IN THE COURT OF APPEALS OF IOWA

No. 2-632 / 11-1527
Filed August 22, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MICHAEL LEE TAYLOR SR.,
Defendant-Appellant.

Appeal from the Iowa District Court for Union County, Gary G. Kimes, Judge.

Michael Lee Taylor Sr. appeals his conviction for failure to register as a sex offender—second offense. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Vidhya K. Reddy, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Darrel Mullins, Assistant Attorney General, and Timothy R. Kenyon, County Attorney, for appellee.

Considered by Eisenhauer, C.J., and Doyle and Tabor, JJ.

DOYLE, J.

On May 19, 2011, the State charged Michael Lee Taylor Sr. by trial information with "failure to register as a sex offender—second offense," in violation of Iowa Code section 692A.111 (2011).[1] The minutes of testimony filed therewith acknowledged Taylor had registered as a sex offender in Union county as required on February 23, 2011. However, it asserted Taylor had moved from that residence in March 2011 and had not "reported a change of address as required by chapter 692A."

Taylor subsequently waived his right to a jury trial and proceeded to a bench trial. There, the testimony evidenced that Taylor had registered as a sex offender in February, but had not notified the county when he moved from that residence in March. Taylor's defense was that he was homeless after moving from the residence, "living under bridges and various locations in Des Moines" and "moving about night by night from one location to the next" because he was homeless. He asserted "he was unable to register and did not do so," and he requested the court take into consideration that he had no address to provide the county. On September 25, 2011, the district court entered an order finding Taylor guilty as charged.

Taylor now appeals challenging the sufficiency of the evidence for the charge. We review his challenge for the correction of errors at law. *See State v. DeWitt*, 811 N.W.2d 460, 467 (Iowa 2012). In jury-waived cases, the trial court's findings of fact have the effect of a special verdict and are binding on appeal if

[1] Taylor was previously convicted of failing to comply with the sex offender registry requirements in 2006.

supported by substantial evidence. Iowa R. App. P. 6.907; *State v. Hall*, 287 N.W.2d 564, 565 (Iowa 1980). Evidence is substantial when it would convince a rational fact finder that the defendant is guilty beyond a reasonable doubt. *State v. Sanford*, 814 N.W.2d 611, 615 (Iowa 2012). In making this determination, we view the record in the light most favorable to the State, including all legitimate inferences and presumptions that may be fairly and reasonably deduced from the evidence. *Id.*

Taylor contends there was insufficient evidence showing he "failed to register" as a sex offender, because it is undisputed that he registered as a sex offender in Union county on February 23, 2011. Specifically, he challenges the trial information's stated crime of "failure to register" when the facts only support a finding that he "failed to notify" the county of his change of residence. He maintains this difference requires reversal of his conviction, judgment, and dismissal of the charge. The State argues Taylor failed to preserve error on the claim and, regardless, he was not prejudiced by a variance between the proof and the trial information.

"Issues not raised before the district court, including constitutional issues, cannot be raised for the first time on appeal." *State v. McCright*, 569 N.W.2d 605, 607 (Iowa 1997). Here, there was no challenge before the district court as to the use of the word "register" in the trial information versus the word "notify" in the minutes of testimony. Consequently, he has not preserved error on this issue.

Even assuming that this challenge was properly preserved, we agree with the State that Taylor cannot establish the requisite prejudice.

> Recognizing the inherent injustice of forcing a defendant to defend against a crime with which he has not been charged, we have observed, when a crime may be committed in different ways, and the State specifies one way, the offense must be proved to have been committed in the way charged. Accordingly, if there is a variance between the crime charged and the proof at trial, we will require a new trial if a substantial right of the defendant is prejudiced. However, a variance between the information and the proof is prejudicial only if the defendant is not fairly notified of the charges against him so that he may prepare to defend.

State v. Yeo, 659 N.W.2d 544, 551 (Iowa 2003) (internal citations, alterations, and quotation marks omitted).

Here, the minutes clearly set forth that the county sheriff would testify that Taylor had not reported a change of address. Taylor conceded this at the bench trial, but argued he was homeless and had no address to report. Taylor cannot now claim his trial was corrupted by faulty trial information given that the State presented specific evidence of his failure to notify the county of his change of residence and he defended that charge, asserting he was homeless and had no new address to report. Taylor did not suffer any prejudice from the flawed information. Accordingly, we affirm his judgment and sentence.

AFFIRMED.