

[Cite as *State v. Blake*, 2010-Ohio-1901.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. CASE NO. 23308
v.	:	T.C. NO. 08 CR 2810
THOMAS K. BLAKE	:	(Criminal appeal from Common Pleas Court)
Defendant-Appellant	:	

**OPINION**

Rendered on the 30<sup>th</sup> day of April, 2010.

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DONOVAN, P.J.

{¶ 1} Defendant-appellant Thomas K. Blake appeals from his conviction and sentence for one count of failure to notify, in violation of R.C. 2950.05(A) and (F)(1), a felony of the fourth degree.

{¶ 2} On August 15, 2008, Blake was indicted for one count of failure to notify the

Montgomery County Sheriff's Office of the change in the address of his place of employment between the dates of June 1, 2008, and June 26, 2008. Blake's duty to notify stemmed from a conviction for gross sexual imposition on April 14, 1999. As a result of his conviction, Blake was sentenced to community control sanctions not to exceed five years. Blake was also classified as a sexually oriented offender which required him to register annually and provide the Sheriff's Office with written notification of any changes to his residential address, school, and/or employment.

{¶ 3} Blake was arraigned on August 19, 2008, stood mute, and the trial court entered a plea of not guilty on his behalf. On November 13, 2008, Blake waived his right to a jury, and the case was set for a bench trial which was held on December 12, 2008. The trial court issued a written decision and entry on January 6, 2009, finding Blake guilty of the charged offense. At a hearing on February 4, 2009, the trial court sentenced Blake to a term of community control not to exceed five years. Blake filed a timely notice of appeal with this Court on March 5, 2009.

#### I

{¶ 4} Because they are interrelated, Blake's first and second assignments of error will be discussed together as follows:

{¶ 5} "THE TRIAL COURT ERRED WHEN IT OVERRULED MR. BLAKE'S MOTION FOR ACQUITTAL PURSUANT TO CRIM. R. 29."

{¶ 6} "MR. BLAKE'S CONVICTION WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶ 7} In his first assignment of error, Blake contends the trial court erred when it

denied his Crim. R. 29 motion for acquittal made at the close of the State's case. Blake's first assignment is essentially an attack on the sufficiency of the evidence, and we will treat it as such. In his second and final assignment, Blake argues that his conviction for failure to notify was against the manifest weight of the evidence.

{¶ 8} “A challenge to the sufficiency of the evidence differs from a challenge to the manifest weight of the evidence.” *State v. McKnight*, 107 Ohio St.3d 101,112, 2005-Ohio-6046. “In reviewing a claim of insufficient evidence, ‘[t]he relevant inquiry is whether, after reviewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.’ (Internal citations omitted). A claim that a jury verdict is against the manifest weight of the evidence involves a different test. ‘The court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction.’” *Id.* (Internal citations omitted).

{¶ 9} The credibility of the witnesses and the weight to be given to their testimony are matters for the trier of facts to resolve. *State v. DeHass* (1967), 10 Ohio St.2d 230, 231.

“Because the factfinder \* \* \* has the opportunity to see and hear the witnesses, the cautious exercise of the discretionary power of a court of appeals to find that a judgment is against the manifest weight of the evidence requires that substantial deference be extended to the

factfinder's determinations of credibility. The decision whether, and to what extent, to credit the testimony of particular witnesses is within the peculiar competence of the factfinder, who has seen and heard the witness." *State v. Lawson* (Aug. 22, 1997), Montgomery App. No. 16288.

{¶ 10} This court will not substitute its judgment for that of the trier of facts on the issue of witness credibility unless it is patently apparent that the trier of fact lost its way in arriving at its verdict. *State v. Bradley* (Oct. 24, 1997), Champaign App. No. 97-CA-03.

{¶ 11} In his first assignment, Blake argues that the trial court erred when it denied his Crim. R. 29 motion for acquittal because the State failed to adduce any reliable evidence that Blake failed to notify the Montgomery County Sheriff's Office that his employment status had changed. Specifically, Blake argues that he cannot be convicted of failure to notify the Sheriff's Office of a change in his employment status because the verification forms utilized by the Sheriff's Office do not require the offender to provide any information regarding his or her employer or employment status. Simply put, Blake asserts that he cannot be convicted for failing to notify the Sheriff's Office of the change in his employment status since the Sheriff's Office did not provide him with a form which would allow him to verify his employment. We disagree.

{¶ 12} Initially, we note that Blake had a duty to notify the Sheriff's Office of any change in his employment address as a result of his designation as a sexually-oriented offender pursuant to R.C. 2950.05(A) and (F)(1). R.C. 2950.05(A) and (F)(1) state as follows:

{¶ 13} "(A) If an offender \*\*\* is required to register pursuant to division (A)(2), (3),

or (4) of section 2950.04 of the Revised Code, \*\*\* the offender \*\*\* shall provide notice of any change of residence, school, institution of higher education, *or place of employment address*, to the sheriff with whom the offender \*\*\* most recently registered the address under division (A)(2), (3), or (4) of section 2950.04 or 2950.041 of the Revised Code or under division (B) of this section. *A written notice of a change of \*\*\* place of employment address also shall include the name of the new \*\*\* place of employment.* \*\*\* [T]he offender \*\*\* registrant shall provide the written notice at least twenty days prior to changing the address of the residence, school, or institution of higher education *and not later than three days after changing the address of the place of employment.* They shall provide the written notices during the period they are required to register. \*\*\*.

{¶ 14} “(F)(1) No person who is required to notify a sheriff of a change of address pursuant to division (A) of this section \*\*\* shall fail to notify the appropriate sheriff in accordance with that division.”

{¶ 15} The evidence adduced during the bench trial established that Blake was convicted and sentenced for one count of gross sexual imposition in April, 1999. As a result, Blake was classified as a sexually-oriented offender who had a duty to register annually with the Montgomery County Sheriff’s Office for ten years. Blake was also required to verify his employment address with the Sheriff’s Office in the county in which he resides pursuant to R.C. 2950.06(C). If there was a change in Blake’s residential or employment address, he was required to provide written notice of the change to the Sheriff’s Office pursuant to R.C. 2950.05(A) and (F)(1).

{¶ 16} On September 27, 2006, Blake was hired by Patrick Staffing, an employment

agency located in Montgomery County. Patrick Staffing placed Blake with a company called Plating Technology in Dayton, Ohio. The evidence established that Blake worked at Plating Technology until November 20, 2006, when he quit. Michelle Huxtable, a manager at Patrick Staffing, testified that her company placed Blake with another company called Ernest Moore Metal Technology on February 21, 2007. Huxtable testified that Blake only worked at Ernest Moore for one day before he quit. After Blake ended his employment at Ernest Moore, Patrick Staffing did not attempt to place Blake at any other companies.

{¶ 17} The record establishes that Blake appeared as required at the Sheriff's Office on September 10, 2007, and reported that he was employed as a production worker at Plating Technology. While at the Sheriff's Office, Blake signed a Notice of Registration Duties form which included the requirement that he periodically verify his place of employment and provide written notice of a change in his place of employment to the Sheriff's Office.

{¶ 18} On June 17, 2008, a deputy from the Sheriff's Office attempted to locate Blake in order to notify him of a change in the law with respect to his status as a sexually-oriented offender. The deputy traveled to Plating Technology to speak with Blake but was informed by management that he had not worked there for several years. Eventually, the deputy located Blake who voluntarily reported to the Sheriff's Office on September 4, 2008. At that time, Blake told the deputy that he was employed at the Cherrywood Manor Apartments, and Blake was subsequently charged with failure to notify the Sheriff's Office of a change in his place of employment between the dates of June 1, 2008, and June 26, 2008.

{¶ 19} The evidence adduced at trial established that Blake worked at Plating

technology from September 27, 2006, until November 20, 2006. Once Blake ended his employment at Plating Technology, he was required to provide written notice to the Sheriff's Office of any change in employment. It is clear from the record that Blake did not provide the requisite notice of the change in his place of employment pursuant to R.C. 2950.05(A). Instead, the record establishes that when he registered as a sexually-oriented on September 10, 2007, approximately one year later, Blake falsely informed the Sheriff's Office that he was still employed at Plating Technology. As noted by the trial court in its written decision, R.C. 2950.05 clearly required Blake to provide a timely notice that he was no longer employed by Plating Technology. Sergeant Leslie Bunch, an employee at the Sheriff's Office, testified that Blake's file contained no notice of the change in his employment status.

In fact, Sgt. Bunch testified that the records at the Sheriff's Office at the time Blake's trial indicate that Blake was still employed at Plating Technology.

{¶ 20} Thus, a review of the record convinces us that the State's evidence, taken in its entirety, was sufficient to sustain Blake's conviction for failure to notify. In light of our holding in this regard, the trial court did not err when it overruled Blake's Crim. R. 29(A) motion for acquittal made at the close of the State's case as the evidence presented was sufficient to support his conviction.

{¶ 21} Lastly, Blake's conviction is not against the manifest weight of the evidence. The credibility of the witnesses and the weight to be given their testimony were matters for the court to resolve. Blake presented no evidence at trial. Instead, Blake attempted to undermine the State's case by pointing out that the verification form utilized by the Sheriff's Office did not contain the necessary employment information pursuant to R.C. 2950.06(C).

Thus, Blake argues that the verification form was unreliable as evidence to establish that he did not notify the Sheriff's Office of a change in his place of employment. Blake's argument ignores the fact that he was not charged with a failure to verify his employment information. Rather, Blake was charged with failure to notify the Sheriff's Office of a change in his place of employment within three days pursuant to R.C. 2950.05(A) and (F)(1).

{¶ 22} The court did not lose its way simply because it chose to believe the evidence provided by the State's witnesses. Having reviewed the entire record, we cannot clearly find that the evidence weighs heavily against a conviction, or that a manifest miscarriage of justice has occurred.

{¶ 23} Blake's first and second assignments of error are overruled.

## II

{¶ 24} All of Blake's assignments of error having been overruled, the judgment of the trial court is affirmed.

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GRADY, J. and RINGLAND, J., concur.

(Hon. Robert P. Ringland, Twelfth District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio).

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