

FILED

MAR 11 2011

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
BY \_\_\_\_\_

NO. 29133-2-III

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON

DIVISION III

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STATE OF WASHINGTON,

RESPONDENT,

V.

DENNIS STENSGAR,  
APPELLANT.

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RESPONDENT'S BRIEF

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KARL F. SLOAN  
PROSECUTING ATTORNEY  
OKANOGAN COUNTY

JOSEPH M. CALDWELL  
CRIMINAL DEPUTY PROSECUTING ATTORNEY  
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## TABLE OF CONTENTS

<b>RESPONSE TO ASSIGNMENT OF ERROR .....</b>	<b>1</b>
<b>Statement of the Case.....</b>	<b>1</b>
<b>Procedural Facts .....</b>	<b>1</b>
<b>Facts Relating to Charge and Conviction .....</b>	<b>1</b>
<b>Standard of Review .....</b>	<b>2</b>
<b>Argument: .....</b>	<b>3</b>
<b>A rational trier of fact could find the essential elements of Failure to Register as a Kidnapping Offender beyond a reasonable doubt.....</b>	<b>3</b>
<b>Conclusion.....</b>	<b>6</b>

## TABLE OF AUTHORITIES

### Cases

<u>Bruce v. Terhune</u> , 376 F.3d 950, 957 (9 <sup>th</sup> Cir., 2004). .....	3
<u>State v. Alvarez</u> , 105 Wash.App. 215, 222, 19 P.3d 485 (Div. III, 2001) ....	3
<u>State v. Bencivenga</u> , 137 Wash.2d 703, 706, 974 P.2d 832 (1999).....	2
<u>State v. Camarillo</u> , 115 Wash.2d 60, 71, 794 P.2d 850 (1990) .....	3
<u>State v. Green</u> , 94 Wash.2d 216, 220, 616 P.2d 628 (1980);.....	2
<u>State v. Joy</u> , 121 Wash.2d 333, 339, 851 P.2d 654, 657 (1993); .....	2
<u>State v. Luther</u> , 157 Wash.2d 63, 77-78, 134 P.3d 205 (2006);.....	2
<u>State v. Myers</u> , 133 Wash.2d 26, 37, 941 P.2d 1102 (1997).....	3
<u>State v. Price</u> , 127 Wash.App. 193, 202, 110 P.3d 1171, 1175 (Div. II, 2005), <i>citing</i> <u>State v. Delmarter</u> , 94 Wash.2d 634, 638, 618 P.2d 99 (1980);.....	3
<u>State v. Salinas</u> , 119 Wash.2d 192, 201, 829 P.2d 1068 (1992); .....	3
<u>State v. Tilton</u> , 149 Wash.2d 775, 785, 72 P.3d 735, 740 (2003); .....	3
<u>State v. Townsend</u> , 147 Wash.2d 666, 679, 57 P.3d 255 (2002); .....	2

### Statutes

RCW 9A.44.130(1)(a).....	4
RCW 9A.44.130(1),.....	5
RCW 9A.44.130(3)(a)(ii). .....	4
RCW 9A.44.130(3)(b)(x) .....	4
RCW 9A.44.130(6)(a),.....	4
RCW 9A.44.130(6)(b).....	4

## I. RESPONSE TO ASSIGNMENT OF ERROR

There was sufficient evidence presented to the jury, such that a rational trier of fact, viewing the evidence in the light most favorable to the prosecution, could have found the essential elements of the crime of Failure to Register as a Kidnapping Offender, beyond a reasonable doubt.

### A. Statement of the Case

#### 1. Procedural Facts

Respondent agrees with the procedural facts set forth in appellant's opening brief.

#### 2. Facts Relating to Charge and Conviction

On November 2, 2009, Dennis Stensgar filled out a "Change of Address" form at the Okanogan County Sheriff's Office to comply with his reporting requirements as a convicted kidnapper. At the time of completing the form, he had just been released from custody. (RP 85-87, CP 113).

On the form, Mr. Stensgar provided several pieces of information, including his last residence as "6398 Hiway 155". (CP113). When Deputy Behymer, the officer responsible for handling offenders who are required to register in Okanogan County, reviewed the form, she saw that the "new address" for Mr. Stensgar had been written in the "Apartment Number" box on the form. (RP 89) She corrected that by re-writing the address in the correct location on the form so it could be processed. (RP 89) She

was also aware that Mr. Stengar was not welcome at the “new address” he had provided, and contacted the resident of the address to confirm her suspicions. (RP 86-87, 90) Her suspicions were confirmed. Mr. Stensgar was located six days later in Spokane County when he was arrested on an unrelated charge. (RP 94) He was charged in Okanogan County with failure to register. (CP 129-130).

At trial, Mr. Stengar stipulated to the prior conviction, that of Kidnapping in the second degree, from July, 1997. (RP84). He was convicted by a jury after trial. (CP 31)

#### **B. Standard of Review**

The standard of review requires an appellate court to determine whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. State v. Joy, 121 Wash.2d 333, 339, 851 P.2d 654, 657 (1993); State v. Townsend, 147 Wash.2d 666, 679, 57 P.3d 255 (2002);; State v. Luther, 157 Wash.2d 63, 77-78, 134 P.3d 205 (2006); “This inquiry does not require the reviewing court to determine whether it believes the evidence at trial established guilt beyond a reasonable doubt.” State v. Green, 94 Wash.2d 216, 220, 616 P.2d 628 (1980); State v. Bencivenga, 137 Wash.2d 703, 706, 974 P.2d 832 (1999). “When the sufficiency of the evidence is challenged in a criminal

case, all reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant.” State v. Salinas, 119 Wash.2d 192, 201, 829 P.2d 1068 (1992); Bruce v. Terhune, 376 F.3d 950, 957 (9<sup>th</sup> Cir., 2004). When raising an insufficiency claim, the appellant “admits the truth of the State’s evidence and all inferences that can reasonably be drawn from it.” State v. Tilton, 149 Wash.2d 775, 785, 72 P.3d 735, 740 (2003); State v. Alvarez, 105 Wash.App. 215, 222, 19 P.3d 485 (Div. III, 2001) In addition, circumstantial evidence is considered no less reliable than direct evidence. State v. Price, 127 Wash.App. 193, 202, 110 P.3d 1171, 1175 (Div. II, 2005), *citing* State v. Delmarter, 94 Wash.2d 634, 638, 618 P.2d 99 (1980); State v. Myers, 133 Wash.2d 26, 37, 941 P.2d 1102 (1997) . “Furthermore, the specific criminal intent of the accused may be inferred from the conduct where it is plainly indicated as a matter of logical probability.” Delmarter at 638. An appellate court also defers to the trier of fact regarding the credibility of witnesses and conflicting testimony. Price at 202, *citing* State v. Camarillo, 115 Wash.2d 60, 71, 794 P.2d 850 (1990)

### **C. Argument:**

- 1. A rational trier of fact could find the essential elements of Failure to Register as a Kidnapping Offender beyond a reasonable doubt**

RCW 9A.44.130(1)(a) states that a person who had been convicted of a kidnapping offense must register with the county sheriff for the county where that person resides. A person who is required to register must provide certain information, including a complete residential address where he or she will stay. RCW 9A.44.130(3)(a)(ii). If the person is homeless, then he or she is not required to provide a residential address, but rather, must provide a location where he or she plans to stay. RCW 9A.44.130(3)(b)(x). A person who becomes homeless must provide written notice of such within three business days to the county where he or she last registered. RCW 9A.44.130(6)(a), and must report weekly, in person, to the sheriff's office. RCW 9A.44.130(6)(b).

Appellant challenges the sufficiency of the evidence as to whether Mr. Stensgar knowingly failed to register. (Appellant's Brief, p.7). Appellant argues that it was the deputy who provided the inaccurate information. But this mis-states the deputy's testimony. In fact, the information was provided by Mr. Stensgar himself. (RP 87) He did not place it in the proper box on the form, but rather near it. (RP 89) The deputy merely moved the information provided by Mr. Stensgar to the correct box. (RP 89)

As noted by the Appellant, the jury had to find that he had acted "knowingly". (Appellant's Brief, p. 6). The jury was provided with an instruction regarding a person acting knowingly. (CP46). Based on

the instruction and the testimony, it is entirely conceivable that the jury would find that, by providing information that even the deputy knew to be false (i.e., the address where he was not welcome or living), Mr. Stensgar was acting knowingly or intentionally, and providing false information: an address where he was not residing, nor could he reside.

Appellant notes that this was not the first time Mr. Stensgar had registered. (Appellant's Brief, p. 8) He had incorrectly filed out the registration form before, apparently on more than one occasion. (RP 98) To argue that he was apparently unaware of the requirements of registration begs the question. (Appellant's Brief, p. 8). The testimony provided by Deputy Behymer precludes that argument. (RP 98)

Nor is the argument that he "attempted to register" any more persuading. (Appellant's Brief, p.7). Nowhere in the statute does it indicate that the offender must "attempt to register". Rather, it states that an offender **must register** by providing specific information. RCW 9A.44.130(1), (3)(emphasis added). Anything less is not provided for in the statute.

As Appellant points out, they could have found that he was "trying" to register as homeless. (Appellant's Brief, pp. 7-8) But the truth of the matter is that there was no testimony to support that

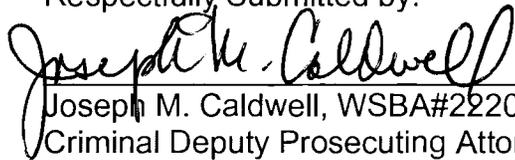
argument. Thus, the jury believed that he failed to register in accordance with the law and they found him guilty.

**D. Conclusion**

Because a rational trier of fact could have found Mr. Stensgar guilty beyond a reasonable doubt of Failure to Register as a Kidnapping Offender, Respondent respectfully requests that the conviction be upheld.

Dated this 10<sup>th</sup> day of March, 2011

Respectfully Submitted by:

  
\_\_\_\_\_  
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