

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
February 9, 2012

v

DANNY LEE OSWALD,

Defendant-Appellant.

No. 302643
Midland Circuit Court
LC No. 10-004512-FH

Before: SERVITTO, P.J., and TALBOT and K. F. KELLY, JJ.

PER CURIAM.

Danny Lee Oswald appeals as of right a jury trial conviction of violating the Sex Offenders Registration Act (SORA)¹ by willfully failing to notify the Michigan State Police at least ten days before he changed his residence or domicile to another state.² Oswald was found not guilty of willfully failing to report a change of residence or domicile within the state.³ Oswald was sentenced as a fourth offense habitual offender⁴ to a term of 13 months to 15 years' imprisonment. We affirm.

Oswald was convicted of three counts of first-degree criminal sexual conduct (CSC I).⁵ After he was paroled, Oswald began living with his mother at her residence in Midland County, which he reported to law enforcement as required by SORA. Sometime before Mother's Day 2010, Oswald cut off his tether bracelet and absconded. During a quarterly SORA compliance check, law enforcement officials discovered that Oswald had failed to comply with the Act's

¹ MCL 28.721 *et seq.*

² The Information and Judgment of Sentence identify MCL 28.729 as the statute under which Oswald was charged and convicted. MCL 28.729, however, is the statute regarding the penalty for violating SORA. The section under which Oswald was charged was former MCL 28.725, as amended by 2011 PA 17, and his conviction was pursuant to former MCL 28.725(4).

³ Former MCL 28.725(1).

⁴ MCL 769.12.

⁵ MCL 750.520b(1)(a) (victim under 13 years of age).

ongoing reporting requirements. Law enforcement then went to Oswald's last reported address, and his mother, Kimberly Potrafka, explained that Oswald had been gone for several months. Oswald was arrested in July 2010 and was charged with violating SORA by failing to report a change of address.⁶

After the prosecution entered its case-in-chief, Oswald moved for a directed verdict, arguing that because he was homeless, he was not required to comply with SORA's reporting requirements. The trial court denied Oswald's motion, stating that there was a question of fact regarding whether he had a residence or domicile at the time he committed the charged offenses.

On appeal, Oswald argues that the trial court abused its discretion by denying his motion for a directed verdict. We disagree. This Court review's a trial court's decision on a motion for a directed verdict de novo.⁷ Viewing the evidence in a light most favorable to the prosecution, we find that the trial court did not err in finding that there was a question of fact regarding whether Oswald had a residence or domicile at the time he committed the charged offenses.⁸ Additionally, at the time Oswald moved for a directed verdict, the only theory being raised was that he willfully failed to report a change of residence or domicile within Michigan.⁹ Because Oswald was not found guilty under this theory, and makes no argument that presenting the theory under which he was convicted prejudiced him in any way, the issue is moot.¹⁰

Next, Oswald contends that the trial court abused its discretion when it denied his motion for a mistrial. We disagree. We review the trial court's decision on a motion for a mistrial for an abuse of discretion.¹¹ An abuse of discretion occurred "if the trial court chose an outcome that is outside the range of principled outcomes."¹²

Oswald contends that the prosecution made a misstatement of the law during its rebuttal closing argument by indicating that the SORA reporting requirements were triggered when Oswald left the state. Thus, he was entitled to a mistrial. Reading the prosecution's statements in context, we find that the prosecution was explaining that if Oswald established a residence or

⁶ Former MCL 28.725.

⁷ *People v Mahew*, 236 Mich App 112, 124-125; 600 NW2d 370 (1999).

⁸ *Id.*

⁹ Former MCL 28.725(1).

It was not until after Oswald subsequently testified regarding time he spent outside of Michigan that the additional theory was raised that he willfully failed to appropriately notify law enforcement when he changed his residence or domicile to another state in violation of former MCL 28.725(4).

¹⁰ *People v Briseno*, 211 Mich App 11, 17; 535 NW2d 559 (1995) ("Where a subsequent event renders it impossible for this Court to fashion a remedy, the issue becomes moot.")

¹¹ *People v Schaw*, 288 Mich App 231, 236; 791 NW2d 743 (2010).

¹² *Id.*

domicile outside of Michigan, then he was required to inform authorities. Additionally, the trial court properly instructed the jury that the prosecution had to prove beyond a reasonable doubt that Oswald “willfully failed to notify the Michigan State Police identifying the new state of his new residence or domicile and, if known, any new address in the other state at least ten days before he changed his residence or domicile to the other state.” “[J]urors are presumed to follow their instructions.”¹³ As such, the trial court did not abuse its discretion.¹⁴

Affirmed.

/s/ Deborah A. Servitto

/s/ Michael J. Talbot

/s/ Kirsten Frank Kelly

¹³ *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998).

¹⁴ *Schaw*, 288 Mich App at 236.