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Cause No: 09-1-00777-7

COA: 655485

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON, Respondent,

v.

MORRIS BAKER, Appellant,

BRIEF OF APPELLANT

John Crowley

Attorney for Appellant

The Crowley Law Firm, P.L.L.C.

Smith Tower

Suite 1015

506 Second Avenue

Seattle, Washington 98104

Tel (206) 625-7500 ♦ Fax (206) 625-1223

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A. PREAMBLE

I have submitted this brief in accordance with *Anders v. California*, 386 U.S. 738 (1967). After having carefully examined this record and after having researched the relevant statutes and case law, I have concluded that this appeal presents only legally frivolous issues.

B. ASSIGNMENTS OF ERROR

1. THE TRIAL COURT DID NOT COMMIT ANY REVERSIBLE ERROR BECAUSE THE VERDICT WAS SUPPORTED BY SUBSTANTIAL EVIDENCE.

C. ISSUE PERTAINING TO ASSIGNMENTS OF ERROR

My review of the record reveals no issues which can be advanced in good faith. Any arguable points that could exist would arise from the sufficiency of the evidence to find that Mr. Baker was guilty of failure to register.

D. STATEMENT OF THE CASE

On October 26, 1998, Defendant Morris Baker was convicted of Rape of a Child in the Third Degree. As a result, he must register pursuant to RCW 9A.44.130. On May 4, 2009, Mr. Baker was charged in Snohomish County Superior for failure to register. At trial, Mr. Baker waived his right to a jury trial and opted for a bench trial. RP at 4-5.

Before issue his verdict and findings of fact, the trial judge recited the necessary elements that the State needed to prove to find Mr. Baker

guilty for failure to register under RCW 9A.44.130. RP at 87. The State, in this case, needed to prove that Mr. Baker was convicted of Rape of a Child in the Third Degree, that he was required to register, and that he did not live at the last registered address between March 4th and April 29th of 2009. RP at 87.

As the trial developed, it became clear that there would be only one truly contested issue: whether Mr. Baker actually moved out of his Snohomish County residence sometime between March and April of 2009. RP at 87. To prove this element, the State offered two witnesses.

First, they called Mr. Ken Milkos, the owner of the home that Mr. Baker was supposed to be living at, who also lived there with Mr. Baker. RP at 88. Mr. Milkos testified that Mr. Baker had moved out on March 3, 2009. RP at 90. Mr. Baker elaborated and told the court that the reason that he knew Mr. Baker had moved out was because he never saw Mr. Baker's car at that residence after March 4, 2009—when Mr. Baker was at the home, the car was always there. RP at 92.

Second, the State called Deputy Gausman, who had visited the residence on March 13, 2009. On that date, Mr. Milkos told the Deputy that Mr. Baker had moved out, however, the court did not rely upon the Deputy's testimony about Mr. Milko's hearsay statements. RP at 91.

Based upon Mr. Milko's testimony, the court found that Mr. Baker did move out of the residence and failed to register a new address within three days. RP at 92. Thus, the Court found him guilty of failure to register under RCW 9A.44.130. RP at 92. Currently, Mr. Baker is out of custody on bail but still required to register under that statute, pending this appeal.

E. SUMMARY OF THE ARGUMENT

Appellate counsel has reviewed the record thoroughly and has failed to identify any legally non-frivolous issues. The only arguable issue for purposes of an Ander's Brief is whether there was sufficient evidence to find that Mr. Baker moved from his registered residence and failed to report that move. Based upon the evidence, a rational trier of fact could have found that Mr. Baker moved from his residence, failed to report the move, and thus violated RCW 9A.44.130.

F. ARGUMENT

1. Sufficiency of the Evidence

a. Standard of Review

An appellate court will test the sufficiency of the evidence by asking whether, viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of a crime beyond a reasonable doubt. *State v. Salinas*, 119 Wn. 2d 192, 201, 829 P.2d 1068 (1992). Unlike the trial court, an appellate court need not

be convinced of the defendant's guilt beyond a reasonable doubt, only that substantial evidence supports the State's case. *State v. Fiser*, 99 Wn. App. 714, 718, 995 P.2d 107 (200).

A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn. *State v. Theroff*, 25 Wn. App. 590, 593, 608 P.2d 1254 (1980). Circumstantial evidence is no less reliable than direct evidence. *State v. Lubers*, 81 Wn. App. 614, 915 P.2d 1157 (1996). Upon review, the court will defer to the trier of fact's decisions resolving conflicting testimony, evaluating the witnesses' credibility, and determining the persuasiveness of evidence. *State v. Walton*, 64 Wn. App. 410, 415-16, 824 P.2d 533 (1992).

b. The Evidence here was sufficient to convict Mr. Baker.

To prove that Mr. Baker guilty of failure to register, the State needed to prove that Mr. Baker was convicted of Rape of a Child in the Third Degree, that he was required to register, and that he did not live at the last registered address between March 4th and April 29th of 2009. RCW 9A.44.130; RP at 87.

As the trial developed, it became clear that there would be only one truly contested issue: whether Mr. Baker actually moved out of his Snohomish County residence sometime between March and April of 2009. RP at 87. To prove this element, the State offered two witnesses.

Mr. Milkos testified that Mr. Baker had moved out on March 3, 2009. RP at 90. Mr. Baker elaborated and told the court that the reason that he knew Mr. Baker had moved out was because he never saw Mr. Baker's car at that residence after March 4, 2009—when Mr. Baker was at the home, his car was always there. RP at 92. Although Mr. Milkos's testimony appeared to conflict at times, it remained within the trial court's discretion to determine the credibility of that witness. *See Walton*, 64 Wn. App. at 415-16.

Moreover, no witnesses affirmatively testified that Mr. Baker did in fact live at that residence during March or April of 2009. Thus, viewing the evidence in the light most favorable to the State, there was substantial evidence to find that Mr. Baker did not live at the residence for more than three days and failed to report the move.

G. CONCLUSION

Based upon the evidence, a rational trier of fact could have found that Mr. Baker moved from his residence, failed to report the move, and thus violated RCW 9A.44.130. Accordingly, no appealable issues exist in this case.

DATED this 20th day of December, 2010.



John R. Crowley, ESQ., WSBA# 19868
Attorney for Morris Baker