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COURT OF APPEALS
STATE OF WASHINGTON

2012 JUN 15 PM 2:00

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WASHINGTON STATE COURT OF APPEALS
DIVISION ONE

8

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STATE OF WASHINGTON

COA No. 67927-9-I

10

Plaintiff,

SUPERIOR COURT OF KING COUNTY

11

vs.

No. 07-1-D1965-7-SEA

12

DONNIE W. DURRETT

STATEMENT OF ADDITIONAL

13

Appellant/Defendant

GROUND

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15

I, Donnie W. Durrett, have received and reviewed the

16

opening brief prepared by my attorney Maureen Cyr, from the

17

Washington Appellate project. Summarized below are the

18

additional grounds for review that are not addressed in that

19

brief. I understand the Court will review this Statement

20

of Additional Grounds for review when my Appeal is considered

21

on the merits.

22

Also with leave of this Court I'm sending Additional Grounds

23

material of a CrR 7.5, that my attorney Mr. Gordon Hill prepared

24

and was sent to this Court, to be considered as a Personal Restraint

25

petition. I choose not to file a P.R.P., But as Additional Grounds.

GROUND I:

In support of my attorney's Opening Brief, I would like this Court to review Motion Hearing proceedings on October 16, 2009; This was postponed. At the motion hearing My Attorney at the time was Micheal Stoddard, from Northwest Defender Association. My attorney requested a continuance, which was granted.

Mr. Stoddard raised the issue which concerns me, and needed clarification. "Since this matter was remanded back to this Court for sentencing, is my client on Community Custody as a result of this? Arguably, he hasn't been sentenced, and he just want to know. He believes that he shouldn't be on Community Custody until he's in fact resentenced."

The Court stated: "Well that's a good question."

"Frankly I'd have to review the law. It was remanded for resentencing and he has served" - "Nine hundred and what?"

In the motion hearing Sentencing Judge Mack acknowledges the fact that the Court of Appeals remanded back for resentencing.

Judge Mack erred when she stated that in her conclusion after doing a little bit of research and rereading the opinion. She based her decision on the fact that the Court of Appeals did not vacate the sentence. "It was remanded for resentencing" The Court stated; "he remains on Community Custody until he is resentenced. I think that's what the law requires."

Page 2

Statement of Additional Grounds. Durrett.

1 But that is not what the law required. See In re Skylstad,
 2 160 Wash.2d 944, 162 P.3d 413 (2007). Where the State Supreme
 3 Court cited State vs. Harrison, 148 Wash.2d 550, 561-62,
 4 61 P.3d 1104 (2003) stating: ("stating after defendant's sentence
 5 was reversed, ... the finality of the judgment
 6 is destroyed" and defendant's "sentence was
 7 ceased to be final judgment on the merits");
 8 Sigler, 196 Wash. at 286, 83 P.2d 583; ("In a criminal case, it is
 9 the sentence that constitutes the judgment against
 10 the accused, and, hence, there can be no judgment
 11 against him until sentence is pronounced.").

12 Flynt vs. Ohio, 451 U.S. 619, 620, 101 S. Ct. 1958, 68 L. Ed.2d
 13 489 (1981) (per curiam); See also Teague vs. Lane, 489 U.S.
 14 288, 314 n.2. 109 S. Ct. 1060, 103 L. Ed.2d 334 (1989) when it
 15 stated: ("[A] criminal judgment necessarily includes
 16 the ~~judgment~~ "sentence imposed upon the defendant."
 17 "Therefore, litigation on the merits continues
 18 and Skylstad's judgment could not be final until
 19 his sentence was final."

20 But the Honorable judge Barbara Mack's ruling, abused her
 21 discretion in what she thought the law required. She failed to
 22 read the entire opinion. The matter of the remand, was based first
 23 on violation of Double Jeopardy prohibition. Because of this violation,
 24 Count 2 was reversed, overturned, vacated, or whatever word one
 25 chose to use. But that ~~reversed~~ ^{reversed} destroyed the original J+S.

Page 3

Statement of Additional Grounds Durratt

1 The Skylstad Court stated that, the Judgment was
2 destroyed because of the reversal, the same applied with Durrett.

3 The Court of Appeals overturned, reversed, vacated Court 2.

4 "When a court reverses a sentence it effectively vacates
5 the Judgment because the "[f]inal judgment in a
6 Criminal case means sentence."

7 "Without the sentence there can be no judgment. Id.

8 The State's reading would mean Skylstad had to bring
9 a collateral attack against the judgment even though
10 there was no valid judgment. And it strains
11 reason to suggest there can be a final judgment
12 where there is no valid judgment," emphases mine.

13
14 The Honorable Judge Mack ruling, basically overruled
15 the Court of Appeals decision that invalidate ^{my} ~~the~~ judgment.

16 She, by her ruling that Durrett "remains on" Community Custody
17 until he is re-sentenced." Which we all know, it can't do.

18 Yet holding on to the invalid Judgment of 2007 original,
19 She then creates another Judgment at Durrett re-sentencing
20 hearing. Which Durrett submits was multiple punishment
21 for the same crime. Having two Judgment and Sentences
22 for the same crime and time periods. It in fact she believes

23 the original Judgment and Sentence was valid enough for

24 Durrett to still be on Community Custody, even though the

25 ~~the~~ ^{PD} original Judgment and Sentence had been ruled 'invalid.'

Page 4

Statement of Additional Grounds Durrett:

GROUND II:

1
2 Appellant/Defendant Durrett would respectfully
3 request this Court to consider a previously submitted
4 a CrR 7.5 motion for a New trial. That Sentencing
5 Court Declined to hear, or rule on. My attorney at
6 re-Sentencing was Mr. Gordon Hill. During the re-sentencing
7 hearing he motioned the Court for a Continuance because
8 he want to submit a motion/brief that would address
9 the remaining one Count of Failure to Register as a Sex
10 Offender.

11 It is our belief, that because this Court found a
12 violation to the Federal and State Constitution that
13 prohibited Double Jeopardy had occurred when the State
14 added Count 2 that amended the Second Count to be tried
15 with Count 1. Because of the Double Jeopardy violation
16 Defendant Durrett was not given a fair trial.

17 The Additional Grounds are outlined in the Statement
18 that went to this Court as a Personal Restraint Petition.
19 I elected to submit that CrR 7.5 as Grounds Number ~~II~~
20 ~~I~~. Sections of the transcript from the original
21 trial that ended in a ~~hung~~ Hung Jury.

22 Also it includes pertinent transcript from the
23 Honorable Nancy McInnesse Court, where Durrett was tried
24 with two counts of Failure to Register that the
25 Court reversed, vacated, suppressed whatever one chooses.

Page 5

Statement of Additional Grounds Durrett

GROUND III

1
2 After the October 21, 2011 resentencing hearing,
3 or just short of it concluded, my Attorney Mr. Gordon
4 Hill mention to the Court that "MR Hill: Your Honor,
5 Mr. Durrett has asked me -- I believe
6 we still do have time to file a motion
7 for New trial before this Court as well,
8 and we may do that. The Court:
9 All right. You may do that."

10 Yet when Mr. Hill submitted his CrR 7.5, the Judge
11 declined to hear the matter, and with that, It was sent
12 to the Court of Appeals as a Personal Restraint Petition,
13 under Case No. 68685-2. It is my understanding that
14 we was granted leave to file a CrR 7.5 motion, by the
15 Honorable Judge Mack when she said: "All right. You may
16 do that." I was not aware or agreed to submit those
17 issues in a P.R.P., I am hoping that this Court will review
18 that motion as Appellant's Statement of Additional Grounds III.

19 The issues that we raised in the CrR 7.5 motion, was
20 created after this Court ruled on the Double Jeopardy matter.
21 Thus, had no opportunity to address the prejudice and unfairness
22 of my trial on the remaining Court of failure to Register as
23 a Sex Offender.

24 However, Mr. Gordon was incorrect when ~~stated~~ he stated
25 that "The Court of Appeals, which held that it was a violation
Page 86

Statement of Additional Grounds Durrett:

1 of the requirement for a determinate sentence for
 2 Court to leave it up D.O.C to determine at what point
 3 Community Custody should be cut off. It is my impression
 4 that the Supreme Court of Washington has since overruled
 5 *Linerud*, and that the basis for the remand has been
 6 overruled, and that the initial -- the way the Judgment
 7 and Sentence initially read, with the notations that
 8 the maximum sentence was not to exceed 60 months,
 9 seems to me the proper approach under the more
 10 recent case law. And I don't think that the defense
 11 has a position, a basis to object to that. ⁹⁾

12 This was ineffective assistance of Counsel, to
 13 try and undermine this Court's ruling, and this was a
 14 violation of some sort of Rules of Professional Conduct.
 15 He was assigned to me, for representation. Not to
 16 open his mouth about something he knew nothing
 17 about. The Courts have repeatedly stated that the
 18 law in effect at the time the crime was committed not
 19 those laws that came after, unless specific reference
 20 to the law or case it intends to overrule. Mr.
 21 Hill cited no case in which this alleged event had
 22 occurred on. The Court nor the State made any
 23 reference to any particular case law. Whatever
 24 the case was it was not around prior to July 16, 2009
 25 when this ruled in *Durset's* case.

Page 7

Statement of Additional Grounds *Durset's*:

1 For the defense attorney Mr. Hill to state such a prejudicial
2 comment to, or about his client or mitigating and undermining
3 Division One ruling to sentence me to a undetermined sentence
4 was obviously was not in my best interest or consent. The
5 sentencing judge should have sentenced me as ordered by this
6 court "accordingly with Limerud decision."

7 Although his motion CrR 7.5 is good in my layman judgment,
8 his performance at re-sentencing is unforgivable error.

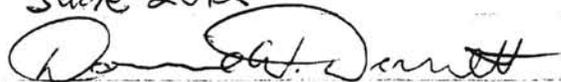
9 GROUND IV

10 For the same reason stated in Durrett's Statement of
11 Additional Grounds, Case No. 68120-6-I, regarding sex offender
12 failure to register is still not a sex offense, according to Substitute
13 Senate Bill 6414, equally applies here. As well as the
14 Ex post facto issues raised in that case in 68120-6-I.

15 "For the purpose of determining whether a person has
16 been convicted of more than one sex offense,
17 Failure to Register as a Sex Offender or Kidnapping
18 Offender, is not a Sex or Kidnapping Offense."

19 Durrett respectfully request the Rule of Lenity must be
20 applied in this matter. And that this case is dismissed with
21 prejudice. See Appendix A.

22 Dated this 10th Day of June 2012

23 
24 Donnie Durrett Doc# 241023
25 P.O. Box 900 R#-D-2

Shelton, Wash. 98584

APPENDIX A

FILED

11 NOV 09 PM 2:28

KING COUNTY
SUPERIOR COURT CLERK
E-FILED
CASE NUMBER: 07-1-01965-7 SEA

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IN THE SUPERIOR COURT OF THE COUNTY OF KING

STATE OF WASHINGTON,

Plaintiff,

vs.

DONNIE WAYNE DURRETT,

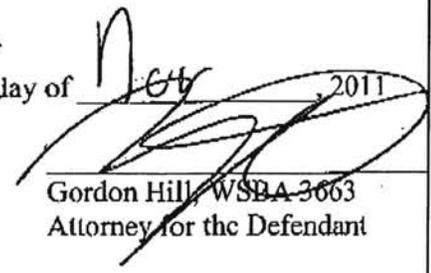
Defendant

CAUSE NO. 07-1-01965-7 KNT

DEFENSE MOTION FOR NEW TRIAL
PURSUANT TO CrR 7.5(6), (8)

MOTION

COMES NOW THE DEFENDANT, DONNIE DURRETT, and moves this court for a new trial pursuant to CrR 7.5 (a)(6) and (8) on the grounds that the violation of Mr. Durrett's right against double jeopardy by the inclusion of a second count of Failing to Register as a Sex Offender prevented him from obtaining a fair trial.

Dated this 9th day of Nov, 2011

Gordon Hill, WSPA 3663
Attorney for the Defendant

ORIGINAL

FACTS

1. Under cause number 07-1-01965-7, Mr. Durrett was charged on February 28th, 2007 with one count of Failing to Register as a Sex Offender between the dates of December 6th, 2006, and January 23rd, 2007, in violation of RCW 9A.44.130(11)(a) (2007).
2. Mr. Durrett proceeded to jury trial on that charge.
3. At trial, Mr. Durrett testified, and relied on a defense that, when he had appeared to register prior to the relevant dates, he had been told by a Sheriff's office employee that he needed to register only every 90 days, the requirement for sex offenders with a residence, rather than weekly, the requirement for homeless sex offenders. (Defendant's testimony, attached).
4. On May 9th, 2007, the jury indicated it was deadlocked and a mistrial was declared.
5. Following the mistrial, Mr. Durrett's case was rescheduled for trial.
6. On September 5th, 2007, the State moved to amend the information to add a second count of Failing to Register as a Sex Offender for the period of time between November 6th, 2006 and November 17th, 2006.
7. The motion to amend was granted, and Mr. Durrett proceeded to his second jury trial, now on two counts of failing to register.
8. At the second trial, Mr. Durrett did not testify, though some of his testimony from the first trial was admitted to the jury.
9. In its closing (Attached as Appendix A), the State capitalized on the theory that each week Mr. Durrett failed to check in with the sheriff constituted a separate offense, arguing, in the course of discussing the requirement of jury unanimity:
 - a. "But what this instruction I just read you to relates to is this: Remember when we went through the calendars. And let's just take the month of January, for example. You can see that the charging period encompasses four separate weeks plus all of December. So really, what you have is probably – you've got eight weeks in which he didn't report. And technically speaking,

1 each week that you don't come in is a separate offense of failing to register.
2 That's a violation. So even though you've got eight different times he didn't
3 come in and each one could be its own charge, it's all sort of lumped into one
4 charge..." (p. 96-97 Trial Transcript September 12th, 2007).

5 10. The State highlighted this point again in rebuttal, arguing:

6 a. "You know, nobody has an axe to grind here. It's not like he missed just one
7 week and everybody's jumping on top of him. He missed a lot of weeks, and
8 he needs to be held accountable. He signed in. He missed way more than he
9 signed in, and that's why he's being penalized. And you need to hold him
10 accountable for his failure to comply with the registration requirements that he
11 knew that he had." (p. 119-120 Trial Transcript September 12th, 2007).

12 11. The State made no such argument during Mr. Durrett's first trial (Attached as
13 Appendix B).

14 12. On September 12th, 2007, the jury convicted Mr. Durrett of both counts of failing to
15 register.

16 13. On September 12th, 2007, Mr. Durrett filed a motion to dismiss based, in part, on an
17 violation of the prohibition against Double Jeopardy.

18 14. On October 3rd, 2007, Mr. Durrett moved, apparently *pro se*, for a new trial and arrest
19 of judgment and for an order extending time.

20 15. A hearing was held on November 14th, 2007, at which Mr. Durrett's motions were
21 addressed; however, a review of the transcript of that hearing reveals no discussion of
22 the double jeopardy issue that ultimately led to this case being remanded to the trial
23 court.

24 16. On appeal, Mr. Durrett argued that the addition of the second charge of Failing to
25 Register as a Sex Offender violated the principle against Double Jeopardy because the
26 two period of times alleged in the two counts actually constituted a single ongoing
27 crime that could not be divided into separate time period to support separate charges.
28

- 1 17. Mr. Durrett did not seek and the court of appeal did not address the question of
2 whether Mr. Durrett should be granted a new trial as a result of this alleged
3 constitutional violation.
- 4 18. The Court of Appeals agreed with Mr. Durrett, holding that, under the relevant
5 statute, "the punishable offense would be a course of conduct—the failure to comply
6 with the ongoing duty to report— rather than each separate failure to report," and that
7 because Mr. Durrett's "failure to report weekly began on November 6th, 2006, and
8 ended on January 22nd, 2007," he could be charged with but one count.
- 9 19. The case was then remanded to the Superior Court for resentencing on a single count
10 of Failure to Register.
- 11 20. Resentencing was initially scheduled for November 6th, 2009, but Mr. Durrett was not
12 present and a Bench Warrant was issued.
- 13 21. On August 16th, 2011, Mr. Durrett was booked on the warrant.
- 14 22. On September 14th, 2011 current counsel was assigned to represent Mr. Durrett.
- 15 23. Shortly after being assigned, current counsel, in anticipation of making a motion for a
16 new trial, began seeking a copy of the trial transcripts from the Court of Appeals in
17 this case. Because the materials had been archived by the Court of Appeals, defense
18 was not able to obtain the trial transcripts until November 7th, 2011.
- 19 24. On September 27th, 2011, Counsel appeared with Mr. Durrett for resentencing and
20 requested a continuance to confer with Mr. Durrett in greater detail about the
21 possibility of the present motion; sentencing was rescheduled to October 21st, 2011.
- 22 25. On October 21st, 2011, counsel again appeared with Mr. Durrett and requested a
23 continuance so that counsel could obtain the trial transcripts in order to prepare the
24 present motion; that motion was denied and Mr. Durrett was sentenced.
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ARGUMENT IN SUPPORT OF MOTION

1
2
3 Division One of the Court of Appeals held that Mr. Durrett's right against double
4 jeopardy was violated when he was prosecuted for two counts of Failing to Register as a Sex
5 Offender. As a result, the appellate court ordered that one count be vacated. A review of the
6 pleadings and the appellate court decision reveals that neither the Defendant nor the State
7 addressed the question of whether the violation of double jeopardy prejudiced Mr. Durrett's right
8 to a fair trial on the remaining count. Because the addition of the second count created undue
9 prejudice to Mr. Durrett's right to a fair trial, he should be granted a new trial on one count of
10 Failing to Register. Criminal Rule for Superior Court 7.5(a)(6) and (8) provide that:

- 11 (a) The court ... may grant a new trial for any one of the following causes when it
12 affirmatively appears that a substantial right of the defendant was materially affected:
13 ... (6) Error of law occurring at the trial and objected to at the time by the defendant;
... (8) that substantial justice has not been done.

14 Although there were several times during Mr. Durrett's second trial that the issue of double
15 jeopardy appears to have been discussed or at least alluded to, it does not appear that the trial
16 court ever heard argument regarding the specific unit of prosecution issue that ultimately lead the
17 court of appeal to vacate one of Mr. Durrett's convictions. Nonetheless, under CrR 7.5(a)(8), the
18 prejudice that accrued to Mr. Durrett's right to a fair trial as a result of being tried on two counts
19 of Failure to Register as a Sex Offender in violation of the principle against Double Jeopardy
20 requires this court to grant Mr. Durrett a new trial on a single count of Failure to Register.

21 Washington courts have long recognized that the joinder of multiple counts into a single
22 trial inherently prejudices a defendant because the mere presence of multiple counts may lead the
23 jury to infer a criminal disposition and return a verdict of guilty based on that "criminal
24 disposition" rather than the facts of a particular case. *State v. Watkins*, 53 Wn. App. 264, 268,
25 766 P.2d 484 (1989). This risk of undue prejudice becomes particularly acute in the context of
26 charges relating to sex offenses. In *State v. Sutherby*, 165 Wn.2d 870, 204 P.3d 916 (2009), the
27 court observed that:

28 Generally, severance of charges is important when there is a risk that the jury will use the
evidence of one crime to infer the defendant's guilty for another crime or to infer a

1 general criminal disposition. The joinder of charges can be particularly prejudicial when
2 the alleged crimes are sexual in nature. In sex offenses there is a recognized danger of
3 prejudice to the defendant even if the jury is properly instructed to consider the crimes
separately.

4 Thus, in Mr. Durrett's case, the risk of prejudice was even greater because the multiple offense at
5 issue were sex offenses. Thus, even without considering the evidence and argument that
6 occurred at Mr. Durrett's second trial, it is clear that Mr. Durrett suffered prejudice from the
7 violation of his right against double jeopardy simply by facing multiple, sex related counts when
8 he should have been charged with but one. This inherent prejudice becomes all the more
9 troubling, however, when considered in the context of the State's arguments to the jury during
10 Mr. Durrett's second trial.

11 In the present case, the prosecutor exacerbated the prejudice inherent in Mr. Durrett's
12 multiple count trial by asserting that Mr. Durrett could have been facing many more than two
13 counts and was, in essence, getting away with uncharged conduct, arguing:

14 But what this instruction I just read you to relates to is this: Remember when we went
15 through the calendars. And let's just take the month of January, for example. You can
16 see that the charging period encompasses four separate weeks plus all of December.
17 So really, what you have is probably - you've got eight weeks in which he didn't report.
18 And technically speaking, each week that you don't come in is a separate offense of
failing to register. That's a violation. So even though you've got eight different times he
19 didn't come in and each one could be its own charge, it's all sort of lumped into one
charge.

20 (p. 96-97 Trial Transcript September 12th, 2007). In arguing that Mr. Durrett was in fact guilty
21 of uncharged conduct and was, effectively, getting a discount by being charged with only two
22 offenses, the State capitalized on the inherent prejudice it had created by bringing multiple counts.
23 As indicated by the Court of Appeals, this argument that Mr. Durrett was subject to multiple
24 counts violated his right against double jeopardy. Significantly, the prosecutor further
25 expounded on this point, arguing in rebuttal:

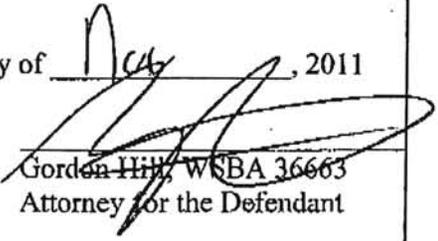
26 It's not like he missed just one week and everybody's jumping on top of him. He missed
27 a lot of weeks, and he needs to be held accountable. He signed in. He missed way more
28 than he signed in, and that's why he's being penalized.

1 (p. 119-120 Trial Transcript September 12th, 2007). The prosecutor's argument in rebuttal, taken
 2 in combination with the closing argument discussed above, clearly communicated to the Jury
 3 that, if Mr. Durrett were guilty of, perhaps, a single count, he would not need to be penalized but,
 4 having committed multiple accounts, he deserved to be convicted. This argument, clearly
 5 targeted at enflaming the passions and prejudice of the jury, further compounded and capitalized
 6 on the prejudice created by the initial double jeopardy violation.

7 In *State v. Boehning*, 127 Wn. App. 511, 111 P.3d 899 (2005), the defendant was charged
 8 with a variety of counts all involving sexual assaults against the same minor. Due to gaps in the
 9 victims testimony, several rape counts were dismissed at halftime. *Id.* at 521. Nonetheless, the
 10 State, during closing, argued that these now uncharged counts were supported by the victim's
 11 pre-trial statements to the prosecutor, essentially asserting that Boehning was getting away with
 12 uncharged crimes. *Id.* at 521-522. The court held that this appeal to the jury to take into
 13 consideration uncharged crimes was misconduct, constituting an "improper[] appeal[] to the
 14 passion and prejudice of the jury and invited the jury to determine guilt based on improper
 15 grounds." *Id.* at 522. The instant case raised nearly identical concerns. The prosecutor, in
 16 essence, argued that Mr. Durrett needed to "be held accountable" for the many potential counts
 17 of Failing to Register with which he could have been charged.

18 The prejudice that inhered because of the violation of Mr. Durrett's right against double
 19 jeopardy is made clear by the fact that his first trial, in which he was charged with only one count
 20 and where the prosecutor did not argue that Mr. Durrett was effectively getting away with
 21 uncharged conduct, ended in a mistrial whereas he was found guilty of both counts in his second
 22 trial. The defense therefore respectfully requests that the court grant Mr. Durrett's motion for a
 23 new trial.

24
 25 Dated this 9th day of Nov, 2011

26
 27 
 28 Gordon Hill, WSBA 36663
 Attorney for the Defendant

1 WITH ANYBODY. SO YOU CAN GO ABOUT YOUR BUSINESS,
2 BUT LEAVE A CONTACT NUMBER, IF YOU WOULD, JUST SO
3 WE KNOW HOW TO GET HOLD OF YOU. BUT OTHER THAN
4 THAT, YOU WILL BE FREE TO GO AS SOON AS YOU GATHER
5 YOUR THINGS. AND THANK YOU VERY MUCH FOR YOUR
6 SERVICE. WE VERY MUCH APPRECIATE IT.

7 ALL RIGHT. FOR THE REST OF YOU, GO BACK TO
8 THE JURY ROOM. THE EXHIBITS WILL BE BROUGHT BACK,
9 ALONG WITH COPIES OF THE INSTRUCTIONS. THE
10 BAILIFF WILL TELL YOU WHEN TO START TALKING ABOUT
11 THE CASE. YOU CAN'T TALK ABOUT IT UNTIL YOU HAVE
12 EVERYTHING BACK THERE.

13 AND IT WAS IN THE INSTRUCTIONS. I WILL
14 REPEAT IT BECAUSE THIS COMES UP ALL OF THE TIME
15 WITH JURORS. ONLY ADMITTED EXHIBITS WILL COME
16 BACK. SO DON'T SEND ME OUT A NOTE SAYING, OH, ONE
17 OF THE WITNESSES TALKED ABOUT THUS AND SUCH, WHERE
18 IS IT? WE WANT TO SEE IT. YOU WILL GET
19 EVERYTHING YOU'RE SUPPOSED TO GET. SO I PROMISE
20 YOU THAT.

21 OKAY. SO WITH THAT, GO ON BACK. YOU CAN
22 TALK TO THE BAILIFF ABOUT SCHEDULING ISSUES.

23 (IN OPEN COURT/JURY NOT PRESENT.)

24 THE COURT: JUROR NUMBER 12 HAD SAID TO THE
25 BAILIFF DURING JURY SELECTION THAT HE THOUGHT HE

1 MIGHT HAVE A CONFLICT OF INTEREST. AND IT TURNED
2 OUT THAT HIS PURPORTED POSSIBLE CONFLICT OF
3 INTEREST WAS THAT HE APPARENTLY -- ALTHOUGH HE
4 NEVER SPECIFICALLY SAID HE WORKED ON THE SALARY
5 COMMISSION, BUT HE SAID HE WAS INVOLVED IN
6 DETERMINING WHAT THE JUDGES' SALARIES SHOULD BE,
7 AND THAT COMES FROM THE STATE SALARY COMMISSION,
8 SO I DON'T KNOW IF HE WAS A MEMBER OR NOT. BUT
9 ANYWAY, IT DIDN'T SEEM TO ME THAT THAT WAS AN
10 ISSUE. IT MIGHT BE IF HE WERE A DEFENDANT OR A
11 WITNESS, BUT NOT IF HE'S A JUROR. AND NEITHER
12 COUNSEL SEEMED TO BE CONCERNED ABOUT THAT.

13 MR. MOHANDESON: THE OTHER THING, JUST FOR
14 THE RECORD, IS THAT WE SAID IT BUT WE WEREN'T
15 RECORDING IT. DEFENSE COUNSEL TOOK NO EXCEPTIONS
16 TO THE JURY INSTRUCTIONS, OTHER THAN THE
17 TO-CONVICTS AND "THE CRIME OF FAILURE TO REGISTER
18 IS COMMITTED WHEN" INSTRUCTION.

19 MR. STODDARD: THE INSTRUCTIONS I SUBMITTED.

20 THE COURT: RIGHT.

21 MR. MOHANDESON: THAT WAS IT.

22 THE COURT: OKAY.

23 MR. MOHANDESON: ALL RIGHT. THANK, YOU YOUR
24 HONOR.

25 THE COURT: ALL RIGHT. THANK YOU.

1 HASN'T COME CLOSE TO PROVING THAT DONNIE DURRETT
2 IS GUILTY OF THESE TWO CHARGES. SPECIFICALLY,
3 THEY HAVE TO PROVE THAT DURING A PERIOD OF TIME,
4 ROUGHLY FROM NOVEMBER AND DECEMBER OF 2006, THAT
5 DONNIE, HAVING AN OBLIGATION TO REGISTER AND
6 HAVING AN OBLIGATION TO REPORT, FAILED TO COMPLY
7 WITH THE LAW. SPECIFICALLY, THAT HE DIDN'T REPORT
8 IN PERSON TO THE KING COUNTY SHERIFF'S OFFICE.
9 AND WHAT EVIDENCE HAVE THEY PRODUCED?

10 THEY'VE PRODUCED LOGS. AND TO PUT IT
11 FRANKLY, THEY'VE PRODUCED A DOCUMENT THAT DONNIE
12 DIDN'T NEED TO SIGN, AND ON SOME DAYS HE SIGNED
13 THAT DOCUMENT AND ON OTHER DAYS HE DIDN'T SIGN
14 THAT DOCUMENT. BUT IT'S NOT A REQUIREMENT UNDER
15 THE LAW THAT HE SIGN THAT DOCUMENT. AND THEY'RE
16 USING THAT AS EVIDENCE THAT HE DIDN'T REPORT.
17 THAT'S NOT EVIDENCE THAT HE DIDN'T REPORT.

18 YOU KNOW, WE'VE ALL HEARD THAT TERM YOU CAN'T
19 PROVE A NEGATIVE, AND IT'S TRUE. IT IS NEARLY
20 IMPOSSIBLE TO PROVE THAT NOTHING HAPPENED. BUT
21 THAT'S THE POSITION THAT THE STATE HAS PUT ITSELF
22 IN.

23 THE LAW SAYS A COUPLE OF THINGS. IT SAYS,
24 ONE, THAT DONNIE IS INNOCENT. NOT 60/40 INNOCENT.
25 NOT 50/50 INNOCENT. HE'S 100 PERCENT INNOCENT.

1 AND THAT INNOCENCE REMAINS WITH HIM UNTIL THE
2 INNOCENCE IS OVERCOME BY EVIDENCE.

3 AND WHO HAS THE BURDEN OF PROOF? THE STATE
4 OF WASHINGTON HAS THE BURDEN OF PROOF. THEY HAVE
5 TO PROVE THAT HE DIDN'T APPEAR IN PERSON. THAT IS
6 ALL THAT IS REQUIRED.

7 NOW, WE'VE LEARNED A LOT OF THINGS ABOUT THIS
8 PARTICULAR CASE, AND I'LL TALK ABOUT THEM IN A FEW
9 MINUTES. BUT BEFORE I GET INTO THAT, I JUST
10 WANTED TO MAKE A FEW THINGS CLEAR.

11 YOU'RE PROBABLY ASKING YOURSELF, WELL, IF HE
12 DID APPEAR, WHY DIDN'T HE TAKE THE STAND AND SAY
13 HE APPEARED? IF HE WAS THERE, AS REQUIRED BY THE
14 LAW, WHY DIDN'T HE PROVIDE US WITH THE EVIDENCE
15 THAT HE WAS THERE? AND THERE'S TWO ANSWERS TO
16 THAT.

17 ONE, HE DOESN'T HAVE TO. YOU HAVE A JURY
18 INSTRUCTION THAT SAYS DONNIE DOESN'T NEED TO TAKE
19 THE STAND AND PROVE ANYTHING. HE ALSO DOESN'T
20 HAVE TO BECAUSE THE STATE HASN'T MET ITS CASE.
21 AGAIN, ALL THEY'VE SHOWN IS THAT HE DIDN'T SIGN A
22 REGISTRY OR A SIGN-IN SHEET CONSISTENTLY.

23 THEY WANT TO MAKE THIS ASSUMPTION AND CONVICT
24 DONNIE ON SIMPLY ASSUMPTIONS. OH, HE SIGNED THESE
25 LOGS SOMETIMES, SO THAT MEANS IF HE DIDN'T SIGN

1 THE LOG, HE WASN'T THERE. AND THAT'S AN
2 ASSUMPTION THE STATE WANTS YOU TO MAKE. BUT
3 PEOPLE AREN'T FOUND GUILTY IN THIS STATE BASED ON
4 ASSUMPTIONS, OR EVIDENCE OF ASSUMPTIONS, OR PROOF
5 BY THE STANDARD OF AN ASSUMPTION. IT'S PROOF
6 BEYOND A REASONABLE DOUBT.

7 YOU MIGHT NOT LIKE THE FACT THAT THE BURDEN
8 IS ALL ON THE STATE, BUT IT IS. AND YOU MIGHT NOT
9 LIKE THE FACT THAT THE STATE HAS TO PROVE A
10 NEGATIVE, AND HOW ARE THEY EVER GOING TO PROVE A
11 NEGATIVE, AND THAT IT'S NOT FAIR TO THE STATE. IT
12 IS FAIR TO THE STATE. THE LEGISLATURE WROTE THE
13 LAW. THEY DEFINED WHAT THE REPORTING REQUIREMENT
14 IS. THEY DEFINED WHAT THE REGISTRATION
15 REQUIREMENT IS. AND THEY GAVE THE BURDEN TO THE
16 STATE OF WASHINGTON IF THEY'RE EVER GOING TO TRY
17 TO CONVICT A PERSON OF THIS. THEY PUT IT ON THEIR
18 SHOULDERS, AND THEY'VE ONLY OFFERED YOU EVIDENCE
19 THAT, AGAIN, ON SOME DAYS HE SIGNED A DOCUMENT HE
20 DIDN'T HAVE TO, AND ON OTHER DAYS HE DIDN'T SIGN A
1 DOCUMENT THAT HE DIDN'T HAVE TO.

2 WHAT DO WE KNOW AND WHAT DO WE KNOW FROM THE
3 WITNESSES? THE FIRST WITNESS IN THIS CASE WAS
4 TINA KELLER. SHE BASICALLY WORKS FOR THE
5 SHERIFF'S OFFICE, IS THE CUSTODIAN OF ALL OF THESE

1 RECORDS. AND WHAT DID WE LEARN FROM HER? WE
2 LEARNED WITHOUT A DOUBT THAT DONNIE DURRETT WAS
3 PROPERLY REGISTERED DURING THE PERIOD OF TIME IN
4 QUESTION. REGARDLESS OF WHAT MR. LEWIS THOUGHT --
5 I'LL DEAL WITH HIS TESTIMONY IN A FEW MINUTES --
6 HE WAS WRONG. TINA KELLER WAS ACCURATE. SHE WAS
7 CORRECT. HE WAS PROPERLY REGISTERED.

8 NEXT THERE IS A DIFFERENCE BETWEEN
9 REGISTRATION AND REPORTING. AND ONCE AGAIN,
10 DURING THE ENTIRE PERIOD OF TIME THAT'S BEING
11 CHARGED BY THE STATE HERE, DONNIE WAS PROPERLY
12 REGISTERED.

13 WE LEARNED THAT ERRORS ARE MADE IN THEIR
14 SYSTEM. THERE ARE SIGN-IN SHEETS FOR PEOPLE THAT
15 NEED TO REPORT WEEKLY, BUT THERE ARE ALSO SIGN-IN
16 SHEETS THAT HAVE DONNIE DURRETT'S NAME ON IT FOR
17 THE SAME PERIOD OF TIME, AND IT'S A 90-DAY SIGN-IN
18 SHEET. THE SHERIFF'S OFFICE MAKES MISTAKES.

19 WHAT ELSE DO WE KNOW? WELL, WE KNOW FROM
20 MS. KELLER THAT SHE DOESN'T REALLY TRAIN THESE
21 PEOPLE. WE ALSO KNOW FROM MS. KELLER THAT THERE
22 IS NO DEFINITION OF "REPORT."

23 YOU KNOW, THROUGH ALL OF THE WITNESSES AND
24 MAYBE, TO SOME DEGREE, THE ATTORNEYS SLOP OVER
25 THESE TERMS LIKE "REGISTRATION" AND "REPORTING"

1 AND "SIGN-IN." THOSE ARE THREE DISTINCT THINGS.
2 AND THE SHERIFF'S OFFICE HAS NEVER DEFINED WHAT
3 REPORTING IS. THERE IS NOT ONE DOCUMENT PRESENTED
4 TO YOU THAT SAYS REPORTING MEANS THAT YOU NEED TO
5 COME IN AND SIGN IN.

6 MS. KELLER NEVER TOLD THAT TO MR. DURRETT.
7 DETECTIVE GORDON NEVER TOLD THAT TO MR. DURRETT.
8 AND AGAIN, WE'LL DEAL WITH MR. LEWIS'S TESTIMONY,
9 OR WHAT AMOUNTS TO TESTIMONY, IN A FEW MINUTES.

10 BUT NOT ONLY IS THERE NO DOCUMENT THAT
11 DEFINES WHAT REPORTING IS, THERE'S NOT EVEN A
12 WITNESS THAT SAYS, "I SPECIFICALLY EXPLAINED TO
13 HIM THAT REPORTING MEANS SUCH-AND-SUCH."

14 WHAT IS MR. DURRETT TOLD, AND CONSISTENTLY
15 TOLD? HE'S TOLD WHAT THE LAW SAYS. AND THE LAW
16 SAYS HE ONLY NEEDS TO APPEAR IN PERSON.

17 THE STATE'S MADE A POINT THAT ON STATE'S
18 EXHIBIT 5 AT THE VERY, VERY BOTTOM -- AND YOU WILL
19 HAVE THE OPPORTUNITY TO LOOK AT THIS EXHIBIT -- "I
20 UNDERSTAND STAND WHILE I'M HOMELESS I MUST SIGN IN
21 WEEKLY WITH THE KING COUNTY SHERIFF'S OFFICE."

22 WELL, THAT'S INTERESTING INFORMATION. DOES IT SAY
23 "YOUR REPORTING REQUIREMENT REQUIRES THAT YOU SIGN
24 IN?" DOES IT SAY "IF YOU DON'T SIGN IN, YOU WILL
25 OFFICIALLY NOT BE REPORTING?" IT DOESN'T SAY

1 THAT. IT ONLY SAYS "I UNDERSTAND I MUST SIGN IN."
2 AND WHEN IS IT IS DATED? IT'S DATED APRIL 9TH,
3 2004, OVER THREE YEARS AGO.

4 DEFENSE EXHIBIT 8, GIVEN TO MR. DURRETT,
5 SIGNED BY MR. DURRETT ON SEPTEMBER 27TH OF 2004,
6 AFTER THAT DATE. GIVES HIM ALL HIS REQUIREMENTS
7 NOT ONLY OF REGISTRATION, BUT OF REPORTING. AND
8 YOU CAN LOOK AT THIS DOCUMENT BECAUSE ON PAGE
9 THREE, UNDERLINED, IT TELLS HIM EXACTLY WHAT HE
10 NEEDS TO DO. AND NOW MR. DURRETT IS NOT TOLD HE
11 NEEDS TO SIGN IN. MR. DURRETT IS TOLD -- AND HE
12 SIGNED THIS DOCUMENT -- THAT HE ONLY NEEDS TO
13 REPORT IN PERSON. SO HE MAY HAVE SIGNED SOMETHING
14 IN APRIL OF 2004. NOW HE'S TOLD HE ONLY NEEDS TO
15 REPORT IN PERSON.

16 HERE'S A DOCUMENT, STATE'S EXHIBIT 2. IT'S A
17 STIPULATION OF THE PARTIES. YOU'LL HAVE AN
18 OPPORTUNITY LOOK IT OVER: THIS DOCUMENT IS ALSO
19 IN SEPTEMBER OF 2004. AND WHAT DOES IT TELL
20 DONNIE DURRETT? DOES IT TELL HIM HE NEEDS TO SIGN
21 IN? NO. THAT HE ONLY NEEDS TO REPORT.

22 STATE'S EXHIBIT 3 FOR APRIL 29TH, 2005, AGAIN
23 WELL AFTER THE DATE OF THAT ORIGINAL LETTER. IS
24 DONNIE TOLD HE NEEDS TO SIGN IN? NO. IS DONNIE
25 TOLD THAT IT ONLY COUNTS AS REPORTING IF YOU SIGN

1 IN? NO. HE'S TOLD HE ONLY NEEDS TO APPEAR IN
2 PERSON. WHAT IS HE TOLD? HE'S TOLD THE LAW. AND
3 DONNIE COMPLIES WITH THE LAW.

4 DOES HE SIGN IN? FROM THE EVIDENCE,
5 SOMETIMES HE DOES AND SOMETIMES HE DOESN'T. BUT
6 THAT'S DIFFERENT THAN NOT COMPLYING WITH THE LAW.
7 SIGNING IN IS A POLICY. IT'S A PROCEDURE. IN
8 FACT, I'M NOT EVEN SURE IT RISES TO THAT LEVEL,
9 BECAUSE YOU WOULD THINK THAT IF THAT REALLY WAS
10 THE SHERIFF'S OFFICE POLICY, YOU'VE GOT TO SIGN IN
11 OR IT DOESN'T COUNT AS REPORTING, THEY WOULD HAVE
12 SOME DOCUMENT TO PUT A PERSON ON NOTICE THAT THIS
13 IS WHAT REPORTING MEANS, BUT THEY DON'T HAVE THAT.

14 YOU'D THINK -- AND HERE'S A PICTURE OF THE
15 ARE CUSTOMER SERVICE COUNTER. YOU'D THINK THAT IF
16 REPORTING MEANT SIGNING IN, THEY'D HAVE A SIGN UP
17 HERE THAT SAYS REPORTING MEANS SIGNING IN, BUT
18 THEY DON'T. WHAT THEY HAVE IS STATE'S EXHIBIT 9,
19 WHICH IS THE LATEST, GREATEST VERSION OF THIS,
20 AVAILABLE AT THE CUSTOMER SERVICE COUNTER, TELLING
21 INDIVIDUALS THAT ARE REQUIRED TO REGISTER WHAT
2 THEY HAVE TO DO. AND DOES THIS LATEST, GREATEST
3 VERSION TELL A PERSON HE HAS TO SIGN IN? NO. IT
4 ONLY TELLS HIM HE HAS TO REPORT.

5 THE ONLY PERSON WHO SOMEHOW PROVIDED EVIDENCE

1 TO YOU THAT, OH, I TOLD DONNIE THAT HE NEEDED TO
2 SIGN IN, IS MR. LEWIS. AND LET'S TALK ABOUT
3 MR. LEWIS'S TESTIMONY.

4 MR. LEWIS WAS CLEAR. DIDN'T EVEN KNOW WHAT
5 THE LAW WAS. WHEN HE SPOKE -- AND WE KNOW THERE'S
6 DISTINCTIONS AGAINST REGISTRATION, REPORTING AND
7 THEN WHATEVER THE SIGN-IN REQUIREMENT IS. WHEN
8 MR. LEWIS TESTIFIED, HE SLOPPED OVER ALL OF THAT
9 STUFF. HE DOESN'T KNOW WHAT THE LAW IS.

10 AND WHEN HE WAS GIVEN COPIES OF THESE
11 DOCUMENTS, WHICH HE SAYS HE'S FAMILIAR WITH, IF
12 YOU COULD RECALL -- AND OF COURSE, THE MANNERISMS
13 THAT PEOPLE USE WHEN THEY TESTIFY IS SOMETHING
14 THAT JURY'S SHOULD CONSIDER -- HE WOULDN'T EVEN
15 TAKE THESE DOCUMENTS. HE'S BEING HANDED THEM AND
16 HE DOESN'T EVEN GRAB AHOLD OF THEM? WHY? BECAUSE
17 HE KNOWS THAT WHAT HE JUST TOLD YOU ABOUT, OH,
18 EXPLAINING TO MR. DURRETT HIS REQUIREMENTS AND,
19 OH, REPORTING HAS TO BE SIGNING IN, IS REALLY NOT
20 TRUE. AND HE DOESN'T WANT TO GRAB THE DOCUMENTS
21 THAT CONTAINS THE LAW AND BASICALLY BE SHOWN TO
22 NOT KNOW THE LAW.

23 IN FACT, THOUGH HE SAID HE KNEW IT, HE LOOKED
24 AT THESE DOCUMENTS LIKE HE'S NEVER SEEN THEM
25 BEFORE IN HIS LIFE AND NEEDED TIME TO LOOK AT THE

1 DOCUMENT AND REVIEW IT.

2 HE'S THE INDIVIDUAL THAT THE STATE IS RELYING
3 UPON TO HAVE COMMUNICATED TO MR. DURRETT THAT HE
4 HAS TO SIGN IN OR SIGNING IN DOESN'T COUNT? THAT
5 INDIVIDUAL DOESN'T EVEN KNOW WHAT THE LAW IS. AND
6 WHEN HE TRIES TO SPEAK ABOUT IT, HE SLOPS ALL OVER
7 THINGS LIKE REGISTRATION AND REPORTING.

8 AND THEN FINALLY -- AND THAT'S SUPPOSEDLY --
9 MR. DURRETT'S CCO, WHEN ASKED THE VERY FINAL
10 QUESTION, DURING THIS PERIOD OF TIME WAS DONNIE
11 PROPERLY REGISTERED WITH THE SHERIFF'S OFFICE?
12 AND WE ALREADY KNEW THE ANSWER FROM MS. KELLER,
13 WHO KEEPS THE RECORDS, BECAUSE SHE TOLD US, IN NO
14 UNCERTAIN TERMS, YEAH, HE WAS PROPERLY REGISTERED.
15 HIS OWN CCO GOES, "NO, I DON'T THINK HE WAS."
16 MR. LEWIS'S TESTIMONY IS NOT RELIABLE.

17 IF YOU ARE GOING TO MAKE SIGNING IN THE ONLY
18 DEFINITION OF REPORTING THAT MATTERS, DON'T YOU
19 THINK YOU'D HAVE SOME DOCUMENT TO VERIFY THAT?
20 AND DON'T YOU THINK YOU'D STOP GIVING PEOPLE
21 DOCUMENTS TO SIGN THAT SAY JUST THE OPPOSITE, THAT
22 THERE'S NO REQUIREMENT TO SIGN IN, ONLY TO REPORT
23 IN PERSON?

24 WE HEARD FROM MR. GORDON. MR. GORDON WAS THE
25 DETECTIVE. AND HE GOES -- HE DOESN'T KNOW.

1 MR. DURRETT. HAS NEVER TALKED TO MR. DURRETT AND
2 NEVER TOLD HIM THE REQUIREMENT. WHEN WE TALKED TO
3 MS. KELLER AND I THINK MS. MOORE AT THE VERY END,
4 WHAT IS THE PROCEDURES IF SOMEBODY COMES IN AND
5 DOESN'T WANT TO SIGN IT? THEY DON'T KNOW. WHEN
6 THAT QUESTION WAS ASKED OF MS. KELLER, SHE DOESN'T
7 KNOW WHAT HAPPENS. SHE SAID, "WELL, I GUESS THE
8 PERSON WOULD JUST LEAVE." YEAH. THE PERSON WOULD
9 JUST LEAVE AND NOT SIGN. SO WHAT HAPPENS? DOES
10 THAT MEAN THEY'RE NOT THERE? IS THAT PROOF THAT
11 THEY'RE NOT THERE? THE NAME THAT DOESN'T APPEAR
12 ON THAT, IS THAT NOW PROOF HE NEVER WAS THERE?

13 YOU KNOW, THERE'S CERTAIN STORES YOU GO TO
14 AND BUY SOMETHING AND, FOR SOME REASON, YOU'RE AT
15 THE CASH REGISTER AND THEY ASK FOR YOUR ZIP CODE.
16 YOU'RE AT THAT STORE WHETHER YOU BOTHER TO GIVE
17 THAT ZIP CODE TO A PERSON OR NOT. YOU GO TO THE
18 DMV AND YOU GET A LITTLE "NOW SERVING" STICKER.
19 YOU WAIT AROUND FOR AN HOUR AND THEN, WHETHER FROM
20 DISGUST OR WHETHER JUST FROM SOMETHING ELSE THAT
21 HAS TO BE DONE, YOU LEAVE. DOES THAT MEAN YOU
22 NEVER WENT TO THE DMV? THE FACT THAT YOU DIDN'T
23 SIGN SOMETHING YOU DIDN'T HAVE TO SIGN UNDER THE
24 LAW, AGAIN, IS NO PROOF. THE STATE WANTS YOU TO
25 MAKE ALL OF THESE ASSUMPTIONS.

1 COUPLE OF OTHER VERY QUICK THINGS, THEN I'LL
2 FINISH UP HERE.

3 WE ALSO KNOW FROM MS. KELLER THAT THE
4 SHERIFF'S OFFICE DOESN'T FOLLOW THE LAW. NOT ONLY
5 DOES THE SHERIFF'S OFFICE NOT MAKE IT CLEAR TO
6 INDIVIDUALS WHAT IT THINKS REPORTING IS, BUT THE
7 LAW SAYS THEY'RE SUPPOSED TO PICK A SPECIFIC DAY
8 WHERE A PERSON IS SUPPOSED TO COME IN TO REPORT.
9 AND MS. KELLER SAYS "NAH, WE DON'T DO THAT." SHE
10 THEN SAYS, "OH, MY GOSH. SIGNING IN IS THE ONLY
11 WAY TO DO IT BECAUSE THERE'S 380 OF THEM AND WE
12 ONLY HAVE A STAFF OF TEN." APPARENTLY THAT WORKED
13 OUT TO LESS THAN ONE AN HOUR. OH, MY GOSH. HOW
14 CAN WE CONTROL THAT VOLUME? WELL, THE LAW SAYS
15 TWO THINGS. ONE, THEY OUGHT TO BE GIVEN A
16 SPECIFIC DATE. AND THOUGH THE LAW DOESN'T REQUIRE
17 THE SIGN-IN, IT SAYS YOU CAN ASK AN INDIVIDUAL FOR
18 WHERE THEY'VE BEEN STAYING FOR THE PAST SEVEN
19 DAYS. DOES THE SHERIFF'S OFFICE DO THAT? NO.
20 THE SHERIFF'S OFFICE DOESN'T DO ANYTHING. THEY
21 DON'T PROVIDE NOTICE. THEY DON'T MAKE IT CLEAR.
22 THEY DON'T FOLLOW THE LAW. BUT THEY DO WANT TO
23 ASSIST IN PUTTING PEOPLE ON TRIAL. BUT TRIAL
24 REQUIRES EVIDENCE, AND TRIAL REQUIRES PROOF.

25 THERE'S AN ANALOGY TO THE SHERIFF'S OFFICE, I

1 GUESS, NOT FOLLOWING IT'S OWN LAW. IT WOULD BE
2 LIKE A LAW THAT SAID SPEEDING IS A CRIME. AND THE
3 NEXT PART OF THE LAW SAYS "AND THE DEPARTMENT OF
4 TRANSPORTATION SHALL POST THE SPEED LIMIT ON ANY
5 ROADWAY," AND THE DEPARTMENT OF TRANSPORTATION
6 NEVER DOES. CAN YOU CONVICT A PERSON? SHOULD A
7 PERSON BE CONVICTED OF SPEEDING IF THE DEPARTMENT
8 OF TRANSPORTATION NEVER POSTS THE SPEED LIMIT? IF
9 THE SHERIFF'S OFFICE IS REQUIRED TO GIVE A
10 SPECIFIC DAY AND NEVER DOES, IF THE SHERIFF'S
11 OFFICE DOESN'T FOLLOW THE LAW, SHOULD THOSE LAWS
12 BE ENFORCED AGAINST AN INDIVIDUAL?

13 ALL THE STATE HAS DONE IS PROVIDE EVIDENCE
14 THAT HE DID OR DID NOT SIGN CERTAIN DOCUMENTS.
15 BUT THEY HAVE NOT PROVEN, ESPECIALLY PROOF BEYOND
16 A REASONABLE DOUBT, THAT MR. DURRETT DID NOT
17 REPORT IN PERSON, AS REQUIRED BY THE LAW, DURING
18 THIS HUGE TIMEFRAME THAT THE STATE HAS LAID OUT IN
19 BOTH COUNTS ONE AND TWO.

20 ONE OF YOUR JURY INSTRUCTIONS IS THE
21 INSTRUCTION ABOUT DIRECT AND CIRCUMSTANTIAL
22 EVIDENCE. AND THIS CASE IS ALMOST ENTIRELY
23 CIRCUMSTANTIAL.

24 WE DON'T KNOW WHAT HE DID ON ALL THOSE WEEKS.
25 BASICALLY COULD HAVE COME IN. MAYBE DIDN'T COME

1 IN. ALL WE KIND OF KNOW IS THAT SOME DAYS HE
2 SIGNED AND SOME DAYS HE DIDN'T.

3 THE STATE'S TRYING TO MAKE A CIRCUMSTANTIAL
4 CASE. AND THE LAW SAYS THE COURT DRAWS NO
5 DISTINCTION -- THE LAW DRAWS NO DISTINCTION
6 BETWEEN DIRECT AND CIRCUMSTANTIAL EVIDENCE. BUT
7 THAT DOESN'T MEAN THAT YOU AS JURORS SHOULDN'T
8 DRAW A DISTINCTION.

9 IT'S CIRCUMSTANTIAL THAT LEE HARVEY OSWALD
10 WAS IN DALLAS IN THE EARLY 60'S. THAT'S
11 CIRCUMSTANTIAL EVIDENCE. DIRECT EVIDENCE WOULD BE
12 SOMEBODY SEEING HIM SHOOT A RIFLE OUT OF THE
13 SCHOOL BOOK DEPOSITORY. THERE'S A DISTINCTION
14 THAT YOU CAN MAKE BETWEEN DIRECT AND
15 CIRCUMSTANTIAL.

16 IF YOU'RE GOING TO CONVICT A PERSON, THEN
17 REQUIRE THE STATE TO PROVE IT. NOT JUST SAY, OH,
18 NUDGE, NUDGE, WINK, WINK, HE DIDN'T SIGN, SO HE
19 MUST BE GUILTY. HE DIDN'T SIGN, SO THAT'S GOOD
20 ENOUGH PROOF, ISN'T IT? IT'S NOT.

21 HOLD THE STATE TO ITS BURDEN OF PROOF. AND
22 IF YOU DO, THE STATE HASN'T MET IT'S BURDEN. AND
23 IF THE STATE HASN'T MET IT'S BURDEN, LADIES AND
24 GENTLEMEN, THEN WHERE DOES THAT LEAVE US? IT
25 LEAVES US WHERE WE STARTED. DONNIE IS INNOCENT.

APPENDIX B

1 And Kenya has copies of the jury instructions
2 that she will be handing out to you momentarily. These
3 instructions are for you to keep. You can certainly write
4 on them, do whatever you want to with them while you are
5 working through the deliberative process.

6 The reason why we go through them and I provide
7 you a copy of them before closing argument is that counsel
8 will oftentimes make reference to the instructions during
9 their argument and it's a lot easier if you can actually
10 track the arguments while you're reading the instructions.

11 Kenya, can you please hand out the jury
12 instructions.

13 And as soon as we conclude this, you'll be
14 hearing closing argument from Counsel.

15 (WHEREUPON, the Court instructed the jury on
16 the law to be applied in the case.)

17 THE COURT: Ladies and gentlemen, that concludes
18 the reading of the jury instructions. If you'll please
19 give your attention to Mr. Bergstrom, who will present
20 closing argument on behalf of the State.

21 MR. BERGSTROM: Good afternoon.

22 I'd like to have you begin by turning to
23 Instruction Number Seven of your jury instructions. This
24 is the instruction that tells you what the State is
25 required to prove before you convict the defendant of this

1 particular crime. And if you look down to the tenth line
2 of the instruction, just count down ten lines and go to the
3 far left-hand side, you'll see the word knowingly. Circle
4 that word.

5 That is what this case is about. The State has
6 to prove three different elements, but this case is really
7 about that word. And that word is knowingly. Because
8 everything else on this page, on page seven, everything is
9 agreed by the parties and evidence has supported everything
10 else. And my guess is that when Mr. Stoddard talks with
11 you, he's not going to have any issue with anything else on
12 this instruction other than the word knowingly.

13 And let me just walk through this very carefully
14 so you'll see my logic here. In element number one, it
15 says that I have to prove that during a period of time
16 intervening between December 6th, 2006, and January 23rd,
17 2007, the defendant was required to register as a sex
18 offender with the King County Sheriff.

19 You will recall the Judge read you this thing
20 called a stipulation this morning. And to remind you what
21 the Judge read you, I'm going to read it to you again,
22 because it satisfies element number one. What the judge
23 read you was, quote, the parties in this case, the State of
24 Washington and Donnie Durrett, have agreed that you may
25 consider the following statement as an agreed fact for

1 purposes of your decision in this case. Here's the agreed
 2 fact. During the period of time intervening between
 3 December 6th, 2006, through January 23rd, 2007, the
 4 defendant was required to register as a sex offender with
 5 the King County Sheriff. So there's an agreement as to
 6 element number one. Everyone agrees that that's been
 7 fulfilled.

8 If you look down to number three, it says the
 9 acts or failure to act occurred in the State of Washington.
 10 All the evidence that was talked about, the King County
 11 Courthouse, downstairs, the homeless shelter in Seattle,
 12 everything's happened in the City of Seattle.

13 And then if you look at element number two, we're
 14 just going to read it together. It says that during the
 15 period of time intervening between December 6th, 2006,
 16 through January 23, 2007, the defendant, and then skip over
 17 the word knowingly, failed to comply with the following
 18 requirements of sex offender registration. That he,
 19 lacking a fixed residence, must report weekly and in person
 20 to the sheriff of the county where he is registered.

21 So what's the evidence that he didn't report
 22 weekly as required? All these pages that you looked at
 23 that have a line for him to sign in every week when he's
 24 supposed to. So we know that he was supposed to check in
 25 every week but he didn't. So that's not in dispute at all

1 either.

2 We know, in addition, that on several occasions,
3 three different occasions, he was advised in writing that
4 he had to register when he was homeless. And, in fact, we
5 also know that he did that on certain occasions. So we
6 know all of those things.

7 What this case is about is about one word,
8 knowingly. And you've heard two different versions of the
9 evidence on that.

10 Mr. Durrett has testified as follows. He said
11 that the last time he came in to the King County Sheriff's
12 Office to register was November 29th, 2006. And the forms
13 bear that out. And when he testified, he didn't use the
14 name Vince, but we know that there's an Asian, Filipino man
15 downstairs who works in the courthouse named Vince that
16 works down there.

17 So Mr. Durrett testified that on the 29th, Vince
18 gave him a form which told him 90 days. That's what
19 Mr. Durrett has testified. That's what his testimony is in
20 terms of his defense. He said that on the 29th, he met an
21 Asian, Filipino man downstairs, the Asian, Filipino man
22 gave him a form that looks just like State's Exhibit 16,
23 the standard form, and that that information was conveyed
24 to him. And he thought, I only have to check in once every
25 ninety days.

1 That's his defense. And it's based upon this
2 word knowingly. So his defense is I didn't know any
3 better, they gave me bad advice, don't hold me guilty. So
4 that's really what we need to focus in on, is whether or
5 not that claim by Mr. Durrett is a valid claim, whether
6 it's reasonable.

7 And we've got a lot more than Mr. Durrett's word
8 to assess whether this is as reasonable thing for you to
9 believe or not. We've actually got four different
10 witnesses that we can use to evaluate his testimony up on
11 this board.

12 The first bit of evidence we've got is, guess
13 what, on the 29th of November, Vince's initials aren't on
14 the form. On the 29th of November, the initials are
15 Ms. Moore's initials. So the first problem with his
16 testimony is that in terms of the records of who the
17 defendant met with on the 29th, there's no evidence other
18 than his words. The only actual evidence is it's
19 Ms. Moore's signature next to his check in. And she
20 testified to you that she knows they do not give out these
21 ticklers to people who are homeless who come in to check
22 in. And she testified she certainly wouldn't have done
23 that. Nor would she have orally told someone who is
24 checking in that they need to do it this way.

25 So the first problem with the defendant's

1 testimony is that there's no document supporting the notion
2 that he had any contact with Vince. But there is the
3 initials of Ms. Moore there.

4 The second problem with the defendant's testimony
5 is this idea that they gave him a form. And you heard from
6 a couple of different witnesses that that doesn't happen at
7 the first floor window in the King County Courthouse. You
8 heard from three witnesses on this point. You heard from
9 Ms. Moore and you heard from Heidi Germano, the first
10 witness before we knew this was going to be an issue, who
11 he had contact with on the 29th. So you heard from
12 Ms. Germano this morning and Ms. Moore this afternoon.
13 Both of them work at that window and both of them told you
14 this letter is not generated or given out at that
15 particular window.

16 You also heard, more importantly, from Tina
17 Keller. That's the blond woman that you heard from this
18 morning that runs the office down at the Regional Justice
19 Center, who collects all of this material and keeps it in a
20 spot where she can look at it. And what she told you is
21 not only does the letter not get disseminate in the first
22 floor here, it gets sent out from her office in Kent. And
23 it's mailed to people who have a home address. Mr. Durrett
24 doesn't have a home address, didn't have a home address to
25 send this letter to.

1 She went on to tell you they do two things to
2 keep track of when these letters go out to people. There's
3 an Excel spreadsheet that she writes in who these letters
4 go out to. And then when the letter is returned to the
5 King County Sheriff's Office, it gets put in your file. So
6 she went to the trouble of going to Mr. Durrett's file and
7 reviewed the file. There's no return document in the file
8 and there's nothing in the Excel spreadsheet to suggest
9 this type of letter was ever generated and sent to the
10 defendant.

11 So you've got Ms. Germano, you've got Ms. Moore
12 and you've got Ms. Keller all telling you it doesn't happen
13 the way the defendant described it happening. The system
14 is not set up to pass these letters out to people when they
15 check in once a week. That's not the way the system is set
16 up.

17 Now, you might even go one step further and go,
18 well, maybe some new employee doesn't know what they're
19 doing, they're just passing these letters out willy nilly.
20 Well, two things would have to happen for that to occur.
21 It's not simply the passing of this letter out that would
22 constitute the first really big mistake, a huge mistake
23 that a clerk would have to have made down there, but
24 Mr. Durrett testified that he apparently filled something
25 out and left the filled out form with the clerk there.

1 So the second big mistake that would have to be
2 made, if you believe that the defendant's testimony is
3 credible, is not only did they make a huge mistake in
4 giving this out, they made another huge mistake in
5 completely losing it through the system. He testified he
6 didn't end up with it, he testified he left it with the
7 clerk. So you've not only got a rogue clerk doing
8 something completely against policy that they're not even
9 equipped to do, but you then have them losing the document.

10 It's really quite convenient if you're
11 Mr. Durrett if that's the way the King County Sheriff's
12 Office is doing business here. But the evidence is the
13 procedure and the system that's put in place doesn't
14 operate at all the way Mr. Durrett described it to you.

15 There's a second class of evidence that you might
16 consider to be of some use here and that's the evidence
17 that came from Theo Lewis. And Theo Lewis was the man who
18 testified this morning. He was asked some questions about
19 dates and then he had to go back and look at his Department
20 of Corrections computer and he came back and testified
21 later. Well, Mr. Durrett, it turns out, not only was he
22 not checking in every week like he was supposed to here,
23 but Mr. Durrett also during exactly the same period of time
24 had the unfortunate bad luck as to miss a whole series of
25 weekly meetings he was supposed to have had with Theo

1 Lewis. So just bad timing for Mr. Durrett.

2 Another way you can look at it is that it's much
3 less likely that this particular prosecution is the result
4 of some accident or mistake or miscommunication when it
5 turns out Mr. Durrett isn't apparently any place he's
6 supposed to be during December and January of 2006 and
7 2007. That may be one way that you want to use Mr. Lewis'
8 testimony about where Mr. Durrett wasn't while he was
9 supposed to be there.

10 I'm not going to belabor this case. This is a
11 paper case. You heard a little bit more testimony than any
12 of us anticipated when we got started this morning. I
13 called a couple of additional witnesses based on how the
14 evidence developed. But really, this is a very simple
15 case. It's a simple case that really relates to one word
16 in the to convict instruction and the word is knowingly.

17 Mr. Durrett has offered a version of events where
18 a clerk did something really quite extraordinary, taking it
19 upon himself to tell Mr. Durrett, you don't have come in
20 every week, you can come in once every three months or so.
21 But the evidence, unfortunately, doesn't match up. The
22 evidence is that this particular form isn't given to anyone
23 at the first floor. It isn't generated on the first floor,
24 it's mailed out from Kent. They've got no record that they
25 mailed it to him, they've got no record that it came back

1 to them. And there's no evidence that even if some clerk
2 made an error, there's no evidence that the error was
3 compounded by the clerks office downstairs losing this
4 document.

5 It's difficult to prove a negative. And
6 Mr. Durrett can get up and he can testify that, you know,
7 ten people said you don't have to register weekly. It's
8 difficult to prove a negative. All you've got are the
9 procedures and the policies and the way the King County
10 Sheriff's Office does business on these points. You've got
11 Mr. Durrett's somewhat incredible testimony that the State
12 has been able to poke a hole in it. There wasn't any
13 contact with Vince, according to these records. He may
14 well recognize Vince because he does check in there
15 occasionally. He may recognize the Asian, Filipino man
16 from checking in down there. But on the 29th, the day that
17 he told you he was told by this man, don't bother checking
18 in, guess what, the person he had contact with was
19 Ms. Moore, it wasn't Vince.

20 So after you've had a chance to look at the
21 exhibits in this case, focus on Jury Instruction Number
22 Seven, focus in on what this case is about. It's really
23 about this one small component. Everything else has
24 generally been agreed to.

25 Thank you, very much, for your attention.

1 THE COURT: Thank you.

2 And if you would please give your attention to
3 Mr. Stoddard, who will present closing argument on behalf
4 of the defense.

5 MR. STODDARD: Thank you, Your Honor.

6 Ladies and gentlemen, what bureaucracy ever
7 admits its mistake. What bureaucracy ever admits its
8 guilt. And who in our society is more likely to circle the
9 wagons, everybody in lock step, than a bureaucracy. And
10 when people rely on that information, mistakes get made.
11 And you need to look no further than the news or the
12 newspaper.

13 A lot of the evidence admitted in this particular
14 case is completely irrelevant. It's establishing things
15 that Mr. Durrett took the stand and under oath sustained
16 for you. What matters is November 29th and what happened
17 the following two months, basically December and January of
18 2006, 2007.

19 But just to begin with, let me talk briefly about
20 the evidence. It was stipulated to that during the period
21 of time that's actually at issue here, basically between
22 December 6th, 2006, and January 23rd, 2007, Mr. Durrett did
23 have an obligation to register. That's not an issue. And
24 because that's not an issue, then the other stipulations
25 that you'll actually see that talk about, oh, him having

1 up until then, in October and up through the 29th of
2 November, he was registering. It stopped on the 29th,
3 which is consistent with his story.

4 When you go through those metal detectors, ladies
5 and gentlemen of the jury, it doesn't scrub the common
6 sense off. Apply what you know about the system, apply
7 what you know about the testimony. And apply the law, what
8 proof beyond a reasonable doubt is and what knowingly
9 failed means.

10 The burden is on the State to prove that my
11 client knowingly failed. And they need to prove that
12 beyond a reasonable doubt. And certainly, ladies and
13 gentlemen of the jury, there's a reason in this particular
14 case and that is why an individual who was reporting
15 stopped. And in Mr. Durrett's case, stopped on November
16 29th, which is exactly what he testified to.

17 Thank you.

18 THE COURT: Thank you.

19 And, ladies and gentlemen, because the State
20 bears the burden of proof, the State is afforded an
21 opportunity for a brief rebuttal.

22 Mr. Bergstrom?

23 MR. BERGSTROM: Thank you, Your Honor.

24 I would suggest among the first thing you do when
25 you begin deliberating is to talk about what it was

1 Mr. Durrett testified to this morning.

2 Mr. Stoddard argued in closing argument that
3 Mr. Durrett had contact with multiple people at the window.
4 When you look at your notes, you may well conclude that
5 what he testified to this morning was that he presented
6 himself to sign in weekly, that he had contact with an
7 Asian, Filipino man when he signed in weekly, and that that
8 man told him, by way of giving him a form and an oral
9 explanation, you don't have to come in every week, you can
10 come in every three months.

11 I would suggest to you that that's really what
12 you should start reviewing in terms of what it was
13 Mr. Durrett testified to. Because his testimony this
14 morning is at odds with what Mr. Stoddard just argued to
15 you. Mr. Stoddard just argued in closing that, you know,
16 he may have contact with lots of different people, two
17 different people. We now know because over the lunch hour
18 we tracked down the CM initials, we now know that CM
19 Christine Moore, not Vince, CM was the person that dealt
20 with the defendant on the 29th.

21 So the only way that Mr. Stoddard has to get
22 around that fact, because there's a written record of it,
23 is for Mr. Stoddard to now suggest that perhaps he had
24 contact with multiple different people. The problem is
25 there's no testimony from Mr. Durrett that he had contact

1 with any other person than the Filipino, Asian male. And
2 we now know from the records that didn't happen.
3 Mr. Durrett met with Ms. Moore and it's Ms. Moore's
4 signature on the document related to the 29th.

5 And when you look at State's Exhibit 7, you're
6 going to have to look at the initials there because there's
7 a redaction problem here. But when you compare the
8 defendant's name on some of the other documents, you'll see
9 the Donnie and Dwayne that match with the defendant and the
10 defendant's signature. But on the 29th, the records
11 reflect Mr. Durrett had contact with one person and one
12 person only. It was Ms. Moore.

13 She testified they don't give these forms out to
14 people coming to the window. She didn't give forms out nor
15 did she give oral advice. We know from Tina Keller the
16 only place these letters are generated from is the King
17 County Sheriff's Office in Kent. They are only sent to
18 individuals with residences. The defendant's file was
19 searched, there was no letter returned to it. The Excel
20 spreadsheet was consulted. There was no record of a letter
21 like this going out to the defendant.

22 So every place that can be searched to determine
23 whether or not he would have ever been given a letter like
24 this says no. And even the defendant's own testimony
25 regarding who he had contact with is contradicted by the

1 written record that we have.

2 And then, finally, it's worth bearing out for
3 just a moment that the very second sentence of this form
4 explicitly tells the recipient it only applies if you've
5 got a home. It only applies if you've got a home. So even
6 if by some wild stretch of the imagination you want to get
7 to this point, the form itself, the way it's set out, would
8 tell him it doesn't apply to him.

9 Mr. Stoddard is quite right, that this particular
10 case boils down to whether he knowingly failed to do
11 something. His claim is, I got bad information. But
12 there's nothing in terms of the mechanisms that this system
13 has been set up or any testimony from anyone that has
14 contact at those windows that has suggested this could ever
15 happen. It wasn't set up that way, it was based in an
16 entirely different building. It only gets mailed to people
17 with an address. No one from that window has indicated
18 that they even had these letters to give out. They see
19 them.

20 And who knows where Mr. Durrett may have heard
21 about this before. If it's true, as Mr. Stoddard brought
22 out, that other people are showing up with these letters,
23 who knows whether Mr. Durrett was present when someone else
24 presented one of these letters. Who knows how he got this
25 information. But there's no evidence whatsoever that

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WASHINGTON STATE COURT OF APPEALS
DIVISION ONE

STATE OF WASHINGTON
Plaintiff,
US.
DONNIE W. DURRETT
Defendant,

Case No. 68120-6
Case No. 67927-9-I
DECLARATION OF
SERVICE BY MAIL

I, Donnie W. Durrett, the Appellant/Defendant in the
above entitled cause, do hereby declare that I have served
the Washington State COURT OF APPEALS - DIVISION ONE COURT
CLERK/Administrator Richard D. Johnson the following:

Appellant STATEMENT OF ADDITIONAL GROUNDS:
FOR THE TWO ABOVE CASE NUMBERS

That I departed in with the ACTIVITY AREA LAW LIBRARY
OFFICER STATION, by processing as "LEGAL MAIL"
with postage first class at Washington Correction Center
P.O. BOX 900, Shelton Washington 98584

Donnie W. Durrett
[Signature]

WAP

RICHARD D. JOHNSON,
Court Administrator/Clerk

The Court of Appeals
of the
State of Washington
Seattle
98101-4170

DIVISION I
One Union Square
600 University Street
(206) 464-7750
TDD: (206) 587-5505

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Washington Appellate Project

NOTICE TO APPELLANT RE:
STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

COURT OF APPEALS DIVISION I OF THE STATE OF WASHINGTON

Re: Case No. 67927-9

State v. Donnie Durrett

Dear Appellant:

Your attorney has filed a proof of service indicating that you were mailed a copy of the opening brief in your appeal. If, after reviewing that brief, you believe there are additional grounds for review that were not included in your lawyer's brief, you may list those grounds in a Statement of Additional Grounds for Review. RAP 10.10.

Because the Statement of Additional Grounds for Review is not a brief, there is no required format and you may prepare it by hand. No citations to the record or legal authority are required, but you should sufficiently identify any alleged error so that the appellate court may consider your argument. A copy of the rule is enclosed for your reference.

Your Statement of Additional Grounds for Review must be sent to the Court within 30 days. It will be reviewed by the Court when your appeal is considered on the merits.

Sincerely,



Richard D. Johnson
Court Administrator/Clerk

DATE: 5/2/12

mmc

2012 JUN 15 PM 2:00
COURT OF APPEALS DIV I
STATE OF WASHINGTON