

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DYSHEE PIERRE,)
)
 Defendant Below-) **No. 254, 2019**
 Appellant,)
 v.)
)
 STATE OF DELAWARE,)
)
 Plaintiff Below-)
 Appellee.)

**ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY**

**CORRECTED
STATE'S ANSWERING BRIEF**

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DATE: October 1, 2019

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NATURE AND STAGE OF THE PROCEEDINGS

Appellee, the State of Delaware, generally adopts the Nature and Stage of the Proceedings as contained in Appellant Dyshee Pierre's August 23, 2019 Opening Brief.

This is the State's Answering Brief in opposition to Pierre's direct appeal of his Kent County Superior Court bench trial conviction for failure to furnish correct information as to his employment as required by 11 Del. C. § 4120(f)(1) and (g)(3) for registered sex offenders.

SUMMARY OF ARGUMENT

I. DENIED. If the defendant wished to challenge his indictment (A-5), he had to do so prior to trial. The grand jury indictment substantially tracks the statutory language of 11 Del. C. § 4120(f)(1), and is sufficient to put the accused on notice of the allegations. The indictment did allege a crime and the general waiver rule applies. The belated appellate argument that the defendant's actions in falsely reporting his place of employment are not criminal ignores the plain language of the statute and is incorrect.

II. DENIED. A rational trier of fact viewing the nonjury trial evidence in the light most favorable to the State could find that the accused committed the crime charged. The defendant was not employed in October 2018, where he claimed to be (A-16, 18), and had not worked there since January 2018 (A-16), when he was discharged a second time.

STATEMENT OF FACTS

Based upon a 2005 New Castle County Superior Court conviction for third degree unlawful sexual contact, a misdemeanor lesser included offense of the original fourth degree rape allegation (A-56), Dyshee L. Pierre was a Tier I sex offender. (A-8). As a designated sex offender, Pierre was required to register annually with the Delaware State Bureau of Investigation (SBI). (A-8-9). 11 Del. C. § 4120(f)(1) requires a sex offender within 3 business days to report any change of name, residence address, place of employment and / or study, or vehicle to the Delaware State Police.

On October 2, 2018, Dyshee Pierre reported to SBI that he was employed at Mawull Logistics in Newark, Delaware (State's Exhibit # 2). (A-10, 47, 50). Pierre reported the same employment information in an October 15, 2018 SBI registration. (State's Exhibit # 3). (A-10, 53, 55, 90).

Delaware State Police Officer Michael Reif was assigned to the Sex Offender Apprehension and Registration (S.O.A.R.) unit of the State Police. (A-9). It was Officer Reif's job to ensure that Delaware sex offenders were in compliance with the registration requirements of 11 Del. C. § 4120. (A-9). On October 5, 2018, Officer Reif contacted Anthony Sorkpah, the owner of Mawull Logistics LLC, a transportation business (A-14-15), to confirm Pierre's claimed employment as a commercial truck driver. (A-10). On October 15, 2018, when Pierre reported an

address change to SBI, he also listed Mawull Logistics as his employer. (A-10, 55, 90).

Pierre was indicted by the Kent County Grand Jury for failing to properly register as a sex offender because his October 2018 SBI filings in Dover listed an incorrect employer. (A-5). At the May 2019 Kent County Superior Court bench trial, Anthony Sorkpah, the owner of Mawull Logistics LLC (A-14), testified about Pierre's limited employment as a commercial truck driver. (A-15-18). Sorkpah testified that he had hired Pierre (A-15); however, "He worked for, I think, a couple of months. He misbehaved so much he was fired." (A-15). According to owner Sorkpah, January 17, 2018 ". . . was the day he was laid off finally." (A-15). Pierre did not work at Mawull Logistics after January 17, 2018. (A-16). Pierre's last payroll week at Mawull Logistics was January 8 thru 14, 2018. (A-82).

Sorkpah testified that Pierre worked as an independent contractor receiving a 1099 tax form (A-16), and that Pierre's employment was terminated twice. (A-17). In January 2018, Sorkpah told Pierre that he was no longer employed at Mawull. (A-18). Sorkpah recalled that Pierre contacted him in June or July 2018 requesting to work again. (A-17).

Testifying in his own defense at the nonjury Superior Court trial (A-20-22), Dyshee L. Pierre said he has worked as a truck driver for sixteen years (A-20), and he started at Mawull Logistics in April 2016. (A-20). Pierre did concede in his

trial testimony that the last Mawull job he actually drove was January 2018. (A-22). Nonetheless, Pierre claimed that around October 2018 (A-22), he test drove a Mawull truck, but the vehicle needed mechanical work. (A-21). Sorkpah did not confirm any such October 2018 third employment attempt by Pierre.

In the May 8, 2019 verdict (A-29-30), announced during Pierre's absence from the courtroom (A-31), the accused was found guilty of violating 11 Del. C. § 4120 "by failing to provide adequate verification of his place of employment" (A-30).

I. DEFENDANT WAIVED HIS CHALLENGE TO THE INDICTMENT

QUESTION PRESENTED

Did the defendant waive his appellate challenge to the indictment (A-5) by not objecting prior to trial as required by Del. Super. Ct. Crim. R. 12(b)(2)?

STANDARD AND SCOPE OF REVIEW

Whether Pierre waived his right to challenge the indictment (A-5) by not raising the claim pretrial (A-1-2), as required by Del. Super. Ct. Crim. R. 12(b)(2) and (f) presents a mixed question of law and fact subject to de novo appellate review. See generally Hubbard v. Hibbard Brown & Co., 633 A.2d 345, 352 (Del. 1993); Levinson v. Delaware Compensation Rating Bureau, Inc., 616 A.2d 1182, 1185 (Del. 1992).

MERITS OF THE ARGUMENT

For the first time on direct appeal, Dyshee Pierre argues that his indictment (A-5) is defective because it does not allege a criminal offense under 11 Del. C. § 4120, and that his nonjury conviction (A-29-30) is void. (Opening Brief at 7). Pierre did not raise any challenge to his indictment or request a bill of particulars prior to trial. (A-1-2).

Del. Super. Ct. Crim. R. 12(b)(2) requires that an objection based on defects in the indictment (A-5) or information, other than lack of jurisdiction or failure to

charge a crime, “must be raised prior to trial.” See Joyner v. State, 2017 WL 444842, at * 5 (Del. Jan. 20, 2017); Brooks v. State, 2015 WL 802995, at * 3 (Del. Feb. 24, 2015); Howard v. State, 2009 WL 3019629, at * 4 (Del. Sept. 22, 2009); Robinson v. State, 953 A.2d 169, 173 (Del. 2008) (“ . . . any objections to the form of an indictment are waived unless they are made prior to trial.”); Malin v. State, 2008 WL 2429114, at * 2 (Del. June 17, 2008); Baker v. State, 2006 WL 3461436, at * 2 (Del. Dec. 1, 2006) Del. Super. Ct. Crim. R. 12(f) states that the failure to raise required objections or requests prior to trial “shall constitute a waiver thereof”

Pierre argues on appeal that the waiver provisions of Del. Super. Ct. Crim. R. 12(b)(2) and (f) are inapplicable in his case because the February 4, 2019 indictment (A-1, 5) does not allege a crime, so the normal waiver rule for not raising this claim prior to trial does not apply to him. Pierre is incorrect, and any belated challenge to the indictment has been waived.

Pierre’s indictment alleged that he violated 11 Del. C. § 4120 by “. . . knowingly or recklessly fail to re-register . . . by failing to provide adequate verification of his place of employment or study to the proper authorities within 3 days of the change of the offender’s own name, residence address or place of employment or study.” (A-5). Pierre’s indictment substantially tracked the language of the statute [11 Del. C. § 4120(f)(1)], and that is all that is required to

place the accused on notice of the allegation. See State v. Deedon, 189 A.2d 660, 662 (Del. 1963) (“It is, of course, the general rule that an indictment drawn in the language of the statute is generally sufficient.”); Mott v. State, 9 A.3d 464, 466 (Del. 2010); Zugehoer v. State, 980 A.2d 1007, 1011 (Del. 2009); State v. Carrea, 2007 WL 404769, at 2 & n. 10 (Del. Super. Jan. 30, 2007); State v. Allen, 112 A.2d 40, 42 (Del. Super. 1955). If Pierre was unsure of what he had to defend against, he could have requested a bill of particulars. See Del. Super. Ct. Crim. R. 7(f); Luttrell v. State, 2014 WL 3702683, at * 5 (Del. July 15, 2014).

Pierre raised no object at trial to the language of his indictment, but he now makes a plain error statutory interpretation argument on appeal. See Del. Supr. Ct. R. 8. Pierre, focusing on the second sentence of 11 Del. C. § 4120(f)(1), argues that all he had to do at SBI was “provide adequate verification of residence” According to Pierre’s interpretation of the statutory language, he was under no legal obligation to provide truthful information about his employment or, in this case, lack of employment. Also, Pierre points out, he had “3 business days” to supply the residence verification, not simply “3 days” as the indictment alleges.

The plain language of the first sentence of 11 Del. C. § 4120(f)(1) was that Pierre had to notify SBI when he ceased employment at Mawull Logistics in January 2018. (A-16, 18). When Pierre twice in October 2018 claimed that he was employed at Mawull Logistics in Newark, he was not in compliance with the sex

offender registration statutory requirements. Claiming that Pierre could lie with impunity to SBI about his employment in October 2018 because 11 Del. C. § 4120(f)(1) does not cover that conduct distorts the statute's purpose and plain language.

Pierre did violate 11 Del. C. § 4120(f)(1) by falsely claiming to still be employed at Mawull Logistics in October 2018. The language of the indictment (A-5) substantially tracked the statutory provision and was sufficient to put Pierre on notice of the criminal allegation against which he must defend. The belated indictment challenge is waived, and even if not waived, there is no plain error in applying the language of the statute to Pierre's conduct.

II. THE EVIDENCE WAS SUFFICIENT TO CONVICT THE ACCUSED

QUESTION PRESENTED

Was the evidence sufficient to convict the sex offender of failing to register his lack of employment with the State?

STANDARD AND SCOPE OF REVIEW

“...[W]here the defendant has entered a plea of ‘not guilty’ but fails to formally move for a judgment of acquittal in a bench trial, the issue of the sufficiency of the evidence will be reviewed the same as if there had been a formal motion for a judgment of acquittal.” Williamson v. State, 113 A.3d 155, 158 (Del. 2015). Accordingly, there is de novo appellate review to determine whether any rational trier of fact, viewing the evidence in the light most favorable to the State, could have found the accused guilty of failing to properly register his employment beyond a reasonable doubt. See Bethard v. State, 28 A.3d 395, 397-98 (Del. 2011); Winer v. State, 950 A.2d 642, 646 (Del. 2008).

MERITS OF THE ARGUMENT

As a result of his June 2005 New Castle County Superior Court criminal conviction for third degree unlawful sexual contact (A-56-59), Dyshee Pierre was a Tier I sex offender. (A-8). 11 Del. C. § 4121(d)(3). As a Tier I sex offender, Pierre was required to appear every 12 months at SBI “to verify all registry

information” 11 Del. C. § 4120(g)(3). In addition, 11 Del. C. § 4120(f)(1) mandates that any sex offender who is required to register must report any change of name, residence address, or place of employment and / or study “within 3 business days of the change.”

The allegation against sex offender Dyshee Pierre at the May 2019 Kent County Superior Court bench trial was that Pierre in SBI reportings on October 2 and 15, 2018 falsely claimed to be employed at Mawull Logistics LLC, a transportation business in Newark, Delaware. (A-10, 14-15). Following Pierre’s October 2, 2018 SBI registration, Delaware State Police S.O.A.R. unit officer Michael Reif contacted Anthony Sorkpah, the owner of Mawull Logistics (A-14), on October 5, 2018 to confirm Pierre’s claimed employment.

At trial on May 7, 2019, Sorkpah testified that Pierre “. . . worked for, I think, a couple of months. He misbehaved so much he was fired. Lied so much. Driving company vehicles when he was not supposed to do it.” (A-15). Pierre was allowed to return to work, but he was terminated a second time in January 2018. (A-17-18).

According to Sorkpah, Pierre last worked at Mawull Logistics on January 17, 2018. (A-15-16). Pierre was last paid by Mawull as an independent contractor (A-16) in January 2018. (A-82). When Pierre was terminated a second time in January 2018 (A-15-16), the sex offender had 3 business days to report this change of

employment to SBI. 11 Del. C. § 4120(f)(1). Pierre made no such January 2018 report. In fact, in October 2018, Pierre twice claimed he was still employed at Mawull. (A-10). This was a knowing or intentional action by Pierre in supplying false employment information to SBI when as a registered sex offender Pierre was legally required to supply accurate employment information. 11 Del. C. § 4120(f)(1).

While Pierre claimed that he test drove a truck for Mawull in October 2018, but the vehicle had a mechanical defect (A-21-22), Sorkpah did not confirm that and said that Pierre's last day of work at Mawull was January 17, 2018. (A-15). The trial judge in this nonjury proceeding was the determiner of fact and the court was free to reject Pierre's contrary factual claim as not credible. (A-29-30).

A rational trier of fact, viewing the testimony of Reif and Sorkpah in the light most favorable to the State, could find beyond a reasonable doubt that Pierre had not reported his change of employment in January 2018 as required by 11 Del. C. § 4120(f)(1), and that the October 2018 employment reporting was false.

CONCLUSION

The judgment of the Superior Court should be affirmed.



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AFFIDAVIT OF SERVICE

BE IT REMEMBERED that on this 1st day of October 2019, personally appeared before me, a Notary Public, in and for the County and State aforesaid, Mary T. Corkell, known to me personally to be such, who after being duly sworn did depose and state:

(1) That she is employed as a legal secretary in the Department of Justice, 102 West Water Street, Dover, Delaware.

(2) That on October 1, 2019, she did serve electronically the attached

Corrected State’s Answering Brief properly addressed to:

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Mary T. Corkell

SWORN TO and subscribed
Before me the day aforesaid.



Notary Public




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CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENT
AND TYPE-VOLUME LIMITATION

1. This Brief complies with the typeface requirement of Rule 13(a)(i) because it has been prepared in Times Roman 14-point typeface using Microsoft Word 2016.
2. This brief complies with the type-volume limitation of Rule 14(d)(i) because it contains 2671 words, which were counted by Microsoft Word 2016.



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