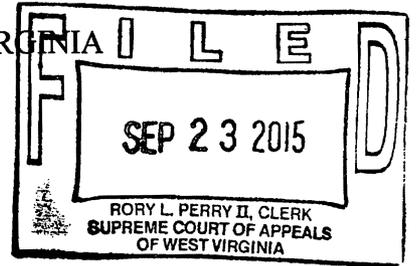


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA



STATE OF WEST VIRGINIA,

Respondent,

v.

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

WILLIAM LEONARD BEEGLE,

Petitioner.

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PETITIONER'S REPLY BRIEF

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## REPLY ARGUMENT

Mr. Beegle viewed his home address or residence as his stepfather's home where he received mail and stored his possessions; Mr. Beegle appropriately registered his stepfather's address as his home address in his sex offender registration. Mr. Beegle worked security at his jobsite, and would often spend the night there performing his job duties, sometimes for over a week at a time. He also reported this address to the State Police: as his place of employment. The State's position, now, as it was at trial, is that in addition to reporting the jobsite as a place of employment, he also had to redundantly report it as a residence. The focus of this appeal is that either a) the registration statute does not require this redundancy, in which case the State did not present sufficient evidence of any crime, or b) if the act does so require that redundancy, it is too vague as applied to have put Mr. Beegle on notice he needed to write the same address, on the same form, twice. Either way, Mr. Beegle is entitled to have his conviction reversed.

**I. The State Erroneously Concluded There Was Sufficient Evidence To Show Each Element Of The Offense Beyond A Reasonable Doubt Despite A Lack Of Proof And Confusion Over The Meaning Of The Law.**

Mr. Beegle's position is the State erred in identifying and defining the elements of the crime and thus failed to show sufficient evidence to prove each element of the crime. However, the State claims "[t]here was sufficient evidence at trial to show that Mr. Beegle was not residing at the 1117 Ninth Street address and there was sufficient evidence for the jury to conclude that the violation was knowing and intentional." Respondent's Brief, p. 6. As explained *infra*, the State failed to show Mr. Beegle was present at his worksite for fifteen continuous days, the minimum number of continuous days needed to trigger a registration obligation.

The State readily agrees that the Sex Offender Registration Act (hereinafter, "the Act") does not define the term "address." *Id.* The State next turns to the State Police's procedural

rules regarding the Act. The procedural rules provide some specificity as to how the intent and purposes of the Act are to be implemented. Although the procedural rules are not legislatively approved rules, they still have value as this Court has recognized rules promulgated by the relevant agency interpreting a statute reflect the body of experience and informed judgment of the agency “to which courts and litigants may properly resort for guidance.” *Appalachian Power Co. v. State Tax Dep’t. of WV*, 195 W.Va. 573, 583, 466 S.E.2d 424, 434 (1995). The procedural rules make multiple references that information regarding place of home residence, place of employment, and place of schooling is subject to reporting once a registrant has been at the location for fifteen continuous days. See 81 CSR §§ 14-4.5, 14-5.1, 14-6.3, 14-13.3, 14-13.7, 14-15.11, 14-17.7.a.4, & 14-17.9. While the procedural rules do not explain or define what actions or events must occur at a location for the location to qualify as a home residence, the rules are clear that once a registrant has been at a location for fifteen *continuous* days, some sort of registration or updating of information must occur. The two important terms used in the procedural rules are “fifteen” and “continuous.” The State emphasizes Mr. Beegle and his fiancé both testified Mr. Beegle stayed at the work site for a week to a week and one-half, thus suggesting the State concluded that the amount of time Mr. Beegle was at the work site continuously was seven to ten days. Fifteen is greater than both seven and ten, which clearly means Mr. Beegle could not have met the fifteen continuous day requirement necessitating some sort of registration or update. Additionally, the common sense meaning of “continuous” is day-after-day or on an ongoing basis. Mr. Beegle’s lengths of stays at the work site were continuous for seven to ten days and then there was a break in the continuity. During these breaks, Mr. Beegle would go to 1117 Ninth Street to pick up his mail. These breaks in continuity, along with the lack of evidence of Mr. Beegle meeting the fifteen day requirement, clearly demonstrates that

if the Court uses the definition in the procedural rules as to time at a location, Mr. Beegle did not fall under the requirement to register. The burden is on the State to show Mr. Beegle's behavior was such that it met the elements of the crime. In this matter, the State failed to show beyond a reasonable doubt that Mr. Beegle resided at his work site for fifteen continuous days and then failed to register that address within the prescribed time period. Therefore, contrary to the State's position, there was not sufficient evidence to convict Mr. Beegle of the crime with which he was charged and his conviction must be overturned.

The State also argues the procedural rules define address as including "habitable property that the offender regularly visits." Respondent's Brief, p. 7. On this point, the State is wrong. The reference to habitable property is to habitable property *owned or leased* by the registrant (the sex offender). See W.Va. Code §15-12-2. At no time during the alleged relevant time period did Mr. Beegle either own or lease habitable property. Mr. Beegle stayed with his stepfather without any kind of lease agreement and stayed at his place of employment as part of his job duties. Mr. Beegle neither owned nor leased the property on which he was working.

The State next turns to Black's Law Dictionary for a definition of the word "residence," emphasizing that "bodily presence as an inhabitant is all it takes to make a place a residence." Respondent's Brief, p. 7. As noted above, nowhere in the procedural rules is residence defined as only needing bodily presence. In terms of authorities of law, the procedural rules are given greater weight than Black's Law Dictionary and the procedural rules reference a person being at a location for fifteen continuous days before registration is necessary. Therefore, something more than bodily presence is needed to make a place a residence; there is a clear time requirement.

Turning to the rules of statutory construction, it is clear that this law must be strictly construed as it is a law in derogation of common law and involves a mandatory act. *See West Virginia Legislature Bill Drafting Manual, Revised January 2006, p. 32. See also State v. Myers*, 216 W.Va. 120, 602 S.E.2d 796 (2004)(explaining statutes which derogate common law are only allowed to the extent clearly indicated by the terms used (internal citations omitted)); *Syl. Pt. 1, State v. Jones*, 187 W.Va. 600, 420 S.E.2d 736 (1992)(explaining statutes in derogation of common law must be given a strict construction); *Poling v. Poling*, 116 W.Va. 187, 179 S.E. 604 (1935)(same); *State ex. Rel. Keller v. Grymes*, 65 W.Va. 451, 64 S.E.728 (1909)(same); and II Sutherland Statutory Construction (2d Ed.), sec. 454. The concept of sex offender registration is a strictly statutory creation as a reaction to the perceived dangerousness of sex offenders. Further, although the law is regulatory in nature, it has criminal penalties, again suggesting the law must be strictly construed. Since strict construction is necessary, the definition of address should be read narrowly, meaning if an offender is not at a location for fifteen continuous days or more, there is no obligation to register that address. Therefore, since the State erred in identifying and defining the elements of the crime, the charge (and conviction) against Mr. Beegle cannot stand as, under a strict construction, Mr. Beegle never established a new home address or residence according to the relevant definitions and thus, could not have violated the Act by failing to register a new home address.

The State also emphasizes the purpose of the Act is to protect the public from sex offenders by disseminating certain information. Of note, the phrase the State cites regarding the intent of the Act is section (b). The first section, section (a), states “[i]t is the intent of this article to assist law-enforcement agencies’ efforts to protect the public from sex offenders by requiring [registration] and by making certain information about sex offenders available to the public as

provided in this article.” W.Va. Code §15-12-1a(a). The very first purpose of the Act is to assist law-enforcement agencies and in Mr. Beegle’s case, law-enforcement knew where to find him throughout the relevant time period, thus fulfilling the purpose and the spirit of the Act. Further, if one examines all the topics covered in the West Virginia Code under Chapter 15, it is apparent that Chapter 15 addresses military and law enforcement issues and the use of military and law enforcement to maintain public safety.

Likewise, the State analyzes the knowing and intentional requirement necessary for a violation, concluding that since Mr. Beegle had been successful in updating his registration in the past, he must undoubtedly understand all aspects of this highly technical law. The State then concludes the jury had sufficient evidence to infer “Mr. Beegle knew and understood the requirement to register where he was actually residing and not just the place that he was picking up mail, but did not provide that information to the State Police as required by the Act.” However, nowhere in the jury instructions is the jury told that the procedural rules say that an offender must register a change of address when the offender has been at the address for fifteen or more continuous days. (A.R., pp. 31-44). There is no way of knowing how many days the jury felt were sufficient to constitute a change of address or whether the jury based its decision not necessarily on the number of days spent at the work site, but on the pattern of being at the worksite between seven and ten days, going elsewhere for one or two days, and then coming back to the worksite. Therefore, there is no way of knowing whether the jury unanimously agreed Mr. Beegle was at the worksite for fifteen continuous days, thus triggering the obligation to register.<sup>1</sup>

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<sup>1</sup> This conclusion also completely ignores the jury’s request for further information regarding the definition of residence, occurring approximately one hour into deliberations. (A.R., pp. 270-74). The jury would not have asked for further clarification if it understood the requirements of the law. The jury began deliberating at 2:39 p.m. (A.R., p. 270). At approximately 4:47 p.m., the judge had to issue an *Allen* charge instructing the jury to continue to

As to the State's arguments suggesting the existence of sufficient evidence, the State refers to officials' visits to the residence or an official driving by the residence. The State does not consider the reality of Mr. Beegle's work life. Mr. Beegle worked long hours, often 7 am to 7 pm, with an hour drive each way. At other times, Mr. Beegle stayed overnight as a security guard. Given Mr. Beegle's busy work life, it is not surprising officials did not see Mr. Beegle at his stepfather's house nor is it surprising it took Mr. Beegle two weeks to pick up legal documents as that may have been the only break in his work schedule. Further, law enforcement always knew where to find Mr. Beegle. Mr. Beegle never spent an extended amount of time at any place he had not registered. Mr. Beegle has complied with his sex offender registration obligations for over ten years; it seems highly unlikely that he would stop complying with the requirements now.

Given Mr. Beegle's ongoing compliance, the State's claim is disingenuous that Mr. Beegle knew to register the car and the parking lot in which it was parked when he was homeless implies he knew staying at his work location requires he register that location as a residence. Mr. Beegle knew he was required to register some address as his home address and concluded he needed to register the car in which he was living and the associated parking lot as a home address since he did not have a verifiable residence. Mr. Beegle lived in that car continuously, night after night, for one month to two months. When Mr. Beegle began staying at the job site to

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deliberate because the jury was hopelessly deadlocked. (A.R., p. 281). The jury was deliberating on a Friday afternoon and had been told the trial would last one day. (A.R., p. 113). Further, the jury was forced to take a break to allow the foreperson of the jury to fulfill a personal obligation; this break was from 5:30 p.m. to 8:15 p.m. (A.R. 282, 288-90). The verdict in this matter was rendered at approximately 9:45 p.m. (A.R. 291). Given the context in which the verdict was reached, it is highly questionable whether the jury had sufficient evidence to convict or whether the jury felt compelled to convict Mr. Beegle as its only means of concluding the trial. *See State v. Pannell*, 225 W.Va. 743, 696 S.E.2d 45 (2010)(explaining determining if a court's instructions improperly coerced a verdict from the jury is dependent on the facts and circumstances of the particular case).

fulfill his job responsibilities, it never occurred to him he needed to register the job location as a home address because he already had a verifiable home address at 1117 Ninth Street and his sole purpose in being at the job site was to perform his job duties. Mr. Beegle never spent more than ten days at the job site, showing he stayed there for a period of time and then went elsewhere. Unlike his time living in a car, Mr. Beegle's stays at the work site were not continuous. Clearly, if Mr. Beegle was willing to register the car as a residence so as to keep the State Police aware of his location, Mr. Beegle undoubtedly would have registered his work address as a residential address had he known that that was required and that his staying at the work site as a night watchman was considered to be residency. Mr. Beegle certainly was not hiding his whereabouts as this address was in the registry. It is highly unlikely a person who has worked diligently to comply with the registration law for more than ten years would suddenly simply ignore the mandates of the registration law and move to another residence without providing the proper notice.

For all of the above reasons, Mr. Beegle's conviction should be reversed.

**II. The State Incorrectly Concludes That The West Virginia Sex Offender Act Contains Sufficient Definiteness To Provide Constitutionally Sufficient Notice To A Person of Ordinary Intelligence.**

The Sex Offender Registration Act is a regulatory act which must be interpreted as a whole. *See Smith v. State Workmen's Compensation Comm'r*, 159 W.Va. 108, 219 S.E.2d 361 (1975). In examining the Act as a whole, one must determine if the terms "address" and "residence" are so vague as not to provide proper notice of criminal conduct. *See Kolender v. Lawson*, 461 U.S. 352, 357, 103 S.Ct. 1855, 1858 (1983); *Grayned v. City of Rockford*, 408 U.S. 104, 108, 92 S.Ct. 2294, 2298 (1972); Syl. pt. 1, *State v. Flinn*, 158 W.Va. 111, 208 S.E.2d 538

(1974). At least one court has held the word “resides” is not necessarily unambiguous in upholding the use of a jury instruction defining “resides” in a Failure to Register case. *United States v. Wampler*, 703 F.3d 815 (2013).

The State readily concedes there is no definition for the word “address” in the Act and that the word “residence” is not used in the Act. The State then proceeds to reference the statute regarding jury duty and concludes since being a resident of the county is clear on its face, then the word “residence” must be clear as well. However, the word “residence” is used with differing meanings through the West Virginia Code. *See, e.g.*, W.Va. Code §11-21-7(a)(explaining, for the purposes of paying personal taxes, a resident is a person who is domiciled in this State or who is not domiciled but maintains a permanent place of abode in this State and spends an aggregate of more than 183 days of taxable year at that abode); W.Va. Code §8-1-2(12) & (13)(explaining who is a resident of a municipal corporation and referencing resident must have usual and bona fide place of abode) and W.Va. Code §20-1-2 (defining “bona fide resident, tenant or lessee” as “a person who permanently resides on the land.”). The word “residence” and the concept of being a resident has nuances throughout the Code, thus it does not follow that concluding one section of the Code is clear regarding what constitutes a “residence” is sufficient for showing other references to “residence” in the Code are likewise clear as, for example, in the Sex Offender Registration Act. Additionally, these nuances show that the word “residence”/”resides” is a term of art whose meaning is wholly dependent upon the context.

The State also uses the procedural rules for the Act in its argument that the requirements of registration are clear. As noted *supra*, the procedural rules state the requirement to register a home, place of employment, or place of schooling occurs if the offender is at that location for fifteen continuous days. Although the time issue is clarified by the procedural rules, the

procedural rules provide absolutely no information on what activities at a “residence” or “address” makes that “residence” or “address” into a *home* address. Therefore, the qualifications for a home “residence” or home “address” remain ambiguous. In this matter, Mr. Beegle was at a work site to perform work related duties; he had no notice that doing so meant he had changed or created a home “residence” or home “address” subject to registration. Furthermore, while this Honorable Court has issued several unpublished memoranda opinions regarding the definition of address under the Act, this Court has yet to create a syllabus point in a published opinion giving clear notice to the public what constitutes a home address requiring registration under the Act. *See generally State v. McKinley*, 234 W.Va. 143, 151, 764 S.E.2d 303, 312 (2014)(“It is equally clear that memorandum decisions occupy a lower station on the scale of precedent when compared to published opinions.”). Therefore, while the amount of time spent at a location which necessitates registration may be clear, the activities that must occur at a location to give it its specific nature (home, employment, school) remain unclear. Given this lack of clarity, Mr. Beegle’s conviction should be overturned as he did not receive proper notice of what constitutes the crime of Failure to Register.

### **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,

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**CERTIFICATE OF SERVICE**

I certify that I have caused to be served the attached Brief of the Appellant by having a true copy thereof delivered to David A. Stackpole, at the Attorney General's Office, 812 Quarrier Street, 6<sup>th</sup> Floor, Charleston, West Virginia 25301; by hand delivery or by U.S. States Mail postage prepaid this the 23<sup>rd</sup> day of September, 2015.



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