

May 2, 2017

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

BRYAN WADE MACKER,

Appellant.

No. 48717-9-II

UNPUBLISHED OPINION

WORSWICK, J. — Following a bench trial, the trial court found Bryan Macker guilty of failure to register as a sex offender. Macker appeals his conviction, asserting that the State failed to prove that he did not comply with RCW 9A.44.130's registration requirements. Specifically, Macker argues that the State did not present any evidence showing that he failed to comply with RCW 9A.44.130(4)(a)(viii), the registration provision applicable to individuals convicted of a qualifying sex offense who move to another state.¹ We affirm Macker's conviction.

FACTS

Macker has previously been convicted of third degree assault of a child with sexual motivation, which conviction required him to register as a sex offender under RCW 9A.44.130.

¹ Macker also requests that we exercise our discretion to waive appellate fees in this matter. Because Macker's current or likely future ability to pay appellate costs may be addressed by a commissioner of this court under recently amended RAP 14.2, we defer this matter to our commissioner in the event the State files a cost bill.

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RCW 9A.44.128(10)(a); former RCW 9.94A.030(47)(c) (2015). On March 18, 2015, Macker registered his address as a house on 52nd Avenue in Graham. Macker's mother, Gwendolyn Williams, resided at the 52nd Avenue house. Williams's nephew, Akeem Tate, also lived at the home with Tate's wife and son.

On July 8, Pierce County Sheriff's Detective Raymond Shaviri went to the 52nd Avenue house to verify that Macker was residing there, but no one was there. Shaviri returned to the house on the following day and spoke with Williams, who said that Macker had not lived at the house for two months. After determining that Macker was not being held in custody, Shaviri changed Macker's verification status to "absconded." Report of Proceedings (RP) at 94.

On August 5, the State charged Macker with failure to register as a sex offender. The matter proceeded to a bench trial.

At trial, Shaviri testified consistently with the facts as stated above. Williams testified that she had provided Shaviri with a written statement stating that Macker had not lived at her house for over two months. But on cross-examination Williams testified that, although she had not personally seen Macker at her house during that time period, she believed he had been living there.

Andrea Conger testified that she works as a records custodian in the Pierce County Sheriff's Office sex offender registration unit. Through Conger's testimony, the State introduced a judgment and sentence showing that Macker had been convicted of an offense requiring him to register as a sex offender. Conger also identified certified judgment and sentence documents showing that Macker had previously been convicted of failure to register as a sex offender in 2004, 2007, and 2010. Conger stated that Macker had registered the 52nd Avenue house as his

resident address on March 18, 2015. Conger further stated that Macker had not registered a different address after March 18. The State asked Conger, “Between May 1, 2015 and August 5, 2015, based on your review of Mr. Macker’s file, did Mr. Macker attempt to register another address other than the . . . 52nd Avenue East Address?” RP at 46. Conger replied, “No, he did not.” RP at 46.

The trial court found Macker guilty of failure to register as a sex offender and thereafter entered the following findings of fact and conclusions of law:

FINDINGS OF FACT

I.

That Bryan Wade Macker, the responded [sic], on the 5th day of August, 2015, was charged by information with the crime of Failure to Register as a Sex Offender–Third or Subsequent Offense. The respondent pleaded not guilty. The matter was set for trial on the 25th of January, 2016, before the Honorable James Orlando, Judge.

II.

That all relevant events occurred in Pierce County, Washington at the respondent’s registered address in Graham.

III.

The Court found, based on the testimony of Andrea Conger of the Pierce County Sheriff’s Department, that Bryan Macker was convicted on the 28th day of May, 2004, of the crime of Assault of a Child in the Third Degree with Sexual Motivation. The Judgement [sic] and Sentence carries Mr. Macker’s signature, date of birth, and a unique State Identification Number (SID).

IV.

The Court found, based upon the credible testimony of Mrs. Conger, that on the 5th day of October, 2004, 5th day of July, 2007, and the 1st day of February, 2010, Mr. Macker was convicted of Failing to Register as a Sex Offender.

V.

The Court found that Mr. Macker had been registering with the Pierce County Sheriff’s Department beginning on the 8th day of September, 2011. He

had completed a full registration packet, had his photo taken, which matched the appearance of Mr. Macker during the course of the trial, and Mr. Macker signed the registration packet acknowledging his rights and duties.

VI.

The Court found that Mr. Macker's signature on the registration packets match all of the Judgement [sic] and Sentences presented at trial.

VII.

The Court found, based on Mrs. Conger's testimony, that Mr. Macker registered himself as transient on the 25th day of February, 2015, and on the 18th day of March, 2015, Mr. Macker sent a letter to the Pierce County Sheriff's Department updating his registered address to [address number] 52nd Avenue, Graham, Washington. In that letter, he stated that he was moving in with his mother, Gwendolyn Williams, in order to help her care for his grandmother.

VIII.

The Court found, based on the creditable [sic] testimony of Detective Shaviri of the Pierce County Sherriff's [sic] Department Sex Offender Unit, that he attempted to contact Mr. Macker at his registered address on the 8th day of July, 2015, without success.

IX.

The Court found, based on the creditable [sic] testimony of Detective Shaviri that he again attempted to contact Mr. Macker at his registered address on the 9th day of July, 2015, but without success. On this day, Detective Shaviri spoke to Gwendolyn Williams, who stated that Mr. Macker had not lived at the residence for two months. She wrote a statement stating the same. Mrs. Williams did not know that Mr. Macker had been homeless in the past seven years.

X.

The Court found that the [sic] Mr. Macker had in fact kept some belongings in the house, such as his computer and X-Box console. These items, based on Mrs. Williams['] testimony, had been moved and she believed they had been moved by Mr. Macker coming and going. However, Mrs. Williams never saw Mr. Macker come or go during the two months prior, and Mr. Akeem Tate, nephew of Mrs. Williams lived at the residence at the same time with his family and may have been responsible for moving or using Mr. Macker's personal belongings.

XI.

The Court found, based on the testimony of Mrs. Williams that she was surprised Mr. Macker had stated he was moving home to help out with his ill

grandmother because he did not assist in the care of his grandmother. Furthermore, Mr. Macker did not attend the funeral of his grandmother once she passed. Lastly, Mr. [sic] Williams could not remember a single day that Mr. Macker was at the residence during the two months prior to the 9th day of July, 2015.

From the foregoing Findings of Fact, the Court makes the following Conclusions of Law.

CONCLUSIONS OF LAW

I.

That the Court has jurisdiction of the parties and subject matter.

II.

Bryan Macker had a duty to register as a sex offender in Pierce County, Washington.

III.

Mr. Macker was not habitually using the registered address as his place of residence.

IV.

Mr. Macker has three prior convictions for Failing to Register as a Sex Offender.

V.

Bryan Macker is guilty, beyond a reasonable doubt, of the crime of Failing to Register as a Sex offender between the 1st day of May, 2015, through the 5th day of August, 2015. The acts occurred in Pierce County, Washington.

Clerk's Papers (CP) at 5-8. Macker appeals from his conviction.

ANALYSIS

SUFFICIENCY OF THE EVIDENCE

Macker argues that the State did not present sufficient evidence to support his failure to register as a sex offender conviction because it failed to present any evidence that he had not

moved to another state and failed to notify Pierce County of his move to the other state. We disagree.

A. *Legal Principles*

When reviewing the sufficiency of evidence supporting a conviction following a bench trial, we determine whether substantial evidence supports the challenged findings of fact and whether the findings support the trial court's conclusions of law. *State v. Smith*, 185 Wn. App. 945, 956, 344 P.3d 1244, *review denied*, 183 Wn.2d 1011 (2015). Substantial evidence is evidence that is sufficient to persuade a fair-minded, rational person that the findings are true. *Smith*, 185 Wn. App. at 956. The party challenging a factual finding bears the burden of demonstrating that the finding is not supported by substantial evidence. *Smith*, 185 Wn. App. at 957. When evaluating the sufficiency of evidence in support of a conviction, we view all the evidence in the light most favorable to the State. *State v. Engel*, 166 Wn.2d 572, 576, 210 P.3d 1007 (2009). We do not consider circumstantial evidence to be any less reliable than direct evidence. *Smith*, 185 Wn. App. at 957.

To convict Macker of failure to register as a sex offender, the State had to prove beyond a reasonable doubt that he (1) had a duty to register for a felony sex offense and (2) knowingly failed to comply with any of RCW 9A.44.130's registration requirements. RCW 9A.44.132. RCW 9A.44.130(4)(a) "sets forth various time limits for reregistration, depending on the offender's residential status." *State v. Peterson*, 168 Wn.2d 763, 768, 230 P.3d 588 (2010). Relevant to Macker's argument on appeal, RCW 9A.44.130(4)(a)(viii) provides:

OFFENDERS WHO MOVE TO, WORK, CARRY ON A VOCATION, OR ATTEND SCHOOL IN ANOTHER STATE. Offenders required to register in Washington, who move to another state, or who work, carry on a vocation, or attend

school in another state shall register a new address, fingerprints, and photograph with the new state within three business days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. The person must also send written notice within three business days of moving to the new state or to a foreign country to the county sheriff with whom the person last registered in Washington state. The county sheriff shall promptly forward this information to the Washington state patrol.

Although an offender's residential status determines his or her registration deadlines, residential status is not an element of the crime that the State need prove beyond a reasonable doubt.

Peterson, 168 Wn.2d at 771-74. Rather, the State may meet its burden of proof by presenting evidence that the accused had "failed to provide timely notice of his whereabouts under any of the statutorily defined deadlines after vacating his registered address." *Peterson*, 168 Wn.2d at 772.

B. *Challenged Finding of Fact*

Macker challenges only the finding that "all relevant events occurred in Pierce County, Washington at the respondent's registered address in Graham." CP at 5. He appears to contend that substantial evidence does not support this finding because the State did not present any evidence showing that he did not move to another state and failed to notify Pierce County of his move to the other state. But, as discussed above, the State was not required to prove that Macker had not moved to another state to convict him of failure to register as a sex offender if it presented substantial evidence that he had both (1) vacated his registered address and (2) failed to comply with any of RCW 9A.44.130(4)(a)'s registration deadlines.²

² Macker does not contest that he had a duty to register.

Here, Conger testified that Macker had registered the 52nd Avenue house as his resident address and did not attempt to register any other resident address between the dates of May 1, 2015 and August 5, 2015. This was substantial evidence supporting the trial court's finding that Macker's registered address during the charging period was the 52nd Avenue house in Graham and that all relevant events occurred in Pierce County.³

Contrary to Macker's argument on appeal, the State was not required to present direct testimony that he had failed to provide notice of moving to another state to prove that his current registered address remained in Pierce County. Instead, because compliance with RCW 9A.44.130(4)(a)(viii) would require Macker to *both* provide notice to Pierce County of his move to another state *and* to actually register his address with the new state within three business days of moving there, Conger's testimony that Macker had not attempted to register *any* address during the charging period was sufficient to prove that he did not comply with RCW 9A.44.130(4)(a)(viii). Had Macker moved to another state and complied with *all* the registration requirements under RCW 9A.44.130(4)(a)(viii), Conger, as a records custodian in the Pierce County Sheriff's Office sex offender registration unit, would have been made aware that he no longer resided at the 52nd Avenue house through RCW 9A.44.130(4)(a)(viii)'s 3-day notice provision. Accordingly, we hold that substantial evidence supports the trial court's finding "[t]hat all relevant events occurred in Pierce County, Washington at the respondent's registered address in Graham." CP at 5.

³ Macker does not challenge the finding that he had not lived at the 52nd Avenue house in the two months prior to July 9, 2015.

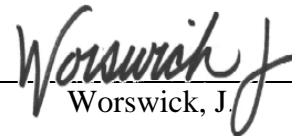
C. *Challenged Conclusion of Law*

Next, Macker assigns error to the trial court's conclusion of law 2, which states, "Bryan Macker had a duty to register as a sex offender in Pierce County, Washington." CP at 8. Again Macker argues that, absent evidence that he did not move to another state and failed to notify Pierce County of the move, the State could not prove that he had any duty to register as a sex offender in Pierce County. We have rejected this argument above, and the trial court's finding that Macker's registered address was in Pierce County clearly supports the conclusion that his duty to register as a sex offender remained in Pierce County.

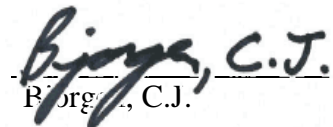
Moreover, the trial court's unchallenged findings of fact 7 and 9 also support the conclusion that Macker had a duty to register in Pierce County, as well as the conclusion that Macker was guilty of failure to register as a sex offender. Finding of fact 7 states that Macker had registered his address as the 52nd Avenue house in Graham on March 18, 2015. And finding of fact 9 states that Shaviri went to the 52nd Avenue house on July 9 and spoke with Williams, who stated that Macker had not lived there for two months. Taken together, these findings show that Macker's registered address was at the 52nd Avenue house and that he had vacated from the house two months prior to July 9. Therefore, the trial court's unchallenged findings support the conclusion that Macker had a duty to register in Pierce County. And, because these findings show that Macker "failed to provide timely notice of his whereabouts under any of the statutorily defined deadlines after vacating his registered address," they further support the conclusion that he was guilty of failure to register as a sex offender. *Peterson*, 168 Wn.2d at 772. Accordingly, we affirm Macker's conviction for failure to register as a sex offender.

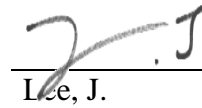
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A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.


Worswick, J.

We concur:


Borg, C.J.


Lee, J.