STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED July 10, 2012
V	No. 301807 Kent Circuit Court
MICHAEL JOHN CHESEBRO, Defendant-Appellant.	LC No. 10-000591-FH

Before: FITZGERALD, P.J., and WILDER and MURRAY, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial conviction of failing to notify the proper authorities of a change in residence within ten days as required by MCL 28.725(1) of the Sex Offenders Registration Act (SORA). We vacate defendant's conviction and sentence.

Defendant built his home at 410 Spencer Street in Grand Rapids in 2003 and claims to have lived there since. He married in 2005. His wife lives at 1912 Waterbury in Kentwood, and the couple maintain separate homes. Defendant does extensive gardening, and during the time period at issue, August 2009 to December 2009, he testified that he was at his house 8 to 12 hours a day gardening and working with plants. Defendant admitted he spent most nights at 1912 Waterbury. Defendant testified he spent two nights at 410 Spencer in October 2009, two nights in November 2009, and no nights in December 2009. In a police interview before trial, defendant stated he had not spent any nights at 410 Spencer between October 31, 2009, and January 6, 2010. Defendant showered at 1912 Waterbury, and his wife did his laundry there. However, he kept 95 percent of his personal belongings at 410 Spencer.

In 2005 or 2006, Kentwood Police stopped at 1912 Waterbury because they had received a complaint that a sex offender was living there. Defendant explained the situation and then called the Grand Rapids Police Department to clarify where he should register. The woman who answered the telephone call informed defendant she knew about the SORA and told him he was registered at the correct address.

Very little electricity and water were used at 410 Spencer in the late summer and early fall of 2009. The amount used was so minimal that the utility companies coded the home as vacant.

The Grand Rapids Police Department received a tip that defendant was not living at 410 Spencer, and in August 2009, officers started conducting surveillance. Over a week and a half, officers stopped by 410 Spencer about 12 times but no one was ever home. An officer placed scotch tape over the door to see how often it was opened. Over a week and a half, the tape sometimes stayed in place a day, sometimes for a couple days, and once for three days. Defendant testified that he and his wife were in Alabama for five days in August 2009.

Grand Rapids police monitored defendant's two primary vehicles with GPS devices. One vehicle, a Ford Festiva, was monitored from October 8, 2009, to October 29, 2009. The Festiva never went to 410 Spencer. Defendant testified the Festiva was broken down at the time. The other vehicle, a Chevrolet Impala, was monitored from October 8, 2009, to October 15, 2009. On two days, the Impala did not go to 410 Spencer. On the other days it went to 410 Spencer one time per day for the following lengths of time: about four hours, about an hour, three minutes, almost three hours, about 40 minutes, and ten minutes before the GPS battery died. Neighbors at 410 Spencer testified that they saw defendant regularly.

The trial court found defendant guilty, finding he slept at 1912 Waterbury, referencing that the GPS evidence indicated defendant did not spend much time at Spencer, and referencing the low utility bills. The trial court found defendant mainly credible and honest and believed a large part of his testimony. As to whether defendant willfully violated the SORA, the trial court noted willfulness can be interpreted in different ways. The trial court was uncertain if defendant was trying to get around the SORA and found defendant made "decent" efforts in conversations with police to determine the correct address to register. The trial court also found defendant had some legitimate misunderstanding of the requirement, partially based on a misreading of the SORA and partially based on comments by police officers. Ultimately, the trial court stated "that technically I think the defendant is guilty, and I so find him."

Defendant argues there was insufficient evidence that he changed his residence. "[W]e review a challenge to the sufficiency of the evidence in a bench trial de novo and in a light most favorable to the prosecution to determine whether the trial court could have found the essential elements of the crime were proved beyond a reasonable doubt." *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000), aff'd 466 Mich 39 (2002). "While the trier of fact may draw reasonable inferences from facts of record, it may not indulge in inferences wholly unsupported by any evidence, based only upon assumption. *People v Petrella*, 424 Mich 221, 275; 380 NW2d 11 (1985). The construction and application of the SORA is reviewed de novo as a question of law. *People v Anderson*, 284 Mich App 11, 13; 772 NW2d 792 (2009).

At the time relevant to defendant's conviction, MCL 28.725(1) provided:

> 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.

The SORA defines "residence" as

> 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. [MCL 28.722(g).]

The three elements that combine to determine a person's residence pursuant to the SORA are where the person habitually sleeps, where he keeps his personal effects, and where he has a regular place of lodging. *People v Dowdy*, 489 Mich 373, 382; 802 NW2d 239 (2011). In this case, although there was evidence that defendant had the majority of his personal belongings at 410 Spencer, there was also evidence that he slept the majority of the time at 1912 Waterbury and did not spend much time at 410 Spencer. The utilities at 410 Spencer were used with such infrequency that the utility companies coded the house as vacant. GPS evidence indicated defendant was rarely at 410 Spencer. There was sufficient evidence for the trial court, as the trier of fact, to determine defendant resided the greater part of the time at 1912 Waterbury, that he changed his residence for purposes of the SORA, and that he was required by the SORA to report this change. MCL 28.722(g); MCL 28.725(1).

Nevertheless, we vacate defendant's conviction because we agree with defendant that there was insufficient evidence that he willfully violated the SORA. MCL 28.729(1) allows for criminal penalties to be imposed against "an individual required to be registered under this act who willfully violates this act." The SORA does not define "willfully violates" or "willfully," but this Court in *People v Lockett (On Rehearing)*, 253 Mich App 651; 659 NW2d 681 (2002), defined what "willfully violates" means in the SORA. Although this Court in *Lockett* recognized that "willful" has in some instances been interpreted as requiring a "bad purpose" and "knowledge and a purpose to do wrong," *id.* at 654-655, the *Lockett* Court ultimately upheld "the district court's conclusion that 'willfully' requires something less than specific intent, but requires a knowing exercise of choice." *Id.* at 655. As a result, the *Lockett* Court concluded that the evidence supported a finding of probable cause that the defendant knew he had an obligation to update his address, and that even though he did notify his probation agent about the change in residence, he purposely failed to notify (as he was instructed to do) the required agency. *Id.* at 656. None of the facts in *Lockett* revealed a "bad purpose" or "purpose to do wrong," yet there still was sufficient evidence of "willful" intent because there was evidence showing that the defendant was aware of his obligation to notify the law enforcement agency (as opposed to his probation agent) but failed to do so.

In the present case, despite the trial court finding that "this was not exactly a blatant, serious disregard of the responsibilities that the defendant had under the act and I think there was some legitimate misunderstanding and – a part of which was based on, I think, an erroneous reading of the act in the definition part of it based on comments with police officers," the trial court, nevertheless, concluded that defendant's conduct constituted a willful violation of the statute. We disagree because neither the evidence nor the trial court's findings of fact support the trial court's conclusion that defendant acted with the willfulness required by the SORA. Similar to the circumstances presented in *Lockett*, here the evidence does not establish that defendant was acting in "bad faith" or with a "bad purpose." But, unlike in *Lockett*, the evidence here does not show that defendant purposely failed to register his wife's house after he had been instructed to do so. Rather, and as the trial court found, the evidence supports the conclusion that

defendant was cognizant of his obligation to register, that he contacted the appropriate agency for guidance, and that he was informed that the 410 Spencer address was the appropriate residence to register. That his decision to follow this guidance ultimately turned out to be incorrect does not, without more, result in a willful violation of the statute. Because the statute is not one of strict liability, such that a person who fails to register the correct residence is subject to the criminal penalties, under the facts found by the trial court, where there were two reasonable views as to where his residence was for purposes of the SORA, defendant did not act willfully in violation of the statute when he made an informed registration decision in consultation with and at the direction of the police.

Because we find that there was insufficient evidence to support a finding that defendant willfully violated the SORA, we need not consider defendant's entrapment by estoppel argument. We vacate defendant's conviction and sentence.

/s/ E. Thomas Fitzgerald
/s/ Kurtis T. Wilder
/s/ Christopher M. Murray