

No. 41600-0-II

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

vs.

**Joshua Viles,**

Appellant.

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Lewis County Superior Court Cause No. 10-1-00382-1

The Honorable Judge Richard L. Brosey

**Appellant's Opening Brief**

Jodi R. Backlund  
Manek R. Mistry  
Attorneys for Appellant

**BACKLUND & MISTRY**

P.O. Box 6490  
Olympia, WA 98507  
(360) 339-4870  
FAX: (866) 499-7475

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### **ASSIGNMENTS OF ERROR**

1. The trial court erred by overruling Mr. Viles's *corpus delicti* objection.
2. Mr. Viles's conviction violated his Fifth, Sixth, and Fourteenth Amendment right to notice of the charge against him.
3. Mr. Viles's conviction violated his state constitutional right to notice of the charge against him, under Wash. Const. Article I, Sections 3 and 22.
4. The First Amended Information was deficient because it failed to outline specific facts describing Mr. Viles's alleged conduct.
5. The trial court erred by entering Finding of Fact No. 1.7.
6. The trial court erred by entering Finding of Fact No. 1.17.
7. The trial court erred by entering Conclusion of Law No. 2.3.
8. The trial court erred by entering Conclusion of Law No. 2.4.

### **ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

1. An accused person's statements may not be admitted at trial until the prosecution establishes the *corpus delicti* of the crime by independent evidence. In this case, the state failed to establish the *corpus delicti* of Failure to Register by independent evidence. Should the trial judge have sustained Mr. Viles's *corpus delicti* objection and excluded his statements?
2. An accused person is constitutionally entitled to be informed of the charges against him. The First Amended Information in this case did not outline any specific facts describing Mr. Viles's alleged conduct. Was Mr. Viles denied his constitutional right to adequate notice of the charge under the Fifth, Sixth, and Fourteenth Amendments, and under Wash. Const. Article I, Sections 3 and 22?

## **STATEMENT OF FACTS AND PRIOR PROCEEDINGS**

Because of his criminal history, Joshua Viles was required to register as a sex offender. RP 38-39. He resided in Lewis county, and registered his home address of 621 W. Rhode Island Place, #2, in Chehalis in March of 2009. RP<sup>1</sup> 8, 10, 43-44. He provided that same address to his community corrections officer (CCO). RP 32-33.

Brandie Jean Clarke was a roommate of Mr. Viles's at that address. RP 8. She had been told that they needed to move out because the landlord needed significant work done on the apartment. RP 14. Mr. Viles worked on packing up his items and changing his address with his CCO. RP 12, 15.

Clarke did not pay much attention to when Mr. Viles had moved in, and she knew that he did not spend every single night there. RP 8-9, 13. She did see him there generally except for the two weeks leading up to June 4, 2010. RP 8-9. By then, he had moved out some totes but still had property in the apartment. RP 12-13. Clarke did not know if Mr. Viles had moved out or not as of June 4, 2010. RP 13, 15.

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<sup>1</sup> The only volume of the Verbatim Report of Proceedings referred to in this brief is from November 3, 2010.

## ARGUMENT

### **I. THE TRIAL JUDGE SHOULD HAVE EXCLUDED MR. VILES'S STATEMENTS UNDER THE *CORPUS DELICTI* RULE.**

#### **A. Standard of Review.**

The Court of Appeals reviews *de novo* a trial court decision finding sufficient evidence of the *corpus delicti*. *State v. McPhee*, 156 Wash.App. 44, 60, 230 P.3d 284 (2010).

#### **B. The prosecution failed to present independent evidence establishing the *corpus delicti* of Failure to Register.**

The *corpus delicti*, or body of the crime, must be proved by evidence sufficient to establish a criminal act. *State v. Brockob*, 159 Wash.2d 311, 328, 150 P.3d 59 (2006). Before an accused person's statements may be admitted into evidence, the *corpus delicti* of the charged crime must be established by independent evidence. *Brockob*, at 328. The independent evidence must be consistent with guilt and inconsistent with a hypothesis of innocence. *Brockob*, at 329. If the independent evidence supports reasonable and logical inferences of both guilt and innocence, it is insufficient. *Brockob*, at 329-330.

The *corpus delicti* of Failure to Register required proof that Mr. Viles "knowingly fail[ed] to comply with any of the requirements of [the

registration statute.]” CP 1, Former RCW 9A.44.130(11)(a) (2010).<sup>2</sup> As charged, this required proof that he changed his “residence address within the same county,” and that he knowingly failed to “send signed written notice of the change of address to the county sheriff within seventy-two hours of moving.” CP 1, Former RCW 9A.44.130(5)(a) (2010).

The independent evidence in this case was insufficient to establish the *corpus delicti* of Failure to Register. First, apart from Mr. Viles’s own statements, no evidence was introduced regarding his alleged failure to “send signed written notice of the change of address,” as required under Former RCW 9A.44.130(5)(a). Detective Borden testified only that Mr. Viles did not ever “come to [his] office and notify [him] of any change in his status...” RP 54. Borden did not testify that Mr. Viles had failed to “send signed written notice of the change of address.” RP 37-56; Former RCW 9A.44.130(5)(a) (2010). Nor did he testify that he had reviewed the incoming mail or Mr. Viles’s file for such written notice. RP 37-56.

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<sup>2</sup> The statute was rewritten by the 2010 legislature, with an effective date of June 10, 2010. Laws 2010, Chapter 265 Sec. 1 and Chapter 267 Sec. 2-3.

Second, the only independent evidence relating to Mr. Viles's alleged change of residence was provided by Brandie Jean Clarke.<sup>3</sup> She testified that after she moved in (in May 2010) Mr. Viles stayed at the apartment regularly, but not every night. She did not know what his hours were. RP 8-15. Near the end of May, he was apparently asked to leave, and he began moving his possessions out. RP 13-15. He told her that "he was waiting for his patrol [sic] officer to approve the new address where he would be." RP 15. She acknowledged that he had not actually moved out, and that he was waiting before he moved. RP 15. She did not testify that Mr. Viles had taken up residence at a new address. RP 8-15.

The independent evidence was insufficient to establish the *corpus delicti*. *Brockob, supra*. Without additional proof, the testimony did not establish that Mr. Viles "change[d] his...residence address within the same county," or that he failed to "send signed written notice of the change of address." CP 1, Former RCW 9A.44.130(5)(a) (2010).

In the absence of additional independent proof, the trial judge should have excluded Mr. Viles's statements under the *corpus delicti* rule. *Brockob, supra*. Accordingly, the conviction must be reversed and the case dismissed for insufficient evidence. *Id.*

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<sup>3</sup> Mr. Viles's CCO also testified that he was not at his address on June 3, 2010, but provided no additional evidence relating to his actual residence. RP 32-34.

**II. MR. VILES'S CONVICTION WAS ENTERED IN VIOLATION OF HIS RIGHT TO NOTICE UNDER THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS, AND UNDER WASH. CONST. ARTICLE I, SECTIONS 3 AND 22.**

**A. Standard of Review.**

A challenge to the sufficiency of a charging document may be raised at any time. *State v. Kjorsvik*, 117 Wash.2d 93, 102, 812 P.2d 86 (1991). Where the Information is challenged after verdict, the reviewing court construes the document liberally. *Id.*, at 105. The test is whether or not the necessary facts appear or can be found by fair construction in the charging document. *Id.*, at 105-106. If the Information is deficient, prejudice is presumed and reversal is required. *State v. Courneya*, 132 Wash.App. 347, 351 n. 2, 131 P.3d 343 (2006); *State v. McCarty*, 140 Wash.2d 420, 425, 998 P.2d 296 (2000).

**B. Mr. Viles was constitutionally entitled to notice that was both legally and factually adequate.**

A criminal defendant has a constitutional right to be fully informed of the charge he or she is facing. This right stems from the Fifth, Sixth, and Fourteenth Amendments to the federal constitution, as well as Article I, Section 3 and Article I, Section 22 of the Washington State Constitution. The right to a constitutionally sufficient Information is one that must be

“zealously guarded.” *State v. Royse*, 66 Wash.2d 552, 557, 403 P.2d 838 (1965).

A constitutionally sufficient charging document must notify the accused person of the essential elements of the offense and of the underlying facts. The rule

requires that a charging document *allege facts supporting every element of the offense*, in addition to adequately identifying the crime charged. This is not the same as a requirement to ‘state every *statutory element* of’ the crime charged.

*State v. Leach*, 113 Wash.2d 679, 689, 782 P.2d 552 (1989) (emphasis in original).<sup>4</sup> Following *Leach*, the Supreme Court elaborated further:

There are two aspects of this notice function involved in a charging document: (1) the description (*elements*) of the crime charged; and (2) a description of the specific *conduct* of the defendant which allegedly constituted that crime... [T]he “core holding of *Leach* requires that the defendant be apprised of the elements of the crime charged and the conduct of the defendant which is alleged to have constituted that crime.”

*Auburn v. Brooke*, 119 Wash.2d 623, 629-630, 836 P.2d 212 (1992) (footnotes omitted, emphasis in original).

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<sup>4</sup> The *Leach* court explained that this rule applies to charging documents other than citations issued at the scene: “Complaints must be more detailed since they are issued by a prosecutor who was not present at the scene of the crime. Defining the crime with more specificity in a complaint assists a defendant in determining the particular incident to which the complaint refers... [Where a citation is issued at the scene, the defendant] presumably know[s] the *facts* underlying [the] charges.” *Leach*, at 699.

C. The First Amended Information was legally deficient because it did not include specific facts supporting the allegation that Mr. Viles changed his residence within the same county.

Prior to June 10, 2010, an accused person could be convicted of Failure to Register if s/he “knowingly fail[ed] to comply with any of the requirements of [the registration statute.]” Former RCW

9A.44.130(11)(a) (2010). Included in these requirements was the following: “If any person required to register pursuant to this section changes his or her residence address within the same county, the person must send signed written notice of the change of address to the county sheriff within seventy-two hours of moving.” Former RCW

9A.44.130(5)(a) (2010).

In this case, the First Amended Information alleged that Mr. Viles had been convicted of a felony sex offense and “knowingly faile[ed] to comply with registration requirements by moving from his last registered address within Lewis County to another residence within Lewis County without sending a signed written notice to the Lewis County Sheriff’s Office within 72 hours...” CP 1.

The charging document was factually deficient in three respects.

First, it did not name the felony sex offense of which he had been convicted. CP 1-3.

Second, it did not specify the “last registered address” from which he had allegedly moved. CP 1-3.

Third, it did not specify “another residence in Lewis County” to which he had allegedly relocated. CP 1-3.

The charging document was factually deficient because it failed to allege any details outlining Mr. Viles’s conduct. *Brooke*, at 629-630.

Accordingly, Mr. Viles need not demonstrate prejudice. *Kjorsvik*, *supra*.

His conviction must be reversed, and the case dismissed. *Id*.

### **CONCLUSION**

For the foregoing reasons, Mr. Viles’s conviction must be reversed and the case dismissed with prejudice. In the alternative, the case must be dismissed without prejudice because of a deficiency in the charging document.

Respectfully submitted on April 7, 2011.

### **BACKLUND AND MISTRY**

  
\_\_\_\_\_  
Jodi R. Backlund, WSBA No. 22917  
Attorney for the Appellant

  
\_\_\_\_\_  
Marek R. Mistry, WSBA No. 22922  
Attorney for the Appellant

CERTIFICATE OF MAILING

I certify that I mailed a copy of Appellant's Opening Brief to:

Joshua Viles, DOC #845659  
Stafford Creek Corrections Center  
191 Constantine Way  
Aberdeen, WA 98520

and to:

Lewis County Prosecuting Attorney  
MS:pro01  
360 NW North Street  
Chehalis, WA 98532-1925



And that I sent the original and one copy to the Court of Appeals, Division II, for filing;

All postage prepaid, on April 7, 2011.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Olympia, Washington on April 7, 2011.



Jodi R. Backlund, WSBA No. 22917  
Attorney for the Appellant