STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1474

State of Minnesota,
Respondent,

vs.

Chanan El Carlson,
Appellant.

Filed September 25, 2023
Affirmed
Reyes, Judge

Polk County District Court
File No. 60-CR-22-89

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Greg Widseth, Polk County Attorney, Scott A. Buhler, Assistant County Attorney, Crookston, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Michael McLaughlin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Ross, Judge; and Bjorkman, Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

Appellant argues that the state failed to present sufficient evidence to prove beyond a reasonable doubt that he knowingly violated Minn. Stat. § 243.166 by failing to register as a predatory offender. We affirm.

FACTS

Appellant Chanan El Carlson was required to register as a predatory offender under Minnesota's predatory-offender-registration statute based on a prior conviction of second-degree criminal sexual conduct. *See* Minn. Stat. § 243.166 (Supp. 2021). He participated in a registered-offender program through the Crookston Police Department which consisted of having offenders' names in a registrant list and having an officer assigned to do "quarterly checks" on them. Detective G. was assigned to appellant.

In May 2021, Detective G. contacted appellant, informing him that he was noncompliant with the registration requirements for failing to return his signed verification letter to the Minnesota Bureau of Criminal Apprehension (BCA). Detective G. also verified appellant's information and confirmed with appellant that there were no new changes with his registration requirements. Appellant had registered apartment #3 in Crookston, Minnesota, as his primary address with the BCA and had been residing there for two years.

On December 28, 2021, officers responded to a reported sexual assault involving appellant and an alleged female victim (Jane Doe) at apartment #5 in Crookston, Minnesota. Appellant fled before the officers arrived. The officers notified Detective G. of the incident and tasked him with finding appellant. Detective G. discovered that the landlord of the apartment building where the alleged assault occurred had employed appellant to do construction-related work in apartment #5 since November 2021. Appellant worked on a few apartments in that building. However, for apartment #5, the work appellant performed was for the sole purpose of moving into it himself.

After obtaining a search warrant, Detective G. and other officers searched and found apartment #5 to be "fully functional and inhabitable." Following the search, Detective G. interviewed appellant. A little over two weeks later, appellant was arrested.

In an amended complaint, respondent State of Minnesota charged appellant with (1) failure to register as a predatory offender, in violation of Minn. Stat. § 243.166, subd. 5(a)(1), (b); (2) possession of a controlled substance in the third degree in violation of Minn. Stat. § 152.023, subds. 2(a)(6), 3(a) (2020); and (3) fourth-degree criminal sexual conduct in violation of Minn. Stat. § 609.345, subds. 1(b), 2 (Supp. 2021). Appellant waived his right to a jury trial, and the case proceeded to a court trial.

At the start of trial, the state informed the district court that it would proceed on appellant's failure to register as a predatory offender only. The district court heard testimony from Detective G. and appellant. It ultimately found appellant guilty and sentenced him to 16 months in prison. This appeal follows.

DECISION

I. Standard of review

Appellant argues that the state failed to prove beyond a reasonable doubt that he knowingly violated the requirement to register as a predatory offender.[1] We are not convinced.

[1] Appellant argues that the state failed to present sufficient evidence to establish that he knowingly violated both the vehicle-registration and secondary-address-registration requirement. Because a violation of "any of the requirements to register" is enough to sustain a conviction, we will only focus on appellant's failure to register apartment #5 as his secondary address. *State v. Munger*, 858 N.W.2d 814, 820 (Minn. App. 2015), *rev. denied* (Minn. Mar. 25, 2015).

In analyzing an argument on the sufficiency of the evidence, this court ordinarily undertakes "a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, was sufficient." *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012) (quotation omitted). Appellate courts "review criminal bench trials the same as jury trials when determining whether the evidence is sufficient to sustain convictions," *State v. Holliday*, 745 N.W.2d 556, 562 (Minn. 2008) (quotation omitted), and assume that "the [district court] believed the state's witnesses and disbelieved any evidence to the contrary," *State v. Caldwell*, 803 N.W.2d 373, 384 (Minn. 2011) (quotation omitted). We will not overturn a verdict if the district court, "acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offense." *Ortega*, 813 N.W.2d at 100.

II. Sufficient evidence supports the finding that appellant knowingly violated the requirement to register as a predatory offender.

Appellant argues that there is insufficient evidence to prove that he knowingly violated the predatory-registration requirement. We disagree.

Under the Minnesota predatory-offender statute, a person required to register must provide the corrections agent or law-enforcement authority with all their secondary addresses in Minnesota, including all addresses used for residential or recreational purposes within five days of obtaining one. *See* Minn. Stat. § 243.166, subd. 4a (2), (b). "Secondary address" is defined as "the mailing address of any place where the person regularly or occasionally stays overnight when not staying at the person's primary

address." Minn. Stat. § 243.166, subd. 1a (j). "By placing secondary addresses within the ambit of the statute, the Legislature understood that an offender, like any other person, will occasionally spend time elsewhere and that doing so does not vitiate the primary living arrangement." *State v. Alarcon*, 932 N.W.2d 641, 647 (Minn. 2019).

A person required to register as a predatory offender who (1) was given notice and (2) knowingly violates any of the requirements to register or intentionally provides false information to a law-enforcement authority is guilty of a crime. *See* Minn. Stat. § 243.166, subd. 5 (a)(1)-(2). Registering as a predatory offender is a continuing obligation and failing to register "is a continuing offense that begins on the day the person fails to register a current address and continues until the person registers." *Longoria v. State*, 749 N.W.2d 104, 105 (Minn. App. 2008) (stating that it is "a violation to reside at an address without registering"), *rev. denied* (Minn. Aug. 5, 2008).

When analyzing an argument that the evidence is insufficient to support a conviction, this court ordinarily undertakes "a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, was sufficient." *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012) (quotation omitted). Appellate courts "review criminal bench trials the same as jury trials when determining whether the evidence is sufficient to sustain [a] conviction[]." *State v. Caldwell*, 803 N.W.2d 373, 384 (Minn. 2011) (quotation omitted). "[D]irect evidence is evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption." *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotation omitted). Witness testimony "is direct evidence when it reflects a witness's personal

observations and allows the jury to find the defendant guilty without having to draw any inferences." *State v. Horst*, 880 N.W.2d 24, 40 (Minn. 2016). In contrast, "circumstantial evidence [is] evidence from which the factfinder can infer whether the facts in dispute existed or did not exist." *Id.* (quotation omitted).

A defendant's state of mind is "generally proven through circumstantial evidence." *State v. Hughes*, 749 N.W.2d 307, 312 (Minn. 2008). "Circumstantial evidence review involves two steps." *State v. Alarcon*, 932 N.W.2d 641, 648 (Minn. 2019). "First, we must identify the circumstances proved. *Id*. (quotations and citation omitted). For this step, appellate courts "defer to the [district court's] acceptance of the proof of these circumstances and rejection of evidence in the record that conflicted with the circumstances proved by the state." *Id*. (quotations and citation omitted). Second, appellate courts "examine independently the reasonableness of all inferences that might be drawn from the circumstances proved." *Id*. "To sustain the conviction, the circumstances proved, when viewed as a whole, must be consistent with a reasonable inference that the accused is guilty and inconsistent with any rational hypothesis except that of guilt." *Id*.

The district found that apartment #5 qualified as appellant's secondary address and that appellant was required to register that secondary address because, for more than three weeks, appellant (1) spent a great deal of time at apartment #5, mainly in the evenings; (2) invited other people inside the apartment; (3) occasionally stayed overnight; and (4) called apartment #5 "his" apartment. Appellant concedes on appeal that he needed to register as a predatory offender and that he received notice of the registration

requirements. He contests only that he did not "knowingly" violate the registration requirement by regularly or occasionally staying there overnight.

The circumstances proved include the following. After the incident with Jane Doe near the end of December 2021, Detective G. search apartment #5 and observed (1) dirty dishes on both sides of the sink; (2) food and other kitchenware on the counters, in the sink, in the fridge, and in the cabinets; (3) a 35-gallon garbage nearly completely full of food, pop cans, and cigarette butts; (4) a dining table with loose change and a scratch-off ticket on the surface; (5) a "tooter," which is a straw commonly used to consume controlled substances; (6) two couches, a television plugged in, and a stereo with speakers plugged in to outlets in the living room; (7) a fully furnished bed, closets containing clothing, clothing on the ground, a television on the bedroom dresser, sex items, and appellant's cellphone in the bedroom; (8) a scale in the bathroom that tested positive for methamphetamine; and (9) BCA paperwork with appellant's name, birthday cards, other miscellaneous mail, and registration paperwork for vehicles under appellant's name. Detective G. testified to apartment #5 being fully functionable and inhabitable.

Detective G. also testified that, when he interviewed appellant and asked him about the controlled substances found, appellant admitted to smoking marijuana in apartment #5. He also admitted that he had people over to play cards and those people consumed methamphetamine in the apartment. Detective G. noted that, towards the end of the interview, appellant called apartment #5 "his place."

Appellant testified at trial and discussed the alleged incident with Jane Doe, stating that "she was inside my apartment." Appellant also testified that, for apartment #3, he

signed a month-to-month lease because he told his landlord that he wanted to rent a "two-bedroom, but that didn't happen until December[,] or it hasn't happened yet." In addition, appellant had a month-to-month cash agreement with the landlord for apartment #5.

Turning to the second step of the circumstantial-evidence test, appellant admits that these circumstances proved support the hypothesis that he stayed in apartment #5 overnight. However, appellant argues that the circumstances proved also support a reasonable, alternative hypothesis that he only spent time there to fix it up in preparation for moving in but that "he did not regularly or occasionally stay in the apartment overnight." But given the overwhelming evidence, including Detective G.'s testimony and appellant's own testimony, this hypothesis is not reasonable.

Appellant also argues that he only stayed overnight at his primary address. The circumstances proved support the district court's implied rejection of appellant's testimony that he only stayed overnight at his primary residence. *See State v. Hough*, 585 N.W.2d 393, 396 (Minn. 1998) ("A factfinder evaluates the credibility of witnesses and need not credit a defendant's exculpatory testimony"). Detective G. testified that, during the investigation, he went to appellant's primary address and observed that a "window was pushed in." He found this to be "significant" because based on all the property, mail, and other items located at apartment #5, it appeared that appellant "no longer had keys[,] access, or permission to go to [apartment #3]." Detective G. even advised appellant that the window was open and that, "[d]ue to the very cold temperatures [in January], those apartment water lines [could] freeze." Detective G. asked appellant if they could search

apartment #3 to make "sure the condition of the apartment was okay" but appellant said "no."

Viewing the evidence in the light most favorable to the district court's findings, we conclude that the state presented sufficient evidence to find appellant guilty of failing to register apartment #5 as his secondary address.

III. The district court did not commit reversible plain error by admitting testimonial out-of-court statements in violation of the confrontation clause.

Appellant argues that Detective G.'s testimony that witnesses told him that appellant was living in apartment #5 were inadmissible testimonial out-of-court statements from witnesses who did not testify at trial. We are not persuaded.

Appellant did not object to this testimony at trial. We will review an unobjected-to error under the plain-error test. *State v. Myhre*, 875 N.W.2d 799, 804 (Minn. 2016). Under this test, an appellant must show (1) error, (2) that is plain, and (3) that affected the appellant's substantial rights. *Id*. (citing *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998).

"Hearsay is defined in our rules of evidence as an out-of-court statement offered as evidence to prove the truth of the matter asserted." *State v. Manthey*, 711 N.W.2d 498, 504 (Minn. 2006). "The number and variety of exceptions to the hearsay exclusion make objections to such testimony particularly important to the creation of a record of the trial court's decision-making process in either admitting or excluding a given statement." *Id*.

Because the state concedes that Detective G.'s testimony contained several inadmissible hearsay statements, constituting error that is plain, we consider whether the

error affected appellant's substantial rights. In assessing whether appellant's substantial rights were affected, we consider "the strength of the evidence against the defendant, the pervasiveness of the improper suggestions, and whether the defendant had an opportunity to (or made efforts to) rebut the improper suggestions." *State v. Davis*, 735 N.W.2d 674, 682 (Minn. 2007) (citations omitted).

Here, as noted above, the strength of the evidence establishing that apartment #5 was appellant's secondary address was overwhelming. Appellant also had a chance to cross-examine Detective G. on this issue.

Finally, we note that the district court, not a jury, found appellant guilty. The Minnesota Supreme Court has stated that "the distinction between a jury trial and a bench trial is important." *State v. Burrell*, 772 N.W.2d 459, 467 (Minn. 2009). "The risk of unfair prejudice to appellant is reduced because there is comparatively less risk that the district court judge, as compared to a jury of laypersons, would use the evidence for an improper purpose or have [its] sense of reason overcome by emotion." *Id*.

We conclude that the error did not affect appellant's substantial rights and so the district court did not commit plain-error by admitting testimonial out-of-court statements.

Affirmed.