STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1245

State of Minnesota,
Respondent,

vs.

Joseph Allen Borowicz,
Appellant.

Filed May 23, 2011
Affirmed
Connolly, Judge

Washington County District Court
File No. 82-CR-09-2926

Lori A. Swanson, Attorney General, St. Paul, Minnesota; and

Peter Orput, Washington County Attorney, Sarah E. Kerrigan, Assistant County Attorney, Stillwater, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Michael E Cromett, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Ross, Judge; and Huspeni, Judge.*

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

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

CONNOLLY, Judge

Appellant challenges the sufficiency of the evidence supporting his convictions of (1) intentionally providing false information on a registration form and (2) knowingly violating the predatory offender registration statute by failing to provide a new address three days before leaving a correctional facility. Because the record reveals that the jury had ample evidence to convict appellant, we affirm.

FACTS

Because he was convicted of fourth-degree criminal sexual conduct in 1992, appellant Joseph Borowicz, is required to register as a predatory offender with the Minnesota Bureau of Criminal Apprehension (BCA) until March 31, 2019. On December 8, 2006, he registered his parents' address in Cottage Grove as his primary address with the BCA. On December 27, 2006, he signed a BCA Change of Information form indicating that he had moved from his parents' home to St. Paul.

On March 14, 2007, appellant signed a BCA Change of Information form indicating that he moved from St. Paul to Maplewood. On January 2, 2008, he signed a BCA Address Verification form indicating that he was still residing in Maplewood. On December 20, 2008, he signed another BCA Address Verification form indicating that he was homeless and a Duty to Register form, which explained that those without primary addresses are required to register with law enforcement weekly.

On March 19, 2009, appellant entered the Washington County jail. He was due to be released on April 1, 2009. He met with a sergeant to complete one BCA form stating,

erroneously, that appellant had been living at his parents' home and changing his address to the jail and a second form that was intended to change his address from the jail to the place he would be living after his release. Appellant told the sergeant he did not know where he would live when he was released. The sergeant had appellant sign the second form, but left it blank. The sergeant then asked a corrections officer to find out where appellant would be living after release. After talking to appellant a few days later, the corrections officer informed the sergeant on March 30, 2009, that appellant had given his parents' address as his residence after release. The sergeant wrote appellant's parents' address on the form appellant had signed a week earlier, dated the form April 1, 2009, and sent it to the BCA.

Appellant was released on April 1, 2009. Two weeks later, at the BCA's request, a Cottage Grove police officer visited appellant's parents' address. Appellant's father explained that appellant had not lived at that address for several years and said he did not know where appellant was living. On April 20, 2009, the state charged appellant with one count of intentionally providing false information on a registration form and one count of knowingly violating the registration statute by failing to provide his new address three days before leaving a correctional facility. On April 30, 2009, appellant signed a BCA Change of Information form indicating that he moved from his parents' address to an address in St. Paul.

After a jury trial, appellant was convicted on both counts and sentenced to a year and a day in prison. On appeal, he argues that neither conviction was supported by sufficient evidence.

D E C I S I O N

When reviewing a claim of insufficient evidence, this court conducts a painstaking review of the record to determine if the evidence, viewed in the light most favorable to the verdict, was sufficient for the jurors to reach that verdict. *State v. Carufel*, 783 N.W.2d 539, 546 (Minn. 2010) (quotation omitted). This court must assume the jury believed the state's witnesses and disbelieved any contrary evidence. *State v. Hurd*, 763 N.W.2d 17, 26 (Minn. 2009) (quotation omitted). This court will not disturb a jury's verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

A. The evidence was sufficient for the jury to conclude that appellant intentionally provided false information in violation of Minn. Stat. § 243.166, subd. 5(a) (2008).

"A person required to register under this section who knowingly violates any of its provisions or intentionally provides false information to a corrections agent, law enforcement authority, or the [BCA] is guilty of a felony." Minn. Stat. § 243.166, subd. 5(a) (2008). Appellant argues that he did not intentionally provide false information because "he was not told that he could continue to register without a primary address."

A jury must infer intent from the totality of the circumstances. *State v. Fardan*, 773 N.W.2d 303, 321 (Minn. 2009). Because the jury is in the best position to evaluate circumstantial evidence, its verdict must be given due deference. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). Circumstantial evidence warrants stricter scrutiny, but it

is entitled to the same weight as direct evidence. *State v. Bauer*, 598 N.W.2d 352, 370 (Minn. 1999).

Appellant did not testify at trial. The corrections officer testified that, two days before appellant's release, she asked appellant where he would stay.

> [H]e said that he really didn't have anywhere to stay. . . . I said we need an address where you're going to be staying when you get out. And his response was well, I guess I'll give you my parents' address. . . . I then asked him if that [was] where he was going to be staying when he got out. And his reply was: I guess that's where I'll have to go.

When asked if appellant used the term "homeless," the officer answered, "No, he did not[,]"; when asked if she was certain, she answered, "Yes, I am."

The sergeant testified that, because he is often not on duty when inmates are released, he asks inmates who are required to register with the BCA to sign its forms prior to their release. The sergeant also testified, "[Appellant] told me . . . he was not sure where he was going to be [after his release]. I explained to him . . . that . . . before he walked out the door on April 1st I needed to know where he was going to reside and what his phone number [would be] when he left." Appellant met with the sergeant to complete two BCA forms. On the first form, appellant asserted, erroneously, that he had been living at his parents' home and was changing his address to the jail. The second form was left blank because appellant told the sergeant he did not yet know where he would be living when he was released. The sergeant subsequently asked another corrections officer to get appellant's address upon release in order to complete the second form. The officer spoke with appellant; appellant again gave his parents' address. The

officer reported this information to the sergeant, who then completed the second form that appellant signed a week earlier, dated it, and sent it to the BCA.

The jury heard from a BCA employee that, since 2006, appellant had filled out one form giving his parents' address as his primary address, three Change of Information forms, and two Address Verification forms; appellant had also checked that he understood each paragraph and signed a "Duty to Register" form stating that those who indicate they are homeless or without a primary address are required to check in with law enforcement weekly.

Finally, the jury heard from the Cottage Grove police officer who visited appellant's parents' home. She testified that appellant's father told her appellant had not lived there for several years and that, when she told appellant she had a form signed by him indicating he was living at that address, "[h]e claimed he had not signed any such papers."

Appellant argues that he did not have an address where he planned to be after release and that he was not told he could be released even if he did not supply an address. But nothing in the record indicates that appellant asked either the sergeant or the corrections officer what he should do if he had no address to go to, and the record indicates that appellant told the corrections officer, "I guess [my parents' house is] where I'll have to go."

The evidence was sufficient for the jury to reach its verdict that appellant was guilty of failure to register—intentionally providing false information.

B. The evidence was sufficient for the jury to find appellant knowingly violated Minn. Stat. § 243.166, subd. 3a(b) (2008).

> [A] person [required to register under this section] with a primary address of a correctional facility who is scheduled to be released from the facility and who does not have a new primary address shall register with the law enforcement authority that has jurisdiction in the area where the person will be staying at least three days before the person is released from the correctional facility.

Minn. Stat. § 243.166, subd. 3a(b). The jury heard that appellant, prior to his release, did not tell either the sergeant, the corrections officer, or the BCA that he would lack a primary address when he was released. In fact, he provided them with the inaccurate information that he would be living at his parents' address after his release. The jury could reasonably have concluded that appellant knowingly violated this statute.

Appellant argues that the sergeant failed to "inform him that he must provide notice three days before his release from jail to the jurisdiction where he would be staying if he lacked a primary address." But appellant did not tell the sergeant that he would not have a primary address when he was released, and the sergeant heard from the corrections officer that appellant had said he would be staying at his parents' home. Thus, the sergeant would have had no reason to inform appellant of this statutory provision.

Appellant also argues that the sergeant "led [appellant] to believe that he could complete the registration without a primary address at any time before his release." But at no time before his release did appellant register with the jurisdiction where he would

be staying, and, on a change of address form filed a month after his release, he erroneously indicated that he had been living at his parents' home.

In any event, appellant cannot plead ignorance of the law because, if he had made the effort to do so, he could have learned of the regulations governing registration upon release from incarceration. Ignorance of the law is not a defense when learning the law would have been possible. *See State v. Grillo*, 661 N.W.2d 641, 645 (Minn. App. 2003) (stating that "ignorance of the law is not a defense when it would have been possible, had appellant made the effort to do so, to learn of the existence of the prohibition"), *review denied* (Minn. Aug. 5, 2003).

Affirmed.