

No. 1-12-0093

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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 12203
)	
KEVIN DOWDELL,)	Honorable
)	Dennis J. Porter,
Defendant-Appellant.)	Judge Presiding.

JUSTICE MASON delivered the judgment of the court.
Justices Neville and Pucinski concurred in the judgment.

O R D E R

¶ 1 *Held:* State presented insufficient evidence that defendant knowingly registered a false residential address in violation of the Sex Offender Registration Act, requiring reversal of his conviction.

¶ 2 Following a bench trial, defendant Kevin Dowdell was convicted of violating the Sex Offender Registration Act (Act) (730 ILCS 150/1 *et seq.* (West 2010)) and sentenced to 30 months' imprisonment. On appeal, he contends that the State presented insufficient evidence to demonstrate beyond a reasonable doubt that he was guilty of registering a false residential address

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under the Act, and that the State failed to prove that a crime occurred because there was no independent evidence corroborating his confession. We agree and reverse.

¶ 3 Dowdell was originally charged with two violations of the Act: first, knowingly providing false material information on March 4, 2010, by informing police that his residence was 1811 North Long Avenue in Chicago when he did not reside there (730 ILCS 150/10(a) (West 2010)); and second, knowingly residing within 500 feet of a school (720 ILCS 5/11-9.3(b-5) (West 2010)). Prior to trial, the State *nolle prossed* the second charge.

¶ 4 At trial, the parties stipulated to Dowdell's 2001 conviction for predatory criminal sexual assault. The parties also stipulated that police detective Patrick Loftus would testify that Dowdell appeared at the Chicago police department at 35th and Michigan on March 4, 2010, to register under the Act for one year beginning that day, that Dowdell provided the Long address as his residential address and that Dowdell signed the registration card and acknowledged his obligation to register any new residential address if he moved within the year beginning that day.

¶ 5 Officer Lomeli testified that on the morning of April 19, 2010, he was assigned to conduct a sex offender residence check. Among the offenders he was assigned to check was Dowdell. Lomeli went to the Long address, which appeared to be a two-flat, where he encountered a 19- or 20-year-old person, who he referred to as a "tenant." He met this person, whose name he later learned was Derrick Billups, at the gate by the sidewalk in front of the building. Lomeli never

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saw Billups exit the building. Lomeli told Billups that he was looking for Dowdell and testified as follows regarding their conversation:

"Q. Did you tell Mr. Billups the nature, the reason why you were there?

A. Yes.

Q. And did you have a conversation with Mr. Billups?

A. Yes.

Q. After having the conversation with Mr. Billups, did you ever speak with a person by the name of Kevin Dowdell?

A. Negative.

Q. Did you give Mr. Billups your contact information?

A. Yes.

Q. And what specifically did you give Mr. Billups?

A. I identified myself. I told him what I was there for, and who I was looking for, and if he had any knowledge he will be able to contact me at the 25th District.

Q. And did you give this information verbally or in writing?

A. Verbally.

Q. Did you have a business card with you?

A. No."

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Lomeli never knocked on the door of the building or attempted to gain entrance. Lomeli testified that after his visit, Dowdell never contacted him.

¶ 6 Detective Tyra Lazaro testified that she spoke to Dowdell after his arrest on June 3, 2010. After Dowdell was informed of his *Miranda* rights, he said that he had lived at the Long address with Josetta Knight, "Little Derrick, and Charlie" but when "they no longer wanted him to live there" he stayed with his sister Yolanda. Lazaro further testified:

"Q. Did defendant indicate when he moved to live with Yolanda?

A. He didn't indicate an exact date. *** I believe it was a couple months he had been living with her.

Q. A couple months from when?

A. From my interview which was June 3[.]"

Dowdell's sister lived at 162 N. LeClaire. Dowdell told Lazaro he did not register that address because it was too close to a school.

¶ 7 Detective Lazaro spoke by telephone on June 3 with a man identifying himself as Billups. When she went to the Long address after June 3 to serve Billups with a trial subpoena, Billups was not there but a woman there identified herself as his sister. Lazaro did not ask anyone at the Long address for documentation regarding whether Dowdell lived there. Detective Lazaro never entered the building at the Long address.

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¶ 8 Dowdell's motion for a directed finding was denied after argument. The defense rested, and the court found Dowdell guilty of violating the Act by "failing to register as charged." Dowdell filed a post-trial motion challenging the sufficiency of the evidence. The court denied the motion following argument.

¶ 9 The court sentenced defendant to 30 months' imprisonment with 128 days' pre-sentencing detention credit and with fines and fees. The order assessing fines and fees shows no credit for pre-sentencing detention. This appeal timely followed.

ANALYSIS

¶ 10 Dowdell contends that the State presented insufficient evidence that he knowingly registered a false residential address. He also contends that the State failed to prove that a crime occurred because there was no evidence that a crime was committed beyond his confession.

¶ 11 Section 10 of the Act provides in relevant part that "[a]ny person who is required to register under this Article who knowingly or wilfully gives material information required by this Article that is false is guilty of a Class 3 felony." 730 ILCS 150/10(a) (West 2010).

¶ 12 "The due process clause of the fourteenth amendment to the United States Constitution requires that a person may not be convicted in state court 'except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.'" *People v. Cunningham*, 212 Ill. 2d 274, 278 (2004) quoting *In re Winship*, 397 U.S. 358, 364 (1970). When a defendant challenges the sufficiency of the evidence, the appellate court must determine

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"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."

Jackson v. Virginia, 443 U.S. 307, 319 (1979); see also *People v. Collins*, 214 Ill. 2d 206, 217 (2005). It is not the role of the reviewing court to retry the defendant, and a conviction will not be set aside unless the evidence is so unreasonable, improbable, or unsatisfactory that it creates a reasonable doubt regarding the defendant's guilt. *People v. Smith*, 185 Ill. 2d 532, 542 (1999).

¶ 13 To sustain a conviction, the State must prove that a crime occurred – the *corpus delicti* – and that it was committed by the defendant. *People v. Lara*, 2012 IL 112370, ¶ 17. Where the defendant's confession or admission is part of the proof of the *corpus delicti*, the State must provide corroborating evidence independent of the defendant's confession or admission. *Id.* However, the independent evidence need not establish beyond a reasonable doubt that an offense occurred so long as it is competent and admissible evidence that tends to corroborate the facts contained in the confession. *Id.*, ¶¶ 18, 45. "To avoid running afoul of the *corpus delicti* rule, the independent evidence need only *tend to show* the commission of a crime. It need not be so strong that it alone proves the commission of the charged offense beyond a reasonable doubt." (Emphasis in original.) *Id.*, ¶ 18. In other words:

"corroboration is sufficient to satisfy the *corpus delicti* rule if the evidence, or reasonable inferences based on it, tends to support the commission of a crime that is *at least closely related* to the charged

offense. Even if a defendant's confession involves an element of the charged offense, the independent evidence need not affirmatively verify those circumstances; rather, the evidence must simply 'correspond' with the confession. [Citation.] Corroboration of only some of the circumstances related in a defendant's confession is sufficient." (Emphasis added.) *Id.*, ¶ 45.

The supreme court explained in *Lara* why it thus defined the *corpus delicti* rule: "Setting the bar too high for finding sufficient corroboration of a defendant's confession under the *corpus delicti* rule would intrude on the scope of the fact finder's exclusive duties. As long as the confession is reasonably reliable, consideration of it and all the other evidence properly admitted at trial falls within the domain of the trier of fact." *Id.*, ¶ 47.

¶ 14 Here, it is undisputed that Dowdell was subject to registration under the Act and that he registered the Long address as his residence on March 4, 2010. In order to sustain Dowdell's conviction under section 10(a) of the Act (730 ILCS 150/10(a) (West 2010)) the State was required to prove that Dowdell did not reside at the Long address and, importantly, that he did not reside there on the day he registered. The evidence, taken in the light most favorable to the State, shows, at most, that Dowdell changed his residence a "couple months" before his June 3 post-arrest interview, evidence which is insufficient to sustain the State's burden to prove him guilty beyond a reasonable doubt of the offense charged.

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¶ 15 Officer Lomeli's testimony adds little to the analysis. On April 19, 2010, he arrived at the Long address and spoke to an individual outside who he referred to, without elaboration, as a tenant. He did not request or attempt to enter the building or even knock on the door. The fact that Dowdell was not physically present at the Long address on the morning of April 19 does not establish that Dowdell did not live there either at that time or, more critically, on March 4.

Lomeli's testimony that he orally gave Billups his contact information, asked Billups to contact him "if he had any information," and was not contacted by Dowdell thereafter is insufficient to establish that Dowdell was guilty of registering a false address on March 4. Lomeli did not testify that he told Billups to have Dowdell contact him and given that Lomeli orally conveyed his contact information to a 19- or 20-year-old, it is not surprising that neither Billups nor Dowdell contacted him. Nothing in the State's evidence, aside from Dowdell's statements after he was arrested, corroborates Dowdell's registration of a false address on March 4 and for this reason Dowdell's conviction must be reversed.

¶ 16 Moreover, even Dowdell's "confession" is insufficient to establish the predicate for the offense. Accepting that "Little Derrick" refers to Billups—apparently Lazaro did not ask for "Little Derrick's" last name—Lazaro's testimony that Dowdell told her he moved from the Long address she "believed" a "couple months" prior to his arrest on June 3 says nothing about where Dowdell lived on March 4. Lazaro certainly could have asked Dowdell where he lived on the day he registered in light of his willingness to talk to her, but she did not. Because equivocal evidence

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regarding a vague "couple months" that Lazaro "believed" Dowdell referred to is insufficient to establish that he did not live at the Long address on March 4, his "confession" does not establish the offense charged.

¶ 17 In sum, on this record, we are left only to speculate where Dowdell lived on March 4 when he registered. It is equally, if not more plausible that Dowdell, in fact, lived at the Long address on March 4 when he registered and that he moved in with his sister sometime after that.

Therefore, the State has failed to sustain its burden to show beyond a reasonable doubt that Dowdell was guilty of knowingly providing a false address when he registered on March 4.

¶ 18 Reversed.