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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1274**

State of Minnesota,
Respondent,

vs.

Kevin Herman Larson,
Appellant.

**Filed September 10, 2018
Affirmed
Halbrooks, Judge**

Rice County District Court
File No. 66-CR-15-2182

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

John Fossum, Rice County Attorney, Terence Swihart, Assistant County Attorney,
Faribault, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Lydia Maria Villalva Lijó,
Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Bjorkman, Judge; and
Hooten, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant challenges his judgment of conviction of failing to register as a predatory
sex offender, arguing that his conviction must be reversed because the evidence he

introduced during phase two of his bifurcated jury trial proved that, at the time he committed the offense, he was suffering from a delusional disorder, and, as a result, he did not know that failing to register was morally wrong. In a pro se supplemental brief, appellant contends that the predatory-offender registration statute is an unconstitutional bill of attainder. We affirm.

FACTS

Appellant Kevin Larson is obligated by law to register as a predatory sex offender. *State v. Larson*, No. A06-623, 2007 WL 2993608, at *1 (Minn. App. Oct. 16, 2007), *review denied* (Minn. Dec. 19, 2007). His duty to register is based on his 1992 second-degree criminal-sexual-conduct conviction. *Id.* Excluding the instant conviction, Larson has been convicted of failing to register four times since 1992. This is Larson's third appeal to this court. *See id.*; *State v. Larson*, No. A05-40, 2006 WL 618857, at *1 (Minn. App. Mar. 14, 2006), *review denied* (Minn. May 16, 2006).

Between May and August 2015, Larson's caseworker met with him in prison six times to discuss his legal duty to register. Larson refused to register each time. On August 26, 2015, a Bureau of Criminal Apprehension (BCA) agent met with Larson. During that meeting, the agent read aloud each section of the six-page registration form to Larson. Larson again refused to register.

The state charged Larson with violating the registration requirements under Minn. Stat. § 243.166, subd. 3(a) (2014). Larson raised a mental-illness defense. The case proceeded to a bifurcated jury trial. In the first phase, the jury found Larson guilty of knowingly failing to register as a predatory sex offender.

The second phase of trial focused on Larson's mental-illness defense. Two psychologists testified. Larson called his court-appointed expert, Linda Marshall, Ph.D., L.P., who had conducted a rule 20.02 evaluation of Larson and met with him once for approximately one hour. In preparation for the interview, Dr. Marshall reviewed the complaint, the probable-cause statement, police records, and department of corrections records. She also reviewed two documents that Larson wrote. Dr. Marshall diagnosed Larson with a delusional disorder—persecutory type.

Dr. Marshall testified that a person with a delusional disorder normally exhibits two types of delusions: bizarre or non-bizarre. She opined that Larson exhibits a non-bizarre delusion—believing that “he is exempt from having to register.” According to Dr. Marshall, Larson believes, with conviction, that he does not have to register, that he is right, and that everyone else is wrong. She also testified that a person who suffers from a persecutory-type delusional disorder “believes that people are out to get him, basically.” In Larson's case, Dr. Marshall stated that he believes that the courts and everyone else are against him.

Dr. Marshall also commented on a 23-page document that Larson wrote. In the document, Larson discusses delusional thoughts such as the idea that putting his signature on the predatory-offender registration form transforms his signature and personal identity into property of the government. According to Dr. Marshall, the distorted thoughts contained within the document support her diagnosis.

The state called Penny Zwecker, Ph.D., L.P. Dr. Zwecker testified that she met with Larson three times and performed two psychological tests: the MMPI-2 and the MCMI-3.

The MMPI-2 requires test takers to answer approximately 500 questions relating to various mental-health issues, including schizophrenia, depression, and anxiety; the MCMI-3 is a “much shorter test” that “looks more at personality features.” Dr. Zwecker testified that she chose these tests because “they really do a good assessment of a person’s mental health issues if a person has them.”

Dr. Zwecker diagnosed Larson with “generalized anxiety disorder, schizoid personality disorder, and anti-social personality disorder.” Dr. Zwecker did not agree that Larson suffers from a delusory disorder. She stated that if Larson were “clearly delusional, that would have shown up in either or both of the tests.” When asked why she believed that Larson refused to register, she testified that he is “being stubborn” and that she did not believe that Larson was laboring under a mental illness or defect at the time that he refused to complete the registration form. The jury rejected Larson’s mental-illness defense and found him guilty of failing to register as a predatory offender. This appeal follows.

D E C I S I O N

Larson argues that his failure-to-register conviction must be reversed, reasoning that Dr. Marshall’s testimony established, by a preponderance of the evidence, that at the time he did not register in August 2015, he was suffering from a delusory disorder and did not know that it was morally wrong not to do so.

The assertion of an affirmative defense of mental illness involves a question of fact. *State v. Roberts*, 876 N.W.2d 863, 868 (Minn. 2016), *cert. denied*, 137 S. Ct. 312 (2016). Therefore, a finding that a defendant failed to meet his burden of proving a mental-illness

defense will not be disturbed unless it is clearly erroneous. *Id.* “A factual finding is clearly erroneous if it does not have evidentiary support in the record or if it was induced by an erroneous view of the law” as well as if we are “left with the definite and firm conviction that a mistake has been made.” *Id.* (quotation omitted). We give great deference to the fact-finder in determining the proper weight to assign expert psychiatric testimony. *Id.* “[T]he factfinder is not bound by expert psychiatric testimony and may reject it entirely, even when the only experts who testify *support* the defendant’s assertion of a mental-illness defense.” *Id.* (emphasis added).

A defendant is presumed responsible for his acts and bears the burden of rebutting that presumption by a preponderance of the evidence. Minn. Stat. § 611.025 (2014); *Roberts*, 876 N.W.2d at 867. Minnesota’s mental-illness defense follows the *M’Naghten* rule, codified under Minn. Stat. § 611.026 (2014), which provides:

No person having a mental illness or cognitive impairment so as to be incapable of understanding the proceedings or making a defense shall be tried, sentenced, or punished for any crime; but the person shall not be excused from criminal liability except upon proof that at the time of committing the alleged criminal act the person was laboring under such a defect of reason, from one of these causes, as not to know the nature of the act, or that it was wrong.

Larson does not dispute that he knew the nature of his act; rather, he contends that he did not know that his act of failing to register was wrong. The word “wrong” in the above statute is “used in the moral sense.” *Id.* at 868 (quotation omitted). Put another way, in order for Larson to be guilty, he “must know that his act was wrong in a moral sense and not merely know that he has violated a statute.” *Id.* (quotation omitted).

In support of his argument, Larson relies on *State v. Rawland*. 199 N.W.2d 774, 787 (Minn. 1972). There, the supreme court reversed the conviction of a defendant who murdered his father during an “extended period of mental illness” where he was “so out of touch with reality that he must have acted without knowing whether the act was right or wrong.” *Id.* Rawland’s delusions included beliefs that his parents planned to kill him, his announcement that he was campaigning for U.S. president, his plan to swim to Canada to escape an alleged assassination, and his attempt at sending messages to the world through his AM radio. *Id.* at 776-77, 787-88.

Rawland is distinguishable from this case. In *Rawland*, “[a]ll experts agreed [that Rawland] had a serious mental disease . . . at the time of the event”; “[a]ll experts agreed that he did not have the ability to control his actions at the moment the offense was committed” and “lacked the capacity to freely and deliberately choose to commit the act”; and “[a]ll experts inferred that . . . he was not at the time able to distinguish between right and wrong.” *Id.* at 788.

Here, Dr. Marshall and Dr. Zwecker differ with respect to Larson’s diagnosis and his understanding of moral wrongfulness. The supreme court has repeatedly stated that appellate courts give broad deference to the fact-finder’s determination of the appropriate weight to give to expert psychiatric testimony. *E.g.*, *State v. Odell*, 676 N.W.2d 646, 648-49 (Minn. 2004); *see State v. Lee*, 491 N.W.2d 895, 900 (Minn. 1992) (providing that “[i]t is solely the function of the jury to determine the ultimate question as to whether or not the appropriate [mental] capacity exists” (quotation omitted)). “Weighing the credibility of

witnesses, including expert witnesses, is the exclusive function of the jury.” *State v. Triplett*, 435 N.W.2d 38, 44 (Minn. 1989).

When there is conflicting expert testimony, we defer to the fact-finder’s evaluation of that testimony and the weight given to it when making a factual conclusion. *See Roberts*, 876 N.W.2d at 870 (affirming conviction where experts were divided on the type, severity, and remission of the defendant’s mental illness and on his knowledge of moral wrongfulness); *State v. Beito*, 332 N.W.2d 645, 647 (Minn. 1983) (affirming conviction although defendant produced two expert opinions on his mental illness and the state produced one, reasoning that “the trial court could have completely relied on the testimony of one of the defense experts and still have found defendant guilty as charged”). The jury heard Dr. Marshall’s and Dr. Zwecker’s testimony and concluded that Larson did not suffer from a mental illness at the time that he failed to register. The jury’s finding is supported by the record and is not clearly erroneous.

In a pro se supplemental brief, Larson argues that the predatory-offender registration statute is an unconstitutional bill of attainder. We have twice rejected this argument. *See Larson*, 2007 WL 2993608, at *11 (“We rejected this argument during Larson’s appeal from his 2004 convictions, and we see no basis to revisit that decision.”); *Larson*, 2006 WL 618857, at *4 (“Because Larson waived his right to a judicial trial and because sex-offender registration is not punishment, we conclude that the predatory-offender registration statute is not a bill of attainder.”). Because this court has previously concluded that the predatory-offender registration statute is not an unconstitutional bill of attainder,

Larson, 2007 WL 2993608, at *11; *Larson*, 2006 WL 618857, at *4, we decline to consider Larson's argument.

Affirmed.