STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED May 13, 2010
v	No. 291433 Shiawassee Circuit Court
RAYMOND RANDALL BALL, Defendant-Appellant.	LC No. 08-007856-FH

Before: BANDSTRA, P.J., and FORT HOOD and DAVIS, JJ.

PER CURIAM.

Defendant appeals of right his conviction by a jury of failing to register as a sex offender, MCL 28.729. Specifically, defendant failed to notify the proper authorities of a change of residence within ten days, as required by MCL 28.725(1) of the Sex Offenders Registration Act (SORA). Defendant was sentenced as an habitual offender, fourth offense, to 40 to 180 months' imprisonment. We affirm.

Defendant first argues that the evidence was insufficient to show that he either changed or vacated his residence, or that he willfully failed to notify the proper authorities. We disagree.

In analyzing a claim of insufficiency of the evidence, this Court reviews the evidence de novo to determine whether a reasonable trier of fact could have found the charged offense proven beyond a reasonable doubt; all evidence, direct and circumstantial, and all reasonable inferences therefrom must be viewed in the light most favorable to the prosecution. *People v Hardiman*, 466 Mich 417, 420-421, 428; 646 NW2d 158 (2002). Construction and application of the sex offenders registration act is reviewed de novo as a question of law. *People v Anderson*, 284 Mich App 11, 13; 772 NW2d 792 (2009).

Defendant's conviction under MCL 28.729(1)(a) was for willfully violating the requirements of MCL 28.725(1), which specifies:

> An individual required to be registered under this act shall notify the local law enforcement agency or sheriff's department having jurisdiction where his or her new residence or domicile is located or the department post of the individual's new residence or domicile within 10 days after the individual changes or vacates his or her residence, domicile, or place of work or education, including any change required to be reported under [MCL 28.724a].

The SORA defines "residence" in MCL 28.722(g) as follows:

> "Residence", as used in this act, for registration and voting purposes means that place at which a person habitually sleeps, keeps his or her personal effects, and has a regular place of lodging. If a person has more than 1 residence, or if a wife has a residence separate from that of the husband, that place at which the person resides the greater part of the time shall be his or her official residence for the purposes of this act. This section shall not be construed to affect existing judicial interpretation of the term residence.

Defendant argues that there was insufficient evidence to show that he resided in any place other than his parents' house—where there is no dispute that he *was* properly registered—for more than ten days at a time.

Defendant does not parse the statute correctly. The requirement is to provide notice of a change within ten days of making that change. It is not a requirement to provide notice if there has been a change that has gone on for more than nine days. In other words, the ten days refers only to the time period given to a registrant in which to communicate notice to the proper authorities. It does not in any way help define what constitutes a changed residence in either of the above-quoted statutes. The only rational reading of the statutes is that as soon as a registrant vacates or changes the "place at which a person habitually sleeps, keeps his or her personal effects, and has a regular place of lodging," or the "place at which the person resides the greater part of the time" if there are multiple such places, the registrant must report that vacation or change to the appropriate authorities. The registrant has, however, ten days in which to make that report.

Here, there was testimony and evidence showing that defendant was told by his father to leave his parents' house, that defendant packed his belongings into his car, and that he stayed with his cousin for some extended period of time. There was evidence tending to show that defendant regularly slept at his cousin's apartment, that defendant stored his personal belongings there, that defendant had access at will to that apartment, and that his room at his parents' house was essentially a vacant spare room. The jury was free to disbelieve his and his cousin's testimony to the contrary.

Defendant does not dispute that he failed to provide the required notice, but he argues that even if he was required to, he did not *willfully* fail to provide it. Willfulness is not the most clearly-defined term in Michigan jurisprudence, but it generally requires a knowing exercise of a decision to do something wrong, although the requisite mental state falls short of specific intent. *People v Lockett* (*On Rehearing*), 253 Mich App 651, 654-655; 659 NW2d 681 (2002); *People v Greene*, 255 Mich App 426, 442; 661 NW2d 616 (2003). Defendant conceded that he was well aware of his obligation to notify the authorities of any change in his residence. There was also testimony that defendant failed to advise his parole officer about the police contact he had had the night before, and there was also testimony that Smith was asked to "get a story straight" between herself, Bates, and defendant's father. Thus, there was some evidence from which it might be inferred that defendant was not completely honest with law enforcement officials. Furthermore, as noted, there was ample evidence from which the trier of fact could have concluded that defendant was residing elsewhere than his registered address; his failure to notify the authorities could be deemed *more* likely to be willful given his otherwise prompt and diligent

reporting. In other words, his high level of conscientiousness suggests that his failure to report was not merely an oversight.

A reasonable trier of fact could, when the evidence is viewed in the light most favorable to the prosecution, have found proven beyond a reasonable doubt that defendant changed or vacated his residence, and that his failure to notify the proper authorities within ten days of doing so was willful.

Defendant next argues that he was deprived of a fair trial because of references to his prior conviction for criminal sexual conduct, fourth degree (CSC-4), and the fact that he was on parole at the time of the charged offense in this matter. We find that defendant was not deprived of a fair trial, so his claims of both prosecutorial misconduct and ineffective assistance of counsel fail. *People v McElhaney*, 215 Mich App 269, 283; 545 NW2d 18 (1996); *People v Lukity*, 460 Mich 484, 496; 596 NW2d 607 (1999); *People v Hoag*, 460 Mich 1, 5-6; 594 NW2d 57 (1999). A trial court's decision to admit evidence is reviewed for an abuse of discretion, but any underlying legal question of admissibility is reviewed de novo. *People v McDaniel*, 469 Mich 409, 412; 670 NW2d 659 (2003).

MRE 404(b)(1) explicitly permits evidence of prior acts to be admitted to prove something other than conformity therewith. And here, the fact that defendant had previously been convicted of CSC-4 was admitted solely to explain why defendant was required to register as a sex offender. Moreover, the fact that he was required to register was never seriously disputed, but it was nevertheless an element of the offense that the prosecutor needed to prove, and here the fact that defendant was convicted of the least-serious degree of CSC could only have minimized the extent of any animosity felt by the jury. The fact that defendant was on parole was admitted to explain why law enforcement officials were keeping track of defendant, and why they went looking for him, in the first place. In other words, defendant's prior conviction and parolee status were *res gestae* facts; MRE 404(b) may permit admission of evidence of prior crimes where "it is essential that prosecutors and defendants be able to give the jury an intelligible presentation of the full context in which disputed events took place." *People v Sholl*, 453 Mich 730, 741; 556 NW2d 851 (1996).

Defendant contends that even if prior crimes may be admissible under MRE 404(b)(1), they are still inadmissible under MRE 403, because any probative value is significantly outweighed by the danger of unfair prejudice. For the reasons stated above, we disagree. Furthermore, the trial court cautioned the jury to disregard any references to defendant being on parole, explaining that "the parties have a right to explain perhaps how the police or Mr. Zeeman initially came into contact with the Defendant" but that whether defendant did or did not violate his parole was not at issue. We see nothing in the record to suggest that the jury was unable or unwilling to follow this instruction. Any prejudice was minimal, and we conclude that defendant was not denied a fair trial.

Defendant finally argues that he was denied his right to present a defense because the trial court incorrectly and inappropriately refused to instruct the jury that a "domicile" was something different from a "residence" under the SORA. We agree that the trial court's instruction was incorrect, but we find that the error was irrelevant to any issue in the case and had no effect on the verdict.

This Court reviews claims of instructional error de novo to make sure, among other things, that the instructions as a whole do not exclude any material defense supported by the evidence, although the instructions need not be perfect. *People v Clark*, 274 Mich App 248, 255-256; 732 NW2d 605 (2007). This Court also reviews de novo whether a defendant was deprived of the right to present a defense. *People v Kurr*, 253 Mich App 317, 327; 654 NW2d 651 (2002). "Instructional errors that directly affect a defendant's theory of defense can infringe a defendant's due process right to present a defense." *Id*. at 326-327. However, erroneous instructions will only warrant reversal if the defendant can demonstrate that the error undermined the reliability of the verdict. *People v Hawthorne*, 474 Mich 174, 184-185; 713 NW2d 724 (2006).

Defendant is correct in asserting that "residence" and "domicile" mean different things. While "residence" is explicitly defined under the SORA, "domicile" is not. But this Court has recently explained, consistent with defendant's argument,

> A "domicile" is "a person's true, fixed, principal, and permanent home, to which that person intends to return and remain even though currently residing elsewhere." Black's Law Dictionary (8th ed). While the terms "domicile" and "residence" are often used as synonyms, the term "residence" generally, and as specifically defined in SORA, does not include the concept of the intent to make the residence a permanent home. A person may have many residences but only one domicile. [*People v Dowdy*, ___ Mich App ___, ___; ___ NW2d ___ (2010).]

In *Dowdy*, the defendant was homeless and thus had no domicile. *Id*. at ___. In the instant matter, the unrebutted evidence—although the jury was free to disbelieve it—was that defendant intended to return to his parents' house. Defendant undoubtedly had a domicile, and arguably, at least, never changed that domicile. The trial court erred in instructing the jury that "residence" and "domicile" are interchangeable terms.

Nonetheless, MCL 28.725(1) uses the two terms disjunctively. Therefore, defendant would need to notify the proper authorities if he changed his domicile *or* if he changed his residence. Indeed, in *Dowdy*, the defendant could not possibly have changed his domicile, given that he had none. If MCL 28.725(1) used "domicile" and "residence" conjunctively—that is, a registrant would only be required to report a changed location if *both* his domicile and residence changed—then no further analysis would have been needed. But that would be contrary to the plain language of the statute, and in any event, the reason the defendant in *Dowdy* was ultimately found not to be obligated to inform any authorities upon changing residences was this Court's conclusion that a homeless person does not have a "residence," either. *Dowdy, supra*, ___ Mich App at ___.

Defendant makes no claim to homelessness here. It was perfectly possible for defendant to change or vacate his residence without changing or vacating his domicile. The defense that defendant claims he was denied—namely, the argument that he never changed his domicile—is not relevant to whether defendant changed his residence. The instructions given to the jury were technically erroneous. However, they did not affect defendant's ability to present a defense, because correct instructions would have been irrelevant, and defendant was not prevented from

presenting a vigorous argument that he never changed his residence. Consequently, defendant has not shown that the trial court's erroneous instruction affected the verdict in any way.

Affirmed.

/s/ Richard A. Bandstra
/s/ Karen M. Fort Hood
/s/ Alton T. Davis