

NO. COA14-403

NORTH CAROLINA COURT OF APPEALS

Filed: 16 December 2014

STATE OF NORTH CAROLINA

v.

Mecklenburg County
Nos. 11 CRS 246037, 12 CRS
202386, 12 CRS 000961

Darrett Crockett,
Defendant.

Appeal by Defendant from judgment entered 3 July 2013 by
Judge Richard D. Boner in Mecklenburg County Superior Court.
Heard in the Court of Appeals 9 October 2014.

*Roy Cooper, Attorney General, by Catherine F. Jordan, and
Kimberly N. Callahan, Assistant Attorneys General, for the
State.*

*Staples S. Hughes, Appellate Defender, by Jason Christopher
Yoder, Assistant Appellate Defender, for defendant-
appellant.*

BELL, Judge.

Darrett Crockett ("Defendant") appeals from his conviction
of two counts of failure to register as a sex offender pursuant
to N.C. Gen. Stat. § 14-208.11.¹ Defendant argues on appeal that

¹ We note that Defendant also filed a petition for writ of certiorari seeking review of that part of the judgment relating to his guilty plea for having attained habitual felon status on the grounds that he failed to give timely notice of appeal on this issue. Rule 21 of the North Carolina Rules of Appellate

the trial court erred by (1) denying his motion to dismiss based on the State's failure to prove the offenses alleged in the indictment; and (2) admitting irrelevant evidence that the Mecklenburg County Sheriff's Office had a policy that the Urban Ministry Center for the Homeless was not a valid address for the purpose of statutorily required sex offender registration. He also argues that the trial court violated his right to a unanimous jury verdict under Article I, § 24 of the North Carolina Constitution. After careful review, we conclude that Defendant received a fair trial free from error.

Factual Background

Procedure provides that a "writ of certiorari may be issued in appropriate circumstances by either appellate court to permit review of the judgments and orders of trial tribunals when the right to prosecute an appeal has been lost by failure to take timely action" N.C.R. App. P. 21(a)(1) (2013). However, a petition for writ of certiorari must contain "a statement of the reasons why the writ should issue." N.C.R. App. P. 21(c) (2013). Here, Defendant merely states in his petition for writ of certiorari that he "has identified potentially meritorious issues to present to this Court in a brief, including issues that involve the judgment for attaining the status of habitual felon" but does not explain what these issues are nor does he address them in his brief. As such, Defendant's petition for writ of certiorari fails to meet the requirements of Rule 21. Accordingly, Defendant's petition for writ of certiorari is denied. *State v. McCoy*, 171 N.C. App. 636, 638-39, 615 S.E.2d 319, 321, *appeal dismissed*, 360 N.C. 73, 622 S.E.2d 626 (2005) (holding that the Rules of Appellate Procedure are mandatory and failure to comply with Rule 21 subjects a petition to dismissal).

Defendant stipulated at trial that on 8 October 1997, he was convicted of a reportable offense for which he was required to register as a sex offender and comply with the North Carolina Sex Offender Registration requirements, including the time period on and between 20 January 2011 and 23 February 2012. The State's evidence at trial tended to establish the following facts: On 9 April 1999, Defendant signed initial registration paperwork at the Mecklenburg County Sheriff's Office entitled "Requirements for Sex Offender and Public Protection Registration." This paperwork was provided to Defendant to assist him in understanding his registration requirements throughout the registration period. One of the statutory requirements listed on the registration form states that

[w]hen an offender required to register changes address, he/she must provide written notification of this address change to the Sheriff in the county where he/she most currently registered. This notification must be sent to the Sheriff within 10 days of the address change. This written notification may be made in the form of a letter, or by going personally to the Sheriff's department and completing a Change of Address Form.

Defendant completed a similar registration form again on 10 December 2004. In compliance with the statute, Defendant reported changes of address in writing to the Mecklenburg County

Sheriff's Office on the following dates: 1 March 2005, 30 May 2006, and 4 October 2006.

On 27 June 2007, Defendant returned an "Address Verification Notice" form² to the Mecklenburg County Sheriff's Office indicating that he had changed his address to 945 North College Street, Charlotte, North Carolina. 945 North College Street is the address of the Urban Ministry Center ("Urban Ministry"), a non-profit organization that provides various services to the homeless community. The facility is open from 8:30 a.m. until 4:00 p.m. during the week and 9:00 a.m. until 12:30 p.m. on weekends. It provides services such as food, shower facilities, counseling, restrooms, laundry, phones, changing rooms, a post office box, and transportation. However, there are no beds at Urban Ministry and visitors are prohibited from staying there overnight. At trial, Laura Stutts ("Ms. Stutts"), an administrative assistant with the Mecklenburg County Sheriff's Office, testified that the Mecklenburg County

² N.C. Gen. Stat. § 14-208.9A provides that, beginning on the date of his initial registration and every six months thereafter, a person required to register under the Sex Offender Registration Act must submit a verification form to the sheriff of his county of residence within three business days of receiving it. The form must be signed and must indicate "[w]hether the person still resides at the address last reported to the sheriff. If the person has a different address, then the person shall indicate that fact and the new address." N.C. Gen. Stat. § 14-208.9A (2013).

Sheriff's Office does not allow sex offenders to use Urban Ministry as an address for registration purposes.

From 15 April 2009 through 20 January 2011, Defendant was incarcerated in Mecklenburg County. Upon his release, he refused to sign a "Notice of Duty to Register" form and did not provide the sheriff's office with written confirmation of an address at which he would reside. The sheriff's office received an email from the Mecklenburg County jail stating that Defendant was going to live at 945 North College Street. That was the last time the sheriff's office received any information concerning Defendant's address until 7 November 2011.

On 11 February 2011, Defendant filed a Petition and Order for Termination of Sex Offender Registration on which he listed 945 North College Street as his current mailing address. The petition was dismissed when Defendant failed to appear for court.

On 7 November 2011, Defendant was arrested and incarcerated in Mecklenburg County. On 17 November 2011, he was released from the Mecklenburg County jail and signed a "Notice of Duty to Register" form, on which he listed 945 North College Street as his address. Defendant reported his address as 945 North College Street again on 17 January 2012.

Defendant mailed a letter postmarked 15 February 2012 to the Honorable Yvonne Evans, Resident Superior Court Judge at the Mecklenburg County Courthouse. The envelope listed the York County Detention Center in South Carolina as Defendant's return address. In the letter, Defendant mentioned that he had been living at his cousin's house in Rock Hill, South Carolina. The Mecklenburg County Sheriff's Office did not receive any written notification from Defendant informing them of this change of address.

On 28 November 2011, Defendant was indicted on one count of failing to register as a sex offender, as required by N.C. Gen. Stat. § 14-208.11, for the time period from 24 January 2011 until 6 November 2011. On 9 January 2012, Defendant was indicted for attaining habitual felon status. On 12 March 2012, Defendant was indicted on a second count of failing to register as a sex offender for the time period from 1 December 2011 until 23 February 2012.

A jury trial commenced on 1 July 2013 in Mecklenburg County Superior Court. On 3 July 2013, the jury returned a verdict finding defendant guilty of both counts of failing to register as a sex offender. Defendant pled guilty to attaining habitual felon status. The trial court sentenced Defendant to an active

term of 60 to 81 months imprisonment. Defendant gave notice of appeal in open court.

Analysis

I. Motion to Dismiss

Defendant first contends that the trial court erred by denying his motion to dismiss both charges of failing to register as a sex offender because the State did not present sufficient evidence to prove that Defendant committed the offenses charged in the indictments. We disagree.

The trial court's denial of a motion to dismiss is reviewed *de novo* on appeal. *State v. Smith*, 186 N.C. App. 57, 62, 650 S.E.2d 29, 33, (2007). When ruling on a motion to dismiss for insufficient evidence, "[t]he only issue before the trial court . . . is whether there is substantial evidence of each essential element of the offense charged and of the defendant being the perpetrator of the offense." *State v. Worley*, 198 N.C. App. 329, 333, 679 S.E.2d 857, 861 (2009) (citation and internal quotation marks omitted). "Substantial evidence is that amount of relevant evidence necessary to persuade a rational juror to accept a conclusion." *State v. Mann*, 355 N.C. 294, 301, 560 S.E.2d 776, 781 (citation omitted), *cert. denied*, 537 U.S. 1005, 154 L. Ed. 2d 403 (2002). "In making its determination, the

trial court must consider all evidence admitted, whether competent or incompetent, in the light most favorable to the State, giving the State the benefit of every reasonable inference and resolving any contradictions in its favor." *State v. Rose*, 339 N.C. 172, 192, 451 S.E.2d 211, 223 (1994) (citation omitted), *cert. denied*, 515 U.S. 1135, 132 L. Ed. 2d 818 (1995).

The North Carolina Sex Offender Registration Program is codified in Article 27A of Chapter 14 of the North Carolina General Statutes (hereinafter "Article 27A" or "the sex offender registration statute"). N.C. Gen. Stat. § 14-208.9 sets forth the requirements with which a registered sex offender must comply should he change his address. N.C. Gen. Stat. § 14-208.9 provides, in pertinent part, as follows:

[i]f a person required to register changes address, the person shall report in person and provide written notice of the new address not later than the third business day after the change to the sheriff of the county with whom the person had last registered. . . .

If a person required to register intends to move to another state, the person shall report in person to the sheriff of the county of current residence at least three business days before the date the person intends to leave this State to establish residence in another state or jurisdiction. The person shall provide to the sheriff a written notification that includes all of the following information: the address,

municipality, county, and state of intended residence.

N.C. Gen. Stat. § 14-208.9(a), (b) (2013).

N.C. Gen. Stat. § 14-208.11 enumerates the offenses with which a person may be charged for failing to comply with certain sections of the sex offender registration statute. N.C. Gen. Stat. § 14-208.11 states, in pertinent part, that

[a] person required by this Article to register who willfully does any of the following is guilty of a Class F felony:

. . . .

(2) Fails to notify the last registering sheriff of a change of address as required by this Article.

. . . .

(7) Fails to report in person to the sheriff's office as required by G.S. 14-208.8, 14-208.9, and 14-208.9A.

N.C. Gen. Stat. § 14-208.11 (2013).

Defendant was charged with two counts of violating N.C. Gen. Stat. § 14-208.11. Both indictments alleged that during the dates listed in each indictment Defendant

fail[ed] to register as a sexual offender in that said defendant, a Mecklenburg County, North Carolina resident, changed his address and failed to provide written notice of his new address no later than three (3) days after the change to the Sheriff's Office in the county with whom he had last registered.

Defendant argues that the State only offered evidence of statutory violations not charged in the indictment. Specifically, Defendant contends that although the State presented evidence that he failed to register upon release from a penal institution, in violation of N.C. Gen. Stat. § 14-208.7, and that he failed to report to the sheriff of the county of his current residence at least three days prior to the date he intended to leave the state, in violation of N.C. Gen. Stat. § 14-208.9(b), the State did not offer evidence proving Defendant had violated N.C. Gen. Stat. § 14-208.11, as alleged in the indictments. This argument is without merit.

This Court has previously determined that because N.C. Gen. Stat. §§ 14-208.9 and 14-208.11 "deal with the same subject matter, they must be construed in *pari materia* to give effect to each." *State v. Fox*, 216 N.C. App. 153, 156, 716 S.E.2d 261, 264 (2011) (citation omitted).

Having established that N.C. Gen. Stat. §§ 14-208.9 and 14-208.11 are properly read together when charging a defendant with a violation of the sex offender registration statute, we turn to Defendant's argument that the State failed to prove that he changed his address and did not provide proper written notice to the sheriff.

Our Supreme Court has held that a conviction for failing to notify the appropriate sheriff of a change of address pursuant to N.C. Gen. Stat. § 14-208.11(a) requires proof of three essential elements: "(1) the defendant is a person required . . . to register; (2) the defendant change[d] his address; and (3) the defendant [willfully³] [f]ail[ed] to notify the last registering sheriff of [the] change of address, not later than the tenth day after the change." *State v. Abshire*, 363 N.C. 322, 328, 677 S.E.2d 444, 449 (2009) (omission, third, and fifth alteration in original) (citations and internal quotation marks omitted).

In the case at hand, the parties stipulated at trial that upon his 8 October 1997 conviction of a reportable offense, Defendant became a person required to register as a sex offender and comply with the requirements of the North Carolina Sex

³ We recognize that in *Abshire*, our Supreme Court held that "[t]he crime of failing to notify the appropriate sheriff of a sex offender's change of address under N.C.G.S. § 14-208.11(a) is a strict liability offense" because the case was analyzed under the 2005 version of the statutes. However, in 2006, the General Assembly amended § 14-208.11, adding the requirement that the State must show that the defendant "willfully" failed to comply with the requirements of the sex offender registration statute. The change to the quoted language from *Abshire* in this opinion reflects the addition of the *mens rea* requirement in the amended version of the statute. *State v. Abshire*, 363 N.C. 322, 328, 677 S.E.2d 444, 449 (2009).

Offender Registration Program. Pursuant to N.C. Gen. Stat. § 14-208.7(a), on 9 April 1999, Defendant signed sex offender registration paperwork and registered his address for the first time.

Defendant was incarcerated from 15 April 2009 until 20 January 2011. On 20 January 2011, Defendant was released from incarceration. He did not register his new address with the Mecklenburg County Sheriff's Office in writing within three days of his change of address when he left the Mecklenburg County jail, as required under N.C. Gen. Stat. § 14-208.9.⁴ Defendant was arrested again on 7 November 2011 and released ten days later, on 17 November 2011. Upon his release, Defendant registered Urban Ministry as his address.

Defendant argues that the State did not prove that he willfully failed to notify the Mecklenburg County Sheriff's Office of his change of address on 20 January 2011 because Ms. Stutts testified that she "received an e-mail from release stating that [Defendant] was going to live at 945 North College

⁴ We view Defendant's January 2011 release from jail as a change of address falling within the purview of N.C. Gen. Stat. § 14-208.9 rather than § 14-208.7 because Defendant had been a registered sex offender since April 1999. Based on the language of N.C. Gen. Stat. § 14-208.7, we believe this section pertains to a defendant's *initial* registration upon release from a penal institution.

Street," the street address for Urban Ministry, although "he didn't list it on the paper." However, we believe that this email, in lieu of Defendant completing and signing paperwork with his address, is insufficient to constitute "registration" as statutorily prescribed in Article 27A.

Even assuming *arguendo* that the email was sufficient to constitute "registration," Urban Ministry is not a valid address at which Defendant could register in compliance with the sex offender registration statute because Defendant could not *live* there. Although "address" is not a term defined in the statute itself, our Supreme Court has held that "a sex offender's address indicates his or her residence, meaning the actual place of abode where he or she lives, whether permanent or temporary." *Abshire*, 363 N.C. at 331, 677 S.E.2d at 451.

[M]ere physical presence at a location is not the same as establishing a residence. Determining that a place is a person's residence suggests that certain activities of life occur at the particular location. Beyond mere physical presence, activities possibly indicative of a person's place of residence are numerous and diverse, and there are a multitude of facts a jury might look to when answering whether a sex offender has changed his or her address.

Id. at 332, 677 S.E.2d at 451.

Yet in *Abshire*, our Supreme Court declined to "add[] any further nuance" to what it means to "live" in a place. *Id.* In the context of the case law, the place where a person lives is where a person "resides" and performs his activities of daily living, such as sleeping and eating. These activities also require that a person keep his personal belongings at his residence. Although Defendant could perform at Urban Ministry some activities which a person normally does at his residence, such as bathing or eating, these activities can also be done at many public locations at which one cannot "live." For example, individuals may shower at the gym or eat in a restaurant. Critical to our holding in the present case that Defendant did not "live" at Urban Ministry is the fact that he was not permitted to keep any personal belongings there, nor could he sleep at Urban Ministry. In addition, Urban Ministry did not permit people to "reside" at the facility, as it closes each day. The activities which Defendant, and many other homeless people, are permitted to perform at the Urban Ministry facility does not make it his "residence" because he cannot "live" there.

Urban Ministry's operational hours are similar to those of a business. It is open from 8:30 a.m. to 4:00 p.m. during the week and from 9:00 a.m. to 12:30 p.m. on weekends. Visitors at

Urban Ministry may use the facility for activities such as showering, napping, and changing clothes, but no one is permitted to sleep there and there are no beds. The purpose of the sex offender registration program is "to assist law enforcement agencies and the public in knowing the whereabouts of sex offenders and in locating them when necessary." *Id.* Allowing Defendant to register Urban Ministry as a valid address would run contrary to the legislative intent behind the sex offender registration statute. See N.C. Gen. Stat. § 14-208.5 (2013).

The State also presented evidence that Defendant was living in South Carolina during the second indictment period of 1 December 2011 through 23 February 2012. In a letter addressed to Mecklenburg County Superior Court Judge Yvonne Evans, Defendant wrote that his cousin had permitted him to live in one of his houses in Rock Hill, South Carolina. The envelope of the letter was postmarked 15 February 2011 and the return address was listed as York County Detention Center in South Carolina.

The record also contained sufficient evidence that a jury could find Defendant *willfully* failed to report his changes of address. "'Wilful' as used in criminal statutes means the wrongful doing of an act without justification or excuse, or the

commission of an act purposely and deliberately in violation of law." *State v. Arnold*, 264 N.C. 348, 349, 141 S.E.2d 473, 474 (1965) (citation omitted). Because willfulness is a mental state, it often must be inferred from the surrounding circumstances rather than proven through direct evidence. *Id.* Here, there was ample evidence to show that Defendant had complied with the registration requirements between 1999 and 2006. Additionally, Defendant had signed forms acknowledging the requirements for sex offenders under the statute and his understanding of these requirements.

The State presented sufficient evidence that Defendant (1) was required to comply with the sex offender registration act; (2) changed his address; and (3) willfully failed to notify the sheriff within three days' time. Thus, we conclude that, taken in the light most favorable to the State, the record contained sufficient evidence that a jury could find Defendant changed his address and failed to notify the sheriff's office, in violation of N.C. Gen. Stat. § 14-208.11, during both indictment periods. Thus, the trial court properly denied his motion to dismiss. This argument is overruled.

II. Evidence Regarding the Mecklenburg County Sheriff's Office
Policy

Defendant next argues that the trial court erred by admitting evidence that the Mecklenburg County Sheriff's Office had a policy that Urban Ministry was not considered a valid address for the purposes of compliance with the sex offender registration statute. Defendant contends that the admission of this policy was not only irrelevant, but "created the real risk that the jury would convict [Defendant] based solely on a 'violation' of the Mecklenburg County Sheriff's Office policy."

Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." N.C. R. Evid. 401. This Court gives a trial court's relevancy determinations great deference on appeal. *State v. Grant*, 178 N.C. App. 565, 573, 632 S.E.2d 258, 265 (2006), *appeal dismissed and disc. review denied*, 361 N.C. 223, 642 S.E.2d 712 (2007). Relevant evidence may be excluded under Rule 403 "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury." N.C. R. Evid. 403. It is within the trial court's sound discretion to decide whether to exclude evidence under Rule 403, and its ruling will not be reversed absent a showing of abuse of that discretion.

State v. Lloyd, 354 N.C. 76, 108, 552 S.E.2d 596, 619 (2001) (citations omitted).

The policy of the Mecklenburg County Sheriff's Office that prohibits sex offenders from registering Urban Ministry as their address was relevant in that it tended to show that no one could "live" at Urban Ministry. Evidence that Defendant registered an address at which he could not live suggests that his actual address, for purposes of complying with the sex offender registration statute, was not the one he had registered. "The State can show that defendant changed his address simply by showing that he was no longer residing at the last registered address" *State v. McFarland*, __ N.C. App. __, __, 758 S.E.2d 457, 463 (2014) (citation omitted).

Even assuming, without deciding, that this policy lacked relevance, Defendant has failed to show that any such error was prejudicial. *State v. Oliver*, 210 N.C. App. 609, 615, 709 S.E.2d 503, 508 ("The admission of evidence which is technically inadmissible will be treated as harmless unless prejudice is shown such that a different result likely would have ensued had the evidence been excluded. Further, it is the defendant's burden to show prejudice from the admission of evidence." (citations and quotation marks omitted)), *disc. review denied*,

365 N.C. 206, 710 S.E.2d 37 (2011). The State presented additional evidence at trial that showed Defendant did not live at 945 North College Street, indicating that he had changed his address and failed to notify the Mecklenburg County Sheriff's Office.

Additionally, we are not persuaded by Defendant's assertion that "the jury could have convicted [him] because it believed [he] violated the Mecklenburg County Sheriff's Office policy." The trial court carefully instructed the jury on each element the State must prove beyond a reasonable doubt in order for the jury to find Defendant guilty of the offenses charged. Defendant has failed to show prejudicial error by the trial court in allowing the policy of the Mecklenburg County Sheriff's Office into evidence.

III. Unanimous Jury Verdict

Defendant's final argument on appeal is that the trial court violated his right to a unanimous jury verdict under Article I, § 24 of the North Carolina Constitution. Specifically, Defendant argues that it was not possible to determine the theory upon which the jury convicted him when it found him guilty of failing to comply with the sex offender registration requirements for each indictment period.

"Article I, Section 24 of the North Carolina Constitution states that '[n]o person shall be convicted of any crime but by the unanimous verdict of a jury in open court.'" *State v. Wilson*, 363 N.C. 478, 482-83, 681 S.E.2d 325, 329 (2009) (alteration in original)(citing N.C. Const. art. I, § 24). However, "[i]t is well established . . . that if the trial court merely instructs the jury disjunctively as to various alternative acts which will establish an element of the offense, the requirement of unanimity is satisfied." *State v. Taylor*, 362 N.C. 514, 541, 669 S.E.2d 239, 262 (2008) (citations and internal quotation marks omitted) (holding trial court's jury instructions that did not specifically instruct jury as to which robbery it should consider as basis for felony murder charge did not violate defendant's right to unanimous jury verdict), *cert. denied*, 558 U.S. 851, 175 L.Ed.2d 84 (2009). See *State v. Hartness*, 326 N.C. 561, 563, 567, 391 S.E.2d 177, 178, 180-81 (1990) (holding that when defendant is charged with "a single offense which may be proved by evidence of the commission of any one of a number of acts," jury instruction not specifying which of those acts the jury should consider does not risk a non-unanimous verdict).

Here, with respect to the first indictment, the trial court instructed the jury as follows:

The defendant . . . has been charged with willfully failing to comply with the sex offender registration law. For you to find the defendant guilty of this offense, the State must prove three things beyond a reasonable doubt.

First, that on or about the period January 24th, 2011, and November 6th, 2011, the defendant was a resident of this state.

Second, that the defendant had been previously convicted of a reportable [offense] for which he was required to register. The parties . . . have previously stipulated and agreed that the defendant had been previously convicted of a reportable offense and that he was required to register as a sex offender in North Carolina.

Third, the State must prove to you that the defendant willfully changed his address and failed to provide written notice of his new address in person at the sheriff's office not later than three days after the change of address to the sheriff's office in the county with which he had last registered.

The trial court gave an identical instruction for the second indictment, but with the applicable time period of 1 December 2011 through 23 February 2012.

Defendant argues that, based on the trial court's instructions, it was impossible to determine whether the jury based his conviction of failing to register as a sex offender

because it found he had (1) failed to register upon leaving the Mecklenburg County jail; (2) failed to register upon changing his address; (3) registered at an invalid address; or (4) did not actually live at the address he had registered. However, because any of these alternative acts satisfies the third element of the jury instruction – that Defendant changed his address and failed to notify the sheriff within the requisite time period – the requirement of jury unanimity was satisfied. As such, Defendant's argument on this issue lacks merit.

Conclusion

For the reasons stated above, we conclude that Defendant received a fair trial free from error.

NO ERROR.

Judges GEER and STROUD concur.