

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2019 IL App (4th) 170316-U

NO. 4-17-0316

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

July 5, 2019

Carla Bender

4th District Appellate Court, IL

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| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from |
| Plaintiff-Appellee, |) | Circuit Court of |
| v. |) | Macoupin County |
| ANTHONY E. MORELAND, |) | No. 14CF120 |
| Defendant-Appellant. |) | |
| |) | Honorable |
| |) | Joshua A. Meyer, |
| |) | Judge Presiding. |

PRESIDING JUSTICE HOLDER WHITE delivered the judgment of the court. Justices Knecht and Cavanagh concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court reversed defendant’s conviction for unlawful failure to register as a sex offender based on insufficient evidence.

¶ 2 In February 2017, after a bench trial, the trial court found defendant guilty of (1) aggravated criminal sexual abuse (count I) (720 ILCS 5/11-1.60 (West 2012)), (2) unlawful failure to register as a sex offender (count II) (730 ILCS 150/3 (West 2012)), and (3) grooming (count III) (720 ILCS 5/11-25 (West 2012)). In March 2017, the court sentenced defendant to concurrent prison terms of five years for aggravated criminal sexual abuse, five years for unlawful failure to register as a sex offender, and three years for grooming.

¶ 3 On appeal, defendant challenges only his conviction for unlawful failure to register as a sex offender, asserting the State failed to prove him guilty beyond a reasonable

doubt. The State concedes. We reverse defendant's unlawful failure-to-register-as-a-sex-offender conviction and otherwise affirm the trial court's judgment.

¶ 4

I. BACKGROUND

¶ 5

On August 19, 2014, the State charged defendant by information with (1) aggravated criminal sexual abuse (count I) (720 ILCS 5/11-1.60 (West 2012)), (2) unlawful failure to register as a sex offender (count II) (730 ILCS 150/3 (West 2012)), and (3) grooming (count III) (720 ILCS 5/11-25 (West 2012)). Count II alleged defendant, a sex offender, "knowingly failed to notify the Macoupin County Sheriff's Department of his new address in accordance with the provisions of the Child Sex Offender Registration Act within 5 days after he left his residence located at 7677 Route 108, Carlinville, Macoupin County, Illinois." In February 2017, defendant's bench trial commenced.

¶ 6

At trial, J.M.J. testified defendant lived with her grandmother at a Carlinville address. During the summer of 2014, defendant often communicated with J.M.J. via text messages. Defendant texted he would "swat [J.M.J.'s] cute lil bottom" and referred to J.M.J. as a "Gorgeous mthr fkr." J.M.J. testified that on August 2, 2014, she was on her grandmother's porch and defendant was rubbing her foot. According to J.M.J.'s testimony, defendant "slid his hand up my leg under my pants, but over my underwear, and he was rubbing my vagina." J.M.J.'s grandmother came from inside the house and told J.M.J. and defendant the conduct was "highly inappropriate." J.M.J.'s grandmother contacted J.M.J.'s parents later that day and told them what she had observed. The family contacted the police.

¶ 7

Illinois State Police Trooper Special Agent James Wolff testified he was investigating a possible sexual assault case in July and August 2014. Defendant had been identified as the suspect in the case, but Wolff was unable to interview the defendant because he

could not locate him. According to Special Agent Wolff's testimony, defendant's name appeared "each month" in an e-mail he received that identified sex offenders who were "non-compliant" with the Sex Offender Registration Act (Act) (730 ILCS 150/1 to 150/12) (West 2012)). Special Agent Wolff stated he "would do some open source checking about trying to find out where [defendant] might be, however I was unable to locate him." In November 2015, authorities arrested defendant in Lowder, Tennessee. According to Wolff, defendant had not updated his sex-offender registration status from August 4, 2014, to early November 2015.

¶ 8 Defendant testified he ran when he found out about the accusations against him. He testified he was scared because he "knew what happens to people who are accused of stuff." Defendant admitted he did not "register properly" but he wished he had.

¶ 9 In closing arguments, the State stated it would not argue "anything about Count II. He admit[ted] that he did not update his registration as required ***." Defense counsel stated that "with respect to the testimony from my client, he said he was scared and he admitted he ran. That is not an excuse, not a legal defense, we understand that. He's—the Court is going to find him guilty of failure to register."

¶ 10 Following closing arguments, the trial court found defendant guilty on all three counts. On March 8, 2017, defendant filed a motion for a new trial, arguing (1) the court erred in allowing the State to read the defendant's prior criminal conviction into the record, (2) the court erred in admitting into evidence text messages that lacked a proper foundation, and (3) the court erred in "not properly considering inconsistent statements made by the alleged victim thereby making her testimony not credible." On March 24, 2017, the court denied defendant's motion for a new trial. On March 31, 2017, the court sentenced defendant to concurrent prison terms of five

years for aggravated criminal sexual abuse, five years for unlawful failure to register as a sex offender, and three years for grooming.

¶ 11 This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 On appeal, defendant argues the State presented insufficient evidence to find him guilty beyond a reasonable doubt of unlawful failure to register as a sex offender. We agree and the State concedes.

¶ 14 When reviewing the sufficiency of the evidence, this court must determine whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could find the essential elements of the crime beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 278, 818 N.E.2d 304, 307 (2004). We reverse a criminal conviction only where “the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant’s guilt.” *People v. Givens*, 237 Ill. 2d 311, 334, 934 N.E.2d 470, 484 (2010). The State bears the burden of proving the essential elements of a crime beyond a reasonable doubt, and it “may not leave to conjecture or assumption essential elements of the crime.” *People v. Laubscher*, 183 Ill. 2d 330, 335-36, 701 N.E.2d 489, 491 (1998).

¶ 15 The State charged defendant under section 3 of the Act (730 ILCS 150/3 (West 2012)). The information stated defendant “knowingly failed to notify the Macoupin County Sheriff’s Department of his new address in accordance with the provisions of the Child Sex Offender Registration Act within 5 days after he left his residence [in Carlinville.]” The information erroneously cited section 3 of the Act (730 ILCS 150/3 (West 2012)), while the factual allegations made in the information describe a violation of section 6 of the Act (730 ILCS 150/6 (West 2012)). Section 6 of the Act (730 ILCS 150/6 (West 2012)) requires that if a sex

offender “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 *** and register, in person, with the appropriate law enforcement agency within the time period specified in Section 3.” 730 ILCS 150/6 (West 2012). Defendant does not challenge the adequacy of the information. The language of the information made it clear that defendant was being accused of a violation of section 6 of the Act, despite the typographical error citing section 3. See *People v. Cohn*, 2014 IL App (3d) 120910, ¶¶ 13-18, 20 N.E.3d 1285 (finding language of the indictment made it clear the defendant was being accused of a section 6 violation, despite erroneously citing section 3).

¶ 16 To prove a violation of the duty to report a change of address, the State must 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.” *People v. Robinson*, 2013 IL App (2d) 120087, ¶ 14, 994 N.E.2d 212. Section 2(I) defines a “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). The Act defines a “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). To prove defendant violated his duty to register a new address, the State must prove a specific location serves as defendant’s new unregistered address. *Robinson*, 2013 IL App (2d) 120087, ¶ 21; *cf. People v. Evans*, 365 Ill. App. 3d 374, 849 N.E.2d 438 (2006) (finding a rational trier of fact could have found defendant guilty beyond a reasonable doubt for failing to

register where the State provided substantial evidence he resided in a specific Dixon apartment with his girlfriend).

¶ 17 Here, defendant argues the State failed to show defendant established a new “fixed residence” or “temporary domicile.” The State provided no evidence as to defendant’s whereabouts between August 2014 and November 2015. The testimony of Special Agent Wolff did not establish a new domicile where defendant had spent an aggregate of three days or more and therefore was required to register, only that he was unsuccessful in locating defendant at his registered address. Further, Special Agent Wolff’s statement defendant was “found” in Lowder, Tennessee, did not place defendant at a specific location for the requisite amount of time pursuant to the Act. The parties disagree on whether the State adequately proved beyond a reasonable doubt defendant’s absence from the Carlinville address. However, regardless of the State’s success on proving absence, defendant’s absence from his registered address “[does] not violate section 6 of the Act.” See *Robinson*, 2013 IL App (2d) 120087, ¶ 23. The record does not show defendant was absent from his registered address *and* spent at least three days at another address and was therefore required to register that address. The State did not meet its burden at trial. Therefore, we accept the State’s concession and reverse defendant’s conviction as to count II.

¶ 18 III. CONCLUSION

¶ 19 For the reasons stated, we affirm defendant’s convictions as to counts I and III and reverse defendant’s conviction as to count II.

¶ 20 Affirmed in part and reversed in part.