STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED February 12, 2013
v	No. 310280 Kalamazoo Circuit Court
ANDREW ANTHONY BLACKMUN, Defendant-Appellant.	LC No. 2012-000124-FH

Before: MURPHY, C.J., and DONOFRIO and GLEICHER, JJ.

PER CURIAM.

A jury convicted defendant Andrew Anthony Blackmun of failure to comply with the sex offender registration act (SORA), MCL 28.729, for failing to report his enrollment at an institution of higher education. The prosecutor presented sufficient evidence from which the jury could conclude beyond a reasonable doubt that defendant willfully failed to report this information and the trial court did not abuse its discretion in excluding certain evidence that defendant remedied his statutory violation after he was charged with this offense. We affirm.

I. BACKGROUND

Defendant was convicted of second-degree criminal sexual conduct in 1998 and was thereafter ordered to register as a sex offender beginning in 2001. The Legislature made several revisions to the statutory SORA provisions effective July 1, 2011. On July 28, 2011, defendant reported to the Kalamazoo Department of Public Safety for his biannual mandatory registration update.[1] Officer Michael Schulte provided defendant with an "Explanation of Duties" form, describing the new SORA provisions in detail. Defendant was required to place his initials next to each item on the form to signify that he had "read the . . . requirements and/or had them read to" him. Item 4(g) provided, "Upon registering as a sex offender, I am required by law to provide . . . [t]he name and address of any school that I attend or that has accepted me if I plan to attend. MCL 28.727(1)(a)." Item 6(c) further informed defendant that he was "required by law

[1] Defendant was actually 13 days late in updating his registration pursuant to MCL 28.725a(3)(b)("A tier II offender shall report not earlier than the first day or later than the fifteenth day of each January and July after the initial verification or registration.").

to report in person within three business days to a local law enforcement agency . . . [t]he name and location of the school upon enrolling . . . at an institution of higher learning. MCL 28.725(1)(c)."[2]

In September 2011, defendant began attending classes at Kalamazoo Valley Community College (KVCC). Defendant did not personally report this information to local law enforcement, either immediately or within three business days. After defendant's enrollment at KVCC, the college's Department of Public Safety learned that defendant was required to register as a sex offender and investigated to ensure his compliance. Officer Majida Beattie discovered that defendant had last reported in July 2011 and had not since updated his registry to include his enrollment at KVCC. Beattie arrested defendant on January 12, 2012. At that time, defendant made the following confession that was transcribed by the officer and signed by defendant:

> I, Andrew Blackmun, date of birth 6-19-1979, was charged with CSC 2nd with the [sic] Van Buren County. I received probation time but no jail time. I was charged in 1998. I was charged in 1998 and—and was accused of the charge and the offense in 1995.
>
> I do not remember signing the explanation of duties. I last verified my address with the City of Portage in January.[3]
>
> I am currently taking classes at KVCC but did not list—did not list it on my sex offender registry.

Defendant was subsequently charged with violating the SORA requirements. On January 18, 2012, after his release from jail, defendant reported to the Portage Police Department and included his KVCC attendance in his registration information.

At trial, defendant claimed he was "unaware" that he had to register his college enrollment along with his residence because he did not actually scrutinize the "Explanation of Duties" form he signed until January 2012, when he went over the requirements with a Portage police officer. The jury convicted defendant of failing to comply with the SORA nevertheless. The court later sentenced defendant to one year of probation and one day in jail, time served.

II. SUFFICIENCY OF THE EVIDENCE

Defendant contends that the prosecutor presented insufficient evidence to support his conviction, specifically that he "willfully" failed to register his college attendance. Rather, defendant claims ignorance of his duties under the law. When examining a challenge to the

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[2] The statute actually requires a registrant to "immediately" report this information.

[3] Despite defendant's January 12, 2012 statement that he had already reported for his biannual SORA registration, it appears that defendant did not actually appear at the Portage Police Department until January 18, 2012. When making his confession to Officer Beattie, defendant provided inaccurate information, either purposefully or unintentionally.

sufficiency of the evidence, we review the evidence de novo in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the prosecutor proved the elements of the charged offense beyond a reasonable doubt. *People v Tombs*, 472 Mich 446, 459; 697 NW2d 494 (2005). Circumstantial evidence, and the reasonable inferences drawn from that evidence, can constitute satisfactory proof of the elements of the crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). "[B]ecause it can be difficult to prove a defendant's state of mind," the jury's resolution of such issues can be supported by even "minimal circumstantial evidence" and may be inferred from the evidence. *People v Kanaan*, 278 Mich App 594, 622; 751 NW2d 57 (2008). It is the sole province of the jury to weigh the evidence and adjudge witness credibility and we may not second guess those considerations. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), mod 441 Mich 1201 (1992). Accordingly, we must "draw all reasonable inferences and make credibility choices in support of the jury verdict." *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

Defendant was convicted of failure to comply with the SORA, MCL 28.729, based on his failure to register his enrollment as a student at an institution of higher education in contravention of MCL 28.725(1)(c). MCL 28.725(1) provides in relevant part:

> An individual required to be registered under this act who is a resident of this state shall report in person and notify the registering authority having jurisdiction where his or her residence or domicile is located immediately after any of the following occur:
>
> * * *
>
> (c) The individual enrolls as a student with an institution of higher education, or enrollment is discontinued.

MCL 28.729 provides in turn that "an individual required to be registered under this act who willfully violates this act is guilty of a felony."

Generally, "'ignorance of the law or a mistake of law is no defense to a criminal prosecution.'" *People v Weiss*, 191 Mich App 553, 561; quoting *Cheek v United States*, 498 US 192, 199; 111 S Ct 604; 112 L Ed 2d 617 (1991). With "'[t]he proliferation of statutes and regulations,'" however, it has become "'difficult for the average citizen to know and comprehend the extent of the duties and obligations imposed'" upon them. *Weiss*, 191 Mich App at 561, quoting *Cheek*, 498 US at 199-200. It is in that spirit that the Legislature has added an element of "willfulness" to certain statutory violations, such as the failure to report under the SORA.

To "willfully" violate the SORA "requires something less than specific intent, but requires a knowing exercise of choice." *People v Lockett (On Rehearing)*, 253 Mich App 651, 655; 659 NW2d 681 (2002). In *Lockett*, for example, this Court found sufficient evidence where the defendant's probation officer testified that he notified all probationers of their duty to report for SORA-registration updates at the local police department and yet the defendant failed to do so. *Id.* at 656. In relation to another criminal statutory violation, this Court has defined willfulness as "impl[ying] knowledge and a purpose to do wrong." *People v Greene*, 255 Mich

App 426, 442; 661 NW2d 616 (2003). In relation to civil matters, our Supreme Court has defined the term as:

> "Willful" is defined as "deliberate, voluntary, or intentional." [*Random House Webster's College Dictionary* (1991).] "Willful implies opposition to those whose wishes, suggestions, or commands ought to be respected or obeyed: a willful son who ignored his parents' advice." *Id.* "'[W]illful" means action taken knowledgeably by one subject to the statutory provisions in disregard of the action's legality. No showing of malicious intent is necessary. A conscious, intentional, deliberate, voluntary decision properly is described as willful, "regardless of venial motive.'" *People v Hegedus*, 432 Mich 598, 605 n 7; 443 NW2d 127 (1989) ([quotation marks and] citations omitted). [*Brackett v Focus Hope, Inc*, 482 Mich 269, 276; 753 NW2d 207).]

While defendant claims ignorance, he never challenged that he actually signed the July 2011 "Explanation of Duties" form and initialed the document next to two separate descriptions of his duty to notify law enforcement of his college attendance. As defendant was notified in writing of his duties under the law and acknowledged receipt of those written warnings, he cannot establish that it was too difficult for him as an average citizen to know and comprehend the extent of the duties and obligations imposed by the SORA. See *Weiss*, 191 Mich App at 561. Further, defendant admitted that he did not ask questions of Officer Schulte regarding the "Explanation of Duties" on the form; rather, defendant simply signed the documents provided by the officer. Moreover, defendant never claimed that he told Officer Schulte that he needed assistance because he "[s]truggle[s] with spelling and . . . pronunciation."

The prosecutor presented sufficient evidence that defendant acted willfully in failing to timely notify local law enforcement of his college enrollment. Defendant admitted that he did not read the "Explanation of Duties" form, claiming that he had been harassed by the police in the past and wanted to leave the station expeditiously. Defendant therefore took on his duties with purposeful ignorance. The jury was free to disbelieve defendant's claimed ignorance and determine that defendant was aware of his obligation but failed to fulfill it. See *People v Perry*, 460 Mich 55, 63; 594 NW2d 477 (1999) ("a jury is free to believe or disbelieve, in whole or in part, any of the evidence presented").

III. EXCLUSION OF DEFENSE WITNESS

Defendant argues that the trial court erred in excluding the testimony of his proffered witness that defendant reported his college enrollment while updating his registry on January 18, 2012. Specifically, defendant wanted to present the testimony of Portage Police Officer Paul Sherfield that defendant went to the police department "directly" after being released from jail. Defendant asserted that Sherfield's testimony was relevant to support his claim that once he learned of his duty to report his college enrollment, he did so, thereby negating the prosecutor's theory of willful noncompliance. The trial court excluded the evidence as follows:

> While pursuant to the defense's claim here as to that it goes to the state of mind or the knowledge, the scienter here, even if that—this evidence did make the existence of a fact of consequence with regard to that defense more probable or

> less probable than it would be without the evidence, and I—and I don't think it does, but even if it did that evidence would need to be excluded because its probative value, however slight that may be, is substantially outweighed by the danger of confusion of the issues or misleading the jury. It's simply not relevant under the rules. If it is, it's excluded under MRE 403. So the officer will not be allowed to testify to registration in January of 2012.

We review for an abuse of discretion a trial court's decision to exclude evidence. *People v Yost*, 278 Mich App 341, 353; 749 NW2d 753 (2008). "A trial court abuses its discretion when it selects an outcome that does not fall within the range of reasonable and principled outcomes." *Id*. "MRE 403 excludes evidence, even if relevant, only if its probative value is 'substantially outweighed' by the danger of unfair prejudice, confusion of the issues, or misleading the jury." *People v Feezel*, 486 Mich 184, 198; 783 NW2d 67 (2010).

Defendant sought to admit the police officer's testimony to show that he registered properly in January 2012, and suggested at trial that this was the first time anyone carefully explained that aspect of the SORA requirements to him. Whether to admit Sherfield's testimony was a close evidentiary question and therefore the trial court's decision, even if we might have ruled otherwise, was not an abuse of discretion. *People v McGhee*, 268 Mich App 600, 614; 709 NW2d 595 (2005). The relevant content of Sherfield's proposed testimony—that defendant complied with MCL 28.725(1)(c) after he was charged in this case—was presented to the jury. Defendant testified that he "didn't have an opportunity to really to [sic] go over the information until the Portage law enforcement, Paul, him and I went in his office and we sat down and went over all the information together." Defendant then told the officer of his enrollment at KVCC. Accordingly, defendant was not denied the right to present his defense.

Further elucidation of this information arguably could have confused the issues before the jury, misled the jury, or been overly prejudicial to the prosecution. The pertinent question was whether defendant willfully violated the SORA reporting requirements in the fall of 2011. The jury knew that defendant voluntarily decided not to review his statutory duties in July 2011 and further information regarding his subsequent decision to become educated after he was charged with a SORA reporting violation would have muddied the waters. Accordingly, although the proffered evidence would have been relevant to some extent, we find no abuse of discretion in excluding it.

Affirmed.

/s/ William B. Murphy
/s/ Pat M. Donofrio
/s/ Elizabeth L. Gleicher