

**FILED**  
**FEB. 23, 2012**  
In the Office of the Clerk of Court  
WA State Court of Appeals, Division III

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

<b>STATE OF WASHINGTON,</b>	)	<b>No. 29321-1-III</b>
	)	
<b>Respondent,</b>	)	<b>Division Three</b>
	)	
<b>v.</b>	)	
	)	
<b>ERIC P. ALGER,</b>	)	<b>UNPUBLISHED OPINION</b>
	)	
<b>Appellant.</b>	)	
	)	

Kulik, C.J. — Eric P. Alger appeals his conviction for failing to register as a sex offender. The State alleged Mr. Alger changed his address without sending notice to the sheriff’s office. Mr. Alger claims that the State failed to produce sufficient evidence that he no longer lived at the registered address. He contends that he continued to secretly reside at the apartment where he had previously registered as a sex offender so no new registration was required. In a claim of insufficient evidence, we draw all reasonable inferences in favor of the State. Here, the evidence was sufficient to show that Mr. Alger abandoned his apartment and did not intend to return. Thus, the evidence supports the trial court’s conclusion that Mr. Alger was guilty of failure to register as a sex offender

when he changed his place of residence. We affirm the conviction.

#### FACTS

Mr. Alger's conviction for indecent liberties required him to register as a sex offender. On April 19, 2010, Mr. Alger moved into the New Washington Apartments in Spokane, Washington. The Department of Corrections (DOC) approved Mr. Alger's living arrangements at the New Washington Apartments for three months, with his rent to be paid by the DOC. The DOC paid Mr. Alger's first month's rent through May 19.

On April 20, Mr. Alger registered his New Washington Apartment address with the Spokane County Sheriff's Office. On that same day, Mr. Alger met with his community corrections officer (CCO), Pamela Madill. Officer Madill informed Mr. Alger that he was required to register as a sex offender and that he needed prior approval before changing his address. She also informed Mr. Alger that he was required to sign in and out when he entered and exited the New Washington Apartments and that he needed to check in at the DOC kiosk between face-to-face meetings with his CCO. Officer Madill set her next meeting with Mr. Alger for May 4.

Mr. Alger signed in and out regularly until April 29. On April 29, Mr. Alger signed out but never signed back in. No one saw him on the premises again.

On May 3, the manager of the New Washington Apartments conducted a welfare

check on Mr. Alger's apartment. The manager found Mr. Alger's apartment key on the bed and Mr. Alger's personal items strewn throughout the room. He picked up the key, locked the room, and contacted Officer Madill to report Mr. Alger's apparent absence. The manager held Mr. Alger's key at the front desk for Mr. Alger to claim.

When Mr. Alger failed to attend the meeting with Officer Madill on May 4, a warrant was issued for his arrest. Mr. Alger testified that once he missed his DOC appointment on May 4, he assumed a warrant would be issued.

On May 19, the last day of the monthly rental period, the apartment manager entered Mr. Alger's room again and packed up Mr. Alger's belongings. According to the manager, the contents of the room had been undisturbed. The manager placed Mr. Alger's belongings in storage. Mr. Alger never attempted to retrieve his belongings. The DOC did not pay rent for the remaining two months.

Mr. Alger maintained that he continued to sleep in his room regularly even after the manager cleared it on May 19. However, Mr. Alger also testified that he did everything he could to avoid being seen in order to avoid arrest on the warrant. He stopped signing in and out, did not enter or exit the building when the attendant occupied the front desk or when people were present, and used a butter knife to enter his apartment's interior door. He also stated that he ate offsite, took care not to disturb the

positioning of items in his room, and carried a backpack of items he retrieved from his room prior to the manager's May 3 room check.

Mr. Alger testified that he continued to use his apartment until his arrest on June 3. Mr. Alger was charged with failure to register as a sex offender between the dates of May 4 and May 18 by changing his address and failing to send notice to the sheriff's office. The court found Mr. Alger guilty. Mr. Alger appeals the conviction, claiming that the State failed to produce sufficient evidence that he changed his residence from the New Washington Apartments.

#### ANALYSIS

In a challenge to a sufficiency of the evidence, the test is whether, viewing the evidence in the light most favorable to the State, any rational trier of fact could find the essential elements of the crime beyond a reasonable doubt. *State v. Gentry*, 125 Wn.2d 570, 596-97, 888 P.2d 1105 (1995). “[A]ll reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant.” *Id.* at 597. Direct and circumstantial evidence are equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

The sex offender registration statute requires that registered sex offenders who change addresses within the same county “must send signed written notice of the

change of address to the county sheriff within seventy-two hours of moving.” Former RCW 9A.44.130(5)(a) (2006). If the sex offender lacks a fixed residence, he or she must “provide signed written notice to the sheriff of the county where he or she last registered within forty-eight hours excluding weekends and holidays after ceasing to have a fixed residence.” Former RCW 9A.44.130(6)(a).

The State must prove every element of a charged offense beyond a reasonable doubt. *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970). A person must knowingly fail to comply with the registration requirements under RCW 9A.44.130 in order to be found guilty of the crime of failure to register as a sex offender. Former RCW 9A.44.130(11)(a).

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.” *State v. Pickett*, 95 Wn. App. 475, 478, 975 P.2d 584 (1999). However, residential status is not an element of the crime of failure to register. *State v. Peterson*, 168 Wn.2d 763, 774, 230 P.3d 588 (2010).

The intent of the sex offender registry is to aid law enforcement in keeping the community safe by knowing the whereabouts of sex offenders. *Id.* at 773-74.

This court’s decision in *State v. Drake*, 149 Wn. App. 88, 201 P.3d 1093 (2009)

provides guidance in assessing Mr. Alger’s situation. Mr. Drake, a sex offender, registered his apartment address with the police department. *Id.* at 91. On May 6, Mr. Drake failed to pay rent and was evicted. *Id.* Mr. Drake did not register a change of address between May 6 and May 20 and was convicted of failure to register as a sex offender. *Id.* at 91-92. On appeal, this court determined that the State failed to prove beyond a reasonable doubt that Mr. Drake knowingly failed to register. *Id.* at 95. Because the State did not produce evidence that Mr. Drake had notice of the eviction, the State did not prove the mens rea element—that Mr. Drake knew he needed to register a new address. *Id.* at 94.

This court also determined that the State failed to present evidence that would infer that Mr. Drake did not intend to return. *Id.* at 95. “If Mr. Drake maintained his residence at the New Washington Apartments and intended to return there, he was under no duty to change his registration to another residence or declare that he had no fixed residence.” *Id.* at 94-95.

Here, in support of the contention that Mr. Alger changed his residence by abandoning his apartment, the State presented the testimony of the apartment manager that (1) he did not see Mr. Alger in the building, (2) he had Mr. Alger’s key in his possession, and (3) he noticed that the contents of Mr. Alger’s room were undisturbed.

The State also presented evidence that Mr. Alger failed to use a sign-in sheet as proof that he was not residing at the apartment.

Mr. Alger contends that he did not abandon his apartment and lived there undetected. Mr. Alger stated that he hid in order to avoid arrest on a DOC warrant. The apartment manager testified that it was possible, though unlikely, for Mr. Alger to come into the building at night and enter the room without being seen.

Based on this evidence, the trial court concluded that “the defendant ceased being regularly and publically [sic] present at the 327 ½ W Second address regardless of whether it was because he had physically abandoned the premises or just intended to make it impossible for persons to locate him at that residence.” Clerk’s Papers (CP) at 53. “The defendant abandoned the public residence where he could be located at by the [Spokane County Sheriff’s Office] and did not register a new address.” CP at 54.

Based on the testimony of the apartment manager, the court could infer that Mr. Alger abandoned his residence and did not intend to return. The evidence of Mr. Alger’s intent not to return distinguishes this situation from *Drake*. Therefore, with all reasonable inferences drawn in favor of the State and interpreted most strongly against

No. 29321-1-III  
*State v. Alger*

Mr. Alger, the evidence is sufficient to support the trial court's conclusion that Mr. Alger was guilty of failure to register as a sex offender.

We affirm the decision of the trial court.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

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Kulik, C.J.

WE CONCUR:

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Sweeney, J.

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Korsmo, J.