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NO. COA11-1583
NORTH CAROLINA COURT OF APPEALS

Filed: 19 June 2012

STATE OF NORTH CAROLINA

v.

Transylvania County
No. 10 CRS 916

ROBERT ANTHONY BUTLER

Appeal by Defendant from judgment dated 31 August 2011 by
Judge Gary M. Gavenus in Transylvania County Superior Court.
Heard in the Court of Appeals 23 May 2012.

*Attorney General Roy Cooper, by Assistant Attorney General
Amy Kunstling Irene, for the State.*

Leslie C. Rawls for Defendant.

STEPHENS, Judge.

Following his indictment for one count of failure to register a change of address pursuant to North Carolina's sex offender registration requirements, Defendant Robert Anthony Butler pled not guilty to the charge and was tried before a jury in Transylvania County Superior Court, the Honorable Gary M. Gavenus presiding. The jury found Butler guilty, and the trial

court sentenced him to 33 to 40 months imprisonment. Butler appeals.

On appeal, Butler argues that the trial court erred by denying his motion to dismiss at the close of the State's presentation of evidence¹ based on the alleged insufficiency of the evidence.

When reviewing a defendant's motion to dismiss a charge on the basis of insufficiency of the evidence, [the appellate court] determines whether the State presented substantial evidence in support of each element of the charged offense. Substantial evidence is relevant evidence that a reasonable person might accept as adequate, or would consider necessary to support a particular conclusion. In this determination, all evidence is considered in the light most favorable to the State, and the State receives the benefit of every reasonable inference supported by that evidence. The defendant's evidence, unless favorable to the State, is not to be taken into consideration Thus, if there is substantial evidence – whether direct, circumstantial, or both – to support a finding that the offense charged has been committed and that the defendant committed it, the case is for the jury and the motion to dismiss should be denied.

State v. Abshire, 363 N.C. 322, 327-28, 677 S.E.2d 444, 449 (2009) (internal citations and quotation marks omitted).

¹Butler renewed his motion to dismiss at the close of all evidence, thus, preserving this issue for appellate review.

Butler was charged with violating N.C. Gen. Stat. § 14-208.9, which provides that "[i]f a person required to register changes address, the person shall . . . provide written notice of the new address not later than the third business day after the change." N.C. Gen. Stat. § 14-208.9(a) (2011). Butler contends that the State presented insufficient evidence to show that he had changed his address without providing the required notice. We disagree.

The evidence presented by the State at trial tended to show the following: Butler's indictment charged him with having failed to register after moving from his registered address more than three business days before 5 April 2010, the date of offense on the indictment. Between May 2007 and April 2010, Butler's registered address was his mother's home. In September 2009, Butler told a law enforcement officer that he resided at his wife's home, and that same law enforcement officer observed men's clothing at Butler's wife's home. In December 2009, an official with the county subsidized housing program saw Butler at his wife's home and observed men's clothing and toiletries at the home. At trial, Butler's mother testified that on 5 April 2010, she had kicked Butler out of her home two days prior, on 3 April 2010; this testimony was impeached with a written

statement given by Butler's mother to law enforcement on 5 April 2010 in which she averred that she had kicked Butler out of her home two months prior. Further, Butler testified at trial that he had clothing at his wife's house and that he did not have a key to his mother's home.

In our view, the forgoing evidence, taken in the light most favorable to the State, serves as substantial evidence that Butler was residing at a home other than his mother's on 5 April 2010 and for more than three days before that date. Butler's statement that he resided at his wife's home, combined with the evidence showing that Butler kept clothing at his wife's home and that he did not have a key to his mother's home, tends to show that Butler was residing at his wife's home rather than his mother's home. This conclusion is further supported by Butler's mother's testimony that she had kicked Butler out of her home. While she testified at trial that she had kicked him out only two days before 5 April 2010, that testimony was plainly contradicted by her previous statement to law enforcement that she had kicked him out two months before that date. This evidence, taken in the light most favorable to the State, shows, at the very least, that Butler's mother kicked him out of her

home sometime before 5 April 2010.² This evidence, combined with the evidence discussed *supra*, was sufficient to show that Butler was residing at an address other than his registered address and that Butler had not given timely notice of his change of address. Accordingly, we conclude that the trial court did not err in denying Butler's motion to dismiss.

NO ERROR.

Judges BRYANT and THIGPEN concur.

Report per Rule 30(e).

²We note that Butler's mother's prior statement to law enforcement was admitted as evidence "bearing on [her] truthfulness" and was not admitted as substantive evidence. Upon admission, the trial court issued a contemporaneous limiting instruction to that effect, which instruction also forbade the jury from "consider[ing] such earlier statement as evidence of the truth of what was said in that earlier time." Although the jury was instructed not to consider Butler's mother's earlier statement as substantive evidence that she had kicked Butler out of the house two months prior, that earlier statement could properly be considered by the jury as evidence tending to show that Butler's mother was lying about when she kicked Butler out of her home.