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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1594**

State of Minnesota,
Respondent,

vs.

Lor Yang,
Appellant.

**Filed August 27, 2018
Affirmed
Florey, Judge**

Ramsey County District Court
File No. 62-CR-16-8732

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

John Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney,
St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jessica Merz Godes, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Florey, Judge; and Stauber,
Judge.*

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

UNPUBLISHED OPINION

FLOREY, Judge

On appeal from his conviction of violating the predatory-offender-registration statute, appellant argues that the state did not establish that he provided a false address to a “law enforcement authority” as defined by statute. He also argues that the state committed plain error by failing to redact a narrative description of a prior crime from an exhibit. Because the state provided sufficient evidence to support a conviction and appellant’s substantial rights were not prejudiced by the unredacted statement, we affirm.

FACTS

Appellant Lor Yang was charged with violating Minn. Stat. § 243.166, subd. 5(a), (2014), after he provided false information regarding his address on four change-of-information forms submitted to the bureau of criminal apprehension (BCA).

At trial, a special agent employed by the BCA testified that appellant is required to register as a predatory offender and was informed that he would be required to register his primary address and any changes to that address. The special agent testified that, on December 8, 2015, appellant completed a change-of-information form, indicating he moved to an apartment on Burr Street in St. Paul. He also completed three other change-of-information forms between January and May 2016, indicating his primary address was located at the same apartment on Burr Street. The special agent testified that, in June 2016, the BCA sent an address-verification letter to the Burr Street apartment. The letter was returned to the BCA as “attempted, not known, unable to forward.”

An officer testified that she received information that appellant was not living in the apartment where he was registered. She went to the Burr Street apartment and spoke with a resident. The resident told the officer that she was not familiar with appellant, and he did not live there. A second resident confirmed that appellant had not lived in the apartment since the resident moved there in 2010. The officer testified that she received information that appellant had been to the apartment before, and he had received a trespass citation because the residents did not know appellant and did not want him in their home.

The state admitted appellant's initial registration form at trial. The form included a description of appellant's prior conviction as well as a narrative description of the acts underlying the conviction. The district court redacted the description of the conviction. However, neither the district court nor the parties discussed redacting the narrative description of the criminal acts, and the exhibit was submitted to the jury with the following statement unredacted:

Subject assaulted his 16 year old, 7 [month] pregnant girlfriend at his home. Subject tied victim to a closet door and struck her on the back, arms and hands with a metal rod more than ten times for over an hour. Victim sustained injuries and the unborn baby was considered in medical danger from the assault, requiring fetal monitoring.

During the crafting of the jury instructions, the state asked that the instructions be written to require the jury to find whether appellant provided false information to a "law enforcement authority," indicating that "law enforcement authority" could encompass the

BCA and a corrections agent.¹ Defense counsel agreed, and the district court tailored the jury instructions to the state's request.

Appellant waived his right to testify and stipulated to the element of being required to register as a predatory offender. The district court defined the crime to the jury as “a person required to register as a predatory offender who intentionally provides false information to a law enforcement authority.” The district court instructed the jury on the second element as requiring the jury to determine whether “the defendant intentionally provided false information to a law enforcement authority.”

The state argued during summation:

Undoubtedly, the second element is going to be what, if anything, you guys will be talking about the most. The defendant intentionally provided false information to a law enforcement authority. Okay. Well, what's a law enforcement authority? Police, corrections, Bureau of Criminal Apprehension. Those are the people that need to get the information.

We have evidence, the official registration form that he filled out in March of 2012. We have four change of informations that were submitted in December, twice in January, once in May. And then we can't forget about the verification letter that was sent out in June of 2016 that was sent back as undeliverable.

Those documents indicate that the defendant knowingly, intentionally filled out official documents, official documents that were received by a law enforcement agency, the BCA, indicating that he lived at [the apartment on] Burr Street

¹ The pattern jury instructions recommend the following language: “Second, the defendant intentionally provided false information to (a corrections agent) (a law enforcement authority) (the bureau of criminal apprehension).” 10 *Minnesota Practice*, CRIMJIG 12.100 (2015).

The jury returned a guilty verdict. The district court sentenced appellant to 21 months' imprisonment.

This appeal followed.

D E C I S I O N

I. The state presented sufficient evidence to support a conviction.

The first question presented by this appeal is whether the state presented sufficient evidence to support a conviction. Appellant does not challenge the jury instructions in this case, which failed to specifically require the jury to find that appellant provided false information to the BCA. Rather, he argues the evidence was insufficient to prove that he gave false information to a “law enforcement authority” as that term is defined by statute.

When reviewing a claim of insufficient evidence, we conduct “a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict which they did.” *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012) (quotation omitted). When proof of an element of a crime requires circumstantial evidence, we use a two-step approach to determine if the evidence is sufficient to prove guilt beyond a reasonable doubt. *State v. Al-Naseer*, 788 N.W.2d 469, 473-75 (Minn. 2010). We first identify the circumstances proved; in doing so, we disregard evidence that is inconsistent with the jury’s verdict. *State v. Harris*, 895 N.W.2d 592, 601 (Minn. 2017). We then independently consider the reasonable inferences that can be drawn from the circumstances proved. *Id.* We will affirm if the circumstances proved are consistent with guilt and inconsistent with

any rational hypothesis other than guilt. *State v. Galvan*, 912 N.W.2d 663, 669 (Minn. 2018).

A sufficiency-of-the-evidence claim that questions whether the appellant’s conduct meets the statutory definition of an offense presents a question of statutory interpretation that we review de novo. *See State v. Hayes*, 826 N.W.2d 799, 803 (Minn. 2013).

Minn. Stat. § 243.166, subd. 5(a), provides that “[a] person required to register under this section who . . . intentionally provides false information to a corrections agent, law enforcement authority, or the bureau is guilty of a felony.” The statute defines “bureau” as the BCA, and defines “law enforcement authority” as “with respect to a home rule charter or statutory city, the chief of police, and with respect to an unincorporated area, the county sheriff.” Minn. Stat. § 243.166, subd. 1a(a), (b), (e) (2014). The definition section of the statute indicates that the statutory definitions govern “unless the context clearly indicates otherwise.” *Id.*, subd. 1a(a).

Appellant argues that, because the jury was only instructed to consider whether he provided information to a “law enforcement authority,” and that phrase has a specific statutory definition, the evidence was insufficient to sustain a guilty verdict.² He argues

² Appellant argues that the state “ultimately charged” him with giving false information to a “law enforcement authority” as that term is defined by statute because of the state’s choice of jury instructions. A complaint is amended during trial if an additional burden is placed on the defendant. *See State v. Guerra*, 562 N.W.2d 10, 13 (Minn. App. 1997). The original complaint alleged that appellant gave false information to a law-enforcement authority or the BCA; the state did not alter its allegations against appellant to include a different crime. *See id.* (indicating that an offense is amended if “the object of the offense” or the “alleged facts underlying each offense were . . . different”). Rather, a defendant may commit the crime through multiple means—by furnishing false information to a law-enforcement authority, a corrections agent, or the BCA. When a statute provides

the state was required to prove that he provided false information to a “law enforcement authority” as defined by Minn. Stat. § 243.166, subd. 1a(e), in this case, St. Paul’s “chief of police” because the Burr Street apartment was located within St. Paul, and St. Paul is a “home rule charter” city. He argues that evidence of the submission of the change-of-information forms to the Ramsey County Sheriff’s Department and the BCA are not sufficient to sustain a conviction because those entities do not meet the definition of “law enforcement authority” in this case, i.e., the St. Paul chief of police.

This case presents a unique question of whether a statutory definition of a phrase which was not provided or explained to the jury, and to which appellant acquiesced in using to include other entities to which the crime applies, governs our sufficiency analysis. In light of the unique circumstances of this case—appellant’s agreement to streamline the jury instructions (instructions he does not challenge on appeal) and the subsequent arguments made in summation—we conclude that the statutory definition of “law enforcement authority” does not govern our analysis of whether the evidence was sufficient to find criminal culpability for the provision of false information to any of the entities listed in Minn. Stat. § 243.166, subd. 5(a). We therefore consider whether the state presented sufficient evidence to prove beyond a reasonable doubt that appellant intentionally provided false information to a corrections agent, law-enforcement authority, or the BCA.

Examining the evidence in the light most favorable to the conviction, the evidence clearly proves that appellant provided a false address to the BCA on multiple occasions.

alternative means to satisfy an element, the jury is not “required to agree upon a single means of commission. *State v. Ihle*, 640 N.W.2d 910, 918 (Minn. 2002).

Ample evidence indicates that appellant did not live at the apartment on Burr Street at the time he completed the change-of-information forms, and he had not lived there since the current residents moved to the apartment in 2010, if he ever lived there at all. These forms clearly state that they will be provided to the BCA, and the BCA received them. From these circumstances, it is reasonable to infer that appellant furnished the false address to the BCA intentionally. Examining the circumstances proved as a whole and the reasonable inferences drawn therefrom, the circumstances are consistent with guilt and inconsistent with any rational hypothesis other than guilt.

II. The unredacted narrative did not affect appellant's substantial rights.

Appellant next argues that he is entitled to a new trial because the initial registration form that was submitted to the jury as an exhibit contained an irrelevant and highly prejudicial narrative concerning his prior criminal acts. The state argues that reversal is not required because appellant cannot satisfy his burden of demonstrating that his substantial rights were affected.

When a defendant does not object to the admission of evidence, this court reviews the district court's admission of the evidence for plain error. *State v. Pearson*, 775 N.W.2d 155, 161 (Minn. 2009); see Minn. R. Crim. P. 31.02. "The plain error standard requires the defendant to show (1) error (2) that was plain and (3) that affected the defendant's substantial rights." *State v. Manthey*, 711 N.W.2d 498, 504 (Minn. 2006). If the three prongs of the plain-error standard are satisfied, "the court must then decide whether it should address the issue in order to ensure fairness and the integrity of the judicial proceedings." *State v. Vick*, 632 N.W.2d 676, 685 (Minn. 2001) (quotation omitted). If

any of the requirements of the plain-error standard are not satisfied, this court need not consider the other requirements. *State v. Brown*, 815 N.W.2d 609, 620 (Minn. 2012).

An error affects substantial rights “if there is a reasonable likelihood that the error substantially affected the verdict.” *State v. Strommen*, 648 N.W.2d 681, 688 (Minn. 2002). In determining whether erroneously admitted evidence affected the verdict, we consider (1) the manner in which the evidence was presented; (2) whether the evidence was highly persuasive; (3) whether it was used in closing argument; and (4) whether the defense effectively countered the evidence. *Townsend v. State*, 646 N.W.2d 218, 223 (Minn. 2002). Although we may not focus solely on evidence of guilt, “overwhelming evidence of guilt” may be considered in determining whether the error had an impact on the verdict. *Id.* at 224 (quotation omitted).

We agree with the state. Appellant has not demonstrated that there is a reasonable likelihood that the unredacted narrative, if erroneously admitted, substantially affected the jury’s verdict. The state did not draw attention to the narrative on page three of the exhibit during its presentation of the exhibit to the jury, instead concentrating on pages five and six, where appellant acknowledged the requirements of registration, and page four, where a former case manager employed by the department of corrections acknowledged that she completed the form with appellant and signed it. In fact, the state made no mention of the narrative during the presentation of evidence and did not direct the jury’s attention to the narrative during closing argument. The defense did not address the evidence or attempt to counter it and instead focused cross-examination and closing arguments on evidence that appellant actually lived at the house and therefore he did not give a false address.

There is no indication that the jury's attention was drawn to the narrative at any point. Moreover, the evidence of guilt was substantial. Two residents of the apartment where appellant repeatedly purported to live testified that appellant had not lived in that apartment since the family took possession in 2010. Even if we assume, without deciding, that including the narrative was plain error because the narrative contains highly prejudicial information, we conclude that appellant's substantial rights were not affected. In this case, the prejudicial nature of the narrative does not outweigh the other considerations that we must take into account when considering the effect of an erroneously admitted piece of evidence.

Affirmed.