

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

STATE OF OHIO)	CASE NO: CR 10 538865
)	
Plaintiff)	JUDGE JOHN P. O'DONNELL
)	
vs.)	<u>JOURNAL ENTRY</u>
)	
DONALD KING, JR.)	
)	
Defendant)	

John P. O'Donnell, J.:

STATEMENT OF THE CASE

The defendant was indicted on June 28, 2010, with one count of failure to register in violation of Ohio Revised Code section 2950.041(E). He entered a plea of not guilty and, after a jury waiver, the case was tried to the court on August 12. This entry follows.

STATEMENT OF FACTS

In case number CR 02 418342 the defendant admitted, by pleading guilty, to two counts of kidnapping in violation of O.R.C. § 2905.01 and a charge of aggravated robbery. On July 23, 2002, he was sentenced to eight years in prison.

Very little evidence was introduced at the trial on this case about the details of the offenses in 418342: the date of the offenses is not in evidence; the indictment is not in evidence; the plea colloquy is not in evidence; a police report or other summary of facts is not in evidence; the transcript of the sentencing hearing is not in evidence; and there is no evidence that the defendant has previously been adjudicated as a sexually oriented offender, child-victim offender, habitual sexual offender or sexual predator. The only evidence about the underlying crimes is a photocopy of a "Cuyahoga County Sheriff's Office Sex Offender Registration and Notification

Form” purportedly completed by the defendant on May 19, 2010. That form contains an unknown person’s handwritten notation that the victim was age two at the time of the crime and that King did not know the victim.

Before his release from the Mansfield Correctional Institution, the defendant was given a “Notice of Registration Duties of Sexually Oriented Offender or Child-Victim Offender.” By his signature, he acknowledged receipt of the notice on January 4, 2010.

The notice advises the defendant that he has been classified as a “Tier I Child Victim Offender” and is required to register his address with the Cuyahoga County Sheriff no later than January 7, 2010, then once a year for fifteen years thereafter.

The defendant did not register his address by January 7 and was subsequently indicted for failure to register in violation of O.R.C. § 2950.041(E).

LAW AND ANALYSIS

To support a verdict of guilty, the prosecutor must prove, beyond a reasonable doubt, that King had a duty to register as a sex offender and failed to do so. The prosecutor asserts that the defendant’s kidnapping offenses were “child-victim oriented offenses” giving rise to a duty to register as a Tier II sex offender. There is no dispute that the defendant did not register as a sex offender upon his release from prison until after he was charged¹ with failure to register. Instead, the defendant claims that the state cannot prove he had a duty to register.

O.R.C. Section 2950.041(E) provides, in pertinent part, as follows:

2950.041 Personal registration with sheriff.

(A)(1) ***

(2) Regardless of when the child-victim oriented offense was committed, each offender who . . . has been convicted of . . . a child-victim oriented offense shall comply with all of the following registration requirements:

¹ On February 22, 2010, in case number CR 10 533936. That case was dismissed and the indictment here was filed.

(a) The offender shall register personally with the sheriff . . . of the county within three days of the offender's coming into a county in which the offender resides . . .

(B) An offender . . . who is required by division (A) of this section to register in this state personally shall do so in the manner described in division (B) of section 2950.04 of the Revised Code . . .

(E) No person who is required to register pursuant to divisions (A) and (B) of this section . . . shall fail to register . . .

Kidnapping can only be a "child-victim oriented offense" pursuant to O.R.C. § 2950.01(C) where the crime involves a victim who is under eighteen years of age and not the offender's own child.

Therefore, King had a duty to register only if the state proves beyond a reasonable doubt that the kidnappings he committed were "child-victim oriented offenses" as defined in O.R.C. § 2950.01(C), *i.e.* that "the victim (was) under eighteen years of age and is not a child of the person who commits the violation." As noted above, the only evidence of the victim's age and relation to the defendant is contained on State's Exhibit 3, the "Cuyahoga County Sheriff's Office Sex Offender Registration and Notification" form.

Deputy sheriff Melissa Harris testified that the form admitted at trial is a photocopy of a form the defendant filled out on May 19, 2010. The form contains at least two different kinds of handwriting. The defendant's name, address, date of birth and other biographical details are filled out in one form of handwriting and notations about the victim's age and relation to the defendant are made in a different handwriting. The form also includes handwritten notations

next to two phone numbers that are either in the same handwriting as the notations about the victim or a third kind of handwriting. Harris testified that the defendant filled out the form outside of her presence and could offer no explanation for the differing handwritings.

Additionally, the form does not list the identity of the underlying offense. Finally, although the court did sustain the state's motion to admit the form into evidence, it is important to note that the form is not signed or otherwise acknowledged by the defendant.

Considering the state of the evidence, the court cannot conclude, beyond a reasonable doubt, that the defendant's kidnapping offenses were committed against a two-year-old who was not the defendant's child, and the court finds the defendant not guilty.

IT IS SO ORDERED:

JUDGE JOHN P. O'DONNELL

Date: _____

SERVICE

A copy of this Journal Entry was sent by e- mail, this _____ day of _____, to the following:

James M. Rice, Esq.
jmrice@cuyahogacounty.us
Attorney for Plaintiff

Patrick S. LaVelle, Esq.
PSL@PatLaVelle.com
Attorney for Defendant

JUDGE JOHN P. O'DONNELL