

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2013 KA 1462

STATE OF LOUISIANA

VERSUS

WILLIAM WASHINGTON

*Ant. JH
TMH*

Judgment Rendered: June 6, 2014

**Appealed from the
22nd Judicial District Court
In and for the Parish of Washington
State of Louisiana
Case No. 10-CR8-107490**

The Honorable Hillary Crain, Judge Presiding

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Baton Rouge, Louisiana**

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William Washington**

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District Attorney
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State of Louisiana**

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BEFORE: KUHN, HIGGINBOTHAM, AND THERIOT, JJ.

THERIOT, J.

The defendant, William Washington, was charged by amended bill of information with failure to register as a sex offender, a violation of La. R.S. 15:542. He pled not guilty and, following a jury trial, was found guilty as charged. The defendant filed motions for new trial and post-verdict judgment of acquittal, both of which the district court denied. He was sentenced to five years at hard labor without the benefit of probation, parole, or suspension of sentence. The defendant filed a timely appeal. For the following reasons, we affirm the conviction and sentence.

ASSIGNMENT OF ERROR

On appeal, the defendant makes a single assignment of error:

- 1) The trial court erred in refusing to charge the jury on the defense of justification.

STATEMENT OF THE FACTS

On February 16, 2010, Sergeant Warren Vollaire with the Washington Parish Sherriff's Office responded to a call regarding a suspicious person walking in people's yards along La. Hwy. 1072. At the scene, Sgt. Vollaire discovered the defendant, who claimed to be looking for work. Sgt. Vollaire requested the defendant's identification, called this information into dispatch, and discovered there was a warrant out for the defendant's arrest for failure to register as a sex offender.¹ The defendant was arrested, transported to the Washington Parish Sheriff's Office, and booked into jail.

DISCUSSION

In his sole assignment of error, the defendant argues that the trial court erred in refusing to instruct the jury on the defense of justification. He

¹ The defendant was convicted of indecent behavior of a juvenile, and this court affirmed that conviction. See *State v. Washington*, 2006-0634 (La. App. 1st Cir. 11/3/06), 941 So.2d 197 (unpublished), writ denied, 2007-0113 (La. 10/12/07), 965 So.2d 393.

contends that it was physically impossible for him, as a homeless person, to provide a residential address as part of the registration process. Consequently, he argues that his failure to register as a sex offender was legally justifiable under La. R.S. 14:18.

Louisiana Revised Statutes 14:18 provides in pertinent part:

The fact that an offender's conduct is justifiable, although otherwise criminal, shall constitute a defense to prosecution for any crime based on that conduct. This defense of justification can be claimed under the following circumstances:

* * *

(5) When the crime consists of a failure to perform an affirmative duty and the failure to perform is caused by physical impossibility[.]

The sex offender registrant at the Washington Parish Sheriff's Office met with the defendant on November 30, 2009, advised him of his registration requirements, and advised him that he had three business days to register in-person at the sheriff's office. According to the defendant's testimony at trial, he did not register as a sex offender any time after he was released from jail in November of 2009 until his arrest in February of 2010 because he was homeless and was busy trying to find a place to live. After his arrest on February 16, 2010, the defendant met with the registrant, but the defendant refused to sign any of the registration documentation.

Prior to closing arguments, the parties presented argument and the district court addressed the defendant's written request that the jury be instructed on justification. Defense counsel argued that a homeless person is unable to comply with the statute due to the impossibility of giving an address. The State argued that the defendant had an address prior to entering jail and that he testified that he intended to return there after being released. According to the State, the mere fact that the occupants of that residence no

longer wanted the defendant living there because he was a sex offender did not rise to the level of justification under La. R.S. 14:18. The State further argued that not properly registering because of homelessness does not justify having convicted sex offenders in the community with their whereabouts unknown.

The court reviewed the exhibits presented by the State, including the sex offender registration forms, and indicated that most of the documents were simply acknowledgements of receipt of information regarding the requirement to register. The defendant refused to sign every document. Based on the evidence presented, the court found that the defendant failed to make a prima facie showing that his failure to register was due to a physical impossibility as required by La. R.S. 14:18. Thus, the court refused to include justification in the jury instructions.

Louisiana Code of Criminal Procedure article 807 provides:

The state and the defendant shall have the right before argument to submit to the court special written charges for the jury. Such charges may be received by the court in its discretion after argument has begun. The party submitting the charges shall furnish a copy of the charges to the other party when the charges are submitted to the court.

A requested special charge shall be given by the court if it does not require qualification, limitation, or explanation, and if it is wholly correct and pertinent. It need not be given if it is included in the general charge or in another special charge to be given.

Louisiana Revised Statutes 15:542C(1)(b) requires a sex offender to register and provide his physical address or addresses of residence. Under La. R.S. 15:542.1.2, he is required to update his information if he establishes a new or additional physical residential address. Although La. R.S. 15:542 and 15:542.1.2 both require the reporting of the “address” of the offender’s “residence,” the statutory sex offender registry scheme also contemplates a

homeless person in its registration requirements. “Residence” is defined in La. R.S. 15:541(22):

“Residence” means a dwelling where an offender regularly resides, regardless of the number of days or nights spent there. For those offenders who lack a fixed abode or dwelling, “residence” shall include the area or place where the offender habitually lives, including but not limited to a rural area with no address or a shelter.

In *State v. Nye*, the Louisiana Fourth Circuit confronted an analogous challenge to Louisiana’s sex offender registration requirement. There, the defendant challenged that his failure to register as a sex offender pursuant to La. R.S. 15:541 was excusable, arguing that the statute did not contemplate homelessness and that its requirements could not be read to apply to homeless individuals without a physical address. *State v. Nye*, 2011-0944 (La. App. 4th Cir. 4/11/12), 89 So.3d 411, 413. The Fourth Circuit rejected the defendant’s challenge, explaining:

[R]eading La. R.S. 15:542’s requirement that a sex offender furnish the physical address of a residence together with the statutory definition of “residence” provided in the statutory sex offender registry scheme, the legislature clearly contemplated that it apply to a homeless person who lacks a fixed abode or dwelling and who habitually lives in an “area or place” “with no address.” By including those provisions in the statutory sex offender registry scheme, the legislature obviously contemplated requiring homeless sex offenders with no physical address to register, at least a homeless sex offender who had an “area or place” where he “habitually” lived, to comply with the registration and notification provisions.

Id. at 415.

Here, the defendant does not argue that he had no “area or place” where he “habitually” lived at the time of his arrest. Rather, the defendant simply contends that it was physically impossible for him to comply with the sex offender registration requirements. Because the sex offender registry scheme requires homeless persons to register, the defendant was not justified in refusing to register, nor was it physically impossible for him to do so.

Therefore, the district court did not err in refusing to charge the jury on the defense of justification as the special charge was not pertinent. Accordingly, this assignment of error has no merit.

CONVICTION AND SENTENCE AFFIRMED.