Cite as 2013 Ark. App. 63

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR12-185

JAMES EDWARD GREEN, JR. APPELLANT	**Opinion Delivered** February 6, 2013 APPEAL FROM THE DREW COUNTY CIRCUIT COURT [NO. CR-2010-106-3]
V.	HONORABLE RANDY WRIGHT, JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED

JOHN MAUZY PITTMAN, Judge

The appellant was charged with failure to comply with registration and reporting requirements applicable to sex offenders and with residing within 2000 feet of a daycare facility as a level 4 sex offender, in violation of Ark. Code Ann. §§ 12-12-904 (Repl. 2009) and 5-14-128 (Supp. 2008), respectively. After a jury trial, appellant was found guilty of those offenses and sentenced to serve consecutive terms of imprisonment totaling forty-five years. On appeal, he argues that the evidence is insufficient to support the convictions and that the trial court erred in admitting into evidence during the sentencing phase of trial a Risk Assessment and Offender Profile Report. We affirm.

In determining the sufficiency of the evidence to support a criminal conviction, the appellate court views the evidence in the light most favorable to the State, considering only that evidence that supports the verdict. *Clayton v. State*, 2011 Ark. App. 692. The test for determining the sufficiency of the evidence is whether the verdict is supported by substantial

evidence, direct or circumstantial. *Id*. Evidence is substantial if it is of sufficient force and character to compel reasonable minds to reach a conclusion and pass beyond suspicion and conjecture. *Id*.

It is undisputed that appellant is a level 4 registered sex offender with a duty to notify local law enforcement ten days in advance of any change of address. For purposes of sex-offender registration, "change of address" is defined as a change of residence or a change for more than thirty days of temporary domicile, or any other change that alters where a sex offender spends a substantial amount of time. Ark. Code Ann. § 12-12-903(4) (Repl. 2009). With respect to both convictions, appellant's argument on appeal is that the evidence will not support a finding that appellant lived in a particular trailer that was shown to be within 2000 feet of a daycare facility. We do not agree.

Appellant notes that there was testimony that he was not living in the trailer but at his parents' home, and that he was in the trailer only to do repair work. Although there was such testimony from appellant's father and from the owner of the trailer, the jury was not required to believe it. Viewing the evidence in the light most favorable to the State, as we must, we do not consider that testimony in determining the sufficiency of the evidence. Appellant also argues that the remaining evidence of his residency in the trailer was insufficient because it was circumstantial. However, the fact that evidence is circumstantial does not render it insubstantial. *Johnson v. State*, 2011 Ark. App. 718. The fact-finder need not lay aside its common sense in evaluating the ordinary affairs of life and may consider and give weight to any false, improbable, and contradictory statements made by the defendant

to explain suspicious circumstances. *Id.* The law makes no distinction between circumstantial and direct evidence when reviewing for sufficiency of the evidence. *Benton v. State*, 2012 Ark. App. 71, 388 S.W.3d 488. Circumstantial evidence alone is sufficient if it excludes every other reasonable hypothesis consistent with innocence. *Id.* Whether the evidence excludes every other reasonable hypothesis is left to the jury to determine. *Id.*

Here, there was evidence that the trailer's previous resident had moved out approximately two months earlier and that the utilities were then shut off. There was also evidence that electrical, gas, and water utilities had been reestablished in appellant's name. A letter from Entergy addressed to appellant at the trailer's address was found in the trailer. Another letter to appellant, bearing the trailer's address, thanked appellant for establishing service with CenterPoint Energy. The manager of the local water utility testified that appellant established water service at the trailer in his name and paid a fifty-dollar deposit. There were dishes in the sink and perishable food in the refrigerator; no mold was present. There was furniture in the trailer. A mattress with pillows was found on the floor, and it appeared that it had been used recently. Men's clothing and toiletries were found in the trailer, as were prescription-medication bottles bearing appellant's name. The owner of the trailer admitted that appellant had approached him three times about renting the trailer. Appellant's father admitted that appellant had intended to move to the trailer. Appellant had a key to the trailer when arrested. No evidence of repair work was observed in the trailer. On this record, we think that a jury could find that there was no reasonable conclusion to be drawn except that appellant was residing in the trailer.

Appellant next argues that the trial court erred in admitting into evidence during the sentencing phase of trial a Risk Assessment and Offender Profile Report. It is true that such reports are not admissible for purposes of sentencing. Ark. Code Ann. § 12-12-918(a)(2)(C) (Repl. 2009). Nevertheless, we do not reach this issue because it is not properly before us. Appellant's attorney, when asked by the trial court, expressly said that he had no objection to the admission of the report. As a general rule, we do not address issues raised for the first time on appeal. *Gaines v. State*, 2010 Ark. App. 439. Even constitutional issues are waived if not raised at trial. *See Bader v. State*, 344 Ark. 241, 40 S.W.3d 738 (2001). While appellant argues that he should be able to raise this issue on appeal pursuant to one of the exceptions to the contemporaneous-objection rule set out in *Wicks v. State*, 270 Ark. 781, 606 S.W.2d 366 (1980), he fails to specify which exception might apply to this case. *See Adams v. State*, 2009 Ark. 375, 326 S.W.3d 764. His attempt to do so in his reply brief is too late. *See Hinton v. State*, 2010 Ark. App. 341. In any event, to the extent that the trial court may arguably have had a duty to intervene under *Wicks*, we think that it adequately did so by expressly asking appellant's trial attorney whether he had any objection to admission of the document into evidence.

Affirmed.

GLADWIN, C.J., and WALMSLEY, J., agree.

Cullen & Co., PLLC, by: *Tim J. Cullen*, for appellant.

Dustin McDaniel, Att'y Gen., by: *Brad Newman*, Ass't Att'y Gen., for appellee.