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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0485**

State of Minnesota,
Respondent,

vs.

Kevin Herman Larson,
Appellant.

**Filed February 10, 2014
Reversed
Chutich, Judge**

Chisago County District Court
File No. 13-CR-12-635

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

Janet Reiter, Chisago County Attorney, Beth A. Beaman, Assistant County Attorney, Center City, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jessica Merz Godes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Kalitowski, Presiding Judge; Rodenberg, Judge; and Chutich, Judge.

UNPUBLISHED OPINION

CHUTICH, Judge

Appellant Kevin Herman Larson appeals his conviction of failure of a predatory offender to register a new primary address. He contends that his conviction must be

reversed because the state failed to prove that: (1) he had a new primary address; (2) he did not inform his corrections agent of the new primary address; and (3) he did not inform law enforcement of a new primary address. Because the state's evidence is insufficient to prove beyond a reasonable doubt that Larson failed to register a new primary address, we reverse.

FACTS

In July 1992, Larson pleaded guilty to second-degree criminal sexual conduct. *See* Minn. Stat. § 609.343, subd. 1(a) (1990). In 2004, 2006, 2007, and 2010, Larson was convicted of violating predatory-offender registration requirements. We affirmed each of these convictions on appeal.¹

On August 22, 2012, Larson was serving a prison sentence at the Minnesota Correctional Facility—Rush City (Rush City facility). Terry Ergen, a special investigator for the department of corrections, and Michael Brown, a case manager at the Rush City facility, met with Larson in a holding cell. They asked Larson to provide an address before his impending release from the Rush City facility and to sign a predatory-offender registration form. Larson did not respond to Brown and Ergen. The district court received an audio recording of the interview into evidence.

¹ *See State v. Larson*, No. A10-1562, 2011 WL 2672239 (Minn. App. July 11, 2011), *review denied* (Sept. 20, 2011); *State v. Larson*, No. A07-2145, 2008 WL 5396820 (Minn. App. Dec. 30, 2008), *review denied* (Minn. Mar. 17, 2009); *State v. Larson*, No. A06-623, 2007 WL 2993608 (Minn. App. Oct. 16, 2007), *review denied* (Minn. Dec. 19, 2007); *State v. Larson*, No. A05-40, 2006 WL 618857 (Minn. App. Mar. 14, 2006), *review denied* (Minn. May 16, 2006).

Larson was scheduled to be released from the Rush City facility four days later on August 26. Ergen did not receive contact information for where Larson would be staying after his release. Ergen attempted to get this information from Larson again on August 24, but Larson did not respond to Ergen.

On August 23, 2012, the state charged Larson with one count of violating the predatory-offender registration statute. *See* Minn. Stat. § 243.166, subd. 5(a) (2012). On September 10, 2012, the state amended its complaint, charging Larson with one count of failure of predatory offender to register a new primary address. *See id.*, subds. 3(b), 5(a) (2012).

A bench trial was held on November 6, 2012, in which Ergen was the sole witness for the state. Larson, testifying on his own behalf, stated that he was incarcerated at the Rush City facility because he did not understand that he was required to register as a predatory offender. He did not remember a form that Ergen or Brown asked him to sign, and he did not remember the name of his prison case worker, but he said it was neither Ergen nor Brown.

The district court found Larson guilty of failing to register a new primary address under subdivisions 3(b) and 5(a) of section 243.166 and sentenced him to 30 months in prison. This appeal followed.

D E C I S I O N

When considering a claim of insufficient evidence, we determine whether the evidence was sufficient to allow the factfinder to reach a guilty verdict. *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012). We review the record in the light most favorable to

the conviction, and we assume the factfinder disbelieved any evidence contrary to that conviction. *Id.* We will not overturn the 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 that the defendant was guilty.” *Id.* We apply the same standard of review to bench trials as to jury trials. *State v. Palmer*, 803 N.W.2d 727, 733 (Minn. 2011).

Larson argues that the evidence was insufficient to convict him of violating subdivision 3(b) of Minnesota Statutes section 243.166 because the state failed to prove that he had a new primary address. Because this argument has merit under *State v. Nelson*, we need not address his two other assertions or his pro se arguments. *See* 812 N.W.2d 184 (Minn. App. 2012).

A person who is required to register under section 243.166 must initially register after sentencing or after a release from incarceration. Minn. Stat. § 243.166, subd. 3(a) (2012); *Nelson*, 812 N.W.2d at 187. The person “shall register with the corrections agent as soon as the agent is assigned to the person.” Minn. Stat. § 243.166, subd. 3(a). “If the person does not have an assigned corrections agent or is unable to locate the assigned corrections agent, the person shall register with the law enforcement authority that has jurisdiction in the area of the person’s primary address.”² *Id.*

² “Primary address” is defined as “the mailing address of the person’s dwelling. If the mailing address is different from the actual location of the dwelling, primary address also includes the physical location of the dwelling described with as much specificity as possible.” Minn. Stat. § 243.166, subd. 1a(g) (2012). “Dwelling” means “the building where the person lives under a formal or informal agreement to do so.” *Id.*, subd. 1a(c).

If the person who is required by section 243.166 to register moves to a new primary address, he or she must give notice to the state or a local government. *Id.*, subd. 3(b). This duty has two parts. *Nelson*, 812 N.W.2d at 188 (separating the requirements of subdivision 3(b) into two parts). First, under the first sentence of subdivision 3(b) of section 243.166, the person must provide written notice of his or her new primary address at least five days before the person starts living there “to the assigned corrections agent or to the law enforcement authority with which the person currently is registered.”

The second part of the duty, arising under the third sentence of subdivision 3(b), requires that the person “also give written notice . . . that the person is no longer living or staying at” the previously registered primary address. Minn. Stat. § 243.166, subd. 3(b). This second notice must also be given “to the assigned corrections agent or to the law enforcement authority that has jurisdiction in the area of the person’s primary address,” and it must be given “immediately after the person is no longer living or staying at that address.” *Id.*

While it appears that Larson has never registered as a predatory offender as required under section 243.166, despite his four prior convictions for failing to do so, the state did not charge Larson with violating the initial requirement to register under subdivision 3(a) of section 243.166. Rather, the state charged Larson with, and Larson was convicted of, violating the requirement to give notice of a new primary address under subdivision 3(b) of section 243.166.

State v. Nelson requires reversal here. In *Nelson*, we held that, to prove that an appellant failed to register a new primary address under section 243.166, subdivision 3(b), the state must prove the existence of a new primary address. 812 N.W.2d at 188 (citing Minn. Stat. § 243.166, subd. 3(b) (2008)).³ *Nelson* recognized that, because the state’s case depended on circumstantial evidence, one of the reasonable inferences from the circumstances proved was that Nelson “had departed from his registered primary address without any intention to return but with an intention to either become homeless or to search for a new primary address.” *Id.* at 189. We determined that “[s]uch a person is required by section 243.166 to register, but that requirement springs from [subdivision 3a],” and the state “did not attempt to prove that Nelson had violated the requirements of subdivision 3a.” *Id.* Instead, the statutory basis of the state’s charge was subdivision 3(b). *Id.* Because the circumstances proved were consistent with at least one reasonable inference that Nelson did not fail to register a new primary address, we held that the state failed to prove that Nelson violated subdivision 3(b) of section 243.166. *Id.* at 190.

Likewise, a reasonable inference that may be drawn from the circumstances proved here is that Larson would leave his primary address at the Rush City facility without a new primary address. The state “concedes that there was no testimony that [Larson] had a specific new address.” The statutory basis of the charge here was

³ The relevant portions of the 2008 version of section 243.166, subds. 3(a) and 3(b), are the same as the 2012 version.

subdivision 3(b), and not subdivision 3a of section 243.166 (2012).⁴ As in *Nelson*, the circumstances here are consistent with a reasonable inference that Larson had no new primary address to register and thus did not violate subdivision 3(b).

Because the circumstantial evidence does not “exclude beyond a reasonable doubt any reasonable inference other than guilt,” *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010) (quotation omitted), the state failed to meet its burden of proving that Larson failed to register a new primary address under subdivision 3(b) of section 243.166.

Reversed.

⁴ The separate registration procedure of subdivision 3a requires a person who leaves a primary address and does not have a new primary address to register “with the law enforcement authority that has jurisdiction in the area where the person is staying within 24 hours of the time the person no longer has a primary address.” *Id.*, subd. 3a(a) (2012). Subdivision 3a(b) requires “a person 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” to 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.” *Id.*, subd. 3a(b).