2018 IL App (2d) 160145-U
No. 2-16-0145
Order filed May 30, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of Kane County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 15-CF-675
	)	
STEVEN DUNNER,	)	Honorable
	)	Clint Hull,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Zenoff and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: The evidence was sufficient to convict the defendant, a homeless sex offender, of failing to accurately and truthfully register the address where he was staying.

¶ 2 The defendant, Steven Dunner, is a sex offender who was required to register his address and other information pursuant to section 3 of the Sex Offender Registration Act (Act) (730 ILCS 150/3 (West 2014)). Dunner was charged with two counts of violating this provision: count II alleged the basic violation, a Class 3 felony; while count I, a Class 2 felony, contained the additional allegation that Dunner was a repeat offender who had previously been convicted of failing to register as a sex offender. On December 21, 2015, Dunner was found guilty on both

counts following a bench trial. He appeals, arguing that the evidence was insufficient to convict him. We affirm his conviction.

¶ 3 I. BACKGROUND

¶ 4 During the time at issue, Dunner was homeless; that is, he had no permanent or fixed address as defined in section 2(I) of the Act (*id.* § 2(I)). The relevant provisions of section 3(a) of the Act required him to register as follows:

> "A sex offender, as defined in Section 2 of this Act, *** shall *** register in person and provide accurate information as required by the Department of State Police. Such information shall include a *** current address ***.
>
> * * *
>
> Any person who lacks a fixed residence must report weekly, in person, *** with the chief of police in the municipality in which he or she is located. The agency of jurisdiction will document each weekly registration to include all the locations where the person has stayed during the past 7 days." *Id.* § 3(a).

¶ 5 The evidence at trial established the following. Dunner lived in the Elgin area, and he filed weekly registration reports with the Elgin police department, using a form that the police department had developed for the purpose. In November 2014, Dunner was barred from entering an apartment complex that he had previously listed on his weekly registration forms. Thereafter, he began listing a variety of addresses on his forms, including, among other addresses, 220 Franklin Boulevard, 310 Ann Street, and 421 Ann Street. Dunner also listed the bathrooms of the local casino and a Walmart store. Dunner did not list 1423 Getzelman Drive on the forms.

¶ 6 Three local residents testified for the State. Jacqueline Granger, who lived at 421 Ann Street, testified that she had known Dunner since childhood and that he sometimes visited her but

he had never stayed overnight. Her bedroom window opened onto her front porch, and she believed that she would notice if anyone was on her porch at night. Two men who lived at 220 Franklin Boulevard (a duplex) also testified, saying that they had never seen anyone sleeping at the property. The garage was kept locked, as was the basement, and the door covering the opening to the basement steps was also kept locked. One of the men stated that the top of the basement steps could not be seen from inside his house.

¶ 7 Two Elgin police officers, Farrell and Engelke, also testified. They were "residential officers" whose duties included investigating whether the information provided by sex offenders in registration forms was truthful. In April 2015, after learning that Farrell wanted to speak with him, Dunner came to the police station. Farrell then interviewed Dunner about the information he had provided. Engelke was present as well. The interview was not recorded in any way and Dunner did not sign a written statement.

¶ 8 According to Farrell's testimony at trial, she began by going over the forms that Dunner had provided to the Elgin police for the period beginning in November 2014. Dunner said that he was not sleeping on the street and that he had stayed at each of the addresses listed.

¶ 9 Farrell asked Dunner if he would be surprised to learn that the residents of 310 Ann Street had told her that he was not staying there, and Dunner said no. Farrell then noted that Dunner had listed the bathrooms at the local casino and a Walmart store on some of the forms as places where he had stayed. She remarked that both places had surveillance video systems and asked Dunner whether, if the police viewed the video footage, they would see him. Dunner stated that the video would not show him.

¶ 10 Farrell then told him that "a reasonable person" would think that the information Dunner had reported on the forms was not truthful. Farrell testified that Dunner then agreed that "it

wasn't truthful." According to Farrell, Dunner said he had listed other addresses so that the police would not know that he was staying at 1423 Getzelman Drive with his daughter, Sierra. Sierra lived with her grandmother, Betty Bailey, and Bailey's foster son, who was 16 years old. Farrell said that Dunner told them that he did not report that he was staying there because he was worried that it would cause problems for Bailey, who had Section 8 housing. According to Farrell, Dunner said that he had been living there since the previous November.

¶ 11 Dunner was the sole witness in his defense at trial. He agreed that he had voluntarily come to the Elgin police station and had spoken with Farrell and another officer. However, he denied saying most of the things Farrell reported. Specifically, he testified that he told the officers that the information on the forms was true. He did visit the places listed on the forms, but often only for a few hours in the middle of the night or very early morning, and he did not enter the buildings at most of those addresses. For instance, he had slept by the front porch steps of 421 Ann Street. At 220 Franklin, he slept on top of the slanted wooden doors covering the steps to the basement. He did not sleep for long, usually only about 45 minutes and never longer than a couple of hours. He would leave before anyone was awake and believed that most of the places he slept could not be seen from inside the buildings at those addresses.

¶ 12 Dunner denied saying that video surveillance footage from the casino and the Walmart store would not show him, as he used the casino bathroom almost every day to wash himself, and he often napped in the Walmart bathroom. Dunner insisted that he did not tell the police that he stayed with his daughter at 1423 Getzelman Drive. Rather, he told them that he did *not* stay there and could not stay there because of the presence of the foster child. Dunner testified that he never mentioned Section 8 rules as a reason why he could not stay there. Further, although he

told the police that he visited his daughter's home sometimes, he also told them that his visits were brief, only long enough for him to wash himself and his clothes, or to cook for her.

¶ 13 To rebut Dunner's testimony, the State called Engelke, who corroborated Farrell's account of the interview. Specifically, Engelke testified that Dunner had told them "he was staying with his daughter on Getzelman" and that "he had lied about those addresses [the ones listed on the registration forms] because he was afraid that it would get [Bailey's] Section 8 revoked."

¶ 14 At the close of the evidence, the trial court found Dunner guilty on both counts. The trial court commented on the credibility of the various witnesses, saying that it found both Farrell and Engelke to be credible, and it believed their accounts of the interview and Dunner's statements to them. The trial court found Dunner's testimony not to be credible. On February 18, 2016, the trial court denied Dunner's posttrial motion, merged the conviction on count II into count I, and conducted a sentencing hearing. As a result of previous criminal convictions, Dunner was eligible for Class X sentencing (Dunner had been informed of this eligibility earlier), with a sentencing range of 6 to 30 years. The trial court sentenced Dunner to 8 years' imprisonment and 3 years of mandatory supervised release. Dunner filed a timely notice of appeal.

¶ 15 II. ANALYSIS

¶ 16 On appeal, Dunner argues that the State did not present sufficient evidence to convict him beyond a reasonable doubt. We cannot agree. Dunner's confession that the information he reported on his registration forms was false, coupled with evidence from other witnesses generally corroborating that confession, was sufficient to convict him.

¶ 17 In evaluating the sufficiency of the evidence supporting a criminal conviction, it is not the province of this court to retry the defendant. *People v. Collins*, 106 Ill. 2d 237, 261 (1985).

Rather, the relevant question 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.' " (Emphasis in original.) *Id*. (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). The weight to be given to the witnesses' testimony, the determination of their credibility, and the reasonable inferences to be drawn from the evidence are all matters within the jurisdiction of the trier of fact. *People v. Smith*, 185 Ill. 2d 532, 542 (1999); *Collins*, 106 Ill. 2d at 261-62. Likewise, the resolution of any conflicts or inconsistencies in the evidence is also within the province of the fact finder. *Collins*, 106 Ill. 2d at 261-62. We will set aside a criminal conviction only "where the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant's guilt." *Smith*, 185 Ill. 2d at 542.

¶ 18 The Act required Dunner to provide "accurate information" to authorities, including his current address. 730 ILCS 150/3(a) (West 2014). As Dunner did not have a fixed address, the Act required him to report weekly as to "all the locations where [he] ha[d] stayed during the past 7 days." *Id*. Officers Farrell and Engelke testified that Dunner confessed to them that the information he had reported on his registration forms between November 2014 and April 2015 was not accurate, in that he had been staying with his daughter but had not reported that fact and instead listed other addresses. Although Dunner denied making this confession, the trial court found the testimony of Farrell and Engelke credible and Dunner's testimony not to be credible. Given the trial court's superior opportunity to observe the witnesses' testimony and demeanor, we must defer to this credibility determination. See *In re Estate of Bennoon*, 2014 IL App (1st) 122224, ¶ 72. Nothing in the record shows that the evidence relating to Dunner's confession was "so unreasonable, improbable, or unsatisfactory" (*Smith*, 185 Ill. 2d at 542) that it would warrant reversing Dunner's conviction.

¶ 19 Dunner argues, however, that his conviction cannot stand because it was based solely on his supposed confession. He points out that the *corpus delicti* (the commission of a crime) "cannot be proven by a defendant's admission, confession, or out-of-court statement alone." *People v. Lara*, 2012 IL 112370, ¶ 17. Under the *corpus delicti* rule, when a defendant's confession is part of the evidence showing that a crime was committed, the State must also present independent corroborating evidence. *Id*. That corroborating evidence "must relate to the specific events on which the prosecution is predicated." *People v. Sargent*, 239 Ill. 2d 166, 185 (2010).

¶ 20 The corroborating evidence need not rise to the level at which it would independently prove, beyond a reasonable doubt, the commission of a crime. *Lara*, 2012 IL 112370, ¶ 18. Rather, the corroborating evidence "must correspond with the circumstances related in the confession" (*id*. ¶ 32 (quoting *People v. Perfecto*, 26 Ill. 2d 228, 229 (1962))) and must "tend[] to prove, generally, that the offense occurred" (*id*. ¶ 41).

¶ 21 Here, the corroborating evidence offered by the State—the testimony of the residents of 421 Ann Street and 220 Franklin that they had never seen Dunner sleeping or "staying" at their properties—related directly to the circumstances of Dunner's confession, in which he allegedly stated that he had not, in fact, been staying at the addresses listed on his registration forms. Dunner argues that these witnesses' testimony did not prove that he had not in fact stayed on their properties, because he could have been present without their knowledge, sleeping there for an hour or two unobserved. This argument misconstrues the State's burden under the *corpus delicti* rule, however. The independent corroborating evidence need not itself prove that the offense occurred. *Id*. ¶ 18. Rather, the independent evidence must simply correspond or be consistent with the circumstances and details of the confession. *Id*. ¶ 45. The purpose of the

corpus delicti rule is not to require that the offense be proved twice over, but "to ensure the confession is not *** unreliable due to either improper coercion of the defendant or the presence of some psychological factor." *Id*. ¶ 47. The testimony of these witnesses did not need to establish that Dunner in fact never stayed or slept at 421 Ann Street or 220 Franklin. So long as that testimony was consistent with Dunner's confession that he did not stay at those addresses, it was sufficient under the *corpus delicti* rule.

¶ 22 Finally, Dunner notes that section 3(a) of the Act and the registration form required him only to list the places where he "stayed" each day. He argues that, as this term is not defined either in the Act or on the registration form, it could reasonably refer to a place that he visited only briefly during the course of a particular day. Thus, he argues, the evidence was insufficient to convict him because it did not show that he did not, even briefly, "stay" at the addresses he listed on the registration forms. He also notes that, under the rule of lenity, any ambiguity in a statute must be construed in favor of the accused. *People v. Pearse*, 2017 IL 121072, ¶ 39.

¶ 23 We acknowledge that the meaning of "stayed" as used in section 3(a) is not especially clear. Section 2 of the Act, which lists statutory definitions for many of the terms used in the Act, does not define "stayed." See 730 ILCS 150/2 (West 2014). Further, as our supreme court has noted, the Act "leaves something to be desired, in terms of consistency and clarity." *Pearse*, 2017 IL 121072, ¶ 39. Nevertheless, under the facts of this case, the official definition of "stayed" is irrelevant. The primary evidence against Dunner was his own confession. Dunner himself had filled out the registration forms that required him to list the addresses where he "stayed." However, according to Farrell and Engelke, he later admitted that the forms were not truthful and that he had actually been "staying" somewhere else, *i.e.*, with his daughter. Whatever the term "stayed" meant to Dunner—an overnight presence, a visit of several hours, or

even a brief nap—Dunner admitted that the registration forms he filled out did not accurately list the locations where he had "stayed." Given this confession and the other evidence presented by the State, the evidence was sufficient to convict him of violating section 3(a) of the Act.

¶ 24 Because of his prior convictions, Dunner's conviction here subjected him to a relatively lengthy sentence, and this may seem harsh. However, the General Assembly has determined that those convicted of past sex offenses pose a serious risk to public safety and that minimizing that risk requires tracking the whereabouts of sex offenders. See *Pearse*, 2017 IL 121072, ¶ 48 ("the Act performs a vital function in assisting law enforcement agencies in keeping their communities safe"). The legislature was particularly concerned with ensuring the safety of children. See *In re Phillip C.*, 364 Ill. App. 3d 822, 827 (2006) (the Act "was enacted to protect children from sexual assault and sexual abuse by providing the police and public with information regarding the whereabouts of convicted sex offenders"). The legislature placed such great importance on this goal of public and child protection that it made the failure to accurately register a felony, leading to Dunner's lengthy sentence. Moreover, although there was no evidence that Dunner's offense directly harmed anyone in this case, his conduct posed exactly the risk that the Act was designed to address. Dunner's conviction directly advances the purpose of the Act, which is to protect the public. Here, Dunner admitted that he was staying with his daughter, in the same home with a foster child. The State was responsible for the safety of that child, a ward of the court. Dunner's decision to stay with his daughter rather than at the addresses he listed therefore not only threatened the safety of the public but also directly endangered a child.

¶ 25 III. CONCLUSION

¶ 26 For the reasons stated, the judgment of the circuit court of De Kalb County is affirmed.

¶ 27 Affirmed.