IN THE SUPREME COURT OF IOWA
Supreme Court No. 23-1375
Linn County No. FECR140568

STATE OF IOWA,
Plaintiff–Appellee,

vs.

RONALD E. COOLEY,
Defendant–Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR LINN COUNTY
THE HONORABLE IAN K. THORNHILL, JUDGE

BRIEF FOR APPELLEE

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II. **Whether the district court erred by denying Cooley's motion for judgment of acquittal**

III. **Whether Jury Instruction number 15 properly informed the jury of the applicable law related to Cooley's registry obligations**

ROUTING STATEMENT

This case can be decided based on existing legal principles. Transfer to the Court of Appeals would be appropriate. Iowa R. App. P. 6.1101(3).

NATURE OF THE CASE

Ronald E. Cooley appeals his conviction after a jury found him guilty of failing to register as a sex offender, second offense. He raises three different legal challenges, each of which stems from the premise that the decision to close the Linn County Sheriff's Office's building to the public during the COVID-19 global pandemic invalidated the State's ability to enforce its sex offender registry law in that county: (1) a claim that the closure of the Linn County Sheriff's Office amounted to a separation-of-powers violation because it invalidated Iowa Code section 692A.104's requirement that "[a] sex offender shall appear in person to register with the sheriff"; (2) a claim that the district court erred in denying his motions for judgment of acquittal and directed verdict on the basis that the State did not prove he failed to register "in person" as required by statute; and (3) a challenge to the marshalling instruction, on the basis that it left out the same statutory language requiring "in person" registration by sex offenders.

STATEMENT OF THE FACTS

Ronald E. Cooley is a registered sex offender who, at all times relevant to this appeal, lived in Linn County, Iowa. D0208, Trial Tr. Vol II at 92:8–10, 93:24–94:24 (4/18/2023). As such, he was statutorily obligated to register with the Linn County Sheriff to provide the State with current biographical information. *Id.* at 91:6–92:1. *See also* Iowa Code § 692A.104. Cooley's mandatory registry requirements included both periodic reporting and a five-business-day window in which he was expected to report any changes to the information previously provided, such as a change of address. *Id.*

Sex offenders are normally required to register in person. *See* Iowa Code § 692A.104. However, for a period during the COVID-19 global pandemic, the Linn County Sheriff's Office's building was closed to the public. D0208, Trial Tr. Vol II at 98:16–21, 99:20–100:5, 106:21–107:5. Large signs were posted at both entrances to the building notifying sex offenders of the phone number they needed to call to register by phone. *Id.* Sex offenders needed to call during normal business hours—the same hours they would have needed to appear in person if the office building was still open to the public. *Id.* at 107:6–12, 108:24–109:13. If a sex offender called outside those hours, the call would be transferred to a dispatcher, who

would either tell them to call the next business day or take the person's name and number so someone in the sheriff's office could call them back. *Id.* at 107:13–108:4. Sex offenders generally did not have to wait more than thirty seconds when they called to register by phone because the Linn County Sheriff had several secretaries to answer phone calls and four phone lines that were "hardly every busy at the same time." *Id.* at 108:5–108:4.

On January 11, 2021, Cooley registered by phone and reported that he was residing at an apartment on Meadowview Drive in Marion, Iowa. D0208, Trial Tr. Vol II at 95:15–100:9. *See also* D0136, State's Trial Exh. 2 at 1. But when two investigators from the Marion Police Department went to the Meadowview apartment several days later to verify the address Cooley had provided, they didn't find Cooley there. D0208, Trial Tr. Vol II at 33:13–35:14. When the investigators tried a second time the next day but still didn't find Cooley at the apartment, they called him on the phone and Cooley told them that he was in Davenport. *Id.* at 35:15–36:12.

Then, in late February 2021, Cooley called the Linn County Sheriff's Office to verify his information for his next registration period. *Id.* at 103:16–23. Cooley's call was suspicious because he did not need to register yet—he was a Tier II sex offender with bi-annual check-ins in March and September of each year. *Id.* at 103:16–104:8, D0136 at 1. Additionally,

Cooley reported he still resided at the Meadowview apartment, despite the fact the Sheriff's Office now had reason to believe that he did not. D0208, Trial Tr. Vol II at 103:16–105:2. So in April 2021, the Sheriff's Office assigned the sergeant in charge of the Sex Offender Registry Unit to investigate whether Cooley lived at the Meadowview apartment. *Id.* at 105:3–14, 114:1–115:6. When the sergeant went to the apartment building looking for Cooley on April 14, 2021, he found a vacant apartment instead. *Id.* at 115:7–116:11, 118:8–120:3.

According to the property manager of the apartment complex, Cooley was never listed as a tenant on the lease for the Meadowview apartment. *Id.* at 41:5–44:4. *See also* D0131, State's Trial Exh. 3. And according to the woman who *was* listed as the tenant, Cooley stayed there quite often but never lived with her. D0208, Trial Tr. Vol II at 84:2–10, 88:21–89:3; D0207, Trial Tr. Vol III at 59:8–61:6, 63:12–69:11 (4/20/2023). She explained that Cooley was a "roustabout," meaning he never stayed anywhere for very long. D0208, Trial Tr. Vol II at 84:11–17; D0207, Trial Tr. Vol III at 64:9–65:2. The woman's daughter also recalled the same thing—Cooley did not live in her mother's Meadowview apartment or stay there every night—and she had told her mother, "Mom, you can't do that"

when Cooley had wanted to move in with her. D0208, Trial Tr. Vol II at 64:12–65:6, 73:17–80:8.

Even so, Cooley had been at the apartment often enough to draw the ire of the property manager, who told the woman that she had to vacate the apartment by the end of March 2021. D0208, Trial Tr. Vol II at 44:5–47:3, 51:18–56:6. The woman was hospitalized in February and March 2021—the same time when she was served the notice to vacate—so her daughter would go to clean out the apartment, and Cooley was not living there. *Id.* at 80:9–19, 81:16–82:5. After the woman vacated the apartment, it sat empty. *Id.* at 45:4–9.

The State charged Cooley with two counts of failing to register as a sex offender.[1] D0079, Amended Trial Information at 1–2 (6/23/2022). The charges against Cooley stemmed from two different alleged violations of his registry requirements: the first charge alleged that he registered a false home address in January 2021 because he did not actually reside at the Meadowview apartment, and the second charge alleged that he failed to

[1] Although both counts were charged as second offenses with a habitual offender enhancement, the parties stipulated to Cooley's prior offenses so the jury did not have to decide those issues. D0206, Trial Tr. Vol I at 15:19–26:20 (4/17/2023); D0129, Consent and Stipulation for Admission of Prior Convictions (4/18/2023).

register a new home address in April 2021 even after it was determined the Meadowview apartment was vacant. *See id.*

Cooley testified that in January 2021 his primary residence was the Meadowview apartment, and that he did not live at any other address. D0207, Trial Tr. Vol III at 11:18–24. He also testified he continued to live in the apartment through February and March while the woman who was on the lease was hospitalized. *Id.* at 21:16–22:16. Cooley stated he and a new girlfriend found a new apartment at the beginning of April 2021, after the woman he was living with at the Meadowview apartment was forced to move out. *Id.* at 24:4–25:15. According to Cooley, he moved into his new apartment on either April 5 or 6, 2021. *Id.* at 25:16–26:5. Cooley's new girlfriend confirmed they moved in together at the beginning of April 2021. D0208, Trial Tr. Vol II at 155:24–156:10.

Cooley testified that he immediately attempted to visit the Linn County Sheriff's Office to register his new address in person, and when he learned he couldn't go inside the building he began calling the phone numbers for both the Sheriff's Office and the jail as instructed. D0207, Trial Tr. Vol III at 23:18–24:3, 26:23–28:16. But Cooley claimed that he was unable to register by phone despite his repeated efforts over a series of "at least seven days," during which time he made two or three attempts per

day during business hours. *Id.* at 28:17–32:8. According to Cooley, he was only able to get ahold of someone on the phone after he had already been charged with failing to register.[2] *Id.* at 29:18–30:2. Cooley's new girlfriend testified similarly—she said she was with Cooley when he went to register in person at the Sheriff's Office and then personally observed him call and leave approximately ten messages over a period of a couple days. D0208, Trial Tr. Vol II at 156:21–159:2.

A jury determined the State had not proved Count I—the count alleging Cooley had registered a false home address in January 2021—likely due to the conflicting evidence regarding the amount of time he spent at the Meadowview apartment. D0141, Jury Verdict (4/21/2023); D0142, Jury Instructions at 15 (4/21/2023). The jury found Cooley guilty of Count II, for having failed to provide a new home address in April 2021 after he no longer could have been living at the Meadowview apartment. D0141, Jury Verdict; D0142, Jury Instructions at 16.

The district court sentenced Cooley to an indeterminate term of imprisonment of fifteen years, with a three-year mandatory minimum.

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[2] Cooley also testified he had encountered similar problems when he registered in January 2021 to report the Meadowview apartment address. D0207, Trial Tr. Vol III at 8:6–11:4–17. In January, he claimed, someone eventually returned his calls and told him he was registered. *Id.* at 8:6–18.

D0212, Post-Trial Motions and Sentencing Tr. at 23:23–24:18 (8/25/2023); D0174, Judgment and Sentence at 1 (8/25/2023).

ARGUMENT

I. Cooley did not preserve a separation-of-powers claim for argument on appeal, but even if he did, he has not proved it.

Preservation of Error

Cooley did not preserve error on this claim.

While he repeatedly objected to the fact he was being tried for two registry violations under Iowa Code chapter 692A.104 despite the fact the Linn County Sheriff's Office building was closed to the public, he never framed his argument by invoking either the separation-of-powers doctrine or the Iowa Constitution by name. *See* D0208, Trial Tr. Vol II at 8:7–9:12, 121:1–123:12; D0207, Trial Tr. Vol III at 75:2–76:16, 82:2–84:8; D0212, Post-Trial Motions and Sentencing Tr. at 4:1–22, 5:23–6:16, 7:2–10; D0147, Motion in Arrest of Judgment at 1–2 (5/4/2023); D0148, Motion for New Trial at 1–2 (5/4/2023).

But even if he had, the district court never addressed the issue in any oral or written ruling. *See* D0208, Trial Tr. Vol II at 9:13–10:6, 126:2–128:1; D0207, Trial Tr. Vol III at 78:18–24, 84:11–85:16; D0212, Post-Trial Motions and Sentencing Tr. at 6:17–24, 8:1–13; D0138, Order Accepting Verdict at 1 (4/21/2023); D0174, Judgment and Sentence at 1.

Because no separation-of-powers claim was ever raised or decided below, this Court should not entertain this claim on appeal. *See, e.g., Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) ("It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal.").

Standard of Review

"On questions involving the separation of powers 'this court shall make its own evaluation, based on the totality of circumstances, to determine whether [a] power has been exercised appropriately.' " *State v. Tucker*, 959 N.W.2d 140, 147 (Iowa 2021) (quoting *Webster Cnty. Bd. of Supervisors v. Flattery*, 268 N.W.2d 869, 872 (Iowa 1978) (en banc)).

Merits

Cooley first contends on appeal that the Linn County Sheriff "blatantly flouted" the sex offender registry requirements outlined in Iowa Code chapter 692A by closing the Sheriff's Office to the public, thereby "assuming the role of a one-man legislature in completely changing the essential statutory scheme by eliminating in-person reporting, and thereby also precluding the mandatory compliance verification procedures the

legislature had thoughtfully and carefully crafted to ensure an offender had proof of his appearance." Appellant's Br. at 23–24.[3]

The concept of separation of powers is enshrined in the Iowa Constitution:

> The powers of the government of Iowa shall be divided into three separate departments—the legislative, the executive, and the judicial: and no person charged with the exercise of powers properly belonging to one of these departments shall exercise any function appertaining to either of the others, except in cases hereinafter expressly directed or permitted.

Iowa Const. art. III, Three Separate Departments, § 1. The separation-of-powers doctrine has three general aspects. *State v. Thompson*, 954 N.W.2d 402, 410 (Iowa 2021). It prohibits one department of the government from exercising powers that are clearly forbidden to it, prohibits one department of the government from exercising powers granted by the constitution to another department of the government, and prohibits one department of the government from impairing another in the performance of its constitutional duties. *Id.* "The demarcation between a legitimate exercise of power and an unconstitutional exercise of power is context specific," and

[3] Cooley's brief also includes language applicable to a sufficiency challenge at the outset of the discussion section for this claim. *See* Appellant's Br. at 13–14. To avoid duplication, the State will address sufficiency in the division asserting that error. *See id.* at 32–34.

"[t]he separation-of-powers doctrine . . . has no rigid boundaries." *Tucker*, 959 N.W.2d at 148 (citing *Klouda v. Sixth Jud. Dist. Dep't of Corr. Servs.*, 642 N.W.2d 255, 260 (Iowa 2002)).

The Iowa Supreme Court has previously considered a separation-of-powers claim related to the Covid-19 global pandemic in *State v. Basquin*, 970 N.W.2d 643 (Iowa 2022), *as amended* (Mar. 2, 2022). There, a criminal defendant alleged the judicial branch had acted outside its sphere of power when it promulgated Covid-19-related supervisory orders and also alleged that those same supervisory orders deprived him and other criminal defendants of due process. *Id.* at 649 ("This appeal presents a frontal attack on the validity of a key provision in our supervisory orders promulgated in response to the COVID-19 global pandemic. The defendant, represented by counsel, signed and entered his written plea of guilty to a class "C" felony. He brings this direct appeal challenging the validity of that plea. He argues that the rules of criminal procedure, our precedent, and due process require an in-person plea colloquy in open court and that our supervisory orders temporarily allowing written pleas violate due process and separation of powers.").

Here, in contrast, Cooley's separation-of-powers claim does not take issue with any branches of state government, nor explains how one of them usurped the power of another. More fundamentally, Cooley misunderstands who caused the Linn County Sheriff's Office building to close to the public. It was not, in fact, the Linn County Sheriff. It was the Linn County Board of Supervisors, who voted unanimously to close the Sheriff's Office and most other Linn County buildings to the public, beginning on November 19, 2020. *See* Gage Miskimen, *Linn County closing buildings to public due to rising COVID-19 numbers*, The Gazette, Nov. 18, 2020, https://www.thegazette.com/government-politics/linn-county-closing-buildings-to-public-due-to-rising-covid-19-numbers/; Linn County Board of Supervisors Meeting Agenda, Nov. 18, 2020, at 2, https://linncoia.portal.civicclerk.com/event/5395/files/agenda/8404. The Linn County Board of Supervisors did not vote to reopen the county buildings until May 2021. *See* Gage Miskimen, *Linn County buildings to reopen in June*, The Gazette, May 20, 2021, https://www.thegazette.com/local-government/linn-county-buildings-to-reopen-in-june/; Linn County Board of Supervisors Meeting Agenda, May 19, 2021, at 3, https://linncoia.portal.civicclerk.com/event/6195/files/agenda/9906.

The Iowa Supreme Court has repeatedly explained that county supervisors function, at least in part, in a legislative capacity. *See, e.g.*, *Landowners v. S. Cent. Reg'l Airport Agency*, 977 N.W.2d 486, 497–98 (Iowa 2022) ("This rule applies to the general assembly and 'to boards or other groups properly delegated legislative authority,' including a county board of supervisors."); *Teague v. Mosley*, 552 N.W.2d 646, 648–650 (Iowa 1996) (extending absolute legislative immunity to individually-named Black Hawk County supervisors in a § 1983 suit related to the operation of county jails). The Iowa Supreme Court has also explained:

> Under our form of government in Iowa, counties are empowered to perform any function to 'protect and preserve the rights, privileges, and property of the county or of its residents, and to preserve and improve the peace, safety, health, welfare, comfort, and convenience of its residents' except as limited by the constitution or a statute.

Warren Cnty. Bd. of Health v. Warren Cnty. Bd. of Supervisors, 654 N.W.2d 910, 913 (Iowa 2002) (quoting Iowa Code § 331.301(1)). This power, known as home rule, is granted in Article III of the Iowa Constitution—the Article devoted to the State's legislative branch. Iowa Const. art. III, Legislative Department, § 39A ("Counties or joint county-municipal corporation governments are granted home rule power and authority, not inconsistent with the laws of the general assembly, to

determine their local affairs and government . . . ."). The "broad" home rule power of each county is vested in a county board of supervisors. *Landowners*, 977 N.W.2d 486, 494 (citing Iowa Code § 331.301(2)).

In other words, the claim Cooley likely should have made is the entirely different (but similarly unpreserved) claim that the Linn County Board of Supervisors overstepped their broad home rule power by acting in a manner inconsistent with the laws established by the Statewide legislative body, thereby depriving Cooley of due process. *See* Appellant's Br. at 16, 19, 23–27 (repeatedly asserting Cooley's concern that the transition from in-person registration to registration by phone deprived him of procedural protections he would have enjoyed under Iowa Code § 692A.108). Such a claim would require a determination of whether there is a protected liberty or property interest at stake, followed by a balancing of the competing interests involved. *See, e.g.*, *In re A.B.*, 956 N.W.2d 162, 170 (Iowa 2021); *Int. of A.H.*, 950 N.W.2d 27, 35 (Iowa Ct. App. 2020).

But however analyzed, the core proposition of the district court's analysis was correct: Cooley did not suffer any prejudice or harm as a result of the cessation of in-person sex offender registration in Linn County:

> We've had a lot of discussion here, or at least argument about the language in the Code about showing up in person to register, and I think the evidence is undisputed that the Linn County Sheriff

> for a time period because of COVID closed down their office to personal visits from anybody outside of the office.
>
> I don't find that it's fatal to the statute. That the requirement to register actually became less onerous, not more, on—on, in this case, sex offenders, and the fact that the sheriff's office was not taking visitors doesn't negate the statutory requirement for sex offenders to register as a sex offender.
>
> It would be different if the Sheriff's office was closed and the charge was that Mr. Cooley or any Defendant called in and gave their address. If the State wanted to criminalize the fact they did it over the phone and not in person, that would be an impossibility to do. That's not the fact scenario we have here. So the fact that the Sheriff's Department because of COVID made the registration process less onerous, I don't see that that is, one, it's not prejudicial to the Defendant and, two, it doesn't essentially created a loophole where you've been relieved of your duty and requirement to register as a sex offender.

D0208, Trial Tr. Vol II at 126:22–127:23. And when appellate courts balance the relevant competing interests in due process cases, the governmental interest in safeguarding the public from the spread of contagious diseases is given "considerable weight." *Basquin*, 970 N.W.2d at 659.

Finally, Cooley's complaints about not receiving procedural administrative protections under chapter 692A that would have demonstrated his attempt to register ring hollow. Cooley registered by

phone in January 2021, as evidenced by State's Exhibit 2. But the only evidence he made any attempt to register a new address after the Meadowview apartment was known to have been vacated was his own self-serving testimony, supported by the testimony of his new girlfriend. And the jury heard that both Cooley and his new girlfriend were previously convicted of crimes that implicated their credibility: him of a felony count for delivery of crack cocaine and of previously providing false information when registering as a sex offender, and her of multiple counts of theft. D0207, Trial Tr. Vol III at 48:25–49:10, D0208, Trial Tr. Vol II at 161:15–162:5. The Sheriff's Office secretary testified that Cooley had previously registered by phone without apparent trouble and also called (early) for his bi-annual tier registration. D0208, Trial Tr. Vol II at 98:5–100:13, 1003:16–105:2. She further testified she was not aware of any instances where someone tried to call to register over the phone but was unable to get through. *Id.* at 102:4–103:15.

For these various reasons, Cooley's separation-of-powers claim must fail. He did not preserve it, prove it, or suffer prejudice by it.

II. The district court did not err by denying Cooley's motion for judgment of acquittal.

Preservation of Error

The State does not challenge error preservation, as Cooley made the same central arguments below in support of his motion for judgment of acquittal, and his renewed motion for the same, but the trial court overruled them.[4] D0208, Trial Tr. Vol II at 121:1–123:12, 126:2–128:1; D0207, Trial Tr. Vol III at 75:2–76:16, 78:18–24. Additionally, "[a] defendant's trial and the imposition of sentence following a guilty verdict are sufficient to preserve error with respect to any challenge to the sufficiency of the evidence raised on direct appeal." *State v. Crawford*, 972 N.W.2d 189, 202 (Iowa 2022).

Standard of Review

"A motion for judgment of acquittal is a means for challenging the sufficiency of the evidence to sustain a conviction." *State v. Allen*, 304 N.W.2d 203, 206 (Iowa 1981). Appellate review of sufficiency-of-the-evidence claims is for correction of errors at law. *Crawford*, 972 N.W.2d at 202.

[4] Although Cooley states the district court erred in denying both his motion for judgment of acquittal and his motion for directed verdict, the record does not reflect discussion of a motion for directed verdict.

Merits

Cooley's second contention on appeal is that "[t]he evidence presented at trial was insufficient to establish that [he] failed to notify the sheriff 'within five business days' of his changing his principal . . . residence."[5] Appellant's Br. at 33–34. More specifically, he argues the State could not meet its burden with evidence he failed to notify the sheriff by phone because the applicable statutory language requires a sex offender to appear in person to notify the sheriff of such a change. *Id.* at 35–37. However, to the extent Cooley's statutory construction discussion relates to his broader argument that the State did not present sufficient evidence to establish his guilt under the marshalling instruction he believes the district court should have given (rather than the one the district court gave), the State will address those statutory construction arguments issue in the division addressing his jury instruction challenge.[6]

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[5] Both Cooley's second and third claims on appeal also refer to ineffective-assistance-of-counsel as a potential avenue for relief. *See* Appellant's Br. at 31, 41. However, Cooley cannot properly raise his claims in this manner because the 2019 amendment to Iowa Code section 814.7 eliminated the ability to pursue ineffective-assistance-of-counsel claims on direct appeal. *See State v. Tucker*, 959 N.W.2d 140, 154 (Iowa 2021) ("Of course, because we have just upheld the constitutionality of section 814.7, this court is without the authority to decide ineffective-assistance-of-counsel claims on direct appeal.").

[6] Cooley refers to *State v. Showens* for the proposition that this Court should look to the Iowa Code, rather than the jury instructions, when

When reviewing a district court's ruling on a motion for judgment of acquittal, appellate courts "review[ ] the evidence in the light most favorable to the State, and all legitimate inferences that may reasonably be deducted therefrom are accepted." *State v. Jackson Thomas*, 987 N.W.2d 455, 462 (Iowa Ct. App. 2022) (citing *State v. Schertz*, 328 N.W.2d 320, 321 (Iowa 1982)). Appellate courts will uphold the district court's denial of the motion "if there is any substantial evidence in the record tending to support the charge." *Id.* "Substantial evidence is that 'which would convince a rational trier of fact that the defendant is guilty of the crime charged beyond a reasonable doubt." *Id.*

Here, the marshalling jury instruction for Count II provided as follows:

INSTRUCTION NO. 15

> The State must prove all of the following elements of Sex Offender Registry Violation as charged in County 2:
>
> 1. On or about April 14, 2021, in Linn County, Iowa, the Defendant was required to register as a sex offender with the Linn County Sheriff;
>
> 2. The Defendant knew, or reasonably should have known, of his duty to register as a sex offender; and

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determining whether the State presented sufficient evidence. Appellant's Br. at 34. But *Showens* is inapposite, because it involved a sufficiency claim following a bench trial. 845 N.W.2d 436, 438–39 (Iowa 2014).

> 3. On or about April 14, 2021, the Defendant failed to provide his new address to the Linn County Sheriff as required within five business days of obtaining a new residence.
>
> If the State has proved all of the elements, the defendant is guilty of Sex Offender Registry Violation under Count 2. If the State has failed to prove any one of the elements, the defendant is not guilty of Sex Offender Registry Violation under County 2.

D0142, Jury Instructions at 16.

When viewed in the light most favorable to the State, the evidence was substantial and provided a sufficient basis for the jury's verdict against Cooley on Count II. Cooley does not contest the State proved the first two elements of the marshalling instruction; it was undisputed both that he had an ongoing obligation to register as a sex offender and that he was aware of that obligation. *See, e.g.*, D0207, Trial Tr. Vol III at 11:9–11 (Cooley testifying that he knew he couldn't live anywhere but the primary address he had provided to the sheriff, stating "If I went somewhere else, I would have been in violation of the registry."). And, as previously discussed, the State offered substantial evidence to prove the third element. The State established Cooley could not possibly have been living at the Meadowview apartment in April 2021 because it was vacant. The State established that Cooley knew how to register by phone because he had done so successfully in the past. And the State established Cooley did not

register any new address April 2021. Given the substantial evidence in the record to support Cooley's conviction, the district court properly denied his motion for judgment of acquittal.

III. Jury Instruction number 15 properly informed the jury of the applicable law related to Cooley's registry obligations.

Preservation of Error

The State does not challenge error preservation as to the omission of "in person" language from the marshalling instruction, as Cooley objected to the challenged jury instruction on that basis but the trial court overruled him. D0207, Trial Tr. Vol III at 5:7–6:12, 82:8–85:21.

However, Cooley did not object to the marshalling instruction on the basis that it omitted language regarding statutory compliance verification procedures, nor did he ask for such language to be included. *See id*. As such, error has not been preserved as to that argument. *See, e.g.*, *State v. Taggart*, 430 N.W.2d 423, 425 (Iowa 1988) ("We have repeatedly held that timely objection to jury instructions in criminal prosecutions is necessary in order to preserve any error thereon for appellate review.").

Standard of Review

When considering whether a district court erred in instructing the jury, appellate review is for correction of errors at law. *See State v. Kraai*, 969 N.W.2d 487, 490 (Iowa 2022) (citing *State v. Rohm*, 609 N.W.2d 504, 509 (Iowa 2000) (en banc)).

Merits

Cooley's third contention on appeal is that the district court erred when instructing the jury as to Count II, because "[t]he marshalling instruction did not adequately convey to the jury the elements of the offense." Appellant's Br. at 46. He argues the marshalling instruction "failed to accurately instruct the jury on the in-person reporting requirement, and also regarding the compliance verification procedures the statute requires the Sheriff['s] department to perform." *Id.*

"Jury instructions 'must convey the applicable law in such a way that the jury has a clear understanding of the issues it must decide.' " *State v. Coleman*, 907 N.W.2d 124, 138 (Iowa 2018) (quoting *Rivera v. Woodward Res. Ctr.*, 865 N.W.2d 887, 892 (Iowa 2015)). In conducting a review of challenged jury instructions, Iowa appellate courts "review the instructions 'as a whole to determine their accuracy.' " *Kraai*, 969 N.W.2d at 490 (quoting *State v. Donahue*, 957 N.W.2d 1, 10 (Iowa 2021)). In other words,

"[a] challenged instruction is 'judged in context with other instructions relating to the criminal charge, not in isolation.' " *Id.* (quoting *State v. Liggins*, 557 N.W.2d 263, 267 (Iowa 1996)). In this way, "an incorrect or improper instruction can be cured 'if the other instructions properly advise the jury as to the legal principles involved.' " *Id.* (quoting *Thavenet v. Davis*, 589 N.W.2d 233, 237 (Iowa 1999) (en banc)).

When reviewing alleged error in jury instructions, appellate courts must "determine as an initial matter whether the instructions correctly state the law." *State v. Ellison*, 985 N.W.2d 473, 478 (Iowa 2023) (citing *State v. Schuler*, 774 N.W.2d 294, 297 (Iowa 2009)). However, determining an instruction correctly states the law does not necessarily end the inquiry, as "even instructions that correctly state the law may not be given if they aren't also 'supported by substantial evidence.' " *Id.* (quoting *State v. Liggins*, 557 N.W.2d 263, 267 (Iowa 1996)). "Evidence is substantial enough to support a requested instruction when a reasonable mind would accept it as adequate to reach a conclusion." *State v. Davis*, 988 N.W.2d 458, 466 (Iowa Ct. App. 2022) (quoting *Bride v. Heckart*, 556 N.W.2d 449, 452 (Iowa 1996)). "Requested instructions that are not related to the factual issues to be decided by the jury should not be

submitted even though they may set out a correct statement of the law." *Vachon v. Broadlawns Med. Found.*, 490 N.W.2d 820, 822 (Iowa 1992).

Finally, "[e]rror in giving or refusing to give a jury instruction does not warrant reversal unless it results in prejudice to the complaining party;" prejudice will be found "where the instruction could reasonably have misled or misdirected the jury." *State v. Hoyman*, 863 N.W.2d 1, 7 (Iowa 2015) (internal quotations and citations omitted).

Iowa Code section 692A.104(2) provides that "[a] sex offender shall, within five business days of changing a residence, employment, or attendance as a student, appear in person to notify the sheriff of each county where a change has occurred." A sex offender who violates the requirements of section 692A.104 commits a criminal offense. Iowa Code § 692A.111(1). "For purposes of this subsection, a violation occurs when a sex offender knows or reasonably should know of the duty to fulfill a requirement specified in this chapter as referenced in the offense charged." *Id.*; *State v. Showens,* 845 N.W.2d 436, 440 (Iowa 2014). "A defendant's knowledge may be proved by direct or circumstantial evidence." *State v. Holmes*, No. 14-0622, 2015 WL 576088, at *2 (Iowa Ct. App. Feb. 11, 2015) (citing *State v. Ogle*, 367 N.W.2d 289, 292 (Iowa Ct. App. 1985)).

The State does not dispute that the statutory language of section 692A.104(2) requires a sex offender in Cooley's position to "appear in person to notify the sheriff." *See, e.g.*, *Coleman*, 907 N.W.2d at 135–36 (discussing the analysis appellate courts utilize to determine if statutory language is ambiguous). However, this should not require reversal. First, even without the "in person" language Cooley requested, the marshalling instruction at issue still conveyed the applicable law in such a way that the jury had a clear understanding of the issues it needed to decide. And second, to the extent the district court erred, Cooley was not prejudiced.

"[T]he purpose of the registry is protection of the health and safety of individuals, and particularly children, from individuals who, by virtue of probation, parole, or other release, have been given access to members of the public." *State v. Iowa Dist. Ct.*, 843 N.W.2d 76, 81 (Iowa 2014). Cooley has put forth no case law or other authority for the proposition that he was absolved of his obligation to register as a sex offender during the COVID-19 pandemic because he was unable to appear in person at the Linn County Sheriff's Office to register. In fact, persuasive authority exists suggesting just the opposite—that Cooley's claimed defense of impossibility would not obviate his duty to register, but would only excuse him from those statutory requirements he could not possibly satisfy. *See State v. McCullough*, No.

08-1380, 2009 WL 2185549, at * 2 (Iowa Ct. App. July 22, 2009). In *McCullough*, a panel of the Iowa Court of Appeals rejected a criminal defendant's argument that "sex offender registration is not statutorily required—or is excused because it is impossible—for homeless persons":

> Moreover, even if address did not mean the same thing as residence, that would not obviate [the defendant]'s duty to register. It would simply excuse him from providing some of the information required.
>
> . . .
>
> Iowa Code section 692A.9 provides that the registration form shall include the sex offender's social security number. Does this mean that a convicted sex offender who lacks a social security number does not have to register? We think not.

McCullough, 772 N.W.2d at * 1–2.

Here, the district court correctly determined that the "in person" language was not necessary or relevant because the State had not alleged or argued Cooley's registry violation was related to his failure to appear in person at the Sheriff's Department:

> As far as the request for the in-person language, the Court specifically finds that the procedure that the Linn County Sheriff had in place at the time of the alleged offenses here, because of the COVID pandemic, made the registration process less onerous, not more onerous.
>
> The State has not charged the Defendant with failing to appear in person. Count One alleges

> providing of a false address and Count Two alleges not updating the address. The State is not attempting to allege that the Defendant is guilty because he didn't appear in person. So I don't find that, given how these two offenses were charged and the state of the evidence, that in-person language is necessary.
>
> I might have stated this on the record earlier, but the reverse would certainly be relevant. For example, if the State was attempting to allege that the Defendant did not appear in person and the fact that the sheriff's department had this other procedure in place would negate the criminality there, we don't have that situation. So I find the in-person language is not required or applicable, given the manner in which and the allegations under which the Defendant is charged in this case.

D0207, Trial Tr. Vol III at 84:16–85:16. In other words, because the jury did not need to determine whether or not Cooley specifically failed to register in person—all parties involved agreed that the registry obligation had been loosened to allow sex offenders to register by phone—"the jury instructions adequately conveyed the applicable law to give jurors a clear understanding of the issues it needed to decide." *See Coleman*, 907 N.W.2d at 138.

Cooley's references to the jury instructions at issue in *State v. Coleman* and *State v. Uranga* are inapposite, as both of those cases involved challenges by sex offenders regarding the applicable timeframes

within which they were obligated to notify the sheriff.[7] *See Coleman*, 907 N.W.2d at 138; *Uranga*, 950 N.W.2d 239, 241–42 (Iowa 2020). Because neither case directly addressed the "in person" language, those cases cannot be understood to hold that similar language is required in all registry violation cases going forward.

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[7] The challenged portion of the marshaling instruction in *Coleman* required the State to prove that

> [o]n or about August 15, 2015, through August 27, 2015, the defendant failed to appear in person and notify the Black Hawk County sheriff within five business days of any location in which the offender is staying when away from the principal place of residence of the offender for more than five days, and identifying the location and the period of time the offender is staying in such location.

907 N.W.2d at 138.

The marshaling instruction in *Uranga* required the State to prove the following:

> 1. [The defendant] had a known legal duty as a Registered Sex Offender to appear, in person, at the Sheriff's Office of Boone County for the month of November, 2016.
>
> 2. [The defendant] voluntarily and intentionally failed to appear in person at the Boone County Sheriff's Office in the month of November 2016.

950 N.W.2d at 242.

But even if the district court erred, Cooley's argument still cannot succeed because he cannot demonstrate prejudice. Cooley's preferred marshalling instruction would have made no difference. The jury did not convict Cooley because he failed to register his new address in a particular manner not contemplated by chapter 692A; the jury convicted him because he failed to register his new address *at all*. The evidence proved not only that Cooley failed to register his new address by phone, but also, and necessarily, that he failed to register it in person.

Finally, upholding Cooley's conviction here would be consistent with results in at least two other states, where appellate courts appear to have approved of prosecution of sex offender registry violations under similar facts. In one such case, the Louisiana Supreme Court described the underlying facts of an appeal as follows before reversing on other grounds:

> Defendant was charged with failure to register and notify as a sex offender, in violation of La. R.S. 15:542.1.4, after he failed to renew his registration in 2020. Defendant testified at trial that he repeatedly attempted to register at the detective's bureau, but he was unable to do so because the building was locked during and due to COVID restrictions. A detective testified that he was present at the detective's bureau and, although the building was locked, instructions were clearly posted with a phone number at which he could be reached, but defendant never called. According to the detective, all other persons required to register during this time were able to do so. After trial, a . . .

> jury found defendant guilty as charged. The district court sentenced him to serve four years imprisonment at hard labor.

State v. Santiago, 2023-00501 (La. 5/10/24), 384 So. 3d 879, 880. Louisiana's sex offender registry statute is similar to Iowa's in that it includes "in person" language. *See* La. R.S. § 15:542(B)(1), (C)(2).

In the other case, the Arkansas Court of Appeals upheld a conviction despite similar COVID-19 modifications to the registration process:

> Sergeant Sanders testified that, due to the COVID-19 pandemic, there were changes made to the reporting procedures. He stated there was a sex-offender check-in form in the front office for those people required to report to sign-in and leave a name and phone number; he would then get in touch and schedule a follow-up appointment. Sergeant Sanders expressed that the changes in reporting procedures did not prevent reporting and registering as required. Sergeant Sanders testified that [the defendant]'s name was never listed on the sign-in sheet; however, once he was provided information that [the defendant] was living in the Malvern area, he contacted [a Detective with] the Malvern Police Department.
>
> . . .
>
> [The defendant] moved for a directed verdict following the close of the State's case. He argued that the State failed to prove that he failed to report a change of address. He contended that during the relevant time periods, the sex-offender-registration offices were not functioning full time and that because the officers were relying on others to relay messages, information could have been lost. The State countered that the offices had procedures in

> place to ensure that people could register if they sought to do so.
>
> . . .
>
> Here, there is no dispute that [the defendant] was required to register as a sex offender and comply with all reporting requirements. . . . The sex-offender statutes require sex offenders to report a change of address within five days of moving to the new residence. [The defendant] failed to do so. Notably, on appeal, [the defendant] does not argue that he reported as required; instead, he contends that it is possible, with the changes in reporting procedures, for information to be lost. Accordingly, viewing the evidence in the light most favorable to the State, we find substantial evidence supports the verdict and affirm the circuit court's finding that [the defendant] failed to comply with sex-offender registration requirements.

Hicks v. State, No. CR-23-329, 2024 WL 172943, at * 2–5 (Ark. Ct. App. Jan. 17, 2024). Sex offenders in Arkansas are also "required to register and to report in person any change of address." *Id.* (citing Ark. Code § 12-12-904 (a)(1)(A)(i), (ii).

Here, the marshalling instruction accurately informed the jury of the three elements the State had to prove to establish a violation: (1) Cooley was a sex offender subject to registry requirements; (2) Cooley knew (or should have known) of his duty to register; and (3) Cooley failed to register his change of address. Those elements accurately informed the jury of the issues they had to decide. Moreover, even if the district court erred because

the jury instruction misstated the law without the "in person" language, Cooley was not prejudiced. For these reasons, Cooley's challenge to Jury Instruction number 15 must fail.

CONCLUSION

For the reasons stated above, Cooley's conviction and sentence should be affirmed.

REQUEST FOR NONORAL SUBMISSION

The State requests that this case be submitted without oral argument.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(g) and 6.903(1)(i)(1) or (2) because:

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Dated: August 28, 2024

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