[Cite as *State v. Lloyd*, 2010-Ohio-6562.]

COURT OF APPEALS
HOLMES COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO Plaintiff-Appellee -vs- WESLEY LLOYD Defendant-Appellant	JUDGES: Hon. Julie A. Edwards, P. J. Hon. W. Scott Gwin, J. Hon. John W. Wise, J. Case No. 09 CA 12 O P I N I O N

CHARACTER OF PROCEEDING:	Criminal Appeal from the Court of Common Pleas, Case No. 09 CR 1
JUDGMENT:	Affirmed in Part; Reversed in Part and Vacated
DATE OF JUDGMENT ENTRY:	December 30, 2010

APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
STEVE KNOWLING PROSECUTING ATTORNEY SEAN WARNER ASSISTANT PROSECUTOR 123 South Crawford Street Millersburg, Ohio 44654	JEFFREY G. KELLOGG 5 South Washington Street Millersburg, Ohio 44654

Wise, J.

{¶1} Appellant Wesley Lloyd appeals from his conviction, in the Holmes County Court of Common Pleas, on three counts of sexual offender registration violations. The appellee is the State of Ohio. The relevant facts leading to this appeal are as follows.

{¶2} In 1995, appellant was convicted, in the State of Texas, of one count of aggravated sexual battery, pursuant to the Texas Penal Code. He was sentenced in that case to seven years in prison. Appellant appealed, but on March 5, 1998, the Court of Appeals of Texas, Eastland, affirmed the conviction.

{¶3} After appellant was released from prison in Texas in 2005, he moved to Auglaize County, Ohio. Appellant thereupon registered as a sexually-oriented offender in Auglaize County, and continued to register as required in 2006 and 2007. In November 2007, appellant received a letter from the Ohio Attorney general indicating that he was being reclassified as a Tier III offender, requiring increased periodic registration. Appellant continued to register, pursuant to his Adam Walsh Act reclassification, in February 2008 and May 2008.

{¶4} On May 21, 2008, appellant purportedly sent a letter to the Auglaize County Sheriff, advising him of his intention to move to Holmes County. On or about June 2, 2008, appellant completed his move to Holmes County.

{¶5} On June 12, 2008, appellant was arrested in Holmes County on charges of failing to register as a sex offender. What we will label as Count I was based on appellant's failure to register with the Holmes County Sheriff within three days of moving into Holmes County. See R.C. 2950.04(E). Count II was based on appellant's failure to provide written notice to the Holmes County Sheriff of his intent to reside in Holmes

County at least twenty days prior to moving. See R.C. 2950.04(E). Furthermore, on June 17, 2008, appellant was indicted in Auglaize County for failure to give a twenty-day advance notice of an address change prior to moving. We will label this as "Count III." See R.C. 2950.05(F)(1).

{¶6} The charges were consolidated for trial in Holmes County. On April 7, 2009, the case was heard via a bench trial. On July 9, 2009, the court found appellant guilty on all three counts. On September 3, 2009, the court sentenced appellant to three years in prison on each count, to be served concurrently.

{¶7} On September 14, 2009, appellant filed a notice of appeal. He herein raises the following nine Assignments of Error:

{¶8} "I. THE DEFENDANT-APPELLANT WAS DENIED DUE PROCESS WHEN HE WAS TRIED AND CONVICTED OF FELONIES FOR FAILURE TO NOTIFY OF CHANGE OF ADDRESS WHEN UNDER OHIO LAW HE WAS NOT REQUIRED TO REGISTER AS A SEX OFFENDER.

{¶9} "II. THE DEFENDANT-APPELLANT WESLEY LLOYD WAS DENIED DUE PROCESS WHEN HE WAS TRIED AND CONVICTED OF FELONIES OF THE FIRST DEGREE WHEN UNDER OHIO LAW HE SHOULD HAVE BEEN CHARGED WITH FELONIES OF THE THIRD DEGREE.

{¶10} "III. THE DEFENDANT-APPELLANT WAS DENIED DUE PROCESS WHEN HE WAS CONVICTED OF A VIOLATION OF R.C. 2950.04(A)(2)(a) [SIC] AFTER BEING TOLD BY LAW ENFORCEMENT THAT HE COULD NOT REGISTER IN HOLMES COUNTY.

{¶11} "IV. THE DEFENDANT-APPELLANT WESLEY LLOYD WAS DENIED DUE PROCESS WHEN HE WAS CONVICTED OF VIOLATING R.C. 2950.04(E) AND R.C. 2950.04(G) WHEN R.C. 2950.04 ONLY APPLIES TO THE INITIAL REGISTRATION OF A SEX OFFENDER UPON RELEASE FROM PRISON OR UPON ENTERING INTO THE STATE.

{¶12} "V. THE DEFENDANT-APPELLANT WESLEY LLOYD WAS DENIED DUE PROCESS OF LAW WHEN HE WAS CONVICTED OF FAILING TO REGISTER IN HOLMES COUNTY WHEN THE EVIDENCE SHOWED THAT REGISTRATION BY LLOYD IN HOLMES COUNTY WAS IMPOSSIBLE.

{¶13} "VI. THE DEFENDANT-APPELLANT WESLEY LLOYD WAS DENIED DUE PROCESS WHEN HE WAS CONVICTED OF A STRICT LIABILITY OFFENSE WITHOUT RECEIVING NOTICE OF THE NEW REGISTRATION REQUIREMENTS.

{¶14} "VII. THE DEFENDANT-APPELLANT WAS DENIED DUE PROCESS OF LAW WHEN HE WAS CONVICTED OF COUNT I OF THE INDICTMENT UPON INSUFFICIENT EVIDENCE.

{¶15} "VIII. THE DEFENDANT-APPELLANT WAS DENIED DUE PROCESS WHEN HE WAS CONVICTED OF VIOLATING R.C. 2950.04(E) UPON INSUFFICIENT EVIDENCE.

{¶16} "IX. THE DEFENDANT'S PROSECUTION UNDER TITLE 2950 OF THE R.C. VIOLATES DUE PROCESS BECAUSE R.C. 2950.031 AND R.C. 2950.032 ARE UNCONSTITUTIONAL PURSUANT TO THE OHIO SUPREME COURT'S DECISION IN *STATE V. BODYKE*."

IX.

{¶17} We will address appellant's Ninth Assignment of Error first.

{¶18} In *State v. Bodyke,* 126 Ohio St.3d 266, 2010-Ohio-2424, 933 N.E.2d 753, the Ohio Supreme Court severed R.C. 2950.031 and 2950.032, the reclassification provisions of the Adam Walsh Act, and held that after severance, those provisions could not be enforced. The Court further held that R.C. 2950.031 and 2950.032 may not be applied to offenders previously adjudicated by judges under "Megan's Law." See also *Chojnacki v. Cordray*, 126 Ohio St.3d 321, 933 N.E.2d 800, 2010-Ohio-3212, ¶5.

{¶19} The only Count potentially affected by *Bodyke* in this instance is Count II. In other words, the registration/notice requirements in Counts I and III were not impacted by the Adam Walsh Act. The State responds, however, that even Count II is not altered by *Bodyke*, because his Tier III classification did not disturb a ruling by the judicial branch. However, recently, in *State v. Clager*, Licking App.No.10-CA-49, 2010-Ohio-6074, this Court found that even out-of-state offenders are not subject to an Ohio Attorney General reclassification based on the doctrine of separation of powers.

{¶20} Appellant's Ninth Assignment of Error is therefore sustained in regard to appellant's Tier III – based offense in Count II.

I.

{¶21} In his First Assignment of Error, appellant contends his convictions for failure to register and notify of an address change violated due process, because he was not required to register as a sexually-oriented offender in Ohio. We disagree.

{¶22} R.C. 2950.04(A)(4) states as follows:

{¶23} "Regardless of when the sexually oriented offense was committed, each person who is convicted, pleads guilty, or is adjudicated a delinquent child in a court in another state **** for committing a sexually oriented offense shall comply with the following registration requirements if, at the time the offender or delinquent child moves to and resides in this state or temporarily is domiciled in this state for more than three days, the offender or public registry-qualified juvenile offender registrant enters this state to attend a school or institution of higher education, or the offender or public registry-qualified juvenile offender registrant is employed in this state for more than the specified period of time, the offender or delinquent child has a duty to register as a sex offender or child-victim offender under the law of that other jurisdiction as a result of the conviction, guilty plea, or adjudication:

{¶24} "(a) Each offender and delinquent child shall register personally with the sheriff, or the sheriff's designee, of the county within three days of the offender's or delinquent child's coming into the county in which the offender or delinquent child resides or temporarily is domiciled for more than three days.

{¶25} "(b) Each offender or public registry-qualified juvenile offender registrant shall register personally with the sheriff, or the sheriff's designee, of the county immediately upon coming into a county in which the offender or public registry-qualified juvenile offender registrant attends a school or institution of higher education on a full-time or part-time basis regardless of whether the offender or public registry-qualified juvenile offender registrant resides or has a temporary domicile in this state or another state.

{¶26} "(c) Each offender or public registry-qualified juvenile offender registrant shall register personally with the sheriff, or the sheriff's designee, of the county in which the offender or public registry-qualified juvenile offender registrant is employed if the offender resides or has a temporary domicile in this state and has been employed in that county for more than three days or for an aggregate period of fourteen days or more in that calendar year.

{¶27} "(d) Each offender or public registry-qualified juvenile offender registrant shall register personally with the sheriff, or the sheriff's designee, of the county in which the offender or public registry-qualified juvenile offender registrant then is employed if the offender or public registry-qualified juvenile offender registrant does not reside or have a temporary domicile in this state and has been employed at any location or locations in this state for more than three days or for an aggregate period of fourteen or more days in that calendar year."

{¶28} In order to define "sexually oriented offense" for purposes of the first paragraph of R.C. 2950.04(A)(4), supra, we turn to the definition found in R.C. 2950.01(A)(11): "A violation of *** any existing or former municipal ordinance or law of another state or the United States *** that is or was *substantially equivalent* to any offense listed in division (A)(1), (2), (3), (4), (5), (6), (7), (8), (9), or (10) of this section." (Emphasis added).

{¶29} Among the Ohio offenses listed in division (A)(1) of R.C. 2950.01 are rape and sexual battery. The pertinent rape section, R.C. 2907.02(A)(2), states: "No person shall engage in sexual conduct with another when the offender purposely compels the other person to submit by force or threat of force." The pertinent sexual battery section,

R.C. 2907.03(A)(1), states: No person shall engage in sexual conduct with another, not the spouse of the offender, when *** [t]he offender knowingly coerces the other person to submit by any means that would prevent resistance by a person of ordinary resolution."

{¶30} In appellant's 1995 Texas conviction for aggravated sexual assault, the jury was instructed as follows pursuant to Texas Penal Code Title 5, Chapter 22, Sec. 22.201:

{¶31} "Our law provides that a person commits the offense of aggravated sexual assault if the person intentionally or knowingly causes the penetration of the mouth or female sexual organ of another person by the sexual organ of the actor without that persons consent, and by acts or words such person places the victim in fear that serious bodily injury or death will be imminently inflicted on any person.

{¶32} "Such assault is without the other person's consent if the actor compels the other person to submit or participate by threatening to use force or violence against the other person, and the other person believes that the actor has the present ability to execute the threat. * * * .

{¶33} "A person acts intentionally, or with intent, with respect to the nature of his conduct when it is his conscious objective or desire to engage in the conduct.

{¶34} "A person acts knowingly or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result." Appellant's Appendix at A-1, A-2.

{¶35} In essence, appellant contends that since rape under Ohio law (R.C. 2907.02(A)(2)) has a "purpose" element, while sexual battery (R.C. 2907.03(A)(1)) has

a "knowing" element, no single Ohio statute is "substantially equivalent" to aggravated sexual assault under the aforecited Texas statute, which includes either purpose (intention) or knowledge. However, upon review, we find appellant's argument lacks merit, and we are further unpersuaded by appellant's reliance on the decision of the First District Court of Appeals in *Doe v. Leis,* Hamilton App.No. C-050591, 2006-Ohio-4507, as that case focused on variances between Ohio and Florida law as to the element of "force" in a criminal sexual assault context.

{¶36} Appellant's First Assignment of Error is therefore overruled.

II.

{¶37} In his Second Assignment of Error, appellant contends his first-degree felony convictions, as opposed to third-degree felonies, violated due process. We disagree.

{¶38} R.C. 2950.99(A)(1)(a) states as follows:

{¶39} "Except as otherwise provided in division (A)(1)(b) of this section, whoever violates a prohibition in section 2950.04, 2950.041, 2950.05, or 2950.06 of the Revised Code shall be punished as follows:

{¶40} "***

{¶41} "(ii) *** [I]f the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address, or address verification requirement that was violated under the prohibition is a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the same degree as that offense committed in the other jurisdiction would constitute if committed in this state."

{¶42} Appellant maintains that because of the "intentionally or knowingly" language of the Texas aggravated sexual assault statute, it is impossible to know if the Texas jury's determination was equivalent to rape or to sexual battery under Ohio law; hence, due process requires that the lesser degree of culpability apply, which in this instance would be sexual battery, a third-degree felony. However, the Texas indictment at issue includes "use of physical force and violence" allegations on the aggravated sexual assault count, and we therefore find no error or violation of due process in appellant's first-degree felony convictions for failure to register at the same degree as the offense of rape.

{¶43} Appellant's Second Assignment of Error is overruled.

III.

{¶44} In his Third Assignment of Error, appellant contends his conviction under Count I (failure to register in Holmes County within three days of relocating) violated due process. We disagree.

{¶45} Appellant first argues the forms utilized under the electronic sexual offender system ("eSORN") are insufficient under Ohio law. He directs us to R.C. 2950.04(B) and (C), which state as follows:

{¶46} "(B) An offender or delinquent child who is required by division (A) of this section to register in this state personally shall obtain from the sheriff or from a designee of the sheriff a registration form that conforms to division (C) of this section, shall complete and sign the form, and shall return the completed form together with the offender's or delinquent child's photograph, copies of travel and immigration documents, and any other required material to the sheriff or the designee. The sheriff or designee

shall sign the form and indicate on the form the date on which it is so returned. The registration required under this division is complete when the offender or delinquent child returns the form, containing the requisite information, photograph, other required material, signatures, and date, to the sheriff or designee.

{¶47} "(C) The registration form to be used under divisions (A) and (B) of this section shall include or contain all of the following for the offender or delinquent child who is registering:

{¶48} "(1) The offender's or delinquent child's name and any aliases used by the offender or delinquent child;

{¶49} "(2) The offender's or delinquent child's social security number and date of birth, including any alternate social security numbers or dates of birth that the offender or delinquent child has used or uses;

{¶50} "(3) Regarding an offender or delinquent child who is registering under a duty imposed under division (A)(1) of this section, a statement that the offender is serving a prison term, term of imprisonment, or any other type of confinement or a statement that the delinquent child is in the custody of the department of youth services or is confined in a secure facility that is not operated by the department;

{¶51} "(4) Regarding an offender or delinquent child who is registering under a duty imposed under division (A)(2), (3), or (4) of this section as a result of the offender or delinquent child residing in this state or temporarily being domiciled in this state for more than three days, the current residence address of the offender or delinquent child who is registering, the name and address of the offender's or delinquent child's employer if the offender or delinquent child is employed at the time of registration or if

the offender or delinquent child knows at the time of registration that the offender or delinquent child will be commencing employment with that employer subsequent to registration, any other employment information, such as the general area where the offender or delinquent child is employed, if the offender or delinquent child is employed in many locations, and the name and address of the offender's or public registry-qualified juvenile offender registrant's school or institution of higher education if the offender or public registry-qualified juvenile offender registrant attends one at the time of registration or if the offender or public registry-qualified juvenile offender registrant knows at the time of registration that the offender or public registry-qualified juvenile offender registrant will be commencing attendance at that school or institution subsequent to registration;

{¶52} "(5) Regarding an offender or public registry-qualified juvenile offender registrant who is registering under a duty imposed under division (A)(2), (3), or (4) of this section as a result of the offender or public registry-qualified juvenile offender registrant attending a school or institution of higher education in this state on a full-time or part-time basis or being employed in this state or in a particular county in this state, whichever is applicable, for more than three days or for an aggregate of fourteen or more days in any calendar year, the name and current address of the school, institution of higher education, or place of employment of the offender or public registry-qualified juvenile offender registrant who is registering, including any other employment information, such as the general area where the offender or public registry-qualified juvenile offender registrant is employed, if the offender or public registry-qualified juvenile offender registrant is employed in many locations;

{¶53} "(6) The identification license plate number of each vehicle the offender or delinquent child owns, of each vehicle registered in the offender's or delinquent child's name, of each vehicle the offender or delinquent child operates as a part of employment, and of each other vehicle that is regularly available to be operated by the offender or delinquent child; a description of where each vehicle is habitually parked, stored, docked, or otherwise kept; and, if required by the bureau of criminal identification and investigation, a photograph of each of those vehicles;

{¶54} "(7) If the offender or delinquent child has a driver's or commercial driver's license or permit issued by this state or any other state or a state identification card issued under section 4507.50 or 4507.51 of the Revised Code or a comparable identification card issued by another state, the driver's license number, commercial driver's license number, or state identification card number;

{¶55} "(8) If the offender or delinquent child was convicted of, pleaded guilty to, or was adjudicated a delinquent child for committing the sexually oriented offense resulting in the registration duty in a court in another state, in a federal court, military court, or Indian tribal court, or in a court in any nation other than the United States, a DNA specimen, as defined in section 109.573 of the Revised Code, from the offender or delinquent child, a citation for, and the name of, the sexually oriented offense resulting in the registration duty, and a certified copy of a document that describes the text of that sexually oriented offense;

{¶56} "(9) A description of each professional and occupational license, permit, or registration, including those licenses, permits, and registrations issued under Title XLVII of the Revised Code, held by the offender or delinquent child;

{¶57} "(10) Any email addresses, internet identifiers, or telephone numbers registered to or used by the offender or delinquent child;

{¶58} "(11) Any other information required by the bureau of criminal identification and investigation."

{¶59} Upon review of the record in this case, we are unconvinced that any purported noncompliance by Auglaize and Holmes law enforcement officials with the data–collection requirements of R.C. 2950.04(B) and (C) would result in a due process violation regarding appellant or in any way excuse his failure to adhere to statutory relocation registration requirements.

{¶60} Appellant secondly contends that he was denied due process based on police entrapment and outrageous police conduct.

{¶61} In *State v. Doran* (1983), 5 Ohio St.3d 187, the Ohio Supreme Court held: "The defense of entrapment is established where the criminal design originates with the officials of the government, and they implant in the mind of an innocent person the disposition to commit the alleged offense and induce its commission in order to prosecute." In *Yeager v. Local Union 20* (1983), 6 Ohio St.3d 369, 375, 6 OBR 421, 453 N.E.2d 666, the Ohio Supreme Court described outrageous conduct as follows: "[S]o outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. Generally, the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, 'Outrageous!' " Id.

{¶62} The State's witnesses in this matter consistently recounted the basis for appellant's Count I violation: His failure to register in Holmes County based on his failure or refusal to first clear his name from the registration system in Auglaize County by properly and timely notifying officials there of his intent to move. Upon review, we find appellant's claims of police entrapment and outrageous police conduct unpersuasive.

{¶63} Appellant's Third Assignment of Error is overruled.

IV.

{¶64} In his Fourth Assignment of Error, appellant contends his convictions for failure to register or notify of an address change violated due process, because he was not required to register as a sexually-oriented offender in Ohio.

{¶65} We find this assigned error relates to Counts I and II only. Those Counts were based on R.C. 2950.04((E), which states: "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."

Count I (3-Day Requirement in Holmes Co.)

{¶66} We first consider, by cross-reference within R.C. 2950.04((E), the requirement of R.C. 2950.04(A)(4)(a) that "[r]egardless of when the sexually oriented offense was committed, each person who is convicted *** in a court in another state *** for committing a sexually oriented offense shall comply with the following registration requirements if, at the time the offender *** moves to and resides in this state or temporarily is domiciled in this state for more than three days, the offender *** enters

this state to attend a school or institution of higher education, or the offender *** is employed in this state for more than the specified period of time, the offender *** has a duty to register as a sex offender or child-victim offender under the law of that other jurisdiction as a result of the conviction, guilty plea, or adjudication:

{¶67} "(a) Each offender *** shall register personally with the sheriff, or the sheriff's designee, of the county within three days of the offender's or delinquent child's coming into the county in which the offender or delinquent child resides or temporarily is domiciled for more than three days."

{¶68} Appellant essentially argues that R.C. 2950.04(A)(4)(a) applies only to out-of-state-offenders who are *initially* moving into Ohio. However, our reading of the above subsection indicates that the "moves to and resides in this state" language is instead merely tied to the question of whether an offender has a duty to register under another jurisdiction's law at the time he or she moves to Ohio.

{¶69} We therefore find no error on this basis as to Count I under R.C. 2950.04(A)(4)(a).

Count II (20-Day Intent to Reside Requirement for Holmes Co.)

{¶70} R.C. 2950.04(G) states as follows:

{¶71} "If an offender or delinquent child who is required by division (A) of this section to register is a tier III sex offender/child-victim offender, the offender or delinquent child also shall send the sheriff, or the sheriff's designee, of the county in which the offender or delinquent child intends to reside written notice of the offender's or delinquent child's intent to reside in the county. The offender or delinquent child shall

send the notice of intent to reside at least twenty days prior to the date the offender or delinquent child begins to reside in the county.

{¶72} Based on our redress of appellant's Ninth Assignment of Error, appellant's Tier III–based conviction in Count II is erroneous as a matter of law and will be ordered to be reversed.

{¶73} Appellant's Fourth Assignment of Error is therefore overruled in part and sustained in part.

V.

{¶74} In his Fifth Assignment of Error, appellant contends his conviction for failure to register in Holmes County violated due process, because the evidence purportedly shows it was impossible for him to do so.[1]

{¶75} Appellant maintains that the computerized registration system prevented him from registering in Holmes County, because he had not been recognized in the system at that time as having been transferred out of Auglaize County. However, appellant was required to give a twenty-day advance notice to Auglaize County prior to leaving for Holmes County; this he failed to do. Thus, the trial court properly concluded that appellant could not rely on an impossibility defense when the alleged impossibility was created by his original violation of the law in Auglaize County.

{¶76} Appellant's Fifth Assignment of Error is therefore overruled.

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[1] At this juncture, we have found appellant's Count II conviction to be reversible error. Furthermore, Count III concerns his Auglaize County notification. We will thus only consider Count I in this assigned error.

VI.

{¶77} In his Sixth Assignment of Error, appellant contends his conviction for failure to notify of an address change violated due process, because he was not notified of his "Tier III" requirements under R.C. 2950.04(G).

{¶78} Appellant's arguments in this assigned error are directed solely at Count II, which is his Tier III – based conviction. Based on our redress of his Ninth Assignment of Error, supra, we find further analysis of the present issue to be moot.

{¶79} Appellant's Sixth Assignment of Error is therefore found moot.

VII.

{¶80} In his Seventh Assignment of Error, appellant contends his conviction for failure to register under what we have labeled as Count III was not supported by sufficient evidence. We disagree.

{¶81} In reviewing a claim of insufficient evidence, "[t]he 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, 574 N.E.2d 492, paragraph two of the syllabus.

{¶82} Count III was based on R.C. 2950.05(F)(1), which reads as follows: "No person who is required to notify a sheriff of a change of address pursuant to division (A) of this section *** shall fail to notify the appropriate sheriff in accordance with that division." However, the indictment language for Count III references both division (A) and (B) of R.C. 2950.05, and charges that appellant failed to notify the appropriate

Sheriff "in accordance with these divisions ***." Appellant argues that the State was thus required to prove both R.C. 2950.05(A) and (B), which it failed to do.

{¶83} We find no merit in appellant's argument. The pertinent statute in Count III is R.C. 2950.05(F)(1), to which R.C. 2950.05(B) is wholly inapplicable, and the reference to R.C. 2950.05(B) set forth in the charge was superfluous. The State therefore sufficiently proved the elements of R.C. 2950.05(F)(1).

{¶84} Appellant's Seventh Assignment of Error is overruled.

VIII.

{¶85} In his Eighth Assignment of Error, appellant contends his conviction for failure to notify of an address change violated due process, because he was not required to register as a sexually-oriented offender in Ohio.

{¶86} R.C. 2950.04(A)(4), supra, imposes registration requirements if "the offender or delinquent child has a duty to register as a sex offender or child-victim offender under the law of that other jurisdiction as a result of the conviction, guilty plea, or adjudication." Appellant essentially contends the State failed to prove he had a duty under Texas law to register as a sex offender. However, the record reveals that appellant himself testified that he was required to register in Texas following his 2005 conviction. See Tr. at 104-105. Moreover, a review of appellant's multiple-ground oral motion for acquittal at the close of the State's case does not reveal that appellant asserted the present "duty under Texas law" argument to the trial court. See Tr. at 93-100. Under the invited error doctrine, a party will not be permitted to take advantage of an error which he himself invited or induced. See *He v. Zeng,* Licking App.No.

2003CA00056, 2004-Ohio-2434, ¶ 13, citing *State v. Bey* (1999), 85 Ohio St.3d 487, 493, 709 N.E.2d 484.

{¶87} Accordingly, appellant's Eighth Assignment of Error is overruled.

{¶88} For the reasons stated in the foregoing opinion, the judgment of the Court of Common Pleas, Holmes County, Ohio, is hereby affirmed in part and reversed in part. Appellant's conviction and sentence under Count II are hereby vacated.

By: Wise, J.

Gwin, J., concurs.

Edwards, P. J., concurs separately.

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JUDGES

JWW/d 1118

EDWARDS, P.J., CONCURRING OPINION

{¶89} I concur in the judgment of the majority. However, in the eighth assignment of error I would not find that appellant was required to move for acquittal on the basis that the State failed to prove he had a duty to register under Texas law in order to raise a sufficiency of the evidence claim on appeal.

{¶90} The Ohio Supreme Court has stated that a failure to timely file a Crim. R. 29(A) motion during jury trial does not waive an argument on appeal concerning the sufficiency of the evidence. *State v. Jones* (2001), 91 Ohio St.3d 335, 346, 744 N.E.2d 1163; *State v. Carter* (1992), 64 Ohio St.3d 218, 223, 594 N.E.2d 595. Because a conviction based on legally insufficient evidence constitutes a denial of due process, a conviction based upon insufficient evidence would almost always amount to plain error. *State v. Coe*, 153 Ohio App.3d 44, 790 N.E.2d 1222, 2003-Ohio-2732, ¶19. The rationale for requiring a criminal defendant to timely file a Crim. R. 29(A) motion at trial is to call the trial court's attention to the alleged insufficiency of the evidence and allow the trial court to correct the error. Id. at fn. 6.

{¶91} In the instant case, appellant's failure to raise the issue of the State's failure to prove he had a duty to register in Texas denied the trial court the opportunity to correct the error by directing a verdict at the close of the State's case, and prior to appellant taking the stand in his own case-in-chief.

Appellant then corrected the deficiency in the evidence himself by admitting that he had a duty to register in Texas following his 2005 conviction. Tr. 104-105. I therefore would find that appellant's conviction was not based on legally insufficient evidence.

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Judge Julie A. Edwards

IN THE COURT OF APPEALS FOR HOLMES COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
Plaintiff-Appellee	:	
-vs-	:	JUDGMENT ENTRY
WESLEY LLOYD	:	
Defendant-Appellant	:	Case No. 09 CA 12

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas, Holmes County, Ohio, is affirmed in part and reversed in part. Appellant's conviction and sentence under Count II are hereby vacated.

Costs to be split evenly between appellant and the State of Ohio.

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JUDGES