

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,

vs.

BRETT DANIEL SHOEMAKER,

Defendant.

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CR- 2039-2012

CRIMINAL DIVISION

**OPINION and VERDICT**

The Non-Jury Trial in this matter was heard by the Undersigned on November 13, 2013. Because of the complexity of the law, the Court reserved its decision, with agreement of the parties, to review the facts, the exhibits and the law.

The Defendant was charged by the Pennsylvania State Police on November 13, 2012, with four counts of failure to comply with registration requirements, 18 Pa. C.S.A. § 4915.1(a)(1), "Transients," subsection (a.1)(1) felonies of the second degree, and (a.1) (3) felonies of the first degree. The alleged registration offenses occurred on September 30, 2012 and October 31, 2012, with each date containing a felony 1 count and a felony 2 count.

The Defendant is under a lifetime sexual registration obligation which arises from a 2008 conviction in the State of Florida for "Attempted Sexual Battery by Person 18 years or Older Upon Child Less than 12 Years." *See, Commonwealth's Exhibit ("Com. Ex.") 1.*

The Defendant moved from the State of Florida in August 2012 to work in Pennsylvania on a gas company related job which the Defendant felt he could obtain with the help of a friend or relative, Keith Ayers. The Defendant was born in Michigan.

Around August 17, 2012, he arrived in Pittsburgh, Pennsylvania and immediately registered with the Pennsylvania State Police as a Sex Offender.

Around August 30, 2012, he traveled with Keith Ayers to Lycoming County to try to obtain employment with Soli-Bone Company. Mr. Ayers is a fleet manager for the eastern division of Soli-Bone Company.

On August 31, 2012, the Defendant reported to the Montoursville State Police barracks to comply with his registration requirements.

The Defendant met with Trooper Angela Bieber who worked in the Megan's Law Field Liaison Office in Montoursville. Trooper Bieber has been doing sexual registrations for 6 years. She maintains the registration files in the Montoursville barracks.

Trooper Bieber interviewed the Defendant and filed a "Sexual Offender Address Worksheet" on August 31, 2012. *See, Com Ex. 2.* At the completion of the process, the Defendant signed the 3<sup>rd</sup> page of the form verifying that the information in the form was true and correct.

The Defendant reported to Trooper Bieber that he was "Homeless – Transient." *See, Com Ex. 2*, block 16 of the form. The Defendant listed his mailing address as 400 Little League Blvd., the "Public Assistance Office." *See, Com Ex. 2*, blocks 37 and 38.

The last section of the form, block 91, requests any additional information from the registrant. The Defendant initially told Trooper Bieber that he spent the night before coming to the barracks in a Camaro vehicle owned by Keith Ayers. Trooper Bieber doubted the credibility of the assertion, so she had the Defendant leave her office for a few moments and she telephoned Keith Ayers. After talking with Mr. Ayers, the Trooper confronted the Defendant about what Mr. Ayers told her and the Defendant acknowledged that he stayed the night before in an RV owned by Keith Ayers. The Defendant also indicated he was looking for a place to stay at American Rescue Workers and that he was attempting to obtain employment with Soli-Bone.

He also stated Soli-Bone has a home they own on Bloomingrove Road in Loyalsock Township and the Defendant indicated this might be a possibility for housing. The Defendant reported that he was attempting to get work with Soli-Bone through Keith Ayers, who worked for Soli-Bone.

As the Defendant listed himself as homeless, he was required to provide monthly verification of his whereabouts every 30 days pursuant to 42 Pa. C.S.A. §9796 (6.2), entitled “Verification of Residence.” The Defendant next reported to the Montoursville barracks to verify residence on September 30, 2012.

On September 30, 2012, the Defendant was interviewed by Trooper Daniel Kozak, who also does Megan’s Law registrations. Trooper Kozak filled out a sexual offender address worksheet, *Com. Ex. 5*. The Defendant again listed himself as “Homeless - Transient,” *Com. Ex. 5*, block 16 for street address. Under the block for employment information the Defendant listed Soli-Bone with Keith Ayers as his supervisor. No additional information is listed under the block “Additional Information.” The Defendant verified the information in *Com. Ex. 5* by signing his signature under a section entitled “Sworn Statement of Offender.” *Com. Ex. 5*. Trooper Kozak testified the Defendant appeared at the barracks at about 4:00 p.m.

On this same date, September 30, 2012, at about 6:35 p.m. the Defendant, driving a Camaro vehicle, was pulled over by Cpl. Darin Farber of the Pennsylvania State Police because the Cpl. felt that the Defendant was weaving in and out of traffic. The Defendant had no license or registration and Cpl. Farber issued a citation for operating a vehicle without a valid driver’s license. *See, Com. Ex. 7*, the citation issued to the Defendant. The Defendant provided an address to Cpl. Farber of 1825 Bloomingrove Road, Williamsport, PA. The Trooper listed this address on the citation under the heading “Defendant’s Street Address.” *See, Com. Ex. 7*. The Cpl. testified that he didn’t ask the Defendant whether this was a mailing address.

On October 9, 2012, the Defendant filled out a W-4 Form for his employment with Soli-Bone. *See, Defendant's Exhibit 1.* Trooper Bieber testified that the defendant on this form listed his address as 1825 Bloomingrove Road.

The Defendant next appeared at the Montoursville barracks on October 31, 2012, for his 30 day verification of address. He was once again interviewed by Trooper Angela Bieber. Trooper Bieber filled out the sexual offender address worksheet, *Com. Ex. 3.* The Defendant listed his address as "Homeless - Transient." *See, Com. Ex. 3, block 16.* The mailing address was again listed as the Welfare Office. *See, Com. Ex. 3, block 37.* The Employer was listed as Soli-Bone. *See, Com. Ex. 3, block 56.* Under additional information, block 91, Trooper Bieber reported that the Defendant was "living in supervisor's (Keith) vehicle," a white Camaro. The Defendant reported he was working at night and sleeping during the day in the Camaro, usually in the Walmart parking lot in Montoursville. Trooper Bieber testified that she asked the Defendant why he had no residence if he was working. The Defendant responded by reporting that he was sleeping in the Camaro but that he would shower and do laundry at the house owned by Soli-Bone at Bloomingrove Road. When Trooper Bieber pressed him about where he was staying, the Defendant expressed concern that reporting of his residence would lead to a public notification to his employer of his sexual offender status and the other employees would then learn of his sexual offender status. The Defendant told the Trooper that he would check with his employer about whether it would be okay to live in one of the Soli-Bone trailers in their maintenance area at Upper Powy's Road.

The next day, November 1, 2012, the Defendant reported back to the barracks and he now reported he was living at the address of 825 Upper Powy's Road, in one of his employer's trailers. The Defendant on this date, November 1, 2012, was interviewed by Trooper Tyson

Havens. Trooper Havens filled out the sex offender address worksheet, *Com. Ex. 6*, and listed the Defendant's address as 825 Upper Powy's Road, block 16. The Defendant listed his employer as Soli-Bone, *Com. Ex. 6*, block 56. Trooper Havens noted under additional information, block 91, that the Defendant "has permanent address now." *Com. Ex. 6*.

On November 5, 2012, the Defendant again reported to Trooper Angela Bieber at the Montoursville barracks. He reported to correct the address at Upper Powy's Road from 825 Upper Powy's Road, which he had given Trooper Havens, to the corrected address of 852 Upper Powy's Road located in the Soli-Bone Building. The Trooper noted in her testimony that November 5, 2012, was the first time that she obtained a correct permanent address from the Defendant.

Trooper Bieber filled out a Sexual Offender Address Worksheet, dated November 5, 2012. *Com. Ex. 4*. The worksheet lists the Defendant's residence as 852 Upper Powy's Road, block 16, and the Defendant's employment as Soli-Bone, block 56.

The Defendant presented at trial Defendant's Exhibit 1. Defendant's Exhibit 1 was the Form W-4 (2012) filled out by the Defendant for his "Employee's Withholding Allowance Certificate" for his employment with Soli-Bone. The form Defendant's Exhibit 1 is dated October 9, 2012.

On November 8, 2012, three days after providing his corrected address to Trooper Bieber of 852 Upper Powy's Road, *Com. Ex. 4*, the Defendant was arrested by Trooper Joel Miles for the offense of Driving Under the Influence ("DUI"). The Trooper was dispatched to a crash scene at about 3:30 a.m. The crash was located south of 852 Upper Powy's Road. The car was unoccupied. The Trooper connected the crash to the Defendant when he found the Megan's Law address worksheet in the vehicle listing 852 Upper Powy's Road as Defendant's address. The

Trooper then went to this location and he found the Defendant asleep in a trailer at this address. The Trooper arrested the Defendant for the offense of DUI. He was taken for a blood alcohol test and then he was taken before Magistrate Jerry Lepley to be arraigned. He arrived before the Magistrate a little after 7:00 a.m. When the Defendant was arraigned, the subject of bail came up and he was asked about his address. He reported his address as 852 Upper Powy's Road. The Trooper recalled the Defendant's telling the Magistrate that he resided at this address for approximately 3 months. The Trooper acknowledged in his testimony that his report conveying this information was prepared the next day and was based on his memory of what occurred the day before in Magistrate Lepley's office.

Based on all the above information, Trooper Angela Bieber prepared a criminal complaint on November 13, 2012, charging the Defendant with the aforesaid registration violations which allegedly occurred on September 30, 2012 and October 31, 2012.

The Defendant testified on his own behalf at trial. He acknowledged his criminal conviction in Florida requiring lifetime registration as a sexual offender. He came to Pennsylvania around August 17, 2012, to find employment in the gas industry as an equipment operator. Keith Ayers, a friend of the family, was working for Soli-Bone in Lycoming County and met Defendant in Pittsburgh. Defendant came to Lycoming County with Mr. Ayers around August 30, 31, 2012 and he reported to the State Police barracks in Montoursville to register.

Defendant testified on direct examination that he told Trooper Bieber he had no residence but that he stayed the night before in an RV at Soli-Bone which he later learned was 1825 Bloomingrove Road. He told the Trooper he couldn't continue to stay there until he was hired full time by Soli-Bone. He stated he could use this address to shower and eat.

The Defendant testified he next reported to the State Police on September 30. He told the State Police he was still transient and was sleeping in a Camaro automobile.

He testified that on October 9, 2012, he signed a W-4 Form, Defendant's Exhibit 1, for employment at Soli-Bone, but he was not paid for about two weeks. He started working for Soli-Bone a few days before he signed the W-4 Form.

The Defendant acknowledged that when Cpl. Farber stopped his vehicle on September 30, 2012 he gave him the address at 1825 Bloomingrove Road. He claimed he gave this address because he believed he could pick up mail at this address.

He acknowledged that on October 31, 2012, he again registered with Trooper Angela Bieber as homeless with a mailing address as the Welfare Office. He told Trooper Bieber he was living in the Camaro vehicle and he discussed his concern with her about his employer finding out that he was a sex offender. When she told him there would not be public notification, he told her he would talk to his employer about listing his residence as the Soli-Bone address.

The defendant testified he then talked to his employer and they gave him permission to use their address.

The Defendant on November 1, 2012, went back to the barracks and listed his address as 825 Upper Powy's Road. He then realized that this number was mistaken and he returned to the barracks on November 5, 2012 to correct the address number to 852 Upper Powy's Road. The Defendant testified that as of November 1, 2012, he was residing at 852 Upper Powy's Road at a Soli-Bone trailer.

The Defendant acknowledged that on November 8, 2012, he was arrested for the offense of DUI where he had been in a vehicle accident where he hit his head during the accident. He left the scene and was later arrested at his Upper Powy's Road address by the State Police. He was

then taken before a Magistrate and when the Magistrate asked him where he was living he gave the 852 Upper Powy's Road. He denied he told the Magistrate that he was living at this address for 3 months but rather he testified he told the Magistrate he was living in Pennsylvania for 3 months. The Defendant admitted he was concerned about obtaining bail at this time and that he might have misunderstood the Magistrate's questions of him.

On cross-examination the Defendant acknowledged that on August 31, 2012, he initially lied to Trooper Bieber about where he stayed the night before, when he initially told her he slept in the Camaro as opposed to Keith Ayers' trailer.<sup>1</sup>

### **Discussion**

While the Defendant should be given some credit for the fact that he reported to the Pennsylvania State Police six times in the time frame of August 2012 to November 2012, he was not always candid with the State Police as to his whereabouts. In his first visit to the Montoursville Station on or about August 31, 2012, he initially was not candid with Trooper Angela Bieber about where he stayed the night before, first claiming he slept in a Camaro. When the dubious trooper personally called his friend, Keith Ayers, she learned he stayed at Mr. Ayers' trailer.

On September 30, 2012, the Defendant again reported that he was homeless. He did list his employment with Soli-Bone and listed Keith Ayers as his supervisor. Approximately two hours later on this same date, the Defendant was stopped by Cpl. Farber of the State Police for a traffic violation and the Defendant gave his address to the Trooper as 1825 Bloomingrove Road.

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<sup>1</sup> The Defendant on direct examination, to our memory, did not mention this initial misstatement to Trooper Bieber. He simply testified that he told her he slept in an RV at Soli-Bone he later learned to be 1825 Bloomingrove Road. The Defendant when pressed on cross-examination testified he slept in Keith Ayers' trailer. The initial mistruth was developed on cross examination of the Defendant.



The Court is aware from other testimony in the case that this residence is utilized by Soli-Bone employees.

On the Defendant's next reporting date, October 31, 2012, he again talked to Trooper Bieber and reported himself as homeless. Once again he told Trooper Bieber that he was living in the Camaro vehicle.<sup>2</sup> When she was again skeptical about this and she pressed him further, the Defendant expressed concern that if he reported a residence, that the reporting would lead to public notification of his sexual offender status to his employer or other employees. The Trooper then again listed him as homeless and he provided a mailing address as the Public Welfare Office. *See, Com. Ex. 3.*<sup>3</sup> Trooper Bieber on October 31, 2012, then explained to the Defendant that listing an address would not lead to public notification as feared by the Defendant.

The fact that the Defendant returned to the State Police barracks the very next day, November 1, 2012, and listed a permanent address of 825 Upper Powy's Road, a trailer at the Soli-Bone premises, *See Com. Ex. 6*; which he then corrected on November 5, 2012 to be 852 Upper Powy's Road, *See Com. Ex. 4*, indicates to the Court that the Defendant was residing at this residence prior to October 31, 2012, when he still reported himself as homeless.

The Defendant's statement to Magistrate Lepley on the morning of November 8, 2012, when he was arrested for the offense of driving under the influence, that he had been residing at 852 Upper Powy's Road for 3 months is further indication that he was residing at this location prior to October 31 when he told Trooper Bieber he was homeless and that the Defendant knowingly gave false information to Trooper Bieber on this occasion.

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<sup>2</sup> The Defendant on his W-4 Form on October 29<sup>th</sup> listed the address of 1825 Bloomingrove Road.

<sup>3</sup> The listing of the Public Welfare Office as a mailing address was inconsistent with the Defendant's testimony at trial in explaining his providing the 1825 Bloomingrove Road address during the vehicle stop of September 30 to Cpl. Farber. The Defendant claimed he gave the Cpl. the Bloomingrove Road address as a mailing address.

For these reasons, the Court will find the Defendant **GUILTY** for the October 31 Counts, as we find he knowingly provided incorrect information to Trooper Bieber on October 31, 2012. We also find that Defendant did not provide his change of address to 852 Upper Powy's Road within 48 hours of moving to this address as is required by 43 Pa. C.S.A. § 9795.2 (a)(2). The Court believes the Defendant reported himself as homeless because he was afraid if he listed the Soli-Bone address it would lead to notification of his sex offense convictions to his employer or other employees. The Court thus believes the Defendant is **GUILTY** of Counts 3 and 4 of the Information both relating to October 31, 2012.

While the Court believes the Defendant is probably guilty of the two counts relating to September 30, 2012, Counts 1 and 2, we will give the Defendant the benefit of the doubt and find him not guilty of these two counts because the Defendant's status on September 30<sup>th</sup> is less certain than October 31. There is a possibility he had not established his residence at 852 Powy's Road by this date. We will thus find him **NOT GUILTY** of Counts 1 and 2.

Accordingly the following verdict is entered.

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COMMONWEALTH OF PENNSYLVANIA,

vs.

BRETT DANIEL SHOEMAKER,

Defendant.

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CR- 2039-2012

CRIMINAL DIVISION

**VERDICT**

And Now, this **27<sup>th</sup>** day of **November 2013**, the Court finds the Defendant as follows;

**COUNT 1:**

Failure to comply with registration of Sexual Offender (Felony 1) (September 30, 2012),

**NOT GUILTY.**

**COUNT 2**

Failure to comply with registration of Sexual Offender (Felony 2) (September 30, 2012),

**NOT GUILTY.**

**COUNT 3:**

Failure to comply with registration of Sexual Offender (Felony 1) (October 31, 2012),

**GUILTY.**

**COUNT 4:**

Failure to comply with registration of sexual offender (Felony 2) (October 31, 2012),

**GUILTY.**

The Defendant shall appear for sentencing on the **28<sup>th</sup>** day of **January, 2014** in  
Courtroom **# 2** at **9:00 a.m.**

The Adult Probation Office of Lycoming County shall prepare a pre-sentence investigation to aid the Court in sentencing. Any mandatory sentences should be provided by the Commonwealth at least 14 days prior to sentencing.

BY THE COURT,

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Date

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Kenneth D. Brown, Senior Judge

cc: Melissa Kalaus, Esq.  
Peter T. Campana, Esq.  
Adult Probation  
April McDonald, Court Scheduling  
Hon. Kenneth D. Brown, Senior Judge