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ARKANSAS COURT OF APPEALS
DIVISION IV
No. CR-22-376

DAVID MCEUEN

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

OPINION DELIVERED FEBRUARY 15, 2023

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT, FIRST
DIVISION
[NO. 60CR-17-4053]

HONORABLE LEON JOHNSON,
JUDGE

AFFIRMED

ROBERT J. GLADWIN, Judge

This appeal arises from the Pulaski County Circuit Court’s order sentencing appellant David McEuen (“McEuen”) as a habitual offender to 360 months’ incarceration following a jury verdict finding him guilty of failing to register as a sex offender. McEuen makes three arguments on appeal, including that the circuit court erred by failing to grant his motion for directed verdict for insufficient evidence; thus, he contends his conviction should be reversed. We affirm.

I. *Background Facts*

On October 10, 2017, McEuen was charged with failing to register as a sex offender in violation of Ark. Code Ann. § 12-12-904 (Supp. 2021). Specifically, the felony information alleged that McEuen had failed to report a change in address as is required by

the statute. A jury trial was set for November 16, 2021; however, a week before trial, the State requested a continuance due to the unavailability of two witnesses, Investigator Ryan Jacks of the Arkansas State Police and Paula Stitz of the Arkansas Crime Information Center. McEuen objected to the continuance, arguing that the State failed to comply with Ark. Code Ann. § 16-63-402(a) (Repl. 2005), which requires that an affidavit accompany the motion describing the material facts the unavailable witness would offer.

The circuit court allowed the State the opportunity to file the required affidavit along with its motion for continuance in order to comply with the statute. Accordingly, the State filed an affidavit asserting that Investigator Jacks, Paula Stitz, and Ken McRae—owner of the warehouse in question—would all be unavailable for trial on November 16. In response, McEuen objected to the continuance and agreed to stipulate to the testimony of Investigator Jacks and provided his proposed stipulation. The circuit court granted the State’s continuance.

A jury trial was held on December 15, 2021. The State alleged that at the time of his arrest, McEuen was living inside a warehouse located at 1302 East 8th Street in North Little Rock, Arkansas; however, he had not registered this address and was instead currently registered as homeless in the area of 2516 Cantrell Road in Little Rock, Arkansas. To support its allegation, the State relied on the testimony of Detective Matt Harrelson of the Little Rock Police Department; Investigator Jacks; Charles Childress; and Paula Stitz. The State maintained that in 2017, McEuen registered as homeless living in Little Rock off

Cantrell Road where he was sleeping in his truck, and he continued to report the Little Rock address from March to September 2017.

At trial, Detective Harrelson testified that in 2017, he was in charge of the sex-offender registration for the Little Rock Police Department. Harrelson stated that McEuen would come in every thirty days to verify his residency because he was homeless. McEuen would always report 2516 Cantrell Road as the area where he parked his truck and slept. Detective Harrelson testified that McEuen never apprised him of the fact that he had access to, and was spending a substantial amount of time in, a camper located inside at a warehouse in North Little Rock, Arkansas.

Investigator Jacks testified that as a result of a different matter, he received information that led him to the warehouse in North Little Rock. On October 7, 2017, Investigator Jacks executed a search warrant of the warehouse in an attempt to locate McEuen. Using a key Jacks obtained from an agent of the owner of the warehouse, he accessed the exterior gate; however, the first bay door was locked from the inside, so Jacks was unable to gain entry. Instead, Jacks attempted access through another door and was ultimately successful after flipping an electrical breaker and restoring power to the door. Inside the warehouse, Jacks and another officer discovered a portion of the property that was closed off by locked doors. Underneath the doors were two power cords running from an electrical outlet. In order to gain access, Investigator Jacks had to pry it open by force due to the stacks of pallets and plywood barricading the door. Once inside, Jacks saw a black pickup truck and a camper. Upon request, McEuen exited the camper and was placed into custody.

Jacks's testimony was that McEuen exited the camper wearing a pair of shorts but no shirt. Photographs of the exterior and interior of the camper were entered into evidence, which show electricity being supplied to the camper, air conditioning, a bed, clothes, food, trash, and alcohol bottles. As noted by McEuen, Investigator Jacks's testimony does not allege that he saw McEuen staying overnight at the warehouse or exiting the area of the warehouse prior to October 7.

Charles Childress also testified as a State witness. Mr. Childress was employed by Ken McRae—the owner of the warehouse—to do various jobs at the warehouse. Childress testified that he met McEuen and asked him to help around the warehouse. He testified that he would call McEuen when he needed assistance but that eventually he gave McEuen permission to store his camper at a specific location inside the warehouse. However, Childress alleged that McEuen moved the camper into a different location far back inside the warehouse. Furthermore, Childress maintained that McEuen had “trashed up” the area around the camper and that the doors to the warehouse were supposed to remain open but that McEuen had closed them off with locks. Childress also testified that he told McEuen he needed to remove the camper on more than one occasion; however, McEuen remained on the property. The testimony established that the camper was located inside the warehouse from January 2017 to October 2017 when McEuen was taken into police custody. Childress maintained that no work was being done at the warehouse in October 2017, despite McEuen's contention that he was only at the warehouse for work purposes.

Paula Stitz testified that McEuen registered with the Little Rock Police Department in 2017 “because he was in the county jail.” Ms. Stitz was testifying as the keeper of records for the sex offender registry of the Arkansas Crime Information Center. With the mention of incarceration, counsel for McEuen objected and moved for a mistrial or, alternatively, a curative instruction. The circuit court denied the request for a mistrial but gave a curative instruction for the jury to disregard the statement regarding McEuen’s incarceration. Ms. Stitz concluded by testifying that McEuen had never registered with the North Little Rock Police Department.

At the close of the State’s evidence, McEuen moved for a directed verdict, arguing that the State failed to establish sufficient evidence that he changed his residence or had a temporary change of domicile for a period of thirty days. The circuit court denied McEuen’s directed-verdict motion and subsequently denied the motion for directed verdict he renewed at the close of evidence. The case went to the jury, and the jury convicted McEuen for failure to register as a sex offender. As a result, the circuit court sentenced him to 360 months’ incarceration in the Arkansas Division of Correction. Appellant filed a timely notice of appeal, and this appeal followed.

II. *Standard of Review*

On appeal, a motion for directed verdict is treated as a challenge to the sufficiency of the evidence. *Dortch v. State*, 2018 Ark. 135, at 5, 544 S.W.3d 518, 522. In reviewing a challenge to the sufficiency of the evidence, we review the evidence in the light most favorable to the State, considering only evidence that supports the verdict. *Gill v. State*, 2015

Ark. 421, at 3, 474 S.W.3d 77, 79. We will affirm the verdict if substantial evidence supports it. *Id.* Substantial evidence is evidence of sufficient force and character that it will, with reasonable certainty, compel a conclusion without resorting to speculation or conjecture. *Id.* Substantial evidence may be direct or circumstantial. *Id.* But circumstantial evidence is substantial only if it excludes every reasonable hypothesis other than the guilt of the accused. *Id.*

III. *Points on Appeal*

On appeal, McEuen argues that (1) the circuit court erred by failing to grant his motion for directed verdict for insufficient evidence; (2) the court erred by granting a continuance when he stipulated to the unavailable witnesses' testimony; and (3) the court failed to grant a mistrial when the State's witness testified about McEuen's incarceration.

IV. *Discussion*

A. *Sufficiency of the Evidence*

McEuen argues that the evidence in support of the verdict was insufficient to prove that he changed his address from homeless on Cantrell Road in Little Rock to a warehouse in North Little Rock. Thus, he contends the circuit court erred by submitting the case to the jury, but rather should have granted his motion for directed verdict.¹

McEuen was charged with and convicted of failure to comply with the sex-offender registration and reporting requirements of Ark. Code Ann. § 12-12-904 to report "a change

¹We note that McEuen stipulated that he is required to conform to the reporting requirements of Ark. Code Ann. § 12-12-904.

of address, employment, education, or training as required under this subchapter.” Pursuant to section 12-12-903 (Supp. 2021), “change of address” is defined as “a change of residence or change for more than thirty (30) days of temporary domicile, change of location of employment, education or training, or any other change that alters where a sex offender regularly spends a substantial amount of time.”

Here, McEuen maintains that the evidence proved that he was located at the warehouse in North Little Rock only one time, focusing exclusively on the change-of-residence or temporary-domicile definition of “change of address” and the fact that no witness testified to seeing him spend the night at the warehouse. However, the statute places no requirement on the State to prove that McEuen stayed at the warehouse overnight or that his overnight stay be verified by eyewitness testimony. Rather, his charge was for failure to report a change of address, which expressly includes a change of location of employment.

The testimony that McEuen was doing work at the warehouse for a period of several months is undisputed. Detective Harrelson testified that McEuen made no mention of the warehouse in North Little Rock. Furthermore, Childress’s testimony established that McEuen worked in the warehouse from at least January to October 2017. Moreover, McEuen’s trial counsel maintained in his motion for directed verdict that McEuen was merely located at “his work during work hours.” Similarly, on appeal, McEuen alleges that “the sole fact of finding David McEuen at his place of employment . . . is insufficient to find that he changed his address.” We disagree. The fact that McEuen worked at the warehouse is sufficient evidence that he “changed his address” in violation of the reporting

requirements set forth in Ark. Code Ann. § 12-12-904. The statutory definition for the charge on which McEuen was convicted expressly includes a change of location of employment, and the jury instructions at trial included the same.

Accordingly, we find that the circuit court did not err in denying McEuen's motions for directed verdict; therefore, his conviction for failure to register as a sex offender is affirmed.

B. Motion for Continuance

Second, McEuen argues that the circuit court erred by granting the State a continuance due to the unavailability of Investigator Jacks. Specifically, he alleges that the trial should have proceeded on the date as planned because he stipulated to Investigator Jacks's expected testimony, and furthermore, the continuance was prejudicial to his case. In response, the State argues that McEuen's failure to discuss the circuit court's reliance on Paula Stitz's unavailability as an additional ground for granting the continuance requires that the order for continuance be affirmed. We agree.

The circuit court granted the State's motion for continuance for two independent reasons. The unavailability of State witness Investigator Jacks and the unavailability of Paula Stitz. On appeal, McEuen focuses entirely on the unavailability of Jacks and his proposed stipulation to Jacks's testimony. However, when a circuit court bases its decision on two independent grounds and an appellant challenges only one ground on appeal, the appellate court will affirm without addressing either basis of the circuit court's decision. See *Coleman v. Regions Bank*, 364 Ark. 59, 216 S.W.3d 569 (2005); *Pugh v. State*, 351 Ark. 5, 89 S.W.3d

909 (2002); *Pearrow v. Feagin*, 300 Ark. 274, 778 S.W.2d 941 (1989). Consequently, McEuen's second argument cannot be examined because he did not challenge *both* independent grounds that the court relied on in granting a continuance. Thus, we affirm on this point.

C. Mistrial

Finally, McEuen argues that the circuit court abused its discretion by denying his motion for a mistrial based on Ms. Stitz's statement that he last registered with the Pulaski County Sheriff's Office because he was in county jail. Specifically, McEuen alleges he was prejudiced by Stitz's reference to his incarceration status and because Stitz was the final witness that the jury heard from before deliberation. Accordingly, McEuen argues that the circuit court's curative instruction for the jury to disregard Stitz's statement was not a sufficient remedy.

A mistrial is an extreme and drastic remedy that will be resorted to only when there has been an error so prejudicial that justice cannot be served by continuing with the trial or when the fundamental fairness of the trial has been manifestly affected. *Armstrong v. State*, 366 Ark. 105, 233 S.W.3d 627 (2006). A circuit court has wide discretion in granting or denying a motion for a mistrial, and absent an abuse of that discretion, the circuit court's decision will not be disturbed on appeal. *Id.* Among the factors this court considers on appeal in determining whether a circuit court abused its discretion in denying a mistrial motion are whether the prosecutor deliberately induced a prejudicial response and whether an admonition to the jury could have cured any resulting prejudice. *Id.* Furthermore, an

admonition to the jury usually cures a prejudicial statement unless it is too patently inflammatory that justice could not be served by continuing trial. See *Sylvester v. State*, 2016 Ark. 136, 489 S.W.3d 146.

Specifically, McEuen contends that because failure to register is a lesser and nonviolent felony, it “stands to reason the jury speculated there were other reasons he was incarcerated pretrial, such as other charges, danger, habitual offenses, etc.” McEuen, however, does not allege that the prosecutor deliberately induced a prejudicial response, and furthermore, the record does not reflect such. Ms. Stitz managed the Arkansas sex-offender registry, and the State was questioning her regarding McEuen’s registration history to establish that he never registered in North Little Rock. Additionally, Investigator Jacks had already testified that he arrested McEuen at the location of the warehouse for the crime he was on trial for; therefore, it stands to reason that the jury already knew McEuen had been incarcerated.

Accordingly, we do not find that Stitz’s statement was so patently inflammatory to McEuen’s case that it necessitated the drastic remedy of a mistrial. The circuit court’s instruction to the jury to disregard the statement was sufficient; therefore, we conclude the circuit court did not abuse its discretion by refusing to grant a mistrial.

V. *Conclusion*

We affirm the circuit court’s order in all aspects.

Affirmed.

HARRISON, C.J., and KLAPPENBACH, J., agree.

Short Law Firm, by: *Lee D. Short*, for appellant.

Leslie Rutledge, Att’y Gen., by: *Walker K. Hawkins, Ass’t Att’y Gen.*, for appellee.