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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2194**

State of Minnesota,
Respondent,

vs.

Robert Arthur Litzau,
Appellant.

**Filed January 4, 2011
Affirmed
Collins, Judge***

Crow Wing County District Court
File No. 18-CR-08-5543

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

Donald F. Ryan, Crow Wing County Attorney, Candace Ann Prigge, Assistant County
Attorney, Brainerd, Minnesota (for respondent)

Renee J. Bergeron, Special Assistant State Public Defender, St. Paul, Minnesota (for
appellant)

Considered and decided by Shumaker, Presiding Judge; Worke, Judge; and
Collins, Judge.

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

UNPUBLISHED OPINION

COLLINS, Judge

Appellant Robert Litzau disputes his conviction of failure to register as a predatory offender, arguing that the evidence was insufficient to allow the jury to reach its verdict and that the complaint was not sufficiently specific to put him on notice of the conduct alleged to constitute his offense. We affirm.

FACTS

In the spring of 1999, Litzau pleaded guilty to felony fourth-degree criminal sexual conduct in violation of Minn. Stat. § 609.345, subd. 1(b) (1996); thereafter, he was required to register as a predatory offender. Minn. Stat. § 243.166, subd. 1(a)(1)(iii) (1998). Among other things, a person required to register as a predatory offender must provide his primary address and all of his secondary addresses. *Id.*, subd. 4a(a) (2008). The registration requirement continues for ten years following the initial registration. *Id.*, subd. 6(a) (1998). It is a felony for a person who is required to register as a predatory offender to knowingly violate any provision of section 243.166 or to intentionally provide false information to a corrections agent, a law enforcement authority, or the bureau of criminal apprehension (BCA). *Id.*, subd. 5(a) (2006).

In this case, the state charged Litzau for his failure to register as a predatory offender in violation of Minn. Stat. § 243.166, subd. 5(a). The complaint alleged that Litzau had registered and lived at an address in Cass County, that was condemned in January 2008, and that Litzau “was registered at an address in Wadena County” and “was residing at a [medical] facility in Wadena County” in August 2008, but that he refused to

sign BCA paperwork identifying his new address when he was discharged. The complaint alleged that Litzau was living at an unregistered address in Crow Wing County, charging specifically that Litzau in Crow Wing County “knowingly violated one or more of the provisions of [section] 243.166 or intentionally provided false information to a corrections agent, law enforcement authority, or the [BCA].”

A jury trial was held in July 2009. Crow Wing County Sheriff’s Office Investigator D.J. Downie testified that in the spring of 2008 he followed up on an anonymous tip that Litzau was living at an address in Crow Wing County and discovered that Litzau had been evicted from his registered Cass County address. After learning that Litzau did not register a new address upon leaving the Wadena County medical facility in August, Investigator Downie went to gather information in the Crow Wing County neighborhood where Litzau was believed to be living. While there, he spoke with neighbors and saw and arrested Litzau. When asked whether he was aware that he was noncompliant with the registration process, Litzau responded that he would make an appointment with an attorney that day to comply with the registration requirements; Litzau also stated that he had not slept at his registered Cass County address the night before.

Investigator Downie testified that he found at the Crow Wing County address in question a cooler containing perishable food, two motor vehicles owned by Litzau, food and trash inside the building, medication prescribed to Litzau, and a note addressed to him. The note, dated September 5, 2008, reads: “Get the rest of your dogs this weekend, or I’ll shoot them to death. Your Landlord, [I.A.]” The contents of the cooler felt cool

and did not appear to have spoiled. Investigator Downie took photographs of the scene, which were admitted as trial exhibits. Investigator Downie testified that the house at the Crow Wing County address was owned by J.T., who spent all of 2008 in northern Minnesota; other than J.T., the only person neighbors saw at that address was Litzau.

An employee of the Crow Wing County Jail testified that he had reviewed telephone calls that Litzau made to I.A. from jail. Recordings of these conversations were played to the jury. Following is an excerpt from one conversation:

I.A.: You just didn't give them an address where you were living . . . that's the charge.
Litzau: I'm living right there at your place.
I.A.: Well not now.
Litzau: Yeah, that's my address.
I.A.: You're at the city jail now.
Litzau: I know
I.A.: . . . That's your mailing address.
Litzau: Right. But my mailing address is also at your place

Another conversation included the following exchange:

I.A.: . . . They should have let you get out on a bail or bond . . . a long time ago because you didn't pull a bank job or kill anybody.
Litzau: I did worse than that. I got in their way; I got in their hair.
I.A.: Yeah. But the thing is, you just didn't give them your—a local—latest address, that's all.
Litzau: . . . I still live there yet, so how can they say that I didn't give them my address?
I.A.: Yeah, I feel your spirit crawling around here every once in a while.
Litzau: Alright. Just make sure that when they call you and talk to you about it, the investigator, that you tell them that I've never moved.
I.A.: Yeah, okay, I'll tell them that.

I.A. testified at trial that he was Litzau's landlord at the registered Cass County address since approximately 2005. Cass County instituted a condemnation process in late 2007 or early 2008; I.A. testified that Cass County officials "ordered Litzau out of that mobile home he was living in, and then they told me I could move in there." When asked whether Litzau moved out, I.A. responded, "Well, in a way he did. He left there but he had a lot of possessions in the mobile home yet." I.A. stated that Litzau "was staying somewhere else," and that Litzau "had some stuff stored" at J.T.'s house in Crow Wing County, but that he did not know exactly where Litzau was staying, which could have been at "several different places." I.A. testified that Litzau "mentioned several other places" where he was staying, but he did not recall exactly where they were.

I.A. also acknowledged leaving the note to Litzau on the door at J.T.'s house in Crow Wing County and that he threatened to shoot Litzau's dogs because he was gone. I.A. admitted that he only "assumed" Litzau was staying at J.T.'s house because Litzau "was there some of the time" and had "moved some of his stuff over there." I.A. testified that he moved into his mobile home where Litzau had been living when other buildings on his property were condemned by the county, but that Litzau continued to receive mail there through the time of trial. When Litzau moved out, he left some of his belongings at the mobile home, including clothing, canned food, and personal effects.

I.A. was also asked about his telephone conversations when Litzau was in the Crow Wing County Jail. Although I.A. acknowledged that in one telephone conversation he had assured Litzau he would inform the investigator that Litzau had not moved,

“because he requested that I do that,” I.A. added “but he was gone from the property but he still claims it as his residence.”

A Cass County adult health supervisor testified that Litzau was served notification of his eviction by the county on January 3, 2008. The supervisor testified that county officials “told [Litzau] as he was leaving the property that he was required to report his residency change” to the BCA, and that Litzau “became argumentative in regards to that.” Litzau was not present and it did not appear that he was living at the Cass County address when the adult health supervisor conducted property inspections on July 1 and August 28, 2008.

One neighbor of J.T.’s in Crow Wing County testified that Litzau “was over at [J.T.’s] house quite a bit” during an extended period of time and was frequently “working in the yard and cutting grass.” The neighbor testified that Litzau’s van was there regularly, but he had never noticed lights on in the house. The neighbor usually saw Litzau “outside during the daytime and once or twice he came over in the evening after dark.” As to whether he heard Litzau’s dogs barking at night, the neighbor testified, “I heard them barking on and off, yes.” When questioned by defense counsel, the neighbor acknowledged that he had no personal knowledge of whether Litzau was sleeping at J.T.’s house.

Another of J.T.’s neighbors testified that she saw Litzau for the first time when he was “[w]ith his van unloading things” at J.T.’s and J.T.’s mother’s houses. The neighbor frequently saw Litzau at J.T.’s and J.T.’s mother’s houses “taking care of [their] place[s]” around noontime when she was out walking her dogs. The neighbor sometimes heard

Litzau's dogs as late as 10:00 or 11:00 p.m., and his van was sometimes there in the morning when she left for work.

Litzau did not testify, but he did present testimony from two witnesses. His half-sister testified that she picked Litzau up from the hospital in Wadena in August 2008. She then drove him to the Cass County address because Litzau "said that he was living there" at the time, and she was unaware of anywhere else he may have been living.

Litzau's longtime friend testified that she visited Litzau for about three hours at the Cass County address after he was discharged from the hospital. She observed that Litzau "was getting it ready to stay [there] for a long period of time. It's a trailer out in the back woods, and that's where he was staying." After that visit, she had no way to know what Litzau did.

The jury found Litzau guilty of failure to register as a predatory offender as charged, and the district court imposed a 17-month sentence. This appeal followed.

D E C I S I O N

I

Appellate review of a sufficiency-of-the-evidence claim entails "a painstaking review of the record to determine whether the evidence and reasonable inferences drawn therefrom, viewed in a light most favorable to the verdict, were sufficient to allow the jury to reach its verdict." *State v. Yang*, 774 N.W.2d 539, 560 (Minn. 2009) (quotation omitted). We "presume that the jury believed the State's witnesses and disbelieved any contrary evidence." *State v. Buckingham*, 772 N.W.2d 64, 71 (Minn. 2009). If the "conviction is based solely on circumstantial evidence, that evidence must be consistent

with the hypothesis that the accused is guilty and inconsistent with any other rational hypothesis except that of guilt.” *Yang*, 774 N.W.2d at 560 (quotations omitted).

Litzau argues that the state failed to prove that J.T.’s Crow Wing County house was an address that he was required to register because I.A.’s Cass County property was still his primary address and, while he had a different registered secondary address in Brainerd, the state failed to prove that J.T.’s house was his secondary address. We disagree. Litzau also contends that I.A.’s testimony was self serving and cannot constitute proof beyond a reasonable doubt. We disagree. Litzau would have this court assess the credibility of witnesses and retry facts, including on the basis of evidence that was never presented to the jury. But in such case, all credibility determinations are resolved in favor of the jury’s verdict, and our sole task is to decide whether the evidence presented at trial was legally sufficient to support the jury’s conclusion that the state proved Litzau’s guilt beyond a reasonable doubt.

The predatory-offender-registration statute defines “primary address” as the address of “the person’s dwelling,” which in turn is defined as “the building where the person lives.” Minn. Stat. § 243.166, subds. 1a(c) (2006) (defining dwelling), 1a(g) (2006) (defining primary address). “Secondary address” is defined as “any place where the person regularly or occasionally stays overnight when not staying at the person’s primary address.” *Id.*, subd. 1a(i) (2006). Thus, the state was required to present evidence sufficient to prove beyond a reasonable doubt that Litzau at least occasionally stayed overnight at J.T.’s house in Crow Wing County.

The only evidence supporting Litzau's defense theory was the testimony of two witnesses.¹ In sum, the jury heard from Litzau's half-sister that Litzau told her he was staying at the Cass County address when she picked him up from the Wadena hospital and, from Litzau's friend, that Litzau appeared to be settling in to stay at the Cass County address residence after his hospital stay. This evidence is contradicted by I.A.'s testimony that Litzau moved out following the eviction order. The jury was entitled to weigh this evidence, credit I.A.'s testimony, and conclude that Litzau had abandoned his primary address in Cass County.

Supporting the state's theory of the case, Investigator Downie testified that, when apprehended in Crow Wing County, Litzau admitted not sleeping in Cass County the previous night. Moreover, Investigator Downie found perishable food, two motor vehicles, trash, and prescription medication belonging to Litzau at the Crow Wing County house, where the owner, J.T., was not staying. The state's case was also supported by the note I.A. left at J.T.'s Crow Wing County house on the assumption that Litzau was staying there at least part time. A resident of the Crow Wing County neighborhood testified that he frequently saw Litzau at J.T.'s house doing yard work, that his van was there regularly, and that he was there sometimes after dark. Another neighbor testified that she saw Litzau unloading belongings from his van to J.T.'s house,

¹ Litzau also relies on his telephone conversations with I.A. while Litzau was in jail awaiting trial. But, viewed in the light most favorable to the verdict, a reasonable interpretation of those conversations is that Litzau tried to persuade I.A. to stick to the story that Litzau was still living at the Cass County address, and that, although I.A. did not believe Litzau had never moved, he agreed to tell the investigator that to assuage Litzau.

that she regularly saw him there during the day, that she sometimes heard his dogs as late as 11:00 p.m., and that she sometimes saw his van there when she left her home for work in the morning.

These facts raise the inference that Litzau stayed overnight at J.T.'s Crow Wing County house, at least occasionally. On appeal, Litzau seeks to create doubt by arguing that he could have been staying at his registered secondary address in Brainerd, which would not fatally conflict with the evidence suggesting that he had moved from his registered Cass County address. But such evidence was not offered at trial; thus, the jury could not have considered it. Viewed in the light most favorable to the verdict, the evidence shows that Litzau sometimes stayed overnight at the unregistered Crow Wing County address, regardless of whether he may have sometimes slept elsewhere, including at a registered secondary address. Because the evidence presented to the jury supports the conclusion that J.T.'s house in Crow Wing County was at least an unregistered secondary address of Litzau's and is inconsistent with any other reasonable conclusion, we will not disturb the jury's verdict.

II

The United States and Minnesota Constitutions guarantee a defendant's right "to be informed of the nature and cause of the accusation" against him. U.S. Const. amends. VI, XIV; Minn. Const. art. I, § 6; *State v. Chauvin*, 723 N.W.2d 20, 29 (Minn. 2006). Because the purpose of the notice requirement is to enable "the defendant to properly prepare his defense and to protect him from subsequent prosecution for the same offense," charging instruments comport with constitutional requirements when they are

sufficiently descriptive to enable the defendant to meet those ends. *Chauvin*, 723 N.W.2d at 30; *State v. Kendell*, 723 N.W.2d 597, 611 (Minn. 2006).

When the adequacy of a charging instrument is challenged for the first time on appeal, thereby depriving the state of an opportunity to clarify or correct the charge, the charging instrument “will be interpreted so as to uphold its validity whenever this is reasonably possible.” *State v. Pratt*, 277 Minn. 363, 365, 152 N.W.2d 510, 512-13 (1967). Thus, “a conviction after a fair trial . . . will not be invalidated unless the defect or imperfection in the [charging document] is of such a nature that it misled the defendant as to the nature of the offense charged to the prejudice of his substantial rights.” *Id.* at 366, 152 N.W.2d at 513. “Precedent indicates that a charging document imperfect in form is not fatally defective if it adequately apprises the defendant of the charge against him.” *State v. Dunson*, 770 N.W.2d 546, 552 (Minn. App. 2009), *review denied* (Minn. Oct. 20, 2009), *cert. denied* 130 S. Ct. 1891 (2010).

Litzau contends that the complaint in this case was deficient because it “did not provide the requisite specificity as to what conduct constituted the violation.” Litzau argues that it was difficult to prepare his defense without knowing what alleged conduct violated the predatory-offender-registration statute, and that he was “prejudiced by having to defend against multiple accusations and by having to appeal without knowing which provision of the statute was found to have been violated.” Litzau concedes that this claim was never asserted in the district court.

The complaint charged Litzau with failure to register as a predatory offender in violation of Minn. Stat. § 243.166, subd. 5(a). The complaint alleged that Litzau had

registered and lived at an address in Cass County that was condemned in January 2008 and that he did not register a new address in August 2008 when he left the medical facility in Wadena County. The complaint further alleged that Litzau was living at an unregistered address in Crow Wing County, citing the street address of the house owned by J.T. Based upon the factual statement of probable cause, the complaint specifically charged that, in Crow Wing County, Litzau “knowingly violated one or more of the provisions of [section] 243.166 or intentionally provided false information to a corrections agent, law enforcement authority, or the [BCA].”

The specification that Litzau’s violation of the predatory-offender-registration statute occurred in Crow Wing County, coupled with the allegation that Litzau was living at an unregistered address in Crow Wing County, citing J.T.’s house address, clearly informed Litzau that he was charged with living at and failing to register J.T.’s house address in Crow Wing County. This was ample notice to enable Litzau to prepare his defense. The record does not support Litzau’s contention that he was misled as to the nature of the offense charged, let alone that his substantial rights were thereby prejudiced. Litzau’s challenge to the adequacy of the complaint therefore fails.

Affirmed.