2018 IL App (1st) 152016-U

No. 1-15-2016

Order filed January 26, 2018

Sixth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 14 C6 60106
	)	
KEVIN JONES,	)	Honorable
	)	Frank G. Zelezinski,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE CONNORS delivered the judgment of the court.
Justices Cunningham and Delort concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for providing false information to law enforcement in violation of the Sex Offender Registration Act is reversed because the State failed to prove beyond a reasonable doubt that he remained under a duty to register as a sex offender 32 years after his underlying offense.

¶ 2 Following a bench trial, defendant Kevin Jones was convicted of providing false information to law enforcement in violation of sections 3(a) and 10 of the Sexual Offender Registration Act (SORA) (730 ILCS 150/3(a) (West Supp. 2013); 730 ILCS 150/10 (West

2012)) and sentenced to five years' imprisonment. Defendant appeals, arguing that the State failed to prove beyond a reasonable doubt that he was required to register as a sex offender pursuant to SORA. For the reasons set forth herein, we reverse the judgment of the trial court.

¶ 3 Defendant was charged with failure to report a change of address in violation of section 6 of SORA and providing false information to law enforcement in violation of sections 3(a) and 10 of SORA. 730 ILCS 150/6 (West Supp. 2013); 730 ILCS 150/3(a) (West Supp. 2013); 720 ILCS 150/10 (West 2012). Regarding the false information count, the indictment alleged that, on or about December 17, 2013, defendant:

> "having been previously convicted of attempt rape under case number 785878 and thus required to register under the sexual offender registration act, knowingly or willfully provided material information that was false, to wit: [defendant] registered the address on 3040 W. 136th Street in Robbins, Cook County, Illinois, as his address and [defendant] did not live at that address."

The state entered a *nolle prosequi* on the failure to report change of address count and, after defendant waived his right to a jury trial, the case proceeded to a bench trial.

¶ 4 Officer Tawasha Walker testified that she was employed as a records advisor officer for the Robbins police department. She was familiar with defendant, whom she identified in-court, as he had come to the Robbins police department to register as a sex offender on multiple occasions over the five years that she had been working there. On October 21, 2013, defendant came to the Robbins police department to register. Defendant told Walker that he was residing at 3430 West 136th Street, and signed a SORA registration form listing that address. Walker testified that defendant had listed the same address when he had registered in July of 2012.

¶ 5 Evvie Swansey testified that she was defendant's aunt and that she had lived at 3430 West 136th Street in Robbins, Illinois for over five years. She testified that defendant had never lived at the residence, and had never spent the night there. On at least one occasion, she went to the post office and signed a card requesting that his mail not be sent to that address. Police came to the residence on December 7, 20, and 21, 2013, but defendant was never at the residence.

¶ 6 Detective Thorns of the Cook County Sheriff's police department testified that, on December 17, 2013, he was assisting the Robbins police department to register its sex offenders and went to the address of 3430 West 136th Street to look for defendant. Thorns did not come into contact with anyone at that address. Thorns requested that an officer on the afternoon shift attempt to go to the residence later in the day, but that officer was similarly unable to come into contact with anyone at the residence. Thorns then called the phone number associated with that address, and spoke with Evvie Swansey. On December 21, 2013, Thorns returned to the residence and again spoke with Swansey, and learned that defendant was not present at the residence. Thorns arrested defendant on January 7, 2013. After waiving his *Miranda* rights, defendant told Thorns that he was homeless and that he sometimes stayed with his sister at a residence located at 3805 West 139th Street.

¶ 7 On cross-examination, Thorns testified that he spoke to Swansey on the phone on December 21, 2013, and that he went to the house on December 23, 2013. He acknowledged that his police reports did not indicate that he spoke with Swansey on the 23rd.

¶ 8 The State admitted into evidence defendant's certified conviction for "attempt rape" from March 6, 1981.

¶ 9 Based on this evidence, the trial court found defendant guilty of providing false information to law enforcement in violation of section 10 of SORA and, after a hearing, sentenced him to five years' imprisonment.

¶ 10 Defendant appeals, arguing that the State failed to prove beyond a reasonable doubt that he was required to register pursuant to SORA.

¶ 11 The due process clause of the fourteenth amendment protects defendants against conviction in state courts except upon proof beyond a reasonable doubt of every fact necessary to constitute the charged crime. *People v. Brown*, 2013 IL 114196, ¶ 48; *Jackson v. Virginia*, 443 U.S. 307, 315-16 (1979). When ruling on a challenge to the sufficiency of the evidence, a reviewing court " 'is not required to search out all possible explanations consistent with innocence or be satisfied beyond a reasonable doubt as to each link in the chain of circumstances. On the contrary, we must ask, after considering all of the evidence in the light most favorable to the prosecution, whether the * * * evidence [in the record] could reasonably support a finding of guilt beyond a reasonable doubt.' " *People v. Grant*, 2014 IL App (1st) 100174-B, ¶ 24 (quoting *People v. Wheeler*, 226 Ill. 2d 92, 116-17 (2007)). In doing so, we must draw all reasonable inferences from the record in favor of the prosecution, and " '[w]e will not reverse a conviction unless the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt.' " *People v. Lloyd*, 2013 IL 113510, ¶ 42 (quoting *People v. Collins*, 214 Ill. 2d 206, 217 (2005)).

¶ 12 SORA was designed to aid law enforcement agencies in monitoring the whereabouts of sex offenders by allowing " 'ready access to crucial information' " about their residency and movements. *People v. Molnar*, 222 Ill. 2d 495, 499 (2006) (quoting *People v. Adams*, 144 Ill. 2d

381, 388 (1991)). As relevant here, Section 3(a) of SORA requires a sex offender to provide accurate information regarding his current address to the law enforcement agency to which he is required to register and report. (730 ILCS 150/3(a) (West Supp. 2013). Section 10 of SORA states that "[a]ny person who is required to register under this Article who knowingly or willfully gives material information required by this Article that is false is guilty of a Class 3 felony." 730 ILCS 150/10 (West 2012)

¶ 13 The record shows, and defendant acknowledges, that "he at one time had a 10-year reporting requirement starting in 1981," the year he violated his probation from the 1979 attempt rape conviction. As defendant was convicted of attempt rape in 1979, and sentenced after a violation of probation in 1981, he is labeled only as a "sex offender." 730 ILCS 150/2(A)(1)(a), (B)(1) (West Supp. 2013). Section 7 of SORA states that sex offenders who have not been adjudicated to be sexually dangerous, and who are not also labeled sexual predators, are required to register for a period of 10 years after conviction or adjudication "if not confined to a penal institution, hospital or any other institution or facility, and if confined, for a period of 10 years after parole, discharge or release from any such facility." [1] 730 ILCS 150/7 (West 2012). Section 7 also states that "[r]econfinement due to a violation of parole, a conviction reviving registration, or other circumstances that do not relate to the original conviction or adjudication shall toll the running of the balance of the 10-year period of registration, which shall not commence running until after final parole, discharge, or release." 730 ILCS 150/7 (West 2012). In this court,

[1] A person who is convicted of attempt criminal sexual assault after July 1, 1999, is labeled a "sex offender" as well as a "sexual predator." 730 ILCS 150/2(E)(1) (West Supp. 2013). Sexual predators, as well as offenders who have been adjudicated as "sexually dangerous" or "sexually violent" are required to register for life. 730 ILCS 150/7 (West 2012).

defendant solely argues that "the State presented no evidence at trial that a 10-year reporting requirement that commenced in 1981 continued to operate 32 years later, in 2013."

¶ 14 The State responds that, "due to defendant's numerous criminal offenses leading to his lengthy custodial status in IDOC, as a matter of law, defendant's initial 10-year period had never expired at the time of the charges in this case." The State details how defendant was initially convicted of attempt rape on September 4, 1979 and sentenced to five years' probation. It then describes how defendant was arrested for murder on June 21, 1980. Defendant was then convicted of murder and sentenced to 21 years' imprisonment on January 27, 1981. Defendant was subsequently found to be in violation of his probation in the attempt rape case and was resentenced to four years' imprisonment. While imprisoned, defendant was twice convicted of aggravated battery; on November 9, 1995, he was sentenced to 8 years' imprisonment and on June 11, 1999, he was sentenced to 5 years' imprisonment. He was ultimately released from IDOC custody on October 23, 2003. Thus, the State concludes, defendant's 10-year requirement, which was tolled by his confinement in IDOC, was still active when he was arrested on January 2, 2013, for failure to comply with SORA registration requirements. The State also points out that defendant was subsequently convicted of failure to report weekly in case number 13 CR 04451 and was sentenced, on November 14, 2014, to three years' imprisonment with credit for "582 days" of presentence custody.

¶ 15 We initially note that, from all this information regarding defendant's criminal history, only defendant's 1981 conviction was introduced at trial. The rest of defendant's alleged criminal history, as outlined by the State, is derived from his presentence investigation report, and was not introduced at trial. Had this information been properly admitted it arguably could

have been used to prove that defendant still had a duty to register and report on October 21, 2013[2], given the fact that a sex offender's duty to register is tolled by confinement. See 730 ILCS 150/7 (West 2012). Yet, as defendant points out, none of this information was presented by the State at trial. Rather, the State directs this court to consider the information regarding defendant's convictions and dates of confinement contained in his presentence investigation report, which is not in evidence. However, "[a] challenge to the sufficiency of the evidence is not a question of what the State could have proved at trial; it is a question of what the State actually proved at trial." *People v. Jones*, 2017 IL App (1st) 143718, ¶ 21.

¶ 16 We find that the evidence adduced at trial was insufficient to prove beyond a reasonable doubt that defendant was still subject to the reporting requirements of SORA nearly 32 years after his underlying conviction for attempt rape. Although the State admitted into evidence defendant's underlying conviction and 1981 sentence, it failed to provide any information regarding when, or if, defendant's registration period was tolled due to reconfinement. See *Jones*, 2017 IL App (1st) 143718, ¶ 22 (Where a sex offender's duty to register has been tolled by imprisonment or extended by a subsequent conviction, the State should provide evidence of such at trial"). Further, while Officer Walker testified that she registered defendant on October 21, 2013, and had done so multiple times in the preceding five years, she provided no explanation as to why defendant's underlying conviction required him to register on that date. Even viewing the evidence in the light most favorable to the State, we find that no rational trier

[2] As noted above, the indictment charged that defendant provided false information to law enforcement "on or about December 17, 2013." Officer Walker testified that defendant provided the 3430 West 136th address on October 21, 2013. There was no testimony about defendant providing information to law enforcement on December 17, 2013.

of fact could have found that defendant was required to register pursuant to SORA at the time in question.

¶ 17 Accordingly, we reverse the judgment of the circuit court of Cook County.

¶ 18 Reversed.