

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

DERRICK A. LYNCH,

Defendant-Appellant.

UNPUBLISHED

July 13, 2004

No. 240542

Wayne Circuit Court

LC No. 01-009146-01

Before: Wilder, P.J., and Hoekstra and Kelly, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of first-degree criminal sexual conduct, MCL 750.520b(1)(e), assault with intent to commit criminal sexual conduct involving penetration, MCL 750.520g(1), and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant was sentenced to concurrent prison terms of 2-1/2 to 10 years for the first-degree CSC conviction, and one to ten years for the assault with intent to commit CSC conviction, to be served consecutive to a two-year term for the felony-firearm conviction. Defendant now appeals as of right. We affirm.

Defendant and the victim were involved in a long-term relationship, which produced a daughter. After the couple's relationship ended, defendant remained close to his daughter, and she often visited him in the two-flat home where he resided with various family members. On the morning of July 14, 2001, the victim arrived at defendant's home to retrieve her daughter after a visitation. The victim left her two-year-old son in the car, approached the flat, and entered a common vestibule that served both the upper and lower flats. When defendant opened the door of the lower flat, the victim entered and walked to a back room to awaken her daughter. She then returned to the front of the flat to the living room. Defendant started talking to the victim about her disrespect toward him and about her relationship with another man. A heated argument began. During the argument, the victim instructed her daughter to go to the car. She then followed her daughter into the vestibule but, before she could exit the house, defendant grabbed her by the arm. He indicated that he had things to say and that she was going to listen. The couple's argument continued in the vestibule.

During the argument, the couple's daughter and the victim's younger son exited the victim's car and approached the house. At that point, the victim left the vestibule, went outside, and tried to get the children back in the car. Defendant impeded her attempts and the couple

wrestled. Eventually, the victim got the children back in the car. Defendant then called her up to the porch of the house and into the vestibule, indicating that he just wanted to say one more thing. Once the victim was inside, defendant closed the vestibule door, leaving it only slightly ajar. He subsequently pulled a gun out of a nightstand located by the door. After pulling the top of the gun back, he continued to talk about the victim's disrespect. The victim was scared. She cried and asked defendant to allow her to go home. Defendant, who smelled of liquor, pushed her against a wall. She felt the gun at her side as he kissed her neck and moved one hand up the leg of her shorts. He placed his hand underneath her underwear and penetrated her vagina with his fingers.

After digitally penetrating the victim, defendant pushed her, face down, onto the flat's main stairs. The victim testified that the gun was still in defendant's hand. He pulled her shorts down using his other hand, and she heard him "undo" his pants. He attempted to have intercourse with her. He eventually managed to insert his penis into her vagina. She was unsure if he ejaculated. At some point during the assault, defendant's grandmother, Amelia Greer, opened the door of the lower flat and defendant jumped off the victim. According to the victim, Amelia said, "oh" and shut the front door. Defendant thereafter continued the assault.

When defendant allowed the victim to leave the vestibule, she returned to her car and drove directly to a telephone to call 911. She was instructed by a 911 operator to wait at the telephone for the police. The victim called a girlfriend to come and get the children. After waiting more than one hour without police response, the victim telephoned 911 again. Officer Tiffany Seaton and her partner responded to the area of the pay telephone and found the victim shaking and crying. The victim gave a statement and was instructed to go to the hospital to have a rape kit performed. She drove to her local hospital in Windsor, Ontario. The rape kit evidence tested negative for the presence of blood or sperm.

Denise Greer, defendant's aunt, who lived in the upper flat, testified that she heard the victim and defendant engaged in a loud, heated conversation on July 14, 2001. It was not an unusual occurrence. Denise walked down the flat's back staircase and entered the kitchen of the lower flat. She testified that she talked to her brother, Christopher Greer, who assured her that there was nothing about which to worry. She returned upstairs using the back staircase. She never spoke to the victim. Denise testified that the front door of her flat was open to a landing and the main stairs below, but she never heard crying or any disturbing noises after returning upstairs. In fact, the voices became lower and sounded pleasant. Denise admitted, however, that she never went to the landing and looked down the stairs to see what, if anything, was occurring. Denise testified that there was no table in the vestibule.

Christopher, defendant's uncle, testified that he observed the victim enter the lower flat at approximately 10:00 a.m. on July 14, 2001. He recalled that he was watching the Jerry Springer television show at the time. Defendant and the victim began a heated conversation. Christopher testified that, during the argument, Denise came down the back stairs, walked through the lower flat, approached the victim and defendant, and spoke with them. Christopher did not speak with Denise while she was downstairs. After Denise returned upstairs, the victim and defendant went into the vestibule and continued talking. They were somewhat more calm. The door to the

lower flat was slightly open, and Christopher heard nothing that caused him to look away from his television. He did not observe anything after the couple went into the vestibule, but he noticed his mother, Amelia, open the front door. She conversed with defendant and the victim. Christopher also testified that there was no table in the vestibule.

Amelia testified that, when the victim came to pick up her daughter on July 14, 2001, she and defendant talked to each other in the same manner they always did. The conversation never reached a level where Amelia felt she needed to intervene. At some point while the victim and defendant were in the vestibule, Amelia opened the door and saw them. Both were getting up from the stairs. They were clothed, and defendant did not have a gun. The conversation between the victim and defendant appeared friendly to Amelia. She testified that she did not converse with either of them. Like Denise and Christopher, Amelia testified that there is no furniture in the vestibule.

I

Defendant first argues that the evidence was insufficient to sustain his conviction for possession of a firearm during the commission of a felony, MCL 750.227b. When reviewing the sufficiency of the evidence in a bench trial, we review the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crime were proved beyond a reasonable doubt. *People v Harmon*, 248 Mich App 522, 524; 640 NW2d 314 (2001), citing *People v Wolfe*, 440 Mich 508, 513-515; 489 NW2d 748 (1992). All evidentiary conflicts are resolved in favor of the prosecution. *Id.* Moreover, a trial court's findings of fact in a bench trial are reviewed for clear error, and we defer to the trial court's resolution of factual issues, especially where they involve credibility determinations. MCR 2.613(C); *People v Cartwright*, 454 Mich 550, 555; 563 NW2d 208 (1997). A finding of fact is clearly erroneous if, after a review of the entire record, we are left with a definite and firm conviction that a mistake has been made. *People v Gistover*, 189 Mich App 44, 46; 472 NW2d 27 (1991).

To prove felony-firearm, the prosecution must prove that the defendant possessed a firearm during the commission of, or the attempt to commit, a felony. *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). In this case, the victim testified that defendant pulled a gun from a piece of furniture, slid the top of the gun back, and held the gun while he digitally penetrated her vagina. Viewed in a light most favorable to the prosecution, this testimony alone was sufficient to support the felony-firearm conviction. See *Avant*, *supra* at 505-506 (where the victim testified that the defendant pointed a weapon at his face while the defendant's companions took his jacket, cellular telephone and cash, this Court held that the victim's testimony was sufficient to establish the elements of felony-firearm beyond a reasonable doubt).

In reaching this conclusion, we reject defendant's suggestion that the prosecutor's failure to recover and offer the firearm into evidence constitutes a failure to prove possession beyond a reasonable doubt. In *People v Perry*, 172 Mich App 609, 622-623; 432 NW2d 377 (1988), the Court held that the victim's testimony, that she believed the defendant had a weapon, was alone

sufficient to support the felony-firearm conviction. See also *People v Libbett*, 251 Mich App 353, 357-358; 650 NW2d 407 (2002), wherein this Court determined that witness testimony was sufficient to establish that the defendant possessed a gun.

Although the victim's testimony was sufficient to sustain the felony-firearm conviction, defendant nevertheless maintains that her testimony was not credible and should have been disregarded, which in turn would leave no evidence to sustain the conviction. He relies on pictures of the vestibule, which were not evidence at trial but were presented with his motion for a new trial. He argues that pictures of the area prove that the vestibule was too small for a nightstand.¹ The trial court was charged with making credibility determinations at trial, *People v McCray*, 245 Mich App 631, 640; 630 NW2d 633 (2001), and we give due regard to those determinations. MCR 2.613(C). It determined that the victim was credible, and articulated reasons for its finding. In ruling on the new trial motion, the trial court considered the newly offered pictures and determined that they did not conclusively show that a nightstand could not have been in the vestibule. We note that the victim testified at trial that the nightstand was two-feet high. She offered no testimony, and was not questioned, with respect to the width or depth of the nightstand. Upon review, we do not find that the trial court's findings of fact with respect to the victim's credibility and the effect of the pictures on that credibility were clearly erroneous. Further, we conclude that the trial court did not abuse its discretion when it denied defendant's motion for a new trial based, in part, on its determination that the evidence was sufficient to support the felony-firearm conviction. *McCray*, *supra* at 637.

II

Defendant next argues that the trial court's verdicts on all three counts were against the great weight of the evidence and that, as such, the trial court should have granted his motion for a new trial. His argument is based on his assertion that the victim lacked credibility. He points to several alleged inconsistencies in her testimony to support this position.²

We review a trial court's denial of a motion for a new trial, which is based on allegations that the verdict was against the great weight of the evidence, for an abuse of discretion. *McCray*, *supra*. "The test is whether the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand." *Id.* Conflicting testimony, even if impeached to some extent, is an insufficient ground for granting a new trial. *People v*

¹ The pictures are not in the lower court file, but are included in defendant's appendix to his brief on appeal.

² In pointing out the alleged inconsistencies, defendant refers to the police report written by a responding officer on the day of the incident. This report was not admitted into evidence at trial. Moreover, Officer Seaton, one of the responding officers, admitted that the report did not include all of the information the victim gave on the day of the attack. Seaton also testified that her partner, not the victim, wrote the report.

Lemmon, 456 Mich 625, 647; 576 NW2d 129 (1998).³ An exception exists if a witness' testimony contradicts indisputable physical facts or law, is patently incredible, or is so inherently implausible that it could not be believed. *Id.*

While some conflicts in the evidence existed in this case, we conclude that any discrepancies do not preponderate so heavily against the verdict that it would be a miscarriage of justice to let the verdict stand. We note that there was conflicting testimony from defendant's witnesses about the events of July 14, 2001, as well as discrepancies in the victim's details. In a thorough and thoughtful opinion, the trial court determined that the victim was more credible and that the evidence justified defendant's convictions. The trial court was charged with making credibility determinations, *McCray*, *supra* at 640, and we give regard to the special opportunity of the trial court to judge credibility, MCR 2.613(C). The victim's testimony did not contradict indisputable physical facts or law, was not patently incredible, and was not so inherently implausible that it could not be believed by a reasonable juror. Thus, we affirm the trial court's denial of defendant's new trial motion.

III

Defendant additionally argues that he was denied due process because of prosecutorial misconduct. Where, as here, a defendant fails to object to alleged prosecutorial improprieties, the issue is reviewed to determine if plain error, affecting defendant's substantial rights, occurred. *People v McLaughlin*, 258 Mich App 635, 645; 672 NW2d 860 (2003), citing *People v Carines*, 460 Mich 750, 752-753, 764; 597 NW2d 130 (1999). There must be a showing of prejudice to warrant reversal, meaning that any error must have affected the outcome of trial. *McLaughlin*, *supra*.

Defendant initially challenges four statements made by the prosecutor during closing argument. First, the prosecutor argued that Christopher Greer was not credible because, based on the prosecutor's personal research, he could not have been watching the Jerry Springer show on Saturday, July 14, 2001. She argued that the show did not air at 10:00 a.m. on Saturdays. We agree with defendant that the challenged argument was not based on facts adduced at trial. A prosecutor may not argue facts that are not in evidence. *People v Watson*, 245 Mich App 572, 588; 629 NW2d 411 (2001). Thus, the comment was improper. Second, the prosecutor argued that the victim told an officer that defendant ejaculated because a nurse told the victim that there was sperm found on her leg. We disagree that this statement was not based on evidence presented at trial. In response to a question on cross-examination, the victim relayed that, on the day after the attack, she told an officer that she was not sure whether defendant ejaculated but that, when the rape kit was done, semen was found on her leg. The nurse told her this. This testimony was not met with a hearsay objection. On redirect examination, the prosecutor tried to follow up on this subject. Defendant objected twice when the victim testified that a nurse told

³ Defendant acknowledges *Lemmon*, but argues that it is applicable only where the verdict was returned by a jury. This conclusory statement is unsupported and incorrect. See *McCray*, *supra* at 638, wherein this Court relied on *Lemmon* when reviewing a trial court's ruling on a new trial motion following a bench trial.

her that there was semen found on her leg. The objections were sustained. But the victim's initial testimony was never stricken from the record. A prosecutor is free to argue the evidence. *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995). Thus, the prosecutor's argument was not necessarily improper. We note, however, that, in ruling on defendant's motion for a new trial, the trial court expressly acknowledged that the testimony was hearsay, but that it was not considered in deciding the issues at trial. Third, the prosecutor argued that a rape kit is an invasive procedure. The comment was a reasonable inference to be drawn from the evidence. The parties stipulated that the rape kit swabs did not reveal the presence of blood or sperm. It was reasonable to infer that the swabs were taken through an invasive procedure. A prosecutor is free to argue all reasonable inferences derived from the evidence. *Id.* The argument was appropriate. Finally, the prosecutor argued that, after the victim and defendant left the living room and entered the vestibule, the victim never left the vestibule. We agree that this was an inaccurate recitation of the evidence. The victim testified that she left the vestibule after the initial argument and returned the children to the car. She later reentered the vestibule. A prosecutor may not mischaracterize the evidence presented. *Watson, supra*. Thus, the statement was inappropriate.

Although some of the challenged arguments were improper, reversal is not required in this case. Defendant cannot, and has not, demonstrated that any of the challenged arguments affected the outcome of the lower court proceedings. *McLaughlin, supra*; *Carines, supra*. We emphasize that defendant was tried before a judge, not a jury. "Unlike a jury, a judge is presumed to possess an understanding of the law, which allows him or her to understand the difference between admissible and inadmissible evidence or statements of counsel." *People v Wofford*, 196 Mich App 275, 282; 492 NW2d 747 (1992). See also *People v Casal*, 412 Mich 680, 686-687; 316 NW2d 705 (1982). In this case, we note that the judge's opinion clearly reflects a full and clear understanding of the facts and law, and was not based on the improper arguments made by the prosecutor. Thus, to the extent some of the prosecutor's argument were plainly improper, defendant's substantial rights were not affected and the challenged arguments do not require reversal.

Defendant next argues that the prosecutor shifted the burden of proof when she posed a series of questions during closing argument. For example, the prosecutor asked why would the victim sit at a telephone waiting for the police or subject herself to an invasive rape kit if the sexual assault did not occur. These abstract questions did not shift the burden of proof. The prosecutor did not call upon defendant to prove anything. Rather, she posed questions that appealed to the common sense of the trier of fact. A prosecutor may appeal to common sense when arguing that the circumstances surrounding certain testimony renders the testimony believable or not believable. See, e.g., *People v Fisher*, 220 Mich App 133, 160; 559 NW2d 318 (1996), wherein this Court approved the prosecutor's argument that the witness' testimony, when viewed with common sense, was truthful. See also *People v Lawton*, 196 Mich App 341, 355; 492 NW2d 810 (1992), wherein this Court found that appealing to common sense is appropriate argument. Moreover, and more importantly, defendant has not demonstrated prejudice attendant to the prosecutor's argument. *McLaughlin, supra*. In *Wofford, supra* at 281-282, the defendant argued that the prosecutor improperly shifted the burden of proof. This Court found that any error was harmless because the case was tried before a judge who is presumed to understand the law. *Id.* The trial judge in this case was also presumed to know the law and understand that defendant had no burden of proof. *Id.*; *Casal, supra*.

Finally, defendant argues that the prosecutor's misconduct in failing to provide relevant discovery requires reversal. After the close of proofs and closing arguments at trial, the trial court inquired about the victim's medical records.⁴ The trial court was curious as to why the results of the rape kit were the only medical evidence presented to the court. The prosecutor informed the court that, in response to a subpoena, the hospital provided no records of the victim's examination. The court noted that it had ordered production of the records and would have liked to review them. Without further comment, however, the trial court set a date for the parties to return for a decision. The trial court rendered its verdict without the benefit of the medical records. Contrary to defendant's conclusory claim on appeal, there has been no showing that any portion of the medical records were favorable to defendant. In fact, defendant fails to cite any specific portion of the medical records to demonstrate their importance to his defense. Moreover, he has not demonstrated that the prosecutor's failure to produce the medical records affected the outcome of trial. *McLaughlin, supra*. In denying defendant's motion for a new trial, the trial court specifically indicated that the records were obtained and reviewed in conjunction with the new trial motion. It determined that they contained minimal impeachment value and otherwise supported the victim's claims. There was no plain error requiring reversal.

IV

Defendant additionally argues that he was denied the effective assistance of counsel.⁵ In order to prevail on a claim of ineffective assistance of counsel, a defendant must show that counsel's performance fell below an objective standard of reasonableness and that, but for defense counsel's errors, there was a reasonable probability that the result of the proceeding would have been different. *People v Stanaway*, 446 Mich 643, 687-688; 521 NW2d 577 (1994). We presume that counsel provided effective assistance, and defendant bears a heavy burden of demonstrating that counsel was ineffective. *People v Williams*, 240 Mich App 316, 331; 614 NW2d 647 (2000).

First, defense argues that counsel was ineffective for failing to offer pictures of the vestibule or request that the court view that area. We disagree. Decisions regarding what evidence to present are matters of trial strategy, which will not be second guessed or assessed with the benefit of hindsight. *People v Garza*, 246 Mich App 251, 255; 631 NW2d 764 (2001). We note that the trial court rejected defendant's claim that the outcome of trial would have been

⁴ At the final pretrial conference, defense counsel informed the trial court that he had requested the rape kit and that it had not been produced. The trial court ordered that "all rape kits, examinations, anything and everything that was done at Windsor hospital" had to be turned over by November 19, 2001. At no time before, or during trial, did defendant object to the prosecutor's failure to produce anything more than the results of the rape kit. The parties appeared content to stipulate that the rape kit evidence was tested and was negative for blood or sperm.

⁵ Defendant moved for an evidentiary hearing on his claims of ineffective assistance of counsel. The trial court did not order an evidentiary hearing, but it considered the issue in ruling on defendant's new trial motion.

different if pictures of the vestibule were offered. In deciding the new trial motion, the trial court reviewed the pictures and determined that they did not conclusively show that a two-foot tall nightstand could not fit in the vestibule. The pictures did not prove that the victim had no credibility. Thus, defendant cannot demonstrate that, but for counsel's failure to produce the pictures or request a viewing, the outcome of trial would have been different.

Second, defendant argues that counsel was ineffective for failing to object to the prosecutorial misconduct discussed previously. Again, we disagree. The alleged prosecutorial misconduct was not prejudicial and did not affect the outcome of trial.

Finally, defendant argues that counsel was ineffective because he "opened the door" for the victim to testify that defendant possessed weapons on other occasions and because he did not move to strike the offensive testimony. Even if we agree that defense counsel imprudently provided the victim with an opportunity to testify about defendant's prior possession of weapons, the outcome of trial was not affected by this conduct. The trial court rejected defendant's claim that the challenged evidence affected its ultimate decision in the case. It ruled that defendant's possession of weapons on any occasion other than July 14, 2001, was irrelevant and that the victim's credibility was judged individually. This ruling belies defendant's conclusory assertion that, but for counsel's conduct, the outcome of the trial would have been different. Defendant has failed to meet his heavy burden of demonstrating that counsel was ineffective.

V

Defendant argues that the cumulative effect of the errors at trial denied him his right to a fair trial and due process. This argument fails because there were no errors of consequence, which combined to collectively deny defendant a fair trial. *People v Cooper*, 236 Mich App 643, 659-660; 601 NW2d 409 (1999); *People v Miller (After Remand)*, 211 Mich App 30, 43-44; 535 NW2d 518 (1995).

VI

Last, defendant challenges Michigan's Sex Offenders Registration Act (SORA), MCL 28.721 *et seq.*, on procedural due process grounds, US Const, Am V.⁶ Defendant specifically challenges the SORA on the ground that it does not condition registration on a finding of

⁶ In framing his statement of the question presented, and in arguing that the SORA violates procedural due process, defendant refers to US Const, Am V. A more correct citation would be to US Const, Am XIV. The restraint imposed upon legislation by the due process clauses of both the Fifth and Fourteenth Amendments is the same. *Heiner v Donnan*, 285 US 312, 326; 52 S Ct 358; 76 L Ed 772 (1932). However, the Fifth Amendment applies to and restricts the federal government. *Public Utilities Comm'n of District of Columbia v Pollack*, 343 US 451, 462; 72 S Ct 813; 96 L Ed 1068 (1952). The Fourteenth Amendment extends the Fifth Amendment guarantees to state action. Thus, defendant's argument would be more properly framed as a constitutional challenge under the Fourteenth Amendment, which applies to the states. See *Champion's Auto Ferry, Inc v Michigan Public Service Comm'n*, 231 Mich App 699, 716-717; 588 NW2d 153 (1998).

dangerousness and does not provide for a hearing on that issue. He relies on *Fullmer v Michigan Dep't of State Police*, 207 F Supp 2d 650 (ED Mich, 2002), in support of this contention. He also contends that the SORA interferes with the specific liberty interests of privacy, travel and employment.

Before addressing the issue, we note that defendant's argument is cursory and does not adequately explain or rationalize his positions. The argument is technically abandoned. *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998) ("An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give only cursory treatment with little or no citation of supporting authority.") Nevertheless, we briefly address the issue. Constitutional issues are reviewed de novo. *In re Wentworth*, 251 Mich App 560, 561; 651 NW2d 773 (2002). "Statutes are presumed constitutional, and courts must construe statutes as constitutional unless the unconstitutionality of a statute is clearly apparent." *Id.* A statute may not be declared unconstitutional simply because it is undesirable, unfair or unjust. *Id.* at 561-562.

In *Wentworth*, *supra* at 563-566, a case involving a juvenile offender, this Court held that the SORA does not implicate due process rights, specifically, that the act does not deprive offenders of liberty or privacy interests. In reaching this conclusion, the Court adopted the following language from *Lanni v Engler*, 994 F Supp 849, 855 (ED Mich, 1998), a case involving a parolee's procedural due process challenge to the SORA:

The Act merely compiles truthful, public information and makes it more readily available. To the extent that plaintiff may suffer injury to his reputation or loss of employment opportunities, such injuries are purely speculative on the present record. Moreover, this Court finds that any detrimental effects that may flow from the Act would flow most directly from plaintiff's own misconduct and private citizen's reaction thereto, and only tangentially from state action.

The *Lanni* Court found that the defendant could not prove deprivation of a liberty or property interest. *Id.* In light of the precedential ruling in *Wentworth*, and the language adopted therein, we find no merit to defendant's claim that the SORA violates specific liberty interests.

We also reject defendant's procedural due process challenge based on the SORA's failure to condition registration on a hearing and finding of dangerousness. The case on which defendant relies, *Fullmer*, *supra*, 207 F Supp 2d 650, was recently reversed by the Sixth Circuit Court of Appeals in *Fullmer v Michigan Dep't of State Police*, 360 F3d 579 (CA 6, 2004). In *Fullmer*, the defendant argued, like defendant here, that the SORA deprived him of notice and an opportunity to be heard on the issue of his dangerousness or threat to public safety. *Id.* at 581. In concluding that the SORA was not unconstitutional, the Sixth Circuit relied on the United States Supreme Court's decision in *Connecticut Dep't of Public Safety v Doe*, 583 US 1; 123 S Ct 1160; 155 L Ed 98 (2003). In *Doe*, the Supreme Court held that a determination of the dangerousness of an offender was not a material issue with respect to Connecticut's sexual offender registry. *Id.* at 7-8. The registry is based on the fact of conviction alone. *Id.* Thus, Connecticut's sexual offender registration act did not violate the Due Process Clause based on its failure to require an analysis of an offender's dangerousness. *Id.* In *Fullmer*, the Sixth Circuit concluded that Michigan's registry serves the same purpose and has the same effect as its

Connecticut counterpart. *Fullmer, supra*, at 582. In light of the Supreme Court's holding in *Doe* and the similarity between the Michigan and Connecticut statutes, the Sixth Circuit determined that Michigan's statute was not unconstitutional under the Fourteenth Amendment of the United States Constitution. *Id.* In *Lanni, supra*, the Court also concluded that the procedural due process challenge to Michigan's SORA failed because all sex offenders are required to register under the act, all are subject to limited public disclosure, no discretion is provided, and thus, an individual hearing would serve no purpose. *Lanni, supra*. In light of the foregoing authorities, we find no merit to defendant's argument that the SORA is unconstitutional where it does not require a finding of dangerousness or hearing on that issue.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Joel P. Hoekstra
/s/ Kirsten Frank Kelly