FIRST DIVISION
May 28, 2013

No. 1-11-3018

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. 11 CR 1892
	)	
MICHAEL CHOICE,	)	Honorable
	)	Clayton J. Crane,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE DELORT delivered the judgment of the court.
Presiding Justice Hoffman and Justice Rochford concurred in the judgment.

O R D E R

¶ 1 *Held*: The State presented sufficient evidence that defendant knowingly failed to register as required by the Sex Offender Registration Act, and the State was not obligated to prove his prior conviction for violating the Act at trial to elevate his offense from a Class 3 to a Class 2 felony. Defendant's three-year term of mandatory supervised release was proper where he was convicted of a Class 2 felony but sentenced as a mandatory Class X offender. Mittimus need not be corrected to properly reflect defendant's conviction.

¶ 2 Following a bench trial, defendant Michael Choice was convicted of violating the Sex Offender Registration Act (Act) (730 ILCS 150/1 *et seq.* (West 2010)) and sentenced as a mandatory Class X offender to the minimum six years' imprisonment. On appeal, he contends

that the State presented insufficient evidence to convict him beyond a reasonable doubt. He also contends that his term of mandatory supervised release (MSR) should be two years for a Class 2 felony offense rather than three years for a Class X felony. The State contends that the mittimus should be corrected to reflect that defendant was found guilty of two counts of violating the Act.

¶ 3 Defendant was charged with two counts of violating the Act, both alleging that his duty to register arose from a conviction for aggravated criminal sexual abuse in case 03 CR 20946 and that he violated the Act between March 15, 2010, and January 2, 2011. The State sought to elevate both counts to Class 2 felonies based on defendant's prior conviction for failure to register under the Act in case 09 CR 6070 . Count 1 count alleged a violation of section 3 of the Act by knowingly failing to register with the Chicago police within three days of establishing a residence or temporary domicile in Chicago. Count 2 alleged that he violated section 6 of the Act by failing to report weekly in person with the Chicago police when he lacked a fixed residence.

¶ 4 At trial, Sarah Robinson testified that she is a counselor for the Department of Corrections who prepares prisoners for their release, which includes discussing sex offender registration with relevant prisoners. On March 11, 2010, she advised defendant of his obligations under the Act, including that he would have to register within three days of release from prison – by March 14, 2010 – and that, if he was homeless, he would have to report to the local police station weekly. Robinson asked defendant if he had any questions after her admonishments, and defendant and Robinson both signed a form acknowledging the various admonishments. On that form, a copy of which was admitted into evidence, defendant declared that he was "homeless" and that "I understand my duty to register next on or before 3-14-10."

¶ 5 Chicago police officer Donald Story testified that he saw defendant shortly before noon on January 2, 2011, near 2810 West Warren Boulevard in Chicago. Defendant was walking

along a row of parked cars and peering inside them, so Officer Story approached him for an interview. When Officer Story asked defendant for his name and "where he lived," he gave his name. Officer Story found in the police computer that defendant was "a convicted sex offender who was supposed to register [but] had not registered yet." No objection was made to this testimony. Officer Story took defendant into custody and informed him of his *Miranda* rights. When Officer Story then asked defendant why he had not registered, he replied that he "lives by a school" and thus could not use that address to register. On cross-examination, Officer Story denied that defendant had said after his arrest that he was homeless. Instead, he had said that he was "staying with a friend or relative," though Officer Story's report did not reflect this.[1]

¶ 6 A certified copy of defendant's conviction for aggravated criminal sexual abuse was admitted into evidence.

¶ 7 The State rested its case, defendant's motion for a directed finding was denied, and the defense rested its case without presenting evidence. Following closing arguments, the court found defendant guilty on both counts, finding that his "mention in his conversation with the officer that he *** didn't register because he lives by a school certainly shows some depth of understanding of the original notification provided" in prison.

¶ 8 The presentence investigation report (PSI) lists defendant's prior convictions, including a 2009 conviction with two years' imprisonment for violating the Act in case 09 CR 6070, and a 2000 conviction with six years' imprisonment for manufacture or delivery of a controlled substance.

¶ 9 Defendant's general post-trial motion was denied. Both parties accepted the PSI except for correction of a typographical error. Following arguments in aggravation and mitigation, the

[1]Defendant's arrest report lists his residence address as 3229 West Warren Boulevard in Chicago, about a half-mile from where he was arrested. However, the report does not explain where this information came from, nor was the report offered into evidence at trial.

court found defendant to be a mandatory Class X offender and sentenced him to six years' imprisonment. The mittimus reflects a single count of conviction, for Count 1 regarding section 3 of the Act, and three years' MSR. The State made no objection to defendant being sentenced on a single count. Defendant's post-sentencing motion was denied, and this appeal followed.

¶ 10 Defendant first contends that the State presented insufficient evidence to convict him of violating the Act. In particular, he contends that the State failed to establish (1) whether he had a residence in Chicago and, if so, for how long, or whether he was in Chicago without a fixed residence, (2) the *corpus delicti* of the charged offenses, and (3) his prior conviction for violating the Act, which the State had to prove as an element of his offense.

¶ 11 We first address the *corpus delicti* claim. To sustain a conviction, the State must prove that a crime occurred – the *corpus delicti* – and that it was committed by the person charged. *People v. Lara*, 2012 IL 112370, ¶ 17; *People v. Mack Harris*, 333 Ill. App. 3d 741, 744 (2002). Where the defendant's confession or admission is part of the proof of the *corpus delicti*, the State must provide corroborating evidence independent of the defendant's confession or admission. *Lara*, ¶ 17; *Mack Harris*, 333 Ill. App. 3d at 744. However, the independent evidence need not establish beyond a reasonable doubt that an offense occurred so long as it is competent and admissible evidence that tends to corroborate the facts contained in the confession. *Lara*, ¶¶ 18, 45; *Mack Harris*, 333 Ill. App. 3d at 744.

¶ 12 Defendant cites two cases in support of his contention that the corroborative evidence here was improper: *Mack Harris* and *People v. Jerry Harris*, 2012 IL App (1st) 100077.

¶ 13 In *Jerry Harris*, a defendant was convicted of aggravated unlawful use of a weapon based on his admission to possessing a loaded firearm on or about his person on a public street, when police found the gun encased in his car. *Jerry Harris*, ¶¶ 19-20. The State presented as corroboration a police officer's conversation with an anonymous bystander who had reported

seeing the defendant on the street with an object that he had retrieved from his car and then returned to his car. *Id.* ¶ 21. There was no objection at trial to the admission of this evidence. *Id.* ¶ 10. This court found that the testimony was insufficient corroboration of the defendant's confession, noting that unobjected hearsay evidence is given its natural probative effect but the probative effect of a statement to police by an anonymous witness is minimal without corroborating evidence. *Id.* ¶ 26. However, while the hearsay statement was corroborated as to defendant having a gun in his car, it was uncorroborated as to the defendant having a gun on the street as charged. *Id.* ¶ 26.

¶ 14 In *Mack Harris*, a defendant was convicted under the Act based on his admission that he resided at a certain unregistered address for over a month. The State presented as corroboration a police detective's conversation with "a person" at the probation office to the effect that the defendant had been residing at the new address "for some time." *Mack Harris*, 333 Ill. App. 3d at 747-48. The defendant had made a hearsay objection to the State eliciting the content of the conversation. *Id.* at 750. We found that testimony insufficient to corroborate the confession because it was vague on the issue of how long he had resided there and thus when he had to register, and because it was inadmissible for lack of foundation. *Id.* at 748-51.

¶ 15 Here, we agree with the State that Officer Story's testimony corroborates defendant's admission that he failed to register. Beyond the fact that Officer Story's computer check directly addresses whether defendant was registered under the Act, it explains why defendant admitted to failing to register. When confronted with the result of the check, he did not claim to be registered in Chicago or elsewhere, but instead provided what he considered an explanation of his failure to register and thus admitted to his knowing failure to register.

¶ 16 We find the instant case distinguishable from the *Harris* cases on two key points: defendant did not object to Officer Story's testimony, and the reliability or weight of a check of

official records is by no means the same as that afforded to vague statements ("for some time") made by unknown persons. Reliance on official records, prepared and kept in the normal course of official business, for the truth of the matters asserted therein constitutes an exception to the hearsay rule, so that any potential objection to Officer Story's testimony regarding the records check would have been foundational. *People v. Hall*, 314 Ill. App. 3d 688, 697-98 (2000). However, the failure to make a foundational objection forfeits the objection because it deprives the proponent-party of the opportunity to establish a foundation. *People v. Hopson*, 2012 IL App (2d) 110471, ¶ 18; *People v. Korzenewski*, 2012 IL App (4th) 101026, ¶ 14. Had defendant objected to Officer Story's testimony regarding the computer records search, the State could have laid a foundation for the admission of the records. We conclude that the State presented admissible evidence that tends to corroborate defendant's admission, thereby satisfying the *corpus delicti* rule.

¶ 17 Defendant also claims that the State failed to establish at trial whether and for how long he had a fixed residence in Chicago or whether and for how long he was living in Chicago without a fixed residence.

¶ 18 Section 3 of the Act provides that a sex offender "shall register *** with the chief of police in the municipality in which he or she resides or is temporarily domiciled for a period of time of 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). 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).

¶ 19 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." 730 ILCS 150/6 (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).

¶ 20 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*, 241 Ill. 2d at 8.

¶ 21 Here, the State clearly proved that defendant was a sex offender subject to the Act and had been made aware of his duties under the Act. For the reasons stated above regarding *corpus delicti*, we find that the State also proved that he had failed to register under the Act. Whether defendant had a fixed residence or not, and whether that residence was in Chicago or elsewhere, it was eminently reasonable to conclude on the trial evidence that he was required by the Act to register somewhere and had not by the date of his arrest registered anywhere.

¶ 22 It is axiomatic that statutes shall be construed to avoid absurd results. *In re Detention of Stanbridge*, 2012 IL 112337, ¶ 70; *People v. Peterson*, 404 Ill. App. 3d 145 (2010). It would be absurd to deem the absence of evidence regarding residence in a particular municipality or county "fatal" to a conviction under the Act where the evidence was to the effect that defendant had not registered anywhere at any time. A different analysis would only apply to a defendant who did register at some time in some municipality or county and the issue at trial is whether he resides there or elsewhere and/or whether his registration was timely. Also, while defendant cites *Peterson* in support of the instant claim, it does not support his claim. In *Peterson*, we reversed not because the evidence was insufficient that the defendant gave an incorrect residential address but, because of the defendant's "documented cognitive limitations," the evidence was insufficient that he *knowingly* gave a false address. We conclude that the State proved defendant guilty of violating the Act by establishing that he never registered as required.

¶ 23 In his last challenge to the sufficiency of the evidence, defendant contends that the State was obligated to prove at trial his prior conviction for violating the Act and, in the absence of such evidence, his offense must be reduced to a Class 3 felony.

¶ 24 Section 111-3(c) of the Code of Criminal Procedure (725 ILCS 5/111-3(c) (West 2010)) provides that:

> "When the State seeks an enhanced sentence because of a prior conviction, the charge shall also state the intention to seek an enhanced sentence and shall state such prior conviction so as to give notice to the defendant. However, the fact of such prior conviction and the State's intention to seek an enhanced sentence are not elements of the offense and may not be disclosed to the jury during trial unless otherwise permitted by issues properly raised during such trial. For the purposes of this Section, 'enhanced sentence' means a sentence which is increased by a prior conviction from one classification of offense to another higher level classification of offense set forth in Section 5-4.5-10 of the Unified Code of Corrections (730 ILCS 5/5-4.5-10); it does not include an increase in the sentence applied within the same level of classification of offense."

¶ 25 Defendant cites *People v. Zimmerman*, 239 Ill. 2d 491 (2010), in support of his argument that his prior conviction under the Act is elemental so that section 111-3(c) does not apply. However, *Zimmerman* concerned aggravated unlawful use of a weapon, where:

> "Proof of a prior adjudication of delinquency is one of the possible factors the State must prove beyond a reasonable doubt to satisfy the elements of the offense pursuant to subsection 24-1.6(a)(3). See 720 ILCS 5/24-1.6(a)(3) (West 2006). Moreover, it would be illogical for the General Assembly to include a sentence-enhancing factor in a list with eight other factors which constitute an element of the offense." *Zimmerman*, 239 Ill. 2d at 500.

Those other factors include such clearly-elemental factual matters as "the firearm possessed was uncased, loaded and immediately accessible at the time of the offense," and "the person possessing the weapon is a member of a street gang or is engaged in street gang related activity." *Zimmerman*, 239 Ill. 2d at 498 (citing 720 ILCS 5/24-1.6(a)(3) (West 2006)).

¶ 26 The State in turn cites *People v. Lucas*, 231 Ill. 2d 169 (2008), where our supreme court held in relevant part that, prior to the adoption of section 111-3(c),

> "a defendant's prior convictions for driving while license revoked and driving under the influence of alcohol were elements of the felony offense of driving while license revoked, subsequent offense. [Citation.] Now, with the addition of subsection (c), it is clear that the prior convictions are not elements of the offense that the State must prove to the trier of fact." *Lucas*, at 181.

The *Zimmerman* court distinguished its case, or more precisely the statute before it, from *Lucas*:

> "*Lucas* differs from the present case because, there, the defendant was charged with, and convicted of, misdemeanor driving while license revoked. [Citation.] Only after being convicted of the misdemeanor offense was the prior conviction used to increase the classification to a felony at sentencing. [Citation.] By contrast, in the instant case, defendant was charged with a felony offense, and his prior delinquency adjudication was an element of that offense." *Zimmerman*, at 498 (citing *Lucas*, at 180-82).

¶ 27 Here, defendant was charged with violating Sections 3 and 6 of the Act, which define a sex offender's duties to register and report but do not establish the penalty therefor. Section 10(a) of the Act provides that "[a]ny person who is required to register under this [Act] who violates

any of the provisions of this [Act] *** is guilty of a Class 3 felony," and "[a]ny person who is convicted for a violation of this Act for a second or subsequent time is guilty of a Class 2 felony." 730 ILCS 150/10(a) (West 2010). Thus, the offense or violation is completely defined without reference to the prior conviction under the Act, the only effect of which is to elevate the class of the offense. We find that the Act resembles the statute in *Lucas* rather than the one in *Zimmerman*. In sum, the elevation from a Class 3 to Class 2 felony for a prior violation of the Act is not elemental but an enhanced sentence under section 111-3(c). The State fulfilled its duty under section 111-3(c) by alleging the prior conviction under the Act as an enhancement in the indictment, and it was not required to prove that conviction beyond a reasonable doubt at trial.

¶ 28 Defendant also contends that he should receive the two-year MSR term for his Class 2 felony offense rather than the three-year term for a Class X felony that he received.

¶ 29 "[E]very sentence includes a term [of MSR] in addition to the term of imprisonment," the MSR term being three years for a Class X felony and two years for a Class 2 felony. 730 ILCS 5/5-4.5-15(c), 5-4.5-25(l), 5-4.5-35(l) (West 2010). This court has repeatedly held that a defendant sentenced as a mandatory Class X offender receives the Class X MSR term of three years. See, *e.g.*, *People v. Lenoir*, 2013 IL App (1st) 113615, ¶¶ 22-25; *People v. Wade*, 2013 IL App (1st) 112547, ¶¶ 31-38; *People v. Brisco*, 2012 IL App (1st) 101612, ¶¶ 58-62. Defendant argues that these cases are cast into doubt by our supreme court's decision in *People v. Pullen*, 192 Ill. 2d 36 (2000), where a defendant convicted of multiple burglaries and sentenced as a Class X offender to consecutive prison terms totaling 30 years challenged his consecutive sentencing on the basis that his aggregate sentence exceeded the statutory maximum. The *Pullen* court found that the consecutive sentences exceeded the maximum for burglary because the Class X offender statute does not change the class of the felonies themselves, and defendant contends that this principle should apply to MSR as well. However, in *Lenoir*, *Wade*, and *Brisco*, we

expressly rejected the contention that *Pullen* applies to MSR. Adhering to these decisions, we find that defendant's three-year MSR term is not erroneous.

¶ 30 Lastly, the State contends that the mittimus should be corrected to reflect that defendant was found guilty of two counts of violating the Act. However, the court sentenced him on only one count; it orally pronounced a six-year prison sentence without reference to counts, then imposed that sentence on Count 1 in the mittimus. By doing so, the court merged the two counts. The State did not object to framing the sentence in this manner and therefore waived any objection to it. While defendant violated the Act by failing to register either with or without a fixed residence, it was proper on this record for the court to ultimately enter judgment on only one count; that is, on one allegation or the other. We find no error to be corrected in this mittimus.

¶ 31 Accordingly, we affirm the judgment of the circuit court.

¶ 32 Affirmed.