

NO. 42525-4-II

**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

STEPHEN KNIGHT LEWIS, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable John R. Hickman

No. 10-1-04824-5

Brief of Respondent

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A. ISSUE PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Whether any error in admitting improper opinion testimony was harmless where any reasonable fact-finder would have reached the same result in the absence of such error.

B. STATEMENT OF THE CASE.

1. Procedure

On November 15, 2010, Stephen Knight Lewis, hereinafter referred to as the “defendant,” was charged by information with failure to register as a sex offender. CP 1.

The State filed an amended information on June 1, 2011, which changed the date of violation from April 14, 2010, to the period between December 11, 2009, and April 2, 2010. CP 2. Finally, on June 27, 2011, the State filed a corrected amended information which again changed the date of violation to the period between December 11, 2009, to April 12, 2010. CP 3. *See* RP 27

The case was called for trial on July 12, 2011, and the court heard motions in limine. RP 5-23. *See* RP 31. Among those motions was the defendant’s motion to exclude testimony from State’s witnesses that, in their opinion, the defendant was not residing at the address he registered with the sheriff’s department. RP 16-23. With respect to this motion, the

court held that, with proper foundation, the witnesses could render an opinion as to whether they believed the defendant was living at his registered address. RP 69-70.

The defendant waived his right to a jury trial, RP 28-31, and the parties gave opening statements. RP 32-33.

The State called Andrea Shaw, RP 33-53, 62-68, Tacoma Police Sergeant Andrea Mueller, RP 70-88, Tacoma Police Detective William Foster, RP 88-97, Community Corrections Officer Pamela Bohon, RP 97-134, Community Corrections Officer Kelly Stave, RP 135-61, and Rachel Eschenfelder, RP 161-92. The State then rested. RP 193.

The defendant moved to dismiss for insufficient evidence and that motion was denied. RP 193.

The defendant called Rodron Neal, RP 193-230, and Michael Monahan, RP 261-78, before testifying himself. RP 230-61. The defendant then rested. RP 278.

The parties gave their closing arguments. RP 279-83 (State's closing argument); RP 283-88 (Defendant's closing argument); RP 288-90 (State's rebuttal argument).

The court found the defendant guilty as charged of failing to register as a sex offender. RP 291-98; CP 48-56; Appendix A.

On August 26, 2011, the court sentenced the defendant to 43 months in total confinement to be served concurrently with confinement ordered in King County Superior Court cause number 08-1-05161-3. RP 318-19; CP 57-74.

The defendant filed a timely notice of appeal the same day. CP 4; RP 320.

2. Facts

Andrea Shaw is an office assistant with the Sex and Kidnap Offender Registration Unit of the Pierce County Sheriff's Department. RP 34. She testified that when a sex offender registers a residence address in Pierce County, he or she must do so at her office, located in Tacoma, Washington. RP 36. When an offender is new to the county or just released from custody, he or she must fill out a "full registration packet," which includes, among other things, a change of address form, an additional information sheet, and a copy of the state laws, which the offender signs. RP 36-37.

The defendant was sentenced for second-degree assault with sexual motivation on June 29, 2001, and for failure to register as a sex offender on September 26, 2008. RP 46-47.

Shaw testified that the defendant completed a full registration packet with the Pierce County Sheriff's Department on August 20, 2007. RP 48-49. In that packet, the defendant registered a change of address, with his new residence being 1901 147th Street Court East in Tacoma, Washington. RP 49-50. At that time, the defendant was given "a copy of the sex offender and kidnap offender registration laws in Washington state," and signed that document. RP 51. The defendant also indicated in writing in a separate form that he understood the requirements of the registration law. RP 51.

On December 11, 2009, the defendant registered a change of address to 1422 South Washington Street in Tacoma, Washington. RP 62. The defendant did not contact the sex offender registration unit thereafter. RP 66.

On April 14, 2010, Sergeant Jennifer Mueller and Detective William Foster went to the 1422 South Washington address to verify that the defendant was residing there. RP 74-75, 92-93. Resident Rachel Eschenfelder arrived home as Mueller was knocking on the residence door. RP 76, 94. Eschenfelder told Mueller that the defendant was not living at the residence, RP 87-88, and allowed her into the residence to check the basement, the area Eschenfelder said the defendant would have been staying if he had lived there. RP 76-77, 87. *See* RP 94. Mueller testified that, though there was a couch and a suitcase in the basement, there was no bed, no closet, no personal effects, or "anything that would

lead you to believe somebody was living there.” RP 78. Though there was a basement door to the outside, it could not be opened from the outside. RP 78-79. Mueller testified that she did not believe the defendant was residing at the house. RP 79-80.

Mueller conducted a records check, which showed that the defendant had been taken into custody the day before, on April 13, 2010, and then called his Community Corrections Officer Pamela Bohon to see if she could provide additional information. RP 80-81.

Bohon testified that she had supervised the defendant in her capacity as a community corrections officer (CCO) beginning January 15, 2010. RP 99-101. She testified that either she or CCO Stave went to the defendant’s registered address six times between January 15 and April 14, 2010, but had never seen the defendant there. RP 103-04. Bohon testified that, on one occasion, she was shown to the basement, where the defendant was supposed to be living, but that there were “absolutely no personal belongings down there.” RP 104. There was a couch, but no bed, dresser, clothing, or toiletries. RP 107-08. Bohon felt that it was “[v]ery unlikely that [the defendant] was living there.” RP 113.

CCO Kelly Stave was supervising Rodron Neal during the period from December 11, 2009 to April 12, 2010. RP 136-37. She testified that she had contact with Neal at the 1422 South Washington residence where

Neal was residing about once per month over an at least six-month period, but never observed the defendant at the residence during any of those contacts. RP 140-44.

Rachel Eschenfelder testified that she rented the property at 1422 South Washington Street. RP 165. The lease was written in her name alone. RP 165. Although her boyfriend, Rodron Neal, lived at the residence, he was not listed in the lease. RP 165.

Eschenfelder testified that the defendant never resided at the residence and never stayed there while she was there. RP 168, 176. She testified that the basement was partially finished, but had no bedroom, bathroom, or kitchen. RP 167-68. She testified that it would have been impossible for the defendant to be living in her home and her not to have seen him. RP 170-71.

Eschenfelder testified that the defendant had a suitcase in her house, RP 172-73, and that she did give permission to her boyfriend, Rodron Neal, for the defendant to receive mail at her residence. RP 171-72.

Eschenfelder testified that she recalled a female law enforcement officer coming to her residence and indicated that she showed her to the basement because that was where the defendant's suitcase was. RP 174-75.

Rodron Neal testified that he gave the defendant permission to live at Eschenfelder's house, RP 199, but that he told the defendant that he

could not be in the home unless Neal was home. RP 203. Neal testified that the defendant never paid rent in exchange for permission to stay in the residence. RP 219.

CCO Michael Monahan testified that he supervised the defendant and approved the 1422 South Washington address as a suitable residence for the defendant. RP 262-68. However, he testified that he did not have any contact with the defendant at that residence thereafter. RP 277.

The defendant testified that Neal told him he could live at the 1422 South Washington Street house in December, 2009, and that he moved into that residence on December 11, 2009. RP 237-38. He testified that he stayed in the basement, on the couch, about five evenings per week, and that he brought a suitcase of clothing with him. RP 238-41. The defendant testified that the only condition on his residence was that he was not to be in the home when Neal was not present. RP 239.

The defendant also testified that he was not sure whether Eschenfelder knew he was residing in the house, or if Neal had told her that he was residing in the house. RP 254. However, the defendant later testified that Eschenfelder did know he was living in the residence. RP 256.

C. ARGUMENT.

I. ANY ERROR IN ADMITTING IMPROPER OPINION TESTIMONY WAS HARMLESS BECAUSE ANY REASONABLE FACT-FINDER WOULD HAVE REACHED THE SAME RESULT IN THE ABSENCE OF SUCH ERROR.

If properly preserved for appeal, a trial court's decision regarding the admissibility of testimonial evidence, including opinion testimony, will only be reversed for a manifest abuse of discretion. *State v. Aguirre*, 168 Wn.2d 350, 359-61, 229 P.3d 669 (2010); *State v. Young*, 158 Wn. App. 707, 243 P.3d, 172, 179 (2010); *State v. George*, 150 Wn. App. 110, 117, 206 P.3d 697 (2009). The trial court abuses its discretion "if no reasonable person would have decided the matter as the trial court did." *State v. Thomas*, 150 Wn.2d 821, 856, 83 P.3d 970 (2004), review granted in part, 163 Wn.2d 1033, 187 P.3d 269 (2008). "Where reasonable persons could take differing views regarding the propriety of the trial court's actions, the trial court has not abused its discretion." *State v. Demery*, 144 Wn.2d 753, 758, 30 P.3d 1278 (2001). "That is, such judgments merit reversal only if the trial court acts on unreasonable or untenable grounds." *Aguirre*, 168 Wn.2d at 359. However, such a decision may be affirmed on any ground the record adequately supports, even if the trial court did not consider that ground. *State v. Costich*, 152

Wn.2d 463, 477, 98 P.3d 795 (2004). The burden is on the appellant to “establish that the trial court abused its discretion.” *Demery*, 144 Wn.2d at 758.

“Under ER [Evidence Rule] 704, ‘[t]estimony in the form of an opinion or inferences otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.’” *State v. Jones*, 66 Wn. App. 380, 387, 832 P.2d 1326 (1992).

“However, ‘[n]o witness, lay or expert, may testify to his opinion as to the guilt of a defendant, whether by direct statement or inference.’” *Id.* Moreover, “[g]enerally, no witness may offer testimony in the form of an opinion regarding... the veracity of another witness because such testimony invades the province of the jury as the fact finder in a trial.” *Demery*, 144 Wn.2d at 759-65; *State v. Black*, 109 Wn.2d 336, 348, 745 P.2d 12 (1987). An opinion as to the guilt of the defendant is particularly prejudicial and improper where it is expressed by a government official, such as a sheriff or a police officer.” *Sanders*, 66 Wn. App. at 387.

“Improper opinion testimony violates the defendant's right to a jury trial and invades the fact-finding province of the jury.” *State v. Thach*, 126 Wn. App. 297, 312, 106 P.3d 782 (2005)(citing *State v. Dolan*, 118 Wash.App. 323, 329, 73 P.3d 1011 (2003)).

A witness expresses “opinion testimony” if the witness gives “[t]estimony based on [his or her] belief or idea rather than on direct knowledge of facts at issue.” *Demery*, 144 Wn.2d at 760.

“In determining whether such statements are impermissible opinion testimony, the court will consider the circumstances of the case, including the following factors: ‘(1) ‘the type of witness involved,’ (2) ‘the specific nature of the testimony,’ (3) ‘the nature of the charges,’ (4) ‘the type of defense,’ and (5) ‘the other evidence before the trier of fact.’” *State v. Montgomery*, 163 Wn.2d 577, 591, 183 P.3d 267 (2008) (quoting *Demery*, 144 Wn.2d at 759, 30 P.3d 1278 (quoting *State v. Heatley*, 70 Wn. App. 573, 579, 854 P.2d 658 (1993))); *State v. Sanders*, 66 Wn. App. 380, 387, 832 P.2d 1326 (1992).

The Washington State Supreme Court has “expressly declined to take an expansive view of claims that testimony constitutes an opinion of guilt.” *Demery*, 144 Wn.2d at 760 (quoting *City of Seattle v. Heatley*, 70 Wn. App. 573, 579, 854 P.2d 658 (1993)).

However, the Supreme Court has held that

there are some areas which are clearly inappropriate for opinion testimony in criminal trials. Among these are opinions, particularly expressions of personal belief, as to the guilt of the defendant, the intent of the accused, or the veracity of witnesses.

Montgomery, 163 Wn.2d at 591. Indeed, “[b]ecause it is the jury’s responsibility to determine the defendant’s guilt or innocence, no witness, lay or expert, may opine as to the defendant’s guilt, whether by direct statement or by inference.” *State v. Farr-Lenzini*, 93 Wn. App. 453, 459-60, 970 P.2d 313 (1999). The Court noted that “[t]his rule is well-

grounded in the rules of evidence,” in that “[t]estimony that tells the jury which result to reach is likely not helpful to the jury (as required by ER 702), is probably outside the witness’s area of expertise (in violation of ER 703), and is likely to be unfairly prejudicial (in violation of ER 403).” *Montgomery*, 163 Wn.2d at 591.

In the present case, the defendant argues that the trial court committed prejudicial error by permitting three witnesses to present improper opinion testimony. Brief of Appellant, p. 8-14. The record shows otherwise.

First, the defendant argues that the court committed error in admitting the following testimony of Sergeant Andrea Mueller, elicited during the deputy prosecutor’s direct examination of Mueller:

Q. Now, Sergeant, based upon your training and experience – without indicating what your opinion may ultimately be –as well as your personal observations of the residence, at the end of your time at 1422 South Washington that day, ***did you ultimately form an opinion as to whether or not the defendant was residing there?***

A. Yes
[Defense Attorney]: Objection, Your Honor.
THE COURT: Same objection as earlier?
[Defense Attorney]: Same action as earlier.
THE COURT: Objection is noted for the record, but I think adequate foundation has been laid. And based on my prior ruling, I’ll allow the witness to answer the question.

A. Yes. I did form an opinion.

Q. What was that opinion?

A. That he was not residing at the residence.

RP 79-80 (emphasis added).

Second, the defendant claims that the court erred in admitting the following testimony of Pamela Bohon, elicited during the deputy prosecutor's direct examination of Bohon:

- Q. Now, based upon your training and your experience and your observations of the residence and your interactions with the defendant, without indicating what it was, *did you form an opinion as to whether or not the defendant was residing at that location?*
- A. *Yes, I did.*
- Q. *What was that opinion?*
- A. *Very unlikely that he was living there.*

RP 112-13 (emphasis added).

The defendant also assigns err to the following re-direct examination of Bohon:

- Q. Officer Bohon, did you ever have concern during your supervision –
[DEFENSE ATTORNEY]: That's not the question, Your Honor.
THE COURT: I'll allow it in that format. You may proceed.
- Q. During the course of your supervision of the defendant, did you ever form the belief or have concern that Mr. Neal was covering for the defendant not registering – not living at the approved residence?
[DEFENSE ATTORNEY]: I object to the form of that question, Your Honor. It calls for complete speculation. It's a question without foundation.
THE COURT: I failed to do so to this witness earlier on because of – I assumed she had prior experience on the stand. You're doing exactly what I've asked you to do. That is not answer these questions if, in, fact there is an

objection. I'll give you direction as I have. So I just wanted to make sure we stayed on that path, which you've been following.

Let me take a look again. I'll overrule and you may answer.

- A. I'm sorry. Can you say the question again?
Q. Certainly. ***Did you ever form the belief or become concerned that Mr. Neal was covering for the defendant at the approved address?***
A. ***Yes.***

RP 131-32 (emphasis added).

Finally, the defendant claims that the following testimony elicited during the direct examination of CCO Stave was admitted in error:

- Q. Officer Stave, did you form an opinion – without telling me what it was – based upon your training and experience as a CCO, as well as your observations of the home as to who was residing at that Washington Street address?
A. Yes.
Q. What was that opinion?
A. My opinion was that it was Mr. Neal and his girlfriend and their children.
Q. And was it your opinion, did anyone else reside at that house in addition to the parties you've just mentioned?
A. No.

RP 144-45.

The defendant contends that in each of these exchanges, witnesses made “an improper and direct comment on the ultimate factual determination in this case,” “an indirect comment on the credibility of the defendant,” and, in the case of Bohon’s testimony on re-direct, a direct comment “on the credibility of another witness and on the truth of the

defendant's testimony." Brief of Appellant, p. 11-12.

The elements of failure to register as a sex offender under RCW 9A.44.130 are (1) that the defendant was required to register as a sex offender, (2) that the defendant knowingly failed to comply with the requirements of sex offender registration, and (3) that these acts occurred in the State of Washington. *State v. Bennett*, 154 Wn. App. 202, 205-07, 224 P.3d 849 (2010); *State v. Peterson*, 145 Wn. App. 672, 186 P.3d 1179 (2008); RCW 9A.44.130.

In the present case, both parties agreed that elements (1) and (3) had been proven and that the only element in dispute was element (2), "whether or not the defendant knowingly failed to comply with the registration requirements," by failing to reside at the registered South Washington address or provide a proper change of address. RP 279-81, 283.

Moreover, it is undisputed that the defendant never changed his registered address after he registered as residing at 1422 South Washington Street on December 11, 2009. RP 62-66; 230-61. Rather, the defendant testified that he continued to live in the basement of the South Washington Street home during the relevant time period. RP 237-41.

Thus, the only issue in the case was whether the defendant actually resided at the South Washington Street address during the relevant period

of time, such that if the defendant resided in that home, he complied with the registration requirements, and was not guilty, and if he failed to reside there, he failed to comply with those requirements and was guilty.

Therefore, when Sergeant Mueller, CCO Bohon, and CCO Stave testified, in turn, that, in their opinion, the defendant “was not residing at the residence,” RP 79-80, that it was “[v]ery unlikely that he was living there,” RP 112-13, and that “it was [only] Mr. Neal and his girlfriend and their children” that resided at that residence, RP 144-45, they indirectly offered testimony in the form of an opinion regarding the guilt of the defendant.

Because “[n]o witness, lay or expert, may testify to his [or her] opinion as to the guilt of a defendant, whether by direct statement or inference,” *Jones*, 66 Wn. App. at 387, such testimony seems to have been improperly admitted.

Moreover, because Neal testified that he gave the defendant permission to live at Eschenfelder’s house, RP 199, Bohon’s testimony that she “form[ed] the belief... that Mr. Neal was covering for the defendant,” RP 131-32, was “testimony in the form of an opinion regarding the... veracity of another witness.” *Demery*, 144 Wn.2d at 759-65. Because “no witness may offer testimony in the form of an opinion

regarding the... veracity of another witness,” *Id.*, such testimony also seems to have been improperly admitted.

However, the error in admitting such improper opinion testimony was harmless.

“A constitutional error is harmless if the appellate court is convinced beyond a reasonable doubt that any reasonable jury would have reached the same result in the absence of the error.” *State v. Thach*, 126 Wn. App. 297, 312-13, 106 P.3d 782 (2005)(quoting *State v. Guloy*, 104 Wn.2d 412, 425, 705 P.2d 1182 (1985)). Thus, the Court must examine “whether the untainted evidence is so overwhelming that it leads necessarily to a finding of guilt.” *Thach*, 126 Wn. App. at 313 (citing *State v. Carlin*, 40 Wn. App. 698, 703, 700 P.2d 323 (1985)).

In the present case, the untainted evidence is so overwhelming that it leads necessarily to a finding of guilt. As noted above, both parties agreed that elements (1) and (3) had been proven and that the only element in dispute was element (2), “whether or not the defendant knowingly failed to comply with the registration requirements,” by failing to reside at the registered South Washington address or provide a proper change of address. RP 279-81, 283.

Rachel Eschenfelder, who was the sole lessee of the 1422 South Washington home, RP 165, 294, testified that the defendant never resided at the residence and never stayed there while she was there. RP 168, 176.

See RP 295. She testified that it would have been impossible for the defendant to be living in her home and her not to have seen him. RP 170-71. *See* RP 295.

The court found, in finding of fact XXVI, that Eschenfelder “knew of defendant’s prior sex offense conviction but held no prejudice against defendant.” CP 48-56; Appendix A; RP 294-95. Moreover, the court noted that Eschenfelder’s testimony that the defendant did not reside at the house was corroborated by the observations of the investigating officers Mueller, Bohon, and Stave. RP 296-97. Specifically, the court, in finding of fact XI, found that Detective Mueller, who “spoke with renter, Rachel Eschenfelder, and entered the residence... observed no physical property or signs of human habitation in the area of the house in which defendant reportedly resided.” CP 48-56; Appendix A. In finding of fact XX, it found that CCO Bohon “made six visits to defendant’s residence,” that the “defendant was never present at the residence during any of these visits,” and that Bohon “observed the basement area of the residence, and saw no sign of defendant habitating the space.” CP 48-56; Appendix A. Finally, the court found, in finding of fact XXIV, that CCO Stave had contact with Neal at the residence on at least six occasions, but never observed the defendant. CP 48-56; Appendix A.

Although Neal testified that he gave the defendant permission to live at Eschenfelder’s house, RP 199, and the defendant testified that he continued to live in the basement of that home during the relevant time

period, RP 237-41, the court noted that “Neal is the defendant’s friend,” RP 295, and that the testimony of the investigating officers undercut the credibility of that offered by Neal and the defendant. RP 298. The court thus concluded in findings of fact XXX and XXXI that neither Neal nor the defendant were credible witnesses. CP 48-56; Appendix A.

Conversely, given that Eschenfelder held no bias against the defendant, CP 48-56; RP 294-95, was actually in a continuing relationship with Neal, RP 164-65, which could be damaged by her testimony against the defendant, RP 298, and that her testimony was corroborated by the observations of the investigating officers, RP 296-97, CP 48-56, the court found, in finding of fact XXVIII, that Eschenfelder was a credible witness. CP 48-56; Appendix A. Moreover, given Eschenfelder testified that the defendant never resided in her home, the court found, in finding of fact XXVII, that the “defendant never resided at 1422 South Washington Street, in Tacoma, Washington.” CP 48-56; Appendix A.

Thus, the court did not have to rely on the improper opinion testimony at issue here for either of these findings, which, because they are uncontested, are verities on appeal. *See State v. Afana*, 169 Wn.2d 169, 176, 233 P.3d 879 (2010). Because these findings, in turn, support the court’s conclusion of law IV “[t]hat on or about the period between December 11, 2009, and April 12, 2010, defendant failed to comply with the statutory notification and registration requirements by failing to reside at the residence registered with the Pierce County Sheriff’s Department,”

CP 48-56, “any reasonable [fact-finder] would have reached the same result in the absence of the error [in admitting the improper opinion testimony at issue].” *State v. Thach*, 126 Wn. App. 297, 312-13.

Therefore, the constitutional error in admitting such evidence is harmless, and this Court should affirm the defendant’s conviction.

D. CONCLUSION.

Although the trial court erred in admitting the improper opinion testimony here at issue, such error was harmless because any reasonable fact-finder would have reached the same result in the absence of the error.

Therefore, the defendant’s conviction should be affirmed.

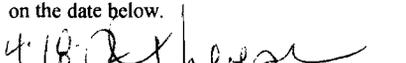
DATED: April 18, 2012.

MARK LINDQUIST
Pierce County
Prosecuting Attorney


BRIAN WASANKARI
Deputy Prosecuting Attorney
WSB # 28945

Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.


Date Signature

APPENDIX A



10-1-04824-5 37025293 FNFL 08-29-11



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE
STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 10-1-04824-5

vs.

STEPHEN KNIGHT LEWIS,

FINDINGS OF FACT AND
CONCLUSIONS OF LAW BENCH
TRIAL

Defendant.

THIS MATTER having come on before the Honorable John R. Hickman, Judge of the above entitled court, for trial on July 12, 2011, upon an information charging the defendant with Count I: Failure to Register as a Sex Offender, the defendant having been present and represented by John Chin and the State being represented by Deputy Prosecuting Attorney Jessica A. Giner, and the court having observed the demeanor and heard the testimony of the witnesses, having reviewed the evidence presented by both parties, and having considered the arguments of counsel and being duly advised in all matters, the Court makes the following Findings of Fact and Conclusions of Law.

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FINDINGS OF FACT

I.

That all acts occurred in Pierce County, Washington.

II.

That defendant was convicted of one count of Assault in the Second Degree with Sexual Motivation in 2001, in Washington State. That Assault in the Second Degree with Sexual Motivation is a Class B felony.

III.

That a conviction for a Class B felony sex offense in the State of Washington imposes upon the convicted sex offender a fifteen year duty to register as a sex offender. That during the period of December 11, 2009 through April 12, 2010, the defendant had a duty to register as a sex offender.

IV.

That defendant was convicted of one count of Failure to Register as a Sex Offender in 2008, in Washington State.

V.

That on December 11, 2009 defendant registered with the Pierce County Sheriff's Department Sex Offender Registration Unit, and provided the address of 1422 South Washington Street, in Tacoma, Washington as his registered address. That during the time period of December 11, 2009 through April 12, 2010, defendant was still registered to reside at 1422 South Washington Street, in Tacoma, Washington and had not registered another address.

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VI.

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4 That the defendant was aware of his ongoing duty to register, having signed an
5 annotated registration requirement statute on August 25, 2009. That the annotated
6 registration requirement statute informed the defendant of the requirement that he return to
7 the Pierce County Sheriff's Department within three business days of changing residences to
8 update his registration. That defendant also completed an "Additional Information Sheet",
9 on which he indicated that he understood his registration requirements. That defendant
10 signed and dated the Additional Information Sheet.
11

VII.

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13 That Andrea Shaw, Records Custodian of the Pierce County Sheriff's Department
14 Sex Offender Registration Unit identified the defendant in open court as the same Bonnie
15 Stephen Knight Lewis who registered to reside at 1422 South Washington Street, in Tacoma,
16 Washington with the Pierce County Sheriff's Department Sex Offender Registration Unit.
17

VIII.

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19 That Ms. Shaw testified that defendant was a convicted sex offender with a duty to
20 register as a sex offender while residing in Pierce County, Washington.
21

IX.

22 That the defendant did not return to the Pierce County Sheriff's Department to
23 register a new address during the period of December 11, 2009 through April 12, 2010.
24

X.

25
26 That Andrea Shaw testified at trial. That Ms. Shaw was a credible witness.
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28

XI.

That Tacoma Police Department Sergeant Jennifer Mueller conducted a sex offender verification check at defendant's 1422 South Washington Street, in Tacoma, Washington address on April 14, 2010. That Sergeant Mueller had conducted over 1,000 sex offender checks during her career with the Tacoma Police Department. That Sergeant Mueller physically observed the 1422 South Washington Street, in Tacoma Washington address. That Sergeant Mueller spoke with renter, Rachel Eschenfelder, and entered the residence where she observed no physical property or signs of human habitation in the area of the house in which defendant reportedly resided. That Sergeant Mueller made a finding that defendant had absconded.

XII.

That Sergeant Jennifer Mueller testified at trial. That Sergeant Mueller was a credible witness.

XIII.

That Tacoma Police Department Detective William Foster conducted a sex offender verification check at defendant's 1422 South Washington Street, in Tacoma Washington address on April 14, 2010. That Detective Foster observed Sergeant Mueller contact Rachel Eschenfelder. That Detective Foster did not enter the residence, but instead, remained outside with Rachel Eschenfelder's children.

XIX.

That Detective William Foster testified at trial. That Detective Foster was a credible witness.

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That Department of Corrections Community Corrections Officer Pamela Bohon supervised defendant as his assigned Community Corrections Officer beginning on January 15, 2010. That defendant had been approved to reside at 1422 South Washington Street, in Tacoma, Washington prior to CCO Bohon's supervision of him. That CCO Bohon made six visits to defendant's residence. That defendant was never present at the residence during any of these visits.

XXI

That on February 18, 2010, CCO Bohon made a visit to 1422 South Washington Street, in Tacoma, Washington. That on February 18, 2010, CCO Bohon contacted Rodron Neal, who resided at 1422 South Washington Street, in Tacoma, Washington with Rachel Eschenfelder. That CCO Bohon observed the basement area of the residence, and saw no sign of defendant habitating the space. That CCO Bohon concluded that defendant did not reside at 1422 South Washington Street, in Tacoma, Washington.

XXII

That CCO Bohon asked Department of CCO Kelly Stave to assist with residence verification of defendant, as CCO Stave was supervising Rodron Neal, who resided at defendant's registered address.

XIII

That Community Corrections Officer Pamela Bohon testified at trial. That CCO Bohon was a credible witness.

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XXIV.

That Community Corrections Officer Kelly Stave was assigned to supervise Rodron Neal. That CCO Stave was present at the 1422 South Washington Street, in Tacoma, Washington on at least 12 separate occasions. That CCO Stave had contact with Rodron during at least six of those occasions. That CCO Stave never observed defendant and Rodron together.

XXV.

That Community Corrections Officer Kelly Stave testified at trial. That CCO Stave was a credible witness.

XXVI.

That Rachel Eschenfelder resided with Rodron Neal, whom she was dating and had one child in common with. That Rachel had two additional children, who also resided with them. That Rachel knew defendant, as a friend of Rodron. That Rachel knew of defendant's prior sex offense conviction but held no prejudice against defendant.

XXVII.

That the basement of 1422 South Washington Street, in Tacoma, Washington did not contain living quarters in the basement area. That defendant did not keep personal items, bedding, or toiletries in the residence, other than one suitcase stored at the residence. That, due to the size of the home, Rachel would have been able to observe or notice defendant residing in the home. That defendant never resided at 1422 South Washington Street, in Tacoma, Washington.

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XXVIII

That Rachel Eschenfelder testified at trial. That Rachel was a credible witness.

XXIX

That Rodron Neal made arrangements with his Community Corrections Officer, Kelly Stave, to have defendant approved to reside at 1422 South Washington Street, in Tacoma, Washington. That Rodron told CCO's Stave and Bohon that defendant was residing at 1422 South Washington Street, in Tacoma, Washington.

XXX

That Rodron Neal testified at trial. That Rodron was not a credible witness.

XXXI

That defendant testified at trial. That defendant was not a credible witness.

From the foregoing Findings of Fact, the Court makes the following Conclusions of

Law:

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CONCLUSIONS OF LAW

I.

That the Court has jurisdiction of the parties and subject matter.

II.

That, on or about the period between December 11, 2009 and April 12, 2010, defendant was a convicted sex offender with an ongoing duty to register as a sex offender.

III.

That on or about the period between December 11, 2009 and April 12, 2010 defendant was aware of his statutory duty to comply with notification with notification requirements that he register with the Pierce County Sheriff's Department Sex Offender Registration Unit as a sex offender.

IV.

That on or about the period between December 11, 2009 and April 12, 2010 defendant failed to comply with the statutory notification and registration requirements by failing to reside at the residence registered with the Pierce County Sheriff's Department.

V.

That these acts occurred in Pierce County, Washington.

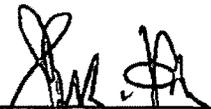
VI.

That the defendant is guilty of one count of Failure to Register as a Sex Offender.

Office of Prosecuting Attorney
930 Tacoma Avenue S Room 946
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

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3 The Court's oral ruling on this issue was given in open court in the presence of the
4 defendant on July 13, 2011.
5

6 The findings and conclusions were signed in open court in the presence of the
7 defendant on August 26, 2011.
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10 
11 JUDGE JOHN R. HICKMAN

12 Presented by:

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14 Jessica A. Giner
15 Deputy Prosecuting Attorney
16 WSBA# 39220

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FILED
DEPT. 22
IN OPEN COURT
AUG 26 2011
Pierce County Clerk
By  DEPUTY

16 Approved as to Form:

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19 John Chin
20 Defense Counsel
21 WSBA# 7160

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PIERCE COUNTY PROSECUTOR

April 18, 2012 - 4:03 PM

Transmittal Letter

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Case Name: St v. Lewis

Court of Appeals Case Number: 42525-4

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The document being Filed is:

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Statement of Arrangements

Motion: _____

Answer/Reply to Motion: _____

Brief: Respondent's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: _____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Other: _____

Sender Name: Therese M Kahn - Email: tnichol@co.pierce.wa.us

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