

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

DEMETRIUS LINDSEY,

Appellant.

No. 41328-1-II

UNPUBLISHED OPINION

Armstrong, P.J. — In a bench trial, the court found Demetrius Lindsey guilty of failing to register as a sex offender under RCW 9A.44.132. On appeal, Lindsey contends that the State failed to prove that his registered address was not his fixed residence. We affirm.

FACTS

Lindsey first registered as a sex offender in 2006. On April 7, 2009, Lindsey registered his grandmother’s home with the Pierce County Sheriff’s Department. On June 5, 2009, Officer Eric Carlson visited this address and spoke with Lindsey’s grandmother, Ella Montgomery. Montgomery told Carlson that Lindsey lived with her for only a few days in April and that he came once a week or so to pick up his mail. She explained that she was “under the impression that he was living with me and he just, you know, like stopped showing up.” Report of

Proceedings (RP) at 59. At trial, Montgomery testified similarly but added that Lindsey “would shower, change clothes, and sometimes he would sleep [and] eat” at her home. RP at 61. Carlson testified to what Montgomery had told him about Lindsey’s residence.

Lindsey and his girlfriend testified that although Lindsey was spending some nights with his girlfriend, he was still living at Montgomery’s house.¹ The trial court found that Montgomery’s home was no longer Lindsey’s fixed residence and convicted him of failing to register as a sex offender.

ANALYSIS

In reviewing a challenge to the sufficiency of the evidence we ask whether, viewed in the light most favorable to the State, the evidence was sufficient for any rational trier of fact to have found guilt beyond a reasonable doubt. *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). In reviewing such a challenge, we construe the evidence, and draw all reasonable inferences from it, in favor of the State. *State v. Partin*, 88 Wn.2d 899, 906-07, 567 P.2d 1136 (1977). And we defer to the trier of fact to resolve all issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v. Thomas*, 150 Wn.2d 821, 874-75, 83 P.2d 970 (2004) (citing *State v. Cord*, 103 Wn.2d 361, 367, 693 P.2d 81 (1985)).

A convicted sex offender is required to register his residence with the county sheriff under RCW 9A.44.130(1)(a). Offenders who change their residential address within the same county must notify the county sheriff of the new residence within three business days of moving. RCW 9A.44.130(5)(a). An offender is guilty of failing to register under RCW 9A.44.132 if he

¹ Lindsey also testified that he changed his registered address to Parramore’s residence after Officer Carlson spoke with Montgomery.

No. 41328-1-II

knowingly fails to comply with these registration requirements.

A “fixed residence” requires:

the act . . . of abiding or dwelling in a *place* for some time : an act of making one’s home in a *place* . . . : the *place* where one actually lives or has his home distinguished from his technical domicile: . . . a temporary or permanent dwelling *place*, abode, or habitation to which one intends to return as distinguished from a place of temporary sojourn or transient visit . . . : a *building* used as a home.

State v. Stratton, 130 Wn. App. 760, 765, 124 P.3d 660 (2005) (quoting Webster’s Third New Int’l Dictionary at 1931 (1969)) (emphasis in original).

Lindsey argues that the State failed to prove that his registered address was no longer his fixed residence, relying on *Stratton* 130 Wn. App. at 765. In *Stratton*, the defendant moved out of the home he was purchasing after defaulting on the payments. But the defendant testified that he returned to the home every night, received his mail and phone messages there, slept in his car outside the home, and considered the residence his home. Neighbors corroborated the defendant’s testimony. We held that under these circumstances the State had failed to prove that the home was not the defendant’s fixed residence. *Stratton*, 130 Wn. App. at 762.

Lindsey claims that like *Stratton*, he always intended to return to his registered address. But *Stratton* is distinguishable on the facts. *Stratton* returned to the residence everyday to get his mail and use the phone; he also spent nights sleeping in his car outside the residence. *Stratton*, 130 Wn. App. at 763. In contrast, Lindsey returned to Montgomery’s home only intermittently and, finally, “just stopped showing up.” RP at 59.

Viewed in the light most favorable to the State, we find the evidence sufficient to support Lindsey’s conviction of failing to register as a sex offender.

No. 41328-1-II

We affirm.

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 pursuant to RCW 2.06.040, it is so ordered.

Armstrong, P.J.

We concur:

Quinn-Brintnall, J.

Worswick, A.C.J.