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**STATE OF MINNESOTA
IN COURT OF APPEALS
A06-2346**

State of Minnesota,
Respondent,

vs.

Damon Moore,
Appellant.

**Filed April 22, 2008
Affirmed in part, reversed in part, and remanded
Ross, Judge
Dissenting, Johnson, Judge**

Chisago County District Court
File No. CR-05-3086

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Considered and decided by Lansing, Presiding Judge; Ross, Judge; and Johnson, Judge.

UNPUBLISHED OPINION

ROSS, Judge

Damon Moore appeals from his conviction of failure to register as a predatory sex offender. Moore was convicted of failing to register because he did not notify law enforcement authorities at least five days before moving from his primary address, in violation of Minnesota Statutes section 243.166, subdivision 3(b), and of failing to return any of the annual address-verification forms sent to him, in violation of section 243.166, subdivision 4(e)(2). Moore argues that the state lacks jurisdiction because the alleged offenses did not occur in Minnesota. He contends that the state's prosecution contravenes his rights under the state and federal constitutions. He also maintains that the evidence was insufficient to convict him.

Because an element of Moore's failure to register occurred in Minnesota, the state's exercise of jurisdiction is not unconstitutional. We also hold that there was sufficient evidence to convict Moore of failing to notify law enforcement authorities of his new address. But because the evidence presented at trial was insufficient to support Moore's conviction of failing to return the annual address-verification forms sent to his address, we reverse that conviction. We therefore affirm in part, reverse in part, and remand.

FACTS

Damon Moore was charged with kidnapping and first-degree criminal sexual conduct in 1991 after he carjacked, abducted, and sexually assaulted a stranger who had stopped at a red light in Minneapolis. Moore pleaded guilty to first-degree criminal

sexual conduct. He completed and signed a predatory sex offender registration form in 1995 while he was living in a residential confinement facility in Minneapolis. That form explained the registration requirements of Minnesota Statutes section 243.166 (1994).

In July 2001, while he was incarcerated at the Rush City prison in Chisago County, Moore submitted a change-of-information notice listing a Chicago, Illinois address as his new place of residence. Moore was released from the Rush City prison on September 1, 2001, and he moved from Minnesota to Chicago the next day. The Minnesota Bureau of Criminal Apprehension sent verification letters to the Chicago address on June 3, 2002, August 13, 2002, June 2, 2003, June 1, 2004, and August 11, 2005. The letters, which were designed for Moore to sign and return to confirm his Chicago residence, were all returned by the post office unopened, marked "Returned to Sender/Attempted Not Known." A verification letter sent on May 30, 2005, was not returned and it generated no other response.

In August 2005, the BCA initiated a computerized search of Moore's criminal history and discovered that he was most recently believed to be living in Missouri. Chisago County officials obtained a warrant for Moore's arrest. Missouri officials apprehended Moore and extradited him to Minnesota.

Chisago County charged Moore with failure to register in violation of Minnesota Statutes section 243.166, subdivision 3(b) (2000), and failure to return sex offender verification forms in violation of Minnesota Statutes section 243.166, subdivision 4(e)(2) (2000). At trial in June 2006, the parties stipulated to facts and to several exhibits. Moore waived his right to a trial by jury, to testify at trial, to have the prosecution's

witnesses testify in open court in his presence, question prosecution witnesses, and have favorable witnesses testify for him in open court. He entered a not-guilty plea but argued that the district court lacked jurisdiction, preserving the jurisdictional question for appeal. He also reserved his right to challenge the sufficiency of the evidence on appeal.

The district court found that Moore knew that he was required to notify law enforcement authorities at least five days before moving and to complete the address-verification forms mailed to him, but that he failed to do either. The court also found that regardless of Moore's state of residence, he had a duty to comply with the requirements of section 243.166, which he failed to perform. It found that under the jurisdictional framing of section 609.025 (2000), Moore had intentionally caused a criminal result within Minnesota from outside the state's boundaries. The district court therefore determined that the state has jurisdiction to prosecute Moore for his registration failures. It found Moore guilty of failing to inform law enforcement authorities of his new address at least five days before he left his claimed Chicago address, in violation of section 243.166, subdivision 3(b), and of failing to return the verification forms sent to the Chicago address, in violation of section 243.166, subdivision 4(e)(2). Moore appeals.

DECISION

We must decide whether the state has jurisdiction over Moore under Minnesota Statutes section 609.025 (2000), and, if so, whether the application of that section to Moore is unconstitutional. Moore also contends that even if the state has jurisdiction, the state nevertheless failed to introduce evidence sufficient to convict him of failing to

register and to verify his address. We are not persuaded by Moore's jurisdictional arguments, but we hold that the evidence cannot sustain both convictions.

I

We agree with the district court that section 609.025 grants the state jurisdiction over Moore without offending Moore's constitutional rights. At common law, a state's jurisdiction in criminal matters was limited to the crimes committed within the territorial boundaries of the state. *State v. McCormick*, 273 N.W.2d 624, 625 (Minn. 1978). Minnesota Statutes section 609.025 confers prosecutorial jurisdiction when a person "[c]ommits an offense in whole or in part within this state," and it also expands Minnesota's extraterritorial jurisdiction: "A person may be convicted and sentenced under the law of this state if the person . . . [b]eing without the state, intentionally causes a result within the state prohibited by the criminal laws of this state." Minn. Stat. § 609.025 (2000). Moore contends that the state lacks jurisdiction to prosecute him. The district court rejected this argument, and we review jurisdictional issues de novo. *State v. LaRose*, 543 N.W.2d 426, 427 (Minn. App. 1996).

Moore argues that Minnesota has no jurisdiction to prosecute his Chicago conduct of failing to notify law enforcement authorities that he left his claimed Chicago address after residing there for five months and for failing to return any of the address-verification forms sent to him at that address, which are prohibited omissions under section 243.166. Section 243.166 requires persons convicted of kidnapping and criminal sexual conduct to register for ten years as a sex offender after they are released from prison. Minn. Stat. § 243.166, subs. 1(a)(1)(ii), (iii), 6 (2000). Under this duty, even if

the offender lives outside Minnesota, he must give written notice of his new primary address at least five days before moving there. *Id.*, subd. 3(b) (2000). The offender must sign and return a verification form sent to his out-of-state address within ten days after receiving the form. *Id.*, subd. 4(e)(1)-(2) (2000). A person required to register who knowingly violates any of these provisions or intentionally provides false information commits a felony. *Id.*, subd. 5(a) (2000). Moore asserts that Minnesota's jurisdictional statute as applied to permit Chisago County to prosecute him violates his constitutional rights. We therefore consider the reach and constitutionality of section 609.025 to Moore's offenses.

Moore's constitutional challenge requires us to apply law to undisputed facts, a task we undertake de novo. *State v. Wiltgen*, 737 N.W.2d 561, 566 (Minn. 2007). The United States Constitution affords criminal defendants the right to trial "by an impartial jury of the State and district wherein the crime shall have been committed." U.S. Const. Amend. VI. The Minnesota Constitution has a similar provision, affording the right to trial in "the county or district wherein the crime shall have been committed." Minn. Const. art. I, § 6. Moore relies chiefly on *State v. McCormick* and *State v. Smith* to support his contention that the district court lacks subject matter jurisdiction. Neither party significantly discusses this court's holding in *Sykes v. State*. These cases and the supreme court's recent opinion in *State v. Simion*, 745 N.W.2d 830 (Minn. 2008), issued after this appeal was submitted, together inform our conclusion that jurisdiction exists for the state to prosecute Moore's failure to register and to verify his change of address.

In *State v. McCormick*, the supreme court held unconstitutional a Minnesota statute that prohibited one parent from detaining his child in another state with the intent to deny the other parent's court-ordered custodial rights. 273 N.W.2d at 625, 628. The *McCormick* court reasoned that although the act of abducting a child in Minnesota allows for prosecutorial jurisdiction in the state for the abduction itself, the act of detaining the child in another state cannot be prosecuted within Minnesota's jurisdiction because the "[d]efendant constitutionally and historically can only be tried in the district where the crime occurred." *Id.* at 628.

In *State v. Smith*, the court considered whether the state's jurisdiction allowed it to prosecute an accused murderer when the decedent's body was discovered in Minnesota but all actions causing the death, and the death itself, occurred outside Minnesota. 421 N.W.2d 315 (Minn. 1988). The *Smith* court discussed the changing landscape of jurisdiction, noting that various states had enacted statutes to expand the traditional territorial restrictions on prosecutorial jurisdiction. *Id.* at 319. But it concluded that "some territorial aspects of jurisdiction remain" because of the state and federal constitutional safeguards against state overreaching. *Id.* The *Smith* court held that "[o]nly if some part of the crime was committed within the State of Minnesota does the state have jurisdiction to punish the crime." *Id.* at 320. It found no jurisdiction for prosecution of the murder, holding that because "the complaint specifically alleges that the entire murder was committed outside of Minnesota, it is deficient on its face." *Id.* at 321.

In *Sykes v. State*, we addressed whether the state had jurisdiction to prosecute a former cult member who sent a letter from England to a member in Minnesota, threatening, “I will kill you, your wife, that is your second wife, and your pathetic dog.” 578 N.W.2d 807, 809 (Minn. App. 1998), *review denied* (Minn. July 16, 1998). The disgruntled former member also left a telephone message stating his intent “to go to America within the next few weeks to murder as many [group members] as I can.” *Id.* at 809–10. Expanding on the rationale of *McCormick* and *Smith*, we held that state jurisdiction to prosecute Sykes for making terroristic threats existed because part of the crime occurred in Minnesota. *Id.* at 812. We relied on the facts that a key component of the crime involved terrorizing others and that the victims in that case received the terrorizing threats while in Minnesota. *Id.* at 811–12; *see also State v. Rossbach*, 288 N.W.2d 714 (Minn. 1980) (holding that state could prosecute defendant who fired rifle shots from inside Red Lake Indian Reservation at deputy sheriff in Clearwater County).

The supreme court’s recent decision in *State v. Simion* summarized this precedent as establishing “the operative-event test.” 745 N.W.2d at 838 (quotation omitted). The *Simion* court considered whether jurisdiction existed for the state to prosecute a former employee for vandalizing and removing parts from his employer’s truck at his home in Wisconsin before returning the truck to his employer in Minnesota. *Id.* at 836–37. The court repeated the maxim stated in *Smith*, explaining that the test is whether “some operative event, a triggering event, for the crime occurred in Minnesota.” *Id.* at 838 (quotation omitted). It also explained that when out-of-state actions result in in-state

criminality under the third paragraph of section 609.025, the test is satisfied “if the result is part of the crime or related to an element of the crime.” *Id.* at 839.

Applying this test, the *Simion* court rendered a split decision. It held that Simion’s vandalism of the truck in Wisconsin did not fall within Minnesota’s jurisdiction because “no criminal behavior relevant to the damage to property charge” occurred in Minnesota. *Id.* at 839. But it held that Minnesota jurisdiction existed to prosecute Simion’s theft from his employer’s truck because although he had taken the item from the truck while he was at home in Wisconsin, he did not finalize his intent to permanently keep the item until he later returned to Minnesota and confronted his employer. *Id.* at 840. Because Simion’s *mens rea* was formed “at least in part in Minnesota,” the court found a sufficient nexus to the state and it recognized jurisdiction to prosecute. *Id.*

Although our case does not squarely mirror the circumstances of any of these prior cases, it has the features necessary to satisfy the operative-event test for constitutionality, whether considered under the first or the third paragraphs of section 609.025. It meets the constitutionally allowable jurisdictional reach of the first paragraph of section 609.025—requiring that part of the offense occur within the state—because an essential element of failing to register is that the defendant is a predatory offender, based on criminal conduct that occurred in Minnesota. Alternatively, it meets the jurisdictional condition of the third paragraph of section 609.025—requiring that the offense caused a criminal result within the state—because a predator’s willful failure to register his whereabouts has the same detrimental impact within the state regardless of where the

predator resides at the time of the failure. We address these alternative bases for our holding in turn.

Under the line of cases leading to and including *Simion*, it is clear that when “some part of the crime” occurs in Minnesota, the state has jurisdiction to prosecute it. Some part of Moore’s offense occurred in Minnesota. To convict a person of knowingly failing to register, the state must prove that (1) the defendant is required to register as a predatory offender; (2) the defendant knowingly violated a registration requirement; (3) the time period within which the offender is required to register has not lapsed; and (4) the failure to register occurred within the time period and the county alleged in the complaint. *See* Minn. Stat. § 243.166, subds. 1(a), 1(b), 3–6 (2000); *see also* 10 Minnesota Practice, CRIMJIG 12.100 (2006). More specifically here, to convict Moore of failing to register his new address or of failing to verify his current address, the state first had to prove that Moore is a predatory offender as defined by section 243.166, subdivision 1.

Under that subdivision as applied to this case, the state could not convict Moore for failing to register unless it first proved that he had been convicted of kidnapping under section 609.25 or criminal sexual conduct under any of five other Minnesota statutes, or that he had been convicted of some other crime arising from his act of kidnapping or his act of sexual misconduct. Minn. Stat. § 243.166, subd. 1(a)(1)(ii), (iii). In other words, an essential element of the crime of failing to register as a predatory offender is the commission of a predatory offense in Minnesota that results in a conviction and the designation as “a person required to register.” Moore could not have

been convicted of failing to register after he moved to Illinois had he not engaged in kidnapping and sexual assault in Minnesota. Because an essential element of Moore's crimes of failing to register is that he is a predatory offender based on criminal conduct that occurred in Minnesota, the state's prosecution of these crimes does not offend the constitutional or statutory limits of jurisdiction as described in the first paragraph of section 609.025.

The dissent takes the position that Moore's Minnesota crimes do not satisfy the operative-event test because "[t]he registration requirement is not . . . an 'event'." Although no Minnesota case has defined what is an "event" and what is not, or what test might be employed to make the determination with some degree of predictability, the supreme court's discussion in *Smith* sheds the most light on the question and supports our decision. In *Smith*, the state argued that although the murder at issue had been committed entirely in some other state, Minnesota had jurisdiction to prosecute the murder because the body had been deposited in Minnesota and the deposit was a crime that occurred entirely in the state. 421 N.W.2d at 320-21. Rejecting this argument, the supreme court expressly explained that "this [body-depositing] crime is not an element of murder" and "[t]herefore, jurisdiction to prosecute for the murder does not arise from this alleged violation." *Id.* at 321.

This plain explanation in *Smith* informs the outcome here. Contrary to the facts in *Smith*, Moore's underlying crime giving rise to the registration requirement *is* an element of the current crime of his conviction. As *Smith* implies, an underlying offense that is itself an element of the offense charged constitutes "some part of the crime" so as to

confer jurisdiction within constitutional limits. And the underlying offense is an “event” especially in a case such as this in which criminal conduct that occurs within Minnesota is expressly identified as an essential element, or a triggering event, of the crime for which jurisdiction is challenged. Moore violated the registration statute only because he first committed the triggering offense within Minnesota; his conduct constitutes a registration violation only because he engaged in one of several specified predatory offenses within the state.

The dissent also looks to *McCormick* and suggests that the defendant’s entrance into and abduction within Minnesota makes that case a better circumstance for meeting the operative-event test than does Moore’s prior Minnesota offenses leading to his Minnesota registration requirement. The dissent reasons that because jurisdiction was absent in *McCormick*, it is absent here. But as the *McCormick* court carefully pointed out, McCormick’s conviction did not depend on the abduction occurring in Minnesota because he was charged under the statute that specifically made it a crime to *detain* a child “*outside* the state of Minnesota.” 273 N.W.2d at 625, 627. The *McCormick* court noted that a “serious infirmity in the statute is its potential application where no contact between the parents, the child and the state of Minnesota exists.” *Id.* The statute here lacks that infirmity because it requires some conduct in Minnesota. Additionally, the defendant in *McCormick* did nothing in Minnesota that would have satisfied any element of the offense charged, such as a separate crime that may itself be an element of the offense, as *Smith* suggests and as is the case here. Contrast McCormick with Moore, whose conviction requires that “some event” or “some part” of the offense occur within

Minnesota by virtue of the first element of the registration statute, and the material distinction between these cases is apparent.

The commission of the underlying predatory offense is an essential element of section 243.166, and Moore's sexual assault and kidnapping that created his registration duty are "some part" of the offense and therefore constitute such an "event."

We also hold that the prosecution here falls within the constitutionally allowable reach of the third paragraph of section 609.025, which extends jurisdiction to in-state criminal results from out-of-state conduct. Moore's willful failure to register his whereabouts in Minnesota after his release as a predatory offender from a Minnesota prison would have the same detrimental impact within Minnesota whether the omissions occur while he is secreting himself in Chicago or isolating himself somewhere within Minnesota. The detailed registration scheme outlined in section 243.166, subdivisions 1–4, evidences the clear legislative intent to assure that Minnesota law enforcement authorities have current information specifying the residence, employment, and property ownership of those who have committed predatory crimes in Minnesota and elsewhere. *See* Minn. Stat. § 243.166, subd. 7 (2000) ("The information may be used only for law enforcement purposes."). The statute's requirements allow authorities to track not only the predator's current residence but the predator's movement. *See id.*, subd. 4a(a)(6) (2000) (requiring registration of information of "the year, model, make, license plate number, and color of all motor vehicles owned or regularly driven by the person"). It facilitates other Minnesota purposes, such as notification of essential persons of where predators are, where they are not, and where they are likely to be. This includes

informing the victim, key witnesses, a deceased victim's relatives, potential neighbors, social services agents, and others, in order to protect the public and to counteract the threat posed by the offender. *See* Minn. Stat §§ 244.052, .053 (2000).

The primary purpose of section 243.166 is to create an offender registry to assist law enforcement with investigations. *Boutin v. LaFleur*, 591 N.W.2d 711, 717 (Minn. 1999); *see also State v. Lilleskov*, 658 N.W.2d 904, 908 (Minn. App. 2003) (“The intended goal of the statute [is] to monitor sex offenders released into the community.”); *Kaiser v. State*, 641 N.W.2d 900, 907 (Minn. 2002) (stating that the statute’s purpose is “to keep law enforcement informed as to a predatory offender’s whereabouts.”); *In re Welfare of C.D.N.*, 559 N.W.2d 431, 433 (Minn. App. 1997) (noting that the statute’s purpose is to provide law enforcement officials with the whereabouts of sexual offenders to assist them with investigations), *review denied* (Minn. May 20, 1997). This need to track and monitor offenders is significant because the risk of recidivism posed by sex offenders is “frightening and high.” *Smith v. Doe*, 538 U.S. 84, 103, 123 S. Ct. 1140, 1153 (2003) (quotation omitted).

The express legislative purpose of registration is undermined when a predator, like Moore, avoids the statutory duty and therefore defeats the state’s opportunity to anticipate his movements in and out of the state; to monitor his contacts with potential future victims in the state; to assure former victims of his distance or to warn of his proximity; to inform parents and schools either of their presumed safety or their danger in light of his location along with that of other predators in the registry; to accurately determine suspects, facilitate witness identification of suspects, locate suspects, or

apprehend suspects expeditiously in the investigation of new predatory crimes; and to allocate crime-prevention resources based on the actual whereabouts of predators. There may be other, less obvious potential detriments to Minnesota public safety efforts when a Minnesota predator fails to register and verify his in-state or out-of-state movement for the duration of the registration period. For example, the failure may facilitate a predator's objective to falsely claim residence in a neighboring state on release from a Minnesota prison to later surreptitiously return home to Minnesota without detection. The state's interest in tracking the whereabouts of predators inside Minnesota migrating from other states may also be served by Minnesota's out-of-state registry requirement to the extent the state creates reciprocal arrangements to share information.¹ *See* Minn. Stat. § 243.166, subd. 9 (2000) (requiring the registration of offenders who move into Minnesota from other states).

We are mindful that these detriments to the state that result when predators fail to register may not constitute crimes under the literal reading of the third paragraph of section 609.025, but this does not prohibit jurisdiction. Jurisdiction is appropriate “if the

¹ Minnesota's predatory offender statute is part of a federally-designed sex-offender registration scheme of national scope. *See* 42 U.S.C. § 14071 (2006) (known as “Megan's Law”). That scheme strongly encourages the states to impose registration requirements that apply to sex offenders who have been convicted in other states, and to impose criminal penalties in any state in which the duty to register is violated. *Id.* § 14071 (c), (d). Both Minnesota's statute and Missouri's statute include provisions conforming with these requirements. *See* Minn. Stat. § 243.166, subs. 1b(b)(1), 5(c) (2006); Mo. Rev. Stat. § 589.400 1.(5), (6) (supp. 2005). The federally-mandated statutory scheme therefore contemplates concurrent jurisdiction in either the state of residence or the state in which the registration requirement was initially imposed. The parties have not briefed the impact of these provisions.

result is part of the crime or related to an element of the crime.” *Simion*, 745 N.W.2d at 839. Our analysis in *Sykes*, cited with approval in *Simion*, is particularly helpful here. In *Sykes*, we specifically acknowledged that “[t]he effect of a terroristic threat is not an essential element of the offense” because the crime has already occurred when the defendant uttered the threat with the purpose of terrorizing. *Sykes*, 578 N.W.2d at 811. We nevertheless considered the significance of victim reaction within the context of the terroristic threat statute. And we concluded, at least for the purpose of applying the jurisdictional analysis under the third paragraph of section 609.025, that “the crime of making terroristic threats was complete when Sykes’s threats were received by the victims in Minnesota.” *Id.* at 812. On that reasoning we held that jurisdiction exists under section 609.025 without violating the state or federal constitution. Likewise here, although the crime of failing to register is literally complete upon the failure itself and the detrimental impact on the state by the failure is not an element of the registration crimes, the substantial impact on the state when the violation occurs establishes a constitutionally significant nexus to the state. And it does so with greater force than the nexus we found to exist in *Sykes*.

The dissent accurately points out that the *Simion* court did not find a sufficient nexus between a Wisconsin vandalism and the economic impact on the property owners in Minnesota, and that the *McCormick* court did not find a sufficient nexus between a California child-detention by one parent and the emotional impact on the other parent in Minnesota. But the *Sykes* court *did* find a sufficient nexus between an English threat and resulting fears in Minnesota. And *Simion*, the last word on the issue, reaffirmed *Sykes*’s

continued precedential value. This case is much more closely aligned with *Sykes*, where the Minnesota result from out-of-state conduct is inextricably intertwined in the statutory scheme of the crime currently being charged.

We hold that Moore's failure to continuously register in Minnesota may be prosecuted within the state's jurisdiction. Because an element of the crime occurred in Minnesota, and, separately, because the offense causes prohibited results within Minnesota, applying section 609.025 to confer jurisdiction does not offend the United States or Minnesota Constitutions.

II

We next address Moore's sufficiency-of-the-evidence argument. Moore argues that the evidence is insufficient to support his conviction of failing to update law enforcement authorities about his change of address at least five days before he moved from his first post-incarceration home in Chicago and of failing to return any of the annual address-verification forms sent to him from 2002 to 2005.

The state would have us avoid the merits, contending that Moore waived this issue when he stipulated to a paper trial, citing *State. v. Busse*, 644 N.W.2d 79, 88-89 (Minn. 2002). We are not persuaded by the state's position. In *Busse*, the Minnesota Supreme Court held that the defendant waived his right to challenge the sufficiency of the evidence on appeal because he had entered a guilty plea and stipulated to the prosecution's case. The *Busse* holding does not establish waiver here because Moore did not plead guilty and did not stipulate to the prosecution's case. This is clear from the state's own understanding. The state explained the terms of its limited agreement with Moore in a

pretrial hearing: “In exchange for Mr. Moore waiving his right to a jury trial or a court trial, [the resolution is] that we would do a paper trial on this case stipulating to the admissibility as evidence the documentation—the entire packet that was already submitted by the state on the defense’s probable cause challenge to have a paper trial *where the defense is still free to argue sufficiency of the evidence.*” (Emphasis added.) The state’s argument that Moore waived this issue is incorrect.

We turn to the merits of Moore’s factual challenge. This court reviews claims of insufficiency of the evidence to determine whether the factfinder could reasonably find the defendant guilty in light of the facts in the record, with all legitimate inferences from those facts construed in favor of the conviction. *Davis v. State*, 595 N.W.2d 520, 525 (Minn. 1999). To convict Moore of knowingly failing to register, the state had to prove that (1) Moore was required to register as a predatory offender; (2) Moore knowingly violated a registration requirement; (3) the time period within which Moore is required to register had not lapsed; and (4) the failure to register occurred within the time period and county alleged in the complaint. *See* Minn. Stat. § 243.166, subds. 1(a), 1(b), 3–6.

Based on stipulated facts, it is undisputed that Moore moved to Chicago one day after being released from prison in September 2001. Five months later, he moved from that address. At some point, he moved to Missouri, where the BCA eventually located him. He returned to Minnesota when he was extradited after the December 2005 warrant. Moore stipulated to several exhibits, including his registration form, which demonstrated that he knew of his continuing obligation under section 243.166 to provide notice of a new address before moving. He was a level-three offender and was required to register

under section 243.166, subdivision 1(a)(1)(ii), (iii). The information contained in the exhibits demonstrated that Moore was required to register his addresses until 2011, and that from 2002-2005, he did not. Moore did not inform the BCA or Rush City prison of his address after he left the Chicago address. The evidence therefore establishes that he knowingly failed to register under section 243.166, subdivision 3(b).

But there is not sufficient evidence to establish that Moore knowingly failed to return the required address verification forms under subdivision 4(e)(2). The statute requires that “within ten days after receipt” of the form, the person must sign that form and “mail the signed verification form back” to the BCA. By the statute’s plain terms, a person’s duty to sign and return the form is triggered by his “receipt” of the form. And the state does not contend that it presented any evidence that Moore ever received any of the forms.

The state does not argue that a presumption of receipt applies here. It argues instead that there was sufficient evidence for a factfinder to infer that Moore continued to live at the Chicago address to which the BCA sent the verification forms. In support, it points to the fact that Moore gave this address three months before he left prison, it was the only address he gave them, he failed to suggest in his stipulated facts any other address, and he apparently failed to file a forwarding address at the post office. We agree with Moore that these speculative bases do not alone constitute sufficient evidence that he lived at the residence as it regards the critical element of Moore’s receipt of the forms. We appreciate the state’s concern that a predatory offender should not be able to “avoid the registration requirement simply by ignoring his mail,” but the state has failed to

stipulate or introduce even circumstantial evidence that Moore actually lived at the residence and ignored his mail at any time during the years the forms were returned by the post office.

Because the state did not prove that Moore received the address-verification forms, we reverse the district court's determination that Moore is guilty of failing to return them. The district court's decisions are otherwise well supported and affirmed.

Affirmed in part, reversed in part, and remanded.

JOHNSON, Judge (dissenting)

I respectfully dissent from the opinion of the court. I believe that part II of the opinion departs from the established case law concerning when the judicial power may be applied to criminal conduct occurring outside the boundaries of the state.

In its prior decisions, the Minnesota Supreme Court consistently has declined to hold that a Minnesota state court has jurisdiction to convict and sentence a person for extraterritorial conduct. In *State v. McCormick*, 273 N.W.2d 624 (Minn. 1978), a California man detained his two Minnesota-based children in California in violation of court orders that awarded custody rights to a Minnesota woman and enjoined the man from visiting the children. *Id.* at 625. In *State v. Smith*, 421 N.W.2d 315 (Minn. 1988), the body of a murder victim, a Colorado woman, was found within Minnesota, but the complaint “alleged that the entire murder was committed outside of Minnesota.” *Id.* at 316-18, 321. And in *State v. Simion*, 745 N.W.2d 820 (Minn. 2008), a Wisconsin man, while in Wisconsin, vandalized a truck belonging to a Minnesota company and later abandoned the truck in Minnesota. *Id.* at 835-36. In each of these cases, the connection to Minnesota was held to be constitutionally insufficient to justify the exercise of jurisdiction. *Simion*, 745 N.W.2d at 839; *Smith*, 421 N.W.2d at 321; *McCormick*, 273 N.W.2d at 627-28.

The majority opinion reasons that jurisdiction is constitutionally proper in this case in part because Moore’s prior conviction occurred in Minnesota. *Supra* at 10-11. As a threshold matter, the facts of this case do not satisfy the asserted statutory basis for jurisdiction, which permits a court to convict and sentence a defendant “if the person . . .

[c]ommits an offense in whole or in part within this state.” Minn. Stat. § 609.025(1) (2004). A person “commits” the offense of failing to maintain registration in violation of Minn. Stat. § 243.166 at the place where he or she resides at the time of the failure to register. *See State v. Jones*, 729 N.W.2d 1, 4 n.4 (Minn. 2007) (“Because Jones resides on [the Leech Lake] reservation, his failure to maintain a current address registration was necessarily an offense that was committed on his reservation.”). Thus, Moore committed the offense that is count 1 in Missouri, where he resided when he failed to “give written notice . . . that [he was] no longer living or staying at [the Illinois] address.” Minn. Stat. § 243.166, subd. 3(b) (Supp. 2005). Moore was not present in Minnesota between 2001, when he was released from a Minnesota prison, and 2006, when he was extradited from Missouri to Minnesota.

Even if section 609.025(1) were satisfied, Moore’s prior conviction and the attendant consequences would not satisfy the constitutional test. The supreme court has held that “some operative event, a triggering event” must occur within the state of Minnesota. *Simion*, 745 N.W.2d at 840 (quoting *Smith*, 421 N.W.2d at 319). The requirement to register is not the type of “operative event” required by *Smith* and *Simion*. The registration requirement is not even an “event”; rather, it is an obligation imposed on Moore by operation of law because of his prior conviction. The majority’s reasoning on this point is inconsistent with the supreme court’s decision in *McCormick*, where the defendant was bound by a custody order issued by a California court as well as a restraining order issued by a Minnesota court after his former wife alleged that he had molested the children in Minnesota. The defendant, who later entered Minnesota to

remove the children to California, violated a criminal statute by “intentionally detain[ing] his own child under the age of 18 outside the state of Minnesota, with intent to deny another’s rights under an existing court order.” 273 N.W.2d at 625 (quoting Minn. Stat. § 609.26). Because the prior court orders in *McCormick* did not satisfy the operative-event test, Moore’s prior conviction also does not satisfy the test.

The majority opinion also reasons that jurisdiction is constitutionally proper because Moore’s failure to maintain registration had a “detrimental impact” on the state. *Supra* at 13. The supreme court, however, has narrowly defined the “result within the state,” Minn. Stat. § 609.025(3), that will satisfy the constitutional requirement for jurisdiction. The majority opinion relies heavily on a passage in *Simion* stating that the operative-event test may be satisfied “if the result is part of the crime or related to an element of the crime.” 745 N.W.2d at 839. Although this language is seemingly broad, it can be understood properly only by considering the facts of the cases from which it is derived. In *Simion*, the “result” of the defendant’s conduct, which the supreme court deemed insufficient, was that a Minnesota company “felt the effects of the crime in Minnesota.” *Id.* In *Smith*, the asserted “result” was that the body of a murder victim was left in Minnesota after the murder was committed in another state. 421 N.W.2d at 320-21. And in *McCormick*, the “result” was that a Minnesota woman was deprived of her custody rights to her children, who also were Minnesota residents, and the children were detained by a man who had been enjoined by a Minnesota court from having contact with them. 273 N.W.2d at 625. The result identified by the majority opinion in this case is no

closer to satisfying the operative-event test than the results that were found insufficient in *McCormick, Smith, and Simion*.

The *McCormick* case is most similar to this case. The defendant's out-of-state conduct had a result within Minnesota that was criminal in nature only because of the defendant's legal status and duties under Minnesota law arising from prior legal proceedings. *McCormick*, 273 N.W.2d at 625; *see also Ray v. Ray*, 299 Minn. 192, 194, 217 N.W.2d 492, 494 (1974) (holding that Minnesota court has authority to modify prior custody determination of court of another state). Yet the supreme court concluded that jurisdiction did not exist in *McCormick* due to the "traditional restraint in prosecuting offenses committed outside the borders of a state." 273 N.W.2d at 628.

I do not perceive that the supreme court has loosened that "traditional restraint" since deciding *McCormick*. Extraterritorial jurisdiction likely exists in circumstances that have yet to be considered in Minnesota, but the existing case law does not support the conclusion that jurisdiction exists in this case. Courts should "proceed cautiously" whenever they are asked to define the constitutional scope of the judicial power, a task that requires self-restraint. *See State v. C.A.*, 304 N.W.2d 353, 358-59 (Minn. 1981). This is especially so with respect to the court of appeals. *Lake Superior Ctr. Auth. v. Hammel, Green & Abrahamson*, 715 N.W.2d 458, 472 (Minn. App. 2006) ("the task of extending existing law falls to the supreme court . . . , not to this court"). Thus, I would refrain from extending the existing case law to approve the exercise of jurisdiction over the extraterritorial conduct at issue in this case.