

65548-1

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NO. 65548-5-1

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

MORRIS G. BAKER, Jr.

Appellant.

BRIEF OF RESPONDENT

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I. ISSUES

The State presented evidence that Defendant moved from the 64th Street residence where he was registered on March 3, 2009. Defendant did not register a new address between March 4, 2009 and April 29, 2009. Defendant was a convicted sex offender and knew that he was required to register. Was there sufficient evidence to prove the defendant was guilty of failing to register as a sex offender?

II. STATEMENT OF THE CASE

Morris Baker was previously convicted of 3rd Degree Rape of a Child on October 26, 1998. Baker stipulated that he had a duty to register as a convicted sex offender and that he knew he was required to register as a convicted sex offender. EX 1; RP 57-60, 68-69. The only contested issue at trial was whether Baker actually moved out of his registered residence between March 4 and April 29, 2009. Appellant's Brief 2; RP 87. Baker waived his right to a jury trial and the matter proceeded to bench trial. RP 4-5.

In February of 2009 Baker moved in with Ken Mikos at 5615 - 64th Street, SE, Snohomish, WA. Baker registered that address with the Snohomish County Sheriff's Office on February 18, 2009. That was the last time Baker registered a change of his address

with the Sheriff's Office. Baker had registered thirty-five times prior to moving to 5615 - 64th Street, SE, Snohomish. RP 12-14, 27, 63, 65.

Baker did not pay rent while living at the 64th Street address, he slept on the couch, and had minimal personal affects, some clothes, grooming items, a bucket of tools, and a kick bag; no furniture, no books, no videos, no television, no radio. Baker also had a car that he parked in the driveway. Mikos saw Baker and Baker's car frequently while Baker was living at the 64th Street address. RP 12-17, 27.

Baker moved out of the 64th Street address on March 3, 2009, and took some of his belonging with him. After Baker moved out Mikos did not see him very much. Mikos had not see Baker's car for ten days when he was contacted by Deputy Gausman. Mikos did not remember seeing Baker's car after Baker moved out on March 3, 2009. Mikos was out of town two weekends in March 2009, and from April 11 to April 22, 2009. Mikos thought that it was possible Baker stayed at the 64th Street residence while he was away because Baker had a key to the house. However, Mikos did not see anything that led him to believe that Baker had been there. The court found Mikos to be credible. RP 17-18, 25-27, 35-36, 91.

On March 13, 2009, Deputy Gausman attempted to verify Baker's address on 64th Street. Baker was not there and Mikos stated that Baker no longer lived at that location. RP 43-48.

The court found Baker guilty of failure to register as a sex offender. The trial court found that Baker had been convicted of 3rd Degree Rape of a Child and was required to register as a sex offender pursuant to RCW 9A.44.130; that Baker ceased residing at his last registered address from March 4th to April 29th 2009, that Baker knowingly failed to give written notice to the sheriff of his change in residence, and that the acts occurred in Snohomish County, WA. RP 86-87.

On May 12, 2010, the court sentenced Baker to 18 months confinement and 36 months community custody. Baker had a standard sentencing range of 17 to 22 months incarceration and 36 months community custody. RP 98, 103.

III. ARGUMENT

A. LEGAL STANDARDS.

Sufficiency of the evidence is a question of constitutional magnitude which a defendant may raise for the first time on appeal. State v. Alvarez, 128 Wn.2d 1, 9, 904 P.2d 754 (1995); State v. Atterton, 81 Wn. App. 470, 472, 915 P.2d 535 (1996). When

reviewing a challenge to the sufficiency of the evidence, the court determines whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. State v. Brockob, 159 Wn.2d 311, 336, 150 P.3d 59 (2006); State v. Hughes, 154 Wn.2d 118, 152, 110 P.3d 192 (2005). All reasonable inferences are drawn in the prosecution's favor and interpreted most strongly against the defendant. State v. Hosier, 157 Wn.2d 1, 8, 133 P.3d 936 (2006). "A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Circumstantial evidence and direct evidence are equally reliable. State v. Goodman, 150 Wn.2d 774, 781, 83 P.3d 410 (2004). The court need not be convinced of the defendant's guilt beyond a reasonable doubt; it is sufficient that substantial evidence supports the State's case. State v. Galisa, 63 Wn. App. 833, 838, 822 P.2d 303 (1992) *citing* State v. McKeown, 23 Wn. App. 582, 588, 596 P.2d 1100 (1979). The court reviews the trial court's findings of fact for substantial evidence and its conclusions of law *de novo*. State v. Santacruz, 132 Wn. App. 615, 618, 133 P.3d 484 (2006); State v. Mendez, 137 Wn.2d 208, 214,

970 P.2d 722 (1999). Credibility determinations are for the trier of fact and cannot be reviewed on appeal. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). The court must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. State v. Walton, 64 Wn. App. 410, 415-16, 824 P.2d 533 (1992).

B. THE STATE PRESENTED SUFFICIENT EVIDENCE THAT DEFENDANT KNOWINGLY FAILED TO REGISTER WHEN HE MOVED FROM THE 64TH STREET RESIDENCE.

In the present case, Baker stipulated that he had a duty to register as a convicted sex offender and that he knew he was required to register as a convicted sex offender. The court found Mikos to be a credible witness.

“Residence as the term is commonly understood is the place where a person lives as either a temporary or permanent dwelling, a place to which one intends to return, as distinguished from a place of temporary sojourn or transient visit.” State v. Pickett, 95 Wn. App. 475, 478, 975 P.2d 584 (1999). Based on this definition, Washington courts have previously concluded that “even a temporary dwelling may be considered a ‘residence.’” State v. Pray, 96 Wn. App. 25, 29, 980 P.2d 240 (1999).

A sex offender need not intend that a place will be his or her permanent residence in order to trigger the registration requirements. Pray, 96 Wn. App. at 30. Therefore, even an offender with a fixed residence must register the address at which the offender will be staying even if that location is only a temporary one, rather than a permanent one. Pray, 96 Wn. App. at 29-30. Even if Baker stayed at the 64th Street address on the two weekends in March and between April 11 and April 22 when Mikos was out of town, he was not residing there during the entire period on March 4 to April 29, 2009. Anytime Baker was staying somewhere other than the 64th Street address he was required to give notice to the Snohomish County Sheriff within 72 hours. RCW 9A.44.130. More than 72 hours lapsed several times without Baker registering another address where he was staying or giving the Sheriff notice that he was not staying at the 64th Street address.

Detective Beard testified that the last address Baker registered was 5615 - 64th Street, SE, Snohomish, WA, on February 18, 2009. The trial court found that Baker ceased residing at the 64th Street address on March 3, 2009. The evidence presented at trial supported this finding. Mikos testified that Baker

moved out of the 64th Street address on March 3, 2009, and that he did not see Baker or his car after that date.

Based on the evidence presented to the trial court, a rational trier of fact could have reasonably concluded that Baker had moved from the 64th Street address where he was registered on March 3, 2009, and that Baker did not register a new residence within the 72 hour time limit.

IV. CONCLUSION

After independent review by this Court, the judgment and sentence should be affirmed.

Respectfully submitted on January 18, 2011.

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