STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0751

State of Minnesota,
Respondent,

vs.

Ellric Alfred Giroux,
Appellant.

Filed March 30, 2020
Affirmed
Smith, Tracy M., Judge

Big Stone County District Court
File No. 06-CR-18-223

Keith Ellison, Attorney General, Karen B. McGillic, Assistant Attorney General, St. Paul, Minnesota; and

Joseph P. Glasrud, Big Stone County Attorney, Ortonville, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer Workman Jesness, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Johnson, Judge; and Smith, Tracy M., Judge.

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

SMITH, TRACY M., Judge

Appellant Ellric Alfred Giroux challenges his conviction under Minn. Stat. § 243.166, subd. 5(a) (2018), for knowingly violating his predatory-offender registration

requirement. Giroux argues that (1) the facts are insufficient to support his conviction and (2) the district court committed plain error by admitting hearsay evidence that the parties agreed to before trial. We affirm.

FACTS

In 1998, the State of North Dakota convicted Giroux of gross sexual imposition. Due to this conviction, Giroux was required to register as a predatory offender according to the rules of the state where he resided. Since his conviction, Giroux has variously lived in both North Dakota and Minnesota. Minnesota originally required Giroux to register until 2008 but eventually extended his registration requirement to 2026 after various other offenses and failures to update his address. In March 2018, the Clay County District Court issued a warrant for his arrest for a shoplifting charge. In August 2018, Giroux moved from North Dakota to Clinton, Minnesota. He did not register as a predatory offender in Minnesota. On October 18, 2018, respondent State of Minnesota charged Giroux under Minn. Stat. § 243.166, subd. 5(a), with the felony offense of knowingly violating his registration requirement with a previous offense of the same statute.

At trial, an agent from the predatory crimes section of the Bureau of Criminal Apprehension (BCA)—who did not work on Giroux's file—testified about Minnesota's predatory registration requirements and the contents of Giroux's BCA packet. The admissibility of this packet was discussed between the attorneys and judge before trial and again in a bench meeting during the agent's testimony. The judge decided to admit the packet as "Exhibit 1," subject to defendant's particularized objections when the state sought to publish pages of the exhibit to the jury. Defense counsel agreed to this approach.

In a bench conference before closing arguments, the state said, "Your Honor, I'd just note for the record, [defense counsel] and I have removed several pages from exhibit one that we are both in agreement should be removed and we ask that everything that's now in exhibit one be received without objection." The judge confirmed with defense counsel and admitted into evidence everything that remained in Exhibit 1.

In the state's closing argument, the state asked the jury to take their time in going through the written evidence. After deliberations, the jury found Giroux guilty of the charged offense.

This appeal follows.

D E C I S I O N

I. The district court did not commit plain error by admitting Exhibit 1 into evidence.

Giroux argues that the district court erred by admitting Exhibit 1 although he did not object to its admission. "Appellate review of an evidentiary issue is forfeited when a defendant fails to object to the admission of evidence." *State v. Vasquez*, 912 N.W.2d 642, 649 (Minn. 2018). But appellate courts review forfeited issues for plain error. Minn. R. Crim. P. 31.02; *Vasquez*, 912 N.W.2d at 650. On plain-error review, appellants bear the burden of showing that "(1) there was an error, (2) the error was plain, and (3) the error affected the defendant's substantial rights." *State v. Myhre*, 875 N.W.2d 799, 804 (Minn. 2016). If those elements are met, appellate courts consider "whether it should address the error to ensure fairness and the integrity of the judicial proceedings." *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998).

Giroux argues that admitting Exhibit 1 was error because it contained hearsay and hearsay is plainly inadmissible. Establishing plain error on hearsay grounds is particularly difficult because "[t]he 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." *State v. Manthey*, 711 N.W.2d 498, 504 (Minn. 2006). The absence of an objection may deprive the state of the opportunity to establish that challenged statements are, in fact, admissible. *Id.* With these considerations in mind, we assess whether Giroux has established that the district court plainly erred by admitting Exhibit 1.

Hearsay is an out-of-court statement offered to prove the truth of the matter asserted. Minn. R. Evid. 801(c). Hearsay is generally inadmissible at trial unless it satisfies a hearsay exception. Minn. R. Evid. 802. Irrespective of the hearsay rule, Minnesota's predatory offender registration statute provides that "[c]ertified copies of predatory offender registration records are admissible as substantive evidence when necessary to prove the commission of a violation of this section." Minn. Stat. § 243.166, subd. 11 (2018). "Certified copies of predatory offender registration records" has not been defined by statute or caselaw.

Giroux argues that "[a]t least thirty-five pages" of Exhibit 1 are not certified copies of predatory offender registration records but instead are "copies of criminal complaints, sentencing and probation revocation documents, file notes from the BCA, an e-mail from the BCA, BCA non-compliance reports, a conviction history prepared by the North Dakota

Attorney General, and an incarceration report." These documents, Giroux argues, should be treated under the hearsay rule like a police report.

His argument is unpersuasive. First, Giroux does not point to the specific documents that he believes are inadmissible hearsay. Second, he does not consider the documents in the context of how the state used them, and, to the extent that the documents were used to show Giroux's knowledge or something other than the truth of the matter they asserted, they were not hearsay. Finally, Giroux does not convincingly show why the documents are more analogous to police reports than to registration records. Especially in light of Giroux's agreement to have the contents of Exhibit 1 admitted into evidence following several discussions with the district court, we cannot conclude that the district court erred, much less plainly erred, in admitting the evidence.

II. The evidence is sufficient to support the "knowing" element of Giroux's failure-to-register conviction.

To convict someone for failing to register under the predatory reporting statute, the state must show that the defendant needed to register as a predatory offender and the defendant knowingly violated a registration requirement. Minn. Stat. § 243.166, subd. 5(a); *State v. Mikulak*, 903 N.W.2d 600, 603-04 (Minn. 2017). Giroux argues that the state provided insufficient evidence to prove that he knowingly failed to register. Defendants knowingly fail to register when they are aware they are violating the reporting statute at the time of the offense. *Mikulak*, 903 N.W.2d at 603-04.

States of mind like knowledge are generally shown through circumstantial evidence. *Cf. State v. Essex*, 838 N.W.2d 805, 809 (Minn. App. 2013), *review denied* (Minn. Jan. 21,

2014). When a disputed element of an offense is proved in part by circumstantial evidence, appellate courts apply a heightened standard of review. *See State v. Horst*, 880 N.W.2d 24, 39 (Minn. 2016). Under the circumstantial-evidence standard, appellate courts follow a two-step analysis. *State v. Moore*, 846 N.W.2d 83, 88 (Minn. 2014). The first step is to identify the circumstances that the state proved. *See State v. Anderson*, 784 N.W.2d 320, 329 (Minn. 2010). In doing so, appellate courts "defer to the jury's acceptance of the proof of these circumstances." *Id.* (quotation omitted). Appellate courts "construe conflicting evidence in the light most favorable to the verdict and assume that the jury believed the [s]tate's witnesses and disbelieved the defense witnesses." *Moore*, 846 N.W.2d at 88 (quotation omitted). The second step is to "determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt." *Id.* (quotations omitted). If they are not, appellate courts must reverse the conviction. *See State v. Al-Naseer*, 788 N.W.2d 469, 481 (Minn. 2010).

Here, the circumstances proved are that Giroux committed a crime in 1998 that required him to remain registered on the Minnesota predatory offender list until 2008. Because of later convictions and failures to follow the reporting rules, Giroux's reporting requirement in Minnesota was extended to 2026. Giroux twice moved to Minnesota from North Dakota. In 2016, the North Dakota attorney general's office sent Giroux a letter relieving him of his North Dakota reporting obligations. The letter stated, "This notification does not release you from your requirements to register with North Dakota Tribal agencies or other states. If applicable, please continue to register with them until further notified." Giroux initialed and signed many documents with the Minnesota BCA between 2004 and

2009 stating that he understood his Minnesota reporting obligation. The Clay County District Court issued a warrant for Giroux's arrest in March 2018 for failing to appear at an arraignment on a shoplifting charge. Giroux knew about this warrant when he moved back to Minnesota in August 2018. He did not report his move to the Minnesota BCA.

Giroux argues that the circumstances proved lend themselves to a rational hypothesis that Giroux believed his Minnesota registration requirement was removed with his North Dakota requirement. But the evidence, when taken as a whole, does not support this alternative theory. First, the North Dakota letter expressly explained that the notification did not relieve Giroux of his registration obligations in other states. And, second, the theory does not account for Giroux's outstanding arrest warrant and the disincentive it gave him to register. When viewed as a whole, the circumstances proved support only one rational theory: Giroux knew he needed to register upon returning to Minnesota but he did not do so because it would have led to his arrest under the pending arrest warrant.

In sum, under the circumstantial-evidence standard of review, the evidence was sufficient to support Giroux's conviction.

Affirmed.