

[Cite as *State v. Buk-Shul*, 2018-Ohio-4640.]

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY**

STATE OF OHIO

Plaintiff-Appellee

V.

JIEL BUK-SHUL

Defendant-Appellant

.....

Appellate Case No. 27773

Trial Court Case No. 2017-CR-1597

(Criminal Appeal from
Common Pleas Court)

OPINION

Rendered on the 16th day of November, 2018.

• • • • •

MATHIAS H. HECK, JR. by SARAH E. HUTNIK, Atty. Reg. No. 0095900, Montgomery County Prosecutor's Office, Appellate Division, 301 W. Third Street, 5th Floor, Dayton, Ohio 45422

Attorney for Plaintiff-Appellee

JAY A. ADAMS, Atty. Reg. No. 0072135, 36 N. Detroit Street, Suite 102, Xenia, Ohio 45385

Attorney for Defendant-Appellant

• • • • •

HALL, J.

{¶ 1} Jiel Buk-Shul appeals from his conviction and sentence following a jury trial on one count of failure to notify of a change of address in violation of R.C. 2950.05(A) and (F)(1).

{¶ 2} Buk-Shul advances two assignments of error. First, he contends the trial court erred in evidentiary rulings that deprived him of his right to due process and a fair trial. Second, he asserts that he received ineffective assistance of counsel.

{¶ 3} At trial, Detective Kyle Baranyi from the Montgomery County Sheriff's Office testified that his responsibilities included registering and tracking sex offenders. (Tr. Vol. I at 105.) Baranyi explained that Buk-Shul was a "Tier II" sex offender who was required to register a change of address with the sheriff's office 20 days before any change. If that was impossible, then Buk-Shul was required to register a change of address no more than one business day after the change. (*Id.* at 109, 144.) Baranyi testified that Buk-Shul had been advised of this requirement and had complied with it 16 times in the past. (*Id.* at 114.) Baranyi stated that Buk-Shul's last registered address was 155 Monarch Lane, Room 255, which was a Super 8 motel room. (*Id.* at 120.) According to the detective, Buk-Shul had registered this address on January 23, 2017. (*Id.*)

{¶ 4} Baranyi went to the motel on May 19, 2017, in an attempt to verify Buk-Shul's address. (*Id.*) Upon arriving, he spoke to the front-desk clerk to investigate the issue. He learned that Buk-Shul had been absent from the motel since February 3, 2017. (*Id.* at 122.) The clerk told Baranyi that some of Buk-Shul's belongings remained at the motel but that they had been placed in storage. (*Id.* at 142.) Baranyi then contacted Buk-Shul's probation officer and learned that Buk-Shul might have been residing at 2570 Orchard

Run Road. (*Id.* at 123.) Baranyi visited that address and encountered Buk-Shul's brother, who gave the detective Buk-Shul's phone number. (*Id.* at 125-126.) Baranyi then spoke to Buk-Shul on the telephone. During their conversation, Buk-Shul admitted that he had left the motel at least a month earlier. He offered to come to the sheriff's office to register his mother's address as his residence. (*Id.* at 126, 129, 148.) Buk-Shul was arrested when he arrived at the sheriff's office. (*Id.* at 126.) Shortly after his arrest, he registered his mother's address, 2570 Orchard Run Road, as his residence. (*Id.* at 127.) Baranyi testified that Buk-Shul had failed to provide notice of his change of address 20 days before moving out of the motel or within one day after relocating to a new address. (*Id.* at 149.)

{¶ 5} The next witness at trial was Neil Patel, the manager of the Super 8 motel. He testified that Buk-Shul was not living at the motel when Baranyi visited on May 19, 2017. (*Id.* at 153.) According to Patel, Buk-Shul's last day residing there was February 4th or 5th, 2017. (*Id.*) He testified that Buk-Shul and a female companion had not paid rent since January 25, 2017, so he made them leave. (*Id.* at 155.) Patel explained that Buk-Shul's personal belongings had been stored in the motel's laundry room after his departure. (*Id.* at 154.)

{¶ 6} Buk-Shul's probation officer, Linda Shipley, also testified as a prosecution witness. She explained that she was responsible for supervising Buk-Shul, who had been granted community control supervision in January 2017. (*Id.* at 163.) Shipley identified court records establishing that Buk-Shul had a prior conviction for unlawful sexual conduct with a minor and a prior conviction for failure to notify of a change of address. (*Id.* at 164-165.) She testified that her responsibilities as a probation officer did not include registering addresses for sex offenders. (*Id.* at 163.) Shipley also testified about Detective Baranyi

contacting her on May 19, 2017, to inquire about Buk-Shul's last known address. (*Id.* at 165-166.) Shipley advised the detective that Buk-Shul had reported his address as 2570 Orchard Run Road on April 28, 2017. Buk-Shul had told Shipley he was living there with his mother at that time. (*Id.* at 166.)

{¶ 7} The final witness at trial was Detective Brian Conley. He identified documents advising Buk-Shul of his registration obligations, including the obligation to register a change of address. (*Id.* at 184-185.) Conley also identified the address registration form Buk-Shul had signed on January 23, 2017 for a room at the Super 8 motel. (*Id.* at 185.)

{¶ 8} Following Conley's testimony, the State rested its case. Buk-Shul did not testify and called no witnesses. Based on the evidence presented, the jury found him guilty of failure to notify of a change of address. The jury's verdicts included findings that Buk-Shul previously had been convicted of a fourth-degree-felony sexually-oriented offense and that he had a prior conviction for failure to notify.¹ (*Id.* at 249-250.) The trial court imposed a three-year prison term to be served consecutively to Buk-Shul's sentence in another case. (Doc. #67.)

{¶ 9} In his first assignment of error, Buk-Shul challenges several evidentiary rulings involving Baranyi's trial testimony. He contends that the rulings were prejudicial

¹ The prior failure to notify conviction was submitted to the jury because it changed the offense from a felony of the fourth degree to a felony of the third degree. R.C. 2950.99 (A)(1)(b)(iii). "When existence of a prior conviction does not simply enhance the penalty but transforms the crime itself by increasing its degree, the prior conviction is an essential element of the crime and must be proved by the state," *State v. Brooke*, 113 Ohio St.3d 199, 2007-Ohio-1533, 863 N.E.2d 1024, ¶ 8. We note however that counsel did not request, and the court did not give, any limiting instruction about the use of the prior convictions, either at the time of the evidence or in the charge to the jury. We encourage both.

and that they deprived him of due process and a fair trial. We review a trial court's evidentiary rulings for an abuse of discretion, provided an objection was made at trial. *State v. Cunningham*, 2d Dist. Clark No. 11CA 0032, 2012-Ohio-2333, ¶ 22.

{¶ 10} Buk-Shul first challenges Baranyi's testimony about the address registration form dated January 23, 2017. It stated that Buk-Shul's address was 155 Monarch Lane, Room 225. Baranyi noted that Room 213 had been crossed out on the form and Room 225 written in. Over objection, Baranyi testified that Buk-Shul had made the change and that the form had been completed on January 23, 2017, which was the date it bore. (Tr. Vol. I at 118, 120.) Baranyi admitted, however, that he was not present when the form was completed and it had been handled by Detective Conley. (*Id.* at 118-119.) Therefore, Buk-Shul contends Baranyi should not have been allowed to testify about the form.

{¶ 11} Buk-Shul next challenges Baranyi's testimony over objection that, based on a discussion with Patel, the detective believed Buk-Shul was not living at the motel and that Buk-Shul had been gone since February 3, 2017. Despite the prosecutor's apparent attempt to avoid hearsay, Buk-Shul contends the detective's testimony constituted hearsay, assumed facts not in evidence, and called for speculation.

{¶ 12} Finally, Buk-Shul challenges Baranyi's testimony about a conversation with probation officer Shipley. Specifically, he complains about the detective testifying over objection that, based on a conversation with Shipley, he believed Buk-Shul might have been residing at 2570 Orchard Run Road. Buk-Shul asserts that the prosecutor's question was leading and that the detective's response constituted hearsay.

{¶ 13} Upon review, we find the foregoing arguments to be unpersuasive. Even if we assume, *arguendo*, that the challenged testimony constituted hearsay, Buk-Shul was

not prejudiced by it. As set forth above, Baranyi also testified that he spoke directly with Buk-Shul, who *admitted* that he had left the motel at least a month before their conversation and who registered 2570 Orchard Run Road as his residence after his arrest. In addition, Detective Conley identified the address registration form Buk-Shul had completed on January 23, 2017, Patel testified about when Buk-Shul had left the motel and how much time had passed, and Shipley testified about the Orchard Run address being where Buk-Shul resided. Because all of the challenged testimony also was elicited from the appropriate third-party speakers, Buk-Shul was not prejudiced by Baranyi's testimony. That being so, we would find harmless error even if Buk-Shul's evidentiary arguments were correct. Accordingly, his first assignment of error is overruled.

{¶ 14} In his second assignment of error, Buk-Shul alleges ineffective assistance of trial counsel. Specifically, he challenges a number of instances in which defense counsel failed to object to testimony or asked questions that were irrelevant, called for hearsay, or were likely to elicit responses that were damaging to his defense.

{¶ 15} "Reversal of a conviction for ineffective assistance of counsel requires that the defendant show first that counsel's performance was deficient and second that the deficient performance prejudiced the defense so as to deprive the defendant of a fair trial." *State v. Dean*, 146 Ohio St.3d 106, 2015-Ohio-4347, 54 N.E.3d 80, ¶ 74, citing *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). We "indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Strickland* at 689.

{¶ 16} Upon review, we do not find ineffective assistance of counsel arising from the issues cited by Buk-Shul. He first asserts that defense counsel should have objected

to Baranyi's testimony that having a conversation with a probation officer did not relieve Buk-Shul of his obligation to register a change of address with the sheriff's office. (Tr. Vol. I at 125.) Buk-Shul contends this testimony constituted an improper legal opinion by Baranyi. But even if this were true, we fail to see any prejudice to Buk-Shul. The detective's opinion was correct, and the trial court subsequently instructed the jury on the applicable law in any event.

{¶ 17} Buk-Shul also contends defense counsel should have objected to the prosecutor eliciting testimony about Shipley being his probation officer. He asserts that this fact gave the jury the impression that he "was of unsavory character and that he was in trouble for something[.]" (Appellant's brief at 15.) We disagree. The jury knew that Buk-Shul was a convicted sex offender who had a prior failure-to-notify conviction. That being so, the fact that he had a probation officer should not have been a surprise and was unlikely to damage his character in the jury's eyes. In any event, defense counsel reasonably could have concluded that establishing Shipley's status as Buk-Shul's probation officer was necessary to provide background and context for her testimony.

{¶ 18} Buk-Shul next claims defense counsel should have objected to Shipley's testimony that Baranyi informed her of his arrest. But the fact of Buk-Shul's arrest already had been established through Baranyi's own testimony and, in any event, could not have been surprising given that Buk-Shul was on trial for the charge on which he had been arrested. Buk-Shul also contends defense counsel should have objected to Shipley's testimony about him giving her the Orchard Run address as the address where he was living with his mother. But that testimony was not objectionable because it was an admission of a party-opponent under Evid.R. 801(D)(2).

{¶ 19} Buk-Shul also asserts that defense counsel provided ineffective assistance by eliciting and/or not cutting off cross-examination testimony about a wide range of topics, including his participation in a drug/alcohol assessment, the fact that he had been in jail for a misdemeanor, attempts to get him unspecified “treatment,” his mother’s address being on his medical card, an investigation into a possible negligent homicide case involving Buk-Shul and drugs, his child support obligation, and his inability to submit a urine sample on one occasion because the testing equipment was not working.

{¶ 20} In response, the State provides plausible explanations for why defense counsel may have elicited or permitted some of the foregoing testimony, and defense counsel cited or relied on some of the testimony in closing arguments. We do find much of this testimony to be irrelevant, and portions of it are difficult to reconcile with any reasonable defense strategy—particularly the cross examination of Buk-Shul’s probation officer about being contacted by a detective, which allowed the probation officer to offer testimony that the detective was investigating whether “Mr. Buk-Shul could have been involved in a possible negligent homicide case.” (T. 176.) But even if defense counsel provided deficient representation by eliciting or not stopping portions of the challenged testimony, on the record before us we find no prejudice within the meaning of *Strickland* because the result would have been no different.

{¶ 21} The State presented essentially uncontroverted evidence that Buk-Shul had moved out of the Super 8 motel without giving the sheriff’s office the required notice of a change of address. Failure to notify is a strict liability offense. *State v. Bizzell*, 2d Dist., Montgomery No. 26260, 2015-Ohio-1746, ¶ 7. The case was not complicated, and it does not seem to us that Buk-Shul had any evidence to contradict the State’s case.

Confronted with these circumstances, defense counsel appears to have attempted to obfuscate and complicate the issues within ethical limits. Although this strategy included wide-ranging and questionable cross examination, Buk-Shul was not prejudiced by his attorney's efforts on his behalf. Given the simplicity of the case, the straightforward nature of the evidence, and the strict liability nature of the offense, we see no reasonable probability that defense counsel's performance negatively impacted the outcome. Our confidence in the outcome of Buk-Shul's trial has not been undermined. Therefore, he has failed to establish prejudice. *State v. Jones*, 2018-Ohio-673, 106 N.E.3d 353, ¶ 52 (2d Dist.). The second assignment of error is overruled.

{¶ 22} The judgment of the Montgomery County Common Pleas Court is affirmed.

.....

FROELICH, J. and TUCKER, J., concur.

Copies mailed to:

Mathias H. Heck, Jr.
Sarah E. Hutnik
Jay A. Adams
Hon. Erik R. Blaine