[Cite as *State v. Finn*, 2009-Ohio-4949.]

IN THE COURT OF APPEALS OF MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. CASE NO. 22914
vs.	:	T.C. CASE NO. 07CR3597
ROBERT F. FINN, JR.	:	(Criminal Appeal from Common Pleas Court)
Defendant-Appellant	:	

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O P I N I O N

Rendered on the 18th day of September, 2009.

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GRADY, J.:

{¶ 1} Defendant, Robert E. Finn, Jr., was convicted following a trial to the bench of a violation of R.C. 2950.04(A)(3)(a) and (E). Those sections provide, respectively:

{¶ 2} "(A)(3)(a) Each child who is adjudicated a delinquent child for committing a sexually oriented offense and who is classified a juvenile offender registrant based on that adjudication shall register personally with the sheriff, or the sheriff's designee, of the county within three days of the delinquent child's coming into a county in which the delinquent child resides or temporarily is domiciled for more than three days.

{¶3} "(E) No person who is required to register pursuant to divisions (A) and (B) of this section, and no person who is required to send a notice of intent to reside pursuant to division (G) of this section, shall fail to register or send the notice of intent as required in accordance with those divisions or that division."

{¶4} R.C. 2950.04 became effective on July 1, 1997. On October 1, 1997, the State of Florida adopted sex offender registration laws applicable to all offenders, including those on probation. Defendant was convicted in Florida in 1992 of a sex offense, Lewd and Lascivious Acts Upon a Child. He was placed on one year of community control supervision and five years of probation. Following enactment of Florida's sex offender registration laws in 1997, Defendant's name was placed on the Florida Sex Offender Registry.

{¶ 5} Defendant had moved to Ohio in 1995. At Defendant's request, his probation supervision was transferred from Florida to Ohio. Defendant completed sex offender counseling in Ohio.

{¶ 6} Defendant resided in Montgomery County, Ohio from 1997, when Ohio's sex offender registration laws became effective, through 2007, but never registered as a sex offender. In March of 2007, Detective Matthew Snyder of the Montgomery County Sheriff's Department, based on information from the Florida Sex Offender Registry, and after verifying Defendant's 1992 conviction in Florida, sent Defendant a letter notifying him of his duty to register as a sex offender. Defendant refused to register.

{¶ 7} On August 8, 2007, an Assistant Montgomery County Prosecutor sent Defendant a letter advising him of his duty to register, and that if he did not register on or before August 17, 2007, criminal charges would be filed against him. Defendant called the prosecutor and stated that he did not believe he had a duty to register, and would retain an attorney to represent him.

{¶ 8} On November 20, 2007, Defendant was indicted on one count of failing to register in violation of R.C. 2950.04(A)(1)(a), which applies to adult offenders. By agreement, a bill of information charging a violation of R.C. 2950.04(A)(3)(a), which applies to child offenders, was filed on April 4, 2008.

{¶ 9} On February 21, 2008, while the original charges were pending, Defendant filed a "Motion to Dismiss: Petition to Establish Civil Rights And/Or To Determine Classification." Defendant argued that there is no evidence he was ever adjudicated or classified as a sex offender or had notice of his duty to register, and, furthermore, that he is not subject to sex offender registration requirements.

{¶ 10} The charges in the bill of information and the contentions in Defendant' Motion/Petition were heard by the court in a bench trial. The court found that Defendant was adjudicated a sex offender in Florida in 1992 and had a duty to register there commencing in 1997 with the enactment of Florida's registration laws. The court further found that Defendant, having moved to Ohio, was therefore required to register in Ohio pursuant to R.C. 2950.04 after that section became effective in 1997, and that Defendant failed to register. The court also found that because that section creates a strict liability offense, Defendant's alleged lack of notice of his duty to register is immaterial.

{¶ 11} The court found Defendant guilty of a violation of R.C. 2950.04(A)(3)(a) and (E). He was sentenced to a five-year term of community control sanctions. Defendant filed a notice of appeal.

FIRST ASSIGNMENT OF ERROR

{¶ 12} "APPELLANT'S CONVICTION FOR VIOLATING O.R.C. §2950.04(A)(3)(a) WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

SECOND ASSIGNMENT OF ERROR

{¶ 13} "THE TRIAL COURT ERRED IN OVERRULING APPELLANT'S CRIM.R. 29 MOTION FOR ACQUITTAL."

{¶ 14} Defendant argues that the trial court should have granted his Crim.R. 29 motion for acquittal, and that his conviction for failing to register as a sex offender is against the manifest weight of the evidence, because the evidence presented by the State fails to establish all of the essential elements of that offense.

{¶ 15} A Crim.R. 29 motion challenges the legal sufficiency of the evidence. A sufficiency of the evidence argument challenges whether the State has presented adequate evidence on each element of the offense to allow the case to go to the jury or sustain the verdict as a matter of law. *State v. Thompkins,* (1997), 78 Ohio St.3d 380.

{¶ 16} When considering a defendant's Crim.R. 29 motion for acquittal, the trial court must construe the evidence in a light most favorable to the State and determine whether reasonable minds could reach different conclusions on whether the evidence proves each element of the offense charged beyond a reasonable doubt. *State v. Bridgeman* (1978), 55 Ohio St.2d 261. The motion may not be granted unless reasonable minds could only conclude that the evidence on which the State relied fails to prove all of the elements of the offense. *State v. Miles* (1996), 114 Ohio App.3d 738.

{¶ 17} "An appellate court's function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. The relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt." *State v. Jenks* (1991), 61 Ohio St.3d

259, paragraph two of the syllabus.

{¶ 18} A weight of the evidence argument challenges the believability of the evidence and asks which of the competing inferences suggested by the evidence is more believable or persuasive. *State v. Hufnagle* (Sept. 6, 1996), Montgomery App. No. 15563. The proper test to apply to that inquiry is the one set forth in *State v. Martin* (1983), 20 Ohio App.3d 172, 175:

{¶ 19} "[t]he court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the jury lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." Accord: *State v. Thompkins*, 78 Ohio St.3d 380, 1997-Ohio-52.

{¶ 20} Defendant contends that the State's evidence fails to demonstrate that he committed a sexually oriented offense for which R.C. 2950.04(A)(3)(a) imposes a duty to register. The State offered documentary evidence that includes: (1) interstate compact reports stating that Defendant pled guilty to and was convicted in Florida of a sex offense, was labeled a sex offender, and was required to undergo sex offender counseling and treatment; and (2) a document from Florida's sex offender registration website showing that Defendant is a registered sex offender. The court was entitled to find the documentary evidence the State offered sufficient to prove that Defendant committed a sexually oriented offense for which R.C. 2950.04(A)(3)(a) imposes a registration requirement.

{¶ 21} Defendant did not dispute the fact of his conviction so much as the weight and sufficiency of the State's evidence concerning his conviction. Defendant's principal claim, at trial and on appeal, is that the State failed to prove he had any notice of his duty to register in the years prior to 2007. Defendant testified that he had made inquiries concerning the matter of probation officials in Florida and Ohio, who told him that their state's registration requirements do not apply to him.

{¶ 22} The State offered the testimonial evidence of Ohio and Florida probation personnel concerning their standard and routine procedures of notification. Both opined that Defendant was likely notified of his duty to register in the years following Florida's and Ohio's enactment of registration laws in 1997. The court could rely on that evidence, but on this record it was not required to.

{¶ 23} R.C. 2950.04(A)(3)(a) requires that Defendant personally register with the sheriff of the county if he moves to and resides in Ohio for more than three days, when he has a duty to register as a sex offender under the laws of another state as a result of a conviction or guilty plea to a sexually oriented offense in that other state. R.C. 2901.21 states in relevant part:

{¶ 24} "(A) Except as provided in division (B) of this section, a person is not guilty of an offense unless both of the following apply:

{¶ 25} "(1) The person's liability is based on conduct that includes either a voluntary act, or an omission to perform an act or duty that the person is capable of performing;

{¶ 26} "(2) The person has the requisite degree of culpability for each element as to which a culpable mental state is specified by the section defining the offense.

{¶ 27} "(B) When the section defining an offense does not specify any degree of culpability, and plainly indicates a purpose to impose strict criminal liability for the conduct described in the section, then culpability is not required for a person to be guilty of the offense. When the section neither specifies culpability nor plainly indicates a purpose to impose strict liability, recklessness is sufficient culpability to commit the offense."

{¶ 28} In *State v. Shaffer* (1996), 114 Ohio App.3d 97, 102-103, the Court of Appeals stated:

{¶ 29} "Generally, strict liability attaches to criminal offenses which are regulatory in nature and which are designed to protect the health, safety, and well-being of the community. *State v. Buehler Food Markets, Inc.* (1989), 50 Ohio App.3d 29, 30, 552 N.E.2d 680, 681-682. Furthermore, when a statute reads 'no person shall' engage in proscribed conduct, absent any reference to a culpable mental state, the statute indicates a legislative intent to impose strict liability."

{¶ 30} Sexual offender registration laws are "mala prohibita," acts made unlawful for the good of the public welfare regardless of the accused's state of mind, and therefore the failure to register is a strict liability offense. *State v. Beasley* (Sept. 27, 2001), Cuyahoga App. No. 77761; *State v. Beckley*, Cuyahoga App. No. 83254, 2004-Ohio-2977, *Maple Heights v. Ephraim*, 178 Ohio App.3d 439, 448, 2008-Ohio-4576. In *State v. Cook*, 83 Ohio St.3d 404, 420, 1998-Ohio-291, the Supreme Court of Ohio found that failing to register under R.C. 2950.04 does not require a culpable mental state: "The act of failing to register alone, without more, is sufficient to trigger criminal punishment provided in R.C. 2950.99." Failure to register as a sex offender per R.C. 2950.04 is a strict liability offense that does not require proof of intent or a culpable mental state on Defendant's part.

{¶ 31} Defendant argues that even if he does have a duty to register as a sex offender under R.C. 2950.04, his conviction for failing to do so violates due process because he did not receive adequate notice or have knowledge that he has such a duty. Defendant cites to *Lambert v. California* (1957), 355 U.S. 225, 78 S.Ct. 240, 2 L.Ed.2d 228, and *State v. Beckley, supra*, for the proposition that actual knowledge of the duty to register or proof of the probability of such knowledge, and subsequent failure to comply, are necessary before a conviction can stand consistent with due process.

{¶ 32} The bill of information charging Defendant with committing the offense of failing to register alleges that the offense occurred between the dates of January 1, 1997 and August 10, 2007. The State's evidence showed that

Defendant was notified by letter of his duty to register by Detective Snyder in March of 2007, and that they thereafter had a telephone conversation in which Defendant refused to register. Defendant was likewise notified of his duty by an assistant county prosecutor by letter dated August 8, 2007, and Defendant thereafter disputed that he had a duty. Regardless of whether Defendant lacked notice prior to those dates, Defendant had actual notice of his duty then and thereafter, prior to the end of the period of time for the violation of his duty to register that the bill of information set out. A duty imposed by law is not avoided merely by disputing that it applies to you.

{¶ 33} The sufficiency and weight of the evidence clearly supports Defendant's conviction for failure to register as a sex offender. From the combination of direct and circumstantial evidence, which have the same probative value, *Jenks, supra*, the trier of facts could reasonably conclude that Defendant knew he had a duty to register in Ohio and failed to do so. Viewing the evidence in a light most favorable to the State, a rational trier of facts could find all of the essential elements of failing to register proven beyond a reasonable doubt. Defendant's conviction is supported by legally sufficient evidence and the trial court properly denied his Crim.R. 29 motion for acquittal.

{¶ 34} The trial court did not lose its way in this case simply because it chose to believe the State's version of these events rather than Defendant's version, which it had a right to do. *State v. DeHass* (1967), 10 Ohio St.2d 230. Reviewing this record as a whole, we cannot say that the evidence weighs heavily against a conviction, that the trial court lost its way in choosing to believe the State's evidence and witnesses, or that a manifest miscarriage of justice occurred. Defendant's conviction for failing to register as a sex offender is therefore not against the manifest weight of the evidence.

{¶ 35} Defendant's assignments of error are overruled. The judgment of the trial court will be affirmed.

BROGAN, J. And DINKELACKER, J. concur.

(Hon. Patrick T. Dinkelacker, First District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio.)

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