

No. 1-10-3296

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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. 10 CR 5867
)	
TOMMIE LYNCH,)	Honorable
)	Michael Brown,
Defendant-Appellant.)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Quinn and Justice Connors concurred in the judgment.

ORDER

- ¶ 1 *Held:* Defendant's guilt of failure to register as a sex offender was established beyond a reasonable doubt. Trial court did not abuse its discretion in denying defendant's day-of-trial request for a continuance to obtain new counsel. Certain fees and fines were improperly imposed on defendant.
- ¶ 2 Following a bench trial in the circuit court of Cook County, defendant Tommie Lynch was convicted of violating the Sex Offender Registration Act (730 ILCS 150/1 *et seq.* (West 2008)) (the Act) and was sentenced to four years in prison. On appeal, defendant contends that his guilt was not established beyond a reasonable doubt. Alternatively, he contends that he is entitled to a new trial because the trial court denied his request for a continuance to obtain private counsel. Finally, defendant challenges certain fines and fees assessed against him.

¶ 3 On April 12, 2010, defendant was arraigned and the Public Defender was appointed to represent him. The matter was continued three times on defendant's motion. On June 29, 2010, trial was set for August 10, 2010. On that latter date, upon the State's motion, the matter was continued for trial until September 8, 2010. On the date of trial, defense counsel informed the court that defendant was not ready for trial because he wanted time to obtain another attorney. Defendant was questioned by the trial judge, who told defendant that new counsel would have to appear in court that day and be ready for trial. Defendant told the court that he did not have the attorney there. He had initially spoken to this prospective attorney five months earlier and most recently in August 2010 on the day trial was originally scheduled. Defendant showed the court the prospective attorney's business card. He stated that he had not called the prospective attorney again because he wanted to see what was "going on." He also informed the court that he was raising the issue because he had just found out what the State was offering him. The trial court denied defendant's request for a continuance to obtain other counsel, finding that defendant did not want another lawyer but was only seeking to delay the proceedings. Defendant then opted for a bench trial, and the trial commenced.

¶ 4 At trial, the State presented the testimony of Shirley Hollingsworth, the president of Joshua Ministries, which operated a number of homeless shelters for men, including one at 200 South Sacramento in Chicago, Illinois. Hollingsworth testified that at this shelter, the men were required to sign a sign-in sheet every evening and had to leave the next morning. She also identified copies of the sign-in sheets for January 1, 2010 through March 15, 2010, and testified that defendant had not signed in for any of those days.

¶ 5 Next, Detective Melissa Fuller (Detective Fuller) testified that her duties included following up on cases where it appeared that a sex offender was not living at the address he had listed when he registered under the Act. In February 2010, she went to the shelter at 200 South Sacramento on two separate occasions, where defendant had most recently listed as his place of residence, as required by the Act. On both occasions, she examined three consecutive dates on the shelter's sign-in

sheet and found that defendant had not signed in for any of those days. Based upon this information, Detective Fuller generated an investigative alert which stated that there was probable cause to arrest defendant for failure to comply with the Act. Defendant was arrested on March 3, 2010, when he went to the sex offender registry at police headquarters located at 3510 South Michigan in Chicago. That same day, Detective Fuller questioned defendant after informing him of his *Miranda* rights. Defendant told her he had no place to stay and was homeless. He was afraid to stay at the 200 South Sacramento shelter because somebody had threatened him there. He further informed Detective Fuller that three weeks before his arrest, he had gone to another shelter but he was told there was no space available and that he should return in two to three weeks. Defendant also told Detective Fuller that he understood he was required to keep a current address with the sex offender registry.

¶ 6 The parties stipulated to the testimony of Chicago police officer Eddie Chapman (Officer Chapman), of the sex offender registration unit. He would testify that defendant registered on December 10, 2009, by giving 200 South Sacramento as his address. Also, without objection from the defense, the State introduced two certified statements of conviction for defendant, showing an October 23, 1993 conviction for aggravated criminal sexual abuse and an April 12, 2006 conviction for failing to register as a sex offender.

¶ 7 Testifying on his own behalf, defendant stated that he first stayed at the 200 South Sacramento shelter in 2008. When another shelter closed, this shelter became crowded and he often was not able to find a place there. When he could not, he would stay "[b]ack and forth" with several friends, with his nephew, or otherwise would often stay on a vacant subway car all night. Defendant testified that on December 10, 2009, he listed his residence as 200 South Sacramento on the sex offender registration at police headquarters. When asked if he was able to stay at that shelter after that date, defendant responded that there were nights he tried to get in but he felt threatened by another shelter resident. Defendant also testified that he went to a police station and asked for help in finding a place to stay. He was directed to a shelter referral organization at 10 South Kedzie in

Chicago, but was told that there was no vacancy and that he should return in about three weeks. He finally found a place to stay at another shelter on March 2, 2010. When asked what was the longest amount time that he had lived in one place, defendant stated "Not long, no more than one night." He was then asked "No more than one night at a time?" and he responded "Yes." On March 2, 2010, he received a telephone call telling him that if he did not register that day at the sex offender registry he would be arrested. He went to the registry that same day but it was closed, and was arrested when he returned the next day. Defendant stated that he had not returned to register on the sex offender registry between December 10, 2009, and March 3, 2010, because he thought that to register, one had to have a statement that they were living at a particular place and he had not found such a place. However he also testified that when he registered on December 10, 2009, he initialed a form stating that he was supposed to register again within three days after he became homeless.

¶ 8 On cross-examination, defendant agreed that between December 2009 and March 3, 2010, he never spent a single night at the 200 South Sacramento shelter. He agreed with the prosecutor's statement that "every other night it was a different place of one night." He also agreed that between December 9, 2009, and March 3, 2010, he never went back to the sex offender registry to report a change in address. The court questioned defendant about what he was supposed to do about registering if he had no place to live. Defendant first responded that when he found a place to live he "definitely would have gone down there." He also said that if he did not have a place to live he could not register until he found a place. When the court persisted in asking defendant about what he was supposed to do about registering if he had no place to live, defendant stated that he believed he would have had 10 days to register and he knew more than 10 days had passed but that he was waiting until he found a place to live.

¶ 9 We first consider defendant's claim that the evidence was insufficient to prove him guilty beyond a reasonable doubt. On review in this court, the test of the sufficiency of the evidence is whether, upon viewing the evidence in the light most favorable to the State, any rational trier of fact

could find the essential elements of the crime to be proven beyond a reasonable doubt. *People v. Beauchamp*, 242 Ill. 2d 1, 8 (2011).

¶ 10 Defendant was charged by indictment with violating section 6 of the Act (730 ILCS 150/6 (West 2008)) in that, having been formerly convicted as a sex offender, he lacked a fixed residence and failed to report weekly in person with the Chicago police department as a sex offender. The Act defines a "fixed residence" as "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(I) (West 2008); *People v. Peterson*, 404 Ill. App. 3d 145, 154 (2010). Here the evidence, viewed in the light most favorable to the State, established that defendant had changed residences every night during the period of January 2010 to March 2010. Although defendant admits to this fact, he contends that the State failed to disprove that he had resided at one of those locations for an aggregate period of five days. The State contends that defendant testified that he was not "living anywhere for more than one night." On direct examination defendant had first testified that the longest time he had lived in one place was one night. But he then agreed that he had not lived in one place for more than one night "at a time." On cross-examination, defendant agreed with the prosecutor's statement that "every other night it was a different place of one night." We agree with the State that defendant's original testimony about not living anywhere for more than one night could have been construed by the trial court as the finder of fact to mean that defendant never had a fixed residence.

¶ 11 Even assuming that the record failed to definitively establish whether defendant ever had a fixed residence during the applicable time period, we find that defendant would have been subjected to the reporting requirement in either event. Defendant contends that as a person with a fixed residence during this time period he was not required to re-register or report under the specific terms of section 6 of the Act. This construction would lead to the absurd result that a convicted sex offender who lives in one place for an aggregate of five days within a calendar year is exempted from the weekly reporting requirement for the entire year. We are charged with not construing a statute

so as to create an absurd result. *People v. Isunza*, 396 Ill. App. 3d 127, 130 (2009); *Peterson*, 404 Ill. App. 3d at 154. We note that section 6 of the Act requires one who lacks a fixed residence to report their last address within three days after ceasing to have such a residence. Because it was established that defendant moved from place to place every night, it is clear that during the time period in question his status periodically changed to one who had no fixed residence and therefore was subjected to this reporting requirement. Thus, the plain language of section 6 of the Act contradicts defendant's construction that having a fixed residence at any point eliminated any reporting requirement. We therefore find that without regard to whether defendant ever had a fixed residence during the time in question, he was subjected to the weekly reporting requirement.

¶ 12 Defendant alternatively bases his claim of insufficiency of the evidence of his guilt on the assertion that the State failed to establish that his reporting requirement was extended for 10 years. Defendant was convicted of aggravated criminal sexual abuse in 1993. Because of this conviction he was required by statute to register as a sex offender for a period of 10 years, ending in 2003. 730 ILCS 150/7 (West 2010). The record contains a pre-sentence report which indicates that defendant was convicted of failing to register his address as required of convicted sex offenders on at least three occasions—in 1999, 2002 and 2004. The State also established that in 2006 defendant was convicted of failure to register as a sex offender, which extended the period of registration by 10 years from the first date of registration after the conviction. 730 ILCS 150/7 (West 2010). Under this statute, defendant's registration period was extended until 2016. The failure to register at issue occurred in 2010, a period in which defendant was still required to register. However, defendant argues that the State failed to establish that this registration period applied to him because it did not prove that the Department of State Police complied with certain requirements for extending the registration period. According to statute, if the registration period is extended, the Department shall send a registered letter to the law enforcement agency where the sex offender resides within three days after the extension. Defendant shall sign for that letter, and a copy of the letter is to be kept on

file with the law enforcement agency for defendant's place of residence. 730 ILCS 150/7 (West 2010). Defendant contends that because the State failed to introduce into evidence a copy of this letter, there was insufficient proof that defendant's registration period was extended. In our view, a plain reading of the statute establishes that the triggering event for the 10-year extension of the registration period is defendant's conviction for failure to register. It is undisputed that this conviction was in 2006. The statute does not indicate that the notification requirements of the statute are triggering events. Furthermore, defendant admitted at trial that he knew he was required to register as a sex offender. For these reasons, we find that it was established at trial that defendant was still required to register as a sex offender in 2010.

¶ 13 Alternatively, defendant contends that he is entitled to a new trial because the trial court erred in failing to grant him a continuance in order to obtain new counsel. The decision of whether to grant a continuance for this purpose is a matter within the discretion of the trial court. *People v. Walker*, 232 Ill. 2d 113, 125 (2009). The Public Defender was appointed to represent defendant on the date of his arraignment on April 12, 2010. There were three subsequent continuances obtained by the defense until the matter was set for trial on August 10, 2010. The State obtained a continuance on that date until the new trial date of September 8, 2010. On the date of trial, defense counsel stated that he was ready for trial, but defendant, for the first time, informed the court that he wanted a continuance to obtain the representation of a prospective lawyer to whom he claimed to have first spoken five months earlier. Upon questioning by the trial judge, defendant admitted that he had also spoken to that lawyer on the August 10 date when trial was initially scheduled. Defendant stated that he had not obtained this prospective lawyer's representation earlier because he was waiting to see what kind of offer the State would make. He also admitted that counsel was not present and thus he was not prepared to proceed to trial with this prospective lawyer. The trial court found that defendant's request for new counsel was a ploy to delay trial, and denied the motion for a continuance.

¶ 14 The defense accurately cites three factors which are relevant to the court's exercise of its discretion in deciding whether to grant a request for new counsel: whether new counsel is ready and willing to proceed with the case; whether defendant articulates an acceptable reason for desiring new counsel; and whether current counsel has represented defendant for a lengthy period before his request for a substitution of counsel. *People v. Abernathy*, 399 Ill. App. 3d 420, 431 (2010). Here, current counsel had only represented defendant for a period of approximately five months, but defendant failed to articulate any reasons for seeking a substitution of counsel, nor was there any evidence that new counsel, whom defendant named, was ready and willing to proceed. Under these circumstances, we find that the trial court did not abuse its discretion when it determined that defendant's request was only an attempt to delay trial, and therefore denied the motion for a continuance to obtain new counsel.

¶ 15 Finally, defendant contends that certain fees were improperly assessed against him. A \$200 DNA analysis fee was assessed against defendant, but defendant has supplemented the record on appeal with proof that a DNA sample was previously obtained from him in connection with a prior conviction. The State agrees that this fee should not have been assessed against defendant in this proceeding and we concur. *People v. Marshall*, 242 Ill. 2d 285, 303 (2011). The State also agrees with defendant's contention that he should not have been assessed a \$5 court-system fee, because that fee is only to be assessed for violation of the Illinois Vehicle Code or similar provisions contained in county or municipal ordinances. 55 ILCS 5/5-1101(a) (West 2010); *People v. Paige*, 378 Ill. App. 3d 95, 104-105 (2007). We accordingly vacate that fee. Finally, defendant contends that he should have been granted a credit of \$5 for every day he spent in presentence custody, up to the amount of the fines imposed on him. The State concurs in this contention. We find that defendant was entitled to a credit of \$50 against his \$50 in fines (\$10 mental-health-court fine (55 ILCS 5/5-1101(d-5) (West 2010)); \$5 youth-diversion/peer-court fine (55 ILCS 5/5-1101(e) (West 2010)); \$5 drug-court fine (55 ILCS 5/5-1101(f) (West 2010)); and \$30 children's advocacy-center fine (55 ILCS 5-1101(f-

1-10-3296

5) (West 2010))) as he spent a total of 232 days in presentence custody. 725 ILCS 5/110-14 (West 2010); *People v. Lemons*, 229 Ill. App. 3d 645, 652 (1992).

¶ 16 For the reasons set forth in this order, we affirm defendant's conviction and sentence; we vacate defendant's \$200 DNA analysis fee and his \$5 court-system fee; and we apply a \$50 presentence-custody credit against the \$50 in fines assessed against defendant.

¶ 17 Affirmed as modified.