STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED June 15, 2004
v	No. 245847 Saginaw Circuit Court
STEVEN LEE DASHKOVITZ, Defendant-Appellant.	LC No. 02-021744-FH

Before: Murray, P.J., and Neff and Donofrio, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction for failing to comply with the requirements of the Sex Offender Registration Act (SORA), MCL 28.721 *et seq*. Defendant was sentenced as a fourth habitual offender to forty-six months to fifteen years' imprisonment. We affirm.

I. Material Facts

On December 27, 1996, defendant was registered by Detective Cheryl Courtney as a sex offender based on his convictions for two counts of sexual battery against a boy. For purposes of registration, defendant's address of record was his mother's residence, located at 4425 West Michigan in Saginaw Township. In September 2000, defendant's case file was transferred to Cynthia Kapa, who assisted defendant in verifying his residence for purposes of the SORA. When Kapa took over defendant's case file, he was staying with his mother in Saginaw County on weekends and at his place of employment in Grand Rapids during the week.[1] As a result, Kapa assisted defendant in transferring his case file to Grand Rapids and in changing his address to the Grand Rapids address. On January 29, 2001, Kapa informed defendant that he needed to register as a sex offender "to the address where he resides the most of the week," and that he needed to go to the police post to change his address. On January 30, 2001, defendant's address of record was updated and changed to 220 Albany SW in Grand Rapids.

[1] At the time, the Grand Rapids address represented defendant's primary residence, which was a truck driving business, because defendant slept at the truck terminal at night during the week. At his place of employment, defendant had a bed, a television, and a coffeemaker. Additionally, defendant had a bed, kept clothing, and received mail at his mother's house.

On approximately December 4 or 5, 2001, defendant was terminated from his employment. According to the owner of the trucking company, Aubrey McDonald, defendant was staying in a truck equipped with a sleeper cab and owned by McDonald. After defendant was terminated, he was no longer permitted to sleep in the truck. McDonald indicated that upon his termination, defendant left the premises, and that defendant indicated to McDonald that "he was going home," although McDonald was not sure if he did or did not go home.

On December 11, 2001, defendant failed to report to his Kent County probation officer, Donald Stevens. On December 13, 2001, Stevens learned that defendant was no longer employed at the trucking company. Defendant previously informed Stevens that he considered Saginaw his home. As of December 20, 2001, defendant was an absconder, and Brad Howell, the supervisor at the Saginaw County Circuit Court probation office, began conducting surveillance on the residence at 4425 West Michigan. Howell received a tip from defendant's mother that defendant was returning to Michigan from out-of-state. On December 20, 2001, Howell saw defendant leave the residence to retrieve mail from the mailbox. At that point, Howell contacted the police, who responded and arrested defendant.

Patricia Dashkovitz, defendant's mother, clarified that defendant "came home" every weekend while he worked in Grand Rapids; however, he failed to come home on the first Saturday in December 2001. As a result, Dashkovitz filed a missing person's report. On December 17, 2001, defendant contacted Dashkovitz, and she asked a friend to pick defendant up and bring him back to Michigan. According to Dashkovitz, defendant returned home on December 20, 2001.

II. Sufficiency of the Evidence

Defendant first argues that there was insufficient evidence to support his conviction for willful failure to provide notice of a change in residence pursuant to MCL 28.725. We disagree.

In determining whether the prosecution presented sufficient evidence to sustain a conviction, we review the record de novo and consider the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime charged were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 722-723; 597 NW2d 73 (1999); *People v Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999). Additionally, statutory interpretation presents a question of law that this Court reviews de novo. *People v Nimeth*, 236 Mich App 616, 620; 601 NW2d 393 (1999).

Defendant first argues that an individual required to register under the SORA does not change his residence within the meaning of the statute until that individual establishes a new residence. The relevant portion of the SORA provided, at the time pertinent to this case:

> (1) Within 10 days after any of the following occur, 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 of the individual's new residence or domicile:

(a) The individual changes his or her residence, domicile, or place of work or education. [MCL 28.725.][2]

Additionally, the SORA defines residence (for registration and voting purposes) 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 the act. This section shall not be construed to affect existing judicial interpretation of the term residence. [MCL 28.722(f).]

As defendant indicates, the SORA does not define the term "change." "Undefined statutory terms should be given their plain and ordinary meanings, for which dictionaries may be consulted." *People v Spann*, 469 Mich 898; 668 NW2d 904 (2003). "The *Random House College Dictionary* (rev ed), p 224, defines 'change' as 'to become altered or modified.'" *Vodvarka v Grasmeyer*, 259 Mich App 499, 513; 675 NW2d 847 (2003). Thus, according to the statute, if an individual required to register under the SORA "changes" (i.e., alters or modifies) his or her residence, the individual must notify the local law enforcement agency or sheriff's department "where his or her new residence or domicile is located" within ten days of the individual changing his or her residence. MCL 28.725(1)(a).

Defendant's argument, that a change in residence occurs only when an individual establishes a new residence, conflicts with this plain meaning of the statute. As noted above, a change in residence occurs when an individual alters or modifies his or her residence, which would, by definition, include the point in time that the individual no longer maintains a residence at a particular place. Here, defendant's residence "changed" (from the Grand Rapids address to the Saginaw address) when he was discharged from his employment, as defendant was no longer permitted to reside on the premises. It was ten days from this point in time that defendant was required to notify the local law enforcement agency or sheriff's department having jurisdiction where his new residence or domicile was located, which he failed to do.

Even if an individual's address did not "change" (for purposes of the statute) until the individual established a new residence, we find that there was sufficient evidence to support defendant's conviction for failure to comply with the SORA. Because defendant had two residences for purposes of the SORA, he was required to use the place where he resided the greater part of the time as his official residence. MCL 28.722(f). Prior to December 4, 2001, defendant primarily resided at his place of employment, and therefore, utilized that address to register. When defendant was terminated from his position, he no longer had two residences,

[2] Pursuant to MCL 28.729, an individual required to register under the act who willfully violates the act is guilty of a felony. For purposes of this issue, defendant raises no argument regarding the "willfulness" of his conduct (although it is raised and addressed in the second issue), and merely focuses on whether there was sufficient evidence to demonstrate that he actually "changed" his residence. Additionally, defendant does not dispute that he was required to register as a sex offender under the SORA.

and at that point his mother's house became his primary residence. Thus, defendant's residence "changed" in accordance with the statute, and defendant was required to provide notification of that change.

Defendant further contends that he did not reside at Dashkovitz's house because he had not moved back there and he was not present there as of December 4 or 5, 2001. The evidence in this case demonstrated that defendant's secondary residence was Dashkovitz's house, where defendant habitually slept, kept personal belongings, received mail, and had a regular place of lodging. Thus, when defendant was discharged from his employment and was no longer permitted to stay on the company's premises, his primary residence or domicile "changed" for purposes of the SORA. Accordingly, after reviewing the evidence in the light most favorable to the prosecution, *Johnson, supra*, we find that there was sufficient evidence to support defendant's conviction for willful failure to comply with the SORA.

III. Stipulation

Defendant next argues that the trial court abused its discretion when it refused to accept defendant's offer to stipulate that he was subject to the requirements of the SORA. Although we agree that the trial court abused its discretion by refusing to accept defendant's stipulation, we find such error to be harmless.

A trial court's decision whether to admit evidence is reviewed for an abuse of discretion. *People v McDaniel*, 469 Mich 409, 412; 670 NW2d 659 (2003). If there is an underlying question of law, such as whether admissibility is precluded by a rule of evidence, then this Court reviews such questions de novo. *Id*.

At trial, defendant offered to stipulate that he was subject to the requirements of the SORA, in an attempt to avoid having the prosecution establish the identity of the predicate offenses requiring defendant to register under the act. Defendant, relying on *Old Chief v United States*, 519 US 172; 117 S Ct 644; 136 L Ed 2d 574 (1997) and *People v Swint*, 225 Mich App 353; 572 NW2d 666 (1997), argues that the trial court abused its discretion by refusing to accept his stipulation.[3] We agree.

In *Old Chief*, the defendant, who was being prosecuted for the crime of felon in possession of a firearm, requested that the trial court require the prosecution to refrain from mentioning the name and nature of the defendant's underlying felony (assault causing serious bodily injury), except to state that the defendant had been convicted of a crime punishable by imprisonment exceeding one year. *Old Chief, supra* at 175. The trial court rejected the defendant's offer of stipulation, and the defendant was subsequently convicted. *Id*. at 175-177. The United States Supreme Court reversed the defendant's conviction, determining that although the name of the prior offense contained in the record of conviction was relevant, FRE 403 precluded the admission of the evidence the defendant sought to exclude, and that the risk of unfair prejudice substantially outweighed the probative value of the evidence. *Id*. at 178. The

[3] Although the details of defendant's proposed stipulation were not stated on the record, defendant apparently offered to stipulate that he was required to register under the SORA.

Court indicated that there "can be no question that evidence of the name or nature of the prior offense generally carries a risk of unfair prejudice to the defendant," but that the risk would be substantial "whenever the official record offered by the Government would be arresting enough to lure a juror into a sequence of bad character reasoning." *Id*. at 185.

Relying on *Old Chief*, this Court similarly found an abuse of discretion where the trial court refused to permit the defendant to stipulate that he committed felonious assault rather than permitting the court and the prosecution to inform the jury that defendant was convicted of assault with a dangerous weapon. *Swint*, *supra* at 379. However, the *Swint* Court went one step further than *Old Chief* and determined that the preserved, nonconstitutional error presented in *Swint* was subject to the harmless error analysis. *Id*. Applying the harmless error test, the Court determined that the error was harmless in light of the overwhelming evidence presented at trial. *Id*.

We find *Old Chief* and *Swint* to be persuasive and therefore conclude that the trial court abused its discretion when it permitted the prosecution to elicit testimony regarding defendant's specific convictions rather than accepting defendant's offer to stipulate that he was required to register under the SORA. As the *Swint* Court stated, "FRE 403, which is identical to MRE 403, precluded the admission of evidence regarding the name and nature of the defendant's underlying felony in light of the offered stipulation to prevent, as the defendant argued, 'generalizing a defendant's earlier bad act into bad character and taking that as raising the odds that he did the later bad act not charged." *Swint*, *supra* at 378. Thus, such evidence is "improper propensity evidence that creates a prejudicial effect outweighing relevance." *Id*.

Although we find that the trial court abused its discretion when it admitted the evidence of the identity of defendant's prior convictions, we find that any error committed was harmless. *Swint*, *supra*. Defendant, while acknowledging that if the stipulation had been accepted the jury would still have know that defendant previously committed a sex offense, nonetheless contends that the evidence was highly prejudicial because it inferred that defendant was "likely a homosexual pedophile and a recidivist." Here, even if the identity of defendant's prior convictions was eliminated, the evidence would still demonstrate that defendant had been convicted of two different SORA offenses, and that he had twice been notified of the requirements of the SORA. Thus, such evidence is certainly relevant to whether defendant had knowledge of the SORA requirement that he must report a change of address within ten days of the change. This significantly hampers defendant's argument that the jury convicted him for being a "recidivist."

Additionally, the error was harmless in light of the other evidence of defendant's guilt. Defendant was convicted of failure to comply with the requirements of the SORA, specifically for failing to provide notification of his change of address. The evidence demonstrates that on December 4 or 5, 2001, defendant was terminated from his employment, and could no longer stay on his former employer's premises. As of December 20, 2001, when defendant was located and arrested at his secondary residence, defendant had not provided notification of his change in address.

Defendant contends that the error was not harmless because the prosecution failed to demonstrate that he "willfully" failed to provide notification of his change of address. However, the evidence demonstrated that defendant was fully aware of the SORA requirements because he

was instructed on those requirements on two occasions by two separate individuals, Courtney and Kapa. As defendant was twice informed of the SORA requirements, the jury could easily infer that defendant was fully aware of the requirements, yet willfully failed to comply with those requirements by failing to provide notification of his change of address.

Finally, the trial court gave the jury a limiting instruction on this precise issue, i.e., that evidence of defendant's prior convictions was only to be utilized in deciding whether defendant was required to register as a sex offender.[4] Jurors are presumed to follow the trial court's instructions. *People v Graves*, 458 Mich 476, 486-487; 581 NW2d 229 (1998). Accordingly, any error committed by the admission of the evidence was harmless.

Affirmed.

/s/ Christopher M. Murray
/s/ Janet T. Neff
/s/ Pat M. Donofrio

[4] The trial court instructed the jury, in relevant part, as follows:

> You have heard testimony from -- that was introduced showing that the defendant committed crimes or improper acts for which he is not on trial. If you believe this evidence, you must be very careful only to consider it for certain purposes. You may only think about whether this evidence tends to show whether the defendant was required to register as a sex offender.
>
> You must not consider the evidence for any other purposes. For example, you must not decide that it shows that the defendant is a bad person or that he is likely to commit crimes. You must not convict the defendant her because you think he is guilty of other bad acts or conduct.