

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

STATE OF WASHINGTON,

Respondent,

v.

JAMES PLES HERRICK,

Appellant.

No. 41255-1-II

UNPUBLISHED OPINION

Quinn-Brintnall, J. — Following a bench trial, a trial court convicted James Herrick of failure to register as a sex offender under former RCW 9A.44.130 (2006). On appeal, Herrick challenges the sufficiency of the evidence supporting the trial court’s finding that he knowingly failed to register. We affirm.

**FACTS**

In the 1980s, Herrick was convicted of three counts of indecent liberties, which required him to register as a sex offender under former RCW 9A.44.130. Herrick registered several times in King County prior to 2000.

On June 13, 2000, Herrick registered as a sex offender with the Pierce County Sheriff’s Department. At the time, he registered his address as “3315 164th Ave. E, Sumner, Pierce County, Washington.” Clerk’s Papers (CP) at 10. Herrick also received a copy of the statutory

requirements for registration and signed a form stating that he understood Washington State's sex offender registration laws. Herrick never again registered as a sex offender with the Pierce County Sheriff's Department.

In 2004, Herrick moved from Pierce County to King County to live with his then-fiancé, Priscilla Hennemann. Herrick's driver's license, issued on March 2, 2006, listed his address as "1814 27th Street Southeast, Auburn, Washington." Report of Proceedings at 50.

On December 21, 2009, Pierce County Sheriff's Department Detective Keith Barnes conducted a sex offender verification check at Herrick's registered address in Sumner, Washington. Barnes discovered that Herrick no longer resided at his listed Sumner address.

On January 20, 2010, the King County Sheriff's Department notified the Pierce County Sheriff's Department that Herrick had moved from Sumner to Auburn. The same day, the State charged Herrick with failing to register as a sex offender in violation of former RCW 9A.44.130.

On September 20, Herrick waived his right to a jury trial and proceeded with a bench trial. Herrick testified that he registered in King County as a sex offender in 2004, on the day he moved to King County, prior to actually moving into his new home. Herrick acknowledged that he did not provide written notice to the Pierce County Sheriff's Department when he moved from Pierce to King County in 2004 because he did not remember that he was supposed to do so. Barbara L. Johnson testified that she lived at 3315 164th Avenue East in Sumner, Washington since September 2007, and had never met or seen Herrick.

The trial court found Herrick guilty of failure to register as a sex offender. On September 28, the trial court issued its written findings of fact and conclusions of law and sentenced Herrick to a standard range sentence of 20 days confinement. Herrick timely appeals.

ANALYSIS

Herrick challenges the sufficiency of the State's evidence that he knowingly failed to register as a sex offender. Although he does not explicitly assign error to any of the trial court's findings of fact, Herrick argues that the evidence was insufficient to show that he knowingly failed to register.

Evidence is sufficient to support a conviction if, viewed in the light most favorable to the fact finder's determinations, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). A claim of insufficiency admits the truth of the evidence and all reasonable inferences that a trier of fact can draw from that evidence. *Salinas*, 110 Wn.2d at 201. Circumstantial evidence and direct evidence are equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). We defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990); *State v. Walton*, 64 Wn. App. 410, 415-16, 824 P.2d 533, *review denied*, 119 Wn.2d 1011 (1992).

Prosecuting attorneys are vested with great discretion in determining how and when to file criminal charges. *State v. Korum*, 157 Wn.2d 614, 625, 141 P.3d 13 (2006); *see also Deal v. United States*, 508 U.S. 129, 134 n.2, 113 S. Ct. 1993, 124 L. Ed. 2d 44 (1993) (recognizing prosecutors have "universally available and unavoidable power to charge or not to charge an offense"). As a reviewing court, we do not need to be convinced of the defendant's guilt beyond a reasonable doubt, but only that substantial evidence supports the verdict as a matter of law. *State v. Jones*, 93 Wn. App. 166, 176, 968 P.2d 888 (1998), *review denied*, 138 Wn.2d 1003

(1999).

Former RCW 9A.44.130(5) requires that a person convicted of a qualifying sex offense moving to a new county must (1) send signed written notice of the change of address to the county sheriff in the new county of residence at least 14 days before moving; (2) register with that county sheriff within 24 hours of moving, and, as relevant here; (3) *send signed written notice within 10 days of the change of address in the new county to the county sheriff with whom the person last registered.* The registration statute establishes criminal liability when a sex offender knowingly fails to register as required. *State v. Drake*, 149 Wn. App. 88, 91-92, 201 P.3d 1093, review denied, 166 Wn.2d 1026 (2009); *State v. Peterson*, 145 Wn. App. 672, 674, 186 P.3d 1179 (2008), *aff'd*, 168 Wn.2d 763, 230 P.3d 588 (2010).

A defendant acts “knowingly” if “(i) he or she is aware of a fact, facts, or circumstances or result described by a statute defining an offense; or (ii) he or she has information which would lead a reasonable person in the same situation to believe that facts exist which facts are described by a statute defining an offense.” RCW 9A.08.010(1)(b). For purposes of former RCW 9A.44.130, “knowledge” may be inferred where a defendant has properly previously registered. *See State v. Castillo*, 144 Wn. App. 584, 589-90, 183 P.3d 355 (2008) (reasonable to infer that a sex offender knew the registration requirements when he had registered before); *State v. Vanderpool*, 99 Wn. App. 709, 713-14, 995 P.2d 104 (a rational trier of fact could decide that defendant knowingly violated the registration requirements when the record contains evidence that he has followed the registration statute before), *review denied*, 141 Wn.2d 1017 (2000).

The trial court’s finding of fact number 6 states,

The evidence proved that [Herrick] had sufficient knowledge of his duty to register as a sex offender: [Herrick] did in fact register with the Pierce County Sheriff’s

Department on June 13, 2000, [Herrick] testified that he registered several times in King County prior to moving to Pierce County in 2000 and testified that he knew of and understood his duty to register.

CP at 9. The evidence amply supports this finding of fact. Herrick testified that he registered several times in King County prior to moving to Pierce County in 2000 and that he knew of and understood his duty to register. He received a copy of the statutory requirements for registration in June 2000. He also signed a form stating that he understood the requirements of the registration laws. The evidence is undisputed that Herrick failed to comply with the notification requirements regarding change of address when he failed to notify the Pierce County Sheriff's Department of his move to King County. Former RCW 9A.44.130(5). Taking the evidence in the light most favorable to the fact finder's determinations, any rational trier of fact could infer that Herrick knowingly violated the registration requirements. *Castillo*, 144 Wn. App. at 589-90; *Vanderpool*, 99 Wn. App. at 713-14. Accordingly, we reject Herrick's argument and affirm his conviction.

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.

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QUINN-BRINTNALL, J.

We concur:

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ARMSTRONG, P.J.

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HUNT, J.