2018 IL App (1st) 153194-U

FIFTH DIVISION
Order filed: January 11, 2019

No. 1-15-3194

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 CR 21926
	)	
GERALD D. GOSSITT,	)	Honorable
	)	Gregory Robert Ginex,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Presiding Justice Rochford and Justice Hall concurred in the judgment.

ORDER

¶ 1 *Held*: We reverse the defendant's conviction for failure to register pursuant to section 3(a) of the Sex Offender Registration Act (730 ILCS 150/3(a) (West 2014)) where: (1) the circuit court failed to admonish the defendant, as required by Illinois Supreme Court Rule 401(a) (eff. July 1, 1984); and (2) the evidence presented at trial was insufficient to prove beyond a reasonable doubt that the defendant established a residence or temporary domicile in Franklin Park.

¶ 2 Following a bench trial in the circuit court of Cook County, the defendant, Gerald Gossitt, was convicted for failing to register as a sex offender and was sentenced as a Class X offender to 12 years' imprisonment. On appeal, the defendant argues that: (1) the circuit court

failed to adequately admonish him before allowing him to waive his right to counsel; and (2) the State did not present sufficient evidence that he lived in Franklin Park from July 2014 to October 2014. For the reasons that follow, we reverse.

¶ 3 On November 21, 2014, the defendant was charged with one count of violating section 3(a) of the Sex Offender Registration Act (Act) (730 ILCS 150/3(a) (West 2014)) in that he, "having been previously convicted of criminal sexual assault under case number 98CR-1972004 and subsequently convicted of a violation of [the Act] under case number 11CR-00925, knowingly failed to register, in person, as a sex offender with Franklin Park Police Department, within 3 days of establishing a residence or temporary domicile in the Village of Franklin Park, Cook County, Illinois."

¶ 4 On several occasions prior to trial, the circuit court informed the defendant of his right to counsel and attempted to appoint the public defender to represent him. However, each time, the defendant refused the appointment. On March 3, 2015, the circuit court again informed the defendant of his right to counsel, including appointed counsel if he was indigent, but the defendant indicated that he would rather represent himself or hire someone who was not a licensed attorney. The circuit court explained that any attorney representing him must be licensed, but did not explain the nature of the charge or the minimum and maximum sentencing range. After noting that the defendant would not be given "special consideration" if he represented himself, and that he had previously refused to cooperate with a fitness examination, the circuit court allowed him to proceed *pro se*.

¶ 5 At trial, Cook County Sherriff's Deputy Peter Katalinic testified that, on June 27, 2014, he met with the defendant while he was in custody at the Cook County jail. At the meeting, Deputy Katalinic served the defendant with a Sex Offender Notification form, instructed him that

he needed to register with his local police department after being released from jail by July 2, 2014, and witnessed him sign the notice and instructions. The State introduced the form, which indicated that the defendant was released from jail on June 27, 2014.

¶ 6 Next, Franklin Park Police Detective Tom Ferris testified that, on November 20, 2014, he detained the defendant in connection with a theft on the 2700 block of Mannheim Road in Franklin Park. At the police station, Detective Ferris ran the defendant's name through "LEADS" and determined that he was a sex offender. The defendant told the detective that he currently lived in Chicago. However, the defendant also said that from July 2014 to October 2014, he lived in Franklin Park along the 2700 block of Mannheim Road in motels, which Detective Ferris testified existed. Next, Detective Ferris reviewed the department's in-house files and determined that the defendant never registered as a sex offender in Franklin Park. Detective Ferris also contacted the Illinois State Police and discovered that the defendant had not registered anywhere in Illinois since 2008. On cross-examination, Detective Ferris admitted that he had no "receipts or any document or anything," proving that the defendant resided in motels on Mannheim Road apart from his confession.

¶ 7 After submitting certified copies of the defendant's convictions for criminal sexual assault and violation of the Act, the State rested. The defendant rested without presenting any evidence.

¶ 8 Following arguments, the circuit court found that the defendant was advised of his duty to register upon his release from custody and that he admitted to living in motels on Mannheim Road in Franklin Park from July to October in 2014. The circuit court found that Detective Ferris corroborated the defendant's admission by determining that the defendant was not registered anywhere, even though the defendant knew that he was supposed to have registered somewhere

by July 2, 2014. Because there had been no registry since 2008, the circuit court found the defendant guilty of failing to register as a sex offender in violation of the Act. On October 22, 2015, the circuit court sentenced the defendant to 12 years' imprisonment as a Class X offender based on his "background." This appeal followed.

¶ 9 For his first assignment of error, the defendant argues that the circuit court failed to admonish him as required by Illinois Supreme Court Rule 401(a) (eff. July 1, 1984) before allowing him to waive counsel and represent himself at trial. The State confesses error, and we agree.

¶ 10 Illinois Supreme Court Rule 401(a) (eff. July 1, 1984) provides that a trial court shall not permit a waiver of counsel by a defendant accused of an offense punishable by imprisonment without "informing him of and determining that he understands:" (1) the nature of the charge; (2) the minimum and maximum sentencing range, including consecutive sentencing or enhancements due to prior convictions; and (3) the right to counsel, including appointed counsel if he is indigent. Substantial compliance with the rule is required for an effective waiver of counsel. *People v. Haynes*, 174 Ill. 2d 204, 241 (1996). Rule 401(a) admonishments must be provided at the time the court learns that a defendant chooses to waive counsel, so that the defendant can consider the ramifications of such a decision. *People v. Jiles*, 364 Ill. App. 3d 320, 329 (2006).

¶ 11 The record shows, and the State concedes, that, although the defendant and the circuit court engaged in several discussions regarding his desire to proceed *pro se*, there were no admonishments immediately preceding the circuit court's ruling that the defendant would represent himself. As this court has noted, a defendant's waiver of his right to counsel is invalid when admonishments are not given at the time when the defendant requests to waive counsel.

People v. Seal, 2015 IL App (4th) 130775, ¶ 31; see also *People v. Langley*, 226 Ill. App. 3d 742, 749-50 (1992). Therefore, the defendant's conviction must be reversed.

¶ 12 Because double jeopardy bars retrial where the evidence at the first trial was not sufficient to support a conviction, we must review the defendant's claim of insufficiency of evidence. See *People v. Olivera*, 164 Ill. 2d 382, 393 (1995). If the evidence presented at the first trial would have been sufficient for any rational trier of fact to find the essential elements of the crime proven beyond a reasonable doubt, retrial is the proper remedy. *People v. Lopez*, 229 Ill. 2d 322, 367 (2008). However, if no rational trier of fact could so find, the defendant may not be subjected to a second trial. *Id.*; see also *People v. Davis*, 377 Ill. App. 3d 735, 747 (2007).

¶ 13 The defendant argues that the State presented insufficient evidence to establish the *corpus delicti* of the crime by failing to corroborate his statement that he lived in Franklin Park from July 2014 to October 2014.

¶ 14 When a defendant challenges the sufficiency of the evidence, it is not the function of this court to retry the defendant. *People v. Evans*, 209 Ill. 2d 194, 209 (2004). A reviewing court must determine whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime charged beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48 (citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). A reviewing court may not overturn a conviction based on insufficient evidence unless the proof is so unreasonable, improbable, or unsatisfactory that a reasonable doubt exists as to the defendant's guilt. *People v. Wheeler*, 226 Ill. 2d 92, 115 (2007); *People v. Smith*, 2015 IL App (1st) 132176, ¶ 24.

¶ 15 Section 3(a) of the Act provides that a sex offender must 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." 730 ILCS 150/3(a) (West 2014). The Act defines "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." *Id*. " 'Inherent in each definition is the idea of a specific location.' " *People v. Gomez*, 2017 IL App (1st) 142950, ¶ 15 (quoting *People v. Robinson*, 2013 IL App (2d) 120087, ¶ 23). Thus, to establish that the defendant violated section 3(a) of the Act, the State was required to prove both: (1) that he resided or was temporarily domiciled at a specific location within Franklin Park; and (2) that he failed to register there. *Gomez*, 2017 IL App (1st) 142950, ¶ 16.

¶ 16 To sustain a criminal conviction, the State must prove that a crime occurred, *i.e.*, the *corpus delicti*, and that it was committed by the person charged. *People v. Cloutier*, 156 Ill. 2d 483, 503 (1993). In a case where the defendant's admission is part of the proof of the *corpus delicti*, the State must also provide corroborating evidence independent of the defendant's admission. *Id*. Specifically, in *People v. Harris*, 333 Ill. App. 3d 741, 747 (2002), this court held that in failure-to-register cases under the Act, where the defendant's admission establishes his residence, the State must provide corroborating evidence that is independent of both his admission regarding his address and his admission as to how long he stayed at the address.

¶ 17 After viewing the evidence in the light most favorable to the State, we find it insufficient to prove beyond a reasonable doubt that the defendant established a residence or temporary domicile in Franklin Park. Although Detective Ferris testified that the defendant admitted to living in motels in Franklin Park from July 2014 to October 2014, no corroborating evidence established that he resided in any of the motels or established how long he lived there. Officers conducted no investigation into whether the defendant stayed in the motels for three consecutive days, and Detective Ferris admitted that no receipts or any documentation demonstrated the

defendant's residence or temporary domicile at any motel. While the record shows that motels exist on Mannheim Road and that Detective Ferris encountered the defendant on Mannheim Road in November 2014, these circumstances do not support an inference that the defendant resided in any of the motels from July 2014 to October 2014. As such, the only evidence of the *corpus delicti* was the defendant's uncorroborated statement, which is insufficient to support a conviction. *Harris*, 333 Ill. App. 3d at 751. Consequently, the State failed to prove beyond a reasonable doubt that the defendant resided at the motels on Mannheim Road, or anywhere else in Franklin Park, for the three days that is required to establish a residence or temporary domicile as defined by the Act. 730 ILCS 150/3(a) (West 2014); *Gomez*, 2017 IL App (1st) 142950, ¶ 20 (finding that the State failed to prove that the defendant was required to register in Chicago because it did not present any evidence placing the defendant's residence in Chicago for at least three days).

¶ 18 Nevertheless, the State contends that the evidence was sufficient to prove that the defendant failed to register as a sex offender because the evidence suggests that he did not register anywhere in Illinois after being released from jail in June 2014. However, the defendant was not charged with failure to register within three days of his release from prison (730 ILCS 150/3(c)(4)(West 2014)), or failing to register as a person without a fixed address (730 ILCS 150/6 (West 2014)). Rather, the defendant was specifically charged under section 3(a) of the Act with failing to register after establishing a residence or temporary domicile in Franklin Park. Since the State failed to prove beyond a reasonable doubt that the defendant established a residence or temporary domicile in Franklin Park, it failed to prove him guilty of the offense with which he was charged. 730 ILCS 150/3(a) (West 2014); *Gomez*, 2017 IL App (1st) 142950, ¶ 2.

¶ 19 In summary, we find that the circuit court failed to admonish the defendant, as required by Illinois Supreme Court Rule 401(a) (eff. July 1, 1984), before allowing him to waive counsel and represent himself at trial, and his conviction is, therefore, reversed. Because there was insufficient evidence to sustain a finding of guilt beyond a reasonable doubt that the defendant established a residence or temporary domicile in Franklin Park, the State failed to prove that he violated section 3(a) of the Act. Accordingly, the prohibition against double jeopardy forbids a second trial. See *People v. Davis*, 377 Ill. App. 3d 735, 747 (2007). As such, we need not reach his further assignments of error.

¶ 20 For the foregoing reasons, the judgment of the circuit court is reversed.

¶ 21 Reversed.