2014 IL App (2d) 140210-U
No. 2-14-0210
Order filed December 24, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. HAROLD WATSON, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Kane County. No. 11-CF-347 Honorable Susan Clancy Boles, Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices McLaren and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly denied defendant's motion to dismiss the indictment, and the evidence was sufficient to find him guilty, beyond a reasonable doubt, of the offense of presence within a school zone by a child sex offender. Therefore, we affirmed.

¶ 2 Following a bench trial, defendant, Harold Watson, was convicted of the offense of presence within a school zone by a child sex offender (720 ILCS 5/11-9.3(a) (West 2010)). The trial court sentenced him to 18 months' probation, 40 hours of public service, and fines and court costs. Defendant raises two arguments on appeal: (1) his due process rights were violated based

on the presentation of false testimony to the grand jury, which should have resulted in the dismissal of the indictment; and (2) he was not proven guilty, beyond a reasonable doubt, of the offense. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On June 29, 2011, the grand jury returned an indictment against defendant alleging the offense of presence within a school zone by a child sex offender, a class 4 felony. The indictment alleged that on February 22, 2011, defendant, a child sex offender, knowingly entered onto the property of Gary D. Wright Elementary School (the school) without the consent, knowledge, or permission of the school's principal.[1]

¶ 5 The grand jury returned the indictment based on the testimony of police officer Roy Maki, the sole witness, who stated as follows. Defendant was a registered sex offender and was not to approach any school unless he had prior permission from the principal of that school. Officer Maki was advised that on February 22, 2011, defendant was at the school to pick up his child (defendant had one child in elementary school and one child in high school). Officer Maki was further advised by the school principal that defendant had not received permission to be at the school on that date. At this point, a grand juror questioned whether defendant had been to the

[1] This court takes judicial notice of the fact that the school referenced in the indictment is a public school belonging to School District 300. Because it is a public school as opposed to a private school, the statute required defendant to obtain permission from the superintendent or school board, not the principal, as alleged in the indictment. See 720 ILCS 5/11-9.3(a) (West 2010). This defect in the indictment does not impact the outcome of this case, however, as it is undisputed that defendant did not receive permission from any school official to be present at the school.

school on prior occasions to pick up his children, and Officer Maki answered affirmatively. A grand juror then asked why the principal had not spoken up prior to defendant's arrest about obtaining permission to pick up his children, to which Officer Maki replied, "He did. They didn't want to pursue certain issues, so he had been notified by my understanding, from the School District and the Principal himself."

¶ 6 On August 14, 2012, defendant moved to dismiss the indictment, arguing that Officer Maki provided false testimony during the grand jury proceeding. Contrary to Officer Maki's testimony that he had been notified of the need to obtain permission, defendant argued that he was never told by the principal or any school official that he was required to obtain permission to pick up his children from school. Defendant argued that Officer Maki's false testimony violated his due process rights and that the indictment should be dismissed.

¶ 7 The State filed a response to defendant's motions to dismiss. In its response, the State argued that the statute did not require a sex offender to have prior notice "that he may not be on school grounds before he can be prosecuted." It also argued that there was no evidence that Officer Maki's testimony before the grand jury was false.

¶ 8 On December 13, 2012, the State filed a supplemental answer to discovery. In its supplemental answer, the State admitted that Officer Maki's testimony before the grand jury was "mistaken." The State indicated that Officer Maki had learned, after testifying in front of the grand jury, that defendant had *not* been notified by the school that he could not pick up his children due to his status as a registered sex offender. Officer Maki admitted that when testifying before the grand jury, he was thinking of another individual who had been notified by the school and was mistaken about what defendant had been told.

¶ 9 On January 8, 2013, defendant filed a supplemental motion to dismiss, reiterating that the indictment should be dismissed based on Officer Maki's false testimony. On February 7, 2013, the trial court denied defendant's motion to dismiss the indictment.

¶ 10 A bench trial commenced on April 30, 2013, during which the following evidence was adduced. Defendant's daughter, Katrina, was in fourth grade, and the school day ended at 2:15 p.m. On February 22, 2011, Katrina had choir practice after school, and defendant arrived at the school around 3:45 p.m. to pick her up. Defendant parked his vehicle in the pick-up area of the school.

¶ 11 Martha Whitehouse, the principal's secretary, observed defendant's vehicle parked outside the school. Whitehouse sent a teacher, Lynnie Hoffman, to see who the driver was. Hoffman approached defendant's vehicle and learned that defendant was there to pick up his daughter, Katrina. Defendant, who never left his vehicle, advised Hoffman that he had sent Linnea, his older daughter, inside the school to retrieve Katrina. Defendant had just picked up Linnea and two of her friends from the neighboring high school.

¶ 12 Hoffman returned to the school and relayed this information to Whitehouse, who was aware that defendant's name and picture were on the sex offender registry. Whitehouse contacted the police liaison officer for the school, Officer Maki, who arrested defendant after he drove away from the school.

¶ 13 It was undisputed that no parent-teacher conferences were scheduled on that day. It was also undisputed that defendant did not have permission from the principal or the school superintendent to be on school property to pick up his children.

¶ 14 Defendant's version of events did not differ from the State's version. Defendant testified that after being convicted of a criminal sex offense in 1997, he was required to register as a sex

offender. For the past 11 years, defendant was legally allowed to pick up his children from school, and he was unaware that the law had changed.[2] It was not until he was arrested that he learned that he needed permission to pick up his children from school, based on the change in the law. At the time of his arrest, defendant told Officer Maki at least a dozen times that nobody told him that he needed permission from the principal or the school superintendent to go onto school property to pick up his children.

¶ 15 The trial court found defendant guilty of the offense. Defendant then filed a motion for a new trial and a motion in arrest of judgment, and these motions were denied. The trial court sentenced defendant to 18 months' probation, 40 hours of public service, and fines and court costs.

¶ 16 Defendant timely appealed.

¶ 17 II. ANALYSIS

¶ 18 A. Motion to Dismiss Indictment

¶ 19 Defendant's first argument on appeal is that the trial court erred by denying his motion to dismiss the indictment. Defendant argues that Officer Maki's false testimony before the grand jury was highly prejudicial in that the grand jury would not have returned an indictment against him but for the false testimony. According to defendant, Officer Maki's false testimony led the grand jury to believe that he had prior knowledge of the requirement that he needed to obtain permission to be present on school property and that he flagrantly disregarded that requirement.

[2] Though defendant, at the trial court level and on appeal, assumes the statute changed in 2008, it actually changed in 2005. See Pub. Act 94-158 (eff. July 11, 2005) (amending 720 ILCS 5/11-9.3(a) (West 2004)).

Defendant argues that, as a result, "he did not have the mental state that the grand jury was told he had," and the grand jury was misled on a material element of the offense.

¶ 20 "The grand jury determines whether probable cause exists that an individual has committed a crime." *People v. Sampson*, 406 Ill. App. 3d 1054, 1057 (2011). The grand jury serves a dual function as an investigatory body and an intermediary between the people and the State, and the prosecutor serves as an advisor to the grand jury, informing it of the proposed criminal charges and the applicable law. *Id*. Challenges to grand jury proceedings are limited, and a defendant may not challenge the validity of an indictment returned by a legally constituted grand jury or seek to challenge the sufficiency of the evidence if some evidence was presented. *People v. Reimer*, 2012 IL App (1st) 101253, ¶ 26.

¶ 21 Still, a trial court may dismiss an indictment if the defendant establishes that he suffered a prejudicial denial of due process. *People v. Holmes*, 397 Ill. App. 3d 737, 741 (2010). In order to do so, the defendant must establish that the denial of due process is "unequivocally clear" and that the prejudice is "actual and substantial." *Id*. A due process violation is actually and substantially prejudicial only if without it the grand jury would not have indicted the defendant. *People v. Oliver*, 368 Ill. App. 3d 690, 696-97 (2006). A defendant's due process rights may be violated if the prosecutor deliberately or intentionally misleads the grand jury, uses known perjured or false testimony, or presents other deceptive or inaccurate evidence. *Holmes*, 397 Ill. App. 3d at 741. A defendant's due process rights may also be violated if the prosecutor's presentation of deceptive evidence was not intentional. *Oliver*, 368 Ill. App. 3d at 696.

¶ 22 Where the facts about what transpired at a grand jury proceeding are undisputed, as they are in this case, we review *de novo* the question of whether the State prejudicially denied the defendant due process. *People v. Legore*, 2013 IL App (2d) 111038, ¶ 23.

¶ 23 Defendant relies on *Oliver* to support his argument. In *Oliver*, the defendant was indicted on two counts of unlawful possession of a controlled substance with the intent to deliver and one count of unlawful possession. *Id*. at 690. Based on the false and misleading testimony of a detective before the grand juries, the trial court dismissed two counts of the indictment (the possession with intent to deliver counts), and the State appealed. *Id*. at 690-91. The detective was the sole witness to testify during the two grand jury proceedings. *Id*. In the first grand jury proceeding, the detective explicitly stated that he himself observed the events, which were hand-to-hand transactions between the defendant and other individuals at an apartment that was under police surveillance. *Id*. at 693, 695. The detective did not observe the events, however, but instead relied on the report of another eyewitness police officer. *Id*. at 694. During the second grand jury proceeding, though the detective did not explicitly say so, he testified as if he were conveying his personal observations rather than those of someone else. *Id*. at 695. Based on this testimony, the *Oliver* court concluded that the State presented the grand juries with deceptive or inaccurate evidence and thus denied the defendant due process. *Id*.

¶ 24 Having made that determination, the *Oliver* court then turned to the issue of prejudice, noting that a due process violation was actually and substantially prejudicial only if without it the grand jury would not have indicted the defendant. *Id*. at 696-97. The court noted that if the only defect in the detective's testimony was that its hearsay nature was concealed, the defendant would not be able to show actual and substantial prejudice. *Id*. at 697. However, the detective's testimony went beyond the hearsay issue in that it mischaracterized the observations of the actual police eyewitnesses so as to establish probable cause where none existed. *Id*.

¶ 25 In particular, the detective testified that the defendant's hand-to-hand transactions would lead him to believe that the defendant intended to deliver the cocaine that he was found later to

possess, despite the fact that the officer actually witnessing the exchange never saw what was exchanged in the transactions and thus had no basis to draw that inference. *Id*. Also, the detective's testimony that the defendant engaged in "several" transactions was misleading, in that the defendant engaged in two transactions. *Id*. Finally, the amount of cocaine found on the defendant did not support a reasonable inference that he had the intent to deliver, despite the detective's testimony that the amount of cocaine would lead him to believe that the defendant intended to deliver the cocaine. *Id*. at 698. The *Oliver* court held that but for the detective's mischaracterization of the eyewitnesses' observations, the grand juries could not have found probable cause to indict the defendant for unlawful possession of a controlled substance with the intent to deliver. *Id*. at 698-99. Thus, the due process violation was actually and substantially prejudicial. *Id*. at 699.

¶ 26 As in *Oliver*, the State in this case presented the grand jury with inaccurate evidence regarding whether defendant was told by the principal that he needed permission to pick up his children. Thus, defendant was denied due process in that respect. However, unlike *Oliver*, the due process violation was not actually and substantially prejudicial. This is because defendant misreads the statute and what is required to establish probable cause.

¶ 27 Section 11-9.3(a) of the Criminal Code of 1961 (Code) sets forth the offense of presence within a school zone by a child sex offender:

> "It is unlawful for a child sex offender to *knowingly* be present in any school building, [or] on real property comprising any school *** *unless* the offender is a parent or guardian of a student attending the school *and* the parent or guardian is: (i) attending a conference at the school with school personnel to discuss the progress of his or her child academically or socially, (ii) participating in child review conferences in which

> evaluation and placement decisions may be made with respect to his or her child regarding special education services, or (iii) attending conferences to discuss other student issues concerning his or her child such as retention and promotion and notifies the principal of the school of his or her presence at the school *or unless the offender has permission to be present from the superintendent or the school board or in the case of a private school from the principal*." (Emphases added.) 720 ILCS 5/11-9.3(a) (West 2010).[3]

¶ 28 As stated, defendant argues that Officer Maki's false testimony led the grand jury to believe that he had prior knowledge of the requirement that he needed to obtain permission to be present on school property and that he knowingly violated that requirement. By arguing that he did not have the mental state that the grand jury was told that he had, and that the grand jury was misled on a material element of the offense, defendant appears to argue that the mental state of "knowingly" applies to the part of the statute providing an exception to the unlawful presence of a sex offender on school property based on permission.

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[3] The 2004 version of the statute was the same as above except that it allowed a parent or a guardian to be present on school property without the added requirement of attending a conference of some sort. See 720 ILCS 5/11-9.3(a) (West 2004) (making it unlawful for a child sex offender to knowingly be present in any school building or on real property comprising any school unless the offender was a parent or guardian of a student present in the building *or* unless the offender had permission to be present from the superintendent or the school board or in the case of a private school from the principal).

¶ 29 However, it is not clear whether the mental state of "knowingly" applies to the permission exception or whether the permission exception is even a separate element of the offense. See 720 ILCS 5/4-3(b) (West 2010) ("If the statute defining an offense prescribed a particular mental state with respect to the offense as a whole, without distinguishing among the elements thereof, the prescribed mental state applies to each such element."); see also *People v. Stanley*, 397 Ill. App. 3d 598, 609 (2010) (the court rejected the defendant's argument that the mental state applied to the offense as a whole because the defendant was mistaken as to what constituted the actual elements of the offense). We need not answer the question of whether the "knowingly" mental state applies to the permission exception in this case. That is because even if we assume, *arguendo*, that it does, defendant's argument still fails.

¶ 30 As the State points out, ignorance of the law is no excuse. See *People v. Hollins*, 2012 IL 112754, ¶ 36 (ignorance of the statute is no excuse). Furthermore, section 4-3(c) of the Code states, "Knowledge that certain conduct constitutes an offense, or knowledge of the existence, meaning, or application of the statute defining an offense, is not an element of the offense unless the statute clearly defines it as such." 720 ILCS 5/4-3(c) (West 2010). The statute in this case does not require the State to prove that defendant had knowledge of the statute or knowledge that he needed permission prior to entering onto school property. See *People v. Wendt*, 183 Ill. App. 3d 389, 396 (1989) (the offense of willful failure to file a tax return did not include as an element knowledge that his conduct constituted an offense or knowledge of the existence, meaning, or application of the offense, as provided in section 4-3(c) of the Code). Therefore, defendant did not need to know that his conduct constituted an offense or that he needed permission from the superintendent, the school board, or the principal in order to "knowingly" be present at the school and "knowingly" lack permission to be there.

¶ 31 In this case, there was sufficient evidence to establish probable cause. Officer Maki's testimony established that defendant was a registered sex offender; that he was required to obtain permission to pick up his children at school; that defendant had not received permission to be at the school on the date he was there; and that defendant was present at the school to pick up his children. Based on this testimony, we cannot say that the grand jury would have refused to indict defendant without Officer Maki's inaccurate testimony. See *People v. Hruza*, 312 Ill. App. 3d 319, 323 (2000) (where the officer incorrectly testified that the defendant failed all the field sobriety tests, even disregarding that statement, the additional evidence before the grand jury was sufficient to support the indictment). Even assuming that the mental state of "knowingly" applies to the permission exception, there was sufficient evidence that defendant knew he lacked permission based on Officer Maki's testimony that defendant had not received permission to be at the school on that date.

¶ 32 At best, Officer Maki's inaccurate testimony made defendant's conduct seem more serious, in that Officer Maki testified that the principal had advised defendant that he needed permission to be at the school. However, as explained, the State was not required to show that defendant knew he needed permission to be at the school, meaning the inaccurate testimony did not prejudice defendant. See *Holmes*, 397 Ill. App. 3d at 743 (while the discrepancy in the police officer's testimony made the defendant's conduct seem more serious to the grand jury, it did not affect the degree of the offense with which the defendant was charged and convicted, meaning the defendant could not show prejudice). Therefore, the trial court properly denied defendant's motion to dismiss the indictment.

¶ 33 B. Sufficiency of the Evidence

¶ 34 Defendant's second argument on appeal is that the evidence was insufficient to find him guilty, beyond a reasonable doubt, of the offense. When reviewing a challenge to the sufficiency of the evidence, we consider whether, viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Wheeler*, 226 Ill. 2d 92, 114 (2007). We will not retry a defendant when considering a sufficiency of the evidence challenge; the trier of fact is best equipped to judge the credibility of witnesses. *Id.* at 114-15. A conviction will be reversed only where the evidence is so unreasonable, improbable, or unsatisfactory that it justifies a reasonable doubt of the defendant's guilt. *Id.* at 115.

¶ 35 Defendant argues that acting "knowingly" is a required element in the offense of presence within a school zone by a child sex offender and that the State failed to prove that element beyond a reasonable doubt. According to defendant, the State failed to prove that he had knowledge that the law had changed or that he knew he needed to obtain permission prior to entering school property. As in his first argument, defendant assumes that the mental state of "knowingly" applies to the permission exception. Again, we need not decide whether the mental state of "knowingly" applies to the permission exception, because there is sufficient evidence that defendant "knowingly" entered onto school property and "knowingly" lacked permission. See *People v. Davis*, 2012 IL App (2d) 100934, ¶ 12 (no need to decide whether the "knowingly" mental state applied to certain language in an offense where sufficient evidence was presented that the defendant acted knowingly with respect to the language at issue).

¶ 36 Essentially, we reject defendant's sufficiency-of-the-evidence argument for the same reasons we rejected his first argument. Beginning with defendant's argument that he had no

knowledge that the law had changed, this court's decision in *People v. Stork*, 305 Ill. App. 3d 714 (1999), is instructive.

¶ 37 In *Stork*, the defendant made several challenges to the same statute involved in the case at bar, one of which was that he was deprived of his right to procedural due process because the statute did not provide for prior notice to child sex offenders that previously lawful conduct had been criminalized. *Stork*, 305 Ill. App. 3d at 719. In rejecting the defendant's argument, this court noted that the defendant's ignorance of the law furnished no exemption from criminal responsibility of his acts. *Id*. Moreover, this court stated that the public is generally held to have notice of a bill's contents at the time the bill is passed in its final form, and a law needs no promulgation to take effect, absent a constitutional provision stating otherwise. *Id*. at 720.

¶ 38 As we stated in response to defendant's first argument, the statute in this case does not require the State to prove that defendant had knowledge of the statute or knowledge that he needed permission prior to entering onto school property. See 720 ILCS 5/4-3(c) (West 2010) ("Knowledge that certain conduct constitutes an offense, or knowledge of the existence, meaning, or application of the statute defining an offense, is not an element of the offense unless the statute clearly defines it as such."). To be guilty of the offense, the State needed to prove that defendant, a child sex offender, knowingly entered school property without permission from the superintendent, the school board, or the principal. Even assuming that the mental state of "knowingly" applies to the permission exception, there is no requirement in the statute that the State prove that defendant had knowledge that he needed permission. Instead, applying the "knowingly" mental state to the permission exception, all that was required was defendant's knowledge that he did not have permission. See 720 ILCS 5/4-5(a) (West 2010) (a person acts knowingly or with knowledge of: (a) the nature or attendant circumstances of his conduct,

described by the statute defining the offense, when he is consciously aware that his conduct is of such nature or that such circumstances exist). Defendant admitted that he did not have permission to pick up his daughter; thus, he knowingly entered school property and knowingly did not have permission.

¶ 39 The court in *People v. Wendt*, 183 Ill. App. 3d 389 (1989), rejected a similar argument. There, the defendant appealed his conviction of willfully failing to file an income tax return under the theory that the evidence of willfulness was insufficient because he believed he was complying with the law. *Id*. at 392, 396. Relying on section 4-3(c) of the Code, set forth above, the court stated that the defendant's belief was no defense because knowledge that his conduct constituted an offense or knowledge of the existence, meaning or application of that statute was not an element of the offense. *Id*. at 396. According to the court, all the State was required to prove to establish the willfulness of the defendant's failure to file his return was that the defendant was consciously aware that a failure to file his return was practically certain to be caused by his conduct. *Id*.

¶ 40 Finally, we reject defendant's argument that a mistake of fact exists in this case. Defendant relies on *People v. Nash*, 282 Ill. App. 3d 982 (1996), where the defendants were charged with knowingly appropriating the timber of an individual (Diane Myers) without her consent. *Id*. at 983. As a result, the State was required to prove that the defendants were consciously aware that they were cutting Myers's trees or that this was a substantial probability. *Id*. at 986. After the defendants were hired to cut some trees for Myers's neighbor, who said her property stretched all the way to a fence, the defendants received a complaint from Myer that they had cut her trees. *Id*. at 984.

¶ 41 At trial, the prosecutor improperly argued that the standard was whether the defendants knew or should have known about the boundary line, and the trial court applied that incorrect standard in finding the defendants guilty. *Id*. at 986. The reviewing court reversed, noting that the State failed to meet its burden of proof on the requisite element of the defendants' knowledge, which required conscious awareness. *Id*. at 986-87. In reaching this result, the reviewing court noted that "[w]here a statute establishes knowledge as the mental state for a particular offense, a mistake of fact constitutes a valid defense if that mistake negates the requisite knowledge." *Id*. at 985.

¶ 42 This case does not involve a mistake of fact, and *Nash* does not aid defendant. Unlike the defendants in *Nash*, who were mistaken as to the boundary line of the individual who provided consent, defendant here (again, assuming that the mental state of "knowingly" applies to the permission exception) did not mistakenly believe he had permission to be present on school property. As stated, defendant admitted that he did not have permission to pick up his daughter. Therefore, the State met its burden of proving defendant's knowledge beyond a reasonable doubt.

¶ 43 III. CONCLUSION

¶ 44 For the reasons stated, we affirm the judgment of the Kane County circuit court.

¶ 45 Affirmed.