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No. 81836-8-I

COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION I

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STATE OF WASHINGTON

V.

MICHAEL JAY STEWART

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PETITION FOR REVIEW

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A. Identity of Petitioner

Michael Stewart seeks review of the Court of Appeals decision terminating review designated in Part B of this petition.

B. Court of Appeals Decision

On February 16, 2021, the Court of Appeals affirmed Mr. Stewart's conviction for failure to register.

C. Issues Presented for Review

1. Is *State v. Peterson, infra*, which held that the offense of failure to register is an alternative committed when a sex offender moves without registering, incorrect and harmful when the offense can be committed in multiple ways that do not involve moving?
2. Does the charging document in this case, which generally accuses Mr. Stewart of failing to comply with registration requirements, violate the essential elements rule by not enumerating the specific way he is accused of violating the statute?

D. Statement of the Case

Michael Stewart was charged with failure to register between May 9, 2018 and June 5, 2018. CP, 3. The charging document alleged, in relevant part, that Mr. Stewart "did knowingly fail to comply with the

registration requirements of RCW 9A.44.130 when required to do so.” CP, 3.

The State admitted without objection seven redacted registration packets. RP, 9, Exhibits, 12A, 13A, 14A, 15A, 16A, 17A, 18A. Each of these packets is materially identical and reflects the information provided to Mr. Stewart when he registered on March 20, 2018, February 24, 2014, February 13, 2014, August 23, 2013, August 15, 2013, July 17, 2012, and February 16, 2012, respectively. CP, 39. Pages 6 through 8 contain three pages of single-spaced, tiny font information of the registration requirements of RCW 9A.44.128 through 9A.44.145. Exhibit 12A.

On March 20, Mr. Stewart registered that he was living at 3021 Pacific Highway East, number 162, in Fife, Pierce County, Washington. RP, 139, Exhibit 12A. 3021 Pacific Highway East is the physical address of the Guesthouse Motel in Fife (hereinafter “Guesthouse Motel.”) RP, 59. Relevant to this appeal, the Guesthouse Motel was his last registered address. RP, 168.

In 2018, Rosemary Stewart, Mr. Stewart’s mother, was living at the Guesthouse Motel. RP, 68. She lived there with her longtime domestic partner, Jackie Robinson, who was in very poor health from liver disease during this period. RP, 72, 187. Mr. Stewart was extremely close to Mr. Robinson, his stepfather for over thirty years. RP, 186. The record does

not reflect when she started living there, but Ms. Stewart moved out on or before May 1. RP, 68. Mr. Stewart was never a registered guest of the motel, but he was observed visiting frequently by motel staff. RP, 67.

Mr. Stewart is on active community custody and supervised by the Department of Corrections (DOC). RP, 39-40. He was also on GPS monitoring with the Department. RP, 94. On March 15, Mr. Stewart contacted his community corrections officer (CCO), Manuel Vilela, about possibly moving to the Guesthouse Motel. RP, 41. As part of his community custody, he is required to live in a DOC approved address. RP, 81. On March 19, 2018, CCO Vilela conducted an in-state transfer request (ITR) visit of the Guesthouse Motel. RP, 40-41. Mr. Stewart was allowed to stay at the Guesthouse Motel while the address was pending approval. RP, 86. On March 21, the ITR address was denied as unsuitable. RP, 46-47. Mr. Stewart was not told of the denial until April 6, however. RP, 86.

Mr. Stewart's primary CCO was Andrew Liebl starting in March of 2018. RP, 80. After the address was denied, CCO Liebl instructed Mr. Stewart that he could continue to visit his mother at the address, but could not stay there overnight. RP, 86. CCO Liebl instructed Mr. Stewart to report daily until he could locate another address, which he started doing. RP, 87-92. On April 15, Mr. Stewart left CCO Liebl a voicemail saying

he had to stay at the Guesthouse Motel overnight. RP, 92. He later explained on the witness stand that Mr. Robinson's health had taken a severe turn for the worse and he needed to be with him. RP, 187. CCO Liebl returned the voicemail on April 16 and Mr. Stewart said, "I know I got to go to jail for staying at mom's." RP, 93. The GPS monitoring confirmed that Mr. Stewart was staying at the Guesthouse Motel from April 15 through April 18. RP, 95. On April 17, Mr. Robinson "passed away in [Mr. Stewart's] arms." RP, 188. Mr. Stewart was arrested on April 18 for the DOC violation and held at the SCORE correctional facility. RP, 95.

Mr. Stewart was released from custody on May 1 and reported to CCO Liebl the same date. RP, 97-98. He said he was going to be staying with his fiancé Helen Schultz in Auburn. RP, 98. Ms. Schultz' address was also not an approved address. RP, 103.

On May 7, Mr. Stewart failed to appear for a scheduled meeting with CCO Liebl. RP, 100. CCO Liebl tried to contact Mr. Stewart by "pinging" his GPS monitoring system. RP, 100. Mr. Stewart removed the GPS bracelet, activating its tamper alert system. RP, 100. CCO Liebl obtained a DOC secretary's warrant that same date. RP, 100. Mr. Stewart was arrested on June 6. RP, 106, 212.

On May 17, Fife Police Officer Randall Fleming went to the Guesthouse Motel to attempt contact with Mr. Stewart. RP, 113. Mr. Stewart was not there when he visited. RP, 115.

Mr. Stewart's defense at trial was that during the charging period, he was registered at Ms. Schultz' residence in King County. RP, 203. The defendant, testifying on his own behalf, testified that prior to March of 2018 he was registered at Ms. Schultz' residence, 34602 53<sup>rd</sup> Avenue in Auburn. RP, 186. When his father got ill, he felt the need to be close to him, so he moved to the Guesthouse Motel in Fife. RP, 187. But then DOC denied the Fife address, so he returned to Ms. Schultz' Auburn address. RP, 188. He admitted spending a couple of nights at the Guesthouse Motel while his father literally died in his arms. RP, 188-89. He was arrested for DOC violations the day after his father's death. RP, 189. After he got out of jail, he returned to staying with Ms. Schultz in Auburn. RP, 198.

Mr. Stewart testified on direct examination that after he was released from jail, he went "downtown" to see if he had to register. RP, 189. Mr. Stewart's attempt to explain what "the lady" downtown told him was stymied by a hearsay objection from the prosecutor. RP, 189. But on cross-examination from the prosecutor, Mr. Stewart was repeatedly challenged over objection with the fact that he had no "proof" of



contacting the King County sheriff. RP, 196-97. This section of the cross-examination concludes with the following question, “You don’t have anyone coming here to testify on your behalf, do you?” RP, 197. Later, when Mr. Stewart stated unequivocally, “I was registered in King County; I was,” the prosecutor responded, “But there’s no proof of that at all.” RP, 203.

On cross-examination, multiple times the prosecutor conflated his community custody requirements and his registration requirements. For instance, she elicited an admission by him that staying at the Guesthouse Motel was “against the rules imposed by your corrections officer.” RP, 202. After his mother’s address was denied, he told CCO Liebl he “was going to stay there anyway.” RP, 197. He was supposed to meet with CCO Liebl on May 7, but he “didn’t go” and instead “cut off [his] GPS.” When he was staying at Ms. Schultz’ residence after May 7, he was “not reporting to [his] CCO any longer.” RP, 212.

Jury instruction #11, the “to convict” jury instruction in this case required the jury court instructed the jury that they were required to find that “during that time period, the defendant knowingly failed to comply with the requirement of sex offender registration.” CP, 54. Jury instruction # 8 defines what it means to register as a sex offender.

A person who is required to register as a sex offender must comply with certain requirements of registration, including the following:

1. the requirement that the defendant register with the county sheriff for the defendant's county of residence.
2. the requirement that the defendant provide the following information when registering: name; any aliases used; complete and accurate residential address, or if the defendant lacks a fixed residence, where the defendant plans to stay; date and place of birth; place of employment; crime for which convicted; date and place of conviction; social security number; photograph; and fingerprints.
3. the requirement that, in conjunction with an address verification by the county sheriff, the defendant update the following information: name; any aliases used; residential address, or if the defendant lacks a fixed residence, where the defendant plans to stay; date and place of birth; place of employment; crime for which convicted; date and place of conviction; social security number; photograph; and fingerprints.
4. the requirement that the defendant, moving to a new county, register within three business days of moving with the county sheriff of the new county of residence.
5. the requirement that the defendant, upon moving to a new county, provide in person or by certified mail with return receipt requested, signed written notice within three business days of the change of address to the county sheriff with whom the defendant last registered.
6. the requirement that the defendant provide, in person or by certified mail with return receipt requested, signed written notice of a change of address to the county sheriff within three business days of moving to a new residence within the same county.
7. the requirement that the defendant, upon moving to a new county, provide in person or by certified mail with return receipt requested, signed written notice within three business days of the change of address to the county sheriff with whom the defendant last registered.
8. the requirement that the defendant, who had a fixed residence but later lacked one, provide signed written notice to the sheriff

- of the county where the defendant last registered within three business days after ceasing to have a fixed residence.
9. the requirement that the defendant, lacking a fixed residence, report weekly on a day specified by the county sheriff's office and during normal business hours, in person, to the sheriff of the county where the defendant is registered.
  10. the requirement that the defendant, lacking a fixed residence, comply with a request from the county sheriff of an accurate accounting of where the defendant stayed during the week.
  11. the requirement that the defendant, lacking a fixed residence and under the supervision of the department of corrections, register with the county sheriff of the county of the defendant's supervision.
  12. the requirement that the defendant provide signed written notice of his change of address to the county sheriff within three business days of moving from the registered address.
- CP, 50-51.

In the Court of Appeals, Mr. Stewart argued that the charging document was defective because it did not contain all the essential elements of the offense. In the alternative, Mr. Stewart argued jury instruction #8 defining the registration requirements was defective because it did not require the jury to be unanimous as to the alternative means. In making these related arguments, Mr. Stewart acknowledged this Court's decision of *State v. Peterson*, 168 Wn.2d 763, 230 P.3d 588 (2010), but argued it is incorrect and harmful and should be overruled. The Court of Appeals declined to reach the merits of Mr. Stewart's argument, however, correctly noting that it is "required to abide by a decision of the Supreme Court and cannot override its precedent." Opinion, 5.

On the issue of whether the charging document contains all the essential elements of the offense, the Court of Appeals concluded that “even if the language was somehow inartful,” it includes all the essential elements and affirmed. Mr. Stewart seeks review.

#### E. Argument Why Review Should be Granted

Decisions from this Court should be overruled when they are incorrect and harmful. *State v. W.R.*, 181 Wn.2d 757336 P.3d 1134 (2014). Whether *State v. Peterson*, 168 Wn.2d 763, 230 P.3d 588 (2010) should be overruled as incorrect and harmful is a significant question of constitutional law and involves an issue of substantial public interest that should be promptly determined by this Court. RAP 13.4(b).

In *Peterson*, this Court considered the nature of the offense of failure to register and concluded it is an alternative means statute. According to this Court in *Peterson*, although there are a variety of requirements and deadlines that must be complied with, the nature of the criminal act remains the same: the offender moves without registering. *Peterson* at 770. Having concluded RCW 9A.44.130 is an alternative means statute, the Court further concluded the jury need not be unanimous as to which requirement the defendant violated. The impact of the *Peterson* case is twofold: (1) the State need not specify in the charging

document how the defendant violated the statute; and (2) the jury need not be unanimous how the defendant violated the statute.

Even a quick reading of RCW 9A.44.130 leads to the conclusion that *Peterson* is incorrect. The ink was barely dry on the *Peterson* case when one panel of the Court of Appeals concluded as much. *State v. Mason*, 170 Wn.App. 375, 285 P.3d 154 (2012). In *Mason*, the Court concluded *Peterson* case should be limited to the narrow circumstances of its facts saying: “We caution, however, that applying our Supreme Court’s reasoning in *Peterson* that focused solely on Peterson’s narrow factual circumstances to other factual circumstances leads to results contrary to the statutory language. The statutory language clearly and expressly establishes multiple circumstances that trigger the registration requirement that do not involve moving from one residence to another (or to none) without notice.” *Mason* at 381.

That the *Peterson* case is incorrect is easily demonstrated. Contrary to this Court’s conclusion, RCW 9A.44.130 is not just a moving without registering statute. Depending upon how one counts the requirements in the statute, there are scores of ways to violate the failure to register statute, many of which have nothing to do with moving, including:

- (1) Failure to submit a photograph or fingerprints. RCW 9A.44.130(2)(a); *State v. Croften*, 110 Wn.App. 1054 (2002) (unpublished) (affirming conviction of defendant who refused to sit for an updated photograph).<sup>1</sup>
- (2) Failure to re-register after being released from a county jail or state prison. RCW 9A.44.130(1)(1); *State v. Tash*, 3 Wash.App.2d 74, 413 P.3d 1069 (2018).
- (3) Failure to register prior to arriving at a school to attend classes. RCW 9A.44.130(1)(b)(i).
- (4) Failure to register upon termination from employment. RCW 9A.44.130(1)(b)(iii).
- (5) Failure to register a name change. RCW 9A.44.130(7).
- (6) Failure to register one's intent to travel outside the United States. RCW 9A.44.130(3).
- (7) Failure to register within three business days of receiving actual notice of the duty to register. RCW 9A.44.130(4)(c).

Given the plethora of ways an offender may violate the registration statute, this Court's conclusion that the statute only criminalizes moving without registering is incorrect.

The *Peterson* case is also harmful. This Court's erroneous interpretation of the statute harms people in Mr. Stewart's situation in two ways. First, it violates their constitutional right to be advised of the essential elements of the offense. *State v. Kjorsvic*, 117 Wn.2d 93, 812 P.2d 86 (1991). Second, it violates their constitutional right to jury unanimity.

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<sup>1</sup> *Croften*, an unpublished case prior to March 1, 2013, is not cited as either precedential or persuasive authority, simply as an example of a person who was convicted of failure to register for an act that did not involve moving. GR 14.1. The Court's conclusion in *Croften* is consistent with the statutory language, however.

While Mr. Stewart's case was pending in the Court of Appeals, this Court clarified the essential elements rule in *State v. Pry*, 194 Wn.2d 745, 452 P.3d 536 (2019), holding that a defendant has the right to be advised of how he allegedly violated a statute when the statute may be violated in multiple ways. In *Pry*, the issue was whether the Information charging Rendering Criminal Assistance was defective. The Information in that case read, in relevant part, the defendant "rendered criminal assistance to a person who had committed or was being sought for a Class A felony." The Supreme Court held that the essential elements of rendering criminal assistance are: (1) knows that another person [has committed or was being sought for a felony] and (2) intends to prevent, hinder, or delay the apprehension or prosecution of that other person and (3) undertakes one of the six specified actions contained in RCW 9A.76.050. The failure of the Information to specify which of the specified actions contained in RCW 9A.76.050 rendered it constitutionally deficient. Rendering criminal assistance requires three things: "intent, knowledge, and action: the *intent* to prevent, hinder, or delay the apprehension or prosecution of someone that he or she *knows* has committed a crime or is sought by authorities for commission of a crime, and *action* on behalf of that person by (among other things) harboring, concealing, or warning them; providing them with aid to avoid discovery;

and concealing or destroying evidence. See RCW 9A.76.050. Section .050 does substantially more than provide a definition; it informs a suspected person of the very crime the State alleges he or she committed.” *Pry* at 756. In other words, the defendant has the right to be advised specifically which of six enumerated actions is alleged.

The defect in the Information in Mr. Stewart’s case is materially similar to the defect in the Information in *Pry*. Allegations that the defendant “did knowingly fail to comply with the registration requirements” and that the defendant “rendered criminal assistance” are both defective when the statute enumerates multiple ways to commit the offense. Failure to register requires three things: 1) that a person required to register act knowingly; 2) that a triggering event occur which requires the person to re-register; and 3) the person fail to re-register. While the triggering event may be moving, as the *Mason* Court correctly pointed out, there are “multiple circumstances that trigger the registration requirement that do not involve moving.”

The holding in *Peterson* is also harmful because it violates Mr. Stewart’s right to jury unanimity. Legal unanimity is implicated when a single criminal offense can be committed in multiple ways. In this situation, Washington courts have distinguished between alternative crimes and alternative means statutes. An alternative means statute need



not be unanimous as long as each of the alternative means is supported by substantial evidence. *State v. Armstrong*, 188 Wn.2d 333, 340, 394 P.3d 373 (2017); *State v. Whitley*, 108 Wn.2d 506, 739 P.2d 1150 (1987); *State v. Arndt*, 87 Wash.2d 374553 P.2d 1328 (1976). Sufficient evidence is that which justifies a rational trier of fact finding guilt beyond a reasonable doubt. *Armstrong* at 341. As the discussion in *Armstrong* suggests, it is not always easy to distinguish between alternative crime statutes and alternative means statutes. In the *Armstrong* case, Justice McCloud reviewed the various cases involving alternative means and summed up their holdings with the following rule:

Acts listed in a single statute may be treated as alternative means on which the jury need not be unanimous (as opposed to alternative crimes on which the jury must be unanimous) only where a juror can logically determine beyond a reasonable doubt that the defendant committed the general crime charged, without also determining which of several acts he or she did to commit that general crime. In other words, the constitution does not demand jury unanimity as to means when those means differ as to preliminary factual issues but do not differ as to the bottom line definition of the crime. On the other hand, where those alternatives really describe different bottom line crimes—where a juror cannot determine that the defendant in *fact* committed the crime charged without also determining *how* he or she committed it—the constitution requires unanimity as to this “how.”

*Armstrong* at 352-53 (Justice McCloud, dissenting).

As Justice McCloud points out, the risk of treating an alternative crimes statute as an alternative means statute is that “the jury would

convict not because it agreed that [the defendant] committed a particular criminal act, but instead because it agreed that he must be guilty of something—that where there is smoke there must be fire.” *Armstrong* at 355 (Justice McCloud, dissenting).

Mr. Stewart’s case amply demonstrates the harm that comes from a lack of jury unanimity as to the alternative means. The State presented extensive evidence that Mr. Stewart was avoiding his probation officer, including by failing to report and cutting off his GPS bracelet, facts that portrayed him as a community custody absconder but which are ultimately irrelevant to the offense of failure to register. The jury also heard conflicting evidence whether he violated the statute upon being released from jail. This latter theory became a source of tension during Mr. Stewart’s testimony. The prosecutor and Mr. Stewart got into a disagreement over whether Mr. Stewart was required to register upon his release from jail on May 1.

Q. Okay. So assuming that you were verbally advised and the registration packets go over the law, then you are aware that you have three business days to register from the time you move from your last registered address, right?

A. I was not told I had three business days by anybody, ma’am.

...

Q. Okay. So under -- because you know that then, then what did you believe your requirement was?

A. If I'm getting out of jail, I went downtown just to make sure and talk to the lady.

Q. I'm asking, what do you believe your requirement was?

A. I'm trying to tell you, ma'am. What your --

Q. I'm asking, how many days did you believe you had to go and register, business days? That's my question.

A. When you're released from prison, you have three days. If you go to jail on a DOC violation or any, you know, upon your release, if your address hasn't changed, you don't need to re-register. But if your address changes, you need to re-register, okay?

Q. Okay.

A. My address never changed. I've been registered at Helen's.

RP, 206-08. Later, during re-cross-examination:

Q. When did you get released?

A. May 1st, I believe.

Q. Okay. And it's your testimony that -- you did just testify to this on cross -- that once you were released from custody, you were required to register within three business days?

A. If you're released from prison, not jail.

Q. That's your understanding, correct?

A. Not for a DOC violation.

Q. Okay. Is that what your understanding of the law is?

A. That's what I was told.

RP, 213.

The confusion over Mr. Stewart's failure to register upon his release from jail was compounded by the exhibits. Exhibit 12A reads, in part, "If you are in custody or are transferred to partial confinement (such as work release), you must register within three business days from the time of release from custody or at the time of transfer to partial confinement, with the official designated by the agency that has jurisdiction over you." Exhibit 12A, page 6. The prosecutor later referenced the "registration packets" in challenging Mr. Stewart about his

understanding of the registration requirements. The jury was permitted to rely on Exhibit 12A as evidence of the registration requirements. See *State v. Taylor*, 193 Wn.2d 691, 694, 444 P.3d 1194 (2019) (holding that a no contact order was admissible as an exhibit because it “provides the specific restrictions imposed on a defendant, is closely related to a felony violation of a no-contact order charge, and is evidence of multiple elements of that offense”).


Compounding the confusion, the jury instructions did not clarify when a person is required to re-register. The “to convict” instruction required the jury to find that “during the time period, the defendant knowingly failed to comply with the requirement of sex offender registration” without defining what those requirements were. CP, 54. Jury instruction # 8 lists twelve different ways the registration statute can be violated, but many of those methods are repetitive, irrelevant to Mr. Stewart’s case, or ambiguous. The jury instructions do not address at all the question of whether a person is required to re-register after release from jail. This ambiguous instruction, coupled with the detailed information contained in Exhibit 12A, left the jury guessing as to the State’s theory and created a very real possibility that the jury convicted without being unanimous as to the law violation.

Given the nature of the State’s evidence and the confusion whether and when he was required to re-register, there is a grave risk the jury convicted Mr. Stewart “because it agreed that he must be guilty of something—that where there is smoke there must be fire,” and not because it unanimously agreed that he violated a specific provision of RCW 9A.44.130. RCW 9A.44.130 is not an alternative means statute, the conclusion of the Supreme Court in *Peterson* notwithstanding. *Peterson* is incorrect and harmful and should be overruled.

F. Conclusion

This Court should grant review and dismiss Mr. Stewart’s conviction without prejudice for a defective charging document. *State v. Vangerpen*, 125 Wn.2d 782, 888 P.2d 1177 (1995). In the alternative, this Court should reverse and remand for a new trial based upon a faulty jury instructions.

DATED this 17<sup>th</sup> day of March, 2021.




---

Thomas E. Weaver, WSBA #22488  
Attorney for Defendant/Appellant



1 I declare under penalty of perjury under the laws of the State of Washington that the foregoing is  
2 true and correct.

3 DATED: March 17, 2021, at Bremerton, Washington.

4  
5   
6 \_\_\_\_\_  
7 Alisha Freeman

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON,	)	No. 81836-8-I
	)	
Respondent,	)	
	)	DIVISION ONE
v.	)	
	)	
MICHAEL JAY STEWART,	)	
	)	UNPUBLISHED OPINION
Appellant.	)	
_____	)	

MANN, C.J. — Michael Stewart appeals his conviction for failure to register as a sex offender, contending that the Washington Supreme Court’s opinion in State v. Peterson, 168 Wn.2d 763, 230 P.3d 588 (2010), which concluded that RCW 9A.44.130 is not an alternative means statute, was decided incorrectly and should be overruled. Stewart also contends that the information did not contain all the essential elements of the crime. We affirm.

I. FACTS

Stewart was convicted of rape in the first degree in 1988. As a result, he has a lifetime duty to register as a sex offender.



In March 2018, Stewart was homeless and living in King County. He registered as a sex offender and the Department of Corrections (DOC) supervised him. On March 14, 2018, Stewart sought DOC approval to move to his mother's address in Pierce County in order to spend time with his dying father. Stewart's mother resided in a room at the Guesthouse Motel in Fife, Washington. The DOC initially granted Stewart permission to live at the location while the DOC investigated its suitability as a residence. He subsequently registered as a sex offender with the Pierce County Sheriff's Department on March 20, 2018, listing the Guesthouse Motel as his residence. At the time of his registration, Stewart was provided with a registration packet that explained that if Stewart moved within the state, he was required to register his new address within three business days of moving.

Stewart resided at the Guesthouse Motel until his community corrections officer (CCO) informed him that the DOC denied this address, and that he needed to return to King County. Stewart temporarily stayed at several different addresses. DOC allowed Stewart to visit his mother at the Guesthouse Motel during the day, but prohibited him from spending the night. Stewart stayed overnight at the Guesthouse Motel from April 15, 2018, to April 18, 2018. Stewart was arrested on April 18, 2018, for violating his community custody and was incarcerated until May 1, 2018.

Upon release, Stewart met with his CCO and said that he would be temporarily staying with his fiancé in Auburn. This was not a DOC approved address for Stewart. The DOC gave Stewart a GPS bracelet and he agreed to register with the King County's Sheriff's Office. GPS showed Stewart at the Auburn location from May 1, 2018, to May 3, 2018, and at two additional locations from May 4, 2018, to May 6, 2018.

Stewart failed to appear for his scheduled DOC meeting on May 7, 2018, and he cut off his GPS bracelet.

On May 17, 2018, the Fife Police Department performed a sex offender address verification check on Stewart's last registered address at the Guesthouse Motel. Stewart was not residing there. Stewart had not registered in either Pierce or King County subsequent to his March 20, 2018, registration at the Guesthouse Motel.

The State charged Stewart by information with failure to register as a sex offender-third offense between May 9, 2018, and June 5, 2018. At trial, Stewart testified that he did not believe that he had to register in King County because he had previously registered at his fiancé's house in Auburn. He admitted to cutting off his GPS bracelet, and absconding from DOC supervision, but he maintained that he was living with his fiancé.

Stewart stipulated that he was convicted of a class A felony sex offense, that he was required to register as a sex offender for life, including during the charging period, and that he had two or more prior convictions for failing to register as a sex offender. The jury found Stewart guilty of failing to register as a sex offender. The jury also found that Stewart was convicted on at least two occasions of failure to register as a sex offender. The court sentenced Stewart to 57 months of incarceration, the high end of the standard sentencing range. Stewart appeals.

## II. ANALYSIS

### A. Alternative Means Crime

Stewart argues first that failure to register as a sex offender is an alternative means crime that requires a verdict supported by jury unanimity. We disagree.

Criminal defendants in Washington are entitled to a unanimous jury verdict. State v. Ortega-Martinez, 124 Wn.2d 702, 707, 881 P.2d 231 (1994). If “the crime charged can be committed by more than one means, the defendant does not have a right to a unanimous jury determination as to the alleged means used to carry out the charged crime or crimes should the jury be instructed on more than one of those means.” State v. Smith, 159 Wn.2d 778, 783, 154 P.3d 873 (2007). But in order to safeguard the defendant’s right to unanimity, “substantial evidence of each of the relied-on alternative means must be presented.” Smith, 159 Wn.2d at 783.

RCW 9A.44.132 provides in relevant part:

(1) A person commits the crime of failure to register as a sex offender if the person has a duty to register under RCW 9A.44.130 for a felony sex offense and knowingly fails to comply with any of the requirements of RCW 9A.44.130.

....

(b) If a person has been convicted of a felony failure to register as a sex offender in this state or pursuant to the laws of another state, or pursuant to federal law, on two or more prior occasions, the failure to register under this subsection is a class B felony.

RCW 9A.44.130 sets forth various registration requirements, including deadlines for registration based on an offender’s residential status.

Stewart contends that RCW 9A.44.130 is an alternative means statute. Our Supreme Court, however, disagreed in Peterson, holding that failure to register as a sex offender is not an alternative means crime. 168 Wn.2d at 766. While Peterson argued that the crime could be accomplished in different ways, the court held that “the failure to register statute contemplates a single act that amounts to failure to register: the offender moves without alerting the appropriate authority. His conduct is the same—he either

moves without notice or he does not.” Peterson, 168 Wn.2d at 770. Even if different deadlines apply, based on the offender’s residential status, the criminal act does not change: moving without registering. Peterson, 168 Wn.2d at 770. We are required to abide by a decision of the Supreme Court and cannot override its precedent. State v. Jussila, 197 Wn. App, 908, 931, 392 P.3d 1108 (2017).

B. Sufficiency of Information

Stewart also contends that the information did not contain all of the essential elements of the crime. Again, we disagree.

To be constitutionally accurate, a charging document must contain all the essential elements of a crime, both statutory and non-statutory, so as to apprise the accused of the charges against him or her and to allow the defendant to prepare a defense. State v. Vangerpen, 125 Wn.2d 782, 787, 888 P.2d 1177 (1995). An “essential element is one whose specification is necessary to establish the very illegality of the behavior.” State v. Johnson, 119 Wn.2d 143, 147, 829 P.2d 1078 (1992). “When a defendant challenges the sufficiency of a charging document for the first time after verdict, the document must be construed liberally in favor of validity.” State v. Taylor, 140 Wn.2d 229, 244, 996 P.2d 571 (2000).

The information provides that:

MICHAEL J. STEWART, in the State of Washington, on or between the 9th day of May, 2018 and the 5th day of June, 2018, did unlawfully, feloniously, having been convicted of a felony sex offense or having been found not guilty by reason of insanity under chapter 10.77 of committing any sex offense, as those offenses are defined by RCW 9A.44.128, and having previously been convicted of a felony failure to register as a sex offender on two or more occasions in this or another state, did knowingly fail to comply with the registration requirements of RCW 9A.44.130 when

required to do so, contrary to RCW 9A.44.132(1)(b), and against the peace and dignity of the State of Washington.

Stewart argues that the information was deficient because it did not specify what provision of RCW 9A.44.130 he violated. This argument relies in part on his rejected alternative means argument. Although the alternative means analysis and essential element analysis are related, they should be analyzed separately. Peterson, 168 Wn.2d at 771.

Stewart relies on State v. Pry, 194 Wn.2d 745, 452 P.3d 536 (2019), to argue that the information was deficient. In Pry, our Supreme Court sets out a two-pronged test to determine if the information gave proper notice: (1) do the necessary facts appear in any form, or by fair construction can they be found on the face of the charging document and, if so, (2) can the defendant show actual prejudice by the inartful language that allegedly caused a lack of notice? 194 Wn.2d 752-53 (citing State v. Kjorsvik, 117 Wn.2d 93, 105-06, 812 P.2d 86 (1991)). While we may examine other charged counts when assessing the information, “[w]e do not look past the face of the document—and therefore do not examine items such as statements of probable cause—until the second prong.” Pry, 194 Wn.2d at 753.

The essential elements of the crime of failure to register as a sex offender under RCW 9A.44.130 are: (1) prior conviction of a felony sex offense; (2) that the defendant was required to register in Washington during the time period at issue; and (3) that the defendant knowingly failed to comply with the registration requirement. State v. Bennett, 154 Wn. App. 202, 206-08, 224 P.3d 849 (2010). See also 11 WASHINGTON

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(WPIC).

The information here, on its face or by fair construction, includes all the essential elements. To wit: Stewart was previously convicted of a felony offense; that he was required to register between May 9 and June 5, 2018; and he knowing failed to do so. The information satisfies the first prong of Pry. Moreover, even if the language was somehow inartful, under the second prong of Pry, the declaration for determination of probable cause provided sufficient notice of how Stewart specifically violated RCW 9A.44.130 that the information lacked. The declaration provided that Stewart was last registered at the Guesthouse Motel, but when Fife police attempted to verify that he was living there, hotel management informed them that Stewart's mother had checked out on May 1, 2018, that Stewart had never been a registered guest there, and the motel employees had not seen Stewart since his mother had checked out. The declaration also provided that "under Washington law, offenders who move or lack a fixed residence are required to register within three business days of moving or ceasing to have a fixed residence." See RCW 9A.44.130(4)(a)(vi). For these reasons, the information gave Stewart sufficient notice of which provision he violated under the statute.

Affirmed.

Mann, C.J.

WE CONCUR:

Andrus, A.C.J.

Leach, J.

Pro Tempore

**THE LAW OFFICE OF THOMAS E. WEAVER**

**March 17, 2021 - 3:56 PM**

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**Filed with Court:** Court of Appeals Division I  
**Appellate Court Case Number:** 81836-8  
**Appellate Court Case Title:** State of Washington, Respondent v. Michael Jay Stewart, Appellant  
**Superior Court Case Number:** 18-1-02450-3

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