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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1657**

State of Minnesota,
Respondent,

vs.

Richard James Gibson,
Appellant.

**Filed July 27, 2020
Affirmed
Schellhas, Judge***

St. Louis County District Court
File No. 69HI-CR-17-909

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

Mark S. Rubin, St. Louis County Attorney, Jeffrey M. Vlatkovich, Assistant County Attorney, Hibbing, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Anders J. Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Larkin, Judge; and
Schellhas, Judge.

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

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant challenges his conviction for failing to register as a predatory offender, arguing that the evidence that he knowingly failed to register is insufficient to support his conviction. We affirm.

FACTS

On September 22, 1997, appellant Richard James Gibson was convicted of second-degree criminal sexual conduct, and the district court sentenced him to 64 months' imprisonment. As a result of this conviction under Minnesota law, Gibson was required to register as a predatory offender for ten years after his release from incarceration. On the day of his sentencing, Gibson completed and signed a Sex Offender Notification and Registration Form. The form included Gibson's current address and place of employment. By signing the form, Gibson acknowledged that he understood that he was required to register as a sexual offender for ten years from the date that he was initially required to register, excluding any period of confinement. Gibson also acknowledged that he understood that he was "legally required to supply the requested data under Minn. Stat. § 243.166" and that "failure to comply or to provide false information" could result in a gross misdemeanor or felony conviction.

On June 4, 2001, in preparation for his July 30, 2001 release from prison, Gibson completed and signed the Minnesota Predatory Offender Registration form. On this form, Gibson initialed a series of declarations indicating that he understood the various obligations of his registration. These declarations included Gibson's understanding that:

(1) he had the duty to register as a predatory offender; (2) he had to register for a period of ten years from the date he initially had to register; (3) if he was convicted of any new offense, he would be required to register for ten years after his release from incarceration; and (4) the term of his registration would be extended by five years if he was convicted of any violation of Minn. Stat. § 243.166 (2000). Under the listed terms, the form provided:

I HAVE READ AND/OR HAD READ TO ME, THE ABOVE
REQUIREMENTS. I UNDERSTAND IT IS MY DUTY TO
REGISTER AND THAT FAILURE TO DO SO IS A
FELONY IN VIOLATION OF MINN. STAT. § 243.166.

Gibson signed the form directly under this statement.

On September 16, 2002, the Bureau of Criminal Apprehension (BCA) sent Gibson a letter to verify his registration information. The letter stated that Gibson's registration term was August 19, 2002, through August 18, 2012. The letter also stated that the "end date is subject to change based on violations of the registration requirements, commission of new offenses, or any period of incarceration after 8/01/2000," and that the BCA would "inform [Gibson] in writing when [Gibson] . . . completed [his] registration period." Gibson completed the registration form on September 20, 2002. The form included statements similar to those that Gibson acknowledged with his initials on the 2001 registration form, but the form also included a statement that Gibson understood that he was required to "register any changes of employment, vehicles, other residences, including all property [Gibson owns], lease[s] or rent[s]." Gibson again initialed each statement and signed the bottom of the form on September 20, 2002.

On July 23, 2004, Gibson was convicted of violating the predatory-offender registration requirements under Minn. Stat. § 243.166, subd. 5 (2002). Based on his conviction, Gibson's ten-year registration period started over and was extended by five years. The end date of Gibson's registration period was therefore extended to July 3, 2019. On July 23, Gibson completed a Predatory Offender Court Notification and Registration Advisory. He initialed the statements on the form that provided that he understood the registration requirements, including that incarceration for a new offense would restart his ten-year registration requirement, and that his registration requirement would be extended if he was convicted of violating Minn. Stat. § 243.66 subd. 5. Gibson's initials on the form also reflected his understanding that he was required to register any changes in employment and vehicles. After reading and initialing the document, Gibson signed the form.

In the fall of 2004, Gibson moved to Kentucky. On October 4, 2004, the BCA mailed Gibson a registration verification letter that was similar to the one previously mailed to him in September 2002, except that the letter stated that Gibson's registration term was now October 24, 2003, through October 23, 2013. The letter also stated that Gibson's registration term was subject to change.

On September 19, 2005, the BCA sent Gibson another letter informing him that, due to a change in Minnesota law, individuals not living in the state of Minnesota were no longer required to register in Minnesota and requested that Gibson complete and return an enclosed verification form. The letter also stated that the change in Minnesota law did not change Gibson's requirement to register in Kentucky, and that if he returned to Minnesota, he would be required to register through his end registration date. The letter set forth

Gibson's registration term as July 4, 2004, though July 3, 2019, and included the following explanation: "10 Years from Incarceration + 5Yrs Violation Conv."

With the September 19, 2005 letter, the BCA enclosed a registration form like the previous forms completed by Gibson. The form included numerous statements regarding Gibson's registration obligations. Paragraph three of the form stated: "I understand that I must register for a **minimum period of 10 years** from the date I was originally registered." Gibson placed a question mark next to this statement, instead of initialing it. But he did initial the statements that noted his understanding that incarceration would restart his registration period and that any convictions under Minn. Stat. § 243.166 (2004) would extend his registration period by five additional years. Gibson also initialed the statement that he understood that he was required to register any changes in his vehicles and employment. He signed the bottom of the form on October 7, 2005.

In 2017, Gibson moved back to Minnesota, and Kentucky state police called him in Minnesota to inform him that he was required to register in Minnesota. On October 15, 2017, Gibson went to the Hibbing Police Department to register as a predatory offender and met with a police officer, who provided Gibson with a registration form. Gibson completed the form, registering his address as a home in Hibbing, Minnesota. He did not list any place of employment or vehicles on the form.

At some point, Gibson sent a letter to the BCA, asking about his end registration date. The parties dispute the date on which Gibson sent the letter, which is undated. In the letter, Gibson noted that he "was informed [his] registry date [was in] 2019" but believed that his end registration date was in 2013, and he asked the BCA to "please look into this."

An officer with the St. Louis County Sheriff's Office testified at trial that he understood that Gibson sent the letter after he met with police on October 15, 2017. Gibson testified that he sent the letter to the BCA in 2005, after he received the BCA's September 19, 2005 letter. But the return address on the letter was the Hibbing address that Gibson registered as his home address on October 15, 2017.

On October 30, 2017, the BCA responded to Gibson's undated letter and informed him that his end registration date was July 3, 2019. Specifically, the letter explained that Gibson's ten-year registration period was restarted and extended for five additional years when Gibson was convicted of violating the predatory-offender registration requirements under Minn. Stat. § 243.166, subd. 5.

On October 19, 2017, police went to Gibson's registered home address in Hibbing. Gibson was not home, but police spoke with his aunt, who said that Gibson was in Duluth and had just been terminated from his employment. On October 24, police again went to Gibson's Hibbing address and spoke with Gibson, who told them that he was hired by General Cleaners in Duluth at the end of September 2017 and was terminated on October 18, 2017. He also told the police that he had been driving back and forth from his Hibbing home to Duluth until he was cited for having a revoked or suspended license.

On December 7, 2017, respondent State of Minnesota charged Gibson with violating the predatory-offender registration requirements under Minn. Stat. § 243.166, subd. 5(a) (2016). Gibson waived his right to a jury trial, and the district court conducted a bench trial. The state called the two police officers involved with Gibson's registration and alleged violation. Gibson testified in his own defense. He testified that he received and read

the BCA's September 19, 2005 letter that informed him that his registration requirement would end on July 3, 2019. He also testified that he received a phone call from Kentucky state police who told him he needed to register in Minnesota, that he went to the Hibbing Police Department on October 15, 2017, and registered his Hibbing address with police. He confirmed that at the time he registered his Hibbing address as his home, he was employed in Duluth and was driving vehicles to and from Duluth but did not register his place of employment or vehicles.

The district court found Gibson guilty of knowingly violating his predatory-offender registration requirements and sentenced him to 24 months in prison.

This appeal followed.

D E C I S I O N

I. The evidence is sufficient to support the “knowing” element of Gibson’s failure-to-register offense.

Gibson argues that the state failed to prove that he knowingly failed to register as a predatory offender. He asserts specifically that “the BCA told [Gibson] that he was only required to register until 2013, which conflicted with his 2019 registration end date, and the BCA did not respond to [Gibson’s] requests for clarification prior to October 15, 2017.”

The parties disagree over whether the traditional direct-evidence standard or the heightened circumstantial-evidence standard applies to our review of the sufficiency of the evidence. Gibson argues that his conviction was based on circumstantial evidence. The state argues that the conviction was based on direct evidence, and notes that: (1) Gibson signed registration forms acknowledging his understanding of the requirements of

registration, including the requirement to register his place of employment and vehicles; (2) Gibson testified that he received the September 19, 2005, letter from the BCA informing him that he was required to register until July 3, 2019; (3) Gibson testified that Kentucky state police informed him that he was required to register in Minnesota; and (4) Gibson acknowledged that he registered his residence at the Hibbing Police Department but did not provide information concerning his place of employment or vehicles.

Direct evidence is evidence “based on personal knowledge or observation and that, if true, proves a fact without inference or presumption.” *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017). Moreover, direct evidence can be provided in the form of testimony by a person who perceived the fact through their senses or physical evidence of the fact itself. *State v. Williams*, 337 N.W.2d 387, 389 (Minn. 1983). Although some inference is required to interpret evidence presented through testimony, that “does not render otherwise direct evidence circumstantial.” *State v. Brazil*, 906 N.W.2d 274, 279 (Minn. App. 2017), *review denied* (Mar. 20, 2018).

Because we conclude that the district court based Gibson’s conviction on direct evidence, we apply the direct-evidence standard of review. Under this traditional standard of review, 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.” *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012) (quotation omitted). We assume that the district court believed the state’s witnesses and disbelieved evidence to the contrary. *State v. Caldwell*, 803 N.W.2d 373, 384 (Minn. 2011) (quotation omitted). “We use 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).

To convict a predatory offender of failing to register, the state is required to prove that: (1) the defendant is required to register as a predatory offender; (2) the defendant knowingly violated a registration requirement or intentionally provided false information to law enforcement; (3) the registration time period has not elapsed; and (4) venue. Minn. Stat. § 243.166 (2016). Gibson challenges only the sufficiency of the evidence concerning the second element—that he “knowingly violated” his registration requirements. *See State v. Mikulak*, 903 N.W.2d 600, 603-04 (Minn. 2017) (providing that “the knowledge and the violation must occur at the same time”).

Here, Gibson testified at trial that he believed that his registration requirement expired in 2013, not 2019, citing the BCA letters that contained conflicting end registration dates. He claimed that when he received the BCA’s September 19, 2005 letter, he sent a handwritten letter along with his October 7, 2005 registration form, explaining his confusion over his end registration date and requesting that the Minnesota BCA “please look into this.” Gibson testified that the BCA did not respond to his letter until October 30, 2017, nearly 12 years after he sent his letter of inquiry. The district court found Gibson’s testimony about when he sent the undated letter not credible. Specifically, the court noted Gibson’s residence in Kentucky in 2005, and that he the address listed in Gibson’s undated letter to the BCA was his address in Hibbing, Minnesota—the address he first registered with the Hibbing Police Department in 2017.

The district court found that the balance of Gibson's testimony was credible direct evidence that established his guilt. *See Williams* 337 N.W.2d at 389 (providing that "[d]irect evidence is the testimony of a person who perceived the fact through his sense, and testifies to it"). Gibson acknowledged in his testimony that he signed several forms in which he acknowledged that he understood his registration requirements. He testified that he received the September 19, 2005, letter from the BCA, which informed him that his end registration date was July 3, 2019. He confirmed that Kentucky state police told him that he was required to register in Minnesota upon his return to the state in 2017. Based on his conversation with the Kentucky state police, he acknowledged that he went to the Hibbing Police Department on October 15, 2017, and registered his home address in Hibbing but did not register his place of employment or vehicles. Although neither party offered as evidence the 2017 offender registration form, Gibson testified that he did not list his employment or vehicles on that form as he was required to do by Minn. Stat. § 243.166, subd. 4(a). The district court found this evidence conclusively establishes that Gibson knew that he needed to register when he registered at the Hibbing Police Department but simply chose not to report his place of employment or vehicles.

We conclude that the evidence is sufficient to support Gibson's conviction for failing to register as a predatory offender.

Affirmed.