STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
D. Craig Brown, Circuit Court Judge

Appellate Case No. 2014-000673

THE STATE,

Respondent,

vs.

PERNELL BYAS,

Appellant.

INITIAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I. The trial court properly denied Appellant's motion for a directed verdict where the State presented substantial evidence that Appellant had failed to provide notification of change of address to the Beaufort County Sheriff's Office in violation of S.C. Code Ann. § 23-3-470.

II. The trial court properly denied Appellant's motion to quash the indictment where the indictment provided Appellant with proper notice that he was charged with violating the sex offender registry pursuant to S.C. Code Ann. § 23-3-470.

STATEMENT OF THE CASE

On April 7, 1986, the Beaufort County Grand Jury indicted Appellant for first degree criminal sexual conduct with a minor. Appellant pled guilty to lewd act upon a minor on November 11, 1986, and was sentenced to ten years' imprisonment. Based on this conviction, Appellant is required to register as a sex offender.

On October 31, 2013, the Beaufort County Grand Jury indicted Appellant for Sex Offender Registry Violation, Fail to Register – Third or Subsequent Offense (2013-GS-07-1580).[1] Appellant was represented by Jessica M. Saxon, Esquire, and Lauren H. Carroway, Esquire, of the Fourteenth Circuit Public Defender's Office. The State was represented by Assistant Solicitors Samantha A. Prinsen and Patrick A. Hall. On March 18, 2014, Appellant proceeded to a bench trial before the Honorable D. Craig Brown, where he was convicted as indicted. Judge Brown sentenced Appellant to four years imprisonment.

Appellant filed a timely notice of appeal. This brief follows.

[1] Appellant has two prior convictions for failure to register as a sex offender, as well as a conviction for giving false information regarding the sex offender registry.

STATEMENT OF FACTS

In the summer of 2013, Arthur Murray was contacted regarding possible housing for Appellant within Beaufort County. (Tr. pp. 38-9). Murray had known Appellant for a few years and understood that Appellant was down on his luck and needed a place to live. (Tr. p. 38). Murray allowed Appellant to move into a trailer he owned, located at 10 Lemon Lane, and he became Appellant's landlord. (Tr. pp. 38-41). Appellant moved some furniture into the trailer. (Tr. p. 43). Additionally, Murray had the electricity turned on for Appellant's use with the understanding that Appellant was responsible for paying the bill. (Tr. p. 42). Pursuant to their agreement, Appellant was to pay Murray rent. (Tr. p. 39).

In August, Murray was concerned that Appellant had failed to pay any rent and sought to evict him from the trailer. (Tr. pp. 39-40). Murray called Tyrone Hicks, an agent with the South Carolina Department of Probation, Parole and Pardon Services who supervised Appellant, in regard to evicting Appellant. (Tr. pp. 39, 41, 44-5,47, 50). Both Hicks and Murray were unable to ascertain Appellant's new address despite several attempts. (Tr. pp. 40, 43, 45, 50). Murray was forced to drop eviction proceedings against Appellant because he could not determine Appellant's new address. (Tr. pp. 40, 44-5). However, Murray was able to turn off the electricity to the residence and get the keys back from Appellant. (Tr. pp. 40, 43).

On September 2, 2013, Hicks ran into Appellant at a local Wal-Mart while off duty. (Tr. p. 50-1). Appellant and Hicks conversed for approximately fifteen minutes. (Tr. p. 51). During the conversation, Hicks informed Appellant of his prior conversations with Murray regarding eviction. (Tr. p. 51). Appellant responded that he had already moved to a new residence on Broad River Boulevard, but he could not provide Hicks with the

numerical address. (Tr. pp. 51-2). Hicks then gave Appellant explicit instructions that he needed to update his new address with the Beaufort County Sheriff's Department due to strict registry requirements and that he also needed to come by Hicks' office to provide the new address. (Tr. p. 52).

On September 12, 2013, Hicks had not heard from Appellant regarding his change of address. Hicks contacted Katrina Light from the Beaufort County Sheriff's Department to inquire as to whether Appellant had updated his address with her office. (Tr. pp. 52, 75). Light informed Hicks that Appellant had not provided an updated address and stated that she could initiate a warrant for Appellant's arrest. (Tr. p. 52). Hicks asked Light to hold off on issuing a warrant so he could try to locate Appellant. (Tr. pp. 52-3, 75). Hicks was unable to make contact with Appellant and notified Light. (Tr. p. 53). Light obtained a warrant for Appellant's arrest for violation of the sex offender registry. (Tr. p. 75). Hicks was present when Appellant was arrested on September 18, 2013. (Tr. p. 53).

Appellant proceeded to a bench trial before the Honorable D. Craig Brown on March 18, 2014. Appellant moved to quash the indictment based upon insufficiency. (Tr. pp. 9-11). Following argument from Appellant and response from the State, the trial court denied Appellant's motion. (Tr. pp. 13-4). Next, Appellant made a constitutional challenge to the statute, which was similarly denied by the trial court following argument and response. (Tr. pp. 14-22).

The State presented evidence of Appellant's prior conviction for lewd act upon a child, the underlying offense requiring him to register as a sex offender. (Tr. p. 36). The State also presented GPS tracking data for Appellant from September 1-15, 2013, which showed he was not present at the Lemon Lane property during this period. (Tr. pp. 47-9). Additionally, the State presented Appellant's most recent sex offender registration form,

completed by Appellant on July 2, 2013; he listed his address as the Lemon Lane property. (Tr. pp. 71-73). This form, signed by Appellant, also stated that Appellant was to provide any new address within three business days, a provision acknowledged by Appellant on the form. (Tr. p. 74).

Following the State's case, Appellant moved for a directed verdict and renewed his motion to quash, arguing the State failed to establish that Appellant had failed to register as a sex offender because he was not scheduled to register again until October 2, 2013. (Tr. pp. 81-4). The trial court denied Appellant's motion. (Tr. pp. 84, 97-102). Following closing arguments, the trial court found Appellant guilty. (Tr. p. 102). After listening to Appellant's prior record and mitigation from Appellant's counsel, the court sentenced Appellant to four years' imprisonment. (Tr. p.105-11).

ARGUMENT

I. The trial court properly denied Appellant's motion for a directed verdict where the State presented substantial evidence that Appellant had failed to provide notification of change of address to the Beaufort County Sheriff's Office in violation of S.C. Code Ann. § 23-3-470.

Appellant contends the trial court erred in denying his motion for a directed verdict for failure to register as a sex offender, arguing that the State disproved its own case with testimony that Appellant was in compliance with the requirements of the sex offender registry. Specifically, Appellant cites the testimony of Staff Sergeant Katrina Light of the Beaufort County Sheriff's Office that Appellant had registered on July 2, 2013, and was required to re-register ninety days later, and thereby "was in compliance as far as coming in to register." (Tr. p. 77). Appellant asserts that this testimony amounts to "direct evidence that Appellant did register as required" and thereby fulfilled the requirements of S.C. Code Ann. § 23-3-470. However, the trial court properly denied Appellant's directed verdict motion because the State presented substantial evidence from which the trier of fact could reasonably conclude Appellant had violated his duties to register as a sex offender under S.C. Code Ann. § 23-3-470 by failing to provide an updated address to the sheriff's office. Therefore, the trial court was required to deny the directed verdict motion. Appellant's conviction should be affirmed.

When presented with a motion for a directed verdict, the trial court is concerned with the existence or non-existence of evidence and not its weight. State v. Long, 325 S.C. 59, 62, 480 S.E.2d 62, 63 (1997). The trial court should deny a directed verdict motion and submit the case to the trier of fact if there is any substantial evidence reasonably tending to prove the guilt of the accused or from which guilt may be fairly or logically deduced. State v. Robinson, 310 S.C. 535, 538, 426 S.E.2d 317, 319 (1992). On

appeal from the denial of a directed verdict, the appellate court must view the evidence and all reasonable inferences in the light most favorable to the State. State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court must affirm the trial court's ruling. State v. Cherry, 361 S.C. 588, 593-94, 606 S.E.2d 475, 478 (2004). The appellate court may only reverse the trial court's denial of a directed verdict motion if there is no evidence supporting the trial court's ruling. State v. Gaster, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002). "**[U]nless there is a total failure of evidence tending to establish the charge** laid in the indictment, the trial court's ruling upon a motion for a directed verdict must stand absent an error of law." State v. Nix, 288 S.C. 492, 496, 343 S.E.2d 627, 629 (Ct. App. 1986) (emphasis added).

S.C. Code Ann. § 23-3-470 sets forth the requirements for registration and notification pursuant to the Sex Offender Registry Act, as well as the penalties for violating the Act. Pursuant to this statute, "[i]t is the duty of the offender to contact the sheriff in order to register, **provide notification of change of permanent or temporary address**, or notification of change of employment, or in attendance, enrollment, employment, volunteer status, intern status, or vocation status at any public or private school, including, but not limited to, a kindergarten, elementary school, middle school or junior high, high school, secondary school, adult education school, college or university, and any vocational, technical, or occupational school. **If an offender fails to . . . provide notification of change of address** . . . as required by this article, he must be punished as provided in subsection (B)." S.C. Code Ann. § 23-3-470(A) (emphasis added). Penalties for violations are as follows: "A person convicted for a first offense is guilty of a misdemeanor and may be fined not more than one thousand dollars, or imprisoned for not

more than three hundred sixty-six days, or both; a person convicted for a second offense is guilty of a misdemeanor and must be imprisoned for a mandatory period of three hundred sixty-six days, no part of which shall be suspended nor probation granted; and a person convicted for a third or subsequent offense is guilty of a felony and must be imprisoned for a mandatory period of five years, three years of which shall not be suspended nor probation granted." S.C. Code Ann. § 23-3-470(B). In order to support a conviction for failure to register as a sex offender pursuant to S.C. Code Ann. § 23-3-470, the State must prove that the defendant's conduct was in violation of the statute.

In the present case, the State presented evidence that clearly established Appellant had violated S.C. Code Ann. § 23-3-470 by failing to provide a current address (either permanent or temporary) to the Beaufort County Sheriff's Office once he stopped residing in the trailer on Lemon Lane. Although Appellant had previously registered as required on July 2, 2013, and was not required to register again for ninety days, he was required by statute to provide the sheriff's department with notification of any new address, whether permanent or temporary, once he ceased residing in the Lemon Lane property. Viewing the evidence in the light most favorable to the State as required, Appellant had ceased living at the trailer on Lemon Lane and failed to provide an updated address to the sheriff's office.

The State presented ample evidence that Appellant was no longer residing in the trailer. Murray testified that the electricity had been turned off in mid-August (thereby rendering it impossible for Appellant to charge his GPS monitoring bracelet every evening as required), that Appellant had given Murray back the key to the trailer, and that Appellant was no longer living in on the property and his whereabouts were unknown. (Tr. pp. 40, 42, 63). Agent Hicks testified Appellant informed him he was no longer

living in the trailer on Lemon Lane and had moved to Broad River Boulevard. (Tr. p. 51). Additionally, the State presented GPS tracking data of Appellant from September 1-15, 2013, showing that Appellant was not at the Lemon Lane property at all during this period. (Tr. pp. 48-9). The State also presented sufficient evidence that Appellant failed to notify the Beaufort County Sheriff's Office of his change of address. Staff Sergeant Light testified the address Appellant provided when registering in July was "10 Lemon Lane, Lot 3." (Tr. p. 73). Light testified Appellant acknowledged and initialed that he was required to provide notice of any change of address within three business days of establishing a new residence. (Tr. p. 74). Appellant failed to ever provide notification of his change of address to the sheriff's office despite explicitly telling Agent Hicks he had moved.

The only logical deduction from the evidence presented is that Appellant failed to provide notification of change of address to the sheriff's office after moving from the Lemon Lane trailer. Therefore, the trial court properly denied Appellant's motion for a directed verdict. As this ruling was based on substantial evidence presented by the State, Appellant's conviction should be affirmed.

On appeal, Appellant seeks to negate the ample evidence presented by the State by relying exclusively on a portion of the cross-examination of Staff Sergeant Light where she stated that Appellant "was in compliance as far as coming in to register." (Tr. p. 77). However, this argument improperly disregards the substantial evidence provided by the State clearly showing that Appellant had changed residences and failed to provide proper notification as required under S.C. Code Ann. § 23-3-470. As the trial court is only concerned with the existence or non-existence of evidence and not its weight when presented with a motion for a directed verdict, the lower court properly denied

Appellant's motion. See Long, 325 S.C. at 62, 480 S.E.2d at 63; Robinson, 310 S.C. at 538, 426 S.E.2d at 319. Appellant's argument regarding Light's cross-examination testimony is better suited for an argument to the trier of fact and is not a sufficient basis for the grant of a directed verdict. Furthermore, the testimony from Light is not a legal conclusion that Appellant was compliant with S.C. Code Ann. § 23-3-470 but merely evidence to be weighed by the trier of fact in conjunction with all other evidence and testimony presented. Based on the evidence presented, the trial court properly denied Appellant's direct verdict motion. Appellant's conviction should be affirmed.

II. The trial court properly denied Appellant's motion to quash the indictment where the indictment provided Appellant with proper notice that he was charged with violating the sex offender registry pursuant to S.C. Code Ann. § 23-3-470.

Appellant avers the trial court erred in denying his motion to quash the indictment because the indictment did not provide notice to him as to which charge he would be called upon to answer at trial. Particularly, Appellant argues that the statute cited within the indictment "lists several violations of the sex offender registry, which include failure to register, failure to notify of change of permanent or temporary address, AND failure to notify of change in employment or attendance at a school." Appellant contends that the indictment's language citing to the general statutory range of "Section 23-3-400, et seq." did not give him sufficient notice of the charges he faced, and he "had no idea what to defend against in court." Additionally, Appellant contends that the indictment states that he "fail[ed] to resister as a sex offender," which is a separate violation than failure to notify of a change of address, the offense he was to defend against at trial. However, Appellant's arguments are without merit. Appellant completely disregards the language in the indictment that Appellant was charged as committing a "sex offender registry violation" pursuant to Section 23-3-470. The indictment provided sufficient notice to Appellant as to his charge and what he would be required to defend. The trial court properly denied the motion to quash the indictment.

If a defendant wishes to challenge the sufficiency or validity of an indictment, the defendant must move to quash or dismiss the indictment prior to the jury being sworn. See S.C. Code Ann. § 17-19-90 ("Every objection to any indictment for any defect apparent on the face thereof shall be taken by demurrer or on motion to quash such indictment before the jury shall be sworn and not afterwards."). Such a motion

challenging the sufficiency or validity of the indictment raises "a question of whether a defendant properly received notice he would be tried for a particular crime." State v. Tumbleston, 376 S.C. 90, 96, 654 S.E.2d 849, 852 (Ct. App. 2007). When a timely and proper challenge to the sufficiency of an indictment has been raised, the trial court is called upon to determine: (1) whether the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce and the defendant to know what he is called upon to answer and to be able to make a decision as to whether to plead guilty or stand trial, and (2) whether the defendant is apprised of the elements of the offense intended to be charged. Tumbleston, 376 S.C. at 96-97, 654 S.E.2d at 852. If an indictment satisfies those conditions and, thus, is facially valid, the trial court should deny the defendant's motion to quash or dismiss the indictment. See State v. Williams, 301 S.C. 369, 371, 392 S.E.2d 181, 182 (1990) (holding a motion to dismiss an indictment was properly denied because the indictment was facially valid and instructing the validity of an indictment is not affected by the character of the evidence considered by the grand jury); see also Tumbleston, 376 S.C. at 98, 654 S.E.2d at 853 ("[A]n indictment passes legal muster when it charges the crime substantially in the language of the statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood.").

"While the court should focus primarily on charging language in the body of the indictment, a caption or title which is consistent with the language in the body of the indictment may be considered in conjunction with the body in determining the sufficiency of the indictment as a whole." State v. Means, 367 S.C. 374, 384, 626 S.E.2d 348, 354 (2006) (internal citations omitted). The true test of sufficiency of an indictment is not whether it could be made more definite and certain, but whether it contains the

necessary elements of the offense intended to be charged and sufficiently apprised the defendant of what he must be prepared to meet. Tumbleston, 376 S.C. at 98, 654 S.E.2d at 853 (internal citations omitted).

The trial court's factual conclusions as to the sufficiency of an indictment will not be disturbed on appeal unless so manifestly erroneous as to show an abuse of discretion. Tumbleston, 376 S.C. at 94, 654 S.E.2d at 851 (Ct. App. 2007) (citing State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006)). An abuse of discretion occurs when the trial court's ruling is based on an error of law or a factual conclusion without evidentiary support. Id. Accordingly, an appellate court is bound by the trial court's factual findings when the findings are supported by the evidence and not controlled by error of law. Baccus, 367 S.C. at 48, 625 S.E.2d at 220.

In the case at bar, Appellant was indicted for a "sex offender registry violation" pursuant to "Section 23-3-470 of the Code of Laws of South Carolina." (R. * Indictment). The body of the indictment directs Appellant's attention to the specific code section he was charged with violating –Section 23-3-470. Additionally, the face of the indictment cites to the particular subsection, 23-3-470(A), putting Appellant on further notice that he was charged with violating that particular provision of the sex offender registry. Based on this indictment, Appellant had notice that he was being charged with a violation of the sex offender registry pursuant to S.C. Code Ann. § 23-3-470(A) and would be required to defend against such at trial. Appellant knew he was being charged with violating the sex offender registry for either failing to register, failing to provide notification of a change of address, or failing to provide notification of change in employment, educational, or volunteer status. Therefore, the State satisfied notice requirements. See State v. Owens, 346 S.C. 637, 649, 552 S.E.2d 745, 751 (2001) *overruled on other grounds by* State v.

Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005) ("While the better practice is to set forth the elements of the crime in the indictment rather than referring to the statutory section alleged to have been violated, the indictment here was sufficient as it informed appellant of the elements of murder, including malice aforethought [by including 'in violation of South Carolina Code of Laws § 16–03–10].'"). As this indictment contained the necessary elements of the offense charged and apprised him of what he must be prepared to defend against, the indictment was sufficient and the motion to quash was properly denied. See Tumbleston, 376 S.C. at 98, 654 S.E.2d at 853.

Additionally, Appellant's claims that his conduct did not amount to "failure to register" because he had registered on July 2, 2013 and was not required to register again for ninety days rings hollow. Based on S.C. Code Ann. § 23-3-470, proper and compliant registration requires that an offender provide his current address to the proper law enforcement entity. When an offender fails to do so, he is in violation of the statute and has failed to properly register. Therefore, Appellant's registration became invalid when he moved to a new residence and failed to provide the sheriff's department with notice. Consequently, Appellant was in violation of the sex offender registry for failure to properly register.

Furthermore, Appellant never aseerted that he did not have sufficient notice of what he was called upon to answer or that his ability to present a defense was hinder by the indictment. He did not move for a continuance or otherwise claim surprise or a lack of sufficient notice to go forward with his case. Rather, in contrast Appellant was on such sufficient notice of what conduct he would be required to defend against at trial that he was able to craft a narrowly tailored motion to quash, noting that his conduct was in violation of a specific portion of S.C. Code Ann. § 23-3-470(A) for failure to provide

notification of a change of address, not failure to register as a whole. Appellant was clearly aware of what he would be required to defend at trial. The trial court properly denied his motion to quash

On appeal, Appellant contends that the indictment did not specifically include the language that he was being charged with failure to provide notification of a change of address. Thus, in essence, Appellant's arguments can be best summarized as a complaint that the indictment could have been more specific. However, this is not the standard that trial courts must employ when facing a motion to quash an indictment. See Tumbleston, 376 S.C. at 98, 654 S.E.2d at 853 ("The true test of sufficiency of an indictment is not whether it could be made more definite and certain, but whether it contains the necessary elements of the offense intended to be charged and sufficiently apprised the defendant of what he must be prepared to meet.") (internal citations omitted). As the trial court properly denied Appellant's motion to quash for the reasons stated above, this Court should affirm Appellant's convictions.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

Feb. 13, 2015

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
D. Craig Brown, Circuit Court Judge

Appellate Case No. 2014-000673

THE STATE,

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Appellant.

DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL

Respondent agrees with the Designation of the Matter to be Included in the Record on Appeal set forth by Appellant. The undersigned hereby certifies this Designation contains no matter which is irrelevant to this appeal.

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ATTORNEYS FOR RESPONDENT

Feb. 13, 2015

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PROOF OF SERVICE

I, Megan Harrigan Jameson, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Tiffany L. Butler, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served. This 13th day of Feb., 2015.

Megan Harrigan Jameson

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ALAN WILSON
ATTORNEY GENERAL

February 13, 2015

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RE: State v. Pernell Byas – Appellate Case No. 2014-000673

Dear Ms. Butler:

I am enclosing two (2) copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case.

Sincerely,

Megan Harrigan Jameson

Megan Harrigan Jameson
Assistant Attorney General
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MHJ/
Enclosures

cc: The Honorable Jenny A. Kitchings (original and one enclosed)
Victim Services