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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1892**

State of Minnesota,
Respondent,

vs.

Eric Wilson,
Appellant.

**Filed August 17, 2020
Affirmed in part, reversed in part, and remanded
Smith, Tracy M., Judge**

Isanti County District Court
File No. 30-CR-18-462

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

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Cambridge, Minnesota (for respondent)

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Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Florey, Presiding Judge; Reilly, Judge; and Smith,
Tracy M., Judge.

UNPUBLISHED OPINION

SMITH, TRACY M., Judge

In this direct appeal from a judgment of conviction for violating predatory-offender
registration requirements, appellant Eric Wilson argues that (1) his convictions must be

reversed because he did not waive his right to a jury trial after respondent State of Minnesota amended the complaint to add a second charge, and (2) the district court's findings of guilty were legally inconsistent because the district court found him guilty of failing to register the same address as both a primary and a secondary address. We affirm in part, reverse in part, and remand.

FACTS

The facts, as established at a bench trial, are as follows. In February 2018, a law enforcement officer was traveling down Main Street in Cambridge and observed a white Ford Expedition. The officer ran the Expedition's license plate and saw that it was registered to an owner with a suspended driver's license. The officer conducted a traffic stop and identified the driver as Wilson. After speaking with Wilson, the officer noted from electronically available records that Wilson was required to register as a predatory offender until January 2021. The officer asked Wilson his address for the citation, and Wilson provided an address in Cambridge. The address on Wilson's driver's license and in the records system did not match the Cambridge address provided, so the officer spoke with Wilson about his registration requirements. Wilson expressed that he thought he had thirty days to make the address change after moving, and the officer instructed him that he needed to update his address with law enforcement right away.

After the traffic stop, the officer opened an investigation to monitor whether Wilson updated his address. He began driving by the Cambridge address that Wilson had provided to see how often Wilson was there. He observed the white Ford Expedition, which was

registered to Wilson at a Minneapolis address, along with a red van that was registered to Wilson at the Cambridge address, frequently parked at the home. He did not see Wilson himself at the Cambridge address. Based on these observations, the officer requested a packet of information from the Minnesota Bureau of Criminal Apprehension (BCA) on Wilson's documentation related to his predatory-offender registration requirements. A form contained in the packet and signed by Wilson indicated that Wilson understood that he needed to register all changes to his primary address five days prior to moving, and any changes to places he stayed overnight on a regular or occasional basis within five days of the change.

The officer also requested information from the postal service regarding Wilson. A postal worker in Cambridge indicated that she began delivering mail to Wilson at the Cambridge address in February 2018 and did so until June 2018, when the postal service received a request indicating that mail for the "entire family" should be forwarded to a Minneapolis address.

Based on this information, the state charged Wilson in June 2018 with one count of violating predatory-offender registration requirements under Minn. Stat. § 243.166, subd. 5(a) (2016), specifically by failing to report a change to his primary address. A jury trial was eventually scheduled for March 4, 2019. When the parties appeared on that date, though, Wilson requested a court trial instead of a jury trial. The district court questioned Wilson to ensure that his jury-trial waiver was knowing, intelligent, and voluntary. The district court granted the request and proposed that the bench trial be held the following

day. In discussing whether a next-day trial was feasible, Wilson’s counsel disclosed that he had a statement from Wilson’s fiancé, who might be called as a witness, that he had not yet provided to the state. The state indicated that it might need more time to prepare for the trial based on the contents of the statement, but the parties agreed to move forward with trial the next day and request a continuance if necessary.

After the March 4 hearing concluded, and on that same day, the state interviewed Wilson’s fiancé and, after that, amended the complaint to add a second count. The second count also charged Wilson with violating predatory-offender registration requirements under Minn. Stat. § 243.166, subd. 5(a), but it referenced the statutory requirement to register not only primary but also secondary addresses.¹

When the parties appeared for trial on March 5, the district court asked whether Wilson had received the amended complaint and reviewed it with counsel. Wilson’s attorney responded, “Yup, I’ve had a chance to speak to him about that. We’ve gone over a few different offers from the State somewhat based on that as well and we would like to proceed to trial.” The district court then commenced the bench trial, and the state called two witnesses—the investigating officer and the postal service worker who delivered mail to Wilson at the Cambridge address. Wilson did not testify or call any witnesses. At the end of the trial, the parties requested time to file written closing arguments and the district court granted that request.

¹ The probable-cause statement in the amended complaint indicates that Wilson’s fiancé stated that Wilson would frequently spend the night at the Cambridge address, where she resided, but that he would return to Minneapolis for work.

The district court found Wilson guilty of both counts. It later adjudicated Wilson guilty on both counts, sentencing him to 19 months' imprisonment on count one but staying execution. The district court did not impose a sentence for the second count because the parties agreed that it arose out of the "same behavioral incident" as the first.

This appeal follows.

DECISION

I. The district court plainly erred by failing to obtain a renewed jury-trial waiver after the state amended the complaint, but the error did not affect Wilson's substantial rights.

Wilson argues that both of his convictions must be reversed because he did not waive his right to a jury trial after the state amended its complaint to add a second count of violating predatory offender registration requirements.

The United States and Minnesota constitutions guarantee criminal defendants the right to a jury trial. U.S. Const. art. III, § 2, cl. 3; U.S. Const. amend. VI; Minn. Const. art. 1, §§ 4, 6. Defendants may waive their right to a jury trial if the waiver is knowing, intelligent, and voluntary. *State v. Dettman*, 719 N.W.2d 644, 651 (Minn. 2006). In Minnesota, the defendant must personally waive the jury-trial right and the waiver must be made either "in writing or on the record in open court," only after the court has advised the defendant of his right to a jury trial and the defendant has had an opportunity to consult with counsel. Minn. R. Crim. P. 26.01, subd. 1(2)(a). "[W]hen the State amends the complaint after a defendant's jury-trial waiver, the district court must obtain a renewed

waiver of the defendant’s right to a jury trial on the newly added charge.” *State v. Little*, 851 N.W.2d 878, 883 (Minn. 2014).

Wilson does not dispute that he initially made a valid waiver of his right to a jury trial on March 4, 2019. He contends that the district court erred when it did not obtain a renewed waiver after the state amended its complaint to add a second count. The record reflects that, although the district court asked Wilson’s attorney about the amended complaint, Wilson did not make a personal waiver of his jury trial after the state amended the complaint. Statements from counsel cannot constitute a valid waiver. *See id.* (rejecting the state’s argument relying on a post-amendment statement by defense counsel and emphasizing that the waiver must be provided by the defendant personally). Under *Little*, the district court’s failure to obtain a renewed waiver following the amended complaint was an error. *Id.*²

Because the district court erred by failing to obtain a renewed jury-trial waiver, we must next determine whether Wilson is entitled to relief. Wilson urges this court to apply the structural-error standard of review and thereby automatically reverse both convictions,

² It is unclear whether the state contests that an error occurred, or whether it argues only that any error was not “plain.” The state argues that the controlling cases on amended complaints without renewed jury-trial waivers “involve amendments that brought more serious charges and penalties,” whereas, here, “the amended complaint merely added an additional count that mirrored the original.” But the holding of *Little* is clear: “We therefore expressly state what our previous case law makes obvious: when the State amends the complaint after a defendant’s jury-trial waiver, the district court must obtain a renewed waiver of the defendant’s right to a jury trial on the newly added charge.” 851 N.W.2d at 883. Thus, to the extent that the state argues that the relatively less serious nature of the amendment to the complaint rendered a renewed waiver unnecessary, we reject that argument.

while the state argues that the plain-error standard of review applies and the convictions should stand. We begin by determining which standard applies.

A. The plain-error standard of review applies in this case.

“Generally, most constitutional errors are reviewed for harmless error.” *State v. Kuhlmann*, 806 N.W.2d 844, 850 (Minn. 2011). When an issue is not raised in the district court, though, the issue is forfeited and appellate courts ordinarily review the forfeited issue for plain error. *State v. Vasquez*, 912 N.W.2d 642, 649-50 (Minn. 2018). But “there are a very limited class of errors, referred to as structural errors, that require automatic reversal of a conviction.” *Kuhlmann*, 806 N.W.2d at 851 (quotation omitted).

Structural errors are “defects in the constitution of the trial mechanism, which defy analysis by ‘harmless-error’ standards because the entire conduct of the trial from beginning to end is obviously affected.” *State v. Dalbec*, 800 N.W.2d 624, 627 (Minn. 2011) (quotation omitted). “In general, structural errors ‘necessarily render a trial fundamentally unfair’ and ‘deprive defendants of basic protections without which a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence.’” *State v. Petersen*, 933 N.W.2d 545, 550 (Minn. App. 2019) (quoting *Neder v. United States*, 527 U.S. 1, 8-9, 119 S. Ct. 1827, 1833 (1999)). Structural error has been found in “a very limited class of cases.” *Johnson v. United States*, 520 U.S. 461, 468, 117 S. Ct. 1544, 1549 (1997).³

³ *Johnson* provides a survey of these cases, which includes *Sullivan v. Louisiana*, 508 U.S. 275, 113 S. Ct. 2078 (1993) (constitutionally deficient reasonable-doubt instruction to jury); *Waller v. Georgia*, 467 U.S. 39, 104 S. Ct. 2210 (1984) (denial of the right to a public

A trial error, on the other hand, “may be quantitatively assessed in the context of the other evidence presented in order to determine whether it was harmless beyond a reasonable doubt.” *Colbert v. State*, 870 N.W.2d 616, 624 (Minn. 2015) (quotation omitted). Generally, “it is the duty of a reviewing court to consider the trial record as a whole and to ignore errors that are harmless, including most constitutional violations.” *Id.* (quotation omitted).

In *Little*, the supreme court expressly declined to consider whether forfeiture and plain-error review categorically “apply to the requirement that defendants [must] affirmatively waive their jury-trial rights.” 851 N.W.2d at 883-84. The supreme court determined that it need not resolve the question because, even under the plain-error standard, Little was entitled to a new trial. *Id.* at 884.⁴ In analyzing whether the plain error affected Little’s substantial rights, the supreme court noted that the amended complaint added a more serious charge of first-degree criminal sexual conduct, which significantly increased Little’s sentencing exposure. *Id.* at 885. It also observed, based on statements from both Little and his defense attorney, that Little may not have known about the new charge at all before trial began. *Id.* In light of these facts, the supreme court determined

trial); *McKaskle v. Wiggins*, 465 U.S. 168, 104 S. Ct. 944 (1984) (denial of the right to self-representation at trial); *Gideon v. Wainwright*, 372 U.S. 335, 83 S. Ct. 792 (1963) (a total deprivation of the right to counsel); and *Tumey v. Ohio*, 273 U.S. 510, 47 S. Ct. 437 (1927) (lack of an impartial trial judge). 520 U.S. at 469, 117 S. Ct. at 1549-50.

⁴ In an opinion concurring in part and dissenting in part in *Little*, Justice Stras concluded that failure to obtain a renewed jury-trial waiver after an amended complaint is not structural error, particularly because the impact of the error is not difficult to assess. *Id.* at 891-94 (Stras, J., concurring in part, dissenting in part).

that it could not “assume that Little and his counsel fully discussed the advantages and disadvantages of waiving a jury trial.” *Id.* The supreme court concluded that the plain error affected Little’s substantial rights, and went on to determine that reversal was required “to ensure fairness and the integrity of the judicial proceedings.” *Id.* at 886.

In *Kuhlmann*, decided before *Little*, the Minnesota Supreme Court applied the plain-error standard of review when the district court failed to obtain the defendant’s personal waiver of his jury-trial right on a single element of the offenses—the previous-conviction element. 806 N.W.2d at 851-52. The charged offenses required the state to prove that Kuhlmann had qualifying previous convictions, and Kuhlmann’s counsel stipulated that he did. *Id.* at 847. The supreme court determined that the district court erred by failing to obtain Kuhlmann’s personal waiver of his jury-trial right as to the previous-conviction element, but that the error was not structural. *Id.* at 852. It reasoned that Kuhlmann received a jury trial on all other elements of the charged offenses, the trial would have proceeded in “exactly the same manner” had the district court obtained a proper waiver, and the jury would have received the same instructions. *Id.* The supreme court also noted that Kuhlmann had never suggested that he wanted to require the state to prove his prior convictions to the jury. *Id.* The supreme court concluded that “the [district] court’s failure to obtain a personal waiver in this case falls into the category of ‘trial errors’ occurring in the prosecution of the case, rather than a defect in the constitution of the trial mechanism.” *Id.*

Reviewing this case in light of that caselaw, we conclude that no structural error occurred here. The record shows that Wilson was aware of the amendment to the complaint and had discussed options in light of the amendment with his attorney. Like in *Kuhlmann*, Wilson never suggested that he would like to have the second count tried to a jury, and the trial proceeded in essentially the same manner that it would have had there been a valid waiver. *See id.* at 851-52. The amendment in essence added a new theory of liability, as the two counts charged violations of an identical statutory provision, with the only distinction being that one regarded a “primary” address and the other a “secondary” address. We thus discern here no error “in the constitution of the trial mechanism,” *id.* at 852, and hold that the error in Wilson’s case falls into the trial-error category. We accordingly turn to applying the plain-error standard of review.

B. Wilson is not entitled to relief under the plain-error standard of review.

Under the plain-error standard of review, appellate courts determine whether there was (1) an error (2) that was plain and (3) that affected the defendant’s substantial rights. *Id.* If each of these prongs is satisfied, an appellate court may grant relief if it determines that the error “seriously affects the fairness and integrity of the judicial proceedings.” *Id.* at 853.

As explained above, the district court’s failure to obtain a renewed jury-trial waiver from Wilson after the state amended its complaint was an error, satisfying the first prong. Under the second prong, “[a]n error is plain if it is clear or obvious, which is typically established if the error contravenes case law, a rule, or a standard of conduct.” *State v.*

Webster, 894 N.W.2d 782, 787 (Minn. 2017) (quotation omitted). The rule from *Little* necessitating a new waiver in this instance is clear, and the second prong is accordingly satisfied.

With respect to the third prong, the substantial-rights requirement, the defendant “bears the burden of establishing that there is a reasonable likelihood that the absence of the error would have had a significant effect” on the proceeding. *State v. Horst*, 880 N.W.2d 24, 38 (Minn. 2016) (quotation omitted); *Little*, 851 N.W.2d at 884. “An error affects substantial rights if the error was prejudicial and affected the outcome of the case.” *Kuhlmann*, 806 N.W.2d at 853.

In *Little*, the supreme court found that substantial rights were affected when the newly added charge significantly increased the potential punishment and the record suggested that the defendant did not know about the new charge before trial. 851 N.W.2d at 884. Distinguishably here, the added charge represented, as the state explains in its appellate brief, a “secondary theory of liability” under the same statutory provision as the first charge. There was no risk of an increased punishment, as the defendant could not be sentenced on both counts.⁵ Furthermore, the record shows that Wilson did know about the amended complaint and that he and his attorney had discussed how to proceed in light of the amendment. Even if the district court had followed the proper procedure under Minn. R. Crim. P. 26.01, subd. 1(2)(a), of advising Wilson of his right to a jury trial on the new

⁵ As explained in more detail below, the parties and district court agreed, in regard to sentencing, that the counts arose out of the same behavioral incident.

charge and obtaining another waiver, nothing in the record suggests that Wilson would have opted for a jury trial. We conclude that Wilson has not met his burden of showing a reasonable likelihood that the absence of the waiver error would have had a significant effect on the proceeding. *See Horst*, 880 N.W.2d at 38.

Even if the third prong were satisfied, though, we are not persuaded that this error “seriously affect[ed] the fairness and integrity of the judicial proceedings.” *Kuhlmann*, 806 N.W.2d at 853. The fairness-and-integrity prong is satisfied only “in those circumstances in which a miscarriage of justice would otherwise result.” *State v. Huber*, 877 N.W.2d 519, 528 (Minn. 2016) (citations omitted). Wilson argues that the fairness and integrity of the proceeding was affected because the state’s addition of a count “caught the defense flat-footed and made Wilson’s chances of an acquittal through a court trial less likely.” But the addition of a count based on failure to register a secondary address—which the state added based on statements from Wilson’s own potential witness—did not add a difficulty for Wilson specific to a court trial. Regardless of the type of trial, the state had strong evidence of Wilson’s failure to register the Cambridge address that Wilson did not rebut.

Again, the district court asked defense counsel whether Wilson had received the amended complaint, and counsel responded that he had, that they reviewed it together, that they reviewed “a few different offers from the State,” and that Wilson wished to proceed with the scheduled bench trial. The evidence that the state presented about Wilson’s activity at the Cambridge address and his registration requirements appears to be almost exactly the same evidence it would have presented absent the new count. Nothing suggests

that Wilson was unfairly surprised by the testimony and exhibits offered by the state. And again, the new charge did not have the potential to increase the penalty Wilson faced, unlike the charge in *Little* which was for a “much more serious offense.” 851 N.W.2d at 886.

In sum, we conclude that Wilson is not entitled to reversal of his convictions on the basis that he did not again waive his right to a jury trial after the state amended the complaint to add a second charge.

II. The district court’s findings of failing to register the same address as both a primary and secondary address are legally inconsistent.

Wilson next argues that the district court’s two findings of guilt are legally inconsistent. Whether verdicts are inconsistent is a legal question that appellate courts review de novo. *State v. Leake*, 699 N.W.2d 312, 325 (Minn. 2005).

“Nothing in the constitution requires consistent verdicts.” *Id.* But while the Minnesota Supreme Court has explained that “*logically* inconsistent verdicts do not entitle a defendant to a new trial,” it has reversed convictions where the verdicts were *legally* inconsistent. *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989) (“*Moore I*”); see *State v. Moore*, 458 N.W.2d 90, 94-95 (Minn. 1990) (“*Moore II*”) (reversing and remanding for a new trial because guilty verdicts for both first-degree premeditated murder and second-degree manslaughter were inconsistent). “Verdicts are legally inconsistent when proof of the elements of one offense negates a necessary element of another offense.” *State v. Cole*, 542 N.W.2d 43, 50 (Minn.1996).

The district court found Wilson guilty of two counts of violating predatory-offender registration requirements under Minn. Stat. § 243.166, subd. 5(a). Minn. Stat. § 243.166, subd. 5(a), is the general penalty section of the registration statute and states:

A person required to register under [Minn. Stat. § 243.166] who was given notice, knows, or reasonably should know of the duty to register and who: (1) knowingly commits an act or fails to fulfill a requirement that violates any provision of this section . . . is guilty of a felony

The requirements of section 243.166 include that registrants “provide to the corrections agent or law enforcement authority the following information: (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.” Minn. Stat. § 243.166, subd. 4a(a)(1)-(2) (2016). In regards to primary addresses, the registration requirements specify that, barring certain exceptions, “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 with which the person currently is registered.” Minn. Stat. § 243.166, subd. 3(b) (2016).

A “primary address” is statutorily defined as “the mailing address of the person’s dwelling.” Minn. Stat. § 243.166, subd. 1a(g) (2016). A “secondary address” is “the mailing address of any place where the person regularly or occasionally stays overnight when not staying at the person’s primary address.” Minn. Stat. § 243.166, subd. 1a(i) (2016).

Wilson argues that the two guilty findings are legally inconsistent because the definitions of “primary address” and “secondary address” exclude a finding that the same address was both. He emphasizes that a secondary address is, by definition, a place a person stays “when not staying at the person’s primary address.” *Id.*

The state argues that the evidence at trial showed that Wilson used the residence and that the “use could have been either as primary or secondary residence. The primary or secondary status of a residence may be fungible depending on shifting circumstances.” (Emphasis omitted.)

While there may be circumstances where the nature of an address is “fungible,” the state did not prove that this was the case here. The amended complaint contains the same offense date, February 20, 2018, for both counts. And the parties agreed at sentencing that the offenses arose out of the “same behavioral incident.” The district court’s findings of fact, conclusions of law, and order do not suggest that the offenses occurred separately when the nature of the address shifted; the district court merely concluded that the evidence was sufficient to show that Wilson “knowingly violated the requirements of his predatory offender registration by failing to register the [Cambridge address] as *either* a new primary address *or* a secondary address.” (Emphasis added.) These circumstances, along with the state’s evidence at trial and the parties’ post-trial written submissions, make clear that the two counts were meant to reflect the same registration violation. Accordingly, we hold that the district court made legally inconsistent findings of guilt because the same address cannot, by statutory definition, be both a primary and secondary address, so “proof of the

elements of one offense negates a necessary element of another offense.” *Cole*, 542 N.W.2d at 50.

Having determined that the findings of guilt are legally inconsistent, we must next determine the relief to which Wilson is entitled. Wilson argues that, pursuant to *State v. Moore*, 481 N.W.2d 355 (Minn. 1992) (“*Moore III*”), we must reverse both convictions because both verdicts are invalid. But a close reading of *Moore III*, in conjunction with the cases that preceded it, persuades us that we need only reverse one conviction in this case.

In *Moore II*, the supreme court determined that jury verdicts for first-degree premeditated murder and second-degree manslaughter were legally inconsistent and accordingly reversed and remanded for a new trial. 458 N.W.2d at 94-95. In *Moore III*, the appellant argued that the district court erred on remand by allowing retrial on charges other than second-degree manslaughter. 481 N.W.2d at 359. The supreme court rejected that argument, explaining that it did not intend to exonerate appellant of the more serious first-degree murder charge:

To hold, as we did in [*Moore II*], that verdicts are legally inconsistent is not to imply, as defendant seems to argue, that conviction of the lesser offense necessarily implies reasonable doubt about the defendant’s guilt of the greater offense. Rather it is to recognize that the underlying factual findings upon which the verdicts were made are invalid. Because no valid verdict was returned, we remanded without limiting instructions.

Id. The supreme court went on to note that a reason it remanded the case in the manner that it did in *Moore II* was that Moore’s trial counsel had engaged in an unauthorized concession of guilt on the second-degree manslaughter conviction. *Id.*; see *Moore II*, 458 N.W.2d at

95. The supreme court in *Moore III* then concluded, “We hold that legally inconsistent guilty verdicts require reversal and, where the remand for a new trial is without express instructions, the defendant may be retried on all charges.” 481 N.W.2d at 360. It is this conclusion that Wilson relies on to argue that both guilty verdicts in his case must be reversed.

While the language of *Moore III* initially appears to support Wilson’s contention, the context of the appeal persuades us that the supreme court was not prescribing the necessary remedy for every case of legally inconsistent verdicts. *Moore II* supports this conclusion because the supreme court there noted that the appellant was requesting *either* a new trial *or* that the court reduce the conviction to second degree manslaughter. 458 N.W.2d at 95. In deciding which remedy to choose, the supreme court explained that, while it “might be inclined to reduce the conviction . . . pursuant to Minn. Stat. § 611.02 (1988),” a new trial was the more appropriate remedy under the circumstances because Moore’s trial counsel had improperly conceded his guilt on the second-degree manslaughter conviction. *Id.*

Here, unlike in the *Moore* cases, Wilson’s convictions resulted from a bench trial, not a jury trial. We thus have available to us the district court’s written factual findings to examine in order to determine whether any conviction can be sustained. In *Moore II*, the state of mind elements for first-degree murder and second-degree manslaughter were inconsistent, 458 N.W.2d 90, so the jury’s verdicts necessarily depended on invalid factual findings, *Moore III*, 481 N.W.2d at 359. Here, we can examine whether the district court’s

findings, absent the error, are sufficient to support one conviction of violating predatory-offender registration requirements under Minn. Stat. § 243.166, subd. 5(a).

The district court found, consistent with the record, that Wilson gave the investigating officer the Cambridge address at the February 2018 traffic stop. The officer later observed vehicles registered to Wilson at the Cambridge address, and the postal service delivered mail to Wilson at the Cambridge address for months. These findings support the district court's conclusion that Wilson failed to register the Cambridge address as his primary address and are not rendered invalid by the inconsistent finding of guilt for not registering a secondary address. We accordingly affirm Wilson's conviction on count one but vacate the conviction on count two because it is based on the legally inconsistent proposition that Wilson failed to register the same Cambridge address as a secondary address. We remand to the district court to correct the warrant of commitment accordingly.

Affirmed in part, reversed in part, and remanded.