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.

FILED
Jul 14 2009, 9:25 am
CLERK
of the supreme court, court of appeals and tax court

ATTORNEY FOR APPELLANT:

JENNIFER A. JOAS
Madison, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

SCOTT L. BARNHART
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

LEO H. JUSTICE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 15A01-0812-CR-581
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE DEARBORN SUPERIOR COURT
The Honorable G. Michael Witte, Judge
Cause No. 15D01-0805-FD-147

July 14, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Leo H. Justice appeals his conviction of failing to register as a sex offender, a Class D felony.[1] Finding the evidence sufficient, we affirm.

FACTS AND PROCEDURAL HISTORY

In April 2008, Justice was released from jail and was on probation for non-support of a dependent child. Justice began living with Christine Watts and her husband in their residence on Cold Springs Road in Moores Hill. Justice was convicted in Missouri of sexual misconduct with a minor, and he is required to register as a sex offender.[2] Justice properly registered the Cold Springs Road address with Doreen Rorabacher, who works for the Dearborn County Sheriff's Department as the clerk in charge of registering sex offenders.

On June 16, 2008, Rorabacher received a call from an informant who claimed Justice was living in Aurora rather than at his registered address.[3] Rorabacher contacted Deputy Brent Casebolt, who found Justice working on a lawn mower next door to his registered address.

On or around June 23, 2008, Watts called Justice's probation officer, Steve Miller. According to Miller, Watts said Justice had not been living at her residence since June 6. Watts thought he might be living with his girlfriend, Susan Ascherman, on Conwell Street. Ascherman and Justice have a daughter, who lives with Ascherman. Their daughter's fiancé, Todd Redwine, was also living at the Conwell Street address at that time.

---

[1] Ind. Code § 11-8-8-17.
[2] Justice stipulated that he is required to register as a sex offender in Indiana.
[3] The informant apparently is married to Justice's girlfriend.

On June 23 or 24, Deputy Casebolt went to Watts' residence. Justice was not present. According to Deputy Casebolt, Watts said Justice had not been living there since June 6. Watts said she had tried to persuade Justice to either return to her residence or register his new address.

On June 24, Deputy Casebolt and Miller went to the Conwell Street address to look for Justice. Redwine answered the door. According to Deputy Casebolt, Redwine told them Justice was living there and had just gone down the street to the store. Miller had the "impression" that Justice "had been staying there for at least a week," but he did not explain the basis for this impression. (Tr. at 25.) Deputy Casebolt and Miller drove around the area trying to locate Justice, but they were unable to find him.

Miller filed a probation violation, and a warrant was issued for Justice's arrest. On June 25, Deputy Casebolt arrested Justice at the Conwell Street residence. Justice told police he had been staying at the Conwell Street residence "for a couple weeks" while helping Ascherman to fix her car. (*Id*. at 39.)

Justice was charged with failing to register as a sex offender because he did not update his address between June 6 and June 23. A bench trial was held on November 13, 2008.

At trial, Watts could not pinpoint the date when Justice moved out of her home. She testified variously that he moved out at "one point in time in June," (*id*. at 7), at the "middle or end of June," (*id*. at 57), and "about the first of June until the middle of June," (*id*. at 58.) She testified she saw Justice return to her home only one time, about a week-and-a-half after he left. He was there for about fifteen minutes, "[l]ong enough for him to

grab some clothes." (*Id*. at 9.) She testified she called Miller about three weeks after Justice stopped living at her house.

Miller and Deputy Casebolt both testified, without objection, that Watts had told them Justice stopped living at her residence on June 6. Deputy Casebolt testified Redwine told him Justice was living at the Conwell Street residence, but Redwine testified Justice was only visiting his daughter.

Justice claimed he was living at the Cold Springs Road address the entire time he was out on probation. He testified he was sometimes gone overnight for his job. He acknowledged spending some time at the Conwell Street residence, but he claimed he was simply re-establishing a relationship with Ascherman and his daughter and was not living there. He denied telling Deputy Casebolt that he had stayed there for a couple weeks.

The trial court found Justice guilty as charged.

DISCUSSION AND DECISION

Justice argues the evidence was insufficient to support a conviction of failing to register as a sex offender. In reviewing the sufficiency of evidence, we do not reweigh the evidence or judge the credibility of witnesses. *Alkhalidi v. State*, 753 N.E.2d 625, 627 (Ind. 2001). We will affirm the conviction if the probative evidence and reasonable inferences to be drawn therefrom could allow a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt. *Id*.

A sex offender who is required to register under chapter 11-8-8 must provide his or her "principal residence address" and any "other address where the sex or violent

offender spends more than seven (7) nights in a fourteen (14) day period." Ind. Code § 11-8-8-8(a)(1). "Principal residence" means "the residence where a sex or violent offender spends the most time." Ind. Code § 11-8-8-3. If a sex offender changes his or her principal residence, the offender must provide the new principal address to the appropriate authority "not more than seventy-two (72) hours after the address change." Ind. Code § 11-8-8-11(a). Ind. Code § 11-8-8-17(a) provides:

> A sex or violent 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.

First, we must address a misapprehension apparently shared by everyone involved in this case: that Justice had seven days to update his address if his principal residence changed. Previously, Ind. Code § 5-2-12-8 gave sex offenders seven days to update their addresses. But in 2006, that section was repealed and replaced with Ind. Code § 11-8-8-11, which gives sex offenders only seventy-two hours to update their principal addresses. Justice was told to update his address within seven days. (State's Ex. 1.) We need not address the effect of this misinformation, however, because there is sufficient evidence that Justice had not lived at the Cold Springs Road address for more than seven days.

That evidence satisfies the requirements as they were explained to Justice and more than satisfies the statute.[4]

Watts could not pinpoint when Justice stopped living in her home, and she provided conflicting testimony on that point. However, she testified there was a period of a week-and-a-half where Justice was not living there and returned once for about fifteen minutes to retrieve some belongings. She also testified she waited approximately three weeks to contact Miller. Thus, there was evidence Justice did not reside at the Cold Springs Road address for a week-and-a-half to three weeks.

This is consistent with Miller's and Deputy Casebolt's testimony that Watts told them Justice had stopped living at her residence on June 6. On June 24, they went to the Conwell Street residence, and Redwine told them Justice was living there. Justice was arrested at the Conwell Street residence on June 25. He admitted he had "been staying there for a couple weeks." (Tr. at 39.)

At trial, Justice and Redwine denied telling anyone that Justice was living at the Conwell Street residence, but that evidence is not favorable to the judgment, and we may not consider it. *McMurrar v. State*, 905 N.E.2d 527, 530 (Ind. Ct. App. 2009). Justice

[4] Justice may have committed the offense of failing to register by one of two ways: having the Cold Springs Road address as his principal residence, but failing to register the Conwell Street address as a place where he would spend more than seven nights in a fourteen day period, *see* Ind. Code § 11-8-8-17(a)(1); or by changing his principal address without notifying authorities within seventy-two hours, *see* Ind. Code § 11-8-8-17(a)(5). The charging information tracks the language of subsection (a)(1), while the parties argue Justice's case falls under subsection (a)(5). *Compare* Appellant's App. at 105 ("On, about or between June 6, 2008, and June 23, 2008, in Dearborn County, State of Indiana, Leo H. Justice did knowingly fail to register as a sex offender when he was required to register pursuant to I.C. 11-8-8.") *with* Appellant's Br. at 7 ("The allegation in this case specifically pertains to I.C. 11-8-8-17 (a) (5).") *and* Appellee's Br. at 5 ("Specifically, a sex offender who does not reside at the sex offender's registered address commits a Class D Felony. I.C. § 11-8-8-17(a)(5)."). The evidence permits a conviction under either subsection, and Justice makes no argument that the information was not sufficiently specific or that the State did not prove the offense as alleged in the information.

notes he was seen next door to Watts' residence on June 16, but that is not inconsistent with the evidence that he was residing elsewhere. As there is probative evidence Justice was not residing at the Cold Springs Road address for at least a week-and-a-half, the evidence is sufficient to sustain his conviction of failing to register.

Affirmed.

BAKER, C.J., and BARNES, J., concur.