

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-1415-2009
vs. :
:
BENJAMIN BRESSMAN, :
Defendant :

OPINION AND ORDER

This case came before the court on the defendant’s post sentence motion. The relevant facts follow.

In 2008, Benjamin Bressman (“Bressman”) was convicted of criminal attempt indecent assault of a child less than 13 years of age. On January 13, 2009, he was sentenced and placed on supervision with adult probation officer Lewis Yingling. Mr. Yingling registered Bressman pursuant to Pennsylvania’s Megan’s Law, see 42 Pa.C.S. §9795.2(a)(4).

At this time, Bressman’s registered address was 329 Chestnut Street. Mr. Yingling advised Bressman of the rules and regulations regarding his duties to register under Pennsylvania’s Megan’s Law, including the provisions requiring Bressman to notify the Pennsylvania State Police within 48 hours of any change of his residence by appearing in person at the nearest state police barracks. Mr. Yingling also gave Bressman a form that notified him of these requirements.

Bressman violated the conditions of his supervision and was returned to prison on March 29, 2009. When Bressman was eligible for parole, he submitted Laura Immel’s address of 761 West Third Street as the address where he intended to reside, but this address was not approved. Ms. Immel then found Bressman an apartment at 335 Rose Street.

Mr. Yingling approved that address, and Bressman appropriately registered the Rose Street address prior to his release from prison.

Bressman was released from prison on July 31, 2009, and he reported to Mr. Yingling. Mr. Yingling again spoke to Bressman about his registration requirements and reminded Bressman he had 48 hours to go to the nearest State Police barracks to register any change of residence.

On August 5, 2009, Bressman was evicted from the Rose Street address.

Bressman was required to meet weekly with Mr. Yingling. Bressman appeared for his scheduled appointment on August 6, 2009, but did not tell Mr. Yingling he had been evicted. Bressman called Mr. Yingling on August 7 and told Mr. Yingling he had been evicted and he was moving to a friend's house on Germania Street. He did not know the exact house number. When Bressman appeared for his appointment on August 13, he told Mr. Yingling he was living with a friend named Alan Lusk at 444 Germania Street. Instead, Bressman was living with Laura Immel at 761 West Third Street. Bressman never reported this address to Mr. Yingling.

On August 18, 2009, Trooper Angela Bieber got a phone call from one of the Magisterial District Judges, which lead her to check Defendant's file and his address. Trooper Bieber noted Bressman's last registered address was 335 Rose Street. She called the realty company and was informed that Bressman had been evicted from that address on August 5. Trooper Bieber then contacted Mr. Yingling, who told her that he had Bressman's address as 444 Germania Street. Bressman, however, never registered that address.

On August 20, 2009, Bressman appeared at the Pennsylvania State Police barracks. Bressman told Trooper Bieber he moved out of the Rose Street address the week before and he was living with his girlfriend, Laura Immel, at 761 West Third Street. Trooper Bieber, however, knew from her conversation with a representative of the realty company that Bressman had not lived at 335 Rose Street for at least two weeks. Bressman was arrested and charged with failing to register in violation of 18 Pa.C.S. §4915.

A non-jury trial was held on April 15, 2010. The Court found Bressman guilty. On June 24, 2010, the Court sentenced Bressman to incarceration in a state correctional institution for 2-4 years.

Bressman filed a timely post sentence motion. In his motion, the defendant raised three issues: (1) the evidence was insufficient to support the defendant's conviction for failure to register; (2) the verdict was against the weight of the evidence; and (3) any violation of 18 Pa.C.S. §4915 was de minimus.

In reviewing the sufficiency of the evidence, the court considers whether the evidence and all reasonable inferences that may be drawn from that evidence, viewed in the light most favorable to the Commonwealth as the verdict winner, would permit the jury to have found every element of the crime beyond a reasonable doubt. Commonwealth v. Davido, 582 Pa. 52, 868 A.2d 431, 435 (Pa. 2005); Commonwealth v. Murphy, 577 Pa. 275, 844 A.2d 1228, 1233 (Pa. 2004). Circumstantial evidence can be as reliable and persuasive as eyewitness testimony and may be of sufficient quantity and quality to establish guilt beyond a reasonable doubt. Commonwealth v. Tedford, 523 Pa. 305, 567 A.2d 610, 618 (Pa.

1989)(citations omitted).

In this case, to prove that the defendant failed to register as required by Pennsylvania's Megan's Law, the Commonwealth had to prove the defendant was an individual who was required to register under 42 Pa.C.S. §9795.1(a) or (b)(1), (b)(2), or (b)(3) and the defendant knowingly failed to inform the Pennsylvania State Police within 48 hours of any change of residence.

The defendant had a conviction for attempted indecent assault of a child less than 13 years of age in violation of 18 Pa.C.S. §3126(a)(7). Therefore, the defendant was a person required to register pursuant to 42 Pa.C.S. §9795.1(a)(3).¹

The issues in this case were whether the defendant changed his "residence," and whether he knowingly failed to inform the police within 48 hours of any such change.

The Court found the Commonwealth's witnesses credible. The Commonwealth called four witnesses at trial: Kathleen Hutchinson, Lewis Yingling, Laura Immel and Trooper Angela Bieber.

Kathleen Hutchinson, the leasing manager for Hutchinson Realty, testified that Bressman and his girlfriend Laura Immel signed a lease on July 31, 2009 for Apartment 17 at 335 Rose Street. They also paid the first month's rent and a partial security deposit and were given the keys to the apartment on that date. Thereafter, Ms. Hutchinson found out Bressman was a sexual offender required to register under Megan's Law, so on August 4, 2009 she told him he had to move out. Bressman moved out on August 5 and the money paid towards the apartment was refunded to his girlfriend, Laura Immel.

Lewis Yingling testified that he was Bressman's probation officer. He informed Bressman of his registration requirements and gave him a form that stated these requirements when he placed him on supervision in January 2009. Bressman was incarcerated on a violation in March 2009. Bressman originally sought approval of Laura Immel's address for his release, but this address was denied. The Rose Street address, however, was approved and he was released from prison on July 31, 2009 with instructions to report to Yingling. When Bressman reported on July 31 as he was instructed, Yingling reminded him he had 48 hours to notify the Pennsylvania State Police of any change in his residence. When Bressman told Yingling that he had been evicted from Rose Street, Bressman claimed he was living a 444 Germania Street.

Laura Immel testified that Bressman lived with her at 761 West Third Street from the time he was released from prison until he was arrested on these charges. She stated that Bressman only had a few things at the Rose Street apartment; the rest of his belongings were at her place. Ms. Immel indicated Bressman referred to her apartment as "his place," and he never lived at 444 Germania Street in August 2009; he only gave that address to Mr. Yingling for probation purposes. She further testified that Alan Lusk lived in Montoursville, not on Germania Street and that Bressman never lived with him. If Bressman had not been arrested, he was going to stay at her apartment even when she was not going to be there.²

Trooper Angela Bieber testified Bressman's last registered address was 335 Rose Street. She had contacted the realty company for the Rose Street apartment and was

¹ The defendant also did not dispute that he was an offender required to register for 10 years.

² Immel was facing an impending 30 day minimum sentence for DUI.

told that Bressman had been evicted and the security deposit was returned August 5. She contacted Mr. Yingling, who told her that Bressman's address was 444 Germania Street. Bressman appeared at the barracks on August 20. Bressman told Trooper Bieber that he moved out of the Rose Street address the week before and he was living with his girlfriend Laura Immel at 761 West Third Street. Trooper Bieber, however, already knew that Bressman had not lived at 335 Rose Street since at least August 5. Bressman never registered 761 West Third Street or 444 Germania Street as his residence.

Based on the testimony of these witnesses, the Court found: (1) Mr. Yingling informed Defendant both orally and in writing of his requirement to notify the Pennsylvania State Police of any change of his residence within 48 hours; (2) Defendant was living at 761 West Third Street since he was released from prison on July 31, 2009; (3) he intended to live at the 761 West Third Street address for more than 30 days; (4) Bressman did not live at the Rose Street address or 444 Germania Street; he only provided these addresses to Mr. Yingling because 761 West Third Street was not an approved address; and (5) Bressman never registered 761 West Third Street as his residence with the Pennsylvania State Police. From these facts, the Court drew the following legal conclusions: (1) Bressman was required to notify the Pennsylvania State Police of any change in residence within 48 hours; (2) Bressman knew he was required to notify the State Police that he was residing at 761 West Third Street within 48 hours of July 31, 2009; (3) Bressman knowingly failed to register that address within 48 hours as required.

Bressman claims the evidence was insufficient because he was not residing at

Immel's apartment, but "bounced around" after he was evicted from the Rose Street apartment. Bressman relies on the case of Commonwealth v. Wilgus, 975 A.2d 1183 (Pa. Super. 2009). The Court cannot agree.

First, the Court found that Bressman was living at Immel's apartment and he intended to reside there for more than 30 days. This finding is supported by the testimony of Laura Immel and Trooper Bieber's testimony that Bressman told her he was living with Laura Immel at 761 West Third Street. The Court did not accept the defense theory that Bressman was "bouncing around."

Second, the Court believes Bressman's reliance on Wilgus is misplaced. In Wilgus, the defendant was homeless and living on the streets of Harrisburg. He did not have an abode. He was living in alleyways and on park benches. This case is clearly distinguishable from Wilgus. Bressman was residing at 761 West Third Street and he intended to reside there for more than 30 days; he was not living in alleyways or on park benches. Furthermore, the Wilgus court stated: "We caution that not all 'homeless persons' will escape registration requirements. There will be those persons, regarded as homeless, but who have temporary abodes such as the home of a relative, a friend or a shelter, and who, therefore, will be expected to register." 975 A.2d at 1188 n.8. Therefore, even under Wilgus, Bressman would be expected to register his address as 761 West Third Street.

Bressman also asserts that any violation was de minimus pursuant to 18 Pa.C.S.A. §312(a)(2) because he failed to register for a mere two weeks and provided his addresses to his adult probation officer. Again, the Court cannot agree.

Section 312 (a)(2) states:

The court shall dismiss a prosecution if, having regard to the nature of the conduct charged to constitute an offense and the nature of the attendant circumstances, it finds that the conduct of the defendant: (2) did not actually cause or threaten the harm or evil sought to be prevented by the law defining the offense or did so only to an extent too trivial to warrant the condemnation of conviction;

18 Pa.C.S.A. §312(a)(2). The Court finds that the nature of the conduct charged and the nature of the attendant circumstances warranted prosecution in this case.

The purpose of the statute is to know where a sexual offender is residing for the protection of the public, see 42 Pa.C.S.A. §9791, not to have them scam their probation officer and the State Police. Bressman did not tell his probation officer that he was living at 761 West Third Street, because that was not an approved address. Bressman told his probation officer that he was residing at 444 Germania Street. Not only did Laura Immel testify that Bressman never resided at that address but the defense testimony also did not support what Bressman told Mr. Yingling. Although Bressman claimed he stayed a few nights with a friend who lived at 223 Germania Street, none of the individuals who testified on Bressman's behalf supported an address of 444 Germania Street. In fact, Bressman testified that 444 Germania Street was where he lived when he was 16 years old.

On August 20, Bressman told Trooper Bieber that he moved to Laura Immel's apartment the week before, but Trooper Bieber knew he had not lived at the Rose Street address since August 5. At trial, Bressman denied telling Trooper Bieber he was living at Laura Immel's apartment and claimed he did not go to the barracks to register, but to inquire what to do because he did not have an address to register. Neither his probation officer nor

the State Police knew where Bressman was actually residing between July 31, 2009 when he was released from prison and August 20 when he was arrested, because he was lying about where he resided to avoid going back to jail on a probation or parole violation for failing to reside at his approved address.

Bressman also claims the verdict was against the weight of the evidence because numerous defense witnesses testified that he spent nights at their residences after his eviction from Rose Street, between August 5 and August 20.

An allegation that the verdict is against the weight of the evidence is addressed to the sound discretion of the trial court. Commonwealth v. Sullivan, 820 A.2d 795, 805-806 (Pa. Super. 2003). A new trial is awarded only when the verdict is so contrary to the evidence as to shock one's sense of justice and the award of a new trial is imperative so that right may be given another opportunity to prevail. Id. at 806.

The verdict did not shock the Court's sense of justice. Credibility determinations are strictly within the province of the fact-finder, who is free to believe all, part or none of the evidence. Commonwealth v. Smith, 580 Pa. 392, 861 A.2d 892, 896 (Pa. 2004) (It is within the province of the jury, as the finder of fact, to decide whether a witness' testimony lacks credibility); Commonwealth v. Gibson, 553 Pa. 648, 720 A.2d 473, 480 (Pa. 1998) (“Credibility determinations are strictly within the province of the finder of fact; therefore an appellate court may not reweigh the evidence and substitute its judgment for the finder of fact.”); Commonwealth v. Pitts, 486 Pa. 212, 404 A.2d 1305, 1306 (Pa. 1979)(the finder of fact is free to believe all, part or none of the evidence presented). Basically, the

Court found the Commonwealth's witnesses credible and did not accept as credible the testimony of Bressman's witnesses that he was spending the night at their residences or their testimony did not support Bressman's argument that he did not have a "residence" during this time period.

Bressman was on a SCRAM unit that required him to download information via computer for approximately 45 minutes every night. Bressman would do the required downloads at his grandparents residence between 9 and 10 p.m. every night. Bressman's witnesses, however, testified that he would arrive at their residence prior to 9 p.m. and he would spend the night. This testimony was inconsistent with the testimony regarding Bressman's SCRAM unit requirements. Furthermore, one of Bressman's witnesses testified that he would stay at his house to get away from Immel taking her frustrations regarding a former paramour out on him. The reasonable inference from this witness's testimony was that Bressman was residing with Immel but would hang out or crash at his friends' places when he was having disagreements with Immel. After considering all the evidence and the credibility of the witnesses presented, the Court concluded Bressman was residing with Immel at 761 West Third Street and he failed to register that address. Therefore, Bressman's claim does not justify the grant of a new trial in this case.

ORDER

AND NOW, this ___ day of October 2010, for the foregoing reasons, the Court
DENIES Bressman's post sentence motion.

By The Court,

Marc F. Lovecchio, Judge

cc: A. Melissa Kalas, Esquire/Kenneth Osokow, Esquire
Nicole Spring, Esquire
Work file
Gary Weber, Esquire (Lycoming Reporter)