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Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-001843-MR

KENNETH MCBRIDE — APPELLANT

v. — APPEAL FROM MONTGOMERY CIRCUIT COURT
HONORABLE BETH LEWIS MAZE, JUDGE
ACTION NO. 01-CR-00069

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
REVERSING

** ** ** ** **

BEFORE: BUCKINGHAM, JOHNSON, AND SCHRODER, JUDGES.

SCHRODER, JUDGE: This is an appeal from a felony conviction for failing to register as a sex offender as required by the Sex Offender Registration Act (KRS 17.510) when appellant moved from Tennessee to Kentucky. We adjudge that because appellant was not given notice of the duty to register as a sex offender in Kentucky as required by due process and KRS 17.510(6), the conviction cannot stand.[1] Additionally, we hold that implicit in

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[1] Our United States Congress and Senate have likewise recognized this problem of sex offenders moving across state lines without registering and the notice issues arising therefrom. They have sought to fill the gap we address in our

the statute is a *mens rea* element that appellant had to act knowingly. Hence, we adjudge that the trial court erred in refusing to include that culpable mental state in the jury instructions. Accordingly, the judgment of conviction is reversed.

On November 12, 1999, appellant, Kenneth McBride, was convicted in a Tennessee court of the felony offense of sexual battery and was sentenced to two years in jail. In late January 2001, McBride moved from Tennessee to Mount Sterling, Kentucky and began working at Fast Change Lube Oil. In March 2001, Sergeant David Charles of the Mount Sterling Police Department learned that McBride was registered as a sex offender in Tennessee and was now living in Mount Sterling and working at a quick change lube company in town. It is undisputed that in March of 2001, McBride was not registered as a sex offender in Kentucky.

On May 11, 2001, McBride was indicted for failure to be registered as a sex offender in Kentucky on March 13, 2001, pursuant to KRS 17.510(7). It is undisputed that McBride did not register in Kentucky as a sex offender until May 7, 2001. McBride's case was tried to a jury on August 20, 2003. He was

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opinion with a federal sex offender registration program and database. JACOB WETTERLING, MEGAN NICOLE KANKA, & PAM LYNCHER SEX OFFENDER REGISTRATION AND NOTIFICATION PROGRAM, H.R. 2423, S. 1086, 109th Cong. (2005); DRU'S LAW, H.R. 95, S. 792, 109th Cong. (2005); see also JESSICA LUNSFORD ACT, H.R. 1505, 109th Cong. (2005).

found guilty and sentenced to four years' imprisonment. This appeal followed.

McBride's first argument is that KRS 17.510(7) is unconstitutionally vague as applied to him. KRS 17.510(7) provides:

> If a person is required to register under federal law or the laws of another state or territory, or if the person has been convicted of an offense under the laws of another state or territory that would require registration if committed in this Commonwealth, that person upon changing residence from the other state or territory of the United States to the Commonwealth or upon entering the Commonwealth for employment, to carry on a vocation, or as a student shall comply with the registration requirement of this section and the requirements of subsection (4)(b) of this section and shall register with the appropriate local probation and parole office in the county of employment, vocation, or schooling. As used in this section, "employment" or "carry on a vocation" includes employment that is full-time or part-time for a period exceeding fourteen (14) days or for an aggregate period of time exceeding thirty (30) days during any calendar year, whether financially compensated, volunteered, or for the purpose of government or educational benefit. . . .

McBride claims the above statute is unconstitutionally vague because it does not define "residence". Under the void-for-vagueness doctrine, a statute is not unconstitutionally vague if it contains sufficient definiteness such that ordinary

people can understand what conduct is prohibited. Kolender v. Lawson, 461 U.S. 352, 357, 103 S. Ct. 1855, 75 L. Ed. 2d 903 (1983). Additionally, the doctrine requires that the statute be worded so as to not encourage arbitrary or discriminatory enforcement. Id. Every term in a statute need not be defined, and terms that are not defined are to be accorded their common, everyday meaning. United States v. Haun, 90 F.3d 1096 (6th Cir. 1996), cert. denied, 519 U.S. 1059, 117 S. Ct. 691, 136 L. Ed. 2d 614 (1997) (holding that the term "proceeds" was not unconstitutionally vague in money laundering statute). "Residence" is defined as "the act or fact of dwelling in a place for some time." MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 993 (10th ed. 2001). In our view, the language of KRS 17.510(7) was sufficiently definite to put McBride on notice that if he failed to register as a sex offender when he changed his place of dwelling from Tennessee, where he was registered as a sex offender, to Kentucky, he would be guilty of the offense therein.

McBride next argues that the trial court erred in refusing to enter a directed verdict in his favor. McBride maintains that the Commonwealth failed to prove that his conviction in Tennessee was for an offense that would have required registration as a sex offender in Kentucky if committed here.

McBride moved for a directed verdict at the close of all the evidence in the case. The only specific allegation of deficiency in the proof was that the Commonwealth failed to prove that McBride had changed his residence to Kentucky. Beyond that, the motion was a general motion simply claiming that the Commonwealth failed to carry its burden of proof as to the charged offense. In Hicks v. Commonwealth, 805 S.W.2d 144, 148 (Ky.App. 1990), this Court adjudged that when the defendant failed to specify how the evidence was insufficient as to a particular element of the offense in the motion for directed verdict or in an objection to the instructions, the issue was not preserved for appellate review. "The trial court was never given an opportunity to address the question of whether there was a lack of evidence on this particular element of the offense." Id. Similarly, in the present case, this allegation that the Commonwealth did not prove that the Tennessee offense, if committed in Kentucky, would have required the defendant to register as a sex offender in Kentucky, was not ever raised in the trial court, either in the motion for directed verdict or as an objection to the Commonwealth's jury instructions. Nevertheless, McBride urges us to review the issue for palpable error under RCr 10.26.

RCr 10.26 defines "palpable error" as error that "affects the substantial rights of a party." Relief from

palpable error "may be granted upon a determination that manifest injustice has resulted from the error." RCr 10.26. If, upon consideration of the whole case, there is a substantial possibility that the result would have been different absent the error, the error is prejudicial and, thus, considered to have resulted in manifest injustice. Abernathy v. Commonwealth, 439 S.W.2d 949 (Ky. 1969), overruled on other grounds, Blake v. Commonwealth, 646 S.W.2d 718 (Ky. 1983). In Schoenbachler v. Commonwealth, 95 S.W.3d 830 (Ky. 2003), the Court recognized that despite the fact that the defendant failed to raise the issue of the sufficiency of the evidence in a renewed motion for directed verdict at the close of all the evidence, relief from palpable error could nevertheless be granted if the Commonwealth failed to prove an essential element of the offense.

Pursuant to KRS 17.510(7), a person changing residence to Kentucky is required to register as a sex offender "[i]f the person is required to register under federal law or the laws of another state or territory, or if the person has been convicted of an offense under the laws of another state or territory that would require registration if committed in this Commonwealth." (emphasis added.) At trial, the Commonwealth called Officer Rudd Kerr of the Kentucky State Police ("KSP"), who was in charge of the KSP sex offender unit which manages the sex offender registry. Officer Kerr testified that, according to

his records, McBride was registered as a sex offender in Tennessee in March of 2001. Additionally, McBride's girlfriend in March of 2001, Darnella Bradley, testified that at one point after McBride moved in with her in January 2001, she opened up McBride's address book and saw McBride's Tennessee sex offender registration identification card. In our view, the above evidence was sufficient proof that McBride was required to register as a sex offender in Tennessee. Therefore, as we read KRS 17.510(7), it was not necessary that the Commonwealth prove that the Tennessee offense was an offense that would have required sex offender registration in Kentucky if committed in Kentucky.

McBride also argues that a directed verdict should have been granted in his favor because there was no evidence that he was informed that he was required to register as a sex offender in Kentucky prior to his arrest, which he maintains was an element of the offense under KRS 17.510(6). As with the argument above, this issue was not specifically raised in McBride's motion for directed verdict. Thus, we will review the argument only for palpable error.

KRS 17.510(6) provides:

> Any person who has been convicted in a court of another state . . . of a sex crime or criminal offense against a victim who is a minor, or who has been committed as a sexually violent predator under the laws of

> another state . . . shall be informed at the time of his or her relocation to Kentucky of the duty to register under this section, and to comply with the requirements of subsection (4)(b) of this section, by the interstate compact officer of the Department of Corrections or the Department of Juvenile Justice. The officer shall require the person to read and sign any form that may be required by the cabinet, stating that the duty of the person to register under this section has been explained. The officer shall order the person to complete the registration form, and the officer shall facilitate the registration process. The officer shall then send the form, including any special conditions imposed by the court or the Parole Board in the state of conviction to the Information Services Center, Kentucky State Police, Frankfort, Kentucky 40601, and to the appropriate local probation and parole office in the county of the registrant's residence.

The Commonwealth does not deny that it did not give McBride actual notice that he was required to register as a sex offender in Kentucky before arresting him for the offense. Rudd Kerr, head of the KSP sex offender unit, testified that Kentucky had no way of knowing that McBride had moved to Kentucky in January of 2001 because McBride never gave notice to Tennessee that he was changing his residence. Kerr testified that according to a form McBride signed in Tennessee when he registered as a sex offender there, McBride was required to notify the Tennessee Bureau of Investigation Sexual Offender Registry if any information on the registration form changed for any reason longer than ten days, or be subject to penalties of

law. According to Kerr, if the offenders notify probation and parole when they move across state lines, as they are supposed to do, the sex offender registry unit from the original state will notify the state where the offenders are moving.

The Commonwealth points out that McBride was charged under section (7) of KRS 17.510, therefore, it maintains that section (6) would have no bearing on his conviction. We disagree. It is a basic principle of statutory construction that a statute should be read and construed as a whole. Smith v. Bob Smith Chevrolet, Inc., 275 F.Supp.2d 808 (W.D.Ky. 2003). In determining legislative intent, courts are not restricted to the particular section challenged, but should read all sections of the statute together since "different parts of a statute reflect light upon each other." Commonwealth v. Trousdale, 297 Ky. 724, 181 S.W.2d 254, 255 (1944).

It is clear from our reading of KRS 17.510 that the various sections of the statute operate together to cover the different aspects and circumstances surrounding sex offender registration in Kentucky, comprising the "registration system" referred to in KRS 17.510(1). Sections (6) and (7) of the statute both relate to persons coming into the Commonwealth from other states that must register as sex offenders in Kentucky. Although the language in those sections is not completely

consistent[2], we see no conflict in the sections. Section (6) provides that those persons coming into Kentucky who must register as a sex offender in Kentucky "shall be informed at the time of his or her relocation to Kentucky of the duty to register under this section, and to comply with the requirements of subsection (4)(b) of this section, by the interstate compact officer of the Department of Corrections or the Department of Juvenile Justice." Section (6) then spells out the specific duties of the interstate compact officer in registering the individual. Section (7) specifies which individuals coming into Kentucky must register in Kentucky as sex offenders and where they must register. Essentially, Section (6) puts the onus on Kentucky to give notice of the duty to register in Kentucky and then to assist the individual in registering, while Section (7) puts the onus on the individual to register in Kentucky. In construing the two sections together, we believe the legislature intended for the individual to receive notice of the duty to register as a sex offender in Kentucky <u>before</u> he has a duty to so register in Kentucky. This interpretation would insure that

[2] Section (6) refers to the offender's "relocation" to Kentucky, while Section (7) refers to the offender "changing residence" to Kentucky. Also, Section (6) requires notice to those convicted in other states or a federal court of a sex crime, an offense against minor, or as a sexually violent predator, while the requirement to register in Section (7) is imposed on persons required to register under federal law or under the law of another state, or who have been convicted of a crime in another state that would necessitate registering in Kentucky if committed here.

the individual's due process rights are satisfied under the statute.

In Lambert v. People of the State of California, 355 U.S. 225, 78 S. Ct. 240, 2 L. Ed. 2d 228 (1957), the United States Supreme Court confronted the issue of whether a municipal ordinance imposing a registration requirement on convicted felons who remained in the city for more than five days violated due process. While the Court acknowledged the longstanding principle that "ignorance of the law will not excuse", the court likewise recognized that "[e]ngrained in our concept of due process is the requirement of notice." Id. at 228. The Court ultimately held that those charged under the ordinance must have actual knowledge of the duty to register or proof of the probability of such knowledge before they can be charged with failing to register under the ordinance. Id. at 229. The Court's decision turned on three factors: (1) that the conduct was passive; (2) the individual's status as a convicted felon would not, in itself, put the individual on notice to inquire as to the applicable law; and (3) the law was enacted solely for the convenience in compiling a list which might be of some assistance to law enforcement agencies.

In State v. Bryant, 163 N.C. App. 478, 594 S.E.2d 202 (N.C.App. 2004), the North Carolina Court of Appeals had before it a factual situation identical to the one in the present case

– a sex offender from another state who moved to North Carolina who was not given notice that the law of North Carolina likewise required that he register as a sex offender. Also, just as in the instant case, the offender had signed a form in the state where he was initially convicted and registered as a sex offender (South Carolina) which stated that he was required to give South Carolina notice if he changed his residence. As with the case at bar, there was nothing on the original state's (South Carolina) form informing him that he must register as a sex offender in any other state to which he might move or even requiring that he give the new state notice of his relocation. Unlike Kentucky, however, there was no provision in the North Carolina sex offender registration statute requiring notice to an out-of-state offender moving to North Carolina of the duty to register in North Carolina.

Relying on Lambert and another North Carolina case, State v. Young, 140 N.C. App. 1, 535 S.E.2d 380 (N.C.App. 2000), the Bryant Court struck down the sex offender registration statute as unconstitutional as applied to sex offenders convicted in other states who move to North Carolina. The North Carolina Court held that due process requires either actual or constructive notice to the out-of-state offender moving to North Carolina of the requirement to register before he can be convicted of failing to register in North Carolina. Bryant, 594

S.E.2d at 205; See also Varnes v. State, 63 S.W.3d 824 (Tex.App. 2001). The Court found that not only did the offender not have any actual notice of the duty to register in North Carolina from North Carolina authorities or via the forms he signed in South Carolina, he likewise did not have constructive notice. Bryant, 594 S.E.2d at 206-207. The Court rejected the State's argument that sex offender registration laws are now so pervasive that the out-of-state offender had constructive notice because he must have known that he was required to register in other states. "We do not, however, believe that mere knowledge that most states have registration requirements is sufficient today to establish knowledge that an offender must register in states other than the one in which he was originally convicted." Bryant, 594 S.E.2d at 206; but see People v. Patterson, 185 Misc. 2d 519, 708 N.Y.S.2d 815, 826 n.5 (2000).

In the case before us, there was no evidence that, prior to his arrest, McBride had actual notice or the probability of notice of the duty to register as a sex offender when he moved to Kentucky. The Commonwealth does not deny that it did not give notice to McBride, and the form signed by McBride in Tennessee only required McBride to give notice to Tennessee if he moved to another state. The form did not inform McBride that he had a duty to register in any other state to which he might relocate or require him to inform his new state

of residence that he has moved there. And unlike the situation in Varnes v. State, 63 S.W.2d 824, where adequate notice was found to have been verbally given to the offender by his parole officer, there was no evidence in the instant case that McBride was verbally informed by anyone of his duty to register in Kentucky.

As to constructive notice, we agree with the North Carolina Court in Bryant that, although the existence of statewide sex offender laws is a well known fact, that fact alone would not put an offender on notice that he is required to register in another state to which he moves. We would note that in 1997, the Jacob Wetterling Act, 42 U.S.C. § 14071 (2003), which conditions certain federal funding on the enactment of sex offender registration laws, was amended to require states to inform offenders moving out of state of the duty to report their change of address as provided by state law and comply with any sex offender registration laws in the new state. 42 U.S.C. § 14071(b)(1)(A)(iii) (as amended Nov. 26, 1997, P.L. 105-119, Title I, § 115(a)(1)-(5), 111 Stat. 2461). "The fact that Congress found it necessary to amend the Jacob Wetterling Act to clarify that state officials are required to inform an offender of his duty to register in a new state shows that sex offender registration laws have not yet achieved such general recognition among the public that a defendant may be charged with knowledge

of a duty to register upon moving to a new state." Bryant, 594 S.E.2d at 207.

We recognize the quandary posed by this situation. To put it simply, how can Kentucky give notice to an out-of-state offender who relocates to Kentucky that he must register as a sex offender in Kentucky when the state does not know that the offender has moved here? Clearly, McBride was in violation of the law for failing to give notice to Tennessee that he was moving - a violation of Tennessee law. He is before us, however, for committing the Kentucky offense of failing to register as a sex offender here, and the fact remains that he was not given notice of the duty to so register in Kentucky as required by the statute. Accordingly, McBride could not lawfully be charged under KRS 17.510 for failing to register as a sex offender since notice is a prerequisite to commission of the offense. See Patterson, 708 N.Y.S.2d at 825. Because this error clearly affected the substantial rights of McBride, we deem it palpable and thus reversible.

We next turn our attention to the related argument that the trial court erred in refusing to include a *mens rea* element in the jury instructions, specifically, that McBride "knowingly" failed to register as a sex offender in Kentucky. McBride tendered jury instructions which would have required the jury to find that he "knowingly" failed to register as a sex

offender in Kentucky. Additionally, McBride's instructions defined "knowingly" as follows: "A person act [sic] knowingly with respect to conduct or to a circumstance when he is aware that his conduct is of that nature or that the circumstance exists."

The Commonwealth maintains that the trial court properly excluded a *mens rea* element from the jury instructions because failing to register as a sex offender under KRS 17.510 is an absolute liability crime. KRS 501.030 provides:

> A person is not guilty of a criminal offense unless:
> (1) He has engaged in conduct which includes a voluntary act or the omission to perform a duty which the law imposes on him and which he is physically capable of performing; and
> (2) He has engaged in such conduct intentionally, knowingly, wantonly or recklessly as the law may require, with respect to each element of the offense, except that this requirement does not apply to any offense which imposes absolute liability, as defined in KRS 501.050.

KRS 501.050 provides:

> A person may be guilty of an offense without having one (1) of the culpable mental states defined in KRS 501.020 only when:
> (1) The offense is a violation or a misdemeanor as defined in KRS 500.080 and no particular culpable mental state is included within the definition of the offense; or
> (2) The offense is defined by a statute other than this Penal Code and the statute clearly indicates a legislative

> purpose to impose absolute liability for the conduct described.

The offense at issue is a Class D felony for which McBride was sentenced to four years' imprisonment. The offense is not set out in the Penal Code, but, from our reading of KRS 17.510, we do not believe it clearly indicates a legislative purpose to impose absolute liability. There is no expression in the statute of any intent to remove knowledge as an element of the offense. See State v. Giorgetti, 868 So.2d 512 (Fla. 2004). Although there is no specific language in KRS 17.510 including a "knowingly" mental state for failure to register as a sex offender, there is, as discussed earlier, an express statutory requirement that the Commonwealth must give notice to the offender that he must register as a sex offender in Kentucky. KRS 17.510(3) and (6). In our view, this demonstrates that the legislature did not intend for the crime to be an absolute liability crime because, if the offender is required to be informed of the registration requirement before he must register, he would necessarily be acting "knowingly" in failing to register. Any claim otherwise by an offender proven to have been given proper notice would likely fail given the knowledge imputed to him through proper notice. We reject what we deem to be an inconsistent position taken by the New York Court in People v. Patterson, 708 N.Y.S.2d 815, that the statute and due

process mandate notice of the duty to register as a sex offender, yet the crime was nevertheless adjudged to be a strict liability crime.

The Commonwealth points to KRS 17.510(12), which expressly includes a "knowingly" state of mind for the offense of providing false, misleading, or incomplete information. The Commonwealth argues that if the legislature had intended for the offense of failing to register to have a "knowingly" mental state, it would have likewise expressly included such a requirement. We do not agree. The offense of providing false, misleading, or incomplete information requires affirmative conduct. The offense of failing to register is a completely separate offense for passive conduct, which, by its very nature, requires some knowledge or probability of knowledge to comport with due process. Lambert, 355 U.S. at 228-230. As stated above, we believe that the requirement of notice of the duty to register in the statute establishes that the legislature intended for the offender to act "knowingly" in failing to register.

Since McBride had to act "knowingly" in failing to register as a sex offender under KRS 17.510, the trial court committed reversible error in refusing to include that element of the crime in the jury instructions. Given this error and the

failure of McBride to receive notice of the duty to register in Kentucky, the judgment of conviction is hereby reversed.

BUCKINGHAM, JUDGE, CONCURS.

JOHNSON, JUDGE, DISSENTS AND FILES SEPARATE OPINION.

JOHNSON, JUDGE, DISSENTING: I respectfully dissent. I conclude that when all provisions of KRS 17.510 are read together, it is clear that subsection (7) places absolute liability on a person who is a registered sex offender in another state to register as a sex offender in Kentucky without him being informed[3] of that duty. The interpretation given to KRS 17.510 by the Majority has the effect of establishing a notice requirement and a knowingly mens rea requirement for subsection (7) that is not contained in KRS 17.510.

KRS 17.510(7) clearly provides that "a person [who] is required to register under . . . the laws of another state . . . upon changing residence from the other state . . . to the Commonwealth . . . shall comply with the registration requirement of this section and the requirements of subsection (4)(b) of this section[.]" KRS 17.510(6) requires the interstate compact officer of Kentucky's Department of Corrections or Department of Juvenile Justice to inform a sex offender "at the time of his[ ] relocation to Kentucky of the

[3] I choose to use the term "informed" as opposed to "notice" because "informed" is used in KRS 17.510(6) and "notice" does not appear in KRS 17.510.

duty to register under this section, and to comply with the requirements of subsection (4)(b) of this section."

In interpreting a statute, a court must presume that the Legislature intended the statute to be effective in its entirety, thus "significance and effect must be accorded to every part of the statute if possible."[4] This includes reading each subsection of a statute in its entirety. Subsection (6) begins with a requirement that the interstate compact officer inform a sex offender of his duty to register. The Majority's reading of this portion of the subsection in isolation defeats the purpose of the statute. Obviously, before a duty arises under this subsection, the officer must have knowledge that the sex offender has entered the Commonwealth. If the sex offender violates the law of the state of his conviction or said state does not have a registration requirement, there is a possibility that the officer will have no knowledge of the sex offender's presence in Kentucky.[5] The remainder of this subsection provides that the officer is mandated to require the sex offender to sign a form acknowledging that he has been informed of that duty,

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[4] Liquor Outlet, LLC v. Alcoholic Beverage Control Board, 141 S.W.3d 378, 386 (Ky.App. 2004) (citing George v. Scent, 346 S.W.2d 784 (Ky. 1961)).

[5] The statute does not provide any examples of when an interstate compact officer would be provided with information that a sex offender has relocated to Kentucky. But I take notice of such knowledge being obtained through notification from another state as testified to by Mr. Kerr and other incidents such as a criminal background check by a police officer and an application for some state employment.

order the sex offender to complete the registration form, facilitate the registration process, and send the appropriate documents to specific offices.[6] Considering the potential role of the sex offender in the officer's learning of his relocation to Kentucky (which would trigger the officer's actions under subsection (6)), and reading subsection (6) and the entire statute as a whole, I interpret the mandate in subsection (6) to require the appropriate Kentucky officials, upon learning that a sex offender has relocated to Kentucky, to take the necessary action to timely facilitate the registering of the sex offender in Kentucky. Thus, the legislative intent of subsection (6) is to require the responsible Kentucky officials to follow certain procedures to ensure that the registration of sex offenders is timely and effectively completed. Subsection (6) was not enacted to give a right of notice to a sex offender, but for the sole purpose of facilitating the effective administration of the

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[6] KRS 17.510(6) provides, in part, as follows:

> The officer shall require the person to read and sign any form that may be required by the cabinet, stating that the duty of the person to register under this section has been explained. The officer shall order the person to complete the registration form, and the officer shall facilitate the registration process. The officer shall then send the form, including any special conditions imposed by the court or the Parole Board in the state of conviction to the Information Services Center, Kentucky State Police, Frankfort, Kentucky 40601, and to the appropriate local probation and parole office in the county of the registrant's residence.

statute. This interpretation comports with the overall purpose of the statute to protect citizens of Kentucky from sex offenders.

Under subsection (6) when an interstate compact officer is aware that a sex offender is relocating to Kentucky, he shall inform that sex offender of the requirement under subsection (7) of the sex offender's absolute liability for failing to register in Kentucky. This interpretation allows for a construction of KRS 17.510 which gives effect to the legislative intent in both subsections (6) and (7), and is consistent with the legislative intent of effectively and efficiently registering sex offenders. Contrary to the holding by the Majority, I conclude that Kentucky has also properly placed the burden on a convicted sex offender who has changed his residence to Kentucky to register in Kentucky without having been informed of that duty.

Alternatively, as noted by the Majority, McBride had been informed in Tennessee that he was required to inform Tennessee authorities of his change of residence within 48 hours of "establishing or changing a primary or secondary residence[.]"[7] Hence, McBride was not informed by Kentucky

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[7] Tenn. Code Ann. §40-39-203(a) (2004). See also Tenn. Code Ann. §40-39-203(g) which states "[a]n offender who indicates to a designated law enforcement agency on the [ ] registration form such offender's intent to reside in another state, . . . and then who decides to remain in this state shall, within forty-eight (48) hours of the decision to remain in the state[,]

officials pursuant to KRS 17.510(6) of the requirement that he register as a sex offender upon changing his residence to Kentucky because of his own failure to comply with Tennessee law. McBride should not be rewarded in Kentucky for his failure to register as a sex offender because he failed to comply with the sex offender laws of Tennessee. Such a holding produces an absurd result.[8]

I also dissent from the Majority's holding that the jury instructions were erroneous for not including the mens rea element of "knowingly." I agree with the Commonwealth that the Legislature intended the failure to register as a sex offender under KRS 17.510 to be a crime with absolute liability. The penalty provisions for violating KRS 17.510 are provided in subsections (11) and (12).[9] "[W]here particular language is used in one section of a statute, but omitted in another section of

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report in person to the designated law enforcement agency and update all information pursuant to subsection (h)."

[8] Cosby v. Commonwealth, 147 S.W.3d 56, 59 (Ky. 2004) (quoting Commonwealth, Central State Hospital v. Gray, 880 S.W.2d 557, 559 (Ky. 1994) (stating that "'[i]n construing statutory provisions, it is presumed that the legislature did not intend an absurd result'")).

[9] KRS 17.510(11) and (12) provide as follows:

> (11) Any person required to register under this section who violates any of the provisions of this section is guilty of a Class D felony.
>
> (12) Any person required to register under this section who knowingly provides false, misleading, or incomplete information is guilty of a Class D felony.

the same statute, it is presumed that the legislature acted intentionally and purposefully in the disparate inclusion or exclusion."[10] By including a mens rea requirement in subsection (12), but not subsection (11), it is obvious that the Legislature consciously chose to require an absolute liability standard for subsection (11). Thus, I conclude that McBride may be guilty of violating KRS 17.510(7) without proof of one of the culpable mental states defined in KRS 501.010[11] since "[t]he offense is defined by a statute other than [the] Penal Code and the statute clearly indicates a legislative purpose to impose absolute liability for the conduct described."[12] I would affirm the conviction.

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[10] Liquor Outlet, 141 S.W.3d at 385 (citing Palmer v. Commonwealth, 3 S.W.3d 763 (Ky.App. 1999)).

[11] KRS 501.010(1) states: "'Culpable mental state' means 'intentionally' or 'knowingly' or 'wantonly' or 'recklessly,' as these terms are defined in KRS 501.020."

[12] KRS 501.050(2).