

FILED

NOV 24 2010

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

29133-2-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

DENNIS STENSGAR, APPELLANT

APPEAL FROM THE SUPERIOR COURT

OF OKANOGAN COUNTY

APPELLANT'S BRIEF

Julia A. Dooris
Attorney for Appellant

GEMBERLING & DOORIS, P.S.
3030 S. Grand Blvd. #132
Spokane, WA 99203
(509) 838-8585

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A. ASSIGNMENT OF ERROR

1. Did insufficient evidence exist to support the conviction for failure to register?

B. ISSUE

1. Where a kidnapping offender seeks to register, but leaves the “new address” portion of the registration blank, and a detective later provides an address where the offender does not live, does the offender fail to register?

C. STATEMENT OF THE CASE

Dennis Stensgar went to the Okanogan County Sheriff’s office to attempt to comply with reporting requirements. Mr. Stensgar was convicted in 1997 of kidnapping, and as a result, he must routinely notify the sheriff’s office of his current whereabouts. (RP 85-86)

On November 2, 2009, Mr. Stensgar filled out the “Change of Address” form. (CP 113) He had just been released from custody, and he attempted to complete a change of address form. (RP 87; CP 113)

On the form, Mr. Stensgar filled in several pieces of information, including his name, the county where he was previously convicted, the kidnapping charge, and he listed his last registered address as “6398

Hiway 155". (CP 113) He left the box for "new address" blank. (RP 89; 100) The clerk that gave Mr. Stensgar the change of address form was Gale Wall, a records clerk. (RP 88; 111) Ms. Wall wrote her name under the place in the form for the "registering officer." (CP 113) Mr. Stensgar signed the form, and left. (CP 113)

Subsequently, Okanogan County Sheriff's Office Detective Deborah Behymer reviewed Mr. Stensgar's change of address form. (RP 89) The detective was familiar with Mr. Stensgar from his previous registering with the sheriff's office. (RP 86-88)

The detective reviewed the form and decided it needed "corrections." (RP 89) Without contacting Mr. Stensgar, the detective wrote in a few answers on Mr. Stensgar's form – his State Identification Number and his social security number, and she wrote in under "new address": 6398 Hiway 155. (CP 113)

The detective admitted she was aware that the address she provided was one where Mr. Stensgar was not welcome. (RP 90) Detective Behymer knew that the last time Mr. Stensgar registered, he provided the 6398 Highway 155 address. But in June, 2009, when she investigated that address to ensure he was living there, she learned he had not been living there and he was not welcome there. (RP 86-87)

In June 2009, the detective reported that Mr. Stensgar was not living at that address, and he was subsequently convicted of failure to register, and jailed. (RP 86-88; 90; CP 111) When he filled out the change of address form in this case, Mr. Stensgar was just being released from that conviction. (RP 87)

The detective acknowledged that Mr. Stensgar has had trouble in the past with properly filling out the forms: “No I couldn’t understand what he was writing. None of it’s normal for what he’s done in the past for writing these forms so that made no sense to me.” (CP 104)

Six days after he filled out the form, Mr. Stensgar was arrested in Spokane on an unrelated charge. (RP 94) Mr. Stensgar was promptly charged in Okanogan County with failure to register. (CP 129-30)

Specifically, the Information alleged that Mr. Stensgar was convicted of a kidnapping offense, and thus was

required to register pursuant to RCW 9A.44.130 did knowingly fail to comply with the requirements of RCW 9A.44.130 to wit did not live at the address that he provided as his registration address and did not either provide a current address or register as homeless and or did not notify of a move either within the county or out of the county contrary to Revised Code of Washington RCW 9A.44.130 Laws of 2006 ch 126 2 and Laws of 2006 ch 128 2 and Laws of 2006 ch 129 2 and Laws of 2006 ch 128 2.

(CP 129-130)

For trial, Mr. Stensgar stipulated that he was previously convicted of second degree kidnapping in July, 1997. (RP 84)

The to-convict instruction required in part that the jury find:

To convict the defendant of FAILURE TO REGISTER AS A KIDNAPPING OFFENDER each of the following elements of the crime must be proved beyond a reasonable doubt:

1. That on or about November 2 2009 the defendant had a duty to register as a kidnapping offender. This element is stipulated.

2. That the defendant either

(a) knowingly failed to maintain registration as a kidnapping offender with the sheriff of the county in which he resides or

(b) changed his residence address within the same county and knowingly failed to provide written notice to the county sheriff within seventy-two hours of moving or

(c) lacked a fixed residence and knowingly failed to provide written notice to the sheriff of the county where he or she last registered within forty-eight hours after ceasing to have a fixed residence.

3. That the acts occurred in the State of Washington.

(CP 42)

The jury instruction related to acting knowingly stated:

A person knows or acts knowingly or with knowledge with respect to a duty to register as a kidnapping offender when he or she is aware of that he has a duty to register and fails to register or to notify the sheriff of a change in his residential status.

If a person has information that would lead a reasonable person in the same situation to believe that a fact exists the jury is permitted but not required to find that he or she acted with knowledge of that fact.

Acting knowingly when failing to register a change in residential status is required to establish an element of a crime the element is also established if a person acts intentionally when he fails to register a change in his residential status.

A person acts with intent or intentionally when acting with the objective or purpose to accomplish a result that constitutes a crime.

(CP 46)

The jury convicted Mr. Stensgar. (CP 31) He appeals.

D. ARGUMENT

1. INSUFFICIENT EVIDENCE EXISTS TO SUPPORT MR. STENSGAR'S CONVICTION.

The standard of review for sufficiency of the evidence is substantial evidence. *State v. Rangel-Reyes*, 119 Wn. App. 494, 499, 81 P.3d 157 (2003). "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 and direct evidence are equally reliable. *State v. Lubers*, 81 Wn. App. 614, 619, 915 P.2d 1157 (1996).

A person who has been convicted of a kidnapping offense must register with the county sheriff for the county of the person's residence. RCW 9A.44.130(1)(a). A person who lacks a fixed residence must provide the following: (i) Name; (ii) date and place of birth; (iii) place of

employment; (iv) crime for which convicted; (v) date and place of conviction; (vi) aliases used; (vii) social security number; (viii) photograph; (ix) fingerprints; and (x) where he or she plans to stay. RCW 9A.44.130(3)(b).

When a person required to register changes his address within the same county, the person must provide signed written notice of the change of address to the county sheriff within three business days of moving. RCW 9A.44.130(5)(a).

When a person required to register becomes homeless, the person must provide signed written notice to the sheriff of the county where he or she last registered within three business days. RCW 9A.44.130(6)(a). A person who becomes homeless must report weekly, in person, to the sheriff. RCW 9A.44.130(6)(b).

In order to convict Mr. Stengsar of failure to register, the State had to prove that he knowingly failed to timely register. *See State v. Peterson*, 145 Wn. App. 672, 186 P.3d 1179, *aff'd* 168 Wn.2d 763, 230 P.3d 588 (2010).

The to-convict instruction provides that in order to find Mr. Stengsar guilty, the State had to prove that he either (a) knowingly failed to maintain registration as a kidnapping offender with the sheriff of the county in which he resides or (b) changed his residence address within the

same county and knowingly failed to provide written notice to the county sheriff within seventy-two hours of moving or (c) lacked a fixed residence and knowingly failed to provide written notice to the sheriff of the county where he or she last registered within forty-eight hours after ceasing to have a fixed residence. (CP 42)

Under the instruction defining “knowingly,” the jury had to find that Mr. Stensgar was aware that he has a duty to register and he failed to register or to notify the sheriff of a change in his residential status. (CP 46) Alternatively, the jury had to find that Mr. Stensgar acted intentionally when he failed to register. (CP 46)

But the evidence fails to support that Mr. Stensgar knowingly failed to register. In fact, the evidence shows just the opposite – Mr. Stensgar attempted to register. He showed up at the sheriff’s office, filled out the necessary information, signed the form, and submitted it to the sheriff’s records clerk.

The un rebutted testimony is that the detective unilaterally provided an incorrect address. Mr. Stensgar left that blank. Apparently he was not aware that leaving the new address portion blank was not the desired method for indicating homelessness in Okanogan County. Mr. Stensgar very well could have been planning to appear seven days later for his

homeless weekly check-in requirement. But because he was arrested six days later, it is impossible to predict what would have happened.

Nor is it reasonable to infer that Mr. Stensgar knew the procedures related to registering as homeless. The evidence indicated he has registered with an address in the past.

Under this record, the State failed to establish all the elements of the crime. Mr. Stensgar tried to register, and a sheriff's detective filled in an address for him that he did not provide. The unilateral acts by the detective cannot support a "knowing" element of Mr. Stensgar, nor can the detective's acts be imputed to Mr. Stensgar.

Because insufficient evidence exists to support his conviction, the conviction must be reversed.

E. CONCLUSION

No evidence exists that Mr. Stensgar knowingly failed to register. Because insufficient evidence exists to support the conviction, it should be reversed.

Dated this 22nd day of November, 2010.

GEMBERLING & DOORIS, P.S.


Julia A. Dooris #22907
Attorney for Appellant

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON,

DIVISION III

STATE OF WASHINGTON,)	
)	
Respondent,)	No. 29133-2-III
)	
vs.)	CERTIFICATE
)	OF MAILING
DENNIS STENSGAR,)	
)	
Appellant.)	

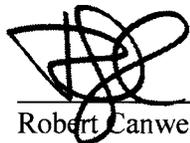
I certify under penalty of perjury under the laws of the State of Washington that on November 22, 2010, I caused copies of Appellant's Brief in this matter to be served by mail to the attorney for the respondent,

Joseph Caldwell
Okanogan County Prosecutor
PO Box 1130
Okanogan, WA 98840-1130

and to the appellant,

Dennis Stensgar
c/o Sophie Stensgar
1413 S. Hwy 21
Republic, WA 99166

Signed at Patnem Beach, India on November 22, 2010.



Robert Canwell
Legal Assistant