

No. 1-11-1795

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 18732
)	
RODNEY LEE,)	Honorable
)	Carol M. Howard,
Defendant-Appellant.)	Judge Presiding.

JUSTICE TAYLOR delivered the judgment of the court.
Presiding Justice McBride and Justice Palmer concurred in the judgment.

ORDER

¶ 1 *Held:* The State presented sufficient evidence that defendant knowingly failed to report a change of address in violation of the Sex Offender Registration Act. His mittimus must be corrected to properly reflect his conviction, his DNA analysis fee must be vacated, and one of his fines must be adjusted.

¶ 2 Following a bench trial, defendant Rodney Lee was convicted of violating the Sex Offender Registration Act (Act), 730 ILCS 150/1 *et seq.* (West 2010), and sentenced to four years' imprisonment. On appeal, he contends that the State presented insufficient evidence to convict him beyond a reasonable doubt of failure to report a change of address. He also

contends, and the State agrees, that his (1) mittimus should be corrected to properly reflect his conviction, (2) DNA analysis fee must be vacated because he provided a DNA sample pursuant to a prior felony conviction, and (3) violent crime victim assistance fine must be reduced to \$4.

¶ 3 Defendant was charged with two counts of violating section 6 of the Act, 730 ILCS 150/6 (West 2010), with both counts alleging that he had been convicted of aggravated criminal sexual abuse and of failure to register under the Act. Count 1 alleged that, on or about July 31, 2009, he knowingly failed to report in person to the Chicago Police Department (CPD), the law enforcement agency with which he last registered under the Act, within 90 days of his previous registration. Count 2 alleged that, on or about July 20, 2009, he changed his address and knowingly failed to report the change to the CPD within three days.

¶ 4 Before trial, the State nol prossed Count 1.

¶ 5 At trial, police officer Erin Jones testified that, on the morning of July 16, 2009, she went to a two-flat residence at 1108 North Monticello Avenue in Chicago seeking defendant. Someone other than defendant was home, and Officer Jones did not "find [defendant] to be present at that residence." On previous occasions, Officer Jones went to the Monticello address and did not see defendant there. On cross-examination, Officer Jones clarified that she routinely made three attempts to find a registered sex offender before formally reporting the matter, but she could not recall when she made the other attempts. She stated in her report, prepared July 16th, that she made three attempts but did not specify the dates. As to her attempt on July 16th, she believed that she rang the doorbells for both the ground- and second-floor apartments but could not recall ringing the doorbell "for the basement apartment." She could not determine which apartment the person she encountered came from.

¶ 6 Officer Patricia Golonka testified that defendant reported to her at CPD headquarters, and registered under the Act, on May 1 and July 29, 2009. He was required to register due to a

conviction for aggravated criminal sexual abuse in a 1998 case, and his registration requirement was extended due to his conviction in a 2006 case for violating the Act. As part of the registration process on both occasions, defendant signed a document listing his duties under the Act, including writing his initials next to the list of those duties. Between defendant's May 1 and July 29 registrations, he did not give written notification of a change of address. When defendant came to headquarters and reported to Officer Golonka on September 29, 2009, she confirmed that there was a pending investigative alert pertaining to defendant, arrested him thereon, and informed the Second District CPD station that she had done so.

¶ 7 On cross-examination, Officer Golonka clarified that defendant was not due to renew his registration on September 29th but came to headquarters that day because he had heard that the police were seeking him and that he was shown on police records as non-compliant with the Act. When Officer Golonka asked defendant on September 29th whether he was living at his registered residence, he replied that he was.

¶ 8 Officer Daniel Gomez testified that, when he was informed that defendant had been arrested on the investigative alert, he went to CPD headquarters and brought defendant to the Second District station. There, defendant was interviewed after being informed of his *Miranda* rights. During the interview, defendant gave the Monticello address as his residence but admitted that he had not been there "for some time."

¶ 9 Johnie Mae Wilson testified that she owns and resides at the Monticello address, that she resided there throughout 2009, and that the building contains three apartments including a basement unit. In 2009, she lived on the second floor while her mother Willie Lee Wilson, who owned the building then, lived on the ground floor and her son Marquis Wilson lived in the basement "off and on." Johnie Mae knew defendant, but he did not live at the Monticello address at any time in 2009. He did receive his mail there, with Willie Lee's permission.

¶ 10 Certified copies of defendant's convictions for aggravated criminal sexual abuse and for violation of the Act were admitted into evidence.

¶ 11 Defendant's motion for a directed finding was denied.

¶ 12 Marquis Wilson testified for the defense that he lived in the basement apartment of the Monticello address for over 20 years, during which time he had two roommates, including defendant. Defendant lived there "constantly" from summer 2008 through the end of 2008, less frequently from January through April 2009, about three nights a week in May, and a "few nights" in June 2009 but was not still residing there in July 2009. However, Marquis added that defendant was there "probably one time" or "a few nights" in July 2009 when Marquis "was back and forth myself" between the Monticello address and his wife's home elsewhere. Defendant had Willie Lee's permission to stay in the basement apartment, whether or not Marquis was there, but Marquis did not know whether defendant paid rent to Willie Lee. Willie Lee had since died. Marquis was home, and defendant was not present, when police came to the Monticello address seeking defendant, including one occasion in July 2009 when Marquis told the police that he knew defendant and that he stayed there. On cross-examination, Marquis testified that, in July 2009, he knew defendant "had been staying at other places" than the Monticello address, though he did not know where.

¶ 13 Following closing arguments, the court found defendant guilty of violating the Act by failing to report a change of address.

¶ 14 Defendant's general post-trial motion was denied. Following arguments in aggravation and mitigation, the court sentenced defendant to four years' imprisonment with fines and fees, including a \$200 DNA analysis fee, \$20 violent crime victim assistance fine, \$30 children's advocacy center fine, and \$5 drug court fine. The mittimus states that he was convicted of and sentenced for both counts of the indictment. This appeal timely followed.

¶ 15 Defendant contends that the State presented insufficient evidence that he knowingly failed to notify the police of a change of address within three days.

¶ 16 Section 6 of the Act provides in relevant part:

"If any person required to register under this Article lacks a fixed residence or temporary domicile, he or she must notify, in person, the agency of jurisdiction of his or her last known address within 3 days after ceasing to have a fixed residence and if the offender leaves the last jurisdiction of residence, he or she, must within 3 days after leaving register in person with the new agency of jurisdiction. If any other person required to register under this Article changes his or her residence address, *** he or she shall report in person, to the law enforcement agency with whom he or she last registered, his or her new address *** and register, in person, with the appropriate law enforcement agency within the time period specified in Section 3." 730 ILCS 150/6 (West 2010).

Section 3 of the Act provides that a person required to register under the Act "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 3 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 2010).

¶ 17 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 3 or more days during any calendar year" and provides that any "person required to register under this Article who lacks a fixed address or temporary domicile must notify, in person, the agency of jurisdiction of his or

her last known address within 3 days after ceasing to have a fixed residence." 730 ILCS 150/3(a) (West 2010). The Act defines a "fixed residence" as "any and all places that a sex offender resides for an aggregate period of time of 5 or more days in a calendar year." 730 ILCS 150/2(I) (West 2010).

¶ 18 To sustain a conviction for violating section 6 of the Act, the State must prove (1) the defendant was previously convicted of an offense subjecting him to the Act, (2) he changed his residence address, (3) he failed to report the change, (4) in writing to the relevant police department, (5) within three days of the change of address. 730 ILCS 150/6 (West 2010); *People v. Harris*, 333 Ill. App. 3d 741, 745 (2002).

¶ 19 When presented with a challenge to the sufficiency of the evidence, this court must determine whether, after taking 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). On review, we do not retry the defendant and we accept all reasonable inferences from the record in favor of the State. *Id.* The trier of fact need not be satisfied beyond a reasonable doubt as to each link in the chain of circumstances; instead, it is sufficient if all the evidence taken together satisfies the trier of fact beyond a reasonable doubt of the defendant's guilt. *In re Jonathon C.B.*, 2011 IL 107750, ¶ 60. Similarly, the trier of fact is not required to disregard inferences that flow normally from the evidence nor to seek all possible explanations consistent with innocence and elevate them to reasonable doubt. *Id.* A conviction will be reversed only where the evidence is so unreasonable, improbable, or unsatisfactory that a reasonable doubt of the defendant's guilt remains. *Beauchamp*, at 8.

¶ 20 Here, it is undisputed that defendant was subject to registration under the Act and that he did not make a written report of a change of address to the CPD from May 1 to July 29, 2009. Thus, the issue in dispute at trial was whether he changed his residence address more than three

days prior to July 20, 2009, as charged in the indictment. Taking the evidence in the light most favorable to the State, we conclude that he did so and thus violated the Act. First and foremost, he confessed that he had not resided at the Monticello address "for some time." This admission was corroborated partially by Officer Jones's unsuccessful efforts to find defendant there. It was corroborated more substantially by Marquis's testimony that defendant resided there "constantly" in 2008 but less so in early 2009 and only rarely at best after April 2009. The inference that defendant was residing elsewhere than the Monticello address as of July 2009 is reasonable. A reasonable finder of fact could conclude on this evidence that defendant had resided at the Monticello address but was residing elsewhere more than three days before July 20, 2009.

¶ 21 While we acknowledge defendant's argument that it is reasonable to infer that he still resided at the Monticello address in July 2009, albeit not as often as in 2008, this does not avail him. Accepting such an inference *arguendo*, it is also reasonable to infer on this evidence that he had another unregistered residence address in July 2009 as alleged. We agree with the State that, under the clear language of section 2(I) of the Act, a defendant can have more than one fixed residence – that is, more than one place he resides for more than five days a year – for purposes of registration under the Act. Thus, the fact that the Monticello address may be a fixed address for the calendar year 2009 does not preclude that defendant had another fixed residence to which he had changed and thus which he was required by the Act to register with the CPD.

¶ 22 Defendant also contends, and the State agrees, that his mittimus should reflect that he was convicted and sentenced under Count 2 alone rather than under both counts of the indictment as it now erroneously states. Similarly, the parties agree that his \$200 DNA analysis fee, 730 ILCS 5/5-4-3(j) (West 2010), was improper because he provided a DNA sample following a prior felony conviction. Our supreme court has determined that the DNA analysis fee may not be assessed under such circumstances. *People v. Marshall*, 242 Ill. 2d 285 (2011).

¶ 23 Lastly, the parties agree that defendant's \$20 violent crime victim assistance fine must be reduced to \$4. This fine is "an additional penalty of \$4 for each \$40, or fraction thereof, of fine imposed," or \$20 for a non-violent felony where "no other fine is imposed." 725 ILCS 240/10(b), (c) (West 2010). Here, other fines were imposed: the \$5 drug court fine and the \$30 children's advocacy center fine. 55 ILCS 5/5-1101(f), (f-5) (West 2010); *People v. Williams*, 2011 IL App (1st) 091667-B, ¶ 19. Thus, the \$4 fine must be substituted for the \$20 fine.

¶ 24 Accordingly, the DNA analysis fee is vacated and the violent crime victim assistance fine is modified to \$4. Pursuant to Supreme Court Rule 615(b)(2) (eff. Aug. 27, 1999), the clerk of the circuit court is directed to correct the mittimus to reflect that defendant was convicted under Count 2 alone. The judgment of the circuit court is affirmed in all other respects.

¶ 25 Affirmed in part, vacated in part, modified, and mittimus corrected.