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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1448**

State of Minnesota,
Respondent,

vs.

David John Kangas, Jr.,
Appellant.

**Filed August 23, 2021
Reversed
Ross, Judge**

Sherburne County District Court
File No. 71-CR-19-1121

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

Kathleen A. Heaney, Sherburne County Attorney, George R. Kennedy, Assistant County Attorney, Elk River, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Steven P. Russett, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Reilly, Judge; and Gaïtas, Judge.

NONPRECEDENTIAL OPINION

ROSS, Judge

A jury heard testimony that convicted sex offender David Kangas Jr. left his registered primary address and failed to inform law-enforcement authorities of his new primary address. It found Kangas guilty of failing to register his primary address as a

predatory offender. But the evidence does not establish beyond a reasonable doubt that Kangas was living at a new primary address. We therefore reverse the conviction.

FACTS

The district court convicted David Kangas Jr. of fourth-degree criminal sexual conduct in August 2012 and sentenced him to 90 months in prison. Before his release in August 2018, the state notified Kangas of his requirement to register as a predatory offender under Minnesota Statutes section 243.166, subdivision 1b(a) (2020), and to establish a primary address. Kangas acknowledged the requirements and notified law-enforcement officials in June 2019 that his primary address would be his father's home in Sherburne County.

One year after his release, the Sherburne County Sheriff's Office sought to execute an arrest warrant issued for Kangas because he failed to maintain contact with his parole officer. Deputies went to his registered primary address three times in July 2019 but did not find him there. The second time, they searched the home but could not access Kangas's locked bedroom. The third time, they spoke with Kangas's father, who told deputies he had not seen Kangas "in at least a couple of weeks" and that he might be residing in Otsego. He told them that Kangas worked in Otsego for a car detailer and that he often drove Kangas to work because he lacked a driver's license. He added that he believed that Kangas would spend the night in Otsego when he could not pick him up at the end of a workday, possibly remaining in Otsego for a week or two at a time.

Investigating deputy Jeffrey Ruhland tried to reach Kangas by calling his cellular telephone. He spoke with Kangas twice in mid July 2019 and recorded the second

discussion. Kangas said that he was not living at his father's home but refused to tell Investigator Ruhland where he was staying. Kangas also declared that he refused to turn himself in on the warrant.

The state charged Kangas with knowingly violating the registration requirements for a predatory offender or intentionally providing false information. The district court conducted a jury trial during which Investigator Ruhland and Kangas testified. The investigator described the facts just outlined. Kangas denied that he ever stopped living at his father's home or started living elsewhere. He testified that he stayed overnight at his workplace in Otsego "two or three times a week." The jury found Kangas guilty, and the district court sentenced Kangas to serve 33 months in prison.

This appeal follows.

DECISION

Kangas asks us to reverse his conviction because the state offered insufficient supporting evidence. When a defendant contests his conviction based on the sufficiency of the evidence, we review the record to determine whether the evidence, viewed in the light most favorable to the conviction, would allow a jury to find the defendant guilty beyond a reasonable doubt. *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012). A conviction like Kangas's, which rests on circumstantial evidence, requires greater scrutiny on review. *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010). In this situation we undertake a two-step analysis, first identifying the circumstances proved at trial, deferring to the fact-finder's acceptance of inculpatory evidence and rejecting conflicting evidence, and second determining whether the circumstances are consistent with guilt and inconsistent

with any rational hypothesis other than guilt. *Id.* at 473–74; *State v. Silvernail*, 831 N.W.2d 594, 598–99 (Minn. 2013). Under that standard and for the following reasons, we hold that the state’s evidence was not sufficient to support the guilty verdict.

We first clarify the nature of Kangas’s conviction. The state generally charged Kangas with failing to register under Minnesota Statutes section 243.166, subdivision 5(a) (2020). That statute makes it a felony for a person required to register under the statute to “knowingly commit[] an act or fail[] to fulfill a requirement that violates *any* provision of” the predatory-offender registration statute. *Id.* (emphasis added). But at trial the state narrowed the nature of Kangas’s alleged crime, maintaining specifically that Kangas violated the provision of the statute that required him to notify law-enforcement officials of his new primary address after he started living at that new address. *See* Minn. Stat. § 243.166, subd. 3(b) (2020). The state agreed that the district court should instruct the jury to find Kangas guilty if it concluded that he “knowingly violated . . . the requirements to register” as a predatory sex offender specifically by failing to “give written notice of [his] new primary address.” Although it could have instead (or alternatively) asked the jury to convict under a different subdivision for failing to register as a person who *lacked* a primary address, *see* Minn. Stat. § 243.166, subd. 3a(a) (2020) (requiring registration with the law-enforcement agency “in the area where the person is staying” after the person no longer has a primary address), the state concedes on appeal that it did not pursue a charge under that provision. We must therefore address Kangas’s evidence-sufficiency challenge in the context of the state’s narrow charge as tried to the jury under section 243.166, subdivision 3(b).

To address Kangas's challenge, we must specifically assess whether the circumstantial evidence supported the allegation that Kangas "start[ed] living at a new primary address" and failed to give "written notice of the new primary address" before five days. Minn. Stat. § 243.166, subd. 3(b). We have recently held that this provision requires the state to prove that the defendant actually began living at a new primary address. *State v. Nelson*, 812 N.W.2d 184, 188 (Minn. App. 2012). A primary address is "the mailing address of the person's dwelling," Minn. Stat. § 243.166, subd. 1a(h) (2020), and a dwelling is a "building where the person lives under a formal or informal agreement," *id.*, subd. 1a(d) (2020). We have no difficulty determining whether the circumstantial trial evidence proved beyond a reasonable doubt that Kangas started living at a new primary address under some type of agreement, because the state essentially offered only the thinnest evidence in support.

The circumstances proved at trial on the question of whether Kangas had established a new primary address that he failed to register consist only of the following. Kangas informed law-enforcement officials in 2019 that his primary address was his father's home in Sherburne County. Kangas was absent from that home three times in July 2019 when deputies went there to find him. Kangas's father said that he had not seen Kangas in a couple of weeks, that he gave Kangas rides to Otsego to work, that Kangas periodically stayed in Otsego in one- or two-week spans when he had no ride back to his father's home, and that he thought Kangas might be in Otsego at that time. Kangas told an investigator that he was no longer living with his father but refused to tell him where he was staying.

The state argues that the circumstances proved support the hypothesis that Kangas moved from his registered primary address with his father and started living at the Otsego car dealership under some sort of formal or informal agreement. We conclude otherwise. The state offered no evidence whatsoever to support the notion that Kangas was staying at any particular place. And it did not offer evidence that, wherever he was staying, he was living there on the agreement of the property's lawful possessor. The state's circumstantial evidence barely rules out the possibility that Kangas was still living at his father's home. And even if the state had proved that Kangas was actually *living* at the car detailer as his new *dwelling* (rather than just spending the night there from time to time, as the evidence supports), it did not attempt to show that Kangas had permission to live there. If the investigator did investigate Kangas's living arrangement in Otsego or elsewhere and identified a new dwelling place, the prosecutor failed to elicit evidence of this at trial. We reversed a conviction in a nearly identical situation because the investigating officers "did not give any testimony that reflected any knowledge of any specific dwelling or building in which [the appellant] had taken up residence." *Nelson*, 812 N.W.2d at 188. The record in that case revealed that "the state simply asked the jury to infer that [the appellant] had a new primary address based on evidence that [he] did not appear to be present at his registered primary address on" a specific date. *Id.* The state's evidence here was not substantively any stronger than it was in *Nelson*, requiring us to reach the same conclusion here.

We conclude that the state's evidence did not prove beyond a reasonable doubt the existence of any new primary address. Because the state's evidence failed on that element, it is insufficient to support Kangas's conviction for failure to register that address.

Reversed.