leaving the facility, or court ordered to be at the "hospital." In response to this testimony, defendant merely testified he was under "medical care" at the nursing home. Based on this evidence, the trial court concluded defendant was "free to leave" the nursing home and "could have walked out *** at any time." That is,

defendant was not confined. This is true regardless of whether we consider confinement as an element the State was required to prove or as an affirmative defense defendant was required to raise and then the State was required to disprove.

¶ 25 III. CONCLUSION

¶ 26 We affirm the trial court's judgment. As part of our judgment, we award the State its $75 statutory assessment as costs of this appeal. 55 ILCS 5/4-2002(a) (West 2016).

¶ 27 Affirmed.