Circuit Court for Frederick County
Case No. C-10-CR-21-000734

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 2341

September Term, 2022

ZACHARY JORDAN CRAWFORD

v.

STATE OF MARYLAND

Arthur,
Leahy,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: January 4, 2024

*This is a per curiam opinion. Consistent with Rule 1-104, the opinion is not precedent within the rule of stare decisis, nor may it be cited as persuasive authority.

Convicted by the Circuit Court for Frederick County of knowingly failing to register as a tier III sex offender, Zachary Jordan Crawford, appellant, presents for our review a single issue: whether the court erred in convicting him of the offense. For the reasons that follow, we shall affirm the judgment of the circuit court.

At trial, the parties "stipulated that [Mr. Crawford] is required to register, by virtue of a 2015 conviction for third-degree sex offense and a 2016 conviction for fourth-degree sex offense." The State then called Brandy Keyser, manager of the sex offender program for the Frederick County Sheriff's Office. Ms. Keyser testified that on May 25, 2021, she met with Mr. Crawford, gave him a written notice containing "the next date when [he was] due to register again," and had him initial and sign the notice. The notice states, in pertinent part: "Registrations are conducted by appointment. Please contact your registering agent two weeks before your due date to schedule an appointment. You must re-register on or before . . . August 25, 2021." Above Mr. Crawford's signature, the notice states: "I swear and affirm that I have read or have been read the above requirements and been provided a copy of this form. I further understand that I must comply with Criminal Procedure Article § 11-701 to 11-722 as it relates to my reporting and registration responsibilities and have been explained the penalties for violating such laws."

On August 3, 2021, Mr. Crawford submitted to Ms. Keyser "a change of address form." On August 11th, Mr. Crawford submitted to Ms. Keyser an "additional" change of address form. On August 17th, Mr. Crawford submitted to Ms. Keyser a third change of address form and "left [her] a voice mail." Ms. Keyser did not "hear from" Mr. Crawford again until September 3rd, when he "left a voice mail . . . reporting . . . that he was homeless

and in a car at the Wal-Mart in Frederick and Hagerstown." Mr. Crawford further stated that "he stayed at the Motel 6 on August 31st and was quarantining with his [child's mother] with COVID."

Following the close of the State's case-in-chief, Mr. Crawford testified that "two weeks ahead" of the deadline for re-registering, he "called . . . the registry" and spoke with "a female" other than Ms. Keyser. On August 20, 2021, Mr. Crawford went "to the hospital," because he "thought [he] had COVID," and "was very, very sick." On August 24th, Mr. Crawford "was still feeling bad," and "went into the hospital to get [his] results." On August 25th, Mr. Crawford "was supposed to . . . re-register," but he "honestly could not physically even get [him]self out to move around like that," and was too weak to use his phone. Mr. Crawford testified: "I was feeling so bad, like my body was on fire. My eyes were pinkish, [and] I couldn't barely move my fingers. It was horrible." On August 28th and September 7th, Mr. Crawford called and spoke with the "registry for Washington County."

Following the close of the evidence, defense counsel argued, in pertinent part, that "necessity was shown." Convicting Mr. Crawford of the offense, the court stated:

> The evidence is that the defendant had registered on numerous occasions, and re-registered as required, most recently on May 25th of 2021, and that he was required to register every three months, so he would have been required to register on August 25th. It's also uncontested that he failed to register on August 25th.
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> Basically in a nutshell, the defendant offers by way of explanation that beginning I guess sometime around August 20th he was feeling, actually prior to August 20th, he was feeling symptoms which made him think that he might have COVID. He went to the hospital on August 20th, and it was later confirmed that he did have COVID. He said he was very, very sick.

That, sorry, on August 20th he went to the hospital thinking he had COVID. On August 24th he returned to the hospital, and they confirmed that he did have COVID. He was very, very sick. He has ongoing health issues. And that on August 25th he agrees that he did not register as required. However, he explains that he was simply unable to do so.

Sometime thereafter, I believe it was in September, he says he calls Washington County because he's going to be living in their jurisdiction, to register. And it's also, there was testimony that on September 3rd that he called and left a voice message in Frederick County that he was homeless and that he was going to, sorry, that he was quarantining with a child who had COVID.

So he made I guess most recently the contact was September 3rd, and thereafter he contacted the representative from Washington County on or about September 7th.

So really the explanation is one of necessity, and the Defense argues that he has met all of the elements, or that the State has failed to prove that it is their burden, once the issue is raised, to disprove that necessity applies.

However, [I] conclude for a number of reasons that the defense of necessity does not apply to the facts of this particular case.

Principally in this case what the defendant said, I was too sick to be able to go in because I was suffering from COVID, I was too sick even to be able to make a call, which it appears would have satisfied the requirements during that period of time. And since the registration could have been accomplished by a call, a phone call, obviously COVID cannot be contracted over the phone, so by him calling the registrant to register, he would not be putting them or anybody in the county at any risk.

So there's a couple different iterations of the defense . . . , one of which discusses three elements, and they say one, that the act charged was done to avoid a significant evil. That's really not what is alleged here. Again, what is alleged is I was too sick to even make a phone call.

There was no other appropriate means . . . . Here, maybe by going in he would have posed a risk, and so if that was what the defense was, if he was required to appear in person and that's what they were alleging, perhaps under those circumstances you could at least arrange it, and the remedy was not disproportionate to the evil to be avoided. Again, that arguably would

> weigh in his favor, if in fact the only way he could accomplish it, the only alternative was to appear in person.
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> [The] third prong is the defendant must have acted with intention of avoiding the greater harm. That's not what was here. Again, he acted basically because he was too sick, he said, to make the call. The relative harm to be avoided, and the harm done, again, there's no harm that would have been done by making a phone call.
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> And the fifth element, is there an option or alternative available. Clearly in this case from the testimony there was an option available, which is to call and explain that he had COVID and was too sick to come in. He did not avail himself of any of those options.
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> So even assuming the State has the burden, based on the facts of this case, they've clearly established that the defense of necessity did not apply to these particular facts.
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> So therefore, based upon the evidence, it's beyond a reasonable doubt that the defendant was required to register, that the defendant failed to register, and therefore he is guilty of failing to register on August 25th.

Mr. Crawford now contends that the court erred in convicting him for two reasons. Mr. Crawford first contends that "the State failed to establish that [he] knowingly failed to register[,] because the evidence demonstrates that he contracted COVID-19 and was experiencing the effects of the virus" on the day of the deadline for re-registering. But, we have stated that the "issue of legal sufficiency of the evidence is not concerned with the findings of fact based on the evidence or the adequacy of the factfindings to support a verdict," but "only, at an earlier pre-deliberative stage, with the objective sufficiency of the evidence itself to permit the factfinding even to take place." *Chisum v. State*, 227 Md. App. 118, 129-30 (2016). Here, the State produced evidence that Ms. Keyser directly gave Mr. Crawford a written notice ordering him to "re-register on or before . . . August 25, 2021," and to "contact [Ms. Keyser] two weeks before [that] date to schedule an

appointment." Mr. Crawford subsequently affirmed that he had "read or . . . been read [those] requirements" and had "been provided a copy of" the notice. Mr. Crawford further affirmed that he understood that he was required to "comply with Criminal Procedure Article § 11-701 to 11-722 as it relates to . . . reporting and registration responsibilities," and § 11-707(a)(2)(i) of the Criminal Procedure Article states that a "tier III sex offender shall register in person." Mr. Crawford further affirmed that he had been informed of "the penalties for violating such laws." The State also produced evidence that Ms. Keyser did not receive a voicemail from Mr. Crawford until August 17th, and subsequently did not "hear from" him again until September 3rd. We conclude that this evidence could convince a rational trier of fact beyond a reasonable doubt that Mr. Crawford's failure to register was done in a knowing manner.

Mr. Crawford next contends that "the necessity defense applied[,] because [his] act of missing his re-registration deadline was justified by the necessity of preventing the spread of the COVID-19 virus, and there were no reasonable alternatives to missing his re-registration deadline." But, one of "the five elements that *all* must be present in order for a defendant to avail himself of the necessity defense" is the "[i]ntention to avoid harm – to have the defense of necessity, the defendant must have acted with the intention of avoiding the greater harm." *Hurd v. State*, 190 Md. App. 479, 494 (2010) (internal citations omitted) (emphasis in original). "Actual necessity, without the intention, is not enough." *Id.* (internal citations omitted). Here, Mr. Crawford testified that he missed his re-registration deadline not because he intended to avoid exposing Ms. Keyser or others to the COVID-19 virus, but because he "could not physically even get [him]self out to move around like

that." There is no evidence that Mr. Crawford acted with the intention of avoiding a greater harm, and hence, the necessity defense is inapplicable, and the court did not err in convicting Mr. Crawford of the offense.

JUDGMENT OF THE CIRCUIT COURT FOR FREDERICK COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.