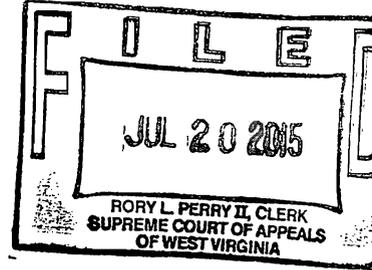


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

STATE OF WEST VIRGINIA,
Respondent,



v.

Supreme Court No. 15-0302
Circuit Court No. 14-F-83
(Marshall County)

WILLIAM LEONARD BEEGLE,
Petitioner.

PETITIONER'S BRIEF

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ASSIGNMENTS OF ERROR

I. A Defendant May Not Be Convicted Despite a Lack of Sufficient Evidence to Show Each Element of the Offense Beyond A Reasonable Doubt When His Purported Change of Address Was Not Established by Any Witness And, If Proved, Was Not Shown To Be An Intentional or Knowing Violation.

II. The Trial Court Failed to Properly Instruct the Jury and thus Committed Reversible Error.

This assignment of error is withdrawn.

III. The Indictment Was Defective, Thus Creating a Fatal Variance.

This assignment of error is withdrawn.

IV. The Statute Concerning Changes in Information as to Addresses and as to Residences for Purposes of Sex Offender Registration Is Unconstitutionally Vague.

STATEMENT OF THE CASE

Section 15-12-2(d)(2) of the Sex Offender Registration Act states that an offender must register where he lives and where he works. W.Va. Code §15-12-2(d). Mr. Beegle did just that. He provided the State with the address at which he received his mail, kept his property, and intended to live, that being his stepfather's house in Moundsville, West Virginia, thus fulfilling his obligation to register where he lives. He also provided the State with the address of his place of employment in Wheeling, West Virginia, thus fulfilling his obligation to register where he works. The State then charged Mr. Beegle with failure to register a change of address because the State believed Mr. Beegle should have registered his place of employment, an address that was already duly registered in his file, as a place at which he lives because he began staying there overnight, multiple nights in a row, to fulfill his work duties as a night watchman. In other words, in the State's opinion, it was not enough to have the address registered; it had to be labeled correctly. Whether the definition of address should encompass one's place of employment in certain situations is unclear; likewise, how listing one's place of employment as a place at which one lives further assists law enforcement in monitoring an offender also is unclear. These two issues are the focus of this appeal.

STATEMENT OF FACTS

Mr. Beegle worked for a construction company that was renovating multiple buildings in the area and turning them into apartments. (A.R., p. 224). As such, Mr. Beegle's boss wanted someone on site overnight to ensure that materials and equipment were not stolen. (A.R., p. 223). While working overnight, Mr. Beegle was permitted to intermittently sleep on a cot in what used to be the office of an old bar. (A.R., p. 224). The office was a single room and was not designed to be used as

a residence. (*Id.*). Additionally, Mr. Beegle did not receive mail at his work site and only kept a change of clothes there. (A.R., pp. 231-32). Mr. Beegle did not deem his place of employment to be a home requiring the listing of the address in his registration as a home address.

The question of Mr. Beegle's address first came to light when the Sheriff's Department attempted to serve legal paperwork on Mr. Beegle at his stepfather's, Richard Kennedy's, house. (A.R., pp. 179-80). The civil process server for the Sheriff's Department attempted to serve Mr. Beegle on April 25, 2014, and April 29, 2014, with each attempt occurring at a different time of the day between the hours of 8 a.m. and 7 p.m. (A.R., pp. 179-81). The process server was unsuccessful in serving Mr. Beegle and asked a State Police trooper if he had any further information regarding Mr. Beegle's location. (A.R., pp. 180-82). As a result, the State Police began an investigation regarding Mr. Beegle's whereabouts. (A.R., pp. 188-89).

The investigating officer drove by Mr. Kennedy's house on different days and at different times looking for Mr. Beegle's girlfriend's car. (A.R., p. 188-89, 193). Mr. Beegle previously had lived in his girlfriend's car while homeless.¹ (A.R., pp. 194, 199, 220). The car was not at the house when the investigating officer drove by looking for it. (A.R., p. 189). The investigating officer alleged that the car not being at Mr. Kennedy's house at various days and times was evidence that Mr. Beegle was not living with his stepfather. (A.R., pp. 193-94). At trial, Mr. Beegle's girlfriend explained she does not permit Mr. Beegle to drive her car and if the car was not present at Mr. Kennedy's address, it was because she was using her car. (A.R., pp. 237-38).

Eventually the investigating officer did stop and speak with Mr. Kennedy; however, the investigating officer did not enter the household nor did he conduct any type of search. (A.R., pp.

189-91, 193, 196, 204-05). When asked, Mr. Kennedy indicated he rarely sees Mr. Beegle and that Mr. Beegle generally just stops by to pick-up his mail. (A.R., pp. 205, 207). Mr. Kennedy was unable to provide specific dates and times to the officer and, at trial, admitted that he has difficulty remembering dates and times. (A.R., pp. 209-10). Also at trial, Mr. Kennedy admitted he naps frequently during the day and that he does drink alcohol daily, although he was not specific as to the quantity of alcohol he consumes on a daily basis.² (*Id.*). Further, both Mr. Beegle and his girlfriend testified that the two had been to the house many times when Mr. Kennedy was asleep and the two of them were able to come into the residence and then leave the residence after staying there overnight without Mr. Kennedy awakening. (A.R., pp. 227, 236-37). When Mr. Beegle did not stay at his work site overnight, he would work from 7 a.m. until 9 or 10 p.m., meaning he did not return home until 10 or 11 p.m. (A.R., p. 225). Given the hours Mr. Beegle kept and Mr. Kennedy's medical

¹ During this time, Mr. Beegle registered the car and the lot where the car was parked so that he was in compliance with the Act and so that law enforcement could readily find him if necessary. (A.R., p. 220).

² During cross-examination, the discussion went as follows:

Q. And you drink quite a bit, don't you?

A. Used to be.

Q. Okay. You drink whiskey, is that correct?

A. Used to.

Q. Okay. Were you drinking a lot back in May of last year?

A. No more than normal.

Q. Well how much was normal back then?

A. Just a shot or two a day.

Q. Was how much?

A. A shot or two a day; a glass a day.

Q. A glass a day?

A. Or two.

Q. How good was your memory back then?

A. Just about like it is now.

Q. Okay. Did you ever have trouble remembering things?

A. No. Just I don't remember dates and times, if that's what you're asking.

Q. Okay. You don't remember dates and times?

A. No. What? Am I supposed to right down every time somebody visits me?

Q. So you don't -- you don't really know when the last time was when Mr. Beegle stayed overnight at your house, do you?

A. No, sir. I can't tell you that.

(A.R., pp. 209-10).

problems and use of alcohol, it is understandable that Mr. Kennedy was not aware of how often Mr. Beegle stayed at his house. Further, given Mr. Beegle's work schedule, it also is understandable why the civil process server was unable to serve Mr. Beegle between the hours of 8 a.m. and 7 p.m. (the hours during which the process server worked). (A.R., p. 183).

The State alleged that at some time between March 23, 2014, and May 16, 2014, Mr. Beegle changed his address and failed to report that change. (A.R., p. 3). On May 30, 2014, Mr. Beegle went to the State Police Detachment to update his registration and was arrested on one count of Failure to Register. (A.R., p. 222). Further, Mr. Beegle provided the State Police with the address of his employment when he began working there. (A.R., pp. 224-25). Accordingly, the address at which Mr. Beegle was alleged to “reside” was given to the State Police, but was labeled as a place of employment. One of the key factual contentions is whether Mr. Beegle was working and living at the same address since his work address was only listed as a place of employment. Additionally, at no time did Mr. Beegle live or work at any address that he had not given to the State Police.³ The State Police could have easily located Mr. Beegle. On days that Mr. Beegle did not stay at his work site overnight, he would work from 7 a.m. until 9 or 10 p.m., and would not return home until 10 or 11 p.m. (A.R., p. 225).

Mr. Beegle readily admits he is a sex offender subject to the provisions of the Sex Offender Registration Act. (A.R., p. 28). Mr. Beegle began registering as a sex offender on May 25, 2003,

³ This fact distinguishes Mr. Beegle’s case from other cases regarding the necessity of registering an “address” or “change of address” under the Sex Offender Registration Act. In both *State v. Bailey*, 2013 WL 949527 (2013)(unpublished opinion) and *State v. Williams*, 2013 WL 5708440 (2013)(unpublished opinion), the offenders failed to provide the State Police with the address the State alleged constituted a registerable address. Here, Mr. Beegle had given the State both his physical/home address and his work address, although the State asserted the work address should have been labeled as both a work address and a home address, meaning law enforcement could easily find Mr. Beegle and the information in question was not missing, but supposedly mislabeled. In *State v. Judge*, this Court recognized that

and has been doing so for the last twelve (12) years. (A.R., p. 229). Mr. Beegle registered the car in which he was living and where he was parking it when he was homeless; he also registered his change in hair color when he dyed his hair. (A.R., pp. 220-21, 229, 354-55). Mr. Beegle has reported any change he understood to be relevant under the Act.

On November 12, 2014, the State indicted Mr. Beegle on one count of Failure to Register. (A.R., p. 3). On February 6, 2015, Mr. Beegle stood trial on this charge. (A.R., p. 91). The State's case was mostly circumstantial. (*See* A.R., pp. 167-211). None of the State's witnesses could clearly state Mr. Beegle had been absent from his registered address for a specific period of time such that Mr. Beegle would have been required to notify the State of a change of address.⁴ (*See id.*). The State also presented Form 270, the sex offender registration form, which says to "register any change in registration information, including but not limited to, physical and mailing address." (A.R., pp. 1, 171). The form states that all changes in information must be made within ten (10) business days, but does not define the word "address" or the word "residence." (A.R., p. 1). Therefore, in determining guilt or innocence, the jury needed to establish if Mr. Beegle moved, and if he did move, the date on which he moved, and whether, within ten business days, Mr. Beegle registered this change of information.

The trial judge charged the jury and the jury began its deliberations at 2:39 p.m. (A.R., pp. 31-44, 270). The jury then came back with questions for the judge. The jury asked for verification

if an offender has no change in his or her actual information, even if the offender is incarcerated for several days, there is no legal need for that offender to re-register upon his or her release. 228 W.Va. 787, 724 S.E.2d 758 (2012).

⁴ The Act does not provide a definition of the phrase "change of address." However, the regulations interpreting the Act state "[t]he intent of the . . . Act is to assist law-enforcement agencies efforts to protect the public from sex offenders to register with a State Police detachment in the county where they reside, work, attend school or visit for more than fifteen (15) continuous days . . ." 81 CSR 14-5.1. The logical interpretation is an offender has ten (10) business days in which to register a change of address starting from the fifteenth consecutive day of his stay at that address.

of Mr. Beegle's work status and for a definition of residence as the statute regarding registration provides no such definition. (A.R., pp. 47, 270-71). The judge said the first inquiry was factual and the second inquiry was legal. (A.R., pp. 273-74). As to the factual issue, the judge stated the evidence was closed and may not be reopened. (A.R., pp. 47, 273). As to the legal issue, the judge said he would tell the jury the Act does not contain a legal definition of residence. (A.R., pp. 47, 273-74). Later, the jury came back with two more questions. (A.R., pp. 48, 274-76). The jury asked for a written version of the jury instructions and asked what date they should use as the start date for the ten day notice requirement. (A.R., pp. 48, 274-76). As to which date to use, the judge responded "I think that's a question purely within the province of the jury to be determined. It's a factual question." (A.R., p. 277). Ultimately, the judge sent the jury instructions back to the jury and stated "The charge is provided and may answer both questions." (A.R., pp. 48, 279-80).

The jury continued to deliberate and then, at 4:45 p.m., notified the judge that it was deadlocked. (A.R., p. 280). In response to the deadlock, the judge gave the jury the *Allen*⁵ charge, asking them to continue to deliberate even though they had not been able to reach a unanimous verdict. (A.R., p. 45, 280-82). The jury also took a recess during its deliberations since one of the jurors was a coach and needed to transport girls from a game. (A.R., pp. 282, 288-91). The jury recessed for nearly three hours, from 5:30 p.m. to 8:15 p.m., and then came back and deliberated some more. (A.R., p. 290). The jury reached a verdict by 9:45 pm, finding Mr. Beegle guilty of one count of Failure to Register. (A.R., pp. 291-95).

On March 5, 2015, the trial court by the Honorable David W. Hummel, sentenced Mr. Beegle to a term of incarceration of not less than one nor more than five years and then suspended the

sentence and placed Mr. Beegle on thirty-six (36) months of supervised probation. (A.R., p. 360).

Mr. Beegle petitioned the trial court for a new trial explaining that in order for a person to commit an intentional act, that person must have notice of what is required of him, and in this matter, he did not have proper notice as the statute did not provide a definition of either “address” or “residence”. (A.R., pp. 340-41). Counsel for Mr. Beegle further noted the State specifically charged Mr. Beegle with failing to register a change in address and an address can be defined as a place where a person receives his mail. (A.R., p. 341). Since Mr. Beegle continued to receive his mail at the address listed in his registration, there was no violation of the registration law. (*Id.*). Counsel for Mr. Beegle stressed the lack of evidence in this case to prove beyond a reasonable doubt each and every essential element of failure to register a change of address. (*Id.*). In response to this motion, the State alleged that it had firmly established Mr. Beegle was not present at the listed address from April 25 to May 16. (A.R., pp. 343-345).⁶ The State also conceded the Act does not actually define “address” or “residence.” (A.R., p. 343). The trial court denied Mr. Beegle’s motion. (A.R., pp. 346-47). This timely appeal followed and the matter is now ripe for review.

SUMMARY OF ARGUMENT

Mr. Beegle’s conviction and sentence must be overturned as the State failed to prove each element of the offense beyond a reasonable doubt. The alleged crime focuses on a change of address and a failure to register that change of address. If no change of address occurred, there can be no crime. In examining the jury instructions and the jury’s questions during deliberations, it is clear the

⁵ *Allen v. United States*, 164 U.S. 492, 17 S.Ct. 154 (1896).

⁶ The State originally claimed that the change of address occurred at some time between March 23, 2014, and May 16, 2014.

jury did not fully understand the meaning of the word “residence” and whether that word related to the word “address.” Logically, if the jury did not comprehend the definition of the word “residence” and its relationship to the word “address,” it had no way to properly analyze whether a change of address had occurred. If the jury cannot determine if a registerable change of information occurred, then it cannot determine, beyond a reasonable doubt, whether Mr. Beegle failed to register that change. Further, the statute regarding sex offender registration and changes in information does not provide a definition of either “residence” or “address,” making the statute unconstitutionally vague. While everyday meanings of the words “residence” and “address” exist, the Sex Offender Registration Act is a technical regulatory law that uses many terms in ways broader or different than the common sense meanings of those terms, necessitating that the statute itself provide definitions for those terms. A conviction based on lack of evidence and on lack of comprehension of terms is an unjust conviction, and therefore, must be overturned.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

A Rule 20 oral argument is necessary in this case as it presents an issue regarding the constitutionality of a statute, which is an issue of significant impact for all defendants subject to the requirements of the statute. Further, this case presents an issue of the definitions of relevant terms used in the statute with no definitions of said terms provided by the statute; therefore, this issue is an area of unsettled law. In addition, the decisional process would be significantly aided by oral argument.

This case is not appropriate for a memorandum decision as the complexity of the issues presented cannot be sufficiently discussed and resolved through a memorandum decision and should

be discussed and resolved through a full opinion by this Court.

ARGUMENT

I. A Defendant May Not Be Convicted Given A Lack Of Sufficient Evidence To Show Each Element Of The Offense Beyond A Reasonable Doubt When His Purported Change Of Address Was Not Established By Any Witness And, If Proved, Was Not Shown To Be An Intentional Or Knowing Violation.

Standard of Review: “A criminal defendant challenging the sufficiency of the evidence to support a conviction takes on a heavy burden. An appellate court must review all the evidence, whether direct or circumstantial, in the light most favorable to the prosecution and must credit all inferences and credibility assessments that the jury might have drawn in favor of the prosecution. The evidence need not be inconsistent with every conclusion save that of guilt so long as the jury can find guilt beyond a reasonable doubt. Credibility determinations are for a jury and not an appellate court. Finally, a jury verdict should be set aside only when the record contains no evidence, regardless of how it is weighed, from which the jury could find guilt beyond a reasonable doubt. To the extent that our prior cases are inconsistent, they are expressly overruled.” Syl. Pt. 3, *State v. Guthrie*, 194 W.Va. 657, 461 S.E.2d 163 (1995).

In criminal matters, there is only one standard for determining guilt and that is the State must demonstrate guilt beyond a reasonable doubt. Syl. Pt. 2, *State v. Guthrie*, 194 W.Va. 657, 461 S.E.2d 163 (1995). In this case, the State did not present sufficient evidence such that, even when viewed in the light most favorable to the prosecution, the evidence failed to support a finding of guilt beyond a reasonable doubt. According to the Sex Offender Registration Act, any time an offender has a change in “any of the registration information as required” by the Act and “knowingly fails to register the change or changes, each failure to register each separate item of information changed shall constitute a separate offense under this section.” W.Va. Code §15-12-8(a).

The State charged Mr. Beegle with failure to register, specifically with failure to register a change of address. The Act provides an offender must register:

(2) The address where the registrant intends to reside or resides at the time of registration, the address of any habitable real property owned or leased by the registrant that he or she regularly visits: *Provided*, That a post office box may not be provided in lieu of a physical residential address, the name and address of the registrant's employer or place of occupation at the time of registration, the names and addresses of any anticipated future employers or places of occupation, the name and address of any school or training facility the registrant is attending at the time of registration and the names and addresses of any schools or training facilities the registrant expects to attend;

W.Va. Code §15-12-2(d)(2). Therefore, in order to convict Mr. Beegle, the State needed to prove each of the following elements: (1) there was a change of address; (2) that change of address was not reported within the time limit provided by statute; (3) the act was performed knowingly; and (4) the defendant was a person required to register pursuant to the Sex Offender Registration Act.

The first element of showing a change of address requires an understanding of what, according to the law, is a change of address under the Sex Offender Registration Act. The Act provides no definition. The Administrative Code further interpreting this Act provides that an address is “[a]ny current physical address(es) including the mailing address and any habitable real property owned or leased that the offender regularly visits.” 81 CSR 14-2.12; *see also* A.R., p. 373. Mr. Beegle listed his home address as 1117 9th Street, Moundsville, West Virginia. (A.R., pp. 220-21). This address is the address at which Mr. Beegle received his mail and kept his property from March 23, 2014, to May 16, 2014. (A.R., pp. 227-28, 231-32). Mr. Beegle did not own or lease any real property. The only other place at which Mr. Beegle spent significant amounts of time is at his work site in Wheeling, West Virginia, the address of which was in his registration file under place of employment. (A.R., pp. 224-25).

“In the absence of any definition of the intended meaning of words or terms used in a legislative enactment, they will, in the interpretation of the act, be given their common, ordinary and

accepted meaning in the connection in which they are used.” Syl. Pt. 1, *Miners in Gen. Group v. Hix*, 123 W.Va. 637, 17 S.E.2d 810 (1941), *overruled on other grounds by Lee–Norse Co. v. Rutledge*, 170 W.Va. 162, 291 S.E.2d 477 (1982). As noted above, the Act provides no definition for the phrase “change of address” or the word “address”, therefore, the phrase “change of address” and the word “address” should be given their common, ordinary and accepted meaning. In this case, the State asserted that staying at a work location to perform work-related duties several nights in a row is a change of address. Common sense dictates that staying at a work location for many days in a row, including being at that site overnight every night as a watchman, cannot constitute a change of address as such a definition stretches the meaning of the phrase “change of address” beyond its common, ordinary and accepted meaning.

The Sex Offender Registration Act requires sex offenders to register where they live and where they work so that law enforcement knows where offenders are spending their time. The Act is not designed to be penal or to be used as retaliation against sex offenders; it is designed to protect the public from sex offenders by gathering and disseminating information about these offenders for use by law enforcement personnel. W.Va. Code §15-12-1a(a). In this case, the State’s definition of change of address creates a redundancy as Mr. Beegle’s home address and work address are already in his registration information; it is unclear why it would be necessary for Mr. Beegle to re-register his work address as a home address when the work address is already listed. Undoubtedly, if law enforcement needed to locate Mr. Beegle, it would check both his home address and his work address; having a work address also listed as a home address does not provide law enforcement with additional information regarding an offender’s location. Further, even though Mr. Beegle spent a large amount of time at his work address, he was only present at the work address for the purpose of

work-related duties. (A.R., pp. 224-25, 240).

The State's evidence showed Mr. Beegle spent large amounts of time at his work location, including multiple overnights for days in a row. The State's evidence did not show Mr. Beegle spent time at an address not listed in his sex offender registration. Therefore, if a change of residential address does not occur when a person begins to spend complete days in a row at his work address doing work-related duties, then the State's evidence fails to show a crime. One cannot fail to register a change of information when the alleged change is not, by definition, an actual change subject to registration. Additionally, the State did not prove Mr. Beegle's criminal intent, especially considering that the address in question was registered. Obviously, Mr. Beegle was not trying to hide or be evasive.

The standard of beyond a reasonable doubt is a difficult standard to meet. This standard exists because we, as a nation, do not want to punish a person and deprive that person of his liberty unless there is compelling evidence demonstrating that such a punishment is justifiable. Further, failure to prove even one element of the offense necessitates a finding of not guilty. *See Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781 (1979); *State v. Nelson*, 190 W.Va. 73, 436 S.E.2d 308 (1993). In this case, no reasonable interpretation of the evidence permits the conclusion that the State has proven each element of the crime beyond a reasonable doubt. *State v. Meadows*, 172 W.Va. 247, 304 S.E.2d 831 (1983). Therefore, in this matter, a critical analysis of the evidence allows only one conclusion – the State did not meet its burden and therefore, the only justifiable finding is one of not guilty. Hence, Mr. Beegle's conviction must be overturned.

II. The Trial Court Failed to Properly Instruct the Jury and thus Commit Reversible Error.

This assignment of error is withdrawn.

III. The Indictment Was Defective, Thus Creating a Fatal Variance.

This assignment of error is withdrawn.

IV. The Statute Concerning Changes in Information as to Addresses and as to Residences for Purposes of Sex Offender Registration Is Unconstitutionally Vague.

Standard of Review: “Where the issue on an appeal from the circuit court is clearly a question of law or involving an interpretation of a statute, we apply a *de novo* standard of review.” Syl. Pt. 1, *Chrystal R.M. v. Charlie A.L.*, 194 W.Va. 138, 459 S.E.2d 415 (1995).

“As generally stated, the void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited....” *Kolender v. Lawson*, 461 U.S. 352, 357, 103 S.Ct. 1855, 1858 (1983). The Due Process Clause requires that laws “give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly,” and provide “explicit standards for those that apply to them.” *Grayned v. City of Rockford*, 408 U.S. 104, 108, 92 S.Ct. 2294, 2298 (1972). *See also* Syl. pt. 1, *State v. Flinn*, 158 W.Va. 111, 208 S.E.2d 538 (1974) (“A criminal statute must be set out with sufficient definiteness to give a person of ordinary intelligence fair notice that his contemplated conduct is prohibited by statute and to provide adequate standards for adjudication.”).

This Court held:

A statute is enacted as a whole with a general purpose and intent, and each part should be considered in connection with every other part to produce a harmonious whole. Words and clauses should be given a meaning which harmonizes with the subject matter and the general purpose of the statute. The general intention is the key to the whole and the interpretation of the whole controls the interpretation of its parts.

State ex rel. Holbert v. Robinson, 134 W.Va. 524, 531, 59 S.E.2d 884, 889 (1950). In this matter, the definitions of the words “address” and “residence” greatly impacted whether adequate notice was provided to Mr. Beegle that his conduct was criminal. In general, the words “address” and “residence” are deemed to be common terms that jurors can apply without receiving specific instructions regarding the definitions of those words. See Syl. Pt. 3, *State v. Soustek*, 233 W.Va. 422, 758 S.E.2d 775 (2014); Syl. Pt. 2, *State v. Elder*, 152 W.Va. 571, 165 S.E.2d 108 (1968) (“Where the language of a statute is clear and without ambiguity the plain meaning is to be accepted without resorting to the rules of interpretation.”). However, sex offender registration requirements are technical requirements generated from a regulatory act, meaning words like “address” and “residence” can and do take on meanings beyond the common use of those words.⁷ Most people would identify themselves as having one address regardless of the number of places they slept in the course of a month. Under the Act, a sex offender may have multiple addresses and is required to register each one.

Mr. Beegle contends an “address” is a place where a person lives such as a place where a person

⁷ Moreover, the Act does not provide definitions for “address” and “residence,” meaning there is no clear guideline in the Act on how long an offender may stay at any given location before that location becomes a residence or an address. However, the regulations supporting the Act state an offender must register in a county where he or she resides or works for more than fifteen (15) continuous days. 81 CSR 14-5.1, *see also* A.R., p. 374. This time span is significant as Mr. Beegle never stayed at his work site overnight for longer than two weeks, or fourteen (14) continuous days. Arguably,

receives his mail and stores his property; for Mr. Beegle, that place was his stepfather's house, which was duly listed in his registration file. Therefore, since Mr. Beegle had provided a proper address for where he lived, he was in compliance with the Act and thus, could not have committed a crime. Further, Mr. Beegle also had registered his place of employment. At no time did Mr. Beegle live at an address not listed in his registration material. Law enforcement could readily find Mr. Beegle due to the availability of this information in his file, which fulfills the purpose and the spirit of the law.

The State, however, contends an "address" is based on how many nights per week a person sleeps at a location, regardless of whether the person receives his or her mail there or is present at an address for reasons that are not personal, like fulfilling work obligations. Given the significant differences between Mr. Beegle's definition of "address" and the State's definition of "address," it logically follows it was unknown to Mr. Beegle that if he slept at his place of employment, even if he was at his place of employment due to job duties, he needed to register that location as an "address" for purposes of where he lived. Mr. Beegle believed that he had complied with his registration requirements by registering both his physical residential address and his work address.⁸ It never occurred to him that based on the long hours he worked, his job site would be deemed a residential "address" necessitating the listing of that job site as a residential "address." Of note, Mr. Beegle's information never changed; the only thing that did change was the State's expectation of how that information was labeled. The issue becomes whether Mr. Beegle should have known this definition. If Mr. Beegle should have known this definition, then he is subject to punishment for any failure to

since Mr. Beegle was not at his work site overnight for fifteen (15) or more continuous days, he was not required to register the alleged "change of address," and therefore, there could be no crime.

⁸ This lack of a clear definition of "change of address" also creates problems for law enforcement and prosecutors in determining when to arrest and when to charge an offender with the crime of Failure to Register due to a failure to

comply with the registration law. However, if Mr. Beegle legitimately did not know of this registration obligation, and the average person would not interpret an “address” or a “change of address” as including this type of situation, Mr. Beegle cannot be punished for failing to meet this requirement.

The State’s conceptualization and interpretation of the requirements of the statute deviate greatly from the rules of statutory construction and from the case law interpreting registration requirements such that no rational person would interpret the statute in the same manner as the State. The State’s theory underlying this charge is exceptionally hyper-technical so as to guarantee a lack of proper notice as required by Due Process. It is a long-standing tradition that notice of wrongful conduct should be provided to citizens to afford citizens the opportunity to bring their conduct into compliance with legal expectations. *See State ex rel. Myers v. Wood*, 154 W.Va. 431, 175 S.E.2d 637 (1970). Without notice as required by the constitutional right to due process, there is no realistic opportunity for compliance and therefore, a failure to comply cannot be deemed illegal. In this case, Mr. Beegle did not receive the notice required by both Article 3, §10 of the West Virginia Constitution and the Fifth and Fourteenth Amendments of the United States Constitution. Therefore, since the State violated one of Mr. Beegle’s constitutional rights, Mr. Beegle’s conviction must be overturned.

The State’s theory on the definition of address also led to an unjust result. In Mr. Beegle’s case, the factual details reflected a need for definitions of the phrases “change of address” and

register a change of address. When does an address change occur and how is that determined? Is it based on sleeping at one location for so many nights? If so, how many nights must an offender be there before he may be charged?

“change of residence.”⁹ Specifically, the jurors asked the trial court to provide them with a legal definition of the meaning of the word “residence,” seeking to clarify the standard by which to determine if a “change of address” had occurred. However, the trial court did not provide any specific guidelines or limits on what constitutes a “change of address” or a “change of residence,” thus, it is unknown how the jury defined the phrase “change of address” and the phrase “change of residence.” The presence of these unknown definitions creates an unsettling situation in which it is unknown whether the jury’s verdict of guilt was based on findings of fact as applied to the correct tenets of laws or whether the jury’s verdict of guilt was based on some other formulation or speculation regarding their understanding of the evidence and the law. Verdicts based on speculation are not valid. Syl. Pt. 1, *Oates v. Continental Ins. Co.*, 137 W.Va. 501, 72 S.E.2d 886 (1952). As such, the only solution in cases like this case is to overturn the verdict.

Additionally, the trial judge erred in allowing the State to use its interpretation to pursue this charge against Mr. Beegle. The charge as written so defies the purpose and spirit of the law that both the charge and the conviction must be dismissed or otherwise invalidated. It is generally recognized that in construing an ambiguous criminal statute, the rule of lenity applies, which requires “[p]enal statutes must be strictly construed against the State and in favor of the defendant.” Syl. pt. 3, *State ex rel. Carson v. Wood*, 154 W.Va. 397, 175 S.E.2d 482 (1970). The rationale for the rule of lenity is to preclude “expansive judicial interpretations [that] may create penalties for offenses that were not intended by the legislature.” *State v. Brumfield*, 178 W.Va. 240, 246, 358 S.E.2d 801, 807 (1987).

⁹ Defense counsel did not object to the jury instructions and the failure of the trial court to initially define the words “address” and “residence” for the jury. However, defense counsel’s failure to object does not relieve the trial court of its obligation to ensure that the jury has been instructed correctly on the applicable law. See Syllabus, *State v. Miller*, 184 W.Va. 367, 400 S.E.2d 611 (1990)(explaining this Court has a clear rule regarding the trial court’s obligation to instruct

The United States Supreme Court made this observation in *Crandon v. United States*: “[The rule of lenity] serves to ensure both that there is fair warning of the boundaries of criminal conduct and that legislatures, not courts, define criminal liability.” 494 U.S. 152, 158, 110 S.Ct. 997, 1002, 108 L.Ed.2d 132, 140 (1990). In this matter, the State offered an unusual definition of “change of address,” however, given the rule of lenity, this Court should rule the State’s definition is not valid. If the State’s definition of “change of address” is not valid, then Mr. Beegle’s conviction cannot be valid and must be reversed.

the jury on all essential elements of the offense charged – if the trial court fails to do so, the accused is deprived of his fundamental right to a fair trial, and reversible error has been committed).

CONCLUSION

For all of the above reasons, Mr. Beegle respectfully requests that this Honorable Court reverse his conviction and direct the trial court to dismiss this matter with prejudice.

Respectfully Submitted

WILLIAM BEEGLE
By Counsel

A handwritten signature in cursive script that reads "Lori M. Waller". The signature is written in black ink and is positioned above a horizontal line.

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CERTIFICATE OF SERVICE

I certify that I have caused to be served the attached *Petitioner's Brief* of the Appellant by having a true copy thereof delivered to David Stackpole, at the Attorney General's Office, 812 Quarrier Street, 6th Floor, Charleston, West Virginia 25301; by hand delivery or by U.S. States Mail postage prepaid this the 20th day of July, 2015.



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