

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

MICHAEL J. ERWIN,

Appellant.

No. 41943-2-II

UNPUBLISHED OPINION

Quinn-Brintnall, J. — Michael J. Erwin appeals his conviction of failure to register as a sex offender. He argues that the evidence was insufficient to prove that he lacked a fixed residence and that he violated the registration statute by failing to register as a transient. Because the evidence was sufficient to prove that Erwin lacked a fixed residence, we affirm.

Facts

Erwin is a felony sex offender who is required to register his address with the county. From April 18, 2006, until November 20, 2009, he was registered with Mason County as a transient, which required him to report to the sheriff's office on a weekly basis. On November 20, 2009, he changed his transient registration and reported a fixed address of 43 Northeast Belfair Street in Belfair. A sex offender with a fixed residence must report on an annual basis.¹

¹ The legislature rescinded the former 90-day reporting requirement. Laws of 2010, ch. 265, § 1.

Deputy Sheriff Thurman Rankin verifies the addresses of Level II and III registered sex offenders in Mason County every 90 days. He went to the Belfair address two or three times between February and July 2010, but did not make contact with Erwin. He left a contact form at the house asking Erwin to call him, but Erwin did not respond.

On July 16, 2010, Detective William Adam received a call from Erwin's girlfriend, Kelly Burdette. Burdette reported that Erwin was not living at the Belfair residence. Adam went to the residence that day and did not find any sign of Erwin. He returned on July 17, 18, 19, and 20, again without seeing Erwin.

After an officer arrested Erwin on a misdemeanor warrant on July 21, the State charged him with failure to register as a sex offender between February 17 and July 20, 2010. At trial, the resident of 41 Northeast Belfair Street, which is part of the duplex shared with 43 Northeast Belfair Street, testified that although she saw Erwin frequently at the Belfair residence in February, March, April, and May of 2010, she saw him less frequently after that and rarely, if at all, in June and July. She added that she often heard arguments between him, his girlfriend Kelly, and another individual who lived there.

Deputy Rankin and Detective Adam testified to the facts cited above, and Adam added that when he interviewed Erwin following his arrest, Erwin first said he had been living on the porch at the Belfair residence and would put his belongings out of sight whenever he left. Erwin then admitted that for the seven days preceding his arrest, he had been living in a tent on his mother's property and that he had left the Belfair residence because of animosity with its other occupants. He said he did not report to the sheriff's office to change his status to transient because he did not want to be arrested on an outstanding warrant.

Kareen Ayala, a Department of Social and Health Services (DSHS) employee, testified that Erwin was a DSHS client between February and July 2010, and that DSHS mailed him several notices and letters during that time using the Belfair address. None of these documents were returned to DSHS.

The jury found Erwin guilty as charged, and he now appeals his conviction.

Discussion

Sufficiency of the Evidence: Lack of Fixed Residence

Erwin argues on appeal that the State failed to present sufficient evidence to prove that he lacked a fixed residence and that, as a consequence, he violated the sex offender registration statute by failing to reregister as a transient.

Evidence is sufficient to support a conviction if, viewed in the light most favorable to the prosecution, 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 State’s evidence and all inferences that reasonably can be drawn therefrom.” *Salinas*, 119 Wn.2d at 201. Circumstantial 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. Walton*, 64 Wn. App. 410, 415-16, 824 P.2d 533, *review denied*, 119 Wn.2d 1011 (1992).

A sex offender is statutorily required to register with the sheriff of his county of residence. Former RCW 9A.44.130(1) (2006); *State v. Peterson*, 168 Wn.2d 763, 768, 230 P.3d

588 (2010). This requirement aids law enforcement in keeping communities safe by requiring offenders to divulge their presence in a particular jurisdiction. *Peterson*, 168 Wn.2d at 773-74. When a registered sex offender ceases to have a fixed residence, he must provide written notice to the sheriff's office within a specified period of time, report to the sheriff's office weekly, and keep a record of where he has stayed during the last seven days. Former RCW 9A.44.130(6)(b) (2006); *State v. Stratton*, 130 Wn. App. 760, 764, 124 P.3d 660 (2005). A person is guilty of failure to register as a sex offender when, having been previously convicted of a qualifying sex offense, he knowingly fails to comply with any of the statutory requirements. Former RCW 9A.44.130(11)(a), (12)(a) (2006).

The registration statute does not define "fixed residence," so we give the term its ordinary meaning. *Stratton*, 130 Wn. App. at 764-65; *State v. Pickett*, 95 Wn. App. 475, 478, 975 P.2d 584 (1999). As commonly understood, a residence is the place where a person lives "as either a temporary or permanent dwelling, a place to which one intends to return, as distinguished from a place of temporary sojourn or transient visit." *Pickett*, 95 Wn. App. at 478; *see also State v. Pray*, 96 Wn. App. 25, 26-27, 980 P.2d 240 (defendant's temporary residences triggered duty to register each change of address with sheriff), *review denied*, 139 Wn.2d 1010 (1999).

Erwin argues that the facts here are similar to those in *Stratton*, where we held that the State failed to prove that the defendant lacked a fixed residence. 130 Wn. App. at 762. In *Stratton*, 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. 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 763. He did not notify the sheriff about his situation because he had not moved off the property and still considered it his residence. *Stratton*, 130 Wn. App. at 763.

Erwin argues that here, as in *Stratton*, the State failed to prove that he knowingly failed to comply with the sex offender registration requirements. He asserts that there was no testimony that he intended to change his address or reside elsewhere, and no testimony that he did not consider the Belfair residence his address. We disagree. There was testimony that Erwin was seldom if ever at the Belfair address in June and July 2010. Law enforcement officers tried to contact him there on several occasions within the charging period and left a contact card to which he did not respond. Although mail addressed to him was sent to the Belfair residence, there was no evidence that he was there to receive it. His girlfriend reported to the sheriff's office on July 16, 2010, that he no longer lived at the Belfair residence. When Detective Adam followed up on her call, he found no sign that Erwin lived there. *See State v. Castillo*, 144 Wn. App. 584, 589, 183 P.3d 355 (2008) (lack of indication that any male lived at apartment supported inference that defendant had changed his residence).

In addition, Erwin told Detective Adam that he left the Belfair residence because of animosity with its residents, that he lived in a tent for a week before his arrest, and that he did not register as a transient because he did not want to be arrested on an outstanding warrant. The evidence shows that Erwin resumed his former transient status without changing his sex offender registration, and it is sufficient to support his resulting conviction for failure to register as a sex offender.

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Affirmed.

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.

QUINN-BRINTNALL, J.

We concur:

PENOYAR, J.

JOHANSON, A.C.J.