STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0389

State of Minnesota,
Respondent,

vs.

Corrie Alexander Peterson,
Appellant.

Filed February 19, 2019
Reversed
Larkin, Judge

Lake County District Court
File No. 38-VB-17-989

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

Russell H. Conrow, Lake County Attorney, Two Harbors, Minnesota (for respondent)

David R. Lundgren, Adam T. Johnson, Lundgren & Johnson, PSC, St. Paul, Minnesota (for appellant)

Considered and decided by Schellhas, Presiding Judge; Larkin, Judge; and Slieter, Judge.

U N P U B L I S H E D O P I N I O N

LARKIN, Judge

Appellant challenges his conviction of possession of a firearm within a state game refuge, arguing that the evidence was insufficient to sustain the conviction. We reverse.

FACTS

Respondent State of Minnesota charged appellant Corrie Alexander Peterson with possession of a firearm within a state game refuge, a misdemeanor offense. The state certified the charge as a petty misdemeanor, and the case was tried to the district court.

The state presented evidence showing that on October 24, 2017, Officer Donald Murray of the Minnesota Department of Natural Resources (DNR) received a complaint that a hunting blind had been constructed within a state game refuge. Officer Murray went to a farmhouse on the property in question, knocked on the door, and no one answered. He affixed his business card to the hunting blind and wrote a message on the back of the card asking the property owners to call him.

On November 12, DNR Officer Matthew Miller received an anonymous complaint of "rifle shots coming from the area of the game refuge." Officer Miller responded to that location and observed a farmhouse at the end of a dead-end road. Officer Miller drove down the dead-end road toward the farmhouse and observed a sign along the road that said "State Game Refuge." Officer Miller observed a hunting blind in a nearby field, but did not see anyone on the property. During his investigation, Officer Miller looked into the hunting blind and saw the business card that Officer Murray had left on October 24.

Peterson exited the farmhouse and approached Officer Miller. Officer Miller testified that he "asked [Peterson] if he'd been hunting today and told him that [the officer had] received a complaint of somebody shooting down there." Peterson stated that he owned the property, and he admitted that he had hunted on the property one week earlier and shot two deer. Peterson also stated that he had done some internet searches through the DNR website regarding state game refuges and hunting restrictions, but he had not found any information indicating his property was within a game refuge.

Officer Murray arrived at the scene. Peterson told Officer Murray that he was not aware that his property was within a game refuge, but he admitted that he had seen the state-game-refuge sign along the dead-end road to the farmhouse. Peterson also admitted that he had possessed a firearm on his property. The officers issued Peterson a citation based on his admissions.

Officer Miller testified that Peterson's property was within a state game refuge that had been "formed by petition" in the 1940s by Game Refuge Order #142. Officer Miller testified that the refuge included "everything from the old Highway 61 to the lakeshore of Lake Superior, and everything between the city limits of Two Harbors to the village limits of Knife River."

Peterson represented himself at trial. He argued that he was unaware that his property was within the boundaries of a state game refuge, due to a lack of proper signage. He cross-examined Officers Murray and Miller about the statutory requirements for the creation of a state game refuge. Officer Miller agreed that "along the boundary of a game refuge, there [must] be signs less than 500 feet [apart]." Officer Murray testified that he

believed that "Game Refuge Order number 142 is enforceable because it is signed properly." However, each officer testified that he did not know whether game-refuge signs were posted every 500 feet along the alleged game-refuge boundary.

The state introduced several photographs that Officer Miller took on or near Peterson's property. The photographs showed two state-game-refuge signs. One was approximately 35 yards east of the hunting blind, and the other was along the road approximately a quarter mile from Peterson's property. As to the latter sign, Officer Miller testified that "[a]s you drive in to the property, on the dead-end road, there's a visible state game refuge sign posted alongside the road." Officer Murray testified that he observed state-game-refuge signs "[o]n the drive in to the property, . . . on the right-hand side, and also out where the hunting blind is."

The district court found Peterson guilty as charged, reasoning that Peterson had admitted his possession of a firearm on his property and that, although the state did not prove that signs had been posted every 500 feet along the boundary of the game refuge, Peterson was on "inquiry notice" that there was a game refuge in that area due to the signs that were in place. The district court entered judgment of conviction, and Peterson appealed, challenging the sufficiency of the evidence to sustain the conviction.

D E C I S I O N

When considering a claim of insufficient evidence, an appellate court carefully analyzes the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the fact-finder to reach the verdict that it did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). An appellate court assumes that

the fact-finder believed the state's witnesses and disbelieved the defense witnesses. *State v. Tscheu*, 758 N.W.2d 849, 858 (Minn. 2008). The court will not disturb a guilty verdict if the fact-finder, 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 proved guilty of the offense charged. *Bernhardt v. State,* 684 N.W.2d 465, 476-77 (Minn. 2004). An appellate court "review[s] criminal bench trials the same as jury trials when determining whether the evidence is sufficient to sustain convictions." *State v. Hough*, 585 N.W.2d 393, 396 (Minn. 1998).

The state charged Peterson under Minn. Stat. § 97A.091, subd. 1 (2016), which provides that "[a] person may not carry within a [state game] refuge . . . a firearm unless the firearm is unloaded and contained in a case, or unloaded and broken down." Peterson argues, and the state agrees, that "an essential element of the offense is that the person carried a firearm 'within a refuge.'" Peterson further argues that "the State failed to prove that [his] property was within a state game refuge because it failed to offer any evidence [that] the game refuge at issue ever became effective."

The alleged game refuge was created by an order of the Minnesota Commissioner of Conservation in 1946, Game Refuge Order #142, which states:

> WHEREAS, a petition having the required number of signatures has been presented to the Director of the Division of Game and Fish, State of Minnesota, requesting that the following described area in Lake County, Minnesota be established as a game refuge:
>
> > All land lying between State Trunk Highway Number 61 and Lake Superior, extending from the City Limits of Two Harbors

> to the Village Limits of Knife River in Township 52 North, Range 11 West, in Lake County[.]
>
> . . . .
>
> NOW, THEREFORE, IT IS HEREBY ORDERED THAT THE ABOVE DESCRIBED AREA BE AND IS HEREBY ESTABLISHED AS A STATE GAME REFUGE, TO BE KNOWN AS THE TWO HARBORS GAME REFUGE, FOR AN INDEFINITE PERIOD OF TIME. *THIS GAME REFUGE WILL BECOME EFFECTIVE UPON DUE PUBLICATION HEREOF AND COMPLETION OF POSTING IN ACCORDANCE WITH LAW*.

(Emphasis added.)

Minn. Stat. § 97A.085, subd. 7 (2016), provides:

> (a) The designation of a state game refuge *is not effective until the boundary has been posted* with notices that measure at least 12 inches.
>
> (b) The notices *must be posted at intervals of not more than 500 feet or less along the boundary*. The notices *must also be posted at all public road entrances to the refuges*, except where the boundary is also an international or state boundary in public waters. . . .
>
> (c) *A certification* by the commissioner or the director of the Wildlife Division, or a certification filed with the commissioner or director by a conservation officer, refuge supervisor, or other authorized officer or employee, stating that the required notices have been posted *is prima facie evidence of the posting*.

(Emphasis added.)[1]

[1] The statute in effect when Game Refuge Order #142 was issued contained substantially similar requirements. *See* Minn. Stat. § 99.25, subd. 7 (1945) (requiring the posting of

The state did not present evidence that the boundary of the game refuge described in Game Refuge Order #142—or any portion thereof—was posted in accordance with the requirements of the order and Minn. Stat. § 97A.085, subd. 7. Officers Miller and Murray testified regarding the locations of two state-game-refuge signs near Peterson's property and their belief that the game refuge was properly posted. But the officers could not say that signs had been posted every 500 feet or less as required by statute. Nor did the state present prima facie evidence of the posting in the form of a certification "stating that the required notices have been posted." Minn. Stat. § 97A.085, subd. 7(c).

The state argues that it

> presented evidence, through conservation officers Miller and Murray's testimony and photographs, that [Peterson's] property, where he was hunting, was posted as a "State Game Refuge." The conservation officers also testified their department has been enforcing game laws within the refuge for years. The evidence taken in the light most favorable to the verdict is sufficient to support the [district] court's finding that the land [Peterson] hunted on is a game refuge.

The evidence on which the state relies does not establish, beyond a reasonable doubt, that the statutory posting necessary to effectuate Game Refuge Order #142 ever occurred. Perhaps the state's evidence would have been sufficient if the state had also offered prima facie evidence of posting in the form of a certification under Minn. Stat. § 97A.085, subd. 7(c), but the state did not do so. Instead, the state relies on "the fact that [Peterson] was cited for hunting on land that *was posted*." (Emphasis added.) But proof

---

notices approximately 500 feet apart for a state-game-refuge designation to become effective).

that the land "was posted" with two signs does not establish compliance with the statutory posting requirements. The issue is whether the land described in Game Refuge Order #142 was ever posted in accordance with statutory requirements, such that the game-refuge designation became effective and the game refuge existed at the time of the alleged offense. The state simply did not prove that such posting occurred.

Indeed, the district court found that the state did not establish compliance with the statutory posting requirements. The district court explained, "[T]he statute requires that notices be posted at intervals of not more than 500 feet or less along the boundary. I do not necessarily find that it was established that . . . signage was posted at those intervals." Nonetheless, the district court found Peterson guilty, reasoning that "the purpose of that portion of [section 97A.085] is to make sure that people have appropriate notice, . . . what we call 'inquiry notice,'" or "[a]t least enough notice to be aware that there's a game refuge in that area and [one needs] to be aware that [one] might be violating laws that would be applicable to game refuges." The district court further reasoned that "[t]estimony did establish beyond a reasonable doubt that there were signs in the immediate area or immediate vicinity of where the discharge of the . . . rifle took place. That's the purpose of the notice, that's the purpose of the signs. It's not to serve as a technical defense."

The district court's reasoning regarding the purpose of the posting requirements does not address the relevant issue: whether the state proved that the land on which Peterson possessed a firearm was *within a refuge*. The statutory language regarding the posting requirements is clear, and neither the district court nor the state has articulated a basis to look beyond the unambiguous posting requirements when determining whether the

state proved the charged offense beyond a reasonable doubt. If a statute is unambiguous, appellate courts must apply its plain meaning without resorting to canons of statutory construction. *State v. Hayes*, 826 N.W.2d 799, 804 (Minn. 2013). We therefore apply the plain language of the statute—and not the alleged purpose of the statute—in determining whether the state proved compliance with the statutory posting requirements and, therefore, the existence of a game refuge.

We hold that the evidence was insufficient to prove, beyond a reasonable doubt, that the land on which Peterson possessed a firearm was within a state game refuge. We therefore reverse his conviction without addressing his alternative argument that the evidence was also insufficient to prove that he intentionally or knowingly possessed a firearm within a state game refuge.

Reversed.