STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1208

State of Minnesota,
Respondent,

vs.

J. Adam Russell Spotts,
Appellant.

Filed August 1, 2022
Affirmed
Smith, John, Judge[*]

Waseca County District Court
File No. 81-CR-19-832

Keith Ellison, Attorney General, Lydia Villalva Lijó, Assistant Attorney General, St. Paul, Minnesota; and

Jennifer M. Novak, Waseca County Attorney, Rachel V. Cornelius Androli, Assistant County Attorney, Waseca, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Steven P. Russett, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Ross, Judge; and Smith, John, Judge.

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

NONPRECEDENTIAL OPINION

SMITH, JOHN, Judge

We affirm the appellant's conviction of failing to register as a predatory offender because (1) the statutory requirement that predatory offenders register a "secondary address" within five days of the date the clause becomes applicable is not unconstitutionally vague, (2) the district court did not commit error in its jury instructions, and (3) there were no prosecutorial misconduct or district court errors that deprived appellant of a fair trial.

FACTS

Appellant J. Adam Russell Spotts is required to register as a predatory offender pursuant to the Minnesota-predatory-offender-registration statute. *See* Minn. Stat. § 243.166 (2020). On October 9, 2019, a detective with the Waseca Police Department was interviewing H.S. on an unrelated matter when H.S. "disclosed that she was living with her mother [L.S.], [and] her mother's boyfriend," Spotts. This information raised "red flags" for the detective because he "knew [Spotts] to be a predatory offender in the city of Waseca" who was registered as living at a different Waseca address with his mother.

The detective checked the Minnesota Bureau of Criminal Apprehension's registry and confirmed that Spotts was registered as living only at his mother's address. The detective then spoke with H.S.'s mother, L.S., in a recorded interview.

L.S. stated that Spotts was her boyfriend and they lived together at her home. L.S. indicated that someone told her that Spotts was a "sex offender," but she did not "know anything about that." L.S. stated twice that Spotts had been staying at her residence for

"two weeks now." The detective clarified, "every night?" and L.S. responded, "Yeah." L.S. also said that Spotts had clothes and "some tools" at her house, and she provided his current telephone number to the detective. Later that day, the detective arrested Spotts at L.S.'s home.

Respondent State of Minnesota charged Spotts with failing to register his (1) primary address, (2) secondary address, and (3) telephone number, all in violation of Minn. Stat. § 243.166, subd. 5(a)(1).

Pretrial Motions

Spotts moved to dismiss counts two and three as unconstitutionally vague, which the district court denied. For trial, the parties stipulated that Spotts was required to register as a predatory offender and was subject to reporting requirements pursuant to Minn. Stat. § 243.166. The district court granted Spotts's motion to prohibit witnesses from referring to him as a "sex offender" and ordered that Spotts "may be referred to as a 'predatory offender' under Minnesota laws."

The state gave notice that it intended to present L.S.'s recorded statement pursuant to Minn. R. Evid. 807, the residual-hearsay-exception rule, but the district court granted Spotts's motion to exclude the recording "with the exception [that] the [s]tate may introduce [the recording] for rebuttal purposes if proper redactions are made." Namely, redacting references to Spotts as a "sex offender."

Jury Trial

At trial, H.S. testified that Spotts had "[h]is clothes, tools, and his dog" at her house and he was staying there "[e]very night." Other people living at the house also testified,

including N.I. and her husband O.I., who lived at the house with their two young daughters. N.I. testified that her family moved in at the "[b]eginning of October," Spotts stayed overnight at the house "[a] few times during the week," and he was present during the day at times. N.I. said that Spotts "shared a room" with L.S. and had "his tools and some clothes" at the house. O.I. similarly testified that Spotts had "his tools and some clothes" at the house and that he would "spend the night . . . in [L.S.]'s room." O.I. said that Spotts would be there "two days" at a time then "leave for two days and come back," beginning when O.I. first moved into the house; however, Spotts "never got mail" and or any "bills there."

Contrary to her previous statements to law enforcement, L.S. testified that Spotts was not living with her, he did not stay at her house, he did not sleep there, and he did not spend the night. L.S. admitted to giving a statement to law enforcement, but testified that she never said that "Spotts was staying every night at [her] residence." She also testified that the reason his clothes were there was because she "was doing laundry for him," and his tools were there to help "fix the house."

After L.S. testified, the state moved to admit L.S.'s recorded statement to law enforcement as substantive evidence pursuant to Minn. R. Evid. 807, the residual-hearsay-exception rule. The district court ruled that the recording was admissible over Spotts's objection.[1]

[1] Spotts does not challenge this ruling on appeal.

After trial, Spotts moved for judgment of acquittal on count three (failure to register a telephone number) which the district court granted, and the jury found Spotts not guilty of count one; however, they found Spotts guilty of count two, for failing to register a secondary address. Spotts was sentenced to 30 months' imprisonment, executed, with 45 days of jail credit.

DECISION

I. The predatory-offender-registration statute is not unconstitutionally vague.

Spotts argues that the statute's secondary address registration requirement "is unconstitutionally vague as applied in this case." A challenge to the constitutionality of a statute is reviewed de novo. *State v. Fitch*, 884 N.W.2d 367, 373 (Minn. 2016). We presume Minnesota statutes to be constitutional and the "power to declare a statute unconstitutional should be exercised with extreme caution and only when absolutely necessary." *In re Haggerty*, 448 N.W.2d 363, 364 (Minn. 1989). "The party challenging a statute must demonstrate beyond a reasonable doubt that the statute violates some provision of the Minnesota Constitution." *State v. Wolf*, 605 N.W.2d 381, 386 (Minn. 2000); *see also Fitch*, 884 N.W.2d at 373 ("The party challenging the constitutional validity of a statute bears the very heavy burden of demonstrating beyond a reasonable doubt that the statute is unconstitutional." (quotation omitted)).

The void-for-vagueness doctrine requires that a statute be defined "with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." *State v. Bussmann*, 741 N.W.2d 79, 83 (Minn. 2007) (quotation omitted); *see also BFI Waste Sys.*

of N. Am., LLC v. Bishop, 927 N.W.2d 314, 325 (Minn. App. 2019) ("The general purpose of the void-for-vagueness doctrine is to assure that ordinary people are put on notice of what conduct is prohibited and to discourage arbitrary and discriminatory law enforcement."), *rev. denied* (Minn. June 26, 2019). A person cannot successfully challenge a statute for vagueness when a statute clearly applies to a person's conduct. *State v. Grube*, 531 N.W.2d 484, 490 (Minn. 1995); *see also State v. Reha*, 483 N.W.2d 688, 691 (Minn. 1992) (concluding that the appellant lacked standing in an as-applied void-for-vagueness challenge because she engaged in conduct clearly proscribed by the law). It is an insufficient reason to hold the language of a statute as too ambiguous to define a criminal offense merely because there may be cases in which it is difficult to determine which side of the line a particular fact situation falls on. *State v. Davidson*, 481 N.W.2d 51, 56 (Minn. 1992).

The predatory-offender-registration statute requires a predatory offender to provide the appropriate law enforcement authority with all their "secondary addresses in Minnesota, including all addresses used for residential or recreational purposes . . . within five days of the date the clause becomes applicable." Minn. Stat. § 243.166, subd. 4a(a)(2), (b). The statute defines a "secondary address" as:

> the mailing address of any place where the person regularly or occasionally stays overnight when not staying at the person's primary address. If the mailing address is different from the actual location of the place, secondary address also includes the physical location of the place described with as much specificity as possible.

Id., subd. 1a(j).

Spotts raises three arguments. First, he argues "the statute does not define or provide any guidance for determining when a person 'stays overnight' at a particular place." Second, he argues the statute does not adequately define "regularly or occasionally," and, therefore, he "can only guess when a place becomes a secondary address." Third, he argues the statute does not adequately describe when the five-day-reporting-period clause become applicable.

Spotts's arguments all fail for the same reason: Spotts lacks standing in this as-applied void-for-vagueness challenge because the record shows that Spotts engaged in conduct clearly prohibited by the predatory-registration statute. *Grube*, 531 N.W.2d at 490; *see also Reha*, 483 N.W.2d at 691.

Turning to Spotts's first argument that "the statute does not define or provide any guidance for determining when a person 'stays overnight' at a particular place." The statute does not define "overnight." "In the absence of a statutory definition, we look to dictionary definitions to determine the plain meaning of words" and "apply them in the context of the statute." *State v. Haywood*, 886 N.W.2d 485, 490, 488 (Minn. 2016); *see also Broadway Child Care Ctr., Inc. v. Minn. Dep't of Hum. Servs.*, 955 N.W.2d 626, 631 (Minn. App. 2021). The dictionary defines "overnight" as "[l]asting for, extending over, or remaining during a night." *The American Heritage Dictionary of the English Language* 1257 (5th ed. 2018); *see also Merriam-Webster's Collegiate Dictionary* 885 (11th ed. 2014) (defining "overnight" as "of, lasting, or staying the night" and "during the night"). Therefore, "overnight" means remaining during the night.

The record plainly shows that Spotts engaged in conduct clearly prohibited by the predatory-offender-registration statute by staying overnight at L.S.'s home for several nights. In the police reports multiple people stated that Spotts was living with L.S., and L.S. herself stated that Spotts had been staying with her *every night* for two weeks.

Spotts next argues that the statute does not adequately define what it means to "regularly or occasionally stay[] overnight," and, therefore, we should define "regularly" or "occasionally" to "require a minimum of two 'overnight' stays." The dictionary defines "occasionally" as "[n]ow and then" and "from time to time." *The American Heritage Dictionary of the English Language* 1218 (5th ed. 2018); *see also Merriam-Webster's Collegiate Dictionary* 858 (11th ed. 2014) (defining "occasionally" as "now and then"). Therefore, "occasionally" means now and then, and the record shows that Spotts clearly engaged in conduct prohibited by the statute when he stayed overnight at L.S.'s home "every night" for two weeks which is certainly "now and then." And even if we applied Spotts's proposed definition to "require a minimum of two 'overnight' stays," the record still shows that Spotts engaged in conduct prohibited by the statute.

Spotts finally argues that the statute does not adequately describe when the five-day reporting period clause becomes applicable. The statute requires Spotts to provide the appropriate law enforcement authority with his "secondary addresses in Minnesota, including all addresses used for residential or recreational purposes . . . within five days of the date the clause becomes applicable." Minn. Stat. § 243.166, subd. 4a(a)(2), (b). In this case, the clause became applicable when Spotts stayed at L.S.'s home overnight. Even assuming that Spotts was required to report only after his second "overnight," as he

suggests, the record shows that Spotts began staying at L.S.'s house on September 30 or October 1 and stayed every night for two weeks, and thus, he exceeded the five-day registration requirement by the time he was arrested on October 9.[2]

Thus, the statute clearly applies to Spotts's conduct. *Grube*, 531 N.W.2d at 490. Therefore, Spotts lacks standing to challenge the constitutionality of Minn. Stat. § 243.166, subd. 4a(a)(2), (b), for vagueness. *Reha*, 483 N.W.2d at 691.

II. The district court did not commit reversible plain error by instructing the jury that an offender must register a secondary address "within five days of staying at the secondary address."

Spotts argues that the district court committed reversible plain error by instructing the jury that he had to register a secondary address "within five days of staying at the secondary address." Although not objected to, Spotts argues that the instruction, as given, misstates the law, permitted Spotts to be wrongfully convicted, and thus constitutes prejudicial plain error.

We review an unobjected-to error under the "plain error test." *State v. Myhre*, 875 N.W.2d 799, 804 (Minn. 2016). "In order to meet the plain error standard, a defendant must show that (1) there was an error, (2) the error was plain, and (3) the error affected the defendant's substantial rights." *Id.* (citing *State v. Griller*, 583 N.W.2d 736, 740 (Minn.

[2] Spotts also argues that the district court erred by alternatively concluding his "conduct could be considered an activity that people do for pleasure when they are not working, and, in turn, [he] was required to notify the agent or authority of the . . . address he was travelling to for residential or recreational purposes." Because the record shows that Spotts regularly stayed overnight at L.S.'s residence such that he was required to register this secondary address, we do not address the argument.

1998)). If these three prongs are met, we then consider whether to address the error to ensure the fairness and integrity of the judicial proceedings. *Id.* at 804-05.

District courts have "considerable latitude in selecting jury instructions, including the specific language of those instructions." *State v. Peltier*, 874 N.W.2d 792, 797 (Minn. 2016). Nonetheless, "jury instructions must fairly and adequately explain the law of the case." *Id.* "A district court errs when its instructions confuse, mislead, or materially misstate the law." *State v. Vang*, 774 N.W.2d 566, 581 (Minn. 2009). Appellate courts "review the jury instructions as a whole to determine whether the instructions accurately state the law in a manner that can be understood by the jury." *State v. Kelley*, 855 N.W.2d 269, 274 (Minn. 2014).

The elements of Spotts's failure-to-register-a-secondary-address offense are: (1) Spotts is a person required to register as a predatory offender; (2) he knowingly violated the requirement to register his secondary address; (3) the period during which Spotts was required to register had not elapsed; and (4) his acts took place on or about October 9, 2019. *See State v. Munger*, 858 N.W.2d 814, 820 (Minn. App. 2015), *rev. denied* (Minn. Mar. 25, 2015). Only the second element is at issue.

Spotts asserts that the district court erred when it instructed the jury that "[t]he requirements to register include: defendant shall provide to the corrections agent or law enforcement authority all of defendant's secondary addresses in Minnesota, including all addresses used for residential or recreational purposes *within five days of staying at the secondary address*." (Emphasis added.) Spotts argues that the statute "by its plain language requires an offender to register a secondary address, at the earliest, five days *after*

a second overnight stay." This is because, according to Spotts, the clause "becomes applicable" only when the offender has "regularly or occasionally" stayed at the secondary address "overnight." And because dictionary definitions of "regularly" and "occasionally" necessarily mean more than one, the clause, according to Spotts, only becomes applicable after two overnight stays. For reasons previously discussed, Spotts's argument is unpersuasive.

First, the statute states that Spotts must register "all addresses used for residential or recreational purposes . . . within five days of the date the clause becomes applicable." Minn. Stat. § 243.166, subd. 4a(a)(2), (b). And a "secondary address" is "any place where the person regularly or occasionally stays overnight when not staying at the person's primary address." *Id.*, subd. 1a(j). There is no requirement of "two overnight stays." Therefore, the district court's jury instruction that Spotts had to register a secondary address "within five days of staying at the secondary address" was not plain error. Rather, the district court's instruction fairly and adequately explained the statute, did not confuse, mislead, or materially misstate the law, and could be understood by the jury. *Kelley*, 855 N.W.2d at 274.

Even if we presume that the district court erred and Spotts's interpretation controls, the error did not affect his substantial rights because the evidence showed that Spotts failed to register the secondary address within five days of his second overnight stay. "An erroneous jury instruction affects a defendant's substantial rights if the error was prejudicial and affected the outcome of the case." *State v. Huber*, 877 N.W.2d 519, 525 (Minn. 2016). Stated another way, "[a]n error in instructing the jury is prejudicial if there

is a reasonable likelihood that giving the instruction in question had a significant effect on the jury's verdict." *Id.* (quoting *State v. Watkins*, 840 N.W.2d 21, 28 (Minn. 2013)). The defendant has the heavy burden of proving prejudice. *Id.*

The record shows that Spotts had been staying at the residence "[b]eginning [in] October." Adding two overnight stays to the five-day-reporting period beginning on October 1, Spotts still failed to register the secondary address on October 8 and 9. Therefore, the district court's instruction did not affect the outcome of the case, and Spotts failed to carry his burden of proving prejudice. *Id.*

III. Spotts was not denied a fair trial.

Spotts argues that the cumulative effect of alleged prosecutorial misconduct and district court errors denied him a fair trial.

Claims of unobjected-to prosecutorial misconduct are reviewed pursuant to a modified-plain-error standard which first requires the defendant to demonstrate "that the prosecutor's conduct constitutes an error that is plain," then the burden shifts to the state "to demonstrate lack of prejudice." *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006); *see also State v. Matthews*, 779 N.W.2d 543, 551 (Minn. 2010). "An error is plain if it is clear or obvious; usually this means an error that violates or contradicts case law, a rule, or an applicable standard of conduct." *State v. Bustos*, 861 N.W.2d 655, 660-61 (Minn. 2015) (quotation omitted).

Before trial, the parties stipulated that Spotts was required to register as a predatory offender and was subject to reporting requirements pursuant to Minn. Stat. § 243.166. As a result, the district court ordered that Spotts "may be referred to as a 'predatory offender'

under Minnesota laws," and Spotts did not object. At trial, the prosecutor elicited testimony from the detective, with no objection from Spotts's attorney, indicating that as part of the detective's job duties, he "keep[s] track of predatory offenders."

Spotts urges us to follow *State v. Wemyss*, in which we held that the failure to remove references to "predatory offender" both orally and in documentary exhibits constituted error. 696 N.W.2d 802, 808 (Minn. App. 2005) (citing *State v. Berkelman*, 355 N.W.2d 394, 396-97 (Minn. 1984)), *reversed and remanded*, (Minn. Aug. 16, 2005) (mem.) (remanding for application of the correct harmless-error standard). We decline to do so. Although *Wemyss* allows a defendant to ask to exclude terms such as "predator" and "predatory offender," it does not mandate that a court acquiesce to that request. Additionally, *Wemyss* is distinguishable from our case. Unlike the defendant in *Wemyss*, Spotts did not request to avoid the term, nor did he object to its use; rather, he merely stipulated to the fact that he is required to register as a predatory offender. Thus, because the detective's testimony did not "contradict case law, a rule, or an applicable standard of conduct," it was not plain error to elicit this testimony. *Bustos*, 861 N.W.2d at 660-61 (quotation omitted).

The detective also testified that the purpose of the predatory-offender-registration statute is to "keep track of [predatory offenders]" and "just keep the community safe and the kids safe." Spotts objected. The district court permitted the testimony "as a general statement of some of the purposes for the registration requirement," and did "not find that it was inflammatory or specifically directed toward Mr. Spotts and it should not be prejudicial to him." We agree, and on this record, it was not error to permit this testimony.

Objected-to prosecutorial misconduct is reviewed for harmless error. *State v. Wren*, 738 N.W.2d 378, 389 (Minn. 2007). This court will reverse a district court's determination regarding alleged prosecutorial misconduct "only when the misconduct, considered in the context of the trial as a whole, was so serious and prejudicial that the defendant's constitutional right to a fair trial was impaired." *State v. Johnson*, 616 N.W.2d 720, 727-28 (Minn. 2000).

First, we note that this testimony, as the district court correctly concluded, was not directed at Spotts—it was directed toward the statute because it was in response to the question: "So in broad terms, what is the purpose of requiring predatory offenders to register?" The detective's full response was: "It's the ability to monitor them, to monitor a predatory offender's whereabouts so that we can keep track of them, inform victims, and just keep the community safe and the kids safe." Thus, this was not evidence of Spotts's previous conviction, as he argues. Second, although the predatory-offender-registration statute does not offer a policy or purpose statement, it does provide some policy guidance on its public safety objectives. For instance, with respect to the registration procedure for persons lacking a primary address, under certain circumstances law enforcement "may authorize the person to follow an alternative reporting procedure," subject to several requirements, including an explanation of "how the alternative reporting procedure *furthers the public safety objectives* of this section." Minn. Stat. § 243.166, subd. 3a(f) (emphasis added). Another provision similarly requires an explanation of how a determination that the person should report to another agency "*would further public safety*." *Id.*, subd. 3a(f)(3) (emphasis added). Therefore, the district court was correct in

concluding that the testimony about "keep[ing] track of [predatory offenders]" and "keep[ing] the community safe and the kids safe" was "a general statement of some of the purposes for the registration requirement," including furthering public safety. *See* Minn. R. Evid. 402 ("All relevant evidence is admissible, except as otherwise provided by the United States Constitution, the State Constitution, statute, by these rules, or by other rules applicable in the courts of this state."). Thus, it was not error to elicit testimony from the detective.

Finally, we are left with the unredacted audio recording offered by the prosecutor in which L.S. stated that someone told her that Spotts was a "sex offender." Before trial, the district court granted Spotts's motion and ordered it that witnesses were prohibited from referring to Spotts as a "sex offender." Additionally, the district court ordered that L.S.'s statement in the audio recording in which she referred to Spotts as a sex offender could be introduced by the state "for rebuttal purposes if proper redactions are made." However, at trial, the district court admitted the recording for rebuttal, over Spotts's objection, without the proper redactions. This was an error.

But not every error warrants a reversal. An error is harmless "[i]f the verdict actually rendered was surely unattributable to the error." *State v. Jones*, 556 N.W.2d 903, 910 (Minn. 1996). The standard for determining whether an error was harmless, however, varies based upon the severity of the misconduct:

> [I]n cases involving unusually serious prosecutorial misconduct this court has required certainty beyond a reasonable doubt that the misconduct was harmless before affirming. . . . On the other hand, in cases involving less serious prosecutorial misconduct this court has applied the test

> of whether the misconduct likely played a substantial part in influencing the jury to convict.

State v. Caron, 218 N.W.2d 197, 200 (Minn. 1974).[3] We need not determine which standard applies because, under either standard for prosecutorial misconduct, any error was harmless beyond a reasonable doubt given that it was a fleeting single reference; the audio recording was not provided to the jury during deliberation; and, as already described, there was substantial additional evidence of Spotts's guilt which showed that he had been staying at the residence overnight for approximately two weeks. *See State v. Fraga*, 898 N.W.2d 263, 278 (Minn. 2017) ("When considering a claim of cumulative error, [appellate courts] look to the egregiousness of the errors and the strength of the State's case."). Therefore, the error was harmless. And because none of Spotts's contentions alone demonstrate reversible error, the cumulative effect of the alleged errors likewise does not rise to the level of reversible error.

Affirmed.

[3] The supreme court has questioned whether this two-tiered approach is still good law, while declining to decide the question. *See State v. McDaniel*, 777 N.W.2d 739, 749 (Minn. 2010); *see also State v. Carridine*, 812 N.W.2d 130, 146 (Minn. 2012).