STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: August 4, 2021)

STATE OF RHODE ISLAND	:	
	:	
v.	:	**C.A. No. P2-2018-3367A**
	:	
TERRENCE LATIMER	:	

DECISION

THUNBERG, J. Before the Court for decision is an appeal of a Magistrate's decision denying the Defendant's, Terrence Latimer (Defendant or Mr. Latimer), Motion to Dismiss pursuant to Rule 9.1 of the Superior Court Rules of Criminal Procedure. Jurisdiction is pursuant to G.L. 1956 § 8-2-11.1(d).

I

Facts and Travel

The Defendant is charged, by way of Criminal Information, with one count of failing to register his address as a sex offender with the Providence Police Department in violation of G.L. 1956 §§ 11-37.1-3, 11-37.1-4, and 11-37.1-10. (Criminal Information at 1.) In April 1992, Defendant was found guilty of "aggravated felony sexual assault" in the State of New Hampshire. *Id.* at 3, 50. In 2003, Defendant was found guilty of a "duty to report" charge in New Hampshire; approximately one year later, in 2004, he was found guilty of "failure to register as a sex offender"; and, in 2009, Defendant was found guilty of "change name, alias, address, duty to inform." *Id.* at 54, 55, 59; *see also* State's Mem. of Law in Supp. of Obj. to Def.'s Mot. to Dismiss Pursuant to Rule 9.1 (State's Mem.) at 2. According to the exhibits attached to the Criminal Information,

Defendant has a registry start date of June 29, 2009 and an end date of July 23, 2021 and is required to register on an annual basis. (Criminal Information at 17.)

At some point prior to February 9, 2018, Defendant moved to Rhode Island and registered as a sex offender with the Providence police. *See id.* at 17. On that date, the Rhode Island State Police went to 16 1/2 Lisbon Street, Apartment 1, in Providence, Rhode Island, the address at which Defendant registered, to execute a bench warrant issued five years earlier for his failure to appear at an ability to pay hearing in reference to an original charge of "leaving the scene of an accident." *Id.* at 3. When police arrived at that address, the occupant of the apartment informed them that she had resided there for about one year and that Defendant had never resided with her, nor had she ever seen him. *Id.* Police also spoke to a neighbor who lived across the street from that address for thirteen years who had never seen Defendant. *Id.* On February 16, 2018, Defendant turned himself in and provided a current address of 46 Victoria Street, Apartment 2, Providence, Rhode Island. *Id.* The State filed the Criminal Information charging the Defendant on November 28, 2018. *Id.* at 1.

On November 12, 2019, the Defendant moved to dismiss the information for lack of probable cause pursuant to Rule 9.1 of the Superior Court Rules of Criminal Procedure and G.L. 1956 § 12-12-1.7. In his initial brief, Defendant contended that because he was convicted on April 2, 1992, nearly three months prior to the effective date (July 1, 1992) of the registration statute, § 11-37-16, he was not required to register. (Def.'s Mem. of Law at 1-2 (citing *State v. Santos*, 870 A.2d 1029 (R.I. 2005).) Defendant also submitted a Supplemental Memorandum of Law, in which he argued that the New Hampshire "Duty to Inform" statute is not "substantially the equivalent" to the Rhode Island Sex Offender Registration statute, and consequently, his three misdemeanor convictions in New Hampshire cannot serve as the basis for a duty to register. *See* Def.'s Suppl.

Mem. at 1-7. Next, Defendant argued that the General Assembly intended to take out the "failure to register" from the enumerated criminal offenses requiring further registration because it eventually repealed § 11-37.1-2(8) in 2018. *Id.* at 8. Lastly, Defendant contended that § 11-37.1-2(f)(8) is void for vagueness. *Id.* at 9.

The State filed a memorandum of law in support of an objection to Defendant's motion on February 17, 2020. In response, the State contended that at the time the arrest warrant was issued, the information and attached exhibits demonstrated probable cause that he was a person convicted of offenses requiring annual registration. (State's Mem. at 6.) The State maintained that Defendant was subject to registration based upon his 1992 and 2009 convictions, because they would both require registration if the offenses were committed in this jurisdiction; in other words, these offenses are "substantially the equivalent." *Id.* More specifically, the State argued that "Defendant's aggravated felony sexual assault charge is substantially the equivalent of RI's first degree child molestation sexual assault R.I.G.L. § 11-37-8.1" and that "duty to inform in NH is substantially the equivalent of a violation of notification of local law enforcement agencies of changes in address R.I.G.L. § 11-37.1-9." *Id.* The State relied on *State v. Morris*, No. P2-2009-2087A, 2010 WL 197378 (R.I. Super. Jan. 11, 2010), a Superior Court decision, to support its position and to distinguish *Santos*. *Id.* at 7.

A Superior Court Magistrate heard arguments from the parties on October 14, 2020. After reviewing the memoranda and considering the arguments, the Magistrate issued a bench decision on November 5, 2020, in which he denied Defendant's motion. The Magistrate, in his bench decision, found that Defendant's duty to register "initially comes from a 1992 conviction in the State of New Hampshire . . . ." (Tr. 5:10-11, Nov. 5, 2020.) The Magistrate also noted that he reviewed *Santos*, the Supreme Court case cited by Defendant, and *Morris*, a Superior Court case

interpreting an additional subsection of the statute, which was cited by the State. *Id.* at 5-6; *see* Def.'s Mem. at 1-2; State's Mem. at 6-7. He noted that the *Morris* decision provided "excellent guidance." (Tr. 6:15, Nov. 5, 2020.)

The Magistrate held that, in accordance with the standard of review, he reviewed the information package "giving [the State] every reasonable inference" including that "if the defendant upon moving to Rhode Island at some point did in fact register, as it says in the information package, that he was registered under the registration requirements and that they did have it on file with the Rhode Island Sex Offender Registry," and further that "[Defendant] knew he had an obligation and duty to register once he came to Rhode Island." *Id.* at 7:2-3, 6-11, 11-13. He found that "giving the state those reasonable inferences, there's enough information within this information package to establish there was an offense committed that required registration and that the defendant in fact at some point had a duty to register, and that subsequent to that he failed to register a change of address." *Id.* at 7:14-20.

Ultimately, the Magistrate held that the State met its burden "in establishing sufficient information to establish sufficient probable cause to believe that the offense was committed and that the defendant committed it." *Id.* at 8:5-9. However, he did agree with Defendant that the "convictions . . . incurred in New Hampshire for failing to register a change of address in New Hampshire . . . alone would not have been grounds to establish probable cause in Rhode Island" because it does not have a similar statute regarding the failure to register a change of address. *Id.* at 8:11-15.

The Magistrate also addressed Defendant's "void for vagueness" argument, noting that although in plain language it may make sense that failure to register cannot be a crime of violence

against a minor, the General Assembly "specifically defines and included a failure to register as a crime of violence against a minor," which causes this argument to fail. *Id.* at 10:5-7.

The Magistrate concluded his decision by denying Defendant's Rule 9.1 motion, noting that in § 11-37.1-3(d), there is no time requirement, therefore "anyone who has to register in a different state where that crime would have been a registrable offense in Rhode Island would still have to register." *Id.* at 11:1-4.

Defendant filed a timely Notice of Appeal on November 9, 2020. Defendant argues that the Magistrate erred in denying his motion to dismiss because: (1) "[a] person who was convicted of a sex offense before July 1, 1992, is not required to register under Rhode Island law"; (2) "[t]he New Hampshire Duty to Inform Statute is not 'substantially the equivalent' to the Rhode Island 'Sexual Offender Registration and Community Notification Act'"; (3) the General Assembly "intended to take out *failure to register* from the enumerated 'Criminal offense against a victim who is a minor' so as to no longer require an offender to register for the crime of failing to register"; and (4) § 11-37.1-2(f)(8) "is void for vagueness because failure to register cannot be a 'Criminal offense against a victim who is a minor.'" (Def.'s Notice of Appeal of Magistrate's Decision.)

II

Standard of Review & Applicable Law

1

Appeal of Magistrate Decision

G.L. 1956 § 8-2-11.1(d) permits an aggrieved party to appeal an order entered by a magistrate to a justice of the Superior Court. Rule 2.9(h) of the Superior Court Rules of Practice governs the standard by which this Court reviews the decision:

> "The Superior Court justice shall make a de novo determination of those portions to which the appeal is directed and may accept, reject, or modify, in whole or in

part, the judgment, order, or decree of the magistrate. The justice, however, need not formally conduct a new hearing and may consider the record developed before the magistrate, making his or her own determination based on that record whether there is competent evidence upon which the magistrate's judgment, order, or decree rests. The justice may also receive further evidence, recall witnesses or recommit the matter with instructions."

2

Rule 9.1 Motion to Dismiss

Pursuant to Rule 9.1 of the Superior Court Rules of Criminal Procedure,

"A defendant who has been charged by information may, within thirty (30) days after the defendant has been served with a copy of the information, or at such later time as the court may permit, move to dismiss on the ground that the information and exhibits appended thereto do not demonstrate the existence of probable cause to believe that the offense charged has been committed or that the defendant committed it. The motion shall be scheduled to be heard within a reasonable time."

"'When addressing a motion to dismiss a criminal information, a [Superior Court] justice is required to examine the information and any attached exhibits to determine whether the state has satisfied its burden to establish probable cause to believe that the offense charged was committed and that the defendant committed it.'" *State v. Martini*, 860 A.2d 689, 691 (R.I. 2004) (quoting *State v. Fritz*, 801 A.2d 679, 682 (R.I. 2002) (brackets in original)). This review to determine probable cause is limited to '"the four corners of the information package,"' *State v. Baillargeron*, 58 A.3d 194, 197 (R.I. 2013) (quoting *State v. Young*, 941 A.2d 124, 128 (R.I. 2008)), and the State is entitled to "the benefit of every reasonable inference" in favor of a probable cause finding. *State v. Jenison*, 442 A.2d 866, 876 (R.I. 1982).

"The probable-cause standard applied to a motion to dismiss is the same as that for an arrest." *State v. Aponte*, 649 A.2d 219, 222 (R.I. 1994). '"Probable cause to arrest exists when the facts and circumstances within the police officer's knowledge and of which he has reasonably trustworthy information are sufficient to warrant a reasonable person's belief that a crime has been

committed and that the person to be arrested has committed the crime."' *Horton v. Portsmouth Police Department*, 22 A.3d 1115, 1122 (R.I. 2011) (quoting *State v. Girard*, 799 A.2d 238, 249 (R.I. 2002)).

3

Registration Statute

Section 11-37.1-3 defines persons required to register under the Sexual Offender Registration and Community Notification Act. Specifically, § 11-37.1-3(a) requires that

> "[a]ny person who, in this or *any other jurisdiction*: (1) has been convicted of a criminal offense against a victim who is a minor, (2) has been convicted of a sexually violent offense, (3) has been determined to be a sexually violent predator, (4) has committed an aggravated offense as defined in § 11-37.1-2, (5) is a recidivist, as defined in § 11-37.1-4, (6) has been convicted of a federal offense, (7) has been convicted of a foreign offense, (8) has been convicted of a military offense, or (9) has been convicted of a violation of § 11-37.1-10 shall be required to register his or her current address with the local law enforcement agency having jurisdiction over the city or town in which the person having the duty to register resides for the time period specified in § 11-37.1-4." (Emphasis added.)

Moreover, § 11-37.1-3(d), added in 2006, states

> "If a person is registered as a sex offender in another jurisdiction for an offense which, if committed within the jurisdiction of this state, would require the person to register as a sex offender, then that person, upon moving to or returning to this state, shall register as a sex offender in the same manner as if the offense were committed within Rhode Island."

The General Assembly has also defined the term "[c]riminal offense against a victim who is a minor" in § 11-37.1-2(f), enumerating certain offenses and "any offense in another jurisdiction that is substantially the equivalent." Prior to a 2018 change in the statute, one of these enumerated offenses included a violation of § 11-37.1-10, which is the penalty section for a failure to register.[1]

[1] Section 11-37.1-10(a) reads, in relevant part:

> "Any person who is required to register or verify his or her address or give notice of a change of address or residence who knowingly fails to do so shall be guilty of a felony

The statute was later amended to delete this enumerated offense from the definition of "[c]riminal offense against a victim who is a minor." *See* § 11-37.1-2(f).

III

Analysis

A

Duty from 1992 Conviction

The Defendant, relying in large part on *Santos*, argues that a person convicted of a sex offense in another state before July 1, 1992 need not register in Rhode Island. (Def.'s Mem. at 1.) The State, on the other hand, cites *Morris*, a decision of this court interpreting § 11-37.1-3(d), a more recent section of the registration statute, in support of its position. (State's Mem. at 6-7.)

In *Santos*, the Supreme Court addressed the question of whether "a person convicted of sexual assault and incarcerated before July 1, 1992, but released after that date, was required to register as a sexual offender pursuant to the registration statute that was in existence at the time of the prisoner's release. . . ." *Santos*, 870 A.2d at 1030. In that case, the Supreme Court interpreted § 11-37-16,[2] holding that § 11-37-16(a) "*defines the universe* of those who were, or are, under a legislative imposed duty to register." *Id.* at 1033. The Court explained in a footnote that this "universe has been clearly defined . . . as consisting of '[a]ny person *who since July 1, 1992, has been, or shall hereafter be, convicted* of any offense in violation of this chapter. . ." *Id.* at 1033

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and, upon conviction, be imprisoned not more than ten (10) years, or fined not more than ten thousand dollars ($10,000), or both."

[2] Section 11-37-16 was repealed in 1996, but "is still effective with respect to a limited class of individuals." *Santos*, 870 A.2d at 1030 n.1. "That is because G.L. 1956 § 11-37.1-18 of the subsequently enacted registration statute contains a savings clause stating that '[n]othing in this section shall be construed to abrogate any duty to register which exists or existed under the provisions of former § 11-37-16.'" *Id.*

n.6. Consequently, the Court held that the defendant, who was convicted in 1990, was not required to register under that statute. *Id.* at 1035.

In *Morris*, a justice of this court had occasion to interpret the language of § 11-37.1-3(a) and (d). *See Morris*, 2010 WL 197378, at *3. In *Morris*, the court first noted, interpreting § 11-37.1-3(d), that "a person's sex offender status in another jurisdiction does not automatically trigger registration requirements in Rhode Island"; rather, § 11-37.1-3(d) imposes such an obligation for a registered sex offender moving to Rhode Island if that person "come[s] within the 'persons covered' under Subsection (a) [of § 11-37.1-3]." *Id*. The defendant in that case argued that because he was convicted in 1982, it "falls outside of the time for which the State can require registration." *Id.* at *4. The trial justice found, however, that "Section 11-37.1-3(d) does not expressly designate a date upon which out-of-state convictions become too remote to trigger registration duties[,]" and, therefore, the language of the statute was ambiguous. *Id.* The court examined the legislative history of the enactment of § 11-37.1-3(d) and determined that "the legislature did not intend to include a timing element in the determination of offenses requiring registration pursuant to the subsection at issue." *Id.* at *7. The court continued that "[i]f subsection (d) is construed to include a 'cut-off' date for convictions, sex offenders registered in other jurisdictions for convictions prior to 1992 could move or return to Rhode Island unnoticed" resulting in a "'loophole'" that "starkly contradicts the 'reason and spirit' of § 11-37.1-3(d)." *Id.*

Although *Santos* interpreted a statute that has since been repealed, it remains good law. *See Santos*, 870 A.2d at 1030 n.1. However, § 11-37.1-3(d) was enacted after the *Santos* decision, and does not, on its face, contain a timing element. *See Morris*, 2010 WL 197378, at *7. Moreover, as the Magistrate noted, the decision in *Morris* convincingly explains why the General Assembly did not intend to include a timing element in this statutory section for offenders moving into Rhode

Island. *See id.* Therefore, while it is true that Defendant would not be included in the universe of offenders required to register under § 11-37-16 because his conviction date occurred prior to July 1, 1992, he is required to register under § 11-37.1-3(d), so long as he "is registered as a sex offender in another jurisdiction for an offense which, if committed within the jurisdiction of this state, would require the person to register as a sex offender," or, in other words, if Defendant's New Hampshire offense is "substantially the equivalent" of one of the enumerated categories of offenses set forth in § 11-37.1-3(a). *See* §§ 11-37.1-3(a) and (d); *see also* § 11-37.1-2(f).

A review of the contents of the Criminal Information, according the State every reasonable inference, establishes that the Defendant is or has registered as a sex offender in another jurisdiction—New Hampshire. (Criminal Information at 3.) The Criminal Information lists Defendant's conviction as a Level I sex offender for "Aggravated Felony Sexual Assault" in New Hampshire in April 1992. *Id.* The Magistrate found this to be substantially similar to the first-degree child sexual assault charge in Rhode Island. *See* Tr. 11:4-8, Nov. 5, 2020. It is unclear from the information package on what date Defendant moved to Rhode Island. However, according to the information, Defendant was convicted in New Hampshire on a duty to report charge in 2009 and was registered with the Providence Police as a sex offender by 2018. Therefore, it is a reasonable inference that Defendant moved to Rhode Island at some point between those dates, after § 11-37.1-3(d) was enacted in 2006. In light of the absence of a timing requirement in the statute, and, according the State every reasonable inference in favor of a probable cause finding, there is enough to establish probable cause that Defendant committed the offense.

B

Duty from 2009 Conviction

The State argued, before the Magistrate, that the Defendant also has a duty to register based upon his 2009 "change name, alias, address, duty to inform" conviction in New Hampshire. (State's Mem. at 1, 6.) The Defendant contends that the New Hampshire duty to inform statute is not substantially the equivalent of Rhode Island's failure to register offense under § 11-37.1-10. (Def.'s Suppl. Mem. at 1-7.) Also, he argues that the Legislature did not intend for § 11-37.1-10 to trigger a duty to register under § 11-37.1-3(a), because the Legislature removed that particular enumerated offense from the list of offenses found in § 11-37.1-3(a) on March 1, 2018. (Def.'s Suppl. Mem. at 8-9; Def.'s Notice of Appeal at 1.)

On this question, however, the Magistrate agreed with Defendant's position. Specifically, he found that "the convictions [Defendant] incurred in New Hampshire for failing to register a change of address in New Hampshire . . . would not have been grounds to establish probable cause in Rhode Island[.]" (Tr. 8:11-15, Nov. 5, 2020.) The Magistrate further noted that "although the purposes of the statute between New Hampshire and Rhode Island for registering a change of address are substantially similar in the attempt to keep track of the sex offender, the mere fact that those convictions happened in New Hampshire would not extend into Rhode Island the requirement that he register[] as a sex offender . . ." *Id.* at 9:2-9. Accordingly, he found that the State has only established sufficient evidence for failure to register based on the 1992 conviction. *Id.* at 9:11-15. As the Magistrate found in Defendant's favor on this issue, the Court need not substantively address the arguments on appeal.

However, the Magistrate did reject Defendant's final argument—that § 11-37.1-2(f)(8) is void for vagueness because "by definition, failure to register cannot be a '[c]riminal offense against

a victim who is a minor' because failure to register has no victim." (Def.'s Suppl. Mem. at 9; *see also* Def.'s Notice of Appeal.) Specifically, the Magistrate determined that although "[b]y its plain language," failure to register may not be a crime of violence against a minor, § 11-37.1(f)(8) "had a definition section for which the general assembly specifically defines and included a failure to register as a crime of violence against a minor." (Tr. 10:2, 4-7, Nov. 5, 2020.)

"A criminal statute will be declared void for vagueness under the Fourteenth Amendment's Due Process Clause when that statute is so vague that people 'of common intelligence must necessarily guess at its meaning and differ as to its application.'" *State v. Allen*, 68 A.3d 512, 516-17 (R.I. 2013) (quoting *State v. Stierhoff*, 879 A.2d 425, 435 (R.I. 2005)). The Supreme Court has held that "[a]bsent some other constitutional concern, if the facts show that a defendant is given sufficient notice that his conduct is at risk we see no reason to speculate whether the statute notifies a hypothetical defendant." *Id.* (quotation omitted). In the instant matter, at the time of Defendant's alleged wrongful conduct and issuance of arrest warrant, which occurred prior to the 2018 change in the statute, § 11-37.1-2(f)(8) clearly listed § 11-37.1-10 as an enumerated offense, part of which contains the definition of "criminal offense against a victim who is a minor." Therefore, the record supports the Magistrate's finding that the statute is not unconstitutionally vague.

IV

Conclusion

After reviewing the contents of the four corners of the Criminal Information and affording the State the benefit of every reasonable inference in favor of a probable cause finding, the Court finds that the State has set forth sufficient evidence to establish probable cause that an offense of failure to register pursuant to §§ 11-37.1-3, 11-37.1-4, and 11-37.1-10 has been committed. Accordingly, this Court affirms the Magistrate's decision. Counsel shall prepare an order for entry.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**State of Rhode Island v. Terrence Latimer**
CASE NO:	**P2-2018-3367A**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**August 4, 2021**
JUSTICE/MAGISTRATE:	**Thunberg, J.**
ATTORNEYS:	
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For Defendant:	**Daniel E. Ciora, Esq.**