2016 IL App (1st) 131489-U

FIFTH DIVISION
May 13, 2016

No. 1-13-1489

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 12 CR 14170
	)	
DONALD CROCKETT,	)	Honorable
	)	James B. Linn,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE BURKE delivered the judgment of the court.[*]
Justices Gordon and Lampkin concurred in the judgment.

ORDER

Held: The circuit court is affirmed where the evidence was sufficient to sustain defendant's conviction for violating the Sex Offender Registration Act, the court did not rely on facts not in evidence in convicting him, and defense counsel's performance was not constitutionally deficient.

¶1 Following a bench trial, defendant Donald Crockett was convicted of violating the Sex Offender Registration Act (SORA) for knowingly failing to report in person to the police

[*] This case was recently reassigned to Justice Burke.

department within 90 days of his last registration (730 ILCS 150/6 (West 2012)). He was sentenced to six years in the Illinois Department of Corrections (IDOC). On direct appeal, defendant raises several claims of error, arguing that the State failed to present sufficient evidence to support his conviction, that the trial court relied on facts not in evidence and shifted the burden of proof, and that his trial counsel rendered ineffective assistance. We affirm.

¶2 I. BACKGROUND

¶3 Defendant was charged by grand jury indictment for violating the SORA between the dates of July 2 and 11, 2012. He was charged as a class 2 offender due to a previous conviction for failure to register as a sex offender (Case No. 08-CR-763401). The indictment recited that defendant, "having been previously convicted of rape under case number 80C3063 in Cook County, Illinois, knowingly failed to report, in person, to the law enforcement agency with whom he last registered, to wit: Chicago Police Department ***, ninety days from the date of such registration and every ninety days thereafter, in violation of chapter 730 act 150 section 6 of the Illinois compiled statutes 1992 as amended."

¶4 At a court date on December 11, 2012, the Assistant State's Attorney (ASA) indicated that the State was not yet ready for trial and the trial court requested a "proffer." The ASA stated that defendant was required to register as a sex offender because of a prior rape conviction from 1980, the evidence would show that defendant was in custody at Cook County jail, and "[a]s of June 28th, 2012, he was told to register by Sheriff's personnel prior to his release. He was told to register with the Chicago Police Department. About three days later the Defendant did not do so. In fact, he was arrested by the Chicago Police approximately two weeks later[.]" The trial court then set a trial date.

¶5 Defendant's bench trial commenced January 8, 2013. The State presented the testimony of Chicago police detective Jermaine Dubois, who was assigned to investigate defendant's failure to register case. Dubois testified that defendant was brought into custody on July 11, 2012, and he and another detective met with defendant that night and into the morning of July 12, 2012. He advised defendant of his constitutional rights and defendant agreed to speak with him. Dubois obtained defendant's registration notification form, which is given to sex offenders when they are released from custody. Defendant's form had been filled out and was dated June 28, 2012. Dubois showed defendant the notification form and defendant acknowledged that it was the form he had signed. Dubois testified that defendant stated that "he thought he had registered when he signed that form when he was released from county jail, and then he said that he made a mistake he was sorry he really slipped up with the fact that he didn't register." Defendant acknowledged that he was told to register.

¶6 On cross-examination, Dubois affirmed that defendant had been registering once per year, but the law changed and he was then required to register every 90 days. Dubois did not know when defendant began registering every 90 days. Defense counsel inquired:

> Q. Did you investigate whether or not he registered sometime in April of 2012, had he previously registered under the 90-day requirement?
>
> A. I believe the last registration was March.
>
> Q. Approximately 90 days before this?
>
> A. Yes."

¶7 The parties stipulated that, if called to testify, Officer Pressley of the Cook County department of corrections would testify that he gave the registration notification form to defendant and had him fill it out or it was filled out in front of defendant; that defendant

acknowledged the form and signed it on June 28, 2012; that defendant initialed all of the component parts of the form and it was explained to him that he had to register by July 1, 2012. The State continued:

"MR. THOR MARTIN [Assistant State's Attorney]: The State would then ask you to take judicial notice that it is a 90-day registration requirement per the first provision on Page 2 of [the registration notification form], that the witness would acknowledge People's No. 1 as a fair and accurate copy of the notification form given to him on that date."

THE COURT: What date was that?

MR. MARTIN: The form was filled out June 28, 2012 registration requirement was as of July 1st, 2012, within a ten-day period to register with the Chicago Police Department. So stipulated?

MR. WILLIAM WOELKERS [Defense Counsel]: So stipulated.

THE COURT: So he was supposed to register by when?

MR. MARTIN: As of July 1st he was supposed to register.

MR. WOELKERS: So stipulated as to that." (A13).[1]

¶8 The State also entered into evidence certified copies of defendant's prior convictions of failure to report in 2008 and rape in 1981.

¶9 The defense presented the testimony of defendant's brother, James Owens, who testified that he had a Bachelor's degree and was an emergency medical technician. He admitted that he was on probation for unlawful use of a weapon by a felon. He testified that defendant was living

[1] The registration notification form listed defendant's name and address and it was signed by defendant and dated June 28, 2012. It indicated that the date of release was "06/28/12." Above the signature line, it reads: "I HAVE READ AND/OR HAD READ TO ME, THE ABOVE REQUIREMENTS. IT HAS BEEN EXPLAINED TO ME AND I UNDERSTAND MY DUTY TO REGISTER NEXT ON OR BEFORE 01 JULY 2012."

with him when he was arrested and had been living with him for approximately 10 years. Owens knew that defendant was required to register as a sex offender. As far as Owens knew, defendant was generally in compliance with registration requirements.

¶10 Owens testified that on June 29, 2012, he took defendant to the police station at 35th and Michigan in order for defendant to register, as "he supposed [*sic*] to sign in once a month or something like that." Owens testified that defendant was in the police station for 15 to 30 minutes. On cross-examination, Owens testified that when defendant exited the police station, he told Owens that "they wouldn't allow him to [register] because he didn't have state ID with him."

¶11 Defendant testified in his own defense. He testified that he was 56 years old and he started registering as a sex offender in 2000; he had generally been in compliance. He believed the last time he registered in 2012 was in March. He was arrested on July 11, 2012, for his failure to register.

¶12 Defendant testified that Owens drove him to the police station at 35th and Michigan on June 29, 2012, so that defendant could register. Defendant went into the police station and waited for an officer. Defendant testified that he did not have identification, so "[t]hey told me if I didn't have any ID I could not register." Defendant testified that he tried to go to the police station again on July 6, 2012, but the "[s]ame thing" happened, and the police "[t]old me I couldn't register with no ID." When asked why he returned a second time, defendant explained that "they know me down there. You see they have a copy—they made a copy of my ID, so it's like they got a photocopy of it, so it's like why do I really need it."

¶13 On cross-examination, the State inquired whether defendant told the detectives about his prior attempts to register on June 29 and July 6. Defendant responded, "I really don't recall all that I told them. I knew I told them that I thought I had registered at first when I first got out."

When the State then asked, "So there wouldn't have been any need for you to go to CPD because you thought you had already registered, correct?" Defendant responded, "Uh-hum, true." He did not recall telling them that he "truly slipped up when [he] did not register."

¶14 Following this testimony, the trial court inquired of defense counsel whether he had investigated the police department logs to determine whether defendant's name was entered on a log, even if he had not been permitted to register. Counsel indicated that he only recently discovered that defendant had spoken with an officer at the station, and he could investigate the logs if the trial court wished. The trial court granted a continuance for counsel to do so. When the parties resumed trial a few weeks later, the defense rested without presenting further evidence.

¶15 In closing, the State asserted that the evidence showed that defendant was required to register and failed to do so after being released from custody. The State argued that defendant failed to inform Dubois of his attempts register and there was no verification of his attempts. The State also asserted that Owens was a convicted felon and was not credible.

¶16 Defense counsel argued that defendant faithfully registered for many years and he did not willfully fail to register this time. He "did actually register earlier in the year, in March I believe, but when he went to re-register again in June and early July he was told he could not register because he did not have identification." Counsel asserted that defendant's and Owens' testimony was uncontested. Counsel argued, "I know the Court is aware there are logs that are kept. I would submit that because we cannot produce logs does not mean that he didn't show up there. He was told he could not register because he did not have identification."

¶17 The trial court found:

"The Court has heard the evidence and Mr. Crockett was in a status where he was required to register periodically with law enforcement his address whereabouts. He had some history of doing that.

When he was found on a routine field interview by the police for drinking liquor on the street, it was found that he had lapsed. He gave some explanations about what had happened, about his lack of willfulness.

I tried to be mindful of the fact that registration requirements for some people could be difficult, onerous. I know that sometimes you have to have identification cards, money or else you're turned away. But even if you're turned away in Chicago, they'll give a chance to show on a log that you signed in. It's not that I'm shifting the burden of proof to the defendant to show me that, but I don't have any evidence to contradict the fact that he was required to register and he hadn't registered in the proper time.

There will be a finding of guilty."

¶18 The trial court denied defendant's posttrial motion for a new trial and sentenced defendant to six years' imprisonment. It also denied defendant's motion to reconsider sentence. Defendant filed a timely notice of appeal.

¶19 II. ANALYSIS

¶20 A. Sufficiency of the Evidence

¶21 On appeal, defendant argues that the State charged him with violating section 6 of SORA (730 ILCS 150/6 (West (2010)) for knowingly failing to report, in person, to the police department within 90 days of his last registration, but the State failed to prove when he last registered, and any evidence that defendant's last registration occurred in March 2012 was admitted by the defense, not the State. Defendant asserts that the State's evidence actually

focused instead on a violation of section 3(c)(4) (730 ILCS 150/3(c)(4)(West (2010)), which requires a defendant who is unable to comply with registration requirements because of imprisonment to register in person within three days of release. Defendant also argues that the State failed to prove that he *knowingly* failed to report because defendant presented uncontested evidence that he went to the police station in person on June 29, 2012, and again on July 6, 2012, but was not allowed to register because he did not have identification. In addition, defendant maintains that SORA does not require him to present a state-issued identification.

¶22 The State concedes that the indictment "indicates that defendant was charged with failure to register as a sex offender every 90 days, but the proofs and defense were directed towards his failure to register within three days of release from custody." (Response Brief, p 7). The State argues that there was sufficient evidence to sustain a conviction under either provision and defendant had adequate notice of either charge based on pretrial proceedings and the indictment. The State asserts that under section 6, the last possible date defendant could have registered was June 29, 2012, assuming defendant's prior registration occurred on the last day of March 2012. The State points out that defendant admitted to Dubois that he "slipped up" in failing to register and the trial court found that the testimony of Owens and defendant that defendant visited the police station on June 29 and July 6 was not credible. Alternatively, the State contends that it established a violation of section 3(c)(4) as the evidence showed that defendant was released from jail on June 28, 2012, and he signed the notification form which informed him that he had to register within three days, by July 1, 2012, and defendant told Dubois that he made a mistake and was sorry for not registering. The State contends that defendant's argument should be construed as a "fatal variance" argument, given the difference between the indictment and proofs at trial. The State asserts that the variance was not fatal here because it was not material, did not

mislead defendant in presenting his defense, and did not expose him to double jeopardy. The State also argues that defendant's alleged attempt to register was not in good faith as he failed to bring identification, despite having registered on prior occasions.

¶23 Defendant argues in reply that he is not advancing a "fatal variance" argument and maintains that there was insufficient evidence to uphold his conviction under section 6. Defendant argues that, nevertheless, any variance was fatal in this case because it involved two different statutes imposing different obligations, and the difference affected the preparation of his defense as his attorney did not present evidence that defendant was in jail at the time he should have reported under the 90-day reporting schedule. Defendant asserts that he is at risk of double jeopardy because indictment for a 90-day violation would not be precluded. Defendant notes that, although not introduced at trial, defendant's criminal history report indicates that he last registered on March 7, 2012, and that he was arrested on June 3, 2012, and released from jail on June 28, 2012. He argues that he could be charged with a 90-day violation for failing to report in person 90 days from March 7, *i.e.*, by June 5, 2012. He notes that his indictment listed the relevant timeframe as July 2 through July 11, 2012. Defendant contends that conviction for a charge not made violated his due process rights.

¶24 In analyzing a challenge to the sufficiency of the evidence sustaining a defendant's conviction, this court considers the evidence in the light most favorable to the State to determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011). "It is the trier of fact's responsibility to determine the witnesses' credibility and the weight given to their testimony, to resolve conflicts in the evidence, and to draw reasonable inferences from the

evidence; we will not substitute our judgment for that of the trier of fact on these matters." *People v. Ortiz,* 196 Ill. 2d 236, 259 (2001).

¶25 Section 6 provides in relevant part:

> "Duty to report; change of address, school, or employment; duty to inform. A person who has been adjudicated to be sexually dangerous or is a sexually violent person and is later released, or found to be no longer sexually dangerous or no longer a sexually violent person and discharged, or convicted of a violation of this Act after July 1, 2005, shall report in person to the law enforcement agency with whom he or she last registered no later than 90 days after the date of his or her last registration and every 90 days thereafter and at such other times at the request of the law enforcement agency not to exceed 4 times a year." 730 ILCS 150/6 (West 2010)).

¶26 In proving a violation of section 6 of SORA, the State must show that "(1) defendant was subject to the reporting requirements under the Act, and (2) defendant knowingly failed to report in person at the requisite reporting agency." *People v. Brock,* 2015 IL App (1st) 133404, ¶ 21 (citing 730 ILCS 150/6 (West 2010)). Additionally, section 6 "further provides several manners in which a defendant may violate the in-person reporting provision including *** the failure to report in person within 90 days of the date of his last registration[.]" *Id.*

¶27 Section 3 provides, in relevant part:

> "3. Duty to register.
>
> (a) A sex offender, as defined in Section 2 of this Act, or sexual predator shall, within the time period prescribed in subsections (b) and (c), register in person and provide accurate information as required by the Department of State Police. Such information shall include a current photograph, current address, current place of

employment, the sex offender's or sexual predator's telephone number, including cellular telephone number, the employer's telephone number, school attended, all e-mail addresses, ***."

***

(c) The registration for any person required to register under this Article shall be as follows:

***

(3) 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.

(4) 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.

(5) The person shall provide positive identification and documentation that substantiates proof of residence at the registering address." 730 ILCS 150/3 (West 2010)).

¶28 As noted, the indictment in the present case alleged that defendant, between July 2 and 11, 2012, violated SORA in that defendant "knowingly failed to report, in person, to the law enforcement agency with whom he last registered *** ninety days from the date of such registration and every ninety days thereafter, in violation of Chapter 730 Act 150 Section 6 ***." It is clear from defendant's indictment that a section 6 violation was charged.[2] The parties

[2] As in his indictment, defendant's order of commitment and sentence indicates that he was convicted of "FAILURE TO REPORT ANNUALLY/2+" with the statutory citation "720-150/6."

contend that a section 3(c)(4) violation was the focus of defendant's trial. Although the record is not perfectly clear in that regard, it does appear that a section 3(c)(4) violation was the focus at trial. For example, at a pretrial court date, the ASA told the trial court that the State intended to prove that defendant was required to register under SORA and that the evidence "would show that the Defendant was in custody in the Cook County Jail. As of June 28th, 2012, he was told to register by Sheriff's personnel prior to his release. He was told to register with the Chicago Police Department. About three days later the Defendant did not do so. In fact, he was arrested by the Chicago Police approximately two weeks later ***."

¶29 On the other hand, at trial, when the ASA admitted into evidence the registration notification form that defendant filled out before being released from jail, the ASA requested that the trial court take judicial notice that "it is a 90-day registration requirement per the first provision on Page 2" of the document. Further, as defendant points out, defense counsel questioned Dubois about the 90-day requirement at trial. In closing arguments, the parties did not refer specifically to a section of SORA or to a 90-day or 3-day requirement.

¶30 However, the trial evidence otherwise focused on defendant's failure to report to the police station within three days of being released from jail and the credibility of defendant's evidence that he went to the police station twice, on June 29 and July 6. The State argued that defendant was required to register and failed to do so after being released from jail. Defense counsel argued in closing that the evidence did not show that defendant willfully failed to register because he had faithfully registered in the past, he registered in March, and he was turned away for lack of identification when he twice attempted to register. In its findings of fact, the trial court observed that defendant was "required to register periodically" and he had a history of doing so, but it was discovered that he had lapsed and "hadn't registered in the proper time."

Moreover, while there is some confusion in the record, both parties agree on appeal that a section 3(c)(4) violation was the focus of the trial.

¶31 It is notable that with regard to section 6, the parties do not dispute that defendant was required to register under SORA. The State admitted into evidence at trial a copy of defendant's prior rape conviction, which formed the basis of his SORA registration requirements. Defendant claims that the State failed to prove that he *knowingly* failed to report (*Brock*, 2015 IL App (1st) 133404, ¶ 21), given his testimony that he twice went to the police station but was turned away for lack of identification. However, there was sufficient evidence to establish this element. Although defendant and Owens testified that defendant went to the police station on June 29 and July 6, and that defendant was turned away for lack of identification, the trier of fact was free to judge the witnesses' credibility and disregard their testimony. When evaluating a challenge to the sufficiency of the evidence supporting a conviction, this court defers to the trial court's assessment of the witness testimony. *Ortiz*, 196 Ill. 2d at 259. The trial court had good reason to doubt Owens' and defendant's trial testimony. Owens, testifying for his brother, also had prior felony conviction. Although defendant testified that he tried to report to the police station on June 29 and July 6, he made conflicting statements when Dubois interviewed him. He informed Dubois that he thought he registered on June 28 when he filled out the registration notification form as he was leaving jail. Apparently, defendant did not inform Dubois about his two prior attempts to register when confronted by the detective. Defendant testified that he "really d[id]n't recall" if he told the detectives that he twice attempted to register after being released from jail. Moreover, had defendant actually believed that he had fulfilled his SORA reporting requirements when he filled out the registration notification form on June 28, he would have had no reason to go to the police station to attempt to register on June 29 or July 6. In addition, according to

Dubois, defendant admitted to him that "he made a mistake he was sorry he really slipped up with the fact that he didn't register."

¶32 However, in establishing a violation of section 6, the record reflects that the State did not present evidence at trial regarding the specific date of defendant's last registration in order to prove defendant's "failure to report in person within 90 days of the date of his last registration[.]" *Id*. The defense introduced evidence through cross-examination of Dubois and direct examination of defendant that defendant last registered sometime in March 2012. No specific date in March was established. Even considering this evidence introduced by the defense, it nevertheless falls short of proving the specific date by which defendant had to report 90 days thereafter under section 6 of SORA. The State assumes that defendant's prior registration was on the last day of March, which would place the next 90-day reporting requirement on June 29, 2012. However, this date does not comport with the dates set forth in the indictment, July 2 and 11, 2012, nor does it establish this element of a section 6 violation beyond a reasonable doubt. *Beauchamp*, 241 Ill. 2d at 8.

¶33 Next, turning to section 3(c)(4), defendant maintains that he is not advancing a "fatal variance" argument in asserting that he was convicted of a charge that did not appear in his indictment and that this violated his due process rights. In essence, however, defendant has advanced such an argument on appeal. "Illinois case law indicates that his argument—that he was denied due process of law where he was 'convicted of a charge not made'—is indeed an argument as to the existence of a fatal variance between the charging instrument and the evidence presented." *People v. Roe*, 2015 IL App (5th) 130410, ¶ 8. See also *People v. Cohn*, 2014 IL App (3d) 120910, ¶ 13 (Noting that although the defendant framed the issue as a sufficiency of the evidence claim, "it actually concerns the adequacy of the charging

information," where the indictment cited section 3 of SORA but the factual allegations described a violation of section 6).

¶34 It is well settled that "[a] person may not be convicted in a state court except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." *Roe*, 2015 IL App (5th) 130410, ¶ 9 (citing U.S. Const., amend. XIV; Ill. Const. 1970, art. I, § 2). The principles of due process require that an indictment apprise the defendant of "the precise offense with which he is charged[.]" *Id.* "A complaint must state the name of the accused; set forth the name, date and place of the offense; cite the statutory provision the defendant allegedly violated; and set forth in the statutory language the nature and elements of the charged offense." *People v. Reese,* 2015 IL App (1st) 120654, ¶ 94 (citing *People v. Collins,* 214 Ill. 2d 206, 219 (2005)). "[A] fatal variance between the instrument charging a defendant and the proof pursuant to which a defendant is convicted at trial requires reversal of the conviction. [Citation.] However, in order to be fatal, a variance between the charging instrument and the poof at trial must be material and of such character that it misleads the accused in making his defense or exposes him to double jeopardy. [Citation.]" *Roe*, 2015 IL App (5th) 130410, ¶ 9.

¶35 In *Cohn*, for example, the indictment cited section 3 of SORA, but the factual allegations in the indictment made it clear that the defendant was charged with a violation of section 6. *Cohn*, 2014 IL App (3d) 120910, ¶ 13. On appeal, the Third District concluded that the citation to the incorrect section of SORA was a formal, rather than substantive, error and did not require dismissal unless the defendant showed prejudice. *Id.* ¶ 14. The facts alleged in the indictment adequately apprised the defendant that he was being charged with failure to report within 90 days of his prior registration, which was a section 6 violation, and, therefore, reversal of his conviction was not required. *Id.* ¶ 15.

¶36 In *Roe*, the defendant's indictment cited section 6 of SORA, but the factual allegations contained therein set forth a violation of section 3(c)(3)—failure to register within three days of conviction—while the proofs at trial focused on his failure to register within three days of being released from prison, which was a section 3(c)(4) violation. *Roe*, 2015 IL App (5th) 130410, ¶¶ 3-10. The First District in *Roe* construed subsection 3(c)(3) and 3(c)(4) together, along with the language in the indictment, and determined that the defendant's due process rights were not violated by the discrepancy. *Id.* ¶ 12. "Sections 3(c)(3) and 3(c)(4) must be interpreted as a whole, as the latter provides a clear alternative to the former due to the impossibility of an imprisoned offender to fulfill the registration requirements under section 3(c)(3)." *Id.* Reading these two sections in conjunction with the language set forth in the indictment, the court concluded that "the defendant was properly charged with section 3(c)(4)'s functional equivalent since he was 'unable to comply with the registration requirements *** because he [was] imprisoned.' " *Id.* (citing 730 ILCS 150/3(c)(4) (West 2012)). The court also determined that the variance was not material, misleading, or likely to expose the defendant to double jeopardy. *Id.* ¶ 13. The court found there were no double jeopardy concerns because the relevant time period began running on the day the defendant was released and he could not again be charged for this time frame. *Id.* Accordingly, the court affirmed the defendant's conviction for failure to register as a sex offender because he was afforded sufficient notice of the charge against him and he was given a meaningful opportunity to defend himself against that charge. *Id.* ¶ 14.

¶37 The State argues that *Roe* is instructive in the present case. Although *Roe* involved section 3(c)(3) and 3(c)(4), whereas this case involves section 6 and section 3(c)(4), this court must "construe the sex offender registration statute as a whole in order to avoid rendering any part of it meaningless or superfluous." *Roe*, 2015 IL App (5th) 130410, ¶ 11 (citing *People v.*

Marshall, 242 Ill. 2d 285, 292 (2011)). As such, this court should read section 6 and section 3(c)(4) together in construing the Act. Just as in *Roe*, where it would have been impossible for the defendant to fulfill the registration requirements under section 3(c)(3) because he was imprisoned at the time, it was also impossible for defendant here to fulfill the requirements under section 6 to report every 90 days because he was in jail at the time. *Id.* ¶ 12. The trial evidence in the present case showed that defendant was in jail until June 28, 2012. Although no evidence regarding when he first entered jail was presented at trial, it appears from defendant's criminal history report contained in the record that defendant entered jail on June 3, 2012. It also appears from the criminal history report, though, again, not from the trial evidence, that defendant last reported on March 7, 2012, which means that his next 90-day reporting date fell on June 7, 2012. As stated, section 3(c)(4) directs that "[a]ny person unable to comply with the registration requirements of this Article because he or she is confined, institutionalized, or imprisoned *** shall register in person within 3 days of discharge, parole or release." 730 ILCS 150/3(c)(4) (West 2012). In reading sections 6 and 3(c)(4) together, section 3(c)(4) "provides a clear alternative to the former due to the impossibility of an imprisoned offender to fulfill the registration requirements" under section 6. *Roe,* 2015 IL App (5th) 130410, ¶ 12. Here, defendant would have been exempt from reporting under the 90-day requirement because he was in jail at the time he was due to report on June 7, and, therefore, he would have to report within three days of his June 28 release date, *i.e.*, by July 1. 730 ILCS 150/3(c)(4) (West 2010). This comports with the dates set forth in the indictment, which charged defendant with failing to report from July 2 to July 11, 2012.

¶38 As noted, the parties agreed at trial that defendant was required to register under SORA. In fact, the parties stipulated at trial to the admission of defendant's registration notification form,

signed by defendant and dated June 28, 2012, which indicated that he was required to register by July 1, 2012.[3] Defendant's defense at trial was that he had faithfully registered in the past and he did not knowingly and willfully violate his SORA requirements because he twice attempted to register, but was turned away. As such, the issue at trial was not whether defendant was required to register or by what date; rather, the question was whether defendant failed to report to the police station after being released from jail on June 28. As the *Roe* court reasoned, "[t]he culpable act at issue is the defendant's failure to register." *Roe,* 2015 IL App (5th) 130410, ¶ 13. The facts here established, beyond a reasonable doubt, that defendant failed to report or register at any time after being released from jail on June 28 and leading up to his arrest on July 11. Like the defendant in *Roe,* defendant's statement to Dubois that he "slipped up" and apologized for failing to register "insinuate that he certainly understood the offense he had committed." *Id.* ¶ 13. Defendant and his attorney never expressed a misunderstanding of the charges.

¶39 In light of these facts, the record supports that any variance between the charges and proofs at trial did not mislead defendant. *Roe*, 2015 IL App (5th) 130410, ¶ 9. Even if the language of the indictment had tracked section 3(c)(4), it is not likely that defendant would have prepared his defense differently, as it was his contention that he twice attempted to report to the police station but was turned away. Regardless of when defendant last reported, the trial evidence sufficiently established that defendant was required to register and he failed to do so, under any given timeline. Additionally, defendant is not exposed to the possibility of double jeopardy. *Roe*, 2015 IL App (5th) 130410, ¶ 9. The indictment set out the charged offense –

[3] In that regard, although not argued by the State, according to the doctrine of invited error, "a party may not request to proceed in one manner and then later contend on appeal that the requested course of action was in error." *People v. Denson,* 2014 IL 116231, ¶ 17 (citing *People v. Lucas,* 231 Ill. 2d 169, 174 (2008)). To that end, defendant cannot now be heard on appeal to contend that there was insufficient evidence to sustain his conviction because the State failed to prove when he last registered, where defendant stipulated that he was required to register by July 1, 2012.

violation of SORA for failing to report—in addition to the place and time period during which the offense was alleged to have occurred. "If any future prosecution were attempted, prior prosecution on these same facts could be shown by resort to the record." *People v. Arndt*, 351 Ill. App. 3d 505, 518-19 (2004).

¶40 Defendant also argues that SORA does not require him to present state-issued identification, citing *People v. Wlecke*, 2014 IL App (1st) 112467. In *Wlecke*, the defendant was found guilty of failing to report weekly to the police department while lacking a fixed residence, under section 6 of SORA. *Id.* ¶ 15. This court held that the State failed to establish that defendant lacked a "fixed address" when, following his release from prison, the defendant reported to the police station and provided his temporary Illinois Department of Corrections identification card, which listed his address as the Veteran's Administration Hospital, because the hospital could be considered a "fixed residence." *Id.* ¶ 26. The State also contended that the duty to register included the duty to provide "accurate information" under section 3(a), which included providing a government-issued identification. *Id.* ¶ 27 (citing 730 ILCS 150/3(a) (West 2010)). The court found that the language in section 3(a) did not require a government-issued identification, and that "accurate information" could mean "a current photograph, current address, current place of employment, the employer's telephone number, school attended, *** extensions of the time period for registering *** and, if an extension was granted, the reason why the extension was granted and the date the sex offender was notified of the extension." *Id.* ¶ 28 (citing 730 ILCS 150/3(a) (West 2010)).

¶41 In distinction from *Wlecke*, the trial court here did not specifically find that defendant failed to present state-issued identification. The trial court's findings appear to reject, as a whole, defendant's testimony that he went to the police station, at all, on June 29 and July 6. Moreover,

it is not clear from defendant's trial evidence that he was turned away because he did not have *state-issued* identification. Although Owens testified that defendant told him that he was not allowed to register because he did not have "state ID with him," defendant testified that he was not allowed to register because he did not have *any* identification with him, not that he was turned away because he did not have a state-issued identification with him. When asked what he did when he went into the police station, defendant responded, "Well, you got to sit around and wait until the officer come and ask for your ID." The ASA then asked "Okay, did you have ID?" Defendant responded, "No, I didn't" and that "[t]hey told me if I didn't have any ID I could not register." Defendant testified that the same thing occurred when he returned to the station on July 6. When asked why he returned a second time, defendant explained that "they know me down there. You see they have a copy—they made a copy of my ID, so it's like they got a photocopy of it, so it's like why do I really need it." As the State points out, defendant's claim that he did not "knowingly" fail to register is rebutted by the fact that defendant had, in fact, reported in the past in a manner that complied with the requirements and by the fact that, if he was indeed turned away on June 29 for lack of identification, he knowingly returned to the station a few days later without identification in an attempt to register.

¶42 It is noteworthy that, after the parties submitted their briefs in this case, this court's decision in *People v. Brock*, 2015 IL App (1st) 133404, was released. This case clarified the difference between SORA provisions requiring a sexual offender to "register" (as is the case here with section 3(c)(4)) and provisions requiring the offender to "report" (as is the case here with section 6). In *Brock*, the defendant was convicted for failure to report in person within 90 days of his last date of registry and failure to report and register a change of address within three days of moving. The court found that the terms "report" and "register" in SORA imposed different

obligations. *Id.* ¶ 17. "Registration" was defined in SORA as "a statement in writing signed by the person giving the information" and, consequently, required a signed writing. *Id.* ¶ 18. To "report" meant "to relate or tell about," and did not require generating a signed writing. *Id.* The court concluded that the 90-reporting requirement in section 6 could be satisfied by the defendant "simply *** reporting" as the statute did not mention a registration requirement. *Id*. ¶ 24. The defendant's actions were sufficient to satisfy this requirement as he appeared in person at the police department on the ninetieth day following his initial registration, spoke with an officer, provided an account of his whereabouts and other information, and a log was created memorializing the defendant's appearance. *Id.* ¶ 24. The fact that the defendant was not allowed to "register" because he lacked appropriate identification did not prevent him from "reporting in person" under section 6, and the court thus reversed his conviction on that count. *Id*. However, the court affirmed the defendant's other conviction under section 6 for failing to "report in person, to the law enforcement agency with whom he or she last registered *** and register, in person," within three days of his change of address because this provision required the defendant to both report in person and to register. *Id.* ¶¶ 28-29. The court rejected the defendant's argument that the State failed to establish the specific date that the defendant moved and started the "three-day clock" because the evidence showed that he moved in April 2012 and there was no evidence that he went to the registration office to register the new address at any time after the three-day window had passed and before his arrest on July 2, 2012 *Id.* ¶¶ 29, 33.

¶43 B. Police Department Logs

¶44 Defendant next claims that the trial court denied him a fair trial when it considered the fact that there was no evidence presented of logs from the Chicago police department showing that defendant attempted to sign-in at the station. Defendant contends that the trial court

improperly based its decision on its private knowledge and thereby shifted the burden of proof. Although defense counsel failed to object at trial, defendant urges this court to review his claim despite the forfeiture and argues that both prongs of the plain error test have been met.

¶45 "[T]he plain-error doctrine allows a reviewing court to consider unpreserved error when (1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). The first step is to consider whether any "clear or obvious" error occurred at all. *People v. McLaurin*, 235 Ill. 2d 478, 489 (2009).

¶46 "Due process requires that the State bear the burden of proving beyond a reasonable doubt all of the elements of the charged offense." *People v. Cameron*, 2012 IL App (3d) 110020, ¶ 27 (citing *People v. Howery*, 178 Ill. 2d 1, 32 (1997)). A defendant is presumed innocent throughout trial and that burden of proof never shifts to him. *Id.* It is presumed that the trial court "know[s] the law regarding the burden of proof" and applied it correctly, but this presumption can be rebutted if "the record contains strong affirmative evidence to the contrary." *Id.* ¶ 28 (citing *Howery*, 178 Ill. 2d at 32).

¶47 Related to defendant's burden-shifting argument is his claim that the trial court also conducted an improper investigation into the police log issue and considered the absence of any logs against him. "In a bench trial, the judge is limited to the record developed during the course of the trial before him." *People v. Jackson*, 409 Ill. App. 3d 631, 647 (2011) (citing *People v. Wallenberg*, 24 Ill. 2d 350, 354 (1962)). " 'A determination made by the trial judge based upon a

private investigation by the court or based upon private knowledge of the court, untested by cross-examination, or any of the rules of evidence constitutes a denial of due process of law.' " *Id.* (quoting *Wallenberg,* 24 Ill. 2d at 354). "If a defendant is not told of the facts of which the court is taking notice, she does not know upon what evidence she is being convicted, and is unable to dispute the truth of the facts allegedly relied upon or challenge inferences drawn therefrom." *People v. Rowjee,* 308 Ill. App. 3d 179, 185 (1999) (citing *People v. Smith,* 176 Ill. 2d 217, 238 (1997)). "Reliance on information found *dehors* the record is not reversible error where there is no evidence that it either misled or entered into the trial court's determination. [Citation.] Specifically, a denial of due process results only where the trial court has used the information to contradict important evidence offered by the defendant." *People v. Banks,* 102 Ill. App. 3d 877, 882-83 (1981). That said, "[a] trial judge does not operate in a bubble; she may take into account her own life and experience in ruling on the evidence." *People v. Thomas,* 377 Ill. App. 3d 950, 963 (2007) (citing *People v. Tye,* 141 Ill. 2d 1, 23-24 (1990)). There is a presumption that the trial court "considered only admissible evidence" in rendering its decision in a bench trial. *Jackson,* 409 Ill. App. 3d at 647. However, "[t]his presumption can be rebutted through affirmative evidence in the record." *Id.*

¶48 In the case at bar, the record reflects that following defendant's testimony, the trial court asked defense counsel if he "explore[d] records to see if his name was on a log, because I understand that even people that don't actually get to register, if they make attempts and they're short identification or money, they're still allowed to sign in on a log. Did you make inquiry about that?" Defense counsel responded that he had not because he "was under the impression that *** it was kind of like a message given to everybody in the room. I didn't find out until very recently that he actually talked to an officer***." Counsel indicated that he "can make an

inquiry" if the court wanted. The trial court stated, "Well, if his name is on a log, it would make absolutely impact [*sic*] totality of the evidence" and it granted defense counsel a continuance. The trial court stated, "If there had been people charged with this offense that go to the police station to register and are turned away for different reasons[,] identification, sometimes they're told there is [*sic*] fees that they may not have, and that does matter in the totality of the evidence[.]"

¶49 When the parties later resumed the trial, the defense rested without producing any evidence of police logs. In closing, the State argued that the evidence showed that defendant was required to register, he failed to do so, he did not tell Dubois about his alleged attempts to register, and there was "no verification that that occurred." Defense counsel argued that defendant registered faithfully in the past but was turned away this time because he lacked identification, and his testimony that he went to the police station to register was uncontradicted. Counsel conceded that he had no corroborating evidence but he argued that "the Court is aware there are logs that are kept. I would submit that because we cannot produce logs does not mean that he didn't show up there. He was told he could not register because he did not have identification." The trial court found:

> "The Court has heard the evidence and Mr. Crockett was in a status where he was required to register periodically with law enforcement his address whereabouts. He had some history of doing that.
>
> When he was found on a routine field interview by the police for drinking liquor on the street, it was found that he had lapsed. He gave some explanations about what had happened, about his lack of willfulness.

> I tried to be mindful of the fact that registration requirements for some people could be difficult, onerous. I know that sometimes you have to have identification cards, money or else you're turned away. But even if you're turned away in Chicago, they'll give a chance to show on a log that you signed in. It's not that I'm shifting the burden of proof to the defendant to show me that, but I don't have any evidence to contradict the fact that he was required to register and he hadn't registered in the proper time.
>
> There will be a finding of guilty."

¶50 In the present case, after reviewing the record, we find that it does not contain "strong affirmative evidence" that the trial court erroneously shifted the burden of proof to defendant or diluted the State's burden of proof. *Cameron*, 2012 IL App (3d) 110020, ¶ 28; *Howery*, 178 Ill. 2d at 32. The trial court did not compel defendant to investigate the police department logs or order the State to do so, and it did not conduct its own private investigation into whether defendant attempted to place his name on a log. It simply inquired about the issue, and defense counsel offered to investigate it. The court granted a continuance for counsel to do so. In reaching its decision, the court commented on the evidence presented and the theories of the case advanced by the State and the defense. In fact, demonstrating its awareness of the proper legal standards, the trial court specifically stated that it was not shifting the burden of proof onto defendant.

¶51 Similarly, in *Cameron*, the defendant testified that he did not know stolen items were in his motor vehicle, that did not know how they appeared there, and that other individuals also drove his vehicle. *Cameron*, 2012 IL App (3d) 110020, ¶ 11. The appellate court found that the trial court did not shift the burden of proof when it stated that the State's evidence "could have been rebutted" had witnesses "come into Court and *** testified that, yeah, I was responsible."

Id. ¶¶ 16, 29. Like the *Cameron* court, we conclude here that "[t]he trial court's comments about defendant's testimony and about evidence or witnesses that were not presented merely indicate that the trial court thoroughly considered and tested defendant's theories and credibility in deciding this case." *Id.* ¶ 29. A trial court's "efforts to test, support, or sustain the defense's theories cannot be viewed as improperly diluting the State's burden of proof or improperly shifting that burden to the defendant." *Id.* ¶ 28 (citing *Howery,* 178 Ill. 2d at 35). A trial court may freely "comment on the implausibility of the defense's theories, as long as it is clear from the record that the trial court applied the proper burden of proof in finding the defendant guilty." *Id.* (citing *Howery,* 178 Ill. 2d at 34–35). In probing into the police department log issue, the trial court merely showed that it was thoroughly considering and testing defendant's theory of the case. "As the record is clear that the trial court knew and properly applied the burden of proof, those comments do not support a claim that the trial court erroneously shifted the burden to defendant." *Id.* ¶ 29.

¶52 Considering the context of the trial court's remarks as a whole, we also conclude that the trial court did not conduct its own investigation or improperly rely on facts not in evidence in finding defendant guilty. As noted, the trial court affirmatively disavowed that it was considering the absence of police logs in weighing the evidence when it explicitly stated that it was not shifting the burden of proof onto defendant to show him police department logs. Although the trial court brought the issue of the logs to defense counsel's attention, the court did not investigate the matter personally or secretly, and it did not require counsel to produce such evidence. Rather, it granted defense counsel a continuance to look into the police log issue at counsel's request, giving him an opportunity to present further evidence. In essence, the trial court's remarks in rendering its verdict demonstrate that it did not credit defendant's explanation

as to his lack of willfulness in failing to register and it did not find the testimony of defendant or Owens credible in that regard. A trial court may freely accept or reject "as much or as little as [he] pleases of a witness' testimony.' " *Jackson,* 409 Ill. App. 3d at 647 (quoting *People v. Nelson,* 246 Ill. App. 3d 824, 830 (1993)).

¶53 In addition, although the trial court referred in passing to information that was contained in defendant's arrest report, *i.e.,* that defendant was initially stopped by police for drinking on the street, there is no indication that the trial court used this information against defendant in rendering its verdict. The record reflects that the trial court was merely summarizing events leading up to defendant's arrest as to how the SORA lapse was discovered. This minor piece of information bore no relation to the issue at trial, *i.e.,* whether he had, in fact, committed the crime of failing to register under the SORA, and did not impact the trial court's finding of guilt. Accordingly, there is no affirmative evidence in the record to rebut the presumption that the trial court considered only admissible evidence in convicting defendant. *Jackson*, 409 Ill App. 3d at 647.

¶54 Defendant's reliance on *Rowjee* is unavailing. In *Rowjee,* the defendant's due process rights were violated where, in a bench trial, the trial court conducted a private investigation by extensively questioning the defendant psychiatrist about patients who were not mentioned in the State's case, it directed issuance of a subpoena for those patient files, it reviewed them without disclosing the contents to the parties, and it specifically stated that it did so in order to test the defendant's recollection and assess his credibility. *Rowjee,* 308 Ill. App. 3d at 185-86. In contrast, here, the trial court did not order the State to issue a subpoena for the logs or review any logs privately. In *Rowjee,* the defendant was not told of the contents of evidence privately

considered by the court against him, and was therefore unaware upon what evidence he was convicted and unable to dispute its truth. That is not what occurred here.

¶55 Defendant also argues that this case is similar to the circumstances in *Wallenberg*, 24 Ill. 2d at 352-53. In *Wallenberg*, the defendant was charged with robbery and he presented an alibi defense, claiming he experienced a "soft tire" at the time of the robbery and was unable to locate a gas station in the area to fill his tire with air. *Id.* In finding the defendant guilty, the trial judge remarked that he knew there were gas stations in that area and he did not believe the defendant's story. *Id.* at 353-54. The supreme court overturned the defendant's conviction, concluding that the trial court's remarks affirmatively rebutted the presumption that the trier of fact considered only admissible evidence. *Id.* at 354.

¶56 The present circumstances are distinguishable from those in *Wallenberg*. Unlike in *Wallenberg*, the record here does not affirmatively rebut the presumption that the trial court considered only admissible evidence in convicting defendant. *Id.* The record shows that the trial court did not rely on facts not in evidence or its own knowledge or investigation in finding defendant guilty. As noted, the trial court explicitly found that it was not shifting the burden of proof. The court simply observed that there was no evidence to corroborate defendant's theory of the case. As the State points out, the trial court's comments demonstrate that it gave serious consideration to the defense advanced at trial and the testimony of defendant and Owens, but nonetheless found them not convincing. See *Howery*, 178 Ill. 2d at 33 (finding that the trial court's remark that there was no evidence to support a not-guilty verdict showed that the trial court had considered and rejected the defendant's reasonable doubt defense and did not show that the trial court had shifted the burden of proof onto the defendant). Accordingly, as no clear or

obvious error occurred, this court need not address either prong of the plain-error analysis. *McLaurin*, 235 Ill. 2d at 489; People *v. Thompson*, 238 Ill. 2d 598, 613 (2010).

¶57 C. Ineffective Assistance of Counsel

¶58 In his final issue on appeal, defendant asserts that he was denied the effective assistance of trial counsel because his attorney (1) elicited evidence that he last reported in March 2012, which was an element of the charged offense; (2) failed to introduce evidence of when defendant was in custody, which would have established a defense; and (3) failed to object to the trial court's reliance on facts not in evidence and improper shifting of the burden of proof.

¶59 The State responds that trial counsel elicited evidence of defendant's prior registration as part of a sound defense, the dates that defendant was in jail would not have assisted defendant's defense as he violated SORA by failing to register within three days of being released from custody, and trial counsel cannot be deemed ineffective for refraining from making a futile objection to the trial court's proper remarks.

¶60 In order to advance a successful claim of ineffective assistance of counsel, a defendant must show that counsel's representation fell below an objective standard of reasonableness and that he suffered prejudice as a result, *i.e.*, "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *People v. Manning*, 241 Ill. 2d 319, 326 (2011), citing *Strickland v. Washington*, 466 U.S. 668, 688 (1984). A "reasonable probability" is one that is "sufficient to undermine confidence in the outcome ***." *People v. Enis*, 194 Ill. 2d 361, 376-77 (2000). A defendant's failure to show either prong—defective representation or prejudice—precludes a finding that his counsel's performance was constitutionally deficient. *Id.* at 377. In reviewing a claim of ineffective assistance of counsel, "[t]here is a strong presumption that counsel's performance falls within the wide range

of reasonable professional assistance." *Id.* "[D]efendant must overcome the presumption that this challenged conduct might be considered sound trial strategy under the circumstances." *People v. Macias*, 2015 IL App (1st) 132039, ¶ 82. This court is "highly deferential to trial counsel on matters of trial strategy" and must not view the record with the benefit of hindsight. *Id.* (quoting *People v. Perry*, 224 Ill. 2d 312, 344 (2007)).

¶61 Regarding defendant's first claim, the State did not offer any evidence of when defendant last reported for purposes of the 90-day reporting requirement. The record reflects that trial counsel's questions during cross-examination of Dubois and direct examination of defendant elicited the fact that defendant's prior registration occurred sometime in March 2012.

¶62 Generally, "the manner in which counsel elects to examine witnesses is regarded as a matter of trial strategy and will not support an ineffective assistance of counsel claim unless the chosen tactic is objectively unreasonable." *People v. Lewis*, 2015 IL App (1st) 122411, ¶ 84 (citing *People v. Pecoraro*, 175 Ill. 2d 294, 326–27 (1997)). A defense attorney who elicits evidence that is essential to proving an element of the State's case may deprive a defendant of the effective assistance of counsel. *People v. Moore*, 338 Ill. App. 3d 11, 17 (2003).

¶63 Here, trial counsel's decision to inquire about defendant's prior reporting date was not objectively unreasonable. The focus of trial was whether defendant registered after being released from jail on June 28, 2011. Trial counsel pursued the defense that defendant did not willfully fail to register after being released from custody because he twice attempted to register at the police station and was wrongfully turned away because he lacked identification. Counsel's questions about defendant's prior registration were an attempt to bolster this defense and support defendant's and Owens' testimony that defendant attempted to register by showing that defendant had faithfully complied with his SORA requirements in the past. As previously discussed, the

fact that defendant registered sometime in March did not establish the specific date by which defendant had to report under the 90-day reporting requirement in section 6, and as a result, this testimony elicited by defense counsel did not assist the State in proving its case. On the record, counsel's chosen tactic was not objectively unreasonable. Defendant has failed to overcome the strong presumption that counsel's decisions constituted sound trial strategy. He has not shown that counsel's choice was "so irrational and unreasonable that no reasonably effective defense attorney, facing similar circumstances, would pursue such a strategy. [Citations.] Illinois courts also recognize that trial strategy will consider the costs and benefits of calling particular witnesses and pursuing particular questions." (Quotation marks omitted.) *Lewis*, 2015 IL App (1st) 122411, ¶ 85.

¶64 Next, defendant notes that his criminal history report shows that he was arrested on June 3, 2012, for possession of a controlled substance, and he was released on June 28, 2012, following dismissal of the charge for lack of probable cause. Defense counsel did not introduce into evidence these specific dates. Defendant argues that the dates established a defense to failing to report within 90 days of his prior registration as the date show that he was in custody at the time and therefore unable to report.

¶65 As with deciding what questions to pose to witnesses, " '[d]ecisions concerning *** what evidence to present on a defendant's behalf are viewed as matters of trial strategy. Such decisions are generally immune from claims of ineffective assistance of counsel.' " *Macias*, 2015 IL App (1st) 132039, ¶ 89 (quoting *People v. Munson*, 206 Ill. 2d 104, 139–40 (2002)). Again, the focus at trial was whether defendant registered within three days of being released from jail on June 28, and defense counsel pursued the defense that defendant twice attempted to register after being released from custody. Therefore, the date defendant first entered jail was irrelevant to

showing that he attempted to register after being released on June 28. Defendant also argues that defense counsel must conduct a reasonable investigation of the case. *People v. Domagala*, 2013 IL 113688, ¶ 38. However, there is no indication from the record available that counsel failed to investigate defendant's case or was otherwise unaware of the dates defendant was in jail. As such, defendant has not shown any ineffective assistance.

¶66 In his last claim, defendant argues that his trial counsel was ineffective for failing to object to the trial court's remarks in rendering its verdict. As discussed in the previous section, *supra*, the trial court did not improperly rely on facts not in evidence or shift the burden of proof onto defendant. As such, his trial counsel cannot be found ineffective for failing to raise futile objections. " 'Defense counsel is not required to make futile motions or objections in order to provide effective assistance.' " *People v. Smith*, 2014 IL App (1st) 103436, ¶ 64 (quoting *People v. Glass*, 232 Ill. App. 3d 136, 152 (1992)).

¶67 III. CONCLUSION

¶68 For the reasons stated above, we affirm defendant's conviction and sentence.

¶69 Affirmed.