

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,
Respondent,

v.

MICHAEL ANTHONY CARINIO,
Appellant.

No. 39683-1-II

UNPUBLISHED OPINION

Van Deren, J. — Michael Carinio appeals his conviction for failing to register as a sex offender, arguing that the State failed to present sufficient evidence that he lacked a fixed residence. Concluding that the evidence was sufficient, we affirm.¹

This court reviews a claim of insufficient evidence for whether, when viewing the evidence in the light most favorable to the State, “any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *State v. Yarbrough*, 151 Wn. App. 66, 96, 210 P.3d 1029 (2009) (quoting *State v. Rempel*, 114 Wn.2d 77, 82, 785 P.2d 1134 (1990)). A sufficiency challenge admits the truth of the State’s evidence and all reasonable inferences

¹ A commissioner of this court initially considered Carinio’s appeal as a motion on the merits under RAP 18.14 and then transferred it to a panel of judges.

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therefrom. *State v. Theroff*, 25 Wn. App. 590, 593, 608 P.2d 1254, *aff'd*, 95 Wn.2d 385, 622 P.2d 1240 (1980). “In determining the sufficiency of the evidence, circumstantial evidence is not to be considered any less reliable than direct evidence.” *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

A sex offender has a statutory duty to register with the sheriff of his county of residence. Former RCW 9A.44.130(1)(a) (2006); *State v. Peterson*, 145 Wn. App. 672, 676, 186 P.3d 1179 (2008), *aff'd*, 168 Wn.2d 672, 230 P.3d 588 (2010). If a convicted sex offender changes his residence address within the same county, he must give the county sheriff written notice of the change within 72 hours. Former RCW 9A.44.130(5)(a); *State v. Stratton*, 130 Wn. App. 760, 764, 124 P.3d 660 (2005). A convicted sex offender who lacks a “fixed residence” is required to provide written notice to the sheriff of the county where he last registered within 48 hours. Former RCW 9A.44.130(6)(a); *Stratton*, 130 Wn. App. at 764. In addition, he must report weekly, in person, to the sheriff of the county where he is registered. Former RCW 9A.44.130(6)(b); *Stratton*, 130 Wn. App. at 764. A person is guilty of failure to register as a sex offender when he (1) holds a conviction for a felony sex offense and (2) knowingly (3) fails to comply with any of the above requirements. Former RCW 9A.44.130(11)(a).

The State presented evidence that (1) Carinio holds a 2005 conviction for first degree rape of a child; (2) Carinio holds a 2008 conviction for failure to register as a sex offender; (3) on December 18, 2008, Carinio registered his address as 922 North Pearl Street, Apartment F15, Tacoma, Washington, which was leased by Rebecca Bundy until her eviction on February 28, 2009; (4) on his sex offender registration form, Carinio marked his initials next to a paragraph notifying him that he must register “[w]ithin 48 hours excluding weekends and holidays after

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ceasing to have a fixed residence” and answered ““yes”” when asked whether he understood those registration requirements; (5) in January 2009, Bundy asked Carinio not to stay at her apartment anymore; (6) the apartment complex manager changed the locks on Bundy’s apartment, repaired some broken windows, and did not give Carinio a new key; and (7) Carinio did not update his sex offender registration until March 3, 2009. Report of Proceedings at 128-29.

Carinio analogizes to *Stratton*, 130 Wn. App. at 760. In that case, following the defendant’s conviction of luring with sexual motivation, he entered into a real estate contract to purchase a home and listed the home’s address on his sex offender registration. *Stratton*, 130 Wn. App. at 762. When the defendant later defaulted on the home purchase, he continued sleeping at his registered address in a car in the driveway, received mail and telephone service there, returned to the address daily, and had no definite departure date. *Stratton*, 130 Wn. App. at 762, 766. The trial court convicted him for failure to register as a sex offender, determining that he was a transient. *Stratton*, 130 Wn. App. at 764. This court reversed, holding that the address constituted the defendant’s fixed residence because it was the ““place”” the defendant was abiding or dwelling and was not subject to change or fluctuation. *Stratton*, 130 Wn. App. at 766.

Carinio argues that his case is like *Stratton* because he intended to return to the Pearl Street apartment until February 28, 2009—when Bundy was evicted—and because he was at the Pearl Street apartment frequently and stayed there overnight on three occasions, even though he did not have a key to the apartment. But unlike *Stratton*, on two occasions, when officers checked on Carinio at the apartment, he failed to respond. In January 2009, when Carinio pawned two items, he listed his address as 4002 North Winnifred Street, Tacoma, Washington.

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And when officers arrested Carinio, he was sleeping in a truck at 1039 South Hawthorn Street, his clothing was soiled, he looked as though he had not showered for several weeks, and it appeared as though he had been sleeping on the streets. Taking the evidence in the light most favorable to the State, a rational trier of fact could have found beyond a reasonable doubt that Carinio lacked a fixed residence when he was arrested. Sufficient evidence supports Carinio's conviction. 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.

Van Deren, J.

We concur:

Armstrong, J.

Worswick, A.C.J.