STATE OF MINNESOTA
IN COURT OF APPEALS
A12-905

State of Minnesota,
Respondent,

vs.

Quentin Otis Livingston,
Appellant.

Filed July 15, 2013
Affirmed
Stoneburner, Judge

Dakota County District Court
File No. 19HACR101072

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

James C. Backstrom, Dakota County Attorney, Karen Wangler, Assistant County Attorney, Hastings, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Julie Loftus Nelson, Special Assistant Public Defenders St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Rodenberg, Judge; and Stoneburner, Judge.

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

STONEBURNER, Judge

Appellant challenges the sufficiency of the evidence to support his two convictions of failure to register as a predatory offender, in violation of Minn. Stat. § 243.166 (2008). We affirm.

FACTS

Appellant Quentin Otis Livingston is required to register as a predatory offender as a result of a 1993 conviction of third-degree criminal sexual conduct. Although his registration period was initially scheduled to end in 2005, his registration dates were reset and extended in 2003, after Livingston was convicted for failure to register as a predatory offender, resulting in a new end date in 2018. His registration dates were again reset in 2008, after a DWI revocation, resulting in a new end date in 2023.

Initially, Livingston registered his mother's St. Paul residence as his primary address. On March 4, 2009, Livingston moved from his mother's St. Paul residence to his girlfriend's Apple Valley residence. On the same day that he moved, Livingston met with Deputy Lupe Vasquez at the Ramsey County Law Enforcement Center to complete a change-of-information form reflecting this move to a new primary address.

On February 1, 2010, the Bureau of Criminal Apprehension (BCA) mailed an annual address-verification form to Livingston with a cover letter instructing him to "read [the form] carefully, complete, sign and return it." Because Livingston disagreed with the date on the form for the end of his registration requirement, he returned the cover letter and the form without initialing the 28 mandatory items regarding his understanding

of the duty to register and without signing on the designated signature lines. Livingston added three notes in the margins of the form. On the BCA's cover letter, he wrote: "These are [sic] not my end date my end date is 2012." At the top of the form, he wrote: "[E]verything's current as you have it. Besides work." And at the top of the two-page duty-to-register section, he wrote: "I'm not signing til my end date of registration is fixed. I have no problem with signing. I believe there's a mistake!" After this final notation, Livingston wrote his name and phone number.

By letter dated February 12, 2010, the BCA acknowledged receipt of Livingston's "unsigned Verification letter" and explained the end date of Livingston's registration requirement. The letter included a new form and advised Livingston that "[n]o updates were made" based on the initial form, because it was not signed, and instructing him to return the new form, completed and signed, within ten days "in order to return to compliant status." Livingston did not return the form.

In early March 2010, Officer Valerie Holes of the Apple Valley Police Department contacted Livingston to advise him that the BCA listed his predatory-offender-registration status as noncompliant. During their interaction, Livingston acknowledged the BCA letter and told Officer Holes "that he would take care of it."

On March 21, 2010, Apple Valley police investigated a potential domestic dispute involving Livingston's girlfriend. During the investigation, Livingston's girlfriend told police that Livingston "did not reside at that residence with her." Officer Holes saw the report of this investigation and, on March 23, began to investigate Livingston's whereabouts.

Officer Holes first went to Livingston's registered primary address, in Apple Valley, and spoke with Livingston's girlfriend. The girlfriend told Officer Holes that Livingston had "officially" moved out of her residence on March 4.

Based on information from the girlfriend and Livingston's registration, Officer Holes and Detective Sean McKnight then went to the residence of Livingston's mother, in St. Paul. There, Livingston's mother told the officers that Livingston no longer lived in Apple Valley and he had moved to her residence approximately three weeks earlier. She said she had spoken to Livingston about changing his primary address to her residence and "he told her he had contacted the B.C.A. and taken care of it."

Although Livingston was not at his mother's residence when the officers arrived, his mother called him, he spoke with Officer Holes regarding the situation, and he told Officer Holes that "he was already on the way" to his mother's residence. After he arrived, Livingston told the officers that he was living at his mother's residence and that he had called the BCA. Detective McKnight had previously checked the BCA's computer system, and there was no record of this alleged contact with the bureau.

The state charged Livingston with two counts of failure to register as a predatory offender, alleging that (1) in February 2010, Livingston "failed to return his annual verification letter to the Bureau of Criminal Apprehension as required by § 243.166, subd. 4(e)" and (2) in February or March 2010, Livingston "knowingly failed, at least five days before changing residence, to give written notice of the address of the new residence."

At the bench trial that followed, witnesses presented conflicting accounts. Officer Holes, Detective McKnight, and a BCA agent testified to the above facts. Livingston's mother testified that in March 2010, Livingston was *living* at her residence. But she also testified that, at that time, she had told Livingston "to come back to [her] house *to stay* until some air get in between him and [his girlfriend]." (Emphasis added.) Livingston's girlfriend testified that Livingston had been gone from the Apple Valley residence "for almost two and a half days" when the officers came there on March 23. Livingston testified that, as of March 23, he had been staying at his mother's residence for three or four nights. Livingston also testified that he did not receive the BCA's February 12 follow-up letter, regarding his annual verification form.

After assessing witness credibility, the district court found Livingston guilty as charged. The district court sentenced Livingston to 24 months in prison, a downward durational departure from the sentencing guidelines. This appeal followed.

D E C I S I O N

Livingston challenges the sufficiency of the evidence to support his convictions. In evaluating the sufficiency of the evidence, we review the evidence in the light most favorable to the decision and assume that the trier of fact disbelieved any testimony in conflict with the decision. *State v. Landa*, 642 N.W.2d 720, 725 (Minn. 2002). Viewing the evidence in this light, we carefully consider the record to determine whether the evidence and reasonable inferences drawn from the evidence are sufficient to support the decision. *State v. Brown*, 732 N.W.2d 625, 628 (Minn. 2007). We will not disturb the decision if the fact-finder, acting with due regard for the presumption of innocence and

the state's burden of proof beyond a reasonable doubt, could reasonably conclude that the defendant is guilty of a charged offense. *State v. McCullum*, 289 N.W.2d 89, 91 (Minn. 1979).[1]

I. Livingston's failure to properly return his annual verification form.

Under Minnesota law, if a person required to register as a predatory offender knowingly violates the registration requirements, the person is guilty of a felony. Minn. Stat. § 243.166, subd. 5(a) (2008). During the period a person is required to register as a predatory offender, the person must complete, sign, and return to the BCA an annual verification form. *Id.*, subd. 4(e) (2008).

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[1] Livingston argues that his convictions are based on circumstantial evidence, requiring stricter scrutiny on appeal. *See State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010) (stating that a conviction based on circumstantial evidence "warrants heightened scrutiny"). Heightened scrutiny applies in cases in which an element of an offense has been proved entirely by circumstantial evidence. *See id.* at 474 (concluding that the court of appeals erred by determining that "heightened scrutiny controls only when every element required for conviction has been proved entirely by circumstantial evidence" (quotation omitted)); *State v. Flowers*, 788 N.W.2d 120, 133 n.2 (Minn. 2010) (concluding that the state presented direct evidence on each element of charged offense and declining to apply a heightened scrutiny analysis). Here, Livingston's admissions to the officers that he (1) had received and "would take care of" the February 12 BCA letter and (2) was living at his mother's residence, constitute direct evidence that, together with the direct evidence that the BCA never received a completed annual verification form or change-of-information form, supports both convictions. *See State v. Silvernail*, ____ N.W.2d ____, ____, 2013 WL 2364094, at *10 n.2 (Minn. May 31, 2013) (Stras, J., concurring in part) (declining to view a witness's testimony regarding appellant's confession as circumstantial, rather than direct, evidence of appellant's guilt "because it fails to account for the critical distinction between a reasonable inference drawn from the circumstances proved and the evaluation of the credibility of witnesses. Unlike inferences based on the circumstances proved, only the jury may evaluate the credibility of witnesses."). Because the convictions are supported by direct evidence, we do not apply the analysis applicable to convictions based on circumstantial evidence. We note, however, that even under a heightened scrutiny analysis, the circumstances proved are consistent with a finding of guilty and inconsistent with any other rational hypothesis. *See State v. Andersen*, 784 N.W.2d 320, 330 (Minn. 2010).

Livingston argues that the state failed to prove that he *knowingly* violated the registration requirements when he returned an incomplete and unsigned verification form with notations rather than a completed and signed verification form. But the record establishes that the verification form sent by the BCA on February 1, 2010, explicitly instructed Livingston to "read it carefully, complete, sign and return it." Livingston returned the form without initialing the 28 mandatory items regarding his understanding of the duty to register and without signing either of the designated signature lines. Even if Livingston initially believed the form he returned, with notations in the margins, satisfied the registration requirements, the BCA promptly sent Livingston a letter stating that "[n]o updates were made on the last Verification letter received as it was not signed," and instructing him to use the enclosed verification letter to "update any changes, sign, date and initial the Duty to Register," and "return [the letter] within 10 days in order to return to compliant status."[2] Officer Holes testified that she contacted Livingston regarding his noncompliant status and Livingston acknowledged the BCA letter and "said that he would take care of it." It is undisputed that, prior to his arrest in March 2010, Livingston did not return a second verification form.

On this record, the district court could reasonably conclude that Livingston *knowingly* violated the registration requirements, and is thus guilty of the charged offense. Livingston is not entitled to relief on this ground.

[2] At trial, Livingston denied receiving the BCA's follow-up letter. But the district court explicitly found Livingston's testimony on this issue "not credible." Assessing the credibility of a witness is the exclusive province of the fact-finder. *State v. Wright*, 679 N.W.2d 186, 190 (Minn. App. 2004), *review denied* (Minn. June 29, 2004).

II. Livingston's failure to give written notice of his changed address.

Under Minnesota law, at least five days before a person required to register as a predatory offender starts living at a new primary address, "the person shall give written notice of the new primary address to the assigned corrections agent or to the law enforcement authority with which the person is currently registered." Minn. Stat. § 243.166, subd. 3(b) (2008). A "primary address" is "the mailing address of the person's dwelling." *Id.*, subd. 1a(g) (2008). A "dwelling" is "the building where the person lives under a formal or informal agreement to do so." *Id.*, subd. 1a(c) (2008).

Livingston does not dispute that he did not give any written notice of a new primary address. Rather, he argues that the state failed to prove that he began living at a new primary address in March 2010. In other words, Livingston argues that the state failed to prove that he had moved out of his girlfriend's residence at that time. But the district court found that Livingston "had permanently moved out of the Apple Valley residence and back to the St. Paul residence as of late February or early March 2010." To support this finding, the district court relied in part on Detective McKnight's testimony that on March 23, 2010, Livingston told him "he was living at [his mother's] address." Although Livingston's girlfriend testified that, as of March 23, 2010, Livingston had been gone for only two and a half days, Officer Holes testified that on March 23, 2010, the girlfriend told her that Livingston "had officially moved out on March 4th of 2010." The district court credited Officer Holes's testimony on this issue. And although Livingston's mother testified that Livingston had come "to stay" with her during the relevant time period, she also testified that Livingston was then *living* at her house. And

the police officers testified that on March 23, 2010, Livingston's mother said that Livingston "did not live in Apple Valley anymore," and he "had moved from Apple Valley approximately three weeks earlier and he was living with her." The district court credited the officers' testimony on this issue.

On this record, the district court could reasonably conclude that Livingston began living at a new primary address by early March 2010, and is thus guilty of the charged offense. Livingston is not entitled to relief on this ground.

III. Pro se supplemental brief.

Livingston's pro se supplemental brief does not raise any arguments that warrant relief.

Affirmed.