**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-2003**

State of Minnesota,
Respondent,

vs.

Luke Ryan Doud,
Appellant.

**Filed August 20, 2018
Reversed
Connolly, Judge**

Crow Wing County District Court
File No. 18-CR-17-2754

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

Donald F. Ryan, Crow Wing County Attorney, Mark Mitchell, Assistant County Attorney, Brainerd, Minnesota (for respondent)

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

Considered and decided by Connolly, Presiding Judge; Johnson, Judge; and Kalitowski, Judge.[*]

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

UNPUBLISHED OPINION

CONNOLLY, Judge

Appellant was convicted of failing to register as a predatory offender under Minn. Stat. § 243.166, subd. 5(a) (2016), by violating subdivision 3(b) of that section. He now argues that the state's evidence is insufficient and that his conviction must be reversed. We agree and reverse the conviction.

FACTS

Appellant Luke Ryan Doud was required to register under Minnesota's predatory-offender registration statute. On October 30, 2015, appellant completed two "Minnesota predatory registration" forms. Under "primary address," he listed the residence of his mother. Under "secondary and other addresses," he listed the address of A.O., the mother of his three children.

In late October, 2016, appellant was required to fill out and submit an "address verification form." Under "alternate residences," the form contained a preprinted statement "no alternate residence reported" with an option to list a "new alternate residence." Appellant did not provide an alternate address. Because no secondary addresses were listed on the most recently submitted form, appellant was no longer registering A.O.'s address as a secondary address. Appellant confirmed that his mother's residence was his current primary address by signing and submitting the form.

From January, 2016, to April, 2016, A.O. testified that appellant visited her address to help with the children; she said that "he wouldn't be there in the morning most of the time when [she] would get up for work or on the weekends." At the end of May, 2016, A.O. asked appellant to help with the children. She testified that appellant would usually stay over on the weekend for Friday, Saturday, and sometimes Sunday nights. Appellant had access to A.O.'s house when she was not there. Appellant did not receive mail or keep his clothes at A.O.'s house. Near A.O.'s address, many cars were parked on the side of the road; when appellant was there, he parked his car behind the house because it leaked oil and A.O. did not want him to park in the driveway or garage.

Between March 16 and 25, 2017, Brainerd police officers stopped three times at appellant's registered primary address in an attempt to complete a registration check. On each occasion, appellant's mother answered the door, appellant was not there, and the officers requested that appellant contact them regarding registration. Additionally, on each day that the police visited appellant's registered primary address, police officers drove past A.O.'s address in an attempt to locate appellant. Between March 22 and March 25, 2017, during daytime, evening, and overnight hours, police officers drove by appellant's registered primary address in an attempt to complete the registration check, but they had no success.

After March 25, 2017, several police officers continued to look for appellant by driving by both addresses in search of his vehicle. On March 26, 2017, appellant was arrested on a probation violation warrant at A.O.'s address. His car was parked behind the house. Appellant waived his jury trial rights, and the district court found him guilty. This appeal follows.

D E C I S I O N

Appellate courts apply "the same standard of review in bench trials and in jury trials in evaluating the sufficiency of the evidence." *State v. Palmer*, 803 N.W.2d 727, 733 (Minn. 2011). This court determines whether the district court "could reasonably conclude that the defendant was guilty of the offense charged." *State v. Landa*, 642 N.W.2d 720, 725 (Minn. 2002). We must assume that the factfinder believed the state's witnesses and disbelieved contradicting evidence. *Id.*

Direct evidence is based on personal knowledge or observation and, if true, proves a fact without inference or presumption. *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotation omitted). Circumstantial evidence, however, always requires an inferential step to prove a fact; furthermore, it is "evidence from which the factfinder can infer whether the facts in dispute existed or did not exist." *Id.* (quotation omitted). Appellate courts determine "whether a reasonable inference inconsistent with guilt can be drawn [to make certain] that there is no reasonable doubt as to the defendant's guilt." *Id.* at 601.

When a sufficiency-of-the-evidence claim involves the question of whether the defendant's conduct meets the statutory definition of an offense, an appellate court is presented with a question of statutory interpretation. *See State v. Colvin,* 645 N.W.2d 449, 451-52 (Minn. 2002) (reviewing de novo whether the appellant's intent to violate an OFP fulfills the intent requirement in the burglary statute). "The interpretation of the predatory sex-offender registration statute, like interpretation of all statutes, is a question of law which we review de novo." *In re Welfare of J.R.Z.*, 648 N.W.2d 241, 247 (Minn. App. 2002).

Minn. Stat. § 243.166, subd. 3 (2016), registration procedure, provides:

> Except as provided in subdivision 3a, at least five days before the person 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. . . . A person required to register under this section shall also give written notice . . . that the person is no longer living or staying at an address, immediately after the person is no longer living or staying at that address.

Persons who are required to register must do so upon being sentenced or released from incarceration. *State v. Nelson*, 812 N.W.2d 184, 187 (Minn. App. 2012). The person "shall register with the corrections agent as soon as the agent is assigned to the person." *Id.* (quoting Minn. Stat. § 243.166, subd. 3). "If the person does not have an assigned corrections agent . . . , the person shall register with the law enforcement authority that has jurisdiction in the area of the person's primary address." *Id.* (quoting Minn. Stat. § 243.166, subd. 3). "After initial registration, a person who is required by section 243.166 to register must give notice" when they move to a new primary address. *Id.* at 188.

This duty to provide notice has two parts. *Id*. "The first part of the duty arises under the first sentence of subdivision 3(b) of section 243.166, which requires the person to give advance notice of the new primary address to which the person plans to move." *Id*. The person must give this notice "at least five days before the person starts living at a new primary address." *Id.* "The second part of the duty arises under the third sentence of subdivision 3(b) of section 243.166." *Id.* This requires a person who has already given notice under the first sentence of subdivision 3(b) to "also give written notice . . . that the person is no longer living or staying at the previously registered primary address." *Id.* (quotation omitted). This notice must also be given "to the assigned correction agent or to the law enforcement authority that has jurisdiction in the area of the person's primary address . . . immediately after the person is no longer staying at that address." *Id.* (quotations omitted).

Subdivision 3a of section 243.166 addresses a person who plans to leave his current primary address but has no existing plan to establish a new primary address. Minn. Stat. § 243.166, subd. 3a(a) (2016), provides:

> If a person leaves a primary address and does not have a new primary address, the person shall register with the law enforcement authority that has jurisdiction in the area where the person is staying within 24 hours of the time the person no longer has a primary address.

Here, appellant argues that the evidence was insufficient to convict him of violating Minn. Stat. § 243.166, subd. 3(b), because the state failed to prove that he had a new primary address; therefore, it was not proven beyond a reasonable doubt that appellant failed to register his new primary address. We agree. The record contains no direct evidence that appellant had a new primary address; any evidence indicating this reasonable inference was circumstantial. There is, however, evidence supporting an alternative inference that appellant did not have a new primary address. Appellant's handful of absences from his registered address and mere presence at A.O.'s address do not prove beyond a reasonable doubt that appellant had a new primary address. Furthermore, the district court did not find that appellant had a new primary address; therefore, it may not reasonably conclude that appellant is guilty of violating subdivision 3(b).

The circumstances of the current case are analogous to those in *Nelson.* 812 N.W.2d at 184. In *Nelson*, the owner of the home at Nelson's registered primary address had recently moved away. *Id.* at 186. On February 9, 2010, a police officer could not see anyone at Nelson's registered primary address, no one had shoveled new-fallen snow from Nelson's registered primary address, no one had made any footprints or other tracks in the new-fallen snow outside the home, and Nelson was in the state of Texas. *Id.* Nelson was charged and convicted for violating Minn. Stat. § 243.166, subd. 3(b) (2008). *Id.* However, on appeal, this court concluded that while the circumstances in *Nelson* were consistent with guilt, they were also "equally consistent with three reasonable inferences that Nelson did *not* fail to register a new primary address at least five days before he started living at a new primary address." *Id.* at 190 (emphasis in original). The circumstantial evidence in *Nelson* did not exclude beyond a reasonable doubt any reasonable inference other than guilt. *Id.* *Nelson* was "required by section 243.166 [subdivision 3a] to register, but that requirement springs from a subdivision other than subdivision 3(b) . . . the statutory basis of *Nelson*'s charge," and "[t]he state did not attempt to prove that Nelson had violated the requirements of subdivision 3a." *Id.* at 189. Therefore, this court reversed Nelson's conviction for insufficient evidence. *Id.* at 190.

In its brief, the state mentions that appellant's defense to Count I, the subdivision 3(b) offense, is a plausible inference that appellant committed an uncharged subdivision 3a(a) violation instead of the charged offense. However, the state did not charge appellant with a violation of subdivision 3a(a). Instead, the statutory basis of the state's charge was subdivision 3(b). "It is ancient doctrine of both the common law and of our Constitution that a defendant cannot be held to answer a charge not contained in the indictment brought against him." *State v. Gisege*, 561 N.W.2d 152, 156 (1997) (quoting *Schmuck v. United States*, 489 U.S. 705, 717, 109 S. Ct. 1443, 1451 (1989)).

For charges based on Minn. Stat. § 243.166, subd. 3(b), it is the state's burden to prove beyond a reasonable doubt not only that the person who is required to register was no longer living at his registered primary address, but also that the person required to register had started living at a new primary address and failed to give advanced notice before doing so. *Nelson*, 812 N.W.2d at 190.

Reversed.