

**RECORD IMPOUNDED**

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This opinion shall not "constitute precedent or be binding upon any court."  
Although it is posted on the internet, this opinion is binding only on the  
parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-2781-14T2

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

MARK T. DEBIASSE,

Defendant-Appellant.

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Submitted November 16, 2016 – Decided February 24, 2017

Before Judges Fuentes and Simonelli.

On appeal from the Superior Court of New  
Jersey, Law Division, Morris County,  
Indictment No. 10-05-0518.

Joseph E. Krakora, Public Defender, attorney  
for appellant (Joshua D. Sanders, Assistant  
Deputy Public Defender, of counsel and on the  
brief).

Fredric M. Knapp, Morris County Prosecutor,  
attorney for respondent (Paula Jordao,  
Assistant Prosecutor, on the brief).

PER CURIAM

A Morris County grand jury indicted defendant Mark T. DeBiasse  
on one count of fourth degree failing to register as a convicted

sex offender as required by N.J.S.A. 2C:7-2e, commonly known as "Megan's Law." Thereafter, defendant moved before the vicinage's Assignment Judge to dismiss the indictment pursuant to N.J.S.A. 2C:2-11, characterizing his alleged failure to register as a de minimis infraction. Defendant characterized his noncompliance as practically inconsequential because he was wearing a global positioning satellite (GPS) leg-bracelet during the relevant time period.

After considering the arguments of counsel, the Honorable Thomas L. Weisenbeck, A.J.S.C., denied defendant's motion. In a statement of reasons attached to the order denying the motion, Judge Weisenbeck concluded "defendant's failure to register is the very type of conduct that the statute was designed to address."

After defendant waived his right to a jury trial, the matter was tried as a bench trial before Judge Mary Gibbons Whipple on April 7, 2014. The State called Borough of Madison Police Detective Edward Mitchko as its only witness. Mitchko first testified about defendant's criminal history by relying on the judgments of conviction. On May 23, 1996, defendant was convicted of second degree endangering the welfare of a child, N.J.S.A. 2C:24-4a. On November 1, 1996, the trial court sentenced defendant for this offense. As a part of this sentence, the court placed defendant on community supervision for life, pursuant to N.J.S.A.

2C:43-6.4, and ordered defendant to register as a convicted sex offender under N.J.S.A. 2C:7-2.

Detective Mitchko testified that on March 4, 2009, defendant reported to the Madison Borough Police Station to comply with his yearly obligation to register as a convicted sex offender under N.J.S.A. 2C:7-2. Mitchko made clear this was not the first time defendant had registered as a sex offender with the Madison Borough Police Department. Mitchko testified he witnessed defendant complete and sign the Morris County Prosecutor's Office Sexual Offender registration form on March 4, 2009.<sup>1</sup> Mitchko testified that he reads "to each registrant . . . their duty to verify their address. If they move[,] to notify us. If they move out-of-state[,] to notify us and the town that they're moving to." The form also apprised defendant that the next registration date was March 4, 2010.

Mitchko testified defendant did not report to the Madison Borough Police Department on March 4, 2010 to re-register as a sex offender. Mitchko also spoke to other detectives in the Department to determine whether defendant had attempted to contact them to

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<sup>1</sup> Although not a part of the record before us, it is not disputed that defendant also completed and signed an acknowledgement of duty to register, re-register, and verify address form on that same day. According to the State, this document was admitted into evidence by Judge Gibbons Whipple.

explain his failure to appear. According to Mitchko, there are no records indicating defendant contacted the Madison Borough Police Department on March 4, 2010. After waiting a few days as instructed, on March 10, 2010, Mitchko contacted the Morris County Prosecutor's Office to obtain authorization for the issuance of a warrant for defendant's arrest for committing the fourth degree offense of failing to register as required under N.J.S.A. 2C:7-2.

Based on this evidence, Judge Gibbons Whipple found defendant guilty of "knowingly fail[ing] to register as a sex offender as required by law." The Judge noted that defense counsel "conceded during opening statements that Mr. DeBiasse was required to register and failed to do so[,] but argues that the State has not proven the requisite culpability to establish that the failure was knowing." In rejecting this argument, Judge Gibbons Whipple found "[t]he State established through the testimony of Detective Mitchko as well . . . as through [documentary exhibits admitted into evidence] that Mr. DeBiasse knew of his obligation to register."

Defendant argued, however, that the State was required to prove more than defendant was "aware in March 2009 that he had to report in 2010." As Judge Gibbons Whipple framed it, defendant argued that "the State is required to prove his non-registration

in 2010 was knowing." Once again, the judge found this argument was not supported by the record.

There's no question here that the defendant had actual knowledge of the duty to register and that he failed to timely comply. Thus this was not conduct wholly passive but conduct which amounted to failure to act under circumstances that should alert the doer [to] the consequences of his deeds.

On October 31, 2014, defendant appeared before a different judge to be sentenced. By that time, defendant had been detained on this charge for 921 days. The court sentenced defendant to time served, ordered him to submit to DNA testing, and imposed the mandatory fines and penalties.

Defendant now appeals raising the following argument.

POINT ONE

SIMPLY BEING ADVISED OF A RESPONSIBILITY TO RE-REGISTER, AND NOT RE-REGISTERING ON THE SPECIFIED DATE, DOES NOT ESTABLISH THAT THE CONDUCT WAS KNOWING AS REQUIRED UNDER N.J.S.A. 2C:7-2e ESTABLISHING THAT THE TRIAL COURT IMPROPERLY APPLIED A DE FACTO STRICT LIABILITY STANDARD IN THIS MATTER.

We reject this argument and affirm substantially for the reasons expressed by Judge Gibbons Whipple. We add only the following brief comments. N.J.S.A. 2C:7-2e provides, in pertinent part: "A person required to register . . . shall verify his address annually in a manner prescribed by the Attorney General." The State acknowledges it is obligated to prove beyond a reasonable

doubt that defendant, "knowing" he is required by law to register as a sex offender, "knowingly failed to do so."

A person acts knowingly with respect to the nature of his conduct or the attendant circumstances if he is aware that his conduct is of that nature, or that such circumstances exist, or he is aware of a high probability of their existence. A person acts knowingly with respect to a result of his conduct if he is aware that it is practically certain that his conduct will cause such a result. "Knowing," "with knowledge" or equivalent terms have the same meaning.

[N.J.S.A. 2C:2-2b(2).]

As an appellate court, we afford substantial deference to the trial judge's factual findings made while sitting as the trier of fact in a bench trial. State v. Hinton, 216 N.J. 211, 228 (2013). We are bound to uphold those findings as long as they are supported by sufficient credible evidence in the record. State v. Handy, 206 N.J. 39, 44 (2011). "However, a reviewing court owes no deference to the trial court's determinations as to matters of law, and those determinations are reviewed de novo." State v. Coles, 218 N.J. 322, 342 (2014).

Judge Gibbons Whipple's factual findings are well-supported by the record developed at trial and we are thus bound by them.

After reviewing her legal analysis and conclusions de novo, we are in complete agreement with her interpretation of N.J.S.A. 2C:7-2e.

Affirmed.

I hereby certify that the foregoing is a true copy of the original on file in my office.



CLERK OF THE APPELLATE DIVISION