STATE OF MINNESOTA
IN COURT OF APPEALS
A06-1763

State of Minnesota,
Respondent,

vs.

Michael R. Dekraai,
Appellant.

Filed January 8, 2008
Affirmed
Randall, Judge

Waseca County District Court
File No. K6-06-122

Lori Swanson, Attorney General, Kelly O'Neill Moller, Assistant Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

Paul Dressler, Waseca County Attorney, Waseca County Courthouse, 307 North State Street, Waseca, MN 56093 (for respondent)

John M. Stuart, State Public Defender, Lydia Villalva Lijó, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Randall, Presiding Judge; Kalitowski, Judge; and Hudson, Judge.

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

RANDALL, Judge

In this appeal from a conviction for failure to register as a predatory offender, appellant argues that the evidence is insufficient to prove that he failed to notify his agent

of a change of address at least five days before beginning to live at a new location. Appellant also argues that the district court committed error by allowing references to his status as a predatory offender at trial. We affirm.

FACTS

Appellant Michael Dekraai was charged with failure to register as a predatory offender in violation of Minn. Stat. § 243.166 subds. 3(b), 5(a) (Supp. 2005). Appellant allegedly failed to provide the department of corrections with five-days advance notice before he moved to a new primary address in December 2005. A jury trial was held on the matter. Much of the testimony produced at trial is uncontroverted.

According to the record, appellant, who was required to register as a predatory offender, rented a residence at 300 Fifth Avenue Southwest in the city of Waseca with his friends, Wyatt Henning and Henning's fiancée, Chelsea Cooney, from April through June 2005. Appellant's name was included on the lease with Henning's and Cooney's and he moved all of his belongings into the residence. In compliance with state law, appellant registered the residence he shared with the couple as his "primary residence" with the department of corrections. Appellant was not living at the residence for several months in 2005, but his possessions remained on the premises while he was away. In November 2005, appellant again began staying at the Henning/Cooney residence. Upon returning, appellant was no longer named on the lease; however, he again registered the residence as his primary address on November 2, 2005.

At trial, corrections agent Jeffrey Oney testified for the state. Oney monitored appellant's compliance with the predatory offender registration requirements during that

time period. Oney had difficulty maintaining contact with appellant because there was no phone service at the residence. Oney testified that he attempted to make contact with appellant at the residence through in-person visits on two occasions during November and December 2005, but was unsuccessful. He was not allowed into the home to determine whether appellant was residing there because Henning, who had been involved in previous run-ins with the law, did not want a police presence at the residence. Oney claimed that Henning contacted both him and his supervisor in late November or early December of 2005, and demanded that the department of corrections find appellant a place to stay because he could no longer live at the residence.

Oney met with appellant on December 5, 2005. At the meeting, appellant told him that he had been staying at the Henning/Cooney residence, but "could no longer live at the residence." Oney suggested that he contact a workforce center for temporary accommodations, but appellant rejected the idea. Appellant was instructed to report back to Oney later that day with the address he would by staying at that evening and to continue reporting each day thereafter. Appellant did not comply with Oney's orders, and a warrant was issued for appellant's arrest.

On December 13, 2005, Oney visited the Henning-Cooney residence with police detective Timothy Bourasa. Oney and Bourasa testified that they spoke with Cooney through a window at the home, and that Cooney informed them that appellant had moved out several days earlier.

Cooney, who testified for the state, did not recall having a conversation with Oney and Bourasa on December 13, 2005. Cooney also denied having told Oney that appellant

moved out of the residence. She speculated that if she had told the men that appellant moved out, it was because he was "never living there at the time." Cooney did not consider appellant to be living with the couple because his name was not on the lease, but did admit that appellant was allowed "to come and go and visit whenever he wanted," and to "get clothes and change or stay the night if he needed." When asked how often appellant stayed at the residence during that time period, Cooney testified that she was unsure because she worked nights and would sleep most of the day.

Conversely, Henning, who testified for the defense, claimed that appellant was allowed to stay at the residence as a guest until he found a more permanent residence because Henning did not want him to "stay on the streets" during the cold winter. Henning testified that he told Oney that their home was not appellant's permanent residence and demanded that Oney find appellant a new place to stay. Henning claimed that appellant consistently stayed at the residence five to six nights a week from November through December 13, 2005, but did not testify as to whether appellant had moved from the residence in December.

At the close of trial, appellant was convicted of failing to register his primary address as a predatory offender and sentenced to 24 months incarceration with credit for time served. This appeal followed.

D E C I S I O N

I.

In considering a claim of insufficient evidence, this court's review "is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction," is sufficient to allow the jury to reach the verdict that it did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). The reviewing court must assume the jury believed that state's witnesses and disbelieved any evidence to the contrary. *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). The reviewing court will not disturb 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 the defendant was guilty of the charged offense. *State v. Alton*, 432 N.W. 2d 754, 756 (Minn. 1988).

Here, appellant was charged with violating Minn. Stat. § 243.166, subd. 3(b) (Supp. 2005). Under the statute, a person required to register as a predatory offender must provide immediate written notification to an assigned corrections officer that the person is no longer living or staying at a previously registered primary address, and must notify law enforcement or an assigned corrections agent at least five days before starting to live at a new primary address. Minn. Stat. § 243.166, subd. 3(b). A "primary address" is "the mailing address of the person's dwelling." *Id*., subd. 1a(g) (Supp. 2005). A "dwelling" is defined as a "building where the person lives under a formal or informal agreement to do so." *Id*., subd. 1a(c) (Supp. 2005).

Appellant concedes that he was required to register, but argues that the evidence is insufficient to prove that he changed his primary address. We disagree. Despite conflicting evidence, the testimony as a whole supports the inference that appellant no longer lived at the residence. At trial, both Oney and Bourasa testified that Cooney told them on December 13, 2005, that appellant moved out of the home several days earlier. Cooney testified that, although she did not recall having this conversation, she may have told the men that appellant moved out because appellant did not reside at the home during that time period. In addition, Oney testified that only days before he and Bourasa spoke with Cooney, appellant told him that he "could no longer live at the residence" and needed Oney to find him a place to stay. Oney ordered appellant to report where he would be staying, but appellant failed to do so. Oney also testified that Henning called him in late November and told him that he needed to find appellant a new residence because he could no longer stay at their home.

The evidence produced at trial was not overwhelming. The law itself is probably obtuse, at best, to street people moving from prison to halfway houses to acquaintances' houses to homeless shelters to the backseat of abandoned cars to bridge overpasses to their grandmother's house for Thanksgiving ("but you cannot stay overnight") to another homeless shelter to an apartment for four weeks until the next month's rent is due to another apartment for four days, which are the four days you put off the landlord by lying about having the first month's rent "tomorrow" until his patience wears out to yet one more abandoned car/homeless shelter/friend's basement etc., etc. The penalty for this status crime is harsh, actual imprisonment. It is a status crime because you do not have to

do anything wrong to be guilty of it, you can live a perfectly straight life, but you are out of contact with a corrections agent/probation officer and they do not have an up-to-date address on hand.

The wisdom of the law and its harsh penalty are not at issue, at least not yet. The outcome of this case was reached by weighing the credibility of the witnesses. In reviewing those determinations, we assume the jury found the state's witnesses more credible. *Moore*, 438 N.W.2d at 108. With testimony from several witnesses in the record that supports the state's case, we decline to disturb the verdict.

II.

Appellant argues that the district court erred by allowing repeated references to appellant's status as a predatory offender, and a few comments involving the use of the phrase "sex offender." Appellant did not object to these references at trial. When a defendant fails to object to the admission of evidence, this court reviews the purported impropriety under the plain error standard. Minn. R. Crim. P. 31.02; *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). "The plain error standard requires that the defendant show: (1) error; (2) that was plain; and (3) that affecting substantial rights." *State v. Strommen*, 648 N.W.2d 681, 6861 (Minn. 2002).

The state argues that the "invited error" doctrine precludes us from considering this argument. The doctrine of invited error prevents a criminal defendant from courting error to preserve a basis for appeal and force a new trial. *State v. Kortness*, 284 Minn. 555, 558, 170 N.W.2d 210, 213 (1969). The state claims that because appellant's counsel also used the phrase "predatory offender" in closing arguments, appellant waived his

right to challenge the use of this language. Conversely, appellant argues that the cases cited by the state applying the invited error doctrine involved defendants who affirmatively or intentionally requested, as opposed to acquiesced to, an instruction.

We need not decide this issue because the error alleged by appellant does not meet the plain error test. From our review of the record, we see no error or prejudice in how the phrase "predatory offender" was utilized at trial. Although it was uttered numerous times, it was only used in reference to "predatory offender registration" as stipulated by the parties. None of the references directly labeled appellant as a predatory offender.

Appellant also contends that Oney's reference to "sex offender" was plain error because it violated the district court's order. Prior to trial, the court barred all witnesses from referring to appellant as a sex offender or using the phrase "sex offender registration." In testifying for the state, Oney did use the phrase "sex offender," but only in the context of explaining the computer system utilized to track offenders. Oney testified that he had access to the system and "[w]henever I've had to access it, I go to our sex offender agent who has – knows how to get in there very easily and look things up, navigate very easily." Strictly construed, Oney's testimony does not violate the order because he did not refer to appellant as a sex offender or mention the phrase "sex offender registration." Further, Oney's comment was limited to a single, brief occurrence that did not involve a direct reference to appellant. This is not plain error.

Affirmed.