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September 30, 2015
Court of Appeals
Division III
State of Washington

32958-5-III

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,

Respondent,

v.

BRANDON CASEY PRIES,

Appellant.

APPEAL FROM THE SUPERIOR COURT
OF SPOKANE COUNTY

BRIEF OF RESPONDENT

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A. APPELLANT'S ASSIGNMENTS OF ERROR

1. The court erred in making Finding of Fact 22: “On [October 8, 2013] the defendant and Ms. Blair moved to Chewelah to reside with the defendant’s uncle.” CP 269.
2. The court erred in making Finding of Fact 26: “Both the defendant and Ms. Blair would have resided at the defendant’s uncle’s house longer but for being asked to leave.” CP 270.
3. The court erred in making Finding of Fact 36: “Ms. Blair and the defendant intended on spending the night of October 19, 2013, at Freeway Park.” CP 271.
4. The court erred in making Finding of Fact 37: “...[A]ny visits [the defendant] made to the New Washington Apartments in the month of October 2013 were nothing more than transient visits.” CP 271.
5. The court erred in making Finding of Fact 38: “The Court does not find that the defendant temporarily stayed in the New Washington Apartments during the month of October 2013.” CP 271.
6. The court erred in making Finding of Fact 40: “In [having the goal to avoid the Department of Corrections], the defendant abandoned his residence at the New Washington Apartments, took temporary residence in Chewelah, and then became transient.” CP 271.

7. The court erred in making Finding of Fact 41: “By abandoning his residence and becoming transient, both the Department of Corrections, as well as law enforcement in general, lacked the ability to contact the defendant.” CP 271.
8. The court erred in making Conclusion of Law 5: “Based upon the evidence, including the defendant’s concession, the defendant did not notify [appropriate authorities] of a change in residence or in becoming transient subsequent to his initial registration o[n] August 13, 2013.” CP 272.
9. The court erred in making Conclusion of Law 8: “The New Washington Apartments was not the defendant’s residence between the dates of October 3, 2013, and October 15, 2013, as he had abandoned the apartment.” CP 272.
10. The court erred in making Conclusion of Law 10: “... From mid-September 2013 through October 19, 2013, the defendant did not use the New Washington Apartment as either a temporary or permanent dwelling.” CP 272.
11. The court erred in finding beyond a reasonable doubt that “[s]ubsequent to abandoning his apartment and becoming transient on or before the date of October 3, 2013, and through his arrest

o[n] October 19, 2013, the defendant knowingly failed to register as a sex offender with the Spokane County Sheriff's Office." CP 272-73.

12. The sentencing court erred when it ordered appellant to submit to another DNA collection under RCW 43.43.754.

B. ISSUES PRESENTED

1. Was the evidence sufficient to support a conviction for knowing failure to register as a sex offender?
2. Did the trial court abuse its discretion when it ordered the defendant to submit to a collection of his DNA with the proviso that the order did not apply if the State Patrol already has a sample of the defendant's DNA?

C. STATEMENT OF FACTS

The defendant Brandon Pries was required to register as a sex offender due to his convictions of first degree child molestation and second degree incest. RP 166, CP 268, Findings of Fact 1, 3. On August 13, 2013, the defendant was released into the community from prison. RP 177-78. On that date, he met with Detective Shane McClary, properly registered as a sex offender, and with the approval of the Department of Corrections, he moved into the New Washington

Apartments in Spokane, Washington. RP 60. He was re-advised of his duties under the law regarding registration and signed an acknowledgement to that effect. Exhibit 6, RP 59-61. His rent at the New Washington Apartments was to be provided on a monthly basis by DOC. RP 117. Because he was a level 3 sex offender he was given a bracelet monitor. RP 88.

On September 11, 2013, the defendant failed to report to his required classes. RP 106-109. This violated of his conditions of supervision. *Id.* On September 12, 2013, a warrant was issued for his arrest. RP 109. Defendant knew that a warrant would be issued for his failure to show to classes on September 11, 2013. RP 181. On that date, the DOC cut the defendant's apartment funding. RP 109-110. Defendant had previously signed his conditions of supervision and knew that he would lose his apartment voucher if he violated those conditions. RP 119. The defendant did not charge his GPS monitor's battery so that he would be untraceable, and then fled to Chewelah with his fiancée to live with his uncle. RP 69, 184. Because he was now homeless, the defendant and his fiancée left many of his possessions behind; they could not take much with them. RP 70. They stayed with the defendant's uncle for two to three weeks. *Id.* However, when Defendant's uncle discovered that the defendant was wanted by law enforcement, the uncle evicted them from

the residence. RP 82. But for this eviction, the defendant and his fiancée would have stayed at the uncle's residence indefinitely. *Id.*¹

The homeless defendant and his fiancée travelled back to Spokane on October 19, 2013. That night, the defendant was arrested while he and his fiancé were staying at "Freeway Park" in downtown Spokane. RP 69, 82-84. They were intending to take meth and sleep in the park that night. RP 82-84. Defendant was convicted for failing to register as a sex offender and timely appealed.

¹ The defendant testified that he only left his uncle's Chewelah residence after he was kicked out:

Prosecutor: Did your -- did you tell your uncle that you were being sought after by law enforcement?

Defendant: I did not.

Prosecutor: Why did you get kicked out?

Defendant: Because my grandfather let him know.

Prosecutor: Your grandfather let who know?

Defendant: My uncle.

Prosecutor: Your grandfather let your uncle know that you were wanted?

Defendant: Yes.

Prosecutor: And that's why you left that residence?

Defendant: That's why -- yes. That's why I left, yes.

RP 185.

D. ARGUMENT

1. THE EVIDENCE WAS SUFFICIENT TO SUPPORT A CONVICTION FOR KNOWINGLY FAILING TO REGISTER AS A SEX OFFENDER.

Standard of Review:

When considering whether sufficient evidence presented at a bench trial supports a criminal conviction, appellate courts determine whether substantial evidence supports the findings of fact, and, if so, whether those findings support the conclusions of law. *State v. Homan*, 181 Wn.2d 102, 105-06, 330 P.3d 182 (2014). “‘Substantial evidence’ is evidence sufficient to persuade a fair-minded person of the truth of the asserted premise.” *Homan*, 181 Wn.2d at 106, quoting *State v. Stevenson*, 128 Wn. App. 179, 193, 114 P.3d 699 (2005). The reviewing court should consider “whether the totality of the evidence is sufficient to prove all the required elements.” *State v. Ceglowski*, 103 Wn. App. 346, 350, 12 P.3d 160 (2000).

In addition, “[a]ppellate courts do not hear or weigh evidence, find facts, or substitute their opinions for those of the trier-of-fact. Instead, they must defer to the factual findings made by the trier-of-fact.” *Quinn v. Cherry Lane Auto Plaza, Inc.*, 153 Wn. App. 710, 717, 225 P.3d 266 (2009). *See, State v. Thomas*, 150 Wn.2d 821, 874–75, 83 P.3d 970 (2004), *abrogated in part on other grounds, Crawford v. Washington*, 541

U.S. 36, 124 S.Ct 1354 (2004) (appellate courts must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and, the persuasiveness of the evidence).

Here, the evidence was sufficient to support a conviction for knowingly failing to register as a sex offender. The overarching argument of the defendant on appeal is that the trial court should have believed the testimony of the defendant over the testimony of the defendant's fiancé and disregarded the logical inferences that could be drawn from the evidence.

The defendant fled to another county - knowing he was at warrant and with the intent to prevent DOC or the Sheriff's department from finding him. He then stayed with his uncle until his uncle discovered he was at warrant, and evicted him from the Chewelah residence. He was later arrested in a public park, at night, where he intended to use meth and sleep. Defendant's fiancée, Ms. Blair, testified she and the defendant would still be residing in Chewelah at the uncle's residence - a year later at the time of trial - if not for the uncle kicking them out.²

² **Ms. Blair (defendant's fiancée):** If his uncle would have never kicked us out of his place, then I bet you we would probably still be there right now.

Prosecutor: So after about two to three weeks at his uncle's place, his uncle told you guys you had to leave?

Appellate courts draw all reasonable inferences from the evidence in favor of the State and interpret the evidence most strongly against the defendant on a claim of insufficiency. *State v. Brown*, 162 Wn.2d 422, 428, 173 P.3d 245 (2007). Facts may be inferred where “plainly indicated as a matter of logical probability” and the finder of fact “determine[s] what conclusions reasonably flow” from the circumstantial evidence in a case. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980); *State v. Bencivenga*, 137 Wn.2d 703, 711, 974 P.2d 832 (1999). There was sufficient evidence to support the defendant’s eighth conviction for failing to register. CP 281-82 (Judgment and Sentence, p. 3-4).

2. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION WHEN IT ORDERED THE DEFENDANT TO SUBMIT TO A COLLECTION OF HIS DNA WITH THE PROVISIO THAT THE ORDER DID NOT APPLY IF THE STATE PATROL ALREADY HAS A SAMPLE OF THE DEFENDANT’S DNA.

The provision ordering the defendant to submit to a DNA collection is contained at CP 288. That “order” contains the proviso that this DNA requirement “*does not apply if it is established that the Washington State Patrol crime laboratory already has a sample from the defendant for a qualifying offense.*” This follows the statutory scheme set

Ms. Blair: Because somebody called him and told him that he was running from the cops, and he said that we had to leave.

RP 82.

forth in RCW 43.43.754, where, under subsection (1) “a biological sample must be collected for purposes of DNA identification analysis from [a qualifying offender],” then, under subsection (2), “[i]f the Washington State Patrol crime laboratory already has a DNA sample from an individual for a qualifying offense, a subsequent submission is not required to be submitted.”³

The order follows the operation of the statute. There is no abuse of discretion in the trial court ordering that which is required by law.

E. CONCLUSION

For the reasons stated above, sufficient evidence was presented supporting the conviction of the defendant for failing to register as a sex

³ The defendant assumes that the defendant’s DNA had been collected pursuant to one of his many prior convictions. Probably so, but nothing in the record supports this assertion. The Court is not required to address this issue. The defendant has not established that he already had a DNA sample on file with the crime laboratory. Appellant assumes facts not in the record. The party seeking review has the burden of perfecting the record so that this court has before it all evidence relevant to the issue. *State v. Jackson*, 36 Wn. App. 510, 516, 676 P.2d 517, 521 *aff’d*, 102 Wn.2d 689 (1984). Additionally, because no objection was taken to this order, the DNA issue would be moot - the DNA sample would have been completed prior to transportation to prison. RCW 43.43.754(3)(a)(ii).

offender. The DNA sentence requirements were proper and should be affirmed.

Dated this September 30, 2015.

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CERTIFICATE OF MAILING

I certify under penalty of perjury under the laws of the State of Washington, that on September 30, 2015, I e-mailed a copy of the Brief of Respondent in this matter, pursuant to the parties' agreement, to:

Susan Marie Gasch
gaschlaw@msn.com

9/30/2015

(Date)

Spokane, WA

(Place)

Kim Cornelius

(Signature)