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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0620**

State of Minnesota,
Respondent,

vs.

Todd Curtis Myers,
Appellant.

**Filed July 8, 2019
Affirmed
Worke, Judge**

Anoka County District Court
File No. 02-CR-16-3897

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Anthony C. Palumbo, Anoka County Attorney, Kelsey R. Kelley, Assistant County Attorney, Anoka, Minnesota (for respondent)

Terry P. Duggins, Duggins Law Firm LLC, Roseville, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Jesson, Judge; and Florey,
Judge.

UNPUBLISHED OPINION

WORKE, Judge

Following his conviction for failing to register as a predatory offender, appellant argues that: (1) revocation of his probation and execution of his sentence in the underlying

matter in 2007 constituted double jeopardy and a departure from the sentencing guidelines; (2) changes to the predatory-offender-registration statute violate ex post facto protections; (3) the evidence was insufficient to prove that he knowingly violated the registration statute; (4) the state failed to disclose exculpatory evidence; and (5) the district court committed misconduct. We affirm.

FACTS

In June 1993, appellant Todd Curtis Myers pleaded guilty to first- and third-degree criminal sexual conduct. The district court sentenced him to consecutive stayed sentences of 86 months and 18 months, with 15 years of probation. In May 2007, the district court revoked Myers's probation and executed his sentences. Myers appealed and this court affirmed. *State v. Myers*, No. A07-1576, 2008 WL 4704850 (Minn. App. Oct. 28, 2008), *review denied* (Minn. Jan. 20, 2009).

Following Myers's release, on June 12, 2016, a deputy observed Myers's vehicle parked in an unusual position on a school playground. After speaking with Myers, the deputy ran his information, which revealed that Myers is a registered predatory offender. After observing Myers leave the playground with a juvenile female, the deputy checked Myers's registration status. Bureau of Criminal Apprehension (BCA) records indicated that Myers was compliant with his registration requirements, and that he was currently registered as homeless with a primary location at the Advent Lutheran Church in Anoka. However, a vehicle-registration search indicated that Myers's address was 20950 Butternut St. NW in Oak Grove.

Officers proceeded to the Butternut Street address. When they arrived, they observed Myers's vehicle and saw him exit a recreational vehicle (RV) parked on the property. The officers believed that Myers was residing in the RV. In the RV, officers found, among other things, clean and dirty laundry, an unmade bed, a refrigerator stocked with fresh and frozen food, prescription medicine in Myers's name, and mail addressed to Myers at the Butternut Street address. Myers was charged with failing to register the Butternut Street address in violation of Minn. Stat. § 243.166 (2014) (the registration statute).

Myers moved to dismiss, arguing that when he was sentenced, violation of the registration requirement was a misdemeanor offense, and that to punish him under the current felony statute violated constitutional prohibitions against ex post facto laws. The district court denied the motion and found that the registration statute in effect at the time of the alleged offense controlled.

At his court trial, Myers stipulated that on June 12, 2016, he was subject to the registration requirements. The district court found Myers guilty of knowingly violating the registration requirement or intentionally providing false information, and sentenced him to 24 months in prison. This appeal followed.

D E C I S I O N

Constitutional challenges

The state maintains that by stipulating that he was subject to statutory registration requirements on the date of the offense, Myers waived the constitutional issues he raised

in a motion to dismiss, which the district court denied.¹ The stipulations relied upon by the state pertained to elements of the offense that the state would have to prove at trial. Myers stipulated only to the fact that on June 12, 2016, he was subject to the statutory registration requirements; he did not stipulate to which version of the registration statute applied to his offense. Because Myers raised these issues before the district court in a motion to dismiss, they are subject to appellate review only on appeal from final judgment. *See State v. Murphy*, 537 N.W.2d 492, 494-95 (Minn. App. 1995) (holding that appellant could only petition for discretionary review of pretrial order denying double-jeopardy challenge prior to entry of final judgment).

Collateral issues

Myers raises four collateral challenges to his sentence for the original offense, asserting that the revocation of his stay of execution constituted double jeopardy and a departure from the sentencing guidelines. Myers already challenged the revocation of his probation and imposition of the conditional-release period on direct appeal in the underlying matter, which this court affirmed. *See Myers*, 2008 WL 4704850, at *1. Furthermore, in the underlying matter, Myers moved to correct his sentence, which the district court denied and this court affirmed on the basis that the district court lacked jurisdiction to modify the sentences because they had expired. *Myers v. State*, No. A17-1694 (Minn. App. May 23, 2018) (order op.). These collateral issues are therefore not properly before this court. *See State v. Cook*, 148 N.W.2d 368, 369 (Minn. 1967)

¹ Myers petitioned for discretionary review of the district court's pretrial order denying his motion to dismiss, which this court denied.

(stating that a defendant may not collaterally attack an order in an appeal arising out of its violation).

Ex post facto challenge

Myers asserts that the district court's application of the registration statute in effect at the time of his violation, as opposed to the registration statute in effect at the time of his sentence, constituted an unconstitutional *ex post facto* application of the law. The constitutionality of a statute is a question of law reviewed *de novo*. *State v. Wolf*, 605 N.W.2d 381, 386 (Minn. 2000). "The party challenging a statute must demonstrate beyond a reasonable doubt that the statute violates some provision of the Minnesota [or United States] Constitution." *Id.*

When Myers was initially sentenced in 1993 for criminal sexual conduct, violation of the registration requirements constituted a misdemeanor, whereas at the time of his current offense it was punishable as a felony. *Compare* Minn. Stat. § 243.166, subd. 5 (1992), *with* Minn. Stat. § 243.166, subd. 5(a) (2014). The United States and Minnesota Constitutions prohibit the enactment of *ex post facto* laws. U.S. Const. art I, § 10; Minn. Const. art. I, § 11. "[T]o constitute an *ex post facto* law, a statute must: (1) punish as a crime an act which was innocent when committed; (2) increase the burden of punishment for a crime after its commission; or (3) deprive one charged with a crime of a defense that was available when it was committed." *State v. Manning*, 532 N.W.2d 244, 247 (Minn. App. 1995), *review denied* (Minn. July 20, 1995).

In *Manning*, this court addressed an *ex post facto* challenge to the registration statute, and determined that because the statute is regulatory, not punitive, it did not

increase the burden of punishment. *Id.* at 249. Because the statute is regulatory, it does not violate constitutional prohibitions against ex post facto laws. *Id.*

Myers argues that *Manning* is distinguishable because it was decided before violation of the registration statute became a felony. However, in *State v. Munger*, this court, relying on *Manning*, stated that “in reviewing a failure-to-register conviction, we use the statute in effect at the time of the offense.” 858 N.W.2d 814, 818 n.1 (Minn. App. 2015), *review denied* (Minn. Mar. 25, 2015). Additionally, the supreme court has reaffirmed that the registration statute is regulatory, not punitive. *See Taylor v. State*, 887 N.W.2d 821, 826 (Minn. 2016). Therefore, the district court did not err in denying Myers’s motion to dismiss.

Sufficiency of the evidence

Myers argues that the circumstantial evidence was insufficient to support his failure-to-register conviction. This court uses a two-step analysis when reviewing a challenge to the sufficiency of circumstantial evidence. *State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013). First, this court must identify the circumstances proved. *Id.*

[W]e defer to the [fact-finder’s] acceptance of the proof of these circumstances and rejection of evidence in the record that conflicted with the circumstances proved by the State. . . . [W]e construe conflicting evidence in the light most favorable to the verdict and assume that the [fact-finder] believed the State’s witnesses and disbelieved the defense witnesses.

Id. at 598-99 (quotations omitted). Next, we must “determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that

of guilt.” *Id.* at 599 (quotations omitted). “We give no deference to the fact finder’s choice between reasonable inferences.” *Id.* (quotation omitted).

The elements of a failure-to-register offense are: (1) the defendant is required to register as a predatory offender; (2) the defendant knowingly violated any of the registration requirements or intentionally provided false information to a law enforcement authority; and (3) the registration time period had not elapsed. Minn. Stat. § 243.166, subd. 5. Myers challenges only the sufficiency of the evidence supporting the second element of the offense.

The registration statute requires an offender to provide authorities with: “(1) the person’s primary address; [and] (2) all of the person’s secondary addresses in Minnesota, including all addresses used for residential or recreational purposes,” amongst other disclosures. *Id.*, subd. 4a(a). An offender with a primary address is required to give written notice “at least five days before the person starts living at a new primary address.” *Id.*, subd. 3(b). An offender who lacks a primary address is still required to “provide the law enforcement authority with all of the information the individual is required to provide under subdivision 4a. However, instead of reporting the person’s primary address, the person shall describe the location of where the person is staying with as much specificity as possible.” *Id.*, subd. 3a(d). The district court found that Myers violated the registration statute by failing to disclose the RV as either his primary or secondary address.

Myers argues that the circumstantial evidence is consistent with the innocent rational hypothesis that he was merely storing his property in the RV and was not residing there. The state introduced the following evidence establishing Myers’s registration

history, and his registration status as of June 12, 2016. On October 9, 2015, Myers registered 20950 Butternut Street in Oak Grove as his primary address, with no secondary address. On November 16, 2015, Myers filed a change-of-information form, stating that he was homeless with a primary location of the Advent Lutheran Church in Anoka. On January 27, 2016, he filed another change-of-information form stating that he is homeless and again listing the church as his primary location. On April 11, 2016, he filed an address-verification form listing his address as homeless with a mailing address of the Anoka Police Department. Based upon these filings by Myers, the BCA registration database accessed on June 12, 2016, listed Myers's primary current address as homeless at the Advent Lutheran Church.

The district court relied upon the following proven circumstances in determining that Myers knowingly provided the false information that as of June 12, 2016, he was homeless with a primary location of the Advent Lutheran Church:

- 1) The pastor of Advent Lutheran Church testified that Myers only had permission to stay in the church parking lot for one week in November 2015, and he had no further contact with Myers after that;
- 2) When officers arrived at the Butternut Street address on June 12, 2016, they observed Myers's vehicle parked out front, and saw him emerge from the RV;
- 3) An officer testified that the RV had a lived-in look. There were clean and dirty clothes throughout, some of which Myers admitted were his. The bed was unmade and clearly had recently been slept in;
- 4) The RV contained Myers's personal belongings. He stocked food in the kitchen, and the bathroom contained his prescription medications and items of personal hygiene,

including contact lenses and solution. The address on Myers's prescription medications was a P.O. Box in Blaine, Minnesota, not previously disclosed to law enforcement;

- 5) Myers received mail at the Butternut Street address, listed it as his registered address for his car insurance, and added a resident of that address to his insurance policy; and
- 6) Myers testified that he uses the RV as a place to be intimate with his girlfriend.

Myers argues that these circumstances are consistent with the reasonable innocent hypothesis that he used the RV only as his office and did not reside there. While this argument is inconsistent with the presence of his food, prescription medications, and clothes in the RV, it also fails to account for the district court's finding that Myers was residing in the RV as either his primary or secondary address, either of which he was statutorily required to disclose to law enforcement. The circumstantial evidence sufficiently supported the district court's finding that the RV was at a minimum Myers's secondary address, and that he provided false information, in violation of Minn. Stat. § 243.166, subd. 5(a), by listing his address as homeless with no secondary address, with his primary location as the church.

Myers also argues that there was insufficient evidence to support the district court's determination that he *knowingly* provided false registration information. Unlike the circumstantial evidence supporting Myers's residential status, the state presented direct evidence of Myers's knowledge of his registration requirements. When an element of an offense is proven by direct evidence, this court's review is limited to "a painstaking analysis of the record to determine whether the evidence, when viewed in a light most

favorable to the conviction,” is sufficient to allow the fact-finder to reach the verdict it did. *State v. Horst*, 880 N.W.2d 24, 39-40 (Minn. 2016).

Myers asserts that the state failed to fully cross-examine him as to his knowledge of his registration requirements, and therefore the state failed to meet its burden of proof. However, the state introduced Myers’s signed duty-to-register acknowledgement form, dated May 12, 2016. On this form, Myers initialed his acknowledgement that he understood all of his various obligations under the registration statute.

Of particular importance are Myers’s signed acknowledgements that he understood the following obligations: “that I must register all changes to my primary address, including moving to another state, at least **five days prior to moving;**” “that I must register any changes with the name(s) and address(es) of . . . any address where I stay overnight on a regular or occasional basis when I am not staying at my primary address, **within five days of the change;**” and “that if I do not comply with my registration requirements as outlined above, I can be charged with a felony. I understand that it is also a felony to provide false information on this or any other registration documents.” These signed acknowledgements are sufficient to support the district court’s determination that Myers was aware of his registration obligations, and that in failing to disclose the Butternut Street RV as either his primary or secondary address, he knowingly provided false information to law enforcement.

Prosecutorial misconduct

Myers asserts that the prosecutor committed misconduct by failing to disclose exculpatory evidence. Myers points out that the state did not enter into evidence the

address-verification form accompanying the May 12, 2016 duty-to-register form, even though the state entered into evidence both forms for April 11, 2016. Myers suggests that the address showing on that form could be a Ham Lake address.

Myers did not object to the state's failure to disclose the May 12, 2016 verification form. Failure to object to prosecutorial misconduct during trial is reviewed under a modified plain-error standard. *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). If the defendant meets his burden of establishing error that is plain, the burden then shifts to the state to prove that there is "no reasonable likelihood that the absence of the misconduct . . . would have had a significant effect on the verdict." *Id.* (quotations omitted).

The prosecutor in a felony case has a duty to disclose "[m]aterial or information in the prosecutor's possession and control that tends to negate or reduce the defendant's guilt." Minn. R. Crim. P. 9.01, subd. 1(6); *see also Woodruff v. State*, 608 N.W.2d 881, 886 (Minn. 2000) ("To establish a *Brady* [*v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194 (1963)] violation, appellant must show (1) that the evidence at issue was favorable to him; (2) that the evidence was willfully or inadvertently suppressed by the state; and (3) that he was thereby prejudiced.").

Myers fails to meet the first prong of the *Brady* analysis. Myers posits, hypothetically, that the undisclosed verification form may have shown an address in Ham Lake. While the district court noted that Myers "was either residing at the Butternut Street address as of [June 12, 2016] or using it as a primary location for receiving mail, eating, and having intimate relations and sleeping at the Ham Lake address in his car," the issue at trial was not whether Myers had properly registered the Ham Lake location. Rather, the

issue was whether Myers was residing at the Butternut Street address, and whether he disclosed that fact to law enforcement. Even if the state possessed an address-verification form for May 12, 2016, showing a Ham Lake address, its disclosure would not have been favorable to Myers. Therefore, Myers has not established plain error in the state's alleged failure to disclose the address-verification form.

Judicial misconduct

Myers mixes together assertions that the district court was biased against him and that the district court improperly excluded testimony regarding his attempts to register subsequent to his arrest. Myers appears to argue that the district court improperly excluded his testimony sua sponte, and because the district court excluded the evidence, it was biased against him. “Evidentiary rulings rest within the sound discretion of the [district] court and will not be reversed absent a clear abuse of discretion. On appeal, the appellant has the burden of establishing that the [district] court abused its discretion and that appellant was thereby prejudiced.” *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003) (citations omitted). “Whether a judge has violated the Code of Judicial Conduct is a question of law, which we review de novo.” *State v. Dorsey*, 701 N.W.2d 238, 246 (Minn. 2005). An adverse ruling alone is insufficient to demonstrate prejudice warranting disqualification of the district court judge. *State v. Kramer*, 441 N.W.2d 502, 505 (Minn. App. 1989), *review denied* (Minn. Aug. 9, 1989).

The district court sua sponte excluded Myers's testimony regarding his registration activities subsequent to his arrest as not relevant to where he was registered on the date of

the offense. Myers argues that this ruling was erroneous, because he had 24 hours² to update his registration information, and therefore his attempts to update his registration subsequent to his arrest were relevant. However, at no point did Myers contend that he had just moved into the RV on Butternut Street within the 24 hours preceding his arrest and had not yet updated his registration materials to reflect the change. Instead, Myers maintained throughout trial that he did not reside at the RV.

As an initial matter, Myers did testify on cross-examination that following his release from custody, he registered at an address in Ham Lake. Therefore, the testimony that Myers argues was improperly excluded was eventually admitted. More importantly, whether Myers updated his registration to list himself as homeless with a primary location in Ham Lake has no bearing on whether he was residing in the RV in Oak Grove as either his primary or secondary address, the only contested issue at trial. On this basis, the district court did not abuse its discretion by initially excluding the testimony as irrelevant.

In addition to the adverse evidentiary ruling, Myers argues that the district court's questioning of him on the witness stand regarding the relevance of his testimony is also indicative of judicial bias. However, a district court is permitted to interrogate witnesses. Minn. R. Evid. 614(b) ("The [district] court may interrogate witnesses, whether called by itself or by a party."). There is no basis to Myers's assertions of judicial bias.

Affirmed.

² Under the registration statute, "[i]f 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." Minn. Stat. § 243.166, subd. 3a(a).