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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1454**

State of Minnesota,
Respondent,

vs.

Anthony Marcellus Richmond,
Appellant.

**Filed September 4, 2018
Affirmed
Halbrooks, Judge**

Hennepin County District Court
File No. 27-CR-16-16583

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

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jodi Proulx, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Florey, Presiding Judge; Halbrooks, Judge; and
Kalitowski, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant challenges his conviction of failing to register as a predatory offender, arguing that the state failed to prove that he knowingly violated his registration requirements and that the district court erred by admitting a prior conviction as *Spreigl* evidence. We affirm.

FACTS

Appellant Anthony Marcellus Richmond is required to register as a predatory offender until January 15, 2027, based on a second-degree aggravated-robbery conviction from 1997, a third-degree criminal-sexual-conduct conviction from 1996, and a failure-to-register conviction from 2003. On June 5, 2016, Sergeant Dan Wilson pulled up behind a vehicle driven by Richmond, ran the vehicle's license plate through a database, and determined that Richmond, the owner of the vehicle, had an expired driver's license. Sergeant Wilson also discovered that Richmond was required to register as a predatory offender and that his wife had an active order for protection against him. Sergeant Wilson initiated a traffic stop, approached the vehicle, and asked for Richmond's address. Richmond gestured toward a nearby hotel and told Sergeant Wilson that he had been staying there for about a month. He explained that he had been staying at the hotel because he could no longer stay at his previous house.

Sergeant Wilson questioned Richmond about his hotel's registration. Richmond first stated that the hotel room was registered under his name but later changed his story and stated that the room was registered to his wife. Another officer checked the hotel's

registry but could not confirm whether Richmond was a hotel guest. Sergeant Wilson issued Richmond a citation for his expired license, and Richmond left. Four days later, Sergeant Erik Fadden reviewed Richmond's predatory-offender registry and discovered that between April 2016 and June 2016, he had been reporting weekly that he was homeless in the downtown area of Minneapolis. Richmond did not submit a change-of-address form that stated that the hotel served as his primary address during that time.

The state charged Richmond with violating his registration requirements under Minn. Stat. § 243.166, subd. 5(a) (2014). Richmond waived his right to a jury trial. Following a bench trial, the district court found Richmond guilty, convicted him, and sentenced him to 26 months of incarceration. This appeal follows.

D E C I S I O N

I.

Richmond argues that the evidence is insufficient to support his failure-to-register conviction because the state did not prove that he knowingly violated his registration requirements. "We use the same standard of review in bench trials and in jury trials in evaluating the sufficiency of the evidence. We will review the evidence in the light most favorable to the verdict and assume that the factfinder disbelieved any testimony conflicting with that verdict." *State v. Palmer*, 803 N.W.2d 727, 733 (Minn. 2011) (quotation and citations omitted).

To determine whether Richmond knowingly violated the registration statute, the district court was required to make inferences about Richmond's state-of-mind based entirely on circumstantial evidence. Circumstantial evidence is "evidence based on

inference and not on personal knowledge or observation.” *Bernhardt v. State*, 684 N.W.2d 465, 477 n.11 (Minn. 2004) (alterations omitted) (quotation omitted). We review a conviction based on circumstantial evidence with heightened scrutiny. *State v. Sam*, 859 N.W.2d 825, 833 (Minn. App. 2015). When reviewing a conviction based on circumstantial evidence, we apply a two-step analysis. *Id.* First, we determine the circumstances proved by resolving all questions of fact in favor of the jury’s verdict and disregarding evidence that is inconsistent with the jury’s verdict. *State v. Harris*, 895 N.W.2d 592, 600-01 (Minn. 2017). Second, we “independently consider the reasonable inferences that can be drawn from the circumstances proved, when viewed as a whole.” *Id.* at 601. To sustain the conviction, the circumstances proved must be consistent with guilt and inconsistent with any other rational hypothesis. *Id.*

Richmond argues that the evidence does not sufficiently prove that he knowingly failed to register, particularly because he did not know that the hotel served as his new primary address. A predatory offender must give written notice to his corrections agent at least five days before he starts living at a new primary address. Minn. Stat. § 243.166, subd. 3(b) (2014). If the predatory offender leaves a primary address and does not have a new primary address, he must register with his corrections agent and inform the agent of where he will be staying within 24 hours of the time he leaves his primary address. Minn. Stat. § 243.166, subd. 3a(a) (2014). A primary address “means the mailing address of the person’s dwelling.” Minn. Stat. § 243.166, subd. 1a(g) (2014). A dwelling “means the building where the person lives under a formal or informal agreement to do so.” Minn. Stat. § 243.166, subd. 1a(c) (2014).

If an offender's reported information no longer applies due to changed circumstances, the offender "shall immediately inform the agent or authority that the information is no longer valid." Minn. Stat. § 243.166, subd. 4a(b) (2014). Minn. Stat. § 243.166, subd. 5(a), makes it a crime to "knowingly violate[]" any part of the predatory-offender registration statute. To prove a violation of subdivision 5(a), the state must show that a person is required to register, that the person knowingly violated his requirement to register, and that the time period in which the person is required to register has not elapsed.

Ignorance of the law generally does not excuse criminal liability, but when knowledge of the law is an element of the offense, mistake of law is a defense because it negates the existence of the required mental state. *State v. Watkins*, 840 N.W.2d 21, 30 (Minn. 2013). In order to convict Richmond under Minn. Stat. § 243.166, subd. 5(a), the state had to prove beyond a reasonable doubt that Richmond knew that he violated his registration requirements at the time the violation occurred. *See State v. Mikulak*, 903 N.W.2d 600, 603-04 (Minn. 2017).

At trial, the state submitted address forms that Richmond submitted to the BCA on a weekly basis that stated that he was homeless in the downtown Minneapolis area from April to June. None of the forms indicated that the hotel served as Richmond's primary or secondary address. The state also submitted change-of-information forms and letters from the Bureau of Criminal Apprehension (BCA) that Richmond initialed between 2011 and 2016, acknowledging that he understood the reporting requirements:

I understand that if I do not have a primary address I must report to the law enforcement authority with jurisdiction in the area where I will be staying *within 24 hours of leaving my former primary address*. I understand that I must continue to report to the law enforcement agency with jurisdiction in the area where I will be staying at least once each week between the hours of 9:00 a.m. and 5:00 p.m. until I obtain a primary address. . . . I understand that if I obtain a primary residence, I am required to report *immediately* to the law enforcement agency with jurisdiction in the area of my new primary address.

In addition, the state introduced evidence of Richmond's 2003 failure-to-register conviction through certified copies of the register of actions, the complaint, and the petition to plead guilty, as well as testimony from Sergeant Fadden, who testified that, in 2003, Richmond "had been stopped on a traffic stop and had been discovered that he was not currently residing at a[n] address that he was reporting that he was living at."

The state also introduced evidence that demonstrated that Richmond lived at the hotel during the period in which he informed the BCA that he was homeless. The state introduced the video of the traffic stop that showed Richmond admitting to Sergeant Wilson that he lived at the hotel for three to four months. He then clarified that "we've been out for about 2 or 3 months. We've been out here for about a month. We was out of them apartment buildings . . . and . . . movin' around to motels is what we've been doin' for the last month." He further informed Sergeant Wilson that he stayed by himself in room 206 and that the room was registered in his name. But when questioned further, Richmond stated that the room was registered to his wife. The district court stated in its order that it "believe[d] that Mr. Richmond was truthful in his first response" when Richmond stated that he had lived at the hotel for the last month.

Hotel records show that his wife paid for the hotel room from April 19, 2016, to June 6, 2016. The hotel's front desk manager testified that he thought that Richmond was a guest because he frequently came to the lobby to get coffee. Sergeant Fadden testified that while investigating Richmond's registration requirements, he asked the hotel's front-desk manager about a guest staying in room 206, and the manager immediately identified the guest in room 206 as "Anthony," which is Richmond's first name.

Having established the circumstances proved, we must decide whether the circumstances are consistent with guilt and inconsistent with any rational hypothesis other than guilt. *Sam*, 859 N.W.2d at 834. The hotel manager's testimony and the hotel records show that Richmond lived in room 206 with his wife. Richmond's initial statement to Sergeant Wilson and the fact that Richmond lived with his wife before she moved to the hotel also support the conclusion that the hotel served as Richmond's primary address. Richmond's extensive history with the BCA, his prior failure-to-register conviction, and his repeated acknowledgement that he understood that he needed to update his address if he obtained a new primary address support the conclusion that Richmond knew that he needed to include the hotel's address as his primary address and that he knowingly violated this requirement by continually stating that he was homeless in the downtown Minneapolis area while living at the hotel. Therefore, when viewed as a whole, the circumstances proved are consistent only with guilt.

But Richmond argues the circumstances proved are also consistent with innocence because both he and his wife testified that he did not live at the hotel and only visited her during the day. But the district court did not find his wife's testimony credible because his

wife was “not forthcoming with a complete explanation as to why they left the [previous] address.” The district court also concluded that “[i]t is not reasonable for the Court to assume that she would move into the [hotel] and he would become homeless.” When construing the circumstances proved, we assume the fact-finder believed the state’s witnesses and disbelieved the defense witnesses. *See State v. Tscheu*, 758 N.W.2d 849, 858 (Minn. 2008). Therefore, we need not consider Richmond and his wife’s conflicting testimony for this purpose because the district court found that they were not credible.

Richmond also argues that the evidence supports the rational hypothesis that he did not understand his registration requirements because the statute is complex and unclear. This argument is not supported by the record. Richmond repeatedly acknowledged in his earlier registration forms that he knew he needed to update his primary address if he began living at a new primary address within 24 hours, and he admitted to living at the hotel for at least one month. We conclude the circumstantial evidence sufficiently supports Richmond’s conviction of knowingly violating his registration requirements under Minn. Stat. § 243.166, subd. 5(a).

II.

Richmond argues he is entitled to a new trial because the district court abused its discretion by admitting evidence of his prior failure-to-register conviction. Before trial, the state moved to admit Richmond’s 2003 failure-to-register conviction. The district court allowed the state to admit the prior conviction, reasoning that the state provided proper notice, the prior conviction was relevant because “one of the elements of the offense is that the defendant had to knowingly violate the registration requirement and so the issue of

knowledge or absence of mistake is relevant,” and the probative value of the prior conviction was not outweighed by its potential for unfair prejudice. The district court also determined that the state satisfied its burden of proving the conviction by clear and convincing evidence. At trial, the state admitted evidence of Richmond’s prior failure-to-register conviction through Sergeant Fadden’s testimony and certified copies of the register of actions, the complaint, and the petition to plead guilty.

“Evidence of another crime, wrong, or act is not admissible to prove the character of a person in order to show action in conformity therewith.” Minn. R. Evid. 404(b). But such evidence, which is often referred to as *Spreigl* evidence, may be admissible for other purposes, such as proof of mistake, intent, and knowledge. *Id.*; *State v. Spreigl*, 139 N.W.2d 167, 169 (Minn. 1965). The general concern with admitting *Spreigl* evidence is that the jury might use the evidence for an improper purpose, “such as suggesting that the defendant has a propensity to commit the [charged] crime.” *State v. Ness*, 707 N.W.2d 676, 685 (Minn. 2006).

Before a district court may admit *Spreigl* evidence, (1) the state must give notice of its intent to admit the evidence, (2) the state must clearly indicate what the evidence will be offered to prove, (3) the defendant’s participation in the other act must be proved by clear and convincing evidence, (4) the evidence must be relevant to the state’s case, and (5) the probative value of the evidence must not be outweighed by its potential for unfair prejudice to the defendant. Minn. R. Evid. 404(b). We review a district court’s decision to admit *Spreigl* evidence for an abuse of discretion. *Ness*, 707 N.W.2d at 685. The appellant bears the burden of showing any error and resulting prejudice. *Id.*

Richmond argues that the district court abused its discretion by admitting his 2003 failure-to-register conviction for three reasons: (1) the conviction was neither relevant nor material to the state's case; (2) the conviction's probative value was substantially outweighed by the potential for unfair prejudice; and (3) the conviction's admission was not harmless because it significantly affected the outcome of the trial.

In determining the relevance and materiality of *Spreigl* evidence, the district court “should consider the issues in the case, the reasons and need for the evidence, and whether there is a sufficiently close relationship between the charged offense and the *Spreigl* offense in time, place or modus operandi.” *State v. Kennedy*, 585 N.W.2d 385, 390 (Minn. 1998) (quotation omitted). To prove that Richmond knowingly violated his registration requirements under Minn. Stat. § 243.166, subd. 5(a), the state had to prove that Richmond was not mistaken as to his registration requirements. The prior failure-to-register conviction was relevant because it demonstrated Richmond's awareness of his registration requirements, which helps determine whether he “knowingly” violated Minn. Stat. § 243.166, subd. 5(a).

Richmond contends, however, that the evidence was not relevant because the prior conviction only proved that he understood that he knew he needed to contact his agent when his primary address was no longer valid in 2003—not that he needed to update the hotel's address as his primary address in 2016. In 2003, Richmond pleaded guilty to failing to register after he was stopped by law enforcement and they discovered that he was not residing at the address where he reported he was living. Although the prior conviction does not conclusively demonstrate that he understood that he needed to register the hotel address

as his primary address, the prior conviction provided a background of his knowledge that helped the district court determine his familiarity with his registration requirements. See *State v. Burrell*, 772 N.W.2d 459, 466 (Minn. 2009) (“[W]e do not agree that a prior bad act must provide the but-for reason for committing the charged offense. The touchstone of the inquiry is simply an evaluation of whether the evidence is material and relevant and whether the probative value of the evidence [outweighs] the potential for unfair prejudice.”).

Richmond also contends that the district court did not conduct a proper analysis of the prior conviction’s relevance. A district court should not take the prosecutor’s stated purpose of the prior conviction’s purpose at face value, but instead should follow Minn. R. Evid. 404(b)’s wording and examine the real purpose of the evidence to ensure that it is permitted under one of Minn. R. Evid. 404(b)’s exceptions. *Ness*, 707 N.W.2d at 686. “*Only after* such an examination is completed should the court balance the probative value of the evidence against its potential to be unfairly prejudicial.” *Id.*

The district court here conducted this analysis. It first determined that the prior conviction was relevant to proving whether Richmond was mistaken as to his registration requirements. The district court reasoned that “the issue of knowledge or absence of mistake is relevant” because “one of the elements of the offense is that the defendant had to knowingly violate the registration requirement.” The district court properly concluded that Richmond’s prior failure-to-register conviction was relevant to determining Richmond’s knowledge, an element of the charged offense.

Because the evidence was relevant and material, we must next examine whether the probative value of the evidence was outweighed by the risk of unfair prejudice to Richmond. *Spreigl* evidence is prejudicial by nature, but the balancing analysis for unfair prejudice focuses on whether the evidence “persuades by illegitimate means, giving one party an unfair advantage.” *State v. Schulz*, 691 N.W.2d 474, 478 (Minn. 2005). The evidence offered by the state was prejudicial because it could have been used to establish that Richmond had a propensity for committing similar failure-to-register crimes. However, the evidence was presented at a bench trial instead of a jury trial. The risk of unfair prejudice to a defendant in a bench trial is reduced “because there is comparatively less risk that the district court judge, as compared to a jury of laypersons, would use the evidence [of a prior crime] for an improper purpose or have his sense of reason overcome by emotion.” *Burrell*, 772 N.W.2d at 467. Although the evidence was prejudicial, its probative value was not outweighed by its prejudicial effect because the district court was less likely to rely on the evidence for an improper purpose. Therefore, we conclude that the district court did not abuse its discretion by admitting Richmond’s prior conviction as *Spreigl* evidence.

But even if the district court erroneously admitted the evidence, we would only grant Richmond a new trial if “there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict.” *Ness*, 707 N.W.2d at 691. In determining whether an admission significantly affected the verdict, we consider “whether the district court provided the jury a cautionary instruction, whether the State dwelled on the evidence

in closing argument, and whether the evidence of guilt was strong.” *State v. Fraga*, 898 N.W.2d 263, 274 (Minn. 2017).

The district court did not issue a cautionary instruction because it was a bench trial. “It is the district court judge who is called upon in the first instance to rule on the admissibility of the evidence.” *Burrell*, 772 N.W.2d at 467. There is less risk that a district court judge, as compared to a jury, would rely on the evidence for an improper purpose. *Id.* District court judges are not “immune from emotional appeals or the temptation to misuse evidence But, taking into account the district court judge’s experience and familiarity with the operation of the rules of evidence, the risk of unfair prejudice is lessened.” *Id.* Because the district court would not have benefited from its own cautionary instruction, the lack of a cautionary instruction does not lead us to conclude that the prior conviction’s admission significantly affected the verdict.

We next consider the strength of the state’s evidence of guilt. The state offered exhibits showing that Richmond initialed that he understood that he would need to immediately update law enforcement if he obtained a new primary address and that he agreed to this language at least once per year. It also offered a video in which Richmond informed Sergeant Wilson that he stayed at the hotel for the last few months and exhibits showing that Richmond reported that he was homeless every week while he stayed at the hotel. The state’s evidence of Richmond’s guilt was strong.

Next, we analyze whether the prosecutor dwelled on the evidence in closing argument. *Fraga*, 898 N.W.2d at 274. During the closing argument, the prosecutor stated:

To knowingly violate[] you have to have a reason to know specific facts existed. Now, the defendant's been registering since 1997, he's filled out initialed rules of forms every year since then he's registered for over 20 years. He knows the rules of registration, what he needs to do, what he can't do and even knows what's a violation because he's been convicted of that before back in 2003. Specifically, providing false information that's either knowingly or intentionally is the statute.

The prosecutor briefly mentioned Richmond's previous conviction to support the state's argument that Richmond understood his registration requirements and knowingly violated them. But the prosecutor did not dwell on his prior conviction, as Richmond asserts. Therefore, even if the district court erroneously admitted the prior conviction, Richmond would not be entitled to a new trial because the admission did not significantly affect the verdict.

Affirmed.