

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CACR10-493

RONALD WAYNE MAGNESS
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered FEBRUARY 9, 2011

APPEAL FROM THE DREW
COUNTY CIRCUIT COURT
[NO. CR09-125-1]

HONORABLE SAM POPE, JUDGE

AFFIRMED

RAYMOND R. ABRAMSON, Judge

A Drew County jury convicted Ronald Magness of failing, as a sex offender, to report a change of address and of being a sex offender living within 2000 feet of a daycare facility. He was sentenced to 252 months' imprisonment and ordered to pay certain fines, costs, and fees. Magness challenges the sufficiency of the evidence on appeal. We affirm.

When faced with a sufficiency challenge, this court views the evidence in the light most favorable to the State and only considers evidence that supports the jury's verdict. *Smith v. State*, 101 Ark. App. 285, 287, 275 S.W.3d 686, 688 (2008). We affirm if the verdict is supported by substantial evidence. *Id.* Substantial evidence is evidence that is forceful enough to compel a conclusion one way or the other beyond mere speculation or conjecture. *Id.* Circumstantial evidence may constitute substantial evidence, but it must exclude every reasonable hypothesis other than the defendant's guilt. *Simmons v. State*, 89 Ark. App. 34, 40,

199 S.W.3d 711, 714 (2004). The question of whether circumstantial evidence rises to that level is generally reserved for the fact-finder. *Id.* On appeal, we do not reweigh the evidence or assess witness credibility—those matters are also for the fact-finder. *Ewell v. State*, 375 Ark. 137, 138, 289 S.W.3d 101, 102 (2008).

It is a felony for a registered sex offender to fail to report a change of address. Ark. Code Ann. § 12-12-904(a)(1)(A)(ii) (Repl. 2009). It is also a felony for a level 3 sex offender, who is required to register under the Sex Offender Registration Act, to reside within 2000 feet of a daycare facility. Ark. Code Ann. § 5-14-128(a) (Supp. 2009). Magness admits that he is a level 3 sex offender, that his registered address is at his mother's house in Star City, and that his girlfriend's residence in Monticello is within 2000 feet of a daycare facility. Magness's only argument on appeal is that there was insufficient proof that he was residing at his girlfriend's house.

A few weeks before Magness was arrested on these charges, he was arrested for DWI. On the DWI pre-sentence screening report, which Magness signed, his address is listed as 913 North Gabbert Street in Monticello—his girlfriend, Lori Abbondola's residence. And the phone number listed on the report is not Magness's, but is instead Abbondola's cell phone number. Casey Lynn Glenn, who filled out the report, said she asked Magness for his current address and that the address listed on the report came from Magness himself and from no other source. At some point, Captain Eddy Deaton of the Monticello Police Department

went to investigate. One of Abbondola's neighbors, who wanted to remain anonymous, told Deaton that Magness was living there.

A bench warrant was issued, and Patrol Lieutenant Steven Stain of the Monticello Police Department went to Abbondola's residence to arrest Magness. When Stain knocked on the door, Abbondola answered it, and Magness was standing behind her wearing only a pair of boxer shorts. Stain saw a pair of men's work boots and a pair of men's tennis shoes sitting just inside the door. Stain arrested Magness and asked Abbondola whether he could search her residence. Abbondola declined.

At the trial, Abbondola testified that Magness kept a change of clothes at her house—a fact Magness confirmed. Deaton testified that Abbondola came to the police station and that he spoke with her there. Deaton said that Abbondola told him that Magness had some personal-hygiene items and clothes at her residence and that Magness had received a letter from his daughter through the mail there. Abbondola confirmed that Magness had received the letter at her residence. There was testimony from several sources that Magness was dating Abbondola at the time in question, that Abbondola lived in Monticello at the Gabbert Street address, and that Magness was working in Monticello. In fact, Lieutenant Stain testified that Magness's boss was picking him up for work at Abbondola's residence.

Magness, Abbondola, and Magness's family members provided conflicting testimony about Magness's living circumstances. But it was up to the jury to assess each witness's credibility and to weigh the conflicting evidence. *Ewell*, 375 Ark. at 138, 289 S.W.3d at 102.

Cite as 2011 Ark. App. 107

Indeed, “a jury is not required to believe a defendant’s self-serving testimony.” *McKenzie v. State*, 362 Ark. 257, 267, 208 S.W.3d 173, 178 (2005).

Viewing the facts in the light most favorable to the State and considering only the evidence that supports the verdict, we hold that substantial evidence supports Magness’s convictions. *Smith*, 101 Ark. App. at 287, 275 S.W.3d at 688.

Affirmed.

VAUGHT, C.J., and GRUBER, J., agree.