

NO. 46825-5-II

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

STATE OF WASHINGTON,
Respondent,

v.

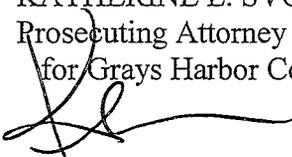
SAMUEL FLETCHER,
Appellant.

APPEAL FROM THE SUPERIOR COURT OF THE STATE
OF WASHINGTON FOR GRAYS HARBOR COUNTY

THE HONORABLE F. MARK MCCAULEY, JUDGE

BRIEF OF RESPONDENT

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I. COUNTERSTATEMENT OF THE CASE

The State does not dispute the facts recited by the appellant; however, they are supplemented as follows.

The appellant was convicted on or about March 7, 1994 of a felony sex offense in Grays Harbor County Superior Court cause number 93-1-43-3. Due to this conviction, he has a duty to register as a sex offender. RP 33; CP 17.

The appellant registered as a sex offender with the Grays Harbor Sheriff's Office (GHSO) on August 8, 2013. RP 29. His registered address was 112 East First Street, Apartment #1. RP 29; Exhibit 9. The appellant also received a notice that contained his registration duties. RP30; Exhibit 7.

On February 11, 2014, the appellant was released from custody and sent a letter to the GHSO confirming he was returning to the above address. RP29. There was no further contact from the appellant until April 2014. RP30.

In March 2014, the appellant was supposed to be residing at 112 East First Street, Apartment #1. RP19-20. On March 27, 2014, CCO Perry attempted to contact the appellant at his registered address. RP20. He

looked through a window and observed that “the apartment was empty.”

RP20.

During this time, the appellant was also supposed to be reporting to his community corrections officer, Curtis Perry, every Tuesday. RP20.

After appearing on March 4, 2014, the appellant failed to make these appointments, even though the Department of Corrections office is one block from the appellant’s registered address. RP20-21. The appellant made no contact with Perry between March 5 and March 31, 2014. RP25.

When Officer Timmons entered the residence on March 31, 2014, the refrigerator and the doors and drawers in the kitchen were open. RP6, 14. He saw trash on the floor and a mattress up against the wall. RP15. He did not observe any items of value. RP15. There were no groceries or bathroom toiletries in the apartment, and no items that indicating anyone had been occupying the apartment. RP15-16; Exhibits 5, 6.

Frederick Voosen owns the building at 112 East First Street in Aberdeen, WA. RP36. Mr. Voosen rented apartment #1 to the appellant, but had issues with the appellant not paying rent. RP37. Mr. Voosen tried to work out these issues with the appellant, but was unable to. Mr. Voosen testified that the appellant left the apartment in “early March, 1st, 2nd,

somewhere in there...” RP38. Mr. Voosen did not believe the appellant returned to apartment #1 after that date. RP38.

In fact, Mr. Voosen had eviction paperwork posted on the unit on February 11, 2014. RP39; Exhibit 1. An abandonment notice was posted on March 4, 2014 and the power was shut off to the unit. Within three days, the property manager changed the locks and reclaimed the property. RP40; Exhibit 2.

II. ARGUMENT

A. Did the State produce sufficient evidence to prove the appellant’s guilt beyond a reasonable doubt?

Yes. Taken in the light most favorable to the State, there is ample evidence to support the decision of the jury.

In every criminal prosecution, due process requires that the State prove, beyond a reasonable doubt, every fact necessary to constitute the charged crime. *In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970). When a defendant challenges the sufficiency of the evidence, the proper inquiry is “whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt.” *State v. Salinas*, 119 Wash.2d 192, 201, 829 P.2d 1068 (1992). “[A]ll reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against

the defendant.” *Id.* Furthermore, “[a] claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom.” *Id.*

To convict Fletcher of failure to register as a sex offender as charged here, the State had to prove beyond a reasonable doubt that Fletcher (1) had a duty to register under RCW 9A.44.130 for a felony sex offense and (2) knowingly failed to register within three business days of either (a) changing his residence or (b) ceasing to have a fixed residence. RCW 9A.44.130(4)-(5); RCW 9A.44.132; CP 1-3.

A defendant acts “knowingly” if “(i) he or she is aware of a fact, facts, or circumstances or result described by a statute defining an offense; or (ii) he or she has information which would lead a reasonable person in the same situation to believe that facts exist which facts are described by a statute defining an offense.” RCW 9A.08.010(1)(b).

For purposes of former RCW 9A.44.130, “knowledge” may be inferred where a defendant has properly previously registered. *See State v. Castillo*, 144 Wn.App. 584, 589–90, 183 P.3d 355 (2008) (reasonable to infer that a sex offender knew the registration requirements when he had registered before); *State v. Vanderpool*, 99 Wn.App. 709, 713–14, 995

P.2d 104 (a rational trier of fact could decide that defendant knowingly violated the registration requirements when the record contains evidence that he has followed the registration statute before), *review denied*, 141 Wn.2d 1017 (2000).

In this case, the appellant properly registered with the GHSO in August of 2013. He was also provided with a notice that informed his of his registration duties and when he was required to update his registration. In fact, after his release from incarceration, the appellant sent a letter to the GHSO confirming that he was returning to his registered address. There is clearly sufficient evidence to prove that the appellant acted “knowingly.”

The appellant focuses on whether or not sufficient evidence was presented to find that the defendant had either moved to another residence or become transient. In making this argument, the appellant heavily relies on *State v. Drake*, 149 Wash.App. 88, 201 P.3d 1093 (2009). However, the case at bar is distinguishable from the facts in *Drake*.

In *Drake*, the trial court found that the defendant had failed to pay rent and “had no legal right to reside at the residence.” *State v. Drake*, at 93. Further, the court held that “[w]hether the defendant intended to return

to that residence is not material” and that the “court infers no intent to return.” *Drake* at 93.

As held by the court in *Drake*, the State acknowledges that evidence that the appellant had no legal right to reside at his registered address would not be sufficient to support a conviction in this case. The appellant could have been living illegally in his registered residence, which would be trespass, but would still be in compliance with his registration requirements.

However, that is not what was presented in this case. Unlike *Drake*, the State in the present case presented evidence from which the jury could infer the appellant had no intent to return to his registered address. *Id.* at 95.

CCO Perry testified that the defendant had failed to appear for weekly meetings beginning on March 5, even though his office was only one block from the registered address. When Perry looked into the apartment on March 27, he found it to be “empty.” Officer Timmons also observed that there were no items in the apartment that indicated recent inhabitation. There was no food, toiletries, or other items of daily life in the apartment.

Most importantly, the landlord testified that the appellant stopped paying rent, he had not been seen in the building since the first of March, eviction proceedings were commenced, the locks were changed, and there was no power to the apartment. The evidence is strong that even if he had wanted to, the appellant had no way to access the apartment and reside there. RCW 9A.44.128 defines "Fixed residence" as:

a building that a person lawfully and habitually uses as living quarters a majority of the week. Uses as living quarters means to conduct activities consistent with the common understanding of residing, such as sleeping; eating; keeping personal belongings; receiving mail; and paying utilities, rent, or mortgage. A nonpermanent structure including, but not limited to, a motor home, travel trailer, camper, or boat may qualify as a residence provided it is lawfully and habitually used as living quarters a majority of the week, primarily kept at one location with a physical address, and the location it is kept at is either owned or rented by the person or used by the person with the permission of the owner or renter. A shelter program may qualify as a residence provided it is a shelter program designed to provide temporary living accommodations for the homeless, provides an offender with a personally assigned living space, and the offender is permitted to store belongings in the living space.

There is no evidence to support that the registered address was the appellant's "fixed address" after March 2, 2014.

Therefore, with all reasonable inferences drawn in favor of the State and interpreted most strongly against the appellant, the evidence is

sufficient to support the jury's conclusion that the appellant was guilty of failing to properly register as a sex offender.

B. Was the defendant's offense properly sentenced?

Yes. In this case, the defendant's offense is a ranked, non-sex offense, class C felony.

The appellant's claim on this issue is confusing. He claims that his "current failure to register as a sex offender is not a sex offense..." Appellant's Supplemental Brief at 1. The next claim is that, as this conviction is not a sex offense, the defendant's "current conviction is not a felony conviction." Appellant's Supplemental Brief at 2. The appellant's conclusion is that if "the current offense is not a sex offense, which makes the current offense an unranked offense whereas a second offense becomes a class C felony." Appellant's Supplemental Brief at 8.

Due to the way the offense was charged, the State agrees that the offense at issue is not a sex offense. In fact, the appellant was not sentenced to a sex offense, and this is reflected in the Judgment and Sentence. CP 57-65.

The defendant was charged with Failure to Register as a Sex Offender under RCW 9A.44.132(1)(a). CP 1-3. RCW 9A.44.132(1)(a) provides that "[t]he failure to register as a sex offender pursuant to this

subsection is a class C felony if: (i) it is the person's first conviction for a felony failure to register; or (ii) The person has previously been convicted of a felony failure to register as a sex offender in this state..."

RCW 9.94A.515 defines "Failure to Register as a Sex Offender (second or subsequent offense) (RCW 9A.44.132)" as a level II on the seriousness level grid. The appellant has four prior felony convictions for Failing to Register as a Sex Offender. CP 57-65. Therefore, he was properly sentenced to a non-sex offense in this matter.

III. CONCLUSION

For the reasons stated above, the State asks that the verdict of the jury and the sentence of the trial court be affirmed.

DATED this 24th day of June, 2015.

Respectfully Submitted,



WSBA #34097

GRAYS HARBOR COUNTY PROSECUTOR

June 26, 2015 - 2:17 PM

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