IN THE COURT OF CRIMINAL APPEALS
OF TEXAS

NO. PD-1369-15

ALBERT JUNIOR FEBUS, Appellant

v.

THE STATE OF TEXAS

ON APPELLANT'S PETITION FOR DISCRETIONARY REVIEW
FROM THE FIRST COURT OF APPEALS
HARRIS COUNTY

NEWELL, J., delivered the opinion of the Court in which KELLER, P.J., KEASLER, HERVEY, YEARY and KEEL, JJ., joined. RICHARDSON, J., filed a dissenting opinion in which ALCALA and WALKER, JJ., joined.

Appellant is a registered sex offender. As part of his duty to register he went to the local police and filled out a change of address form. He voluntarily signed the form listing his new address as an apartment at "6110 Glenmont" even though he never intended to live there. Months later, when police went to that apartment at "6110 Glenmont" to check on Appellant, Appellant was not living there. At his trial for failure to

comply with his duty to register as a sex offender, Appellant claimed he had actually told the police he was moving to an apartment at "6100 Glenmont." According to Appellant, the police had gotten the apartment number correct, but they had placed the wrong street address in their registry. We granted review to address whether the evidence was legally sufficient to support the jury's determination that Appellant failed to notify the local police regarding his change of address in violation of his duty to register as a sex offender. We hold that the evidence was legally sufficient and affirm the court of appeals' opinion.

Background

Though there is some dispute, the facts of this case are relatively straightforward. Appellant was required to register as a sex offender as a result of his past conviction for indecency with a child. Upon his release from prison for this offense, he was required to sign and initial forms indicating his understanding of the registration rules. He was also required to do so on every occasion in which he re-registered or changed his address. Up until this offense, Appellant had complied with the registration program for six years without any issues.

Prior to the offense, Appellant had registered his address as 6110

Glenmont Drive, Apt. #57, in the La Hacienda Apartment complex.[1] In March 2013, Appellant obtained a new driver's license from the Texas Department of Public Safety (DPS) in order to obtain a new CR-14 registration identification, also known as a "blue card." He then went to the Houston Police Department to register a prospective change of address. There, he filled out the "Sex Offender Update Form" with the assistance of a registration officer. During this face-to-face meeting, Appellant told the registration officer that his new address was "6110 Glenmont Drive, Apt. #45." All three of the registration documents (the temporary license, the blue card, and the Sex Offender Update Form) listed Appellant's new address as "6110 Glenmont Drive, Apt. #45." Appellant signed all three of these documents; he never suggested that the address he had provided was incorrect.

In October 2013, Officer C.R. Black did a compliance check on Appellant. He first went to the apartment manager's office to verify that the apartment was not vacant. The manager took Officer Black to 6110 Glenmont Drive, Apt. #45. The resident of that apartment, Marcus

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[1] When asked the name of the person he lived with in this apartment, Appellant responded "I don't know his name. I just know his name was Jose, but they called him Chapin." When asked if the man's name was actually "Marciano Aguilar," Appellant responded, "The truth is, you know, I didn't have a lot of communication with him. I mean, they tell you one name and they tell you another name. I just knew him as Jose Chapin."

Arevalo, had never met Appellant and verified that Appellant did not live at that address. Appellant was not listed as a resident of that apartment on the lease, either.

Based upon this information, the State charged Appellant with intentionally and knowingly failing to comply with his duty as a registered sex offender by failing to provide his new address to the local police. At trial, Appellant advanced the theory that the incorrect address was not the result of Appellant's conduct; it was, instead, the result of a clerical error. Appellant testified that he told law enforcement that the street address for his new apartment was "6100 Glenmont" and not "6110 Glenmont." According to Appellant, he told the officer that he planned to live at "6100 Glenmont Drive" and he gave DPS the same information. He explained that he knew the La Hacienda Apartment complex was divided into two buildings, one with a "6110 Glenmont" street address and the other with a "6100 Glenmont" street address. Appellant explained that he had planned to move into the 6100 building rather than into the 6110 building.[2] Moreover, Appellant claimed that he had received his permanent driver's license from DPS at the "6100 Glenmont"

[2] Appellant did agree that he never lived in apartment 45 at "6110 Glenmont," the address listed on his temporary driver's license, his blue card, and his "Sex Offender Update" form.

street address, and the plastic license card reflected his correct address of "6100 Glenmont Drive, Apt. #45." Appellant introduced a photocopy of this license into evidence, but he admitted that he had lost the original two days prior to trial.[3]

In addition to his own testimony, Appellant called Javier Ayala, the tenant in apartment 45 at "6100 Glenmont" to testify on his behalf. Ayala told the jury that Appellant had lived with him in the "6100 Glenmont" apartment for approximately eight months (from March 2013 until Appellant was arrested), and that Appellant had received mail at that address. However, Ayala did not go so far as corroborating Appellant's testimony that DPS had mailed Appellant's driver's license to that address. Appellant's name was not on the lease at that apartment.

The State introduced testimony from Lindsay Ulloa, the apartment manager at the La Hacienda Apartment complex. She explained that her office was located in the "6100 Glenmont" building, and she had never seen Appellant around the complex. She further explained that La Hacienda Apartments was a small complex where everyone knew everyone. She described Ayala as a man that everyone in the apartment

[3] Appellant testified, "I lost my papers a couple of days ago. I told my attorney, and I haven't reported them because I have seven days to do so."

complex knew because he picked up cans to live, even collecting cans from the various residents.

According to Ulloa, Ayala would have let her know if someone were living with him "just in case." As she stated, "he's pretty good letting me know, because like, his condition, so." Yet, Ayala had never mentioned to her that someone was sharing his apartment with him. She did agree that she would not have seen someone come and go from Ayala's apartment outside the hours of 9:00 in the morning and 6:00 in the afternoon. According to Ayala, Appellant was only in the apartment outside of those hours.

The trial court charged the jury that it was required to find not only that Appellant knew his duty to register as a sex offender, but also that he had intentionally or knowingly failed to comply with that duty. Appellant argued that he had actually complied with his duty to register a change of address and that he was living with Javier Ayala in his apartment at "6100 Glenmont." The failure to register was a clerical error on the part of law enforcement and not the result of Appellant intentionally supplying incorrect information. The State argued that Appellant did not live with Ayala at "6100 Glenmont," but allowed that if the jury believed that he did, Appellant had still failed to register because

he provided the wrong address to law enforcement.

The jury found Appellant guilty. At punishment, Appellant pleaded true to two enhancement allegations that he had previously been convicted in Los Angeles of both robbery and possession of a firearm as a felon. The State also introduced evidence that Appellant had changed his name multiple times in his life as he moved from New York to Los Angeles to Houston. The jury found both enhancement allegations to be true and sentenced Appellant to thirty-five years in prison.

On appeal, Appellant argued that the evidence was legally insufficient to support a determination that Appellant had intentionally or knowingly failed to provide his new address to the Houston Police Department. Specifically, Appellant argued that the failure was due to a negligent mistake on either the part of the registering authority or Appellant himself. The court of appeals rejected this argument, simply holding that under this Court's opinion in *Robinson v. State*, the State was not required to prove that Appellant had a culpable mental state when failing to provide the correct address.[4] The court of appeals affirmed the conviction, holding that the evidence was legally sufficient

[4] *Febus v. State*, No. 01-14-000942-CR 2015 WL 6081647, at *3 (Tex. App.–Houston [1st Dist.] 2015) (not designated for publication).

to support the jury's verdict. We granted review to determine the propriety of that holding. We will affirm.

Analysis

When addressing a challenge to the sufficiency of the evidence, we determine whether, after viewing the evidence in the light most favorable to the verdict, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.[5] We may not re-weigh the evidence or substitute our judgment for that of the factfinder.[6] A jury may accept one version of the facts and reject another, and it may reject any part of a witness's testimony.[7] We presume that the factfinder resolved any conflicting inferences from the evidence in favor of the verdict, and we defer to that resolution.[8] This is because the jurors are the exclusive judges of the facts, the credibility of the witnesses, and the weight to be given to the testimony.[9]

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[5] *Crabtree v. State*, 389 S.W.3d 820, 824 (Tex. Crim. App. 2012) (citing *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

[6] *Williams v. State*, 235 S.W.3d 742, 750 (Tex. Crim. App. 2007).

[7] *See Margraves v. State*, 34 S.W.3d 912, 919 (Tex. Crim. App. 2000), *overruled on other grounds*, *Laster v. State*, 275 S.W.3d 512 (Tex. Crim. App. 2009).

[8] *Merritt v. State*, 368 S.W.3d 516, 525-26 (Tex. Crim. App. 2012).

[9] *Brooks v. State*, 323 S.W.3d 893, 899 (Tex. Crim. App. 2010).

The essential elements of an offense are determined by state law.[10] Under Texas state law, we measure the sufficiency of the evidence by the elements of the offense as defined by the hypothetically correct jury charge for the case.[11] Such a charge is one that accurately sets out the law, is authorized by the indictment, does not unnecessarily increase the State's burden of proof or unnecessarily restrict the State's theories of liability, and adequately describes the particular offense for which the defendant was tried.[12]

We recently analyzed the elements of the offense of failure to comply with the requirements of registering as a sex offender under Chapter 62 of the Code of Criminal Procedure.[13] In *Robinson*, we held that this offense is a "circumstances of the conduct" type of offense.[14] The "circumstance" at issue is the duty to register and the culpable mental state of "knowledge and recklessness" applies only to the duty-to-register element, rather than the failure-to-comply element.[15]

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[10] *Byrd v. State*, 336 S.W.3d 242, 246 (Tex. Crim. App. 2011).

[11] *Malik v. State*, 953 S.W.2d 234, 240 (Tex. Crim. App. 1997).

[12] *Id.*

[13] *Robinson v. State*, 466 S.W.3d 166, 170 (Tex. Crim. App. 2015).

[14] *Id.* at 170-71.

[15] *Id.* at 172.

Robinson claimed that he had intended to register a change of address, but he was rebuffed in his attempts by the police.[16] Based upon our determination that the statute did not require a showing of an intentional failure to register, we rejected Robinson's argument that the evidence was insufficient to establish that he intentionally failed to report his prospective change of address in person.[17] We affirmed the court of appeals and upheld the conviction noting that the evidence convincingly established that Robinson had failed to report an intended change of address in person.[18]

In this case, Appellant argued to the court of appeals that he did not intend "to evade his duties to properly register as a sex offender." But he further argued that "any discrepancies in [A]ppellant's last listed address and/or apartment number were merely a negligent mistake on the behalf of the registering authority and/or [A]ppellant." The State responded that Appellant's argument had been rendered moot by this Court's decision in *Robinson*. The court of appeals agreed and held that there was no need to analyze the proof surrounding Appellant's mental state

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[16] *Id.* at 169.

[17] *Id.* at 173-74.

[18] *Id.* at 174.

when he failed to comply with his duty to register as a sex offender.[19] We agree with the court of appeals' analysis that the evidence was sufficient to establish Appellant's awareness of the registration requirements and that the State was not required to prove an additional culpable mental state regarding his failure to register.

However, the court of appeals did not fully address Appellant's argument that the jury had irrationally determined that Appellant failed to comply with his duties to register as a sex offender. As Presiding Judge Keller observed in her concurring opinion in *Robinson*, when authorities rebuff attempts to register, the sex offender may not be criminally liable on the basis that his failure to register was involuntary.[20] Though this rationale was not explicitly incorporated into the majority opinion in *Robinson*, we find the reasoning persuasive and incorporate it into the holding in this case. Appellant testified at trial, and argues on appeal, that he not only intended to register his change of address, but that the evidence established that he did so. According to Appellant, if

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[19] *Febus*, 2015 WL 6081647, at *3.

[20] *Robinson*, 466 S.W.3d at 174 (Keller, P.J., concurring). Presiding Judge Keller also observed that due process may require that authorities not place significant hurdles to complying with a duty to register beyond those contemplated by the statute. *Id*. However, in this case, Appellant only raises a challenge to the sufficiency of the evidence, rather than a due process challenge.

there was any failure to comply, it was on the part of the registering agency, not him. In short, Appellant argues that his failure to comply was involuntary.

Section 6.01(a) of the Penal Code provides that "a person commits an offense only if he voluntarily engages in conduct, including an act, an omission, or possession."[21] The issue of voluntariness of one's conduct is separate from the issue of one's mental state.[22] "Voluntariness," within the meaning of Section 6.01(a), refers only to one's own physical body movement.[23] If those physical movements are the non-volitional result of someone else's act, that movement is not voluntary.[24]

Typically, the question of whether a defendant has committed a voluntary act arises in situations in which evidence shows a defendant engaged in conduct, but the defendant denies that the physical conduct was voluntary. For example, in *Farmer v. State*, the defendant argued that his wife's mistake in setting out the wrong medication before he

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[21] TEX. PENAL CODE § 6.01(a).

[22] *Whatley v. State*, 445 S.W.3d 159, 166 (Tex. Crim. App. 2014).

[23] *Id.* (quoting *Rogers v. State*, 105 S.W.3d 630, 638 (Tex. Crim. App. 2003)).

[24] *Id*.

drove to work rendered his conduct involuntary.[25] Similarly, in *Rogers v. State*, the defendant in a murder case argued that his conduct in shooting his wife was involuntary because the gun simply "went off" when she grabbed his arm.[26]

But in this case, the question is more straightforward as the dispute is not over whether or not Appellant involuntarily gave a bad address to the police. Rather, the dispute is over whether Appellant ever gave that address in the first place. Appellant claims he is not guilty because someone else committed the conduct he is accused of, namely entering the wrong address into the sex offender database. Consequently, we must look to the record in a light most favorable to the jury's verdict to determine if any rational factfinder could find that Appellant had told the registering authorities that he was moving to "6110 Glenmont, Apt. #45."

As described above, the registering officer testified that Appellant told her, face-to-face, that he was moving to "6110 Glenmont." She explained that Appellant presented her with a temporary driver's license signed by Appellant that listed Appellant's address as "6110 Glenmont."

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[25] 411 S.W.3d 901, 907 (Tex. Crim. App. 2013).

[26] 105 S.W.3d 630, 640 (Tex. Crim. App. 2003) (noting that the defendant's testimony did not unambiguously develop the theory that he was "the passive instrument of another's act, *i.e.*, that, somehow, his finger had been made to exert the requisite fourteen-and-a-half to sixteen pounds of force to squeeze the trigger and fire the gun").

She prepared the requisite forms based upon the information Appellant provided, and Appellant signed three different documents that listed his address as "6110 Glenmont." And Appellant was familiar with the process, having successfully filled out the proper paperwork for six years prior to this offense. From this testimony and these exhibits, a rational jury could have found that Appellant did tell the police that he was changing his address to "6110 Glenmont." Based upon the uncontradicted testimony of the tenant in the listed apartment at 6110 Glenmont that same rational jury could have found that Appellant had lied to the police about moving to an apartment at "6110 Glenmont."

But, what about the evidence showing that Appellant had actually been living at "6100 Glenmont, Apt. #45" the entire time? The jury was not required to credit this evidence and could have rationally resolved the testimonial conflict against Appellant. Though Mr. Ayala said that Appellant had been living with him, the apartment manager, Ms. Ulloa, testified that she had never seen Appellant around the complex before, and that Ayala had never mentioned to her that someone was living with him. She also explained that it would have been uncharacteristic of Mr. Ayala not to tell her about his new roommate. The jury chose to believe Ms. Ulloa rather than Mr. Ayala. It was free to do so, and we must defer

to that credibility determination.

Similarly, the jury could also have disregarded Appellant's claims that he received a plastic driver's license from DPS at the "6100 Glenmont" address. Appellant introduced a photocopy of this license, but the original was lost two days prior to trial. While Appellant denied fabricating the copy of the plastic license, a jury could have disbelieved him given the temporary license with the "6110 Glenmont" address that Appellant himself admitted he had received from DPS. During the State's cross-examination of Appellant the following exchange took place:

> Q: DPS gave you a paper license, right?
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> A: Yes, with a picture.
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> Q: And that license is on State's Exhibit 3, right?
>
> A: Yes, sir.
>
> Q: And you presented that paper license when you went to HPD to register for your new address, right?
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> A: Yes. That's the one I got at DPS.
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> Q: The question I'm asking, did you present the license in State's Exhibit 3 to the officer when you registered?
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> A: Yes, sir.

Simply put, a rational jury could have concluded that Appellant had

moved out of La Hacienda Apartments in March 2013 but told the police he was still living there. In other words, that same jury could have concluded that Appellant never moved to any apartment at either "6110 Glenmont" or "6100 Glenmont," and that Appellant had only claimed to live at "6100 Glenmont" after he had been caught giving bad information to the police. Though Appellant argues that it was more reasonable for the jury to conclude that the police had made a clerical mistake, we must defer to the jury's resolution regarding competing inferences and evidentiary conflicts.[27]

Stare Decisis

It has also been suggested that this Court reconsider its holding in *Robinson v. State*. We do not frivolously overrule established precedent.[28] Rather, we follow the doctrine of *stare decisis* to promote judicial efficiency and consistency, encourage reliance upon judicial decisions, and contribute to the integrity of the judicial process.[29] The interests underlying the doctrine of *stare decisis* are at their height for

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[27] *Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007) ("When the record supports conflicting inferences, we presume that the factfinder resolved those conflicts in favor of the prosecution and therefore defer to that determination.").

[28] *Paulson v. State*, 28 S.W.3d 570, 571 (Tex. Crim. App. 2000).

[29] *Id.*

judicial interpretations of legislative enactments upon which parties rely for guidance in attempting to conform to those legislative enactments.[30] If a prior decision was poorly reasoned or unworkable, we do not achieve the goals sought through reliance upon *stare decisis* by continuing to follow that precedent.[31] As this case demonstrates, *Robinson* is neither poorly reasoned nor unworkable.

The argument was made in *Robinson* that there should be a second culpable mental state that attaches to the act of failing to register, and that same argument is made again here. The Court rejected this argument when it decided *Robinson*, and nothing has changed since that decision. But the facts of this case show that requiring that the failure to register be intentional is unlikely to change the ultimate sufficiency decision. The same facts that a jury can rely upon to determine whether a defendant knows he has a duty to register as a sex offender will often give rise to a rational inference that his failure to register was intentional.

Here, the State marshaled evidence that Appellant had gone over his registration requirements multiple times. The State introduced documents signed by Appellant indicating his understanding of his duty

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[30] *Busby v. State*, 990 S.W.2d 263, 267 (Tex. Crim. App. 1999).

[31] *Paulson*, 28 S.W.3d at 571-72.

to register. The jury heard that Appellant had previously successfully registered as a sex offender on several occasions. From this, the State argued that Appellant's failure to register was intentional because Appellant was aware of the requirements and had demonstrated his ability to successfully register. It had to. The case was tried before this Court decided *Robinson* and the jury was instructed to determine whether Appellant had intentionally failed to register.[32] The jury could have rationally inferred that Appellant's failure to register was intentional (and rejected Appellant's theory that it was the result of a mistake) even if we had interpreted the statute to require a second culpable mental state.

As a practical matter, our decision in *Robinson* has not affected the sufficiency determination in this case at all. At most, *Robinson* resolves defensive claims that the failure to register was due to either an "accident" or "mistake" by analyzing them under the rubric of "involuntary act."[33] Thus, we see no compelling reason to abandon our holding in *Robinson*.

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[32] This was the basis of Appellant's argument to the jury and to the court of appeals, namely that the jury was required to believe the alleged failure to register was unintentional.

[33] *See Williams v. State*, 630 S.W.2d 640, 644 (Tex. Crim. App. 1982) (noting that the function of the former defense of "accident" is performed now by the requirement that a person voluntarily engage in the forbidden conduct).

Conclusion

The court of appeals properly concluded that the evidence in this case was legally sufficient. We agree with the court of appeals that the evidence was sufficient to establish that Appellant was aware of his duty to register and the requirements attendant to that duty. We further hold that a rational jury could have concluded that Appellant had provided incorrect information regarding his new address. We affirm Appellant's conviction for failing to comply with his duty to register a prospective change of address.

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