

[Cite as *State v. Johnson*, 2010-Ohio-2474.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93553

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

DURWIN JOHNSON

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-519378

BEFORE: Cooney, J., Kilbane, P.J., and Sweeney, J.

RELEASED: June 3, 2010

**JOURNALIZED:
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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief per App.R. 26(A), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

COLLEEN CONWAY COONEY, J.:

{¶ 1} Defendant-appellant, Durwin Johnson (“Johnson”), appeals his conviction. Finding no merit to the appeal, we affirm.

{¶ 2} In December 2008, Johnson was charged with failure to provide notice of change of address. The matter proceeded to a bench trial, at which he was found guilty. The trial court sentenced him to two years of community control sanction. The following evidence was adduced at trial.

{¶ 3} In 2002, Johnson was convicted of sexual battery. He was classified as a Tier III sexual offender and required to report to the Cuyahoga County Sheriff’s Office (“CCSO”) every 90 days. In October 2008, Deputy Sheriff Michael Poslet met with Johnson and completed a change of address form, indicating that Johnson’s new address is 5913 Frontier Avenue in Cleveland, Ohio. The registration form provided that Johnson was to return to the CCSO by December 23, 2008. The form advised that the failure to register, verify address, or provide notice of a change in address will result in criminal prosecution.

{¶ 4} The CCSO sent deputies to verify Johnson’s address on October 31, November 3, and November 27, 2008, and were unsuccessful, noting “no response.” On November 19, 2008, CCSO deputy Rodney Blanton

("Blanton") attempted to verify Johnson's address. He went to the Frontier Avenue residence, looked in the window, and observed that the house was vacant. Blanton also spoke with a neighbor, Thomas Hitsman, who lives two houses away from 5913 Frontier Avenue. Hitsman testified that the property is owned by Michelle Wiggins ("Wiggins"), who had moved out in August or September 2008. He claimed the house had been vacant since then. He also testified that he did not recall seeing Johnson at the Frontier Avenue address. During November 2008, he had not observed anyone doing yard work or taking out the garbage.

{¶ 5} Kathleen Orlando ("Orlando"), a detective with the CCSO, sent a verification letter to Johnson at the Frontier Avenue address on November 20, 2008. The letter was returned on November 28, 2008, marked "return to sender, attempted, not known, unable to forward." This letter advised Johnson that the CCSO had been unable to verify his address and he had seven days to respond to the CCSO. In another attempt to contact Johnson, Orlando sent him a note and her business card on December 1, 2008. It was also returned, marked "return to sender, attempted, not known, unable to forward." Then, approximately ten days later, she visited the Frontier Avenue address. The house appeared unoccupied. She knocked on the door and, when no one answered, she left her business card in the door. After

receiving no response from the letters or the December 2008 visit, Orlando submitted Johnson's case to the prosecutor's office for charges to be filed.

{¶ 6} Johnson testified in his own defense. He testified that he lived at the 5913 Frontier Avenue address from October 2008 to February 2009. He used his social security benefits to pay Wiggins \$400 a month in rent. Johnson testified that his monthly disability checks were sent to his uncle's address, not to the Frontier Avenue address because his uncle was the payee.

He further testified that he lived alone and the house was not vacant — he had a chair and TV in the living room. He claimed that he had taken out the garbage a few times.

{¶ 7} Johnson explained that the neighbors did not see him in November 2008 because he was visiting his daughter in the hospital. He did not have a car, so he relied on a friend for a ride, or took the bus, or walked to the hospital. Johnson also testified that he received mail at the Frontier Avenue address, but it took some time for the address to change because he had to go to three separate post offices. He left the Frontier Avenue address in February 2009 and reported his new address to the CCSO.

{¶ 8} Johnson now appeals, raising one assignment of error, in which he argues that “[t]he evidence at trial does not support conviction under [R.C.] 2950.05(A), the only crime for which [he] was indicted.”

{¶ 9} In *State v. Diar*, 120 Ohio St.3d 460, 2008-Ohio-6266, 900 N.E.2d 565, ¶113, the Ohio Supreme Court explained the standard of review for a challenge to the sufficiency of the evidence:

“Raising the question of whether the evidence is legally sufficient to support the jury verdict as a matter of law invokes a due process concern. *State v. Thompkins* (1997), 78 Ohio St.3d 380, 386, 678 N.E.2d 541. In reviewing such a challenge, ‘[t]he relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.’ *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus, following *Jackson v. Virginia* (1979), 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560.”

{¶ 10} An offender’s duty to provide notice of a change of address is set forth in R.C. 2950.05, which provides in pertinent part:

“(A) If an offender * * * is required to register pursuant to division (A)(2), (3), or (4) of section 2950.04 or 2950.041 of the Revised Code, * * * the offender * * * shall provide notice of any change of residence * * * address, to the sheriff with whom the offender * * * most recently registered the address under division (A)(2), (3), or (4) of section 2950.04 or 2950.041 of the Revised Code or under division (B) of this section. [T]he offender * * * shall provide * * * written notice at least twenty days prior to changing the address of the residence * * *.”

{¶ 11} Johnson claims that the evidence at trial establishes that he complied with these requirements — he advised the CCSO that his new address is 5913 Frontier Avenue. Thus, he maintains that the trial court could not have convicted him of the failure to provide notice of address change.

{¶ 12} We disagree, and find this court' s reasoning in *State v. Beasley* (Sept. 27, 2001), Cuyahoga App. No. 77761, persuasive. *Beasley* involved an analogous situation in which the appellant, Beasley, argued that the State failed to establish the requisite elements of the failure to report a change of address because he did not “change” his address. Beasley also argued in the alternative that “his homelessness left him without an address to report.” The *Beasley* court rejected his homelessness argument, stating that “[t]his is sophistry. An address ‘changes’ when one no longer lives at that address.” The *Beasley* court found sufficient evidence to support Beasley’s conviction, stating that when he left his residence, his address changed and he had a duty under R.C. 2950.05(A) to report this change.

{¶ 13} In the instant case, Johnson argues that the evidence presented by the State was designed to demonstrate, not that he failed to register the Frontier Avenue address, but rather to demonstrate that the information he provided to the CCSO was incorrect. As a result, he claims that the evidence presented at trial may have established that he violated R.C. 2921.13(A)(3), the falsification statute, but not R.C. 2950.05(A).¹

¹R.C. 2921.13(A)(3) provides that “[n]o person shall knowingly make a false statement, or knowingly swear or affirm the truth of a false statement previously made, when * * * [t]he statement is made with purpose to mislead a public official in performing the public official’s official function.”

{¶ 14} However, as this court stated in *Beasley*, “[a]n address ‘changes’ when one no longer lives at that address.” Here, the evidence at trial demonstrated that Johnson was not living at the Frontier Avenue address when the CCSO made several attempts to verify that address. The CCSO attempted to verify Johnson’s address on five different dates. When Blanton looked in the window of the Frontier Avenue residence, he observed that the house appeared vacant. Blanton also spoke with Hitsman, who testified that he did not recall seeing Johnson at the Frontier Avenue address and that no one had done yard work or taken out the trash in November 2008. Orlando sent two letters to Johnson at the Frontier Avenue address, which were marked, “return to sender, attempted, not known, unable to forward.” She also visited the Frontier Avenue address and testified that the house appeared unoccupied.

{¶ 15} When Johnson no longer resided at this address, his address “changed,” and he had the duty to report this change. Therefore, in viewing the evidence in the light most favorable to the State, we find that there was sufficient evidence to support Johnson’s conviction.

{¶ 16} Accordingly, the sole assignment of error is overruled.

{¶ 17} Judgment is affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

COLLEEN CONWAY COONEY, JUDGE

MARY EILEEN KILBANE, P.J., and
JAMES J. SWEENEY, J., CONCUR