

original

NO. 34898-5-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON, Respondent

v.

JOSEPH ALAN COOPER, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
THE HONORABLE ROBERT L. HARRIS
CLARK COUNTY SUPERIOR COURT CAUSE NO. 05-1-01792-9

BRIEF OF RESPONDENT

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I. STATEMENT OF THE CASE

The State accepts the statement of the case as set forth by the defendant.

II. RESPONSE TO ASSIGNMENT OF ERROR

The only assignment of error raised in this appeal is the claim that the essential elements of Failing to Register as a Sex Offender were not included in the Second Amended Information and therefore the case must be dismissed without prejudice.

The original Information, an Amended Information, and then the Second Amended Information all contained the same basic language except changing dates of the criminal activity and modifying the dates of prior felony conviction. (CP 1, 2, and 7). At no time did the defendant make claim that any of these Informations were defective. The question of the thirty days in which to register (RCW 9A.44.130) was first broached with the trial court at the time that the jury instructions were being put together. At that time, the defense attorney indicated that he thought that the thirty days was an essential element of the crime. (RP 401). The State took the position that the thirty day language was not an essential element of the crime and this was especially true given the nature of the defense and the fact that the defendant had never registered in the

State of Washington. (RP 401-402). The argument raised did not appear to have much influence on the trial court because the court indicated that the clear testimony in the case was that he had never registered in the State of Washington. (RP 404). Further, the nature of the defense in this case was that he was a resident of the State of Oregon and had never resided in the State of Washington. (RP 465-466).

The State of Washington must inform the defendant of the nature and cause of the accusation against him. The information “shall be a plain, concise and definite written statement of the essential facts constituting the offense charged.” CrR 2.1(a)(1). The “essential elements” rule requires that a charging document adequately identify the crime charged and alleged facts supporting every element of the offense. State v. Leach, 113 Wn.2d 679, 689, 782 P.2d 552 (1989). Essential elements are those necessary to establish “the very illegality” of the crime itself. State v. Ward, 148 Wn.2d 803, 811, 64 P.3d 640 (2003); State v. Johnson, 119 Wn.2d 143, 147, 829 P.2d 1078 (1992). The objective of this rule is to provide the accused with a meaningful opportunity to prepare an adequate defense. State v. Kjorsvik, 117 Wn.2d 93, 101, 812 P.2d 86 (1991); State v. Tandecki, 153 Wn.2d 842, 846, 109 P.3d 398 (2005).

The State submits that there is no question here but that this defendant was put on notice of the essential elements of the crime. The defendant never registered in the State of Washington. Although this matter was raised at the time that the instructions were being put together, there was no request by the defense or argument to the court that the information needed to be modified or changed to include essential elements. It had no effect on the nature of the defense that was being offered nor did it have any influence on the evidence that had been presented.

Informations challenged for the first time after verdict are reviewed for validity under a liberal standard. When this liberal standard is applied, the court uses a two-prong test which has been utilized in the Federal system for some time. State v. Kjorsvik, 117 Wn.2d at 105-106.

The two-prong test and how it relates to our case is as follows:

1. Do the necessary facts appear in any form, or by any fair construction can they be found, in the charging document. In our situation, the charging document clearly sets forth the nature of the crime: failing to register as a sex offender while a resident living in the State of Washington. The State submits that that is the nature of the crime. The crime is further refined to indicate that it is not criminal if he files within thirty days, however, the defendant was maintaining that he was not a

citizen of the State of Washington, did not reside in the State of Washington and had never registered in the State of Washington. He was not in disagreement with that.

2. Can the defendant show that he was actually prejudiced by the inartful language which caused a lack of notice. As previously indicated, the nature of the defense has nothing to do with registration within thirty days. His entire position in this case was that he did not need to register. He maintained that he resided in the State of Oregon, that that was his home, and that he was not a resident of Clark County, State of Washington. The State submits that given the nature of that defense, he cannot show any type of prejudice because of the lack of the “thirty days” being included in the charging language.

This question of the validity of the charging language was not challenged at the trial court level. Although the matter was raised by the defense attorney, it was not pursued by the defense. There was no request of the trial court to modify or amend nor was there any claim that this in some way prejudiced the nature of the defense or how this was to be approached. (RP 402-403). When the defense then argues this case to the jury, the position can be summed up as part of his closing argument to the jury as follows:

(Dave Kurtz, Attorney for defendant)

Because he wasn't a resident then, and he's not a resident now. It's that simple. And that's simple for me, simple for us, simple for maybe a lot of other people, but since you're the twelve that have to make that decision, it may not be as simple. So the only thing you could do is go with your common sense.

Mr. Cooper has testified that he was and still is living in Oregon. Was and still is. He registered in Clackamas County. Mr. Taylor, his current PO, testified to that.

- (RP 465, L.9-19)

Using the more liberal standard of a challenge to the charging document on appeal, the defendant cannot show that he was prejudiced in the presentation in notice of violation of the law (failing to register as a sex offender in our State) or preventing him from establishing his defense. State v. Goodman, 150 Wn.2d 774, 83 P.3d 410 (2004); State v. Tandecki, 153 Wn.2d at 846-847; State v. Hopper, 118 Wn.2d 151, 156, 822 P.2d 775 (1992); State v. Campbell, 125 Wn.2d 779, 801, 880 P.2d 1185 (1995).

The State submits that the defendant was adequately put on notice of the nature of the criminal activity he was being charged with and that he was able to fashion a defense and adequately present it to a jury. There is no evidence in this record to support a proposition that he did not

understand the nature of the criminal activity he was being charged with or that it prejudiced his ability to present his defense.

III. CONCLUSION

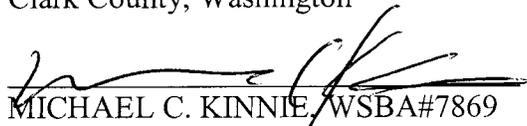
The trial court should be affirmed in all respects.

DATED this 21 day of November, 2006.

Respectfully submitted:

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