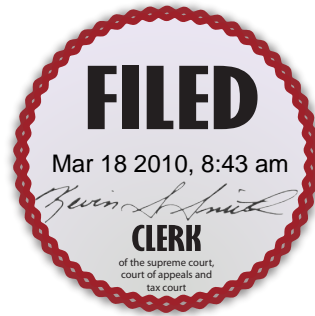


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ROBERT D. KING, JR.
The Law Office of Robert D. King, Jr., P.C.
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

HILTONIO FLOURNOY,)
)
Appellant,)
)
vs.) No. 49A02-0909-CR-907
)
STATE OF INDIANA,)
)
Appellee.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Grant W. Hawkins, Judge
Cause No. 49G05-0904-FC-43724

March 18, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Hiltonio Flournoy appeals his conviction following a bench trial for failure to register as a sex or violent offender as a class C felony.¹

We affirm.

ISSUE

Whether there is sufficient evidence to support the conviction.

FACTS

In October of 1994, Flournoy was convicted of criminal sexual assault and aggravated criminal sexual abuse in Cook County, Illinois. In May of 2004, Flournoy registered as a sex offender in Marion County, Indiana. On or about September 11, 2008, Flournoy submitted a change of address to the sex offender registry, indicating his new address to be 1028 Tacoma Avenue, Indianapolis. He submitted no additional changes thereafter.

On April 29, 2009, Rolley Ferguson, a deputy with the Marion County Sheriff's Department's sex and violent offender registry compliance unit, conducted a routine "hotel sweep" of the Motor 8 Inn on Shadeland Avenue in Indianapolis. (Tr. 30). As part of the sweep, Deputy Ferguson obtained a list of the motel's registered guests "to see if any of them are on the sex registry" and to verify their compliance with the registry's requirements. (Tr. 30). He determined that Flournoy, one of the registered guests, was on the sex offender registry.

¹ Ind. Code § 11-8-8-17.

A receipt obtained from the motel indicated that Flournoy initially registered at the motel on March 7, 2009, and paid for one week. Thereafter, Flournoy continued to reserve and pay for his room each week for the next seven weeks.

Deputy Ferguson went to Flournoy's room and requested his identification. As Flournoy searched his room for his identification, Deputy Ferguson observed numerous items inside the room, including "a lot of clothing, a lot of other objects, . . . a cooker . . . that would indicated that . . . someone was cooking in the room," and "[a] lot of stuff on the vanity or wash basin." (Tr. 45).

Flournoy produced an Indiana identification card, which listed his address as 1028 Tacoma Avenue, Indianapolis. When Deputy Ferguson asked Flournoy whether he lived at the Tacoma address, Flournoy "stated no, he did not." (Tr. 43). Flournoy informed Deputy Ferguson that he had been staying at the motel for approximately two months, ever since "[h]is house had caught on fire" (Tr. 43). Deputy Ferguson then placed Flournoy under arrest for failure to register as a sex offender.

On April 29, 2009, the State charged Flournoy with Count I, Part I, failure to register as a sex offender as a class D felony for failing "to update his address within seventy-two (72) hours after changing his address"; and Part II, failure to register as a sex offender as a class C felony due to Flournoy's prior unrelated conviction on November 15, 2007, under Cause Number 49-F18-0708-FD-173749 ("Cause No. 749"), for failure to register as a sex offender in Marion County. The State also charged Flournoy with Count II, failure to register as a sex offender as a class D felony for failing "to reside at

the address which he had registered as his address of residence[.]” (App. 17; 18). On May 22, 2009, the State filed an amended information, charging Flournoy with Count II, Part II, failure to register as a sex offender as a class C felony due to Flournoy’s prior unrelated conviction under Cause No. 749.

The trial court conducted a bench trial on August 14, 2009. Flournoy testified that he had been meeting his girlfriend at the motel the day Deputy Ferguson questioned him. He further testified that he “had a small fire at [his] house and [he] would use that [motel] room to shower and to meet [his girlfriend] and sometime[s] to get some rest . . . two days out of the week.” (Tr. 72). He testified that he spent the rest of the week at his Tacoma address. According to Flournoy, he only paid for two non-consecutive weeks at the motel while his girlfriend paid for the other weeks.

The trial court found Flournoy guilty of Count I, Part I; and not guilty of Count II, Part I. The trial court granted the State’s motion to dismiss Count II, Part II. During the enhancement phase of the trial on Count I, Part II, the State moved to admit into evidence certified copies of the abstract of judgment and order of judgment of conviction in Cause No. 749 (collectively, “Exhibit 13”). Flournoy then “stipulate[d] to the facts that make up the conviction.” (Tr. 94). Namely, he stipulated to being “the Hiltonio Flournoy that was convicted . . . on November 15, 2007 of the failure to register offense as a D felony.” (Tr. 94).

The trial court admitted Exhibit 13 into evidence and accepted the stipulation. The trial court then found as follows:

Show that based on the stipulation and Exhibit 13, the State of Indiana satisfied its burden of proof beyond a reasonable doubt that the defendant received a conviction under this same chapter . . . and enter a conviction for failure to register as a sex offender, a class C felony as charged in Count One.

(Tr. 97). Following a sentencing hearing on August 27, 2009, the trial court sentenced Flournoy to four years, with two suspended.

DECISION

We first note that the State has not filed an appellee's brief.

The obligation of controverting arguments presented by the appellant properly remains with the State. Thus, when the appellee does not submit a brief, the appellant may prevail by making a prima facie case of error, i.e. an error at first sight or appearance. We are nevertheless obligated to correctly apply the law to the facts of the record to determine if reversal is required.

Mateyko v. State, 901 N.E.2d 554, 556 (Ind. Ct. App. 2009) (internal citations omitted), *trans. denied*.

Flournoy asserts there is insufficient evidence to support his conviction under Part I of Count I. Specifically, he argues that “the State failed to establish that [he] spent ‘most of his time’ at the Motor Inn room where he was found, as opposed to his registered ‘principal place of address on Tacoma [Avenue.]’” Flournoy's Br. at 4.

When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court's ruling. Appellate courts affirm the conviction unless no reasonable fact-finder

could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

Drane v. State, 867 N.E.2d 144, 146-47 (Ind. 2007) (quotations and citations omitted).

We will sustain a judgment based on circumstantial evidence alone if the circumstantial evidence supports a reasonable inference of guilt. *Pelley v. State*, 901 N.E.2d 494, 500 (Ind. 2009).

Indiana Code section 11-8-8-17(a) provides that a sex offender who knowingly or intentionally:

- (1) fails to register when required to register under this chapter;
- (2) fails to register in every location where the sex or violent offender is required to register under this chapter;
- (3) makes a material misstatement or omission while registering as a sex or violent offender under this chapter;
- (4) fails to register in person as required under this chapter; or
- (5) does not reside at the sex or violent offender's registered address or location;

commits a Class D felony.

The offense, however, is a class C felony if the sex offender has a prior unrelated conviction for failure to register as a sex offender. *See* I.C. § 11-8-8-17(b).

Here, the State charged Flournoy with “fail[ing] to update his address within seventy-two (72) hours after changing his address[.]” (App. 17). Indiana Code section 11-8-8-11(a) provides that if a sex offender, who is required to register under chapter 8, changes his “principal residence address,” he must report the change to the local law enforcement authority “not more than seventy-two (72) hours after the address change.”

Thus, the State was required to prove that Flournoy changed his principal address and failed to register the change within seventy-two hours.

A sex offender's principal residence includes a "a residence owned or leased by another person if" the sex offender "spends more time at the residence owned or leased by the other person that at the residence owned or leased" by the sex offender. I.C. § 11-8-8-3. Indiana Code section 11-8-8-3 defines "principal residence" as "the residence where a sex or violent offender spends the most time."

Deputy Ferguson testified that Flournoy informed him that he did not live at the Tacoma address and that he had been living at the motel for approximately two months. According to Deputy Ferguson, Flournoy's room contained "so much stuff," including clothing and a cooking device. (Tr. 44).

The State further presented evidence that Flournoy had reserved the motel room on March 7, 2009, and continued to reserve the room on a consecutive weekly basis, for a total of eight weeks, until his arrest. Flournoy, however, did not report the motel's address to the sex offender registry. We find this evidence supports a reasonable inference that the motel became Flournoy's principal residence on March 7, 2009, and that he failed to report the change within seventy-two hours. Accordingly, the State presented sufficient evidence to convict Flournoy of failure to register as a sex offender.

Affirmed.

BAKER, C.J., and CRONE, J., concur.