

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-1343-2009  
vs. :  
 : K 710084-4  
MATTHEW DAVID BENKOE, :  
Defendant : Non-Jury Trial/Verdict

**OPINION AND ORDER**

As counsel know, in order to find an individual guilty under 18 Pa.C.S. §4915(a)(1), the Commonwealth first must prove that the Defendant is subject to registration under 42 Pa.C.S. §9795.1(a) or (b)(1), (2) or (3); second, that the Defendant failed to register as required by 42 Pa.C.S. §9795.2; and third, that the Defendant knowingly failed to do so.

In this particular case the Court is convinced beyond a reasonable doubt as to some of the required elements, those being that the Defendant was convicted of a similar offense in Ohio and that the Defendant knew of his requirement to register in Pennsylvania.

The problem that the Court struggled with, quite candidly, was the residency issue. Section 9795.1(a) requires certain individuals to register with the Pennsylvania State Police for a period of ten years, including individuals “**currently residing in this Commonwealth** who have been convicted of offense similar to the crimes cited in paragraphs (1) and (2) under the laws of the United States or one of its territories or possessions, another state, the District of Columbia, the Commonwealth of Puerto Rico or a foreign nation or under a former law of this Commonwealth.” 42 Pa.C.S.

§9795.1(a)(3)(emphasis added). The Court is convinced beyond a reasonable doubt that the Defendant’s Ohio conviction is an offense similar to indecent assault graded as a misdemeanor of the first degree or higher, which is a crime cited under paragraph (1). The Court, however, is of the opinion that the Commonwealth faced an insurmountable burden in

this case, because Megan’s Law does not cover the situation where a person does not have a fixed place of habitation of some degree of permanence. In *Commonwealth v. Wilgus*, 975 A.2d 1183 (Pa. Super. 2009), a case which this Court is bound to follow, the Superior Court noted that based on the definition of residence set forth in section 9792, the term “residence” connotes a “fixed geographical location within a neighborhood whose residents are entitled to notice and protection.” *Id.* at 1187. The Defendant did not have a fixed geographical location where he stayed, nor did he intend to stay more than thirty days. In a footnote, the Superior Court also stated: “[o]ne would not seriously contend, for example, a hotel is a ‘residence’ of a proverbial traveling salesman because he stays overnight; nor would one contend a parent’s home is a ‘residence’ of an adult child visiting over the holidays.” *Id.* at 1187 n.5. Defendant’s employment was akin to that of a traveling salesman. He was working for an amusement company that traveled to Pennsylvania for the Lycoming County Fair. The unit to which he was assigned was returning to Ohio for the rest of the fair and carnival season.<sup>1</sup>

The Court is also of the opinion that the Commonwealth may have faced an insurmountable burden because Megan’s Law does not address a situation where an individual employed by an out-of-state company is performing temporary work in Pennsylvania. As was noted in the testimony and the exhibits, the Defendant was employed by an Ohio company and essentially was working in Pennsylvania for a very limited period.

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<sup>1</sup> The Court notes that it is not entirely clear where the Defendant stayed when he was in Pennsylvania. Testimony was presented that the amusement company employees would stay in bunkhouse trailers unless they stayed in a hotel or with someone they knew locally. The evidence presented also indicated that if an employee stayed in the bunkhouse, a fee would be deducted from their pay. The Defendant’s pay stub, however, did not show any such deductions; the only deductions were for taxes, FICA and the like. Under the facts and circumstances of this case, the Court does not believe any of these housing alternatives would qualify as a “residence” under Megan’s Law.

Section 9795.2 requires offenders who were convicted in another state and reside, are employed or are students in this Commonwealth to register with the Pennsylvania State Police within 48 hours of their arrival in this Commonwealth. Section 9792 describes the term “employed” as a vocation or employment that is full-time or part-time for a period of time exceeding 14 days or for an aggregate period of time exceeding 30 days in any calendar year. The Defendant’s employment in Pennsylvania was not going to exceed 14 days.

Accordingly the Court finds the Defendant not guilty of violating 18 Pa.C.S. §4915(a)(1).

In connection with the summary offense, the Court is convinced beyond a reasonable doubt that Mr. Benkoe was in a public place manifestly under the influence of alcohol to a degree that endangered himself or other persons or property, or annoyed persons in his vicinity. At about 1:30 a.m. on July 23, 2009, the police observed Mr. Benkoe come out from behind a vehicle and run onto Main Street in Hughesville to join two other individuals. His eyes were glassy and his speech was slurred and difficult to understand. When he was in custody, he threw up multiple times. Accordingly, the Court finds the Defendant guilty of public drunkenness, a violation of 18 Pa.C.S. §5505.

**ORDER**

**AND NOW**, this \_\_\_\_ day of February 2010, following a non-jury trial, the Court finds the Defendant not guilty of violating 18 Pa.C.S. §4915(a)(1).

The Court finds the Defendant guilty of violating 18 Pa.C.S. §5505.

Sentence of the Court is that the Defendant pay the costs of prosecution and undergo incarceration in the Lycoming County Prison for a period of ninety (90) days.

The Defendant is given credit for time served from July 23, 2009 to today's date. Accordingly, the Defendant is released to the fugitive from justice warrant and any other detainers.

If any bail was posed in this matter it is hereby terminated. It is further ORDERED and DIRECTED that the Prothonotary shall return such bail to the person who posted it, less poundage. This shall apply regardless of whether such bail was ten percent cash bail, personal or real property bail, or any other type of bail.

By The Court,

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Marc F. Lovecchio, Judge

cc: CA; APO; DA (Kilgus)  
Warden (2)  
R. Buzas, Esq.  
Hughesville Police Dept.

MFL/rlk