

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
November 27, 2012

v

CODIE JAMES FELTON,
Defendant-Appellant.

No. 308311
Calhoun Circuit Court
LC No. 2011-001403-FH

Before: SAWYER, P.J., and SAAD and METER, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of failure to comply with the sex offender registration act (SORA), MCL 28.729, based on his failure to register a change of residence within 10 days, as required by MCL 28.725. He appeals as of right, and argues that there was insufficient evidence presented to support a conviction. We affirm.

The test for determining the sufficiency of evidence in a criminal case is, “whether the evidence, viewed in a light most favorable to the people, would warrant a reasonable juror in finding guilt beyond a reasonable doubt. . . . The standard of review is deferential: a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict.” *People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000). Additionally, the jury is “the sole judge of the facts. It is the function of the jury alone to listen to testimony, weigh the evidence and decide the questions of fact” *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992), quoting *People v Palmer*, 392 Mich 370, 375-376; 220 NW2d 393 (1974).

MCL 28.729(1) provides that “an individual required to be registered under [SORA] who willfully violates this act is guilty of a felony” At the time relevant, MCL 28.725(1) set forth the following:¹ “An individual required to be registered under this act shall notify the local law enforcement agency . . . within 10 days after the individual changes or vacates his or her residence” “[A] person’s ‘residence’ under SORA is a combination of three things: that place where a person (1) habitually sleeps, (2) keeps personal effects, and (3) has a regular place

¹ 2011 PA 17 amended the statute effective July 1, 2011.

of lodging.” *People v Dowdy*, 489 Mich 373, 382; 802 NW2d 239 (2011). To “willfully violate[]” SORA, “requires something less than specific intent, but requires a knowing exercise of choice.” *People v Lockett (On Rehearing)*, 253 Mich App 651, 655; 659 NW2d 681 (2002).

In this case, on April 2, 2011, defendant was arrested at his then-girlfriend’s home at 18 Vale Street in Battle Creek by police officer Jennifer Appl, who had responded to a domestic violence call. When asked, defendant told her that he lived at 18 Vale Street. The next day, Warrant Officer David Timmer, who was familiar with defendant, noticed that defendant’s detainer listed 18 Vale as his address and that defendant indicated that he paid rent there. Timmer checked the SORA database and saw that defendant’s last registered address, from November 2010, was 47 Keith Drive. Timmer went to 47 Keith Drive and spoke with a resident. On April 4, 2011, Timmer received a telephone call from defendant, who said that he continued to reside at the Keith address and had simply lied to the responding officers. At trial, defendant admitted telling the officers that he lived at 18 Vale, but tried to excuse the statement by claiming that he was drunk at the time and only told the officers that he lived there in the hope that they would not make him leave. It is undisputed that defendant was subject to SORA’s registration requirements.

Defendant’s argument that there was insufficient evidence to prove that he did not live at 47 Keith Drive, and thus insufficient evidence of a SORA violation, fails to necessitate reversal of his conviction. At the time relevant, MCL 28.722(g) stated that for compliance with SORA registration, “[i]f a person has more than 1 residence, or if a wife has a residence separate from that of the husband, that place at which the person resides the greater part of the time shall be his or her official residence” Accordingly, the prosecution only had to show that defendant had made 18 Vale his primary residence.

Defendant admitted telling the responding officers that he lived at 18 Vale, and testified that he kept clothing and possibly a suitcase there, and regularly stayed at the location on the weekends. The jury was free to disbelieve defendant’s self-serving testimony and credit his earlier statements. See *People v Perry*, 460 Mich 55, 63; 594 NW2d 477 (1999). Further, Appl testified that defendant had previously told her that he lived there, and he indicated that he lived there on the night of his arrest. He also stated that he intended to return there upon release. Timmer testified that the detainer indicated that defendant had told the responding officers that he paid rent at 18 Vale. Consequently, the jury could conclude that defendant had established a new primary residence at 18 Vale, triggering the statutory requirement that he register the address with the police, which he unquestionably did not do by April 2, 2011. See *Dowdy*, 489 Mich at 381-383.

This evidence, combined with defendant’s testimony that he and his then-girlfriend at 18 Vale “got in a lot of fights, always on the weekends,” also permits a rational fact finder to infer that at least 10 days had passed since defendant first made 18 Vale his new residence. That defendant “willfully” failed to register was established by the appearance of his signature and signed initials on the certified statement of sex offender act requirements that was introduced at trial. From this, the jury could conclude that defendant was aware of his obligation to notify the law enforcement agency but failed to do so, willfully violating the registration requirement. See *Lockett*, 253 Mich App at 655-656.

Finally, defendant's suggestion that the jury improperly considered Timmer's hearsay statement is groundless. As discussed above, there was sufficient evidence presented to support defendant's conviction without consideration of the excluded statement, and the trial court instructed the jury to ignore the hearsay component of Timmer's volunteered answer. Jurors are presumed to follow their instructions. See *People v Waclawski*, 286 Mich App 634, 710; 780 NW2d 321 (2009), citing *People v Rodgers*, 248 Mich App 702, 717; 645 NW2d 294 (2001). The evidence presented, viewed in the light most favorable to the prosecution, was sufficient to permit a rational trier of fact to find that the essential elements of the crime were proved beyond a reasonable doubt. *Nowack*, 462 Mich at 399-400

Affirmed.

/s/ David H. Sawyer
/s/ Henry William Saad
/s/ Patrick M. Meter