2016 IL App (2d) 140051-U
No. 2-14-0051
Order filed June 22, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. BRIAN PEARSE, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Boone County. No. 12-CF-22 Honorable C. Robert Tobin III, Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justice Spence concurred in the judgment.
Justice Hutchinson dissented.

ORDER

¶ 1 *Held*: Defendant was proven guilty beyond a reasonable doubt of violating section 3 of the Sex Offender Registration Act by failing to report a change of address after returning to a previously registered address.

¶ 2 After a jury trial, defendant, Brian Pearse, was convicted of failing to register his address in accordance with section 3 of the Sex Offender Registration Act (Act) (730 ILCS 150/3 (West 2012)). On appeal, he argues that (1) he was not proved guilty beyond a reasonable doubt; and (2) the trial court erred in giving the jury nonpattern instructions that did not apply to the facts of the case. We affirm.

¶ 3 On February 24, 2012, defendant was indicted for violating section 3 of the Act, which, as pertinent here, reads:

> "(a) A sex offender *** shall, within the time period prescribed in subsections (b) and (c), register in person and provide accurate information as required by the Department of State Police. *** The sex offender *** shall register:
>
> (1) 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 ***.
>
> * * *
>
> For purposes of this Article, the place of residence or temporary domicile is defined 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. ***
>
> * * *
>
> (b) Any sex offender ***, regardless of any initial, prior, or other registration, shall, within 3 days of *** establishing a residence, place of employment, or temporary domicile in any county, register in person as set forth in subsection (a) ***." 730 ILCS 150/3(a)(1), (b) (West 2012).

As originally phrased, the indictment alleged that defendant "knowingly failed to register a change of his address *** with the Chief of Police, or his designee, of the City of Belvidere, Boone County, Illinois, within three days of moving from his registered [*sic*]."

¶ 4 Defendant demanded a bill of particulars, seeking specific descriptions of his "registered address" on February 2, 2012, and "the address the State intend[ed] to prove as the 'change of address' as alleged." The State responded that the address at which defendant last registered

before he was charged in this case was 8311 W. Roosevelt Road, Forest Park, Illinois 60130, a hospital where he was voluntarily admitted early in January 2012.

¶ 5 At a hearing on September 10, 2013, the prosecutor explained that he had provided only the first requested particular. He believed that the State need not prove defendant's actual address on February 2, 2012, but only that he was residing somewhere other than the hospital and had not registered any new address within three days after leaving the hospital. The judge stated that the change of address and how long defendant had been there as of February 2, 2012, appeared to be "elements of the offense." The prosecutor responded that, however long defendant had resided at his new address after he left the hospital, the State needed to prove only that, at least three days after he left the hospital, he had not registered his current address. He added that the indictment was consistent with this theory. Defendant's attorney noted that the indictment "sa[id] address change, it [did not say] residence. The statute has different types of residences that are different types of addresses that you have to prove." She had demanded a bill of particulars so as to know which of several possible theories the State had elected.

¶ 6 The judge suggested that, had defendant moved from his home, where he had previously been registered, then to the hospital, where he registered next, and then back to his home, he would have had to "reregister that place." The prosecutor contended that, under the Act and the indictment, the State need prove only that, more than three days after defendant left the hospital (where he had duly registered), he had resided elsewhere and had "never registered any change of address." The judge suggested that proving a violation of section 3 might require proof that defendant had established a new fixed residence or temporary domicile (a place where he had resided "for at least three or five days aggregate during any calendar year") that he had not registered. The hearing on the bill of particulars was continued.

¶ 7 At a hearing on September 16, 2013, the prosecutor explained, "We're saying [defendant] failed to notify the Belvidere Police Department that he moved back into Belvidere after leaving the hospital in Forest Park." He said that the address was 1123½ South State Street in Belvidere. At a hearing on September 18, 2013, defendant's attorney said that the bill of particulars was now complete. The State then amended the indictment by deleting "knowingly" and placing "address" at the end of the charge.

¶ 8 The cause proceeded to trial. The State's first witness, Forest Park police officer Jason Keeling, testified as follows. On January 5, 2012, he was assigned to Riveredge Hospital in Forest Park, where he had defendant read and sign a sex-offender registration form. The form, admitted into evidence as People's exhibit No. 1, contained several subheadings on the first line. Each had a box that could be checked. The subheading "Initial Registration" was checked. The subheading "Change of Address" was not checked. Thus, January 5, 2013, was defendant's annual registration date, not his "change of address" date.

¶ 9 Julie Grubar, a Belvidere police officer, testified as follows. On October 18, 2011, well before defendant entered the hospital, she had visited 1123 South State Street, a two-story house, to make sure that defendant was there. That day, she filled out a form stating that defendant lived at 1123 South State. The form went to the dispatch department, and a LEADS report was created and entered into the database. The form was admitted into evidence.

¶ 10 Grubar testified that, on January 27, 2012, while on patrol, she received a call about defendant and proceeded to 1123 South State. Grubar knocked on the front door but got no response. On February 2, 2012, she returned. She noticed that the house had an upper apartment with the address 1123½ South State. Grubar went there and spoke to defendant. He told her that he had been out of the hospital about two weeks; in that period, he had been residing at 1123½

South State. Grubar sent a report to Sergeant Mark Pollock, who was in charge of registering sex offenders. On February 6, 2012, she returned to 1123½ South State and arrested defendant for failing to register that address within three days after returning there from the hospital.

¶ 11 Pollock testified on direct examination as follows. Each sex offender for whom he was responsible had a separate file. He identified a standard sex-offender registration form that the department used. It had separate lines for the sex offender's "Resident Address" and "Secondary Address." The resident address was the one that the Illinois State Police database (LEADS) listed as the "current address." On February 2, 2012, Pollock read Grubar's report and checked LEADS, which showed that defendant's current address was not in Belvidere.

¶ 12 Pollock testified on cross-examination as follows. A LEADS search will disclose a sex offender's "resident address," as listed on his registration form, but not his "secondary address." In response to Grubar's request, Pollock searched LEADS but did not look at People's exhibit No. 1, which had listed the Belvidere house as defendant's secondary address.

¶ 13 A form, identified by Pollock and admitted into evidence as defendant's exhibit No. 2, was dated April 6, 2011, and signed by defendant and the registering officer. On the first line, the subheading "Change of Address" was the only one checked. The form gave defendant's "Resident Address" as "1123 South State Street" in Belvidere. It did not give a secondary address. It gave defendant's annual registration date as April 6, 2012.

¶ 14 Pollock next identified defendant's exhibit No. 3 as one page of a form that defendant filled out and signed on April 6, 2011. The form stated that defendant was required to report in person for address changes. Pollock testified that, were defendant to continue to reside at 1123 South State but add a secondary address, he would have to report in person and fill out the line marked "Secondary Address" on defendant's exhibit No. 2.

¶ 15 On redirect examination, Pollock testified that defendant was given defendant's exhibit No. 2 when he registered on April 6, 2011. Belvidere's police department had lacked access to People's exhibit No. 1, because Forest Park's police department would not have sent it a copy. Belvidere officers saw only what was entered into LEADS. When Pollock checked defendant's department file on February 2, 2012, he did not find any form stating that, within the last three days, defendant had registered a change of address with the department.

¶ 16 The State rested. The parties stipulated that defendant was a sex offender.

¶ 17 Defendant moved for a directed verdict, arguing that, according to the State's evidence, he had been registered at his Belvidere address before, during, and after his time in the hospital, and he had never stopped "residing" there. The form that he filled out at the hospital gave his Belvidere home as his secondary address. Thus, defendant reasoned, he had not violated section 3 of the Act; he had reported his addresses at both locations.

¶ 18 The State responded that defendant had violated the Act by failing to reregister his Belvidere address within three days of leaving the hospital in Forest Park.[1] The judge denied

[1] The State also noted that 1123 South State was different from 1123½ South State. The State does not rely on that fact here. The indictment did not distinguish between 1123 South State and 1123½ South State; it did not allege that defendant violated the Act by failing to register his address at 1123½ South State after moving back from Forest Park. The theory of the indictment and the State's case at trial was that defendant had failed to register his address at 1123 South State. Also, the evidence showed that, before defendant entered the hospital, he had been residing at 1123½ South State, so there is no possibility that, at any pertinent time, he had ever had more than one address in Belvidere. Thus, for our purposes, there is no distinction between "1123 South State" and "1123½ South State."

defendant's motion, reasoning that the Act contemplated that an offender might have two or more residences at a time, and be registered at all of them, but still have to inform the police if he moved from one to another.

¶ 19 Defendant's father, Arnold Pearse, testified as follows. He had lived at 1123 South State for approximately 35 years. The upstairs apartment's address is 1123½ South State. In April 2011, defendant resided there; he still did on January 1, 2012, when a deputy visited and asked his whereabouts. In January 2012, defendant entered the hospital for less than a week. He paid rent every month, including for February 2012.

¶ 20 At the instructions conference, the judge commented that, although the indictment alleged that defendant had violated section 3 of the Act by failing to register at 1123 South State after having established (or reestablished) an address there in January 2012, the evidence had made it "sound[] like the State is real [*sic*] proceeding under 150/6, failure to register a change of his residence address as opposed to establishing a residence. [Section 3] indicates that he would have to [register] within three days of establishing a residence." We note that, as pertinent here, section 6 of the Act reads, "If any *** 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 ***." 730 ILCS 150/6 (West 2012). Defendant's attorney responded, "If that is the way they want to go, then I'd renew my motion for a directed verdict."

¶ 21 The judge explained, "[T]he difference I would guess is that under [section 3] *** every lily pad that you establish on the pond, every time you establish a new one might fall in under [section 3] because it uses the word 'establish' a residence; whereas if you already have lily pads out there that you are just bouncing back and forth amongst, you have an obligation to notify

them of a change of address, which would be [section 6] but it doesn't use the term ['] establish residence.['] " Defendant's attorney responded, "Hence we should go back to my motion to dismiss [*sic*]." The judge noted that, had the State alleged that defendant did not change his address but actually established a new residence, then a directed verdict would have been proper on a charge of violating section 3. However, the wording of the indictment, and the evidence at trial, both "indicate[d] that the State is really going under [section] 6, change of address, in other words he jumped on a different lily pad but one that was already there. And in that case I do think that the wording ['] residence address['] would be appropriate. It's word[-]for[-]word out of the statute." The prosecutor responded, "That is fine. What we're saying *** is that the defendant had a duty to provide information under [section] 3 and then under [section] 6, that is what he failed to do within three days[,] so yes, I would have no objection to that."

¶ 22 The judge and the parties then discussed the impact of section 3(b), under which any sex offender, "*regardless of any initial, prior, or other registration*, shall, within 3 days of *** establishing a residence *** or temporary domicile in any county, register in person as set forth in subsection (a) or (a-5)." (Emphasis added.) 730 ILCS 150/3(b) (West 2012). The prosecutor argued that the emphasized language meant that, even though defendant had registered his Belvidere address in April 2011, he still had to report to the Belvidere police within three days and register it again after he moved from the hospital back to the Belvidere address. After he left the hospital, he had "reestablished" his residence in Belvidere, and the prior registration was insufficient. The prosecutor noted that, when defendant entered the hospital, and registered it as his primary address, there was no telling how long he would stay there; thus, there was good reason to require him, upon returning to Belvidere, to notify the Belvidere police promptly that he could now be found there and not in Forest Park.

¶ 23 Defendant's attorney countered that, after leaving his Forest Park address, defendant did not need to reregister his Belvidere address, because he had already done so. The emphasized language did not impose any such requirement; its purpose was to ensure (for example) that, once defendant entered the hospital in Forest Park, the mere fact that he had registered his Belvidere address did not excuse him from registering the new address as well.

¶ 24 The judge ruled for the State, explaining, "[O]nce you establish a place and register it as one of these places, if you are going to bounce back and forth amongst the lily pads, one that meets the statutory requirement of more than three days or five days [for a temporary domicile or fixed residence], I think you have an obligation to let everybody know where you are at. Otherwise one can establish conceivably in any 12[-]month period 30 places and bounce back and forth amongst those 30 places never staying at one longer than another in which case nobody would ever really know where you live." He explained that, in his view, the legislature's intent was to enable people in a municipality to know that a sex offender was actually living there. The judge conceded that section 3(b) does refer to "establishing a residence[,] which would lead one to believe that that would be the first time that one actually identifies that location as a residence; however, that is inconsistent with the earlier phrase in that sentence, ['] regardless of any prior registration.['] " Thus, the indictment and the proofs were consistent with the theory that defendant had violated section 3(b) by failing to register his Belvidere address within three days after moving back there from Forest Park.

¶ 25 The conference returned to the choice of jury instructions in light of the foregoing ruling. The judge decided to give People's instruction No. 11, which was Illinois Pattern Jury Instructions, Criminal, No. 9.43F (4th ed. Supp. 2011) as modified, over defendant's objection.

It read: "A person commits the offense of failure to register as a sex offender when he fails to report a change of address."

¶ 26 The conference turned to the elements instruction. Noting his construction of the Act as not requiring a sex offender to register at a new address if he does not stay there the minimum period for a fixed residence or temporary domicile (see *People v. Robinson*, 2013 IL App (2d) 120087, ¶¶ 22, 23 (construing section 6 of the Act)), the judge decided to issue People's instruction No. 13A:

> "To sustain the charge of failure to register as a sex offender the State must prove the following propositions:
>
> *First Proposition*: That the defendant was a sex offender, and
>
> *Second Proposition*: That the defendant established a fixed residence or temporary domicile different from his last place of registration, and
>
> *Third Proposition*: That the defendant failed to report that address change within three days.
>
> If you find from your consideration of all the evidence that each of these propositions has been proven beyond a reasonable doubt, you should find the defendant guilty.
>
> If you find from your consideration of all the evidence that any of these propositions has not been proven beyond a reasonable doubt, you should find the defendant not guilty."

Other instructions defined "fixed residence" and "temporary domicile." The propriety of those instructions is not at issue.

¶ 27 The jury found defendant guilty. The court denied his posttrial motion and, after a hearing, sentenced him to 30 months' conditional discharge. He timely appealed.

¶ 28 On appeal, defendant contends first that he was not proved guilty beyond a reasonable doubt of the charged offense, violating section 3 of the Act by failing to report his change of address after he returned to 1123 South State in Belvidere. Defendant argues that (1) even had the evidence proved that he violated section 6 of the Act, the State never charged him under that section and thus could not obtain a conviction on that basis; and (2) although the evidence proved that he did not reregister with the Belvidere police after he returned from the hospital, that omission did not violate section 3, because that section did not require him to register an address that he had registered less than a year earlier.

¶ 29 Defendant contends second that the trial court erred in giving People's instruction Nos. 11 and 13A, because they did not apply to the charge of violating section 3 of the Act. Defendant's contention depends on his reasonable-doubt contention: in each, he argues that the law did not allow a finding of guilty under section 3 or a jury instruction that allowed (or directed) a guilty verdict under section 3.

¶ 30 We turn to reasonable doubt. In assessing the sufficiency of the evidence, we ask only whether, after viewing all of the evidence in the light most favorable to the State, any rational fact finder could have found the elements of the offense proved beyond a reasonable doubt. *People v. Ward*, 154 Ill. 2d 272, 326 (1992). However, to the extent that our review involves the application of a legal standard (here, the pertinent provision(s) of the Act) to a given set of facts, we consider that issue *de novo*. *City of Champaign v. Torres*, 214 Ill. 2d 234, 241 (2005).

¶ 31 Defendant argues that, although the indictment (as amended and supplemented by the bill of particulars) alleged that he did not timely register his "change of address" from the hospital to

his Belvidere home with the Belvidere police department, he was not charged with violating section 6, which speaks specifically of changes of address. We note that section 6 would not apply to the charged conduct anyway, as it requires a person who changes his address to report to the jurisdiction that he departed but not the jurisdiction to which he has moved. See 730 ILCS 150/6 (West 2012); *Robinson*, 2013 IL App (2d) 120087, ¶ 14. The State charged defendant with failing to report his change of address to the police department of his new (or old but new again) jurisdiction of residence, Belvidere, not failing to report to or register with the Forest Park police.

¶ 32 As he was charged only with violating section 3, defendant reasons that the basis of the charge was that, by returning to reside at 1123 South State without registering timely, he failed to register his "current address" with the chief of police "in the municipality in which he *** reside[d] or [was] temporarily domiciled for a period of time of 3 or more days." 730 ILCS 150/3(a)(1) (West 2012). Defendant maintains that he had already fulfilled this obligation in April 2011 by registering the same address with the Belvidere police department. Thus, he concludes, he did not violate section 3, because he was not required to *re*register his already-registered address.

¶ 33 The State responds that, as the trial court held, subsection (b) of section 3 of the Act, read in conjunction with subsection (a), required defendant to register his Belvidere address a second time after he moved back there. The State observes that subsection (b) states that a sex offender, "*regardless of any initial, prior, or other registration,* shall, within 3 days of *** establishing a residence *** or temporary domicile in any county, register in person as set forth in subsection (a) or (a-5)." (Emphasis added.) 730 ILCS 150/3(b) (West 2012). The State argues that this language shows that the legislature intended to require a sex offender such as defendant to

register his address anew with the jurisdiction from which he has been absent and to which he has returned. The State notes that the purpose of the Act is to provide a municipality notice that a sex offender is residing (or temporarily domiciled) there. The State reasons that requiring defendant to "reregister" with the Belvidere police department after his return served this end, whereas not requiring reregistration would frustrate the objective of giving notice to the Belvidere police that he had reestablished his presence in Belvidere.

¶ 34 Defendant replies in part that subsection (b) speaks narrowly of "establishing" a residence or temporarily domicile (730 ILCS 150/3(b) (West 2012)), not "reestablishing" the same residence or merely moving back there. Defendant argues that, because the disputed provisions of the Act establish criminal offenses, we should resolve any doubt as to their meaning by applying the "rule of lenity"—the principle that penal statutes are to be construed narrowly in favor of the accused. See *People v. Gutman*, 2011 IL 110338, ¶ 12. Defendant contends that the emphasized language would not be superfluous, as it would still prevent a sex offender from registering only one address when he actually had several residences.

¶ 35 To resolve the dispute over the meaning of the Act, we start with basic principles of statutory construction. On our *de novo* review, our primary goal is to effectuate the intent of the legislature. *People v. Garcia*, 241 Ill. 2d 416, 421 (2011). Our starting point is the language that the legislature chose. *Id.* To the extent that the language is ambiguous, a court ought to consider the statute as a whole, keeping in mind the subject that it addresses and the legislature's apparent objective in enacting it. *People v. Davis*, 199 Ill. 2d 130, 135 (2002). Although the rule of lenity favors construing ambiguities in criminal statutes in favor of the accused, this preference is subordinate to the primary goal of effectuating the legislature's intent. *Garcia*, 241 Ill. 2d at 427.

¶ 36 Preliminarily, we conclude that the pertinent language of section 3 is ambiguous as applied to this case, as both parties make plausible arguments for reading the section as a whole in their respective ways. See In re *B.L.S.*, 202 Ill. 2d 510, 515 (2002) (statute is ambiguous if it is capable of more than one reasonable interpretation).

¶ 37 The purpose of the Act is to enhance public safety by enabling law-enforcement agencies to keep track of sex offenders. *People v. Malchow*, 193 Ill. 2d 413, 420 (2000); *Lesher v. Trent*, 407 Ill. App. 3d 1170, 1174 (2011). The State contends that its construction of section 3 of the Act serves this purpose by enabling the police to keep a closer bead on a sex offender such as defendant, who has moved from one municipality to another. Of course, defendant's situation is distinctive, as he moved back to the address from which he had departed, and he had already registered with the police department in the jurisdiction of his address of return. Had defendant moved from Forest Park to a third municipality, or even to an address in Belvidere other than 1123 South State, there would be no serious doubt that he would have had to register his new address. That way, and only that way, would the Belvidere police have his current address on file. Such, of course, is not the situation here. When defendant returned from Forest Park, his current address was the one at which he had registered with the Belvidere police less than a year earlier. The issue then is whether defendant was legally required to register again with the Belvidere police.

¶ 38 Subsection (a) of section 3 does not appear to impose any such requirement by itself. However, subsection (b) can be read to address defendant's circumstances. As the trial judge reasoned, if defendant's return to 1123 South State in Belvidere was an act of "establishing a residence," then, "regardless of any initial, prior, or other registration," he was required to register with the Belvidere police department. (730 ILCS 150/3(b) (West 2012).

¶ 39 The Act does not define "establish[ing]," so we turn to the dictionary. See *Landis v. Marc Realty, L.L.C.*, 235 Ill. 2d 1, 8 (2009). As pertinent here, the definitions of "establish include "to place, install, or set up in a permanent or relatively enduring position esp. as regards living quarters"; "to bring into existence, create, make, start, originate, found, or build" (Webster's Third New International Dictionary 778 (1993)). These definitions might be of questionable applicability to defendant's act of moving back into a long-time residence from which he had departed in an emergency. Then again, a legitimate argument can be made that, by departing 1123 South State for an indeterminate time, potentially a substantial one, with no certainty that he would return there at all, and then returning, defendant established, or reestablished, a residence there.

¶ 40 Were the dictionary definitions all that we had to work with, we might well favor applying the rule of lenity and holding that, in returning to his former residence, defendant was not "establishing" a residence and thus was not subject to section 3 of the Act. As noted, however, the rule of lenity must give way to the fundamental principle of effectuating the intent of the legislature in the event of a conflict between the two. And, as we have noted, one legitimate tool for ascertaining the intent of the legislature is to consider the apparent purpose of the Act and whether a given interpretation of statutory language tends to advance or to frustrate that purpose. Consideration of the Act's purpose, in light of the interaction of section 3 with section 6 of the Act, compels requiring reregistration in this case.

¶ 41 As we also noted earlier, section 6 requires a sex offender who changes his address to notify the police of the municipality from which he is departing that he is moving elsewhere, but section 6 does not require him to notify the municipality to which he is moving. See 730 ILCS 150/6 (West 2012); *Robinson*, 2013 IL App (2d) 120087, ¶ 14. Thus, although we do not know

from the record whether defendant notified the Belvidere police when he moved to Forest Park in January 2012, we must assume that he did. The law required him to do so, and, in construing the statute, we assume that the legislature was concerned primarily with what purpose the Act would serve if sex offenders and police departments followed it as written.

¶ 42 We thus ask what the legislature intended in the following circumstances. A sex offender who is duly registered at an address in Municipality A moves to what becomes a residence in Municipality B. He reports to the police department of A that he has departed its jurisdiction, and he registers with the police department of B. He then moves back to A, resides at the prior address, and reports the move to the police in B. However, the police in A do not receive any word from the police in B that he is now within their jurisdiction.

¶ 43 We conclude that the legislative intent requires the offender to register again with A. The facts of this case illustrate the logic of this construction of the Act. As of defendant's return from Forest Park, and his physical presence at 1123 South State for the period necessary to trigger section 3's operation, the Belvidere police department was still on notice that, early in January, he had moved out of Belvidere and into the hospital in Forest Park (assuming that he had followed the law and reported under section 6 of the Act). However, the department was not on notice that, sometime later, defendant had returned from Forest Park and was now residing in Belvidere. The evidence at trial, particularly Pollock's testimony, showed that this danger was not merely hypothetical but actually manifested itself here.

¶ 44 We are compelled to note that in this case the Belvidere police apparently did not have great difficulty locating defendant once he had resided in Belvidere long enough to trigger the operation of section 3 (as we have construed it). Nonetheless, the value of construing the Act as

we have appears to us to outweigh any arguments regarding the issues of lenity or inconvenience.

¶ 45 Given our construction of the Act, we hold that the State proved defendant guilty beyond a reasonable doubt of violating the Act. Defendant's second claim of error thus falls as well, because his challenge to People's instruction Nos. 11 and 13A is that they incorrectly assumed that he "established" a residence at 1123 South State when he returned from Forest Park. Because defendant's challenges to the instructions depend wholly on a construction of the Act that we have rejected, we conclude that his challenges are necessarily without merit.

¶ 46 The dissent asserts that defendant's registration of his Belvidere residence as his "secondary address" on January 5, 2012, sufficed as a registration of that address upon his return to that residence. There are two problems with that assertion. The first is that defendant himself does not make it. Indeed, perhaps because, as the dissent acknowledges, the Act does not acknowledge such a thing as a "secondary address," defendant does not attempt to ascribe any legal significance to it. Instead, he argues only that, "because defendant presented proof that he had registered his Belvidere apartment *when he began living there in 2011*, the State failed to prove defendant violated 150/3." (Emphasis added.)

¶ 47 The second problem, though, is that the dissent's assertion would thwart the purpose of the Act. As noted, the Act's purpose is to enable law enforcement to know where sex offenders *are*, not merely where they *might be*. That defendant's "secondary address" was his Belvidere residence on January 5, 2012, provided no assurance that, once defendant left Forest Park, he would actually *be* in Belvidere. We have no quarrel with the dissent's references to the fact that a defendant can have multiple registered residences. However, the dissent wholly ignores section 3(b). Under that provision, to ensure that law enforcement knows where the defendant

actually *is*, the defendant must register a residence "regardless of any initial, prior, or other registration." 730 ILCS 150/3(b) (West 2012). That is, regardless whether defendant previously registered his Belvidere residence, he had to register it again.

¶ 48 For the foregoing reasons, the judgment of the circuit court of Boone County is affirmed. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2014); see also *People v. Nicholls*, 71 Ill. 2d 166, 179 (1978).

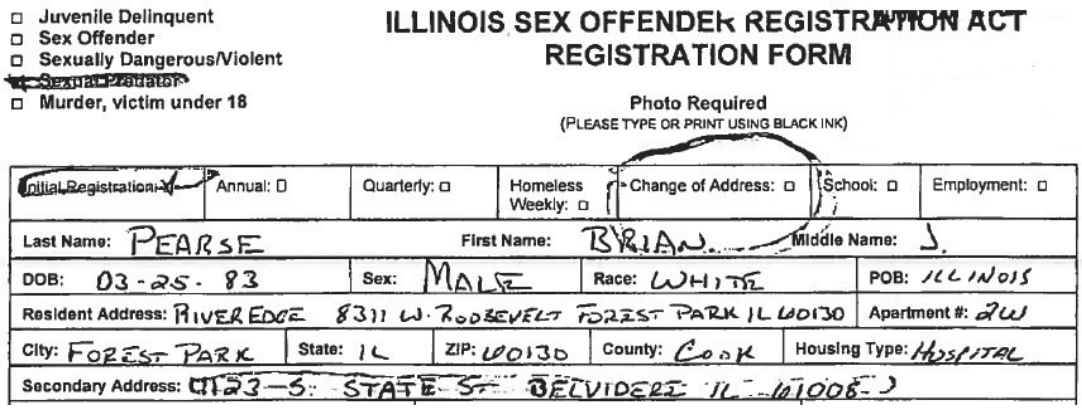
¶ 49 Affirmed.

¶ 50 JUSTICE HUTCHINSON, dissenting.

¶ 51 I dissent from the majority's opinion because the jury was improperly instructed on the elements of the offense. And had the jury been properly instructed, no reasonable trier of fact could have found the elements of failure to register in this case beyond a reasonable doubt.

¶ 52 The Sex Offender Registration Act (the Registration Act) defines "registration," in part, as "a statement in writing signed by the person giving the information that is required by the Department of State Police." 730 ILCS 150/8(a) (West 2012). Given the offense in question, nearly every prosecution for the offense of failure to register (730 ILCS 150/10(a) (West 2012)), comes down to a simple question: Did the defendant register or not?

¶ 53 Well, this defendant certainly did. Consider this, a partial copy of State's Exhibit #1 at trial. This is the form that Officer Keeling testified that *he* filled out for Pearse at Riveredge Hospital on January 5, 2012 (more on this later), which he then "*had* [Pearse] initial each section and then sign":



- ☐ Juvenile Delinquent
- ☐ Sex Offender
- ☐ Sexually Dangerous/Violent
- ~~☐ Sexual Predator~~
- ☐ Murder, victim under 18

ILLINOIS SEX OFFENDER REGISTRATION ACT
REGISTRATION FORM

Photo Required
(PLEASE TYPE OR PRINT USING BLACK INK)

~~Initial Registration~~ ☐	Annual: ☐	Quarterly: ☐	Homeless Weekly: ☐	Change of Address: ☐	School: ☐	Employment: ☐

Last Name: PEARSE	First Name: BRIAN	Middle Name: J.	
DOB: 03-25-83	Sex: MALE	Race: WHITE	POB: ILLINOIS
Resident Address: RIVEREDGE 8311 W. ROOSEVELT FOREST PARK IL 60130			Apartment #: 2W
City: FOREST PARK	State: IL	ZIP: 60130	County: COOK	Housing Type: HOSPITAL
Secondary Address: 1123 S. STATE ST. BELVIDERE IL 61008-3			

Note that the form states Pearse's "Resident Address" is Riveredge Hospital. The form also states that Pearse's "Secondary Address" is the upstairs apartment in Belvidere. Given the definition of "registration" (again, 730 ILCS 150/8(a)), this form, once transmitted to the state police (and all parties concede that it was) would have been a valid registration of *both* addresses.

¶ 54 So how does one get around the form? The State argued at trial, and the trial court instructed the jury, that the January 5, 2012, registration was insufficient because, when defendant returned to Belvidere, he was no longer residing at his "last registered address." Implicit in that approach is that an offender may have only one official address under the Registration Act; *i.e.*, that the defendant's "Resident Address" is the one he "last registered" to the apparent exclusion of his "Secondary Address." Under that interpretation then, one might reasonably conclude that Pearse misreported where he was residing; he told the authorities that he could be found in Forest Park (*i.e.*, his "last registered address") when, all along, his *real* residence was in Belvidere. In fact, the plot needn't even be that complicated because the State proceeded on the strict liability version of the offense under 730 ILCS 150/10(a). See generally *People v. Molnar*, 222 Ill. 2d 495, 523 (2006).

¶ 55 There's just one problem. We have held that, under the plain language of the Registration

Act, a sex offender may lawfully register "multiple addresses" (*People v. Robinson*, 2013 IL App (2d) 120087, ¶ 18) and even "occasional address[es]" (*People v. Peterson*, 404 Ill. App. 3d 145, 152 (2010)). Accordingly, in both *Robinson* and *Peterson*, we reversed the defendants' convictions for failure to register on grounds of insufficient evidence, in part because a sex offender can lawfully reside at more than one valid registered address.

¶ 56 So, is there a basis to distinguish *Robinson* or *Peterson*? Not that I can see. In *Robinson* and *Peterson*, we examined the term "fixed residence," which the Registration Act defines 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 2012). In examining this definition, we held that the use of the phrase "any and all places" coupled with the focus on an "aggregate period of time" of residence during a year, dictated that a sex offender may have multiple registered addresses. See *Robinson*, 2013 IL App (2d) 120087, ¶ 18; *Peterson*, 404 Ill. App. 3d at 152. Now consider the term at the heart of this case: A "temporary domicile" is "any and all places where the sex offender resides for an aggregate period of time of 3 or more days during any calendar year." 730 ILCS 150/3(a) (West 2012). Same critical language—"any and all places" and a focus on aggregate time. Same result? Apparently not.

¶ 57 OK. So what about the distinction between "Resident Address" and "Secondary Address"? There isn't one, at least not in the Registration Act. In fact, the terms "Resident Address," "Secondary Address," and "last registered address" do not appear in the Registration Act *at all*. They are thus unknown to our state's laws. The terms "Resident Address" and "Secondary Address" appear to have been crafted by the drafters of the registration form, the Illinois State Police's Sex Offender Registration Unit, but a state agency cannot broaden its authority beyond the confines of a statute. See, *e.g.*, *People v. Woodall*, 333 Ill. App. 3d 1146,

1149 (2002). Likewise, the phrase "last registered address" appears to have been created out of whole cloth by the prosecution in this case, seemingly as a means of explaining away the January 5, 2012, registration form.

¶ 58 Taken together, these terms—both in the registration form and, in particular, the use of the phrase "last registered address" in the non-IPI elements instruction—impermissibly expanded the scope of defendant's criminal liability. Those terms enabled law enforcement officers, prosecutors, and the trial court judge to mislead the jury into convicting defendant of a crime where one simply had not been proven. Their use in defendant's trial was a clear violation of the his constitutional rights. *People v. Henderson*, 142 Ill. 2d 258, 328 (1990) (citing *Stirone v. United States*, 361 U.S. 212, 217 (1960)); *People v. Ogunsola*, 87 Ill. 2d 216, 222 (1981). Simply put, there is no "last registered address" requirement in the Registration Act; so, how can the State or a court add one? See *People v. Almond*, 2015 IL 113817, ¶ 42; *People v. Taylor*, 221 Ill. 2d 157, 162 (2006). And had the legislature intended that a sex offender could have only one "registered" address at a time, then they would have said so—particularly after we issued our decisions in *Robinson* and *Peterson*. See *People v. Espinoza*, 2015 IL 118218, ¶ 27 ("When the legislature chooses not to amend a statute following a judicial construction, it will be presumed that the legislature has acquiesced in the court's statement of the legislative intent").

¶ 59 In my view, the registration form's extra-legislative distinction between an offender's "Resident" address and "Secondary" address drops out and so we're left with the January 5, 2012, registration form from that registered *both* defendant's Belvidere residence and Riveredge Hospital, which (again) is entirely consistent with the Registration Act. *Robinson*, 2013 IL App (2d) 120087, ¶ 18; *Peterson*, 404 Ill. App. 3d at 152. That police computers spit out only a single address in response to an address query (as Sergeant Pollock testified) is lamentable, but that

technological shortcoming simply does not equate to a finding of defendant's criminal liability. I would hold that the trial court abused its discretion when it instructed the jury concerning defendant's "last registered address," a term contrary to the plain language of the Registration Act. Furthermore, because defendant *did* register his Belvidere residence, I would find the State's evidence was insufficient to convict defendant of failing to register beyond a reasonable doubt.

¶ 60 The majority asserts that defendant did not raise these arguments in his appellate brief. I believe he did, and quite clearly at that. That said, even if there was a need for defendant to have been more explicit, the issues in this case are too weighty for me to ignore. See *Hormel v. Helvering*, 312 U.S. 552, 557 (1941) ("There may always be exceptional cases or particular circumstances which will prompt a reviewing or appellate court, where injustice might otherwise result, to consider questions of law which were neither pressed nor passed upon by the court or administrative agency below").

¶ 61 Candidly, I have grave concerns regarding the notion that a hospital is a "residence," or that a brief stay at an inpatient medical facility constitutes a "change in residence" under the Registration Act. A hospital is a place someone goes to in a time of need; it is not a residence. No one admitted to a hospital for at least 72 hours would, upon reaching hour 72, turn to the staff and say, "I live here now. This is my domicile." Nor is it reasonable to think that upon a brief hospital stay, a person has "abandoned" his or her residence. Either conclusion would be plainly absurd for, as our supreme court has said, albeit in a different context, one's residency does not change so easily. *Cf. Maksym v. Board of Election Commissioners of City of Chicago*, 242 Ill. 2d 303, 319 (2011) (for purposes of the Election Code, "a residence is not lost by temporary removal with the intention to return" (internal quotation marks omitted)); see also *id.* at 331

(Freeman, J., joined by Burke, J., specially concurring) ("The majority today now makes clear that residency for all purposes is the equivalent of domicile").

¶ 62 Given this absurdity, I do not understand the majority's failure to apply the rule of lenity in this case. I understand the majority's point that we should determine the legislature's intent before applying the rule (*supra*, ¶ 34 (citing *People v. Garcia*, 241 Ill. 2d 416, 421 (2011)), but isn't it "always presumed that the legislature did not intend to cause absurd, inconvenient, or unjust results"? *Garcia*, 241 Ill. 2d at 421. What is the result in this case if not that?

¶ 63 And in all reasonable likelihood, the defendant in this case never meant to "change" his residence to Riveredge Hospital. Normally, sex offenders register in person with the local chief of police or the county sheriff (730 ILCS 150/3(a)(1), (a)(2) (West 2012)), but defendant was not charged with that particular crime. Instead, it was Officer Keeling of the Forest Park police department who went to the hospital to fill out the form for defendant, because, as Keeling testified, the Forest Park police department makes an "exception[ ]" for the hospital's patients. And recall that it was Keeling, not defendant, who actually filled out the form. If defendant never meant to "change" his residence to the hospital, or to "establish" the hospital as his temporary residence, then defendant violated neither the text nor the spirit of the Registration Act. Keeling may have in defendant's name; and to the extent Keeling did that was, by any reasonable definition, entrapment. See *Jacobson v. United States*, 503 U.S. 540, 548 (1992) ("Government agents may not originate a criminal design, implant in an innocent person's mind the disposition to commit a criminal act, and induce commission of a crime so that the government may prosecute"); *Mathews v. United States*, 485 U.S. 58, 68 (1988) (Scalia, J., concurring).

¶ 64 My core concern though is that the majority's decision will gravely impact defendant and other sex offenders; that it will have a chilling effect on their willingness to seek emergency

treatment. Those concerns are only compounded by what seems to me to be the deliberate indifference on the part of law enforcement officers and prosecutors in this case. At all times, the police knew where defendant was. Nothing says that the Belvidere police, upon discovering what they perceived as a registration error, could not have helped defendant "re-register" his Belvidere address (which, I would again submit was unnecessary (see *Robinson*, 2013 IL App (2d) 120087, ¶ 18; *Peterson*, 404 Ill. App. 3d at 152)). Instead, defendant was charged with a felony offense. Those charges came despite the fact that, whatever else he may have done wrong in his life, defendant's presentence investigation report states "he has always been good about keeping [p]robation and law enforcement updated on his address ***." In the event of another emergency though, won't defendant think twice before picking up the phone and calling for help? Will he pick up the phone at all? Would you?

¶ 65 I do not doubt the wisdom and importance of sex offender registration requirements, but the law should be fairly and equitably enforced. In this case, it was not. The jury instructions deprived defendant of a fair trial. The evidence showed that he had in fact registered his Belvidere residence with the state police. No properly instructed, reasonable trier of fact could have found defendant guilty beyond a reasonable doubt. Therefore, I respectfully dissent.