

No. 1-11-2050

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
	)	the Circuit Court
Plaintiff-Appellee,	)	of Cook County.
	)	
v.	)	No. 10 CR 16575
	)	
WILLIE LUCKETT,	)	Honorable
	)	Michael Brown,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE QUINN delivered the judgment of the court.  
Justices Connors and Simon concurred in the judgment.

**ORDER**

¶ 1 *HELD:* Judgment entered on defendant's conviction of failing to register as a sex offender affirmed over his challenge to the sufficiency of the evidence and claim of ineffective assistance of trial counsel; record insufficient to address claim that section 3(c)(5) of SORA was unconstitutionally vague as applied; record does not support claim that section 3(c)(5), as applied, violated the fourteenth amendment.

¶ 2 Following a bench trial, defendant Willie Lockett was found guilty of violating the Sex

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Offender Registration Act (SORA) for failing to register as a sex offender, then sentenced to four years' imprisonment. On appeal, defendant contends: (1) that the State failed to prove him guilty of violating SORA beyond a reasonable doubt; (2) that he received ineffective assistance of trial counsel; (3) that section 3(c)(5) of SORA is unconstitutionally vague; and (4) that section 3(c)(5) of SORA violates the fourteenth amendment. For the following reasons, we affirm.

¶ 3 The record shows, in relevant part, that defendant was charged by indictment with one count of failing to register as a sex offender in violation of section 3(a)(1) of SORA (730 ILCS 150/3(a)(1) (West 2010)). The indictment specifically alleged that between April 6, 2010, and August 16, 2010, defendant, having been previously convicted of criminal sexual assault, knowingly failed to register, in person, as a sex offender with the Chicago Police Department within three days of establishing a residence or temporary domicile in the City of Chicago.

¶ 4 At defendant's bench trial, the State presented the following stipulations. Defendant was found guilty of criminal sexual assault in Case No. 95-CR-34969 and sentenced to four years' imprisonment. He was required to register as a sex offender and subsequently found guilty of violating SORA in Case No. 08-CR-2459, for which he received a sentence of three years' imprisonment.

¶ 5 If called to testify, David Smetzer would testify that on April 1, 2010, he was employed by the Illinois Department of Corrections (IDOC) at the Danville Correctional Center in Danville, Illinois. That day, he filled out a SORA notification form for defendant, went over it with him, and observed defendant initial each statement of the form explaining his duty to register. Defendant was informed that he had to register again on or before April 5, 2010, and signed a form acknowledging

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that he understood his duty to register.

¶ 6 Defendant was released from IDOC on April 2, 2010. If called to testify, a representative of the Chicago Police Department Registration Unit would testify that a review of their registration logs from April 6, 2010, to August 16, 2010, "did not show [that defendant] had been registered as a sex offender in the City of Chicago."

¶ 7 The State called Detective Dwayne Davis as its only live witness. He testified that on the afternoon of August 16, 2010, he and two arresting officers met with defendant in the gang office at the 2nd District as part of an investigation into his failure to register as a sex offender. At that time, defendant told Detective Davis that he was living at 2449 West 63rd Street, apartment 307, which is in the City of Chicago. He also told Detective Davis that he had not registered as a sex offender since being released from IDOC. He explained that he spent a few days in the hospital after his release, then went to the Chicago Police Department's criminal registration unit and attempted to register, but was "turned away" because he did not have "the proper identification." Defendant stated that he did not have the money to purchase a state identification card and never returned to the registration unit "because he had not obtained his I.D." When Detective Davis asked defendant "how did he eat," defendant responded that his mother and sister took care of him. Detective Davis then asked if he could have obtained the fee for an identification card from them, and defendant told him that they would not give him the money for the fee.

¶ 8 The State rested and the defense moved for a directed finding, which was denied. The defense then called Richard Hyden to the stand, and the court asked defendant, "Mr. Luckett, do you agree to have this witness called on your behalf?" Defendant replied, "Yes, your Honor."

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¶ 9 Hyden testified that he is employed by New Beginnings Adult Transitional Housing (New Beginnings) for felons and drug addicts. He is an ex-felon and met defendant in 2001 or 2002 when they were both at Brother's Keeper, another rehabilitative program. On April 2, 2010, he and defendant went to the DMV to get an ID for defendant, but defendant was unable to get one because "it was more than a year so they couldn't use his file." They then went to the public library to get a library card and the Social Security office to get "printouts," but could not get those either because both required an ID. Early the next week, they also went to the "Link place" to get defendant a Link card, but he needed an ID for that too and was therefore unable to get one. Hyden testified that he "had a letter of residency from New Beginnings to bring to the police station" at the time, and that "they" nonetheless took his information down at the "Link place."

¶ 10 On April 6, 2010, Hyden and defendant went to the police station. Although the officers took down defendant's information, they would not register him because he did not have proof of residency or an ID. On Thursday of that week, they went to the police station again and had the same experience: "They said without an I. D. they can't register him and they said come back once a week until he gets his I.D."

¶ 11 On cross-examination, Hyden stated that defendant lived with him at the New Beginnings Facility at 817 West 51st Place, in Chicago, from April 2010 to sometime in July 2010, at which point Hyden took defendant to his mother's house. He also stated that when he took defendant to register at 35th Street and Michigan Avenue on April 6 and 8, 2010, he sat in the waiting room and was not present at the counter while defendant was attempting to register. On redirect, Hyden testified that defendant's mother's house is at West 63rd Street and Western Avenue.

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¶ 12 The defense presented the following stipulations. Chicago police officers assigned to the sex registration desk would testify that the Chicago police sex offender registration desk is closed every Saturday and Sunday without exception. They would also testify that Chicago police sex offender registration desk sign-in sheets show that defendant tried to register on April 6 and 8, and that he was turned away for a lack of proof of residence. Other Chicago police officers would testify that all relevant Chicago police records indicate that defendant's date of birth is May 31, 1979. Lastly, the keeper of business records at Holy Cross Hospital would testify, and/or medical records from Holy Cross Hospital would show, that a Willie Lockett was admitted for treatment at the emergency room at 8 or 8:30 p.m. on April 2, and was in their care until at least 10:30 a.m. the next morning. The date of birth for that Willie Lockett was May 31, 1979, and the address listed on the medical records was 2449 West 63rd Street.

¶ 13 Following closing arguments, the court found that the State had met its burden of proof as to the charged offense. The court noted that defendant "knew \*\*\* that he had to register in person, and the testimony is clear that [he] did not register. He signed in to register, but the stipulation is he did not register." Thus, the court found defendant guilty of violating SORA for knowingly failing to register as a sex offender and sentenced him to four years' imprisonment.

¶ 14 In this appeal from that judgment, defendant first contends that the State failed to prove him guilty of violating SORA beyond a reasonable doubt. He specifically claims that the State failed to establish that he was not in compliance with SORA when he attempted to register, and that he did not provide accurate information where police refused to allow him to complete his registration.

¶ 15 The State responds that it proved defendant guilty of violating SORA where it established

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that he is a sex offender, had notice of his duties under SORA, and failed to register as required. The State also responds that it only had to prove defendant's failure to register in relation to the time period listed in the indictment, and that it was not required to prove that defendant provided inaccurate information when attempting to register.

¶ 16 Where, as here, defendant challenges the sufficiency of the evidence to sustain his conviction, the question for the reviewing court 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. *People v. Campbell*, 146 Ill. 2d 363, 374 (1992). It is the responsibility of the trier of fact to determine the credibility of the witnesses and the weight to be given their testimony, to resolve any inconsistencies and conflicts in the evidence, and to draw reasonable inferences therefrom. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). A reviewing court will not overturn the decision of the trier of fact unless the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant's guilt. *Campbell*, 146 Ill. 2d at 375.

¶ 17 To sustain defendant's conviction of failure to register as a sex offender in this case, the State was required to prove that defendant was a sex offender and knowingly failed to register in person at the Chicago Police Department Headquarters within three days of establishing a residence or temporary domicile in the city. 730 ILCS 150/3(a)(1), (b) (West 2010); see Illinois Pattern Jury Instructions, Criminal, No. 9.43H (4th ed. 2000) (hereinafter, IPI Criminal 4th No. 9.43H). Viewed in the light most favorable to the prosecution, the record shows that on April 1, 2010, defendant completed a SORA notification form acknowledging that he understood his duty to register as a sex offender. He was then released from IDOC and, within the month, took up residence with Richard

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Hyden at New Beginnings, 817 West 51st Place, in Chicago. He stayed there until July 2010, then moved to his mother's house at 2449 West 63rd Street, apartment 307, in Chicago. He was residing there as of August 16, 2010, and never registered as a sex offender after his release from IDOC. Under the circumstances, we find that the State clearly proved defendant guilty beyond a reasonable doubt of knowingly failing to register as a sex offender within three days of establishing a residence or temporary domicile in the city. 730 ILCS 150/3(a)(1), (b) (West 2010).

¶ 18 Defendant disagrees with this conclusion and claims that the State failed to establish that he was not in compliance with SORA between April 2, 2010, and April 6, 2010. He also claims that the State failed to establish that he provided the Chicago Police with inaccurate information. However, the State was not required to establish these facts because neither related to the charged offense. The indictment covered the period of time between April 6, 2010, and August 16, 2010, not between April 2, 2010, and April 6, 2010. Also, the indictment did not charge defendant with providing inaccurate information; rather, it charged defendant with knowingly failing to register as a sex offender. Since defendant established a residence in Chicago during the period of time alleged and failed to register as a sex offender within three days, we conclude that there was sufficient evidence to support his conviction.

¶ 19 Defendant next contends that he received ineffective assistance of trial counsel. To establish a claim of ineffective assistance of counsel, defendant must first show that counsel's performance was deficient, *i.e.*, it fell below an objective standard of reasonableness. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984). Secondly, defendant must show that counsel's deficient performance resulted in prejudice to the defense, *i.e.*, a reasonable probability that, but for counsel's deficient

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performance, the result of the proceedings would have been different. *Strickland*, 466 U.S. at 687, 694. Both prongs of *Strickland* must be satisfied to succeed on a claim of ineffective assistance of counsel. *People v. Flores*, 153 Ill. 2d 264, 283 (1992).

¶ 20 In this case, defendant maintains that trial counsel was ineffective for: (1) failing to point out in his motion for a directed finding that the State did not present evidence that defendant established a residence or temporary domicile in Chicago; (2) calling a witness who provided testimony as to this allegedly missing element; and (3) failing to renew the motion for a directed finding at the close of evidence and thereby waiving any issue regarding the failure of the court to grant the motion. For the reasons discussed below, we do not find counsel ineffective on any of these bases.

¶ 21 Initially, defendant cannot establish that trial counsel was deficient for failing to point out in his motion for a directed finding that the State did not present evidence that defendant established a residence or temporary domicile in Chicago. The decision whether to argue a motion for a directed finding is a matter of trial strategy (*People v. Nunez*, 263 Ill. App. 3d 740, 753 (1994)), and thus virtually unchallengeable (*People v. Fuller*, 205 Ill. 2d 308, 331 (2002)). Here, trial counsel could have reasonably presumed that the trial court knew the law and would apply it properly when ruling on his motion for a directed finding. See *People v. Howery*, 178 Ill. 2d 1, 32 (1997) (noting that "the trial court is presumed to know the law and apply it properly"). His failure to present a specific argument on the motion cannot, therefore, support a finding of ineffectiveness.

¶ 22 Similarly, defendant cannot establish that counsel was deficient in failing to renew his motion for a directed finding at the close of evidence. "As a general rule, trial counsel's failure to file a motion does not establish incompetent representation, especially when that motion would be futile."

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*People v. Wilson*, 164 Ill. 2d 436, 454 (1994). "Whether or not to file a motion is a matter of trial strategy which will be accorded great deference." *Wilson*, 164 Ill. 2d at 454. Here, the record shows that after the State rested its case-in-chief and counsel's motion for a directed finding was denied, counsel opted to present a full defense to the charge of failure to register as a sex offender, presenting multiple stipulations and calling Richard Hyden to testify that police turned defendant away from registering on two occasions. In light of his decision to put on such a defense, we cannot say that counsel did not make a strategic decision to exclusively pursue the chosen defense in the belief that it would be successful, and to forego any objection to the denial of his previous motion. Although defendant points out that counsel later objected to the denial of the motion for a directed finding in his amended motion to reconsider, we note that this does not indicate that counsel did not make such a strategic decision. Notably, that motion was filed after the chosen defense failed and with the benefit of hindsight. We therefore reject defendant's claim that counsel was ineffective for not renewing his motion for a directed finding.

¶ 23 That said, we turn to defendant's remaining claim that trial counsel was ineffective for calling a witness who provided testimony regarding a missing element in the State's case. We note that decisions concerning which witnesses to call on defendant's behalf are matters of trial strategy reserved to the discretion of trial counsel. *People v. Enis*, 194 Ill. 2d 361, 378 (2000). Such decisions are entitled to a strong presumption that they reflect sound trial strategy and are thus generally immune from ineffective assistance of counsel claims. *Enis*, 194 Ill. 2d at 378. The exception is where counsel's strategy was so unsound that no meaningful adversarial testing was conducted. *Enis*, 194 Ill. 2d at 378.

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¶ 24 Here, defendant claims that the State failed to prove that he established a residence or temporary domicile in Chicago where it presented no evidence on the duration of any domicile and failed to corroborate his statement to Detective Davis under the *corpus delicti* rule. He thus claims that trial counsel was ineffective for calling Richard Hyden as a defense witness where, on cross-examination, Hyden testified to defendant's establishment of a residence in Chicago during the period of time in question.

¶ 25 We initially note that defendant is not in a position to claim that counsel erred in calling Richard Hyden to testify. It is axiomatic that a party who acquiesces in proceeding in a given manner is not in a position to claim that he was prejudiced thereby. *People v. Villarreal*, 198 Ill. 2d 209, 227 (2001). The supreme court has thus held that under the doctrine of invited error, defendant may not request to proceed in one manner, then later contend on appeal that the course of action was erroneous. *People v. Carter*, 208 Ill. 2d 309, 319 (2003). Here, the record shows that defendant expressly assented in open court to counsel's decision to call Hyden as a defense witness. Although he now claims error, this "[a]ction taken at defendant's request precludes defendant from raising such course of conduct as error on appeal." *Carter*, 208 Ill. 2d at 319.

¶ 26 Even if defendant had properly raised this claim, however, he cannot overcome the presumption that counsel's decision to call Hyden was sound trial strategy. The record shows that following the denial of his motion for a directed finding, counsel put on a defense to the charge of failure to register as a sex offender which was in the nature of an impossibility defense; specifically, that defendant made repeated efforts to register as a sex offender, but was unable to obtain an acceptable form of identification. To that end, counsel called Hyden to testify that defendant made

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an earnest attempt to obtain a state identification card, but was unable to get one because "it was more than a year so they couldn't use his file." Defendant then attempted to obtain a library card, link card, and social security printout, but was unable to obtain those either without an ID. He nonetheless went to the Chicago Police Department on two separate occasions to register as a sex offender, but both times he was turned away for lack of proper identification. It was on cross-examination of Hyden *by the State* that Hyden testified that defendant lived at New Beginnings, in Chicago, from April 2010 to sometime in July 2010, before moving to his mother's house at West 63rd Street and Western Avenue.

¶ 27 We note that defendant does not object to the defense presented by trial counsel and, in fact, argues similarly on appeal. He asserts, however, that "counsel's performance falls below an objective standard of reasonableness when counsel produces evidence, which proves an element of the State's case, after the State fails to prove that element," citing *People v. Jackson*, 318 Ill. App. 3d 321 (2000), *People v. Orta*, 361 Ill. App. 3d 342 (2005), and *People v. Bailey*, 374 Ill. App. 3d 608 (2007). We do not dispute this proposition. But unlike the cited cases, counsel in this case did not elicit testimony as to defendant's establishment of a residence; the State, rather, elicited that testimony on cross-examination. We will not hold counsel ineffective merely because a witness called by the defense had the potential to harm defendant's case on cross-examination. While the potential for any harm is certainly a factor to be considered when deciding whether to call a witness, trial counsel and defendant ultimately must determine whether such harm is outweighed by the potential benefit of the testimony, *i.e.*, in establishing a defense. Given that Hyden's testimony helped establish a defense to the charged offense in this case, and that defendant clearly agreed to

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have Hyden testify on his behalf, we cannot say that trial counsel's decision to call him as a witness constituted an unsound trial strategy. *Enis*, 194 Ill. 2d at 378. Defendant's ineffective assistance of trial counsel claim thus fails. *Flores*, 153 Ill. 2d at 283.

¶ 28 Defendant next contends that section 3(c)(5) of SORA is unconstitutionally vague. That section requires a registering sex offender to "provide positive identification and documentation that substantiates proof of residence at the registering address." 730 ILCS 150/3(c)(5) (West 2010). Although this argument was not raised at trial, a challenge to the constitutionality of a statute may be raised at any time (*People v. McCarty*, 223 Ill. 2d 109, 123 (2006)), and our review of such a challenge is *de novo* (*People v. Carpenter*, 228 Ill. 2d 250, 267 (2008)).

¶ 29 "A defendant can challenge a statute as unconstitutionally vague on its face or as applied to the defendant's actions." *People v. Molnar*, 222 Ill. 2d 495, 524 (2006). "However, if a statute does not implicate the first amendment, a defendant must demonstrate that the statute was vague as applied to the conduct for which the party was being prosecuted." *Molnar*, 222 Ill. 2d at 524. "[U]nder either the United States Constitution or the Illinois Constitution, a statute is said to violate due process on the basis of vagueness only if the terms of the statute are so ill-defined 'that the ultimate decision as to its meaning rests on the opinions and whims of the trier of fact rather than any objective criteria or facts.'" *Molnar*, 222 Ill. 2d at 524. "[D]ue process is satisfied if: (1) the statute's prohibitions are sufficiently definite, when measured by common understanding and practices, to give a person of ordinary intelligence fair warning as to what conduct is prohibited; and (2) the statute provides sufficiently definite standards for law enforcement and triers of fact that its applications do not depend merely on their private conceptions." *Molnar*, 222 Ill. 2d at 524-25.

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¶ 30 In this case, defendant claims that section 3(c)(5) was vague as applied to him because it does not put a person of ordinary intelligence on notice of what may or may not be presented to complete the registration process and "invites a standardless application of its requirements." However, the State, citing *In re Parentage of John M.*, 212 Ill. 2d 253 (2004), responds that the record is insufficient to establish defendant's claim where he never attempted to provide any documentation of his address. In *John M.*, the supreme court noted:

"A court is not capable of making an 'as applied' determination of unconstitutionality when there has been no evidentiary hearing and no findings of fact. *Reno v. Flores*, 507 U.S. at 300-01, 113 S.Ct. at 1446, 123 L.Ed.2d at 15-16 (when there are no findings or evidentiary record, the constitutional challenge must be facial). Without an evidentiary record, any finding that a statute is unconstitutional 'as applied' is premature. See *In re R.C.*, 195 Ill. 2d 291, 299-300, 253 Ill.Dec. 699, 745 N.E.2d 1233 (2001); see also *Desnick v. Department of Professional Regulation*, 171 Ill. 2d 510, 555-56, 216 Ill.Dec. 789, 665 N.E.2d 1346 (1996) (McMorrow, dissenting) (reaching the merits of a constitutional 'as applied' challenge without the presentment or circuit court consideration of any evidence creates constitutional due process concerns). Nor would it be appropriate for this court, *sua sponte*, to consider whether the statute has been constitutionally applied since we, as a reviewing court, are not arbiters of the facts." *John M.*, 212 Ill. 2d at 268.

¶ 31 We agree with the State that the record before us is insufficient to rule on whether section

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3(c)(5) is unconstitutionally vague as applied to defendant. Here, defendant argues that section 3(c)(5) does not put a person of ordinary intelligence on notice of what types of identification or documentation are required to register as a sex offender. However, there was literally no evidence presented at trial that defendant attempted to provide a form of identification or documentation to police, nor was there any evidence that the Chicago police department would have rejected a particular form of identification or documentation from him in an attempt to register as a sex offender. There was also, contrary to defendant's claim, no evidence that he was *required* to produce a state-issued identification card. Although defendant cites to Hyden's testimony as support for this assertion, Hyden testified that police would not register defendant because he did not have proof of residency *or* an I.D. It is also notable that Hyden was not present during the conversation defendant had with police and thus his testimony is mere hearsay. *People v. Johnson*, 2013 IL App (1st) 103361, ¶ 31 ("Testimony as to an out-of-court statement that is offered to establish the truth of the matter asserted is hearsay and is generally not admissible in evidence.") (quoting *People v. Lawler*, 142 Ill. 2d 548, 557 (1991)). Defendant never stated that he could register only with a state ID or driver's license either. Rather, he told Detective Davis that he was turned away because he did not have "the proper identification," and that he never returned because he was unable to afford a state ID card. We therefore have no facts upon which to assess the constitutionality of section 3(c)(5) as applied to defendant. Under the circumstances, it would be inappropriate for this court, *sua sponte*, to consider whether section 3(c)(5) was constitutionally applied. *John M.*, 212 Ill. 2d at 268.

¶ 32 Defendant also contends that section 3(c)(5) is unconstitutional as applied to him because it violates the fourteenth amendment's prohibition against punishing a defendant solely because of

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his indigency. He claims that "[u]nder the standards promulgated by the Chicago Police Department, offenders are not permitted to register unless they present a driver's license or a state identification card." However, he claims, "[t]hese documents cannot be obtained by an indigent individual who cannot afford the associated costs and fees of obtaining the items."

¶ 33 This claim likewise finds no support in the record. As discussed above, there was no evidence presented at trial that the Chicago police department would *only* accept a state ID or driver's license to register defendant as a sex offender. Consequently, there was also no evidence that defendant was required to purchase those documents in order to comply with SORA. Since the entire premise of defendant's claim is thus lacking in support, we need not address the claim further.

¶ 34 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 35 Affirmed.