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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0799**

State of Minnesota,
Respondent,

vs.

Raciel Zalva Zalvidar-Proenza,
Appellant.

**Filed May 18, 2020
Reversed
Smith, Tracy M., Judge**

Swift County District Court
File No. 76-CR-17-280

Keith Ellison, Attorney General, Peter Magnuson, Assistant Attorney General, St. Paul, Minnesota; and

Danielle Olson, Swift County Attorney, Benson, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Lydia Maria Villalva Lijó, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

SMITH, TRACY M., Judge

Appellant Raciél Zalva Zalvidar-Proenza¹ challenges his conviction for failure to register as a predatory offender, arguing that respondent State of Minnesota provided insufficient evidence to show that he knowingly committed the offense. Because the state limited the offense period to a time when the circumstances proved support a rational theory inconsistent with guilt, the evidence is insufficient to support the conviction. We reverse.

FACTS

On June 22, 2017, the state charged Zalvidar-Proenza with one count of failure to register as a predatory offender under Minn. Stat. § 243.166, subd. 5(a) (2016). The Bureau of Criminal Apprehension (BCA) required Zalvidar-Proenza to register as a sexual predator when he was released from prison in 1999 for a 1997 second-degree sexual-assault conviction. As part of his registration requirements, Zalvidar-Proenza was required to update his registration with any changes of information. *See* Minn. Stat. § 243.166, subd. 3 (2016).

This case revolves around Zalvidar-Proenza's update of his place of residence on December 27, 2016. On that date, Zalvidar-Proenza went to the Swift County Sheriff's Office to update his address. He spoke with A.B., a Swift County records employee, who

¹ Appellant's name is listed as "Zalvidar-Proenza" in the case heading, although his name has also been spelled "Zaldivar-Proenza" in district court filings and in a previous appeal to this court. *State v. Zaldivar-Proenza*, No. A19-0157, 2020 WL 290442 (Minn. App. Jan. 21, 2020), *review granted* (Minn. Apr. 14, 2020).

had worked with Zalvidar-Proenza on registration forms in the past. Zalvidar-Proenza orally provided his new address information, and A.B. filled in the form. A.B. then gave the completed form to Zalvidar-Proenza for his review. He made no changes and signed the form. The form changed Zalvidar-Proenza's address from "XY7 9th St SE²" in Kerkhoven to "XY3 9th St SE." His new address was actually XY3 10th Street South.

On April 9, 2017, Deputy Jordan Michael Hennes of the Swift County Sheriff's office was performing a routine compliance check regarding Zalvidar-Proenza's registration. Deputy Hennes had interacted with Zalvidar-Proenza in November 2016, when he served Zalvidar-Proenza with an eviction notice from his 9th Street residence, and Deputy Hennes had reminded Zalvidar-Proenza to update his residence information. As part of Deputy Hennes's compliance check, he reviewed Zalvidar-Proenza's BCA records and recognized that the new address listed on the change-of-information form was incorrect because the "SE" moniker only applies to county addresses and there was not a house number of XY3 9th Street "SE." Hennes also knew that Zalvidar-Proenza was living at XY3 10th Street South because of a previous call to that address. Deputy Hennes went to the 10th Street address, spoke with Zalvidar-Proenza, and told him that the address on the form was incorrect. Zalvidar-Proenza told Deputy Hennes that he must have put down the wrong information. Deputy Hennes told him to update his form to fix the error.

On June 22, 2017, when Zalvidar-Proenza had not yet corrected the erroneous information, the state filed charges against him for violating registration requirements. It

² We substitute X and Y for the specific address numbers.

later amended the complaint. Although Zalvidar-Proenza was still in violation when the charges were filed, the amended complaint listed the offense date as on or about April 9, 2017—the date that Deputy Hennes noticed the violation. On July 28, 2017, Zalvidar-Proenza corrected his registration documents. On October 24, 2018, the complaint was amended again to list the offense date as on or about December 27, 2016 to April 9, 2017.

After a two-day trial, the jury was asked in a special-verdict form whether Zalvidar-Proenza was guilty of failure to register “on or about December 27, 2016 to April 9, 2017.” The jury returned a verdict of guilty. The district court sentenced him to 30 months of imprisonment, to be served concurrently with an executed sentence for another conviction, which this court has since affirmed on appeal. *Zaldivar-Proenza*, 2020 WL 290442. This appeal follows.

D E C I S I O N

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 that 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). Zalvidar-Proenza argues that the state provided insufficient evidence that he knowingly failed to register. Defendants knowingly fail to register when they are aware they are violating the reporting statute while they are committing the act. *Mikulak*, 903 N.W.2d at 603-04.

Intent is generally shown through circumstantial evidence. *State v. Essex*, 838 N.W.2d 805, 809 (Minn. App. 2013), *review denied* (Minn. Jan. 21, 2014). But the state argues that there is sufficient direct evidence to show Zalvidar-Proenza’s knowledge that

he was violating the statute, citing the facts that: (1) Zalvidar-Proenza signed forms recognizing his requirement to report, (2) Deputy Hennes testified that he told Zalvidar-Proenza to report after he was evicted, (3) A.B. testified that Zalvidar-Proenza orally told her the wrong address, and (4) Zalvidar-Proenza signed the address change form. But none of this evidence shows directly what was in Zalvidar-Proenza's mind. We therefore apply the circumstantial-evidence standard.

When a disputed element of an offense is proved in part by circumstantial evidence, appellate courts apply a heightened standard of review. *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010). 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 State’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 Al-Naseer*, 788 N.W.2d at 481. When considering circumstances proved, we only look at circumstances relating to the offense, and the offense is defined by the dates listed on the complaint. *Cf. Taylor v. State*, 670 N.W.2d 584, 588 (Minn. 2003)

(stating that it was improper for the district court to consider acts committed on dates different from listed on the complaint to support upward departure).

Here, the circumstances proved are that Zalvidar-Proenza had an obligation to report his address change as a sexual predatory offender. In November 2016, Deputy Hennes reminded Zalvidar-Proenza to update his address after he served an eviction notice. On December 27, 2016, Zalvidar-Proenza, who was previously living at what his form listed as “XY7 9th St. SE,” told A.B. at the Swift County Sheriff’s Office that he needed to change his address to “XY3 9th St. SE.” A.B. had worked with Zalvidar-Proenza more than a dozen times and the two had effectively communicated in English, although it was not Zalvidar-Proenza’s first language. A.B. entered the information into the BCA’s software, printed out a page showing the wrongly stated address, and Zalvidar-Proenza signed it. Four months later, Deputy Hennes conducted a random predatory-registration check and realized the error on the form because Zalvidar-Proenza actually lived at XY3 10th Street South.

The next step is to determine whether these circumstances are consistent with guilt and inconsistent with any rational hypothesis other than guilt. Zalvidar-Proenza focuses only on the latter inquiry. He argues that there are three rational theories inconsistent with guilt: the incorrect information was a result of a (1) clerical error, (2) language miscommunication, or (3) his own unknowing error.

Zalvidar-Proenza’s first two theories are inconsistent with the circumstances proved. The third theory, however, is consistent with the circumstances proved. Zalvidar-Proenza had registered previously with the BCA. Upon his change of address, he went to

the sheriff's office to update his information. The updated information contained the same mistake of a "SE" address as his previous address. The house number of the new address was correct, but the street was off by one street. The similarities between the wrong new address that Zalvidar-Proenza provided on December 27 and the former address rationally lead to a conclusion this was an honest mistake. Further, the state has not shown any sort of motive or benefit associated with the wrong address that could prove it was an intentional act in these circumstances. The evidence showed that law enforcement was aware of Zalvidar-Proenza's correct address, even if the form was wrong. Law enforcement informed Zalvidar-Proenza of the incorrect address on April 9, 2017. The circumstances proved support the reasonable hypothesis that, as of April 9, the incorrect address was a mistake and not a knowing violation. In fact, the state did not charge Zalvidar-Proenza in April—it only charged him in June when he had not yet corrected his address information. Based on the date range of the offense, from December 26, 2016, to April 9, 2017, and consistent with the heightened scrutiny of the circumstantial-evidence test, the state did not provide sufficient evidence to support Zalvidar-Proenza's conviction.

Reversed.