2014 IL App (1st) 121017-U

SECOND DIVISION
July 8, 2014

No. 1-12-1017

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. 09 CR 10080
	)	
BRUCE HOLMGREN,	)	Honorable
	)	Kevin M. Sheehan,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE HARRIS delivered the judgment of the court.
Justices Simon and Pierce concurred in the judgment.

ORDER

¶ 1 *Held*: Where the State failed to prove that defendant did not register within five days of moving to Chicago, we reverse his conviction for violating the Sex Offender Registration Act.

¶ 2 Following a bench trial, defendant Bruce Holmgren was convicted of violating the Sex Offender Registration Act (Act) (730 ILCS 150/1 *et seq.* (West 2008)), and sentenced to three years' imprisonment. On appeal, he contends that the State presented insufficient evidence to convict him beyond a reasonable doubt where it failed to show he did not register as a sex

offender within five days of moving to Chicago. Defendant also contends that the State failed to prove the *corpus delicti* of the charged offense. We reverse.

¶ 3 Defendant was charged with one count of violating the Act. The count indicated that defendant's duty to register as a sex offender arose from a conviction for first degree criminal sexual conduct under Minnesota case number KB-94-684. The count alleged that defendant violated section 3 of the Act on or about May 19, 2009, by knowingly failing to register with the Chicago police within five days of establishing a residence or temporary domicile in Chicago.

¶ 4 At trial, the State entered into evidence a certified copy of defendant's prior conviction in the State of Minnesota for criminal sexual conduct in the first degree, and the Minnesota Address Verification Form signed by defendant on September 12, 2006, instructing defendant as to his duty to register. The parties stipulated that Thief River Falls Officer Craig Matteson would testify that he met defendant on July 10, 2006, and that, on that date, defendant registered his Minnesota address.

¶ 5 Officer Eddie Chapman testified that he worked with the criminal registration department (Department). He explained that when a person is registering as a sex offender in Chicago, he is required to have a state I.D. or driver's license with a current Chicago address. When the person provides this information to the Department, the officers enter the information into a system, creating a "hard card." The officers maintain paper files as well as electronic files for each person that registers with the Department. Chapman was asked to look for defendant's files, including on the day of trial, but could not find them. Chapman represented that if defendant was a registered sex offender in Chicago, there would be a file confirming his status as such.

¶ 6 Detective Michael Rooks testified that on June 2, 2009, defendant had already been arrested and was in the interview room of the police station. After defendant waived his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966), Rooks showed defendant a Minnesota sex

offender registration form, which contained his name and residence. Defendant acknowledged that his signature was on the form, but indicated he signed it under duress. Defendant also told Rooks that he had not registered as a sex offender in Chicago because he felt he was unjustly convicted in Minnesota for the crime that required him to register. Rooks further testified that defendant admitted he lived in Chicago at 54th Street and Ellis Avenue in a "small room where he was doing work." On cross-examination, Rooks clarified that when he interviewed defendant, defendant stated that he was "going back and forth from Minnesota and Illinois." Defendant never indicated how long he had been staying at 54th Street and Ellis Avenue.

¶ 7 After the State rested its case-in-chief, defense counsel moved for a directed finding, alleging that the State failed to prove defendant guilty beyond a reasonable doubt. In particular, counsel argued that no evidence was presented regarding how long defendant lived in Illinois. The court denied the motion, finding that defendant admitted to living in Chicago, and the defense rested without presenting any evidence.

¶ 8 Following closing arguments, the trial court found defendant guilty of violating the Act. In doing so, the court held that no files were found indicating that defendant registered as a sex offender in Chicago, and he told police that he did not register in Chicago because he was unjustly convicted in Minnesota. The court also found that defendant admitted to working and living in Chicago.

¶ 9 Defendant filed a motion for new trial, contending that under the rule of *corpus delicti*, it is insufficient to convict a defendant based solely on his confession without any corroborating evidence. According to defendant, outside of his own statement as testified to by Detective Rooks, no evidence revealed how long he lived at the Chicago address, and thus the State failed to prove him guilty beyond a reasonable doubt. The court denied the motion for new trial and sentenced defendant to three years' imprisonment.

¶ 10 Defendant contends that the State presented insufficient evidence to convict him of violating the Act. In particular, defendant first maintains that the State failed to show when he established a residence in Chicago.

¶ 11 When presented with a challenge to the sufficiency of the evidence, this court must determine 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. Beauchamp*, 241 Ill. 2d 1, 8 (2011). The credibility of the witnesses, the weight to be given their testimony, and the resolution of any conflicts in the evidence are within the province of the trier of fact, and a reviewing court will not substitute its judgment for that of the trier of fact on these matters. *People v. Brooks*, 187 Ill. 2d 91, 132 (1999). Reversal is justified only where the evidence is "so unsatisfactory, improbable or implausible" that it raises a reasonable doubt as to the defendant's guilt. *People v. Slim*, 127 Ill. 2d 302, 307 (1989).

¶ 12 Section 3 of the Act provides that a sex offender "shall register *** with the chief of police in the municipality in which he or she resides or is temporarily domiciled for a period of time of 5 or more days, unless the municipality is the City of Chicago, in which case he or she shall register at the Chicago Police Department Headquarters." 730 ILCS 150/3(a) (West 2008). Section 3 defines a "place of residence or temporary domicile" as "any and all places where the sex offender resides for an aggregate period of time of 5 or more days during any calendar year." 730 ILCS 150/3(a) (West 2008).

¶ 13 Here, we agree with defendant that no evidence showed when he established a residence in Chicago, and thus the State failed to prove beyond a reasonable doubt that he failed to register as a sex offender within five days of establishing a residence. The only evidence regarding defendant's residence in Chicago was Detective Rooks' testimony that defendant told him he was living in Chicago at 54th Street and Ellis Avenue. Defendant did not tell Rooks how long he had

been staying at that address, and Rooks had no independent knowledge as to how long he had been living there.

¶ 14 This court's decision in *People v. Harris*, 333 Ill. App. 3d 741 (2002), supports our conclusion. In *Harris*, the defendant admitted to the police that he had been staying at an address in Chicago for "over a month." *Id*. at 743. We found that such a statement was not "inherently reliable," and that the State was required to prove "corroborating evidence independent of the defendant's admission regarding the new address where he was currently living and independent of defendant's admission as to how long he had been staying at the new address." *Id*. at 746-47. After finding no such corroboration, this court reversed the conviction. *Id*. at 754. Here, as defendant correctly argues in his brief on appeal, the State's case is even weaker than in *Harris* where the State could at least point to the defendant's admission that he had been living in the city for "over a month." *Id*. at 743.

¶ 15 In so finding, we reject the State's contention, without citation to authority, that "there is no requirement that the People must prove when defendant moved or changed addresses, nor is there a requirement that the People must prove for how long defendant resided permanently or temporarily at the new address." In fact, the opposite is true. The statute specifically requires that offenders register when they reside in a place "for a period of time of 5 or more days." 730 ILCS 150/3 (West 2008). Moreover, we have previously held that the length of time an offender has resided at a new address is a "critical element" that the State is required to prove to sustain a conviction for violating the Act. *Harris*, 333 Ill. App. 3d at 746. We further find that, despite the State's contentions to the contrary, implications and inferences are insufficient to uphold a conviction where one of the elements of the offense was wholly ignored. Without any evidence establishing that defendant failed to register within five days of moving to Chicago, we must reverse the conviction. As a result of our disposition, we need not address defendant's alternative

argument that the State failed to establish the *corpus delicti* of the charged offense.

¶ 16 For the foregoing reasons, we reverse the judgment of the circuit court.

¶ 17 Reversed.