

NOTICE

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2015 IL App (4th) 130844-U

NO. 4-13-0844

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

May 12, 2015
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Vermilion County
COREY SMOOT,)	No. 13CF181
Defendant-Appellant.)	
)	Honorable
)	Craig H. DeArmond,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Holder White and Appleton concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court (1) reversed defendant's conviction for failing to report a change of address as a sex offender based on insufficient evidence and (2) entered a judgment of acquittal.

¶ 2 In August 2013, a jury found defendant, Corey Smoot, guilty of failing to report a change of address as a sex offender. In September 2013, the trial court sentenced him to five years in prison.

¶ 3 On appeal, defendant argues (1) the State failed to prove him guilty beyond a reasonable doubt and (2) the jury instructions were insufficient. We reverse defendant's conviction.

¶ 4 I. BACKGROUND

¶ 5 In April 2013, the State charged defendant by information with one count of failing to report a change of address as a sex offender (730 ILCS 150/3(b) (West 2012)), alleging

that on or about March 27, 2013, defendant, a sex offender, knowingly failed to report in person to notify the Vermilion County sheriff of a change of address in accordance with the provisions of the Sex Offender Registration Act (Act) (730 ILCS 150/1 to 12 (West 2012)). In July 2013, defendant's jury trial commenced.

¶ 6 The evidence indicated defendant pleaded guilty in April 2012 to one count of attempt (criminal sexual abuse) (720 ILCS 5/8-4(a), 11-1.50(a)(1) (West 2012)). As a result, defendant was required to register as a sex offender pursuant to the Act (730 ILCS 150/3 (West 2012)). On June 25, 2012, defendant registered a residence at 13 South Alexander Street in Danville with the Vermilion County sheriff's department. He did not update his address again before his arrest.

¶ 7 Patrina Smith, defendant's probation officer, testified she received information on March 27, 2013, that defendant was no longer residing at the Alexander Street residence. Smith and a police officer went to the address but did not see defendant.

¶ 8 Fabre'Ante Jackson testified she lived at 13 South Alexander Street in August 2012 with Lana Miles, Shane Whorrall, Brandon Miles, and defendant. She stated defendant lived there until the end of September 2012, when he moved out. Jackson stated defendant returned "on and off." After defendant moved out in September 2012, he did not stay at the home overnight.

¶ 9 Jackson testified Lana Miles asked her and Whorrall to move out on March 27, 2013, because they had informed the police that defendant was no longer living at the home. As of that date, defendant still received mail at the address.

¶ 10 Lana Miles testified she lived at 13 South Alexander Street with her son in May 2012. Defendant moved into the residence in May or June 2012. He kept his clothes and

received his mail at the residence. Miles stated defendant moved out in August 2012.

Thereafter, he stayed overnight only once, when he had nowhere else to go. Defendant continued to receive mail at the address and Miles held it for him.

¶ 11 Miles testified she spoke with Investigator Jeff Palmer in June 2013 and told him defendant still lived at 13 South Alexander Street. She even provided Palmer with a piece of defendant's mail to show his residency. Miles admitted what she told Palmer was different than her testimony but stated she did not tell Palmer the truth because she was "nervous and afraid." Miles also spoke with an investigator on June 21, 2013, and told him she and defendant got into a fight and she had him remove his belongings out of the house.

¶ 12 Danville police detective Scott Talbott testified he investigates sex-offender registrations. On July 24, 2012, he filled out an address-verification form for defendant at 13 South Alexander Street. A patrol officer then confirmed defendant was living at the address. When he spoke with Jackson on March 27, 2013, she told him defendant had stayed overnight once since she moved into the house in September 2012.

¶ 13 Defendant testified he lived at 13 South Alexander Street from June 2012 to April 9, 2013. On March 27, 2013, Whorrall was fighting with defendant's brother (Lana Miles's boyfriend), and Whorrall called the police seeking to get back at defendant's brother by having defendant arrested. As a result of the confrontation, Lana Miles asked Whorrall and Jackson to move out that same day. When the police arrived, defendant had left "to keep everything from exploding" and went to the house of his friend, Jack.

¶ 14 Following closing arguments, the jury found defendant guilty. Thereafter, defendant filed a motion for a new trial. In September 2013, the trial court denied the motion and sentenced defendant to five years in prison. This appeal followed.

¶ 15

II. ANALYSIS

¶ 16 Defendant argues the State failed to prove him guilty of failing to report a change of address as a sex offender where the State offered no proof that he established a new fixed residence or temporary domicile. We agree, and the State concedes.

¶ 17 As a matter of due process, the State must prove each element of the charged offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 316 (1979). "When reviewing a challenge to the sufficiency of the evidence in a criminal case, the relevant inquiry is whether, when viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *People v. Ngo*, 388 Ill. App. 3d 1048, 1052, 904 N.E.2d 98, 102 (2008) (quoting *People v. Singleton*, 367 Ill. App. 3d 182, 187, 854 N.E.2d 326, 331 (2006)). "Circumstantial evidence is sufficient to sustain a criminal conviction, provided that such evidence satisfies proof beyond a reasonable doubt of the elements of the crime charged." *People v. Hall*, 194 Ill. 2d 305, 330, 743 N.E.2d 521, 536 (2000).

¶ 18 The State charged defendant under section 6 of the Act (730 ILCS 150/6 (West 2012)), which requires a sex offender who "changes his or her residence address" to "report in person, to the law enforcement agency with whom he or she last registered, his or her new address *** within the time period specified in Section 3." Section 3(b) of the Act (730 ILCS 150/3(b) (West 2012)) provides as follows:

"Any sex offender, as defined in Section 2 of this Act, or sexual predator, regardless of any initial, prior, or other registration, shall, within 3 days of beginning school, or establishing a residence, place of employment, or temporary domicile in any county,

register in person as set forth in subsection (a) or (a-5)."

Section 2(I) of the Act defines "fixed residence" as "any and all places that a sex offender resides for an aggregate period of time of 5 or more days in a calendar year." 730 ILCS 150/2(I) (West 2012). Section 3(a) of the Act defines "the 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." 730 ILCS 150/3(a) (West 2012).

"[T]o prove a violation of the duty to report a change of address, the State was required to prove that defendant: (1) was previously convicted of an offense subjecting him to the Act; and (2) established a new 'fixed residence' or 'temporary domicile'; (3) which he knowingly failed to report in person to the law enforcement agency with whom he last registered. 730 ILCS 150/6 (West 2008)." *People v. Robinson*, 2013 IL App (2d) 120087, ¶ 14, 994 N.E.2d 212.

¶ 19 In *Robinson*, 2013 IL App (2d) 120087, ¶ 1, 994 N.E.2d 212, the State charged the defendant with violating section 6 of the Act (730 ILCS 150/6 (West 2008)), alleging he knowingly failed to report a change of address to the police. The State's evidence indicated the defendant no longer lived at his last registered address and was working in Iowa. *Robinson*, 2013 IL App (2d) 120087, ¶¶ 3-8, 994 N.E.2d 212. The trial court found the defendant guilty, stating it had no doubt the defendant had been away from his last registered address for over five days during a calendar year. *Robinson*, 2013 IL App (2d) 120087, ¶ 9, 994 N.E.2d 212.

¶ 20 On appeal, the defendant argued, *inter alia*, the State failed to offer evidence establishing any other location he visited constituted a fixed residence. *Robinson*, 2013 IL App

(2d) 120087, ¶ 17, 994 N.E.2d 212. The Second District reversed the defendant's conviction, finding "the only satisfactory evidence presented was regarding defendant's *absence* from his registered *** address." (Emphasis in original.) *Robinson*, 2013 IL App (2d) 120087, ¶ 21, 994 N.E.2d 212. The court stated, "[t]he record lacks evidence of any specific address at which defendant stayed for an aggregate period of five days or more, let alone any specific amount of time he stayed at various locations." *Robinson*, 2013 IL App (2d) 120087, ¶ 21, 994 N.E.2d 212.

¶ 21 In the case *sub judice*, the State was required to show defendant established a new fixed residence or a temporary domicile. The State failed to do so, offering no evidence to show defendant was at a specific location for the requisite three days. The State's Attorneys Appellate Prosecutor agrees the evidence was insufficient to satisfy the required element. The State points out section 3 of the Act requires a sex offender or sexual predator "who is temporarily absent" from his registered address for three or more days to notify the police (730 ILCS 150/3 (West 2012)) but concedes defendant was not charged with this language in the instant case.

¶ 22 Because the State failed to prove an essential element of the charged offense, the evidence was insufficient to prove defendant guilty beyond a reasonable doubt. Thus, his conviction must be reversed. "When a conviction is reversed based on evidentiary insufficiency, the double jeopardy clause precludes the State from retrying the defendant, and the only proper remedy is a judgment of acquittal." *People v. Williams*, 239 Ill. 2d 119, 133, 940 N.E.2d 50, 59 (2010). Accordingly, we reverse defendant's conviction and enter a judgment of acquittal. Given our decision on this issue, we need not address defendant's jury-instruction argument.

¶ 23 III. CONCLUSION

¶ 24 For the reasons stated, we reverse the trial court's judgment.

¶ 25 Reversed.