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

STATE OF WASHINGTON, RESPONDENT

v.

HAROLD SPENCER GEORGE, APPELLANT

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

No. 13-1-01810-3

No. 13-1-01811-1

APPELLANT'S BRIEF

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Table of Contents
13-1-01810-3

A.	<u>ASSIGNMENTS OF ERROR</u>	1
	1. Whether the evidence is insufficient to support three counts of child molestation in the first degree.	1
	2. Whether substantial evidence does not support the findings of fact and conclusions of law.	1
B.	<u>STATEMENT OF THE CASE</u>	1
	1. Procedure	1
	2. Facts.....	2
C.	<u>ARGUMENT</u>	10
	1. THE EVIDENCE PRESENTED AT TRIAL IS INSUFFICIENT TO SUPPORT THE CONVICTIONS FOR THREE COUNTS OF CHILD MOLESTATION IN THE FIRST DEGREE.....	10
	2. THE FINDINGS OF FACT AND CONCLUSIONS OF LAW ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE. ...	19
D.	<u>CONCLUSION</u>	20

Table of Contents
13-1-01811-1

A.	<u>ASSIGNMENTS OF ERROR</u>	21
1.	Whether the Court abused its discretion by refusing to exclude late discovery.	28
2.	Whether Mr. George's statements to the police should have been suppressed..	30
3.	Whether Detective Hickman's comment on Mr. George's credibility constitutes reversible error.	33
4.	Whether there is insufficient evidence to support Mr. George's conviction for Failing to Register as a Sex Offender.	36
5.	Whether the findings of fact and conclusions of law are not supported by substantial evidence.	41
B.	<u>STATEMENT OF THE CASE</u>	21
1.	Procedure	21
2.	Facts.....	22
C.	<u>ARGUMENT</u>	28
1.	THE COURT ABUSED ITS DISCRETION BY NOT EXCLUDING THE STATE'S LATE DISCOVERY.....	28
2.	THE COURT SHOULD HAVE SUPPRESSED MR. GEORGE'S STATEMENTS TO THE POLICE.....	30
3.	THE OFFICER'S COMMENT ON MR. GEORGE'S CREDIBILTY CONSTITUTES REVERSIBLE ERROR.	33
4.	THERE WAS INSUFFICIENT EVIDENCE TO CONVICT MR. GEORGE OF FAILING TO REGISTER AS A SEX OFFENDER.	36

5. THE FINDINGS OF FACT ARE NOT SUPPORTED BY
SUBSTANTIAL EVIDENCE. 41

D. CONCLUSION..... 45

Table of Authorities

Appellant's Cases

<i>State v. Broadaway</i> , 133 Wn.2d 118, 130, 942 P.2d 363 (1997)	31
<i>State v. Carlin</i> , 40 Wn. App. 698, 701, 700 P.2d 323 (1985)	34
<i>State v. Delmarter</i> , 94 Wn.2d 634, 618 P.2d 99 (1980).....	10, 36
<i>State v. Demery</i> , 144 Wn.2d 753, 759, 30 P.3d 1278 (2001).....	33, 34
<i>State v. Gatewood</i> , 163 Wn.2d 534, 539, 182 P.3d 426 (2008)	19, 41
<i>State v. Hayes</i> , 81 Wash. App. 425, 438, 914 P.2d 788 (1996) 11, 12, 13,	15
<i>State v. Heatley</i> , 70 Wn. App. 573, 579, 854 P.2d 658 (1993)	34
<i>State v. Heritage</i> , 152 Wn.2d 210, 214, 95 P.3d 345 (2004)	30, 31
<i>State v. Jones</i> , 117 Wn. App. 89, 653 P.3d 1153 (2003)	35
<i>State v. Linden</i> , 89 Wn. App. 184, 193, 947 P.2d 1284 (1997)	29
<i>State v. Post</i> , 118 Wn.2d 596, 605-606, 826 P.2d 172 (1992)	31
<i>State v. Salinas</i> , 119 Wn.2d 192, 201, 829 P.2d 1068 (1992)	10, 36
<i>State v. Stevenson</i> , 128 Wn. App. 179, 193, 114 P.3d 699 (2005)	19, 41
<i>State v. Watkins</i> , 53 Wn. App. 264, 274, 766 P.2d 484 (1989)	31

Constitutional Provisions

U.S.Const. amend. V	30
Wash. Const. art. §	9

Washington Court Rules

CrR 4.7 28, 29

Washington Pattern Jury Instructions

WPIC 44.20 9

WPIC 44.21 9

Cause No. 13-1-01810-3

A. ASSIGNMENTS OF ERROR.

1. Whether the evidence is insufficient to support three counts of child molestation in the first degree?
2. Whether substantial evidence does not support the findings of fact and conclusions of law?

B. STATEMENT OF THE CASE.

1. Procedure

On May 3, 2013, the Pierce County Prosecuting Attorney's Office charged HAROLD SPENCER GEORGE with three counts of Child Molestation in the First Degree for allegedly molesting A.Q. between January 1, 2008 and September 1, 2012 in Pierce County Cause No. 13-1-01810-3. CP 369-371. Mr. George was also charged with one count of Violation of a Protection Order, and one count of Furnishing Liquor to a Minor but those charges were bifurcated for trial and later dismissed by the State. CP 369-371, 439-441, RP 43-44.

Trial commenced on February 6, 2014, before the Honorable John Hickman. RP 3. Mr. George waived his right to a jury trial. RP 83. At the end of trial, Judge Hickman returned a verdict finding Mr. George guilty of three counts of Child Molestation in the First Degree. RP 486.

On April 11, 2014, Mr. George was sentenced to 180 months to life in prison. CP 480-495.

2. Facts

At trial, Detective Gary Sanders with the Pierce County Sheriff's Office testified that he attended A.Q.'s forensic interview on May 2, 2013. RP 122. Detective Sanders met with the interviewer, Dr. Yolanda Duralde, and A.Q.'s mother, Mary Moran-George "Ms. Moran" to get background information and to discuss how A.Q.'s disclosure occurred. RP 122-123, 139. After the interview, Detective Sanders met with Ms. Moran to discuss A.Q.'s forensic interview. RP 126. Counseling was offered to A.Q. at that time. RP 126-127. On May 28, 2013, Detective Sanders interviewed A.Q.'s brother, Tony Kinsey. RP 127. Detective Sanders had no contact with A.Q., other than reviewing her forensic interview. RP 122.

Dr. Yolanda Duralde, the medical director at the Child Abuse Intervention Department of Mary Bridge Hospital, testified that on May 2, 2013, after A.Q.'s forensic interview, she met with Ms. Moran to get medical background information for A.Q. RP 132-133, 140. Dr. Duralde conducted a physical exam of A.Q., using a colposcope to look at A.Q.'s external genitalia and hymen. RP 140-141. Dr. Duralde did not observe any injuries to A.Q. RP 142.

After the physical exam, Dr. Duralde met with a social worker and Ms. Moran to discuss the results of the examination. RP 141, 143. Dr. Duralde testified that counseling was offered to A.Q. at that time and that Dr. Duralde stressed how important counseling for A.Q. would be. RP 143-144, 145.

At trial, A.Q. testified that she is 12 years old and that Mr. George was her step dad. RP 158, 162. She testified that she got along with Mr. George. RP 167. A.Q. thought she had been living in her current house for more than five years, maybe six or seven years and had lived there with her mother, her brother, and Mr. George. RP 160, 163.

A.Q. testified that Mr. George would take her into the master bedroom and do things to her. RP 172. She testified that she thought Mr. George locked the door during this time. RP 230. When asked to describe the master bedroom where this would take place, A.Q. testified that there was “[a] couch... wait, maybe not a couch. Chairs, a bed, and like a table between the couch and two nightstands.” RP 172.

A.Q. testified that she was not sure whether Mr. George took off her pants and panties or whether he asked her to do it. RP 173. When asked what Mr. George wore, A.Q. testified that Mr. George wore jeans and a t-shirt. RP 175. A.Q. testified that she thought that Mr. George’s pants would be off and his shirt on during the incidents. RP 175. A.Q.

claimed that Mr. George put a pillow over her face during the incidents. RP 174. She testified that Mr. George took off his underwear and would be on top of her. RP 175-176. When asked “how would the defendant’s private touch your private” A.Q. responded “[j]ust rocking back and forth I suppose.” RP 178. A.Q. testified that when this was happening she would either just be sitting there or shouting help. RP 178.

The prosecutor asked A.Q. “[n]ow, after his private was rocking back and forth on your private for a couple minutes, would anything happen?” RP 178. A.Q. answered “[n]ot that I know of.” RP 178. Prosecutor asked “[d]id you ever see anything come out of the defendant’s privates?” RP 179. A.Q. responded “No.” RP 179. The prosecutor then asked “[d]id you ever feel anything come out of the defendant’s private?” RP 179. A.Q. responded “yes” and testified that it was a warm liquid that would go on her stomach. RP 179. A.Q. testified that she never looked at the liquid and that Mr. George probably wiped it off with a towel or a shirt. RP 179-180.

The prosecutor asked A.Q. “Now, before, I asked you if you cried, and you said sometimes. Does that mean sometimes you cried, and sometimes you didn’t?” RP 181. A.Q. responded “Yes.” RP 181. The prosecutor asked A.Q. “So that means this happened more than one time?” A.Q. responded “Yeah.” Prosecutor asked “More than two times?” RP

181. A.Q. responded “Probably.” RP 181. The prosecutor asked “More than three times?” RP 181. A.Q. responded “I’m not sure.” RP 181.

The prosecutor then asked “Would it happen on, for example, like, a weekly basis?” RP 181. A.Q. responded “Yeah, I guess.” RP 181.

The prosecutor asked A.Q. if she remembered what grade she was in when Mr. George did these things to her. RP 182. A.Q. replied “No. Probably Fourth.” RP 182. She went on to testify that she thought she was 10 when it happened but she was possibly 9. RP 182. The prosecutor asked A.Q. if she told her mom about what Mr. George did to her in 2012, when she was in fifth grade. RP 186. A.Q. responded “I think so.” RP 187. The prosecutor asked “Was it in that beginning part of the school year; fall, September, October?” RP 187. A.Q. replied “I’m not sure.” RP 187. The prosecutor then stated “Sound about right, though?” RP 187. A.Q. replied “Yeah.” RP 187.

The prosecutor then asked “Are you able to give a rough estimate as to the number of times it happened?” RP 182. A.Q. responded “five.” RP 182.

During cross examination, A.Q. admitted that she doesn’t really remember when the incidents happened and can’t really say that it happened weekly. RP 211.

The prosecutor asked A.Q. who she first told about what Mr. George had done to her and she said she told her mom. RP 184. A.Q. then testified that her brother told her mom and her mom asked her about it. RP 184. When the prosecutor asked A.Q. how her brother knew if she never told him, A.Q. changed her testimony and said that she thought she had mentioned something about it to her brother's girlfriend, Nicole, and that Nicole either told her brother or he overheard their conversation. RP 184.

A.Q. admitted that she previously recanted her allegations against Mr. George. RP 194-195. A.Q. testified that her brother, Tony, had pinned her down on the couch for 40 minutes yelling at her to say her allegation about Mr. George was not true. RP 194-195. A.Q. then told Tony that she made up the allegation about Mr. George. RP 195.

A.Q. also recanted to her mother, Ms. Moran. RP 196.

Sometime later, A.Q.'s mom and Mr. George split up and A.Q. told her mom that her original allegation against Mr. George was true. RP 199. Ms. Moran called 911 to report it. RP 204.

A.Q. testified that prior to accusing Mr. George of molesting her, she heard her neighbor, Ashley Simpson, referring to Mr. George as a sex offender. RP 212. A.Q. testified that she previously disclosed that her

neighbor, Kayla, told her to make up the allegations about Mr. George but that she lied about Kayla telling her to do that. RP 251-252.

A.Q. testified that she didn't talk with a psychologist and no counseling was ever offered to her. RP 223.

Tony Kinsey, A.Q.'s 15 year old brother, testified that he learned about A.Q.'s allegations because Mr. George told him that A.Q. accused him of molesting her. RP 260. Tony testified that he argued with A.Q. over her allegations and pinned A.Q. down for about 15 or 20 minutes asking her to tell the truth about Mr. George. RP 261, 263. A.Q. then told Tony that her allegation about Mr. George was not true. RP 263. Tony testified that his ex-girlfriend, Nicole, never told him about the allegations against Mr. George. RP 265.

Tony testified that he saw A.Q. and Mr. George go into the master bedroom about four or five times and the door would be locked. RP 266. Tony testified that he listened at the door but didn't hear any screams. RP 266.

Mary Moran-George testified that she is the mother of A.Q. and Tony Kinsey. RP 280. She testified that she became involved with Mr. George in 2002 or 2003. RP 281. They all began living together at Mr. George's mother's house in 2007. RP 282-283. They lived there for less than a year and then Mr. George, Ms. Moran and the children moved into

their own place. RP 284. Ms. Moran testified that A.Q. first told her about what happened with Mr. George in September/October 2012 and that after A.Q. told her about what happened, A.Q. wanted to go see Mr. George to say something to him. RP 285, 287.

Ms. Moran took A.Q. to go see Mr. George at his mother's house. RP 287-288. The conversation between A.Q. and Mr. George lasted less than 10 minutes. RP 290. Ms. Moran claimed that after leaving, Mr. George called Ms. Moran on the phone and told her he was going to kill himself. RP 290. A few minutes later, A.Q. told Ms. Moran that her allegations against Mr. George were not true. RP 291. Ms. Moran asked A.Q. why she would say that and A.Q. said she didn't know and that there was a flyer that went around. RP 291.

After A.Q. recanted, Ms. Moran allowed Mr. George to move back into the home. RP 292. Their marriage broke apart and ended in late 2012, early 2013. RP 292. After the marriage was over, A.Q. told Ms. Moran that her original allegations against Mr. George were actually true so Ms. Moran called 911 to report it. RP 294, 296.

Ms. Moran testified that although she tried to set up counseling for A.Q., A.Q. wouldn't go. RP 299.

Kim Brune, who worked as the child interviewer on A.Q.'s case testified that she conducted a forensic interview with A.Q. on May 2,

2013. RP 313-314, 317-318. Ms. Brune stated that she could not testify as to whether an alleged victim had been coached. RP 317.

Harold George testified that he lived with A.Q. in various homes for six or seven years. RP 403. While living with A.Q., numerous other people moved in and out of the homes. RP 414-415. People were always coming in and out of the house. RP 393. Mr. George had no idea when someone might come into the house and someone may come in anytime he was home with A.Q. RP 393.

Mr. George denied molesting A.Q. RP 325. Mr. George testified that A.Q. first accused him of molesting her in June or July 2012. RP 346. He testified that when A.Q. and Ms. Moran came over to his mother's house to discuss the allegations, A.Q. recanted. RP 397. Since A.Q. had recanted, Mr. George thought everything was resolved. RP 397. After his conversation with Ms. Moran and A.Q., he did not hear anything about the allegations again until he was arrested. RP 354.

Mr. George testified that there were flyers going around their neighborhood about Mr. George's sex offender status. RP 344. He testified that during Mr. George and Ms. Moran's relationship, Ms. Moran accused Mr. George of having an affair with a woman named Courtney. RP 394. About a week later, Mr. George was arrested. RP 394. Mr.

George voluntarily agreed to speak with the detective about the allegations. RP 371.

At the end of trial, the Judge returned a verdict finding Mr. George guilty as charged. RP 486. On April 11, 2014, Mr. George was sentenced to the high end of the standard range sentence of 180 months in prison. RP 498.

C. ARGUMENT.

1. THE EVIDENCE PRESENTED AT TRIAL IS INSUFFICIENT TO SUPPORT THE CONVICTIONS FOR THREE COUNTS OF CHILD MOLESTATION IN THE FIRST DEGREE.

Evidence is insufficient to support a conviction when, viewed in the light most favorable to the State, a rational trier of fact could not have found the essential elements of the crime beyond a reasonable doubt. *See State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). A claim of insufficiency admits the truth of the State's evidence and all reasonable inferences that can be drawn therefrom. *Id.* Circumstantial evidence and direct evidence are equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 618 P.2d 99 (1980).

A person is guilty of child molestation in the first degree if the person has sexual contact with a child who is less than twelve years old,

who is not married to the person, and who is at least thirty-six months younger than the person. WPIC 44.20.

To convict the defendant of three counts of child molestation in the first degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That between January 1, 2008 and September 1, 2012, the defendant had sexual contact with A.Q.;

(2) That A.Q. was less than twelve years old at the time of the sexual contact and was not married to the defendant;

(3) That A.Q. was at least thirty-six months younger than the defendant; and

(4) That this act occurred in the State of Washington.

WPIC 44.21.

In cases involving a resident child molester, the alleged victim's generic testimony can be used to support multiple counts. *State v. Hayes*, 81 Wash. App. 425, 438, 914 P.2d 788 (1996). At a minimum, the alleged victim must be able to describe (1) the kind of act or acts with sufficient specificity for the jury to determine which offense, if any, has been committed; (2) the number of acts committed with sufficient certainty to support each count alleged by the prosecution; and (3) the general time period in which the acts occurred. *Id.*

- a. *The evidence is insufficient to prove that Mr. George had sexual contact with A.Q. between January 1, 2008 and September 1, 2012.*

The evidence presented at trial was insufficient to prove that between January 1, 2008 and September 1, 2012, Mr. George had sexual contact with A.Q.

To support a conviction for Child Molestation in the First Degree, the alleged victim must be able to describe the general time period in which the acts occurred. *See State v. Hayes*, 81 Wash. App. at 438.

At trial, A.Q. could not give a specific time period as to when the alleged molestation occurred. She testified that she “thought” she had been living in her current house for more than five years, maybe six or seven years. RP 160. When asked if she remembered what grade she was in when Mr. George molested her, she replied “No. Probably Fourth.” RP 182. She said she may have been 9 or 10 when it happened. RP 182.

Although Ms. Moran testified that they had lived in the Graham house since 2007, she did not narrow down the time period any further. This evidence is insufficient to prove that the alleged molestation began sometime after January 1, 2008.

At trial, A.Q. could not specify when she initially disclosed her allegations against Mr. George. The prosecutor asked A.Q. if she told her mom about what Mr. George did to her in 2012, when she was in fifth

grade. RP 186. A.Q. responded “I think so.” RP 187. The prosecutor asked “Was it in that beginning part of the school year; fall, September, October?” RP 187. A.Q. replied “I’m not sure.” RP 187. The prosecutor then stated “Sound about right, though?” RP 187. A.Q. replied “Yeah.” RP 187.

Ms. Moran testified that A.Q. first told her about the allegations in September or October 2012. RP 285.

No additional evidence was offered at trial to establish the time period in which the alleged molestation occurred. A.Q. could not give specific dates, and was even unsure about how old she was when it happened. RP 182. This evidence is insufficient to prove the alleged molestation occurred within the charging period of January 1, 2008 through September 1, 2012. Therefore these charges cannot be supported.

b. The evidence is insufficient to support three instances of molestation.

The evidence presented at trial was insufficient to prove three acts of molestation.

To support a conviction for Child Molestation in the First Degree, the alleged victim must be able to describe the number of acts committed with sufficient certainty to support each count alleged by the prosecution. See *State v. Hayes*, 81 Wash. App. at 438.

A.Q. could not give a precise answer about how many times the alleged molestation occurred. When the prosecutor asked A.Q. “So that means this happened more than one time?” A.Q. responded “Yeah.” Prosecutor asked “More than two times?” RP 181. A.Q. responded “Probably.” RP 181. The prosecutor asked “More than three times?” RP 181. A.Q. responded “I’m not sure.” RP 181.

Although when the prosecutor then asked “Would it happen on, for example, like, a weekly basis?”, A.Q. responded “Yeah, I guess.”, she later admitted that she really didn’t remember when the incidents happened and can’t say that it happened weekly. RP 181, RP 211.

The prosecutor then asked “Are you able to give a rough estimate as to the number of times it happened?” RP 182. A.Q. responded “five.” RP 182.

A.Q. could not describe with sufficient certainty the number of acts committed. Her testimony does not support three counts of Child Molestation in the First Degree.

c. The evidence is insufficient to prove that Mr. George molested A.Q.

In order to support a conviction for Child Molestation in the First Degree, the alleged victim must be able to describe the kind of act or acts

with sufficient specificity for the jury to determine which offense, if any, has been committed. See *State v. Hayes*, 81 Wash. App. at 438.

As already discussed, A.Q. could not specify the time period in which the alleged molestation occurred or the number of instances the molestation occurred. A.Q. testified that it “probably” happened more than once and that she was “not sure” if it happened more than twice. See RP 181. In addition to being insufficient to prove the time period of the alleged molestation or the number of instances, the evidence is also insufficient to prove that any molestation occurred.

At trial, A.Q.’s testimony was filled with unsure statements about what happened. A.Q. testified that Mr. George would take her into the master bedroom. RP 172. She testified that she “thought” Mr. George locked the door. RP 230. When asked to describe the master bedroom where the molestation took place, A.Q. testified that there was “[a] couch... wait, maybe not a couch. Chairs, a bed, and like a table between the couch and two nightstands.” RP 172.

A.Q. was not sure whether Mr. George took off her pants and panties or whether she did. RP 173. When asked “how would the defendant’s private touch your private” A.Q. responded “[j]ust rocking back and forth *I suppose.*” RP 178 (*emphasis added*).

The prosecutor asked A.Q. “[n]ow, after his private was rocking back and forth on your private for a couple minutes, would anything happen?” RP 178. A.Q. answered “[n]ot that I know of.” RP 178. Prosecutor asked “[d]id you ever see anything come out of the defendant’s privates?” RP 179. A.Q. responded “No.” RP 179. The prosecutor then asked “[d]id you ever feel anything come out of the defendant’s private?” RP 179. A.Q. responded “yes” and testified that it was a warm liquid that would go on her stomach. RP 179.

A.Q. could only give details when the prosecutor led her there and her testimony at most describes one incident of molestation.

In addition to the lack of specificity regarding the alleged molestation, A.Q. continually changed her story showing a lack of credibility. When asked about the initial disclosure, A.Q. testified that she told her mom about the alleged molestation. RP 184. Then she changed her testimony and said that her brother told her mom and her mom asked her about it. RP 184. A.Q. again changed her testimony and stated that she thought she had mentioned it to her brother’s girlfriend, Nicole, and that Nicole must have told her brother or he overheard their conversation. RP 184. Tony, A.Q.’s brother, testified that Nicole never told him about the allegations and he never told his mom. RP 265.

A.Q. testified that she was never offered counseling. RP 223. However, numerous witnesses testified that counseling was offered to A.Q. at several different times and Ms. Moran testified that she tried to set up counseling for A.Q. but A.Q. refused to go. RP 126-127, 143-145, 299.

A.Q. recanted her allegations several times. A.Q. admitted recanting to her brother. She said he pinned her down for 40 minutes yelling at her to say that she made up her allegation about Mr. George. RP 194-195. Tony testified that he pinned A.Q. down for about 15 or 20 minutes asking her to tell the truth about Mr. George and A.Q. then told Tony that she lied about Mr. George. RP 261, 263.

A.Q. also recanted to her mother, Ms. Moran, telling Ms. Moran that her allegations against Mr. George were not true. RP 196, 291. Ms. Moran asked A.Q. why she would say that and A.Q. said she didn't know and that there was a flyer that went around. RP 291.

Mr. George testified that A.Q. also recanted during the conversation between Mr. George, Ms. Moran, and A.Q. RP 397.

Furthermore, there were several motives to lie about Mr. George molesting A.Q. First, prior to A.Q.'s allegations, there was a flyer going around Mr. George's neighborhood that highlighted Mr. George's sex offender status. A.Q. testified that prior to accusing Mr. George of

molesting her, she heard her neighbor referring to Mr. George as a sex offender. RP 212. A.Q. admitted that she previously said her neighbor told her to make up the allegations about Mr. George but she lied about that. RP 251-252.

Ms. Moran also had a motive to lie or coach her daughter into making these allegations. Ms. Moran accused Mr. George of having an affair with a woman named Courtney. RP 394. About a week later, Mr. George was arrested. RP 394.

A.Q.'s testimony was filled with unsure statements. She could not state the time period in which the alleged molestation occurred or the number of times the alleged molestation occurred. She recanted her allegations several times and reported that a neighbor told her to make up the story about Mr. George. A.Q. repeatedly changed her story, lied about being offered counseling, and had motive to lie about Mr. George.

There was no physical evidence that any molestation occurred. Dr. Duralde testified at trial that she found no evidence of any injury to A.Q. during her examination. RP 140-142.

Mr. George denied molesting A.Q. RP 325. He also testified that while living with A.Q., numerous other people moved in and out of their homes. RP 414-415. People were always coming in and out of the house and there was no way to know when someone might walk in. RP 393.

The evidence is insufficient to support the convictions for child molestation in the first degree and therefore the convictions must be overturned.

II. THE FINDINGS OF FACT AND CONCLUSIONS OF LAW ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.

Following a bench trial, appellate review is limited to determining whether substantial evidence supports the findings of fact and, if so, whether the findings support the conclusions of law. *State v. Stevenson*, 128 Wn. App. 179, 193, 114 P.3d 699 (2005). “Substantial evidence” is evidence sufficient to persuade a fair-minded person of the truth of the asserted premise. *Id.* Challenges to a trial court’s conclusions of law are reviewed de novo. *State v. Gatewood*, 163 Wn.2d 534, 539, 182 P.3d 426 (2008).

In the present case, Judge Hickman found that “on at least five occasions while living in the Graham home, the defendant took A.Q. into the master bedroom and locked the door.” CP 505-509. However, substantial evidence does not support these findings.

At trial, A.Q. testified that she “thought” Mr. George locked the door when he would take her into the master bedroom. RP 230.

The prosecutor asked A.Q. “So that means this happened more than one time?” A.Q. responded “Yeah.” Prosecutor asked “More than

two times?” RP 181. A.Q. responded “Probably.” RP 181. The prosecutor asked “More than three times?” RP 181. A.Q. responded “I’m not sure.” RP 181. The prosecutor then asked “Would it happen on, for example, like, a weekly basis?” RP 181. A.Q. responded “Yeah, I guess.” RP 181. The prosecutor asked “Are you able to give a rough estimate as to the number of times it happened?” RP 182. A.Q. responded “five.” RP 182. During cross examination, A.Q. admitted that she doesn’t really remember when the incidents happened and can’t really say that it happened weekly. RP 211.

This testimony establishes that A.Q. thought the molestation happened more than one time. She does not describe in detail more than one act of molestation.

Although A.Q.’s brother, Tony, testified that he saw A.Q. and Mr. George go into the master bedroom about four or five times, he did not describe anything that happened inside the room.

Substantial evidence does not support the Court’s finding that Mr. George took A.Q. in the bedroom on “at least five occasions.”

D. CONCLUSION.

For the forgoing reasons, the appellant respectfully requests this Court reverse Mr. George’s convictions for three counts of Child Molestation in the first degree and dismiss the charges with prejudice.

Cause No. 13-1-01811-1

A. ASSIGNMENTS OF ERROR.

1. Whether the Court abused its discretion by refusing to exclude late discovery.
2. Whether Mr. George's statements to the police should have been suppressed.
3. Whether Detective Hickman's comment on Mr. George's credibility constitutes reversible error.
4. Whether there is insufficient evidence to support Mr. George's conviction for Failing to Register as a Sex Offender.
5. Whether the findings of fact and conclusions of law are not supported by substantial evidence.

B. STATEMENT OF THE CASE.

1. Procedure

On May 3, 2013, the Pierce County Prosecuting Attorney's Office charged HAROLD SPENCER GEORGE with one count of Failure to Register as a Sex Offender in Pierce County Cause No. 13-1-01811-1. CP 523.

Trial commenced on February 18, 2014, before the Honorable John Hickman. RP 583. Mr. George waived his right to a jury and proceeded with a Bench Trial. RP 660-662, 664. At the end of trial, Judge Hickman returned a verdict finding Mr. George guilty as charged.

RP 779. On April 11, 2014, Mr. George was sentenced to 12 months in prison, to run concurrent with cause number 13-1-01810-3. CP 580-594.

2. Facts

At trial, the defense moved to exclude Mr. George's statements to Officer Dillon as late discovery. RP 598, 602. Defense counsel explained to the Court that she did not receive Officer Dillon's report until the Friday afternoon before trial and was unable to review it with Mr. George under the following Sunday. RP 599. Defense counsel explained that she had prepared her entire case based on Officer Hickman's report and that allowing new discovery at this point would be prejudicial to the defense especially since the report includes statements allegedly made by Mr. George to Officer Dillon. RP 599-602. The State informed the Court that she was unaware that Officer Dillon, the officer who gave the initial tip that Mr. George was not living at his registered address, had written a report with respect to Mr. George's case. RP 595. The prosecutor stated that she received Officer Dillon's report on the Thursday before trial and that she immediately forwarded to defense counsel. RP 596. The prosecutor explained that Officer Hickman's police report specifically included the statements Mr. George made to Officer Dillon, arguing that the discovery should be allowed. RP 603. The Judge refused to exclude the new discovery, finding that it would not prejudice the defendant

because Mr. George's statements to Officer Dillon were referenced in the probable cause statements and Officer Dillon was listed on the State's Witness List. RP 605-606.

At trial, the defense moved to have the Judgment and Sentences of Mr. George's prior sex offense convictions redacted and asked the Court to only allow the State to present evidence of one prior sex offense conviction. RP 589-590. Judge Hickman denied both requests. RP 593.

Trial proceeded with a 3.5 Suppression Hearing. At the 3.5 Hearing, Detective Oliver Hickman with the Pierce County Sheriff's Department testified that he received a tip that Harold George was not living at his registered address. RP 611. On May 2, 2013, Detective Hickman contacted Mr. George, who was already in police custody. RP 612-613. Detective Hickman testified that Mr. George told him that he did not know what to do about his registration because there was a restraining order so he couldn't live at his registered address any longer. RP 613. Detective Hickman testified that he stopped Mr. George and then advised him of his *Miranda* rights. RP 613. Mr. George waived his rights and agreed to speak with Detective Hickman. RP 614. Detective Hickman testified the Mr. George told him that he was staying in his car in a parking lot near the casino and admitted staying a few nights at a friend's house in Tacoma. RP 615. Detective Hickman testified that Mr.

George admitted not living at his registered address for about two weeks. RP 615. Detective Hickman testified that Mr. George told him that he hadn't changed his registered address because he didn't know he could register as homeless. RP 617.

Officer Anita Dillon with the Puyallup Tribal Police also testified at the 3.5 hearing. She testified that on April 22, 2013, she met with Mr. George about a report of a missing teenager. 639-641. Officer Dillon knew that Mr. George was a registered sex offender before contacting him. RP 643. Officer Dillon testified that during the conversation with Mr. George, he told her that he was staying with friends instead of at his registered address. RP 644-645.

At the end of the 3.5 hearing, defense counsel moved to suppress all statements made by Mr. George to Detective Hickman and Officer Dillon. RP 628, 653-654. Judge Hickman ruled that all statements could be admitted at trial. RP 632-634, 660.

After the 3.5 hearing, Mr. George waived his right to a jury trial and proceeded with a bench trial. RP 660-662, 664.

At trial, Officer Dillon testified that on April 22, 2013, she met with Mr. George about a report that his step-son, Tony, had run away from his mother's home. 671-673. Mr. George helped her get in touch with Tony by phone. RP 674. Officer Dillon testified that Mr. George

admitted that Tony had been staying with him and that he had dropped Tony back at his mother's house the prior day. RP 674-675.

Officer Dillon testified that during her conversation with Mr. George, he told her that he was staying at a friend's house. RP 676-677. Officer Dillon testified that Mr. George did not tell her that he was staying in Tacoma and that he did not tell her how long he was staying at his friend's house. RP 677. Officer Dillon told Mr. George he should update his sex offender registration. RP 676.

Detective Alec Wrolson with the Puyallup Tribal Police testified that on May 2, 2013, he was contacted by the Pierce County Sheriff's Department asking for assistance in locating Mr. George. RP 680-681. Detective Wrolson assisted the Sheriff's Department in locating Mr. George and in transporting Mr. George to jail. RP 681-682.

Detective Oliver Hickman testified that on April 23, 2013, he received a tip from a Puyallup Tribal Officer that Mr. George was separated from his wife and living at a friend's house in Tacoma. RP 688-689, 696. Detective Hickman testified that he called Mr. George's wife on April 29, 2013, to confirm whether Mr. George was still living at his registered address and through that conversation determined that Mr. George was not living there. RP 690, 696. On May 2, 2014, Detective Hickman contacted Mr. George. RP 690.

Detective Hickman testified that he introduced himself to Mr. George and explained he received information that Mr. George was no longer living at his registered address. RP 692, 693. Detective Hickman testified that Mr. George said he didn't know what to do because he had a restraining order preventing him from living at that address. RP 693. Detective Hickman testified that Mr. George said he separated from his wife two weeks prior and had been living mostly out of his car at the cemetery and using the shower facilities at the cemetery office. RP 694. Detective Hickman asked Mr. George if he had stayed at a friend's house in Tacoma. RP 694. Detective Hickman testified that Mr. George admitted staying at a friend's house for a couple of nights but that the majority of time he was in his car. RP 694.

Detective Hickman testified that he asked Mr. George why he hadn't updated his registration and Mr. George told him that he didn't know he was allowed to register as homeless, he thought in order to register he needed to list a permanent address. RP 696-697.

The prosecutor asked Detective Hickman if he thought Mr. George's response was credible and Detective Hickman replied "No." RP 697.

On cross examination, Detective Hickman admitted that his police report was more accurate than his memory of the events and that he did

not include in his police report that Mr. George admitted to no longer living at his registered address. RP 704-705. Nowhere in Detective Hickman's report did it state that Mr. George specifically said he moved out of the house where he was registered. RP 707. Detective Hickman testified that Mr. George told him that he "stayed" at his friend's house and that he "stayed" in his car but did not tell him that he was living in his car. RP 707. Detective Hickman testified that as far as he knows, Mr. George was compliant with his registration up until April 23, 2013. RP 709.

Andrea Shaw with the Pierce County Sheriff's Department testified that she is the records custodian for the Pierce County Sex Offender Registration Unit. RP 724. She testified that the Sex Offender Registration Unit has a file on Mr. George. RP 724. On November 24, 1992, Mr. George pled guilty to attempted rape in the first degree which is a sex offense. RP 725-726. On November 12, 1999, Mr. George pled guilty to communicating with a minor for immoral purposes. RP 727-728. Ms. Shaw testified that on April 11, 2007, Mr. George completed a sex offender registration packet listing a Tacoma address. RP 729-730. On December 19, 2007, Mr. George completed a change of address form, registering a new address. RP 734-735. Ms. Shaw testified that because Mr. George is a level two registered sex offender, the Sheriff's

Department must physically go out to his address twice a year to verify that he's living at his registered address. RP 736-737. Up until 2011 or 2012, verification could be made through a third party who either lived at the registered house or nearby, like a neighbor. RP 737.

On June 17, 2008, Mr. George updated his work address with the registration office. RP 737-738. Ms. Shaw testified that the last time Mr. George updated his registered address was on July 12, 2010, listing a house in Graham. RP 739-741. Ms. Shaw testified that as far as she knew, up until May 2, 2013, Mr. George had always changed his address with the sheriff's office. RP 742. Ms. Shaw also testified that Mr. George would not need to update the registration office if he stayed at a friend's house for a night. RP 743.

At the end of trial, Judge Hickman found Mr. George guilty as charged. RP 779.

C. ARGUMENT.

1. THE COURT ABUSED ITS DISCRETION BY NOT EXCLUDING THE STATE'S LATE DISCOVERY.

Under CrR 4.7, the prosecuting attorney is required to disclose to the defendant evidence and information within the prosecuting attorney's possession or control. CrR 4.7(a). The disclosure duty is a continuing obligation, and any new material or information must be promptly

disclosed. CrR 4.7(h)(2).

The purpose of CrR 4.7 is “to provide adequate information for informed pleas, expedite trial, minimize surprise, afford opportunity for effective cross-examination, and meet the requirements of due process ...”

State v. Linden, 89 Wn. App. 184, 193, 947 P.2d 1284 (1997) (*internal citations omitted*). A trial court’s decision to allow late discovery is reviewed for abuse of discretion. *Id.* at 189-190.

In the present case, days before trial, the prosecutor received Officer Dillon’s police report detailing statements that Mr. George allegedly made to Officer Dillon. RP 596, 602. Although the State forwarded the report to defense counsel, defense counsel did not receive that report until the Friday before trial and was unable to review the report with Mr. George until two days before trial began. RP 596, 599.

Officer Dillon’s report included material statements Mr. George made to Officer Dillon about no longer living at his registered address. RP 644-645. The statements were essential to the prosecutor’s case since Officer Dillon was the person who gave the initial tip to police that Mr. George wasn’t living at his registered address.

Defense counsel explained to the Judge that she had prepared for Mr. George’s entire case based on one police report - Officer Hickman’s report and as a result had not interviewed Officer Dillon. Officer Dillon’s

testimony not only affected trial preparation but also motion preparation because Officer Dillon would be testifying about statement allegedly made by Mr. George.

The new discovery prejudiced Mr. George because his counsel was unable to prepare his entire trial with all of the facts. Allowing such discovery would require changing defense strategy at this late stage in the case.

Over defense counsel's objection, the Court refused to suppress Officer Dillon's testimony. RP 605-606.

The court abused its discretion by allowing this material discovery to be presented at trial. The discovery not only changed defense counsel's trial strategy, but it was so late that defense did not have adequate time to factor Officer Dillon into the defense case. The Court should have excluded any statements Mr. George allegedly told Officer Dillon.

2. THE COURT SHOULD HAVE SUPPRESSED MR. GEORGE'S STATEMENTS TO THE POLICE.

The Fifth Amendment to the United States Constitution provides that "[n]o person ... shall be compelled in any criminal case to be a witness against himself." *U.S. Const., amend. V*. Police must give Miranda warnings when a suspect is subject to interrogation while in the coercive environment of police custody. *State v. Heritage*, 152 Wn.2d 210, 214, 95

P.3d 345 (2004). “Without Miranda warnings, a suspect's statements during custodial interrogation are presumed involuntary.” *Id.*

A suspect is deemed in custody for *Miranda* purposes as soon as his or her freedom “is curtailed to a degree associated with formal arrest.” *State v. Watkins*, 53 Wn. App. 264, 274, 766 P.2d 484 (1989) (*internal citations omitted*). That determination is based on how a reasonable person in the same circumstances would have perceived the situation. *Id.* In most cases, the term custodial refers to whether the suspect's freedom of movement was restricted at the time of questioning. *Id.* at 649-650. An interrogation occurs when the investigating officer should have known his or her questioning would provoke an incriminating response. *Id.* at 650-652; *State v. Post*, 118 Wn.2d 596, 605-606, 826 P.2d 172 (1992).

Denial of a suppression motion is reviewed by independently evaluating the record to determine whether substantial evidence supports the findings and whether the findings support the conclusions. *State v. Broadaway*, 133 Wn.2d 118, 130, 942 P.2d 363 (1997).

In the present case, there were two Officers who testified about statements Mr. George allegedly made to the police. Detective Oliver Hickman testified that he received a tip that Harold George was not living at his registered address. RP 611. Mr. George was already in police custody when Detective Hickman contacted him. RP 612-613. Detective

Hickman testified that Mr. George told Detective Hickman that he did not know what to do about his registration because there was a restraining order so he couldn't live at his registered address any longer. RP 613. Detective Hickman testified that after Mr. George made that statement, he was advised him of his *Miranda* rights. RP 613.

The statement Mr. George made to Detective Hickman prior to being advised of his *Miranda* rights should have been suppressed. Mr. George was in custody and under interrogation at the time he made the statement and he had not yet been advised of his *Miranda* rights. RP 612-613. Therefore, the statement should have been suppressed.

Officer Anita Dillon also testified at the 3.5 hearing. She testified that on April 22, 2013, she met with Mr. George about a report of a missing teenager. 639-641. Officer Dillon testified that during the conversation with Mr. George, he told her that he was staying with friends instead of at his registered address. RP 644-645.

Officer Dillon knew that Mr. George was a registered sex offender prior to contacting him about his missing step son and she elicited information from Mr. George about where Mr. George was staying at the time. Although Officer Dillon testified that Mr. George was not in custody during their conversation, a reasonable person would not have felt free to leave in Mr. George's situation. Mr. George was compelled to stay

and talk with Officer Dillon because Officer Dillon was looking for his step son. A reasonable person would not feel free to walk away or refuse to answer a police officer's questions when the subject of the investigation was a missing teenager.

Although Officer Dillon testified that she was not investigating Mr. George for failing to register as a sex offender, she should have advised him of his *Miranda* rights before asking him questions that she knew would elicit possible incriminating evidence. Officer Dillon even told Mr. George that he should change his address with the sex offender registry. RP 645. She clearly knew that asking Mr. George if his step son had been staying with him, as opposed to at his mother's house where Mr. George is registered, would lead to an incriminating response. Therefore the statements should have been suppressed.

3. THE OFFICER'S COMMENT ON MR. GEORGE'S CREDIBILITY CONSTITUTES REVERSIBLE ERROR.

Generally, no witness may offer testimony in the form of an opinion regarding the guilt or veracity of the defendant. *State v. Demery*, 144 Wn.2d 753, 759, 30 P.3d 1278 (2001) (*internal citations omitted*). Such testimony is unfairly prejudicial to the defendant because it "invades the exclusive province of the jury." *Id.* In determining whether statements are in fact impermissible opinion testimony, the court considers

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. *Id.*, quoting *State v. Heatley*, 70 Wn. App. 573, 579, 854 P.2d 658 (1993).

Admitting impermissible opinion testimony regarding the defendant's guilt may be reversible error because admitting such evidence “violates the defendant's constitutional right to a jury trial, including the independent determination of the facts by the jury.” *State v. Demery*, 144 Wn.2d 753, 759, 30 P.3d 1278 (2001), citing *State v. Carlin*, 40 Wn. App. 698, 701, 700 P.2d 323 (1985).

In the present case, the prosecutor asked Detective Hickman “[w]hen he [Mr. George] responded to you that he didn’t know that he could register as homeless, did you specifically ask him why he hadn’t registered as homeless?” RP 679. Detective Hickman responded “[y]es. Yes.” RP 679. The prosecutor then asked Detective Hickman if he thought Mr. George’s response was credible and Detective Hickman replied “No, I did not.” RP 697.

The prosecutor’s question called for an improper comment on Mr. George’s credibility. The issue at trial was whether Mr. George knowingly failed to update his registered address. Detective Hickman

testified that Mr. George's statement about not knowing he could register as homeless was not credible. This is a direct comment on Mr. George's credibility and invades the exclusive province of the fact finder.

Considering the relevant factors (1) the witness, Detective Hickman, is a police officer, (2) Detective Hickman specifically testified that Mr. George's statement about his registration was not credible, (3) the sole charge at trial was Failure to Register as a Sex Offender, (4) Mr. George's defense was that he did not know he was out of compliance with the registration requirements and did not know that a person could register as homeless, (5) the only other evidence before the court regarding Mr. George's knowledge of his compliance with the registration requirements were the statements Mr. George made to Officer Dillon. Detective Hickman's testimony was not only a comment on Mr. George's credibility, it goes directly against Mr. George's defense. Detective Hickman's comment was material to the finding that Mr. George *knowingly* failed to comply with his registration requirements.

In *State v. Jones*, 117 Wn. App. 89, 653 P.3d 1153 (2003), the Court reversed the defendant's conviction for unlawful possession of a firearm finding that the officer's comment that he didn't believe the defendant was unaware of the gun under his seat was material, prejudicial, and constituted reversible error. See *State v. Jones*, 117 Wn. App. 89.

In the present case, Detective Hickman's comment that he did not find Mr. George's explanation about his registration status credible was material to the charge against Mr. George and was prejudicial, requiring reversal.

4. THERE WAS INSUFFICIENT EVIDENCE TO CONVICT MR. GEORGE OF FAILING TO REGISTER AS A SEX OFFENDER.

Evidence is insufficient to support a conviction when, viewed in the light most favorable to the State, a rational trier of fact could not have found the essential elements of the crime beyond a reasonable doubt. *See State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). A claim of insufficiency admits the truth of the State's evidence and all reasonable inferences that can be drawn therefrom. *Id.* Circumstantial evidence and direct evidence are equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 618 P.2d 99 (1980). To find the defendant guilty of Failing to Register as a Sex Offender, the State must prove beyond a reasonable doubt that Mr. George was convicted a prior sex offense requiring registration and that Mr. George knowingly failed to comply with the registration requirements between March 29, 2013 and May 2, 2013. CP 523.

In the present case, the State failed to prove that Mr. George knowingly failed to comply with the registration requirements.

- a. *The evidence is insufficient to prove that Mr. George was out of compliance with his registration requirements.*

The evidence presented at trial was insufficient to prove that Mr. George was no longer living at his registered address.

Officer Dillon testified that on April 22, 2013, Mr. George told her that his step-son, Tony, had been staying with him and that he had dropped Tony back at his mother's house the prior day. RP 674-675.

Officer Dillon testified that Mr. George said that he was staying at a friend's house but did not tell her how long he was staying at his friend's house. RP 676-677.

At trial, Ms. Shaw testified that Mr. George would not need to update the registration office if he stayed at a friend's house for a night. RP 743.

Detective Hickman testified that on April 29, 2013, he called Mr. George's wife and through that conversation determined that Mr. George was not living at his registered address. RP 690, 696. Detective Hickman testified that on May 2, 2013, Mr. George told him that he separated from his wife two weeks prior and had been living mostly out of his car at the cemetery. RP 694. Detective Hickman admitted that Mr. George said he stayed at his friend's house and that he stayed in his car but did not say that he was living in his car. RP 707.

The testimony presented at trial establishes that Mr. George temporarily stayed outside of his registered address but does not establish how long Mr. George was out of his registered address or that he was actually living elsewhere. Although Mr. George told Detective Hickman that he had been separated from his wife for two weeks, the testimony did not establish what “separated” meant. Mr. George could have “separated” from his wife two weeks prior but have continued to live in the house with temporary stays either in his car or at a friend’s house. Mr. George was not required to update his sex offender registration every time he stayed a night outside of his registered address.

The only confirmation Detective Hickman got that Mr. George was not “living” at his registered address was from his conversation with Mr. George’s ex-wife. Ms. Shaw testified that because Mr. George is a level two registered sex offender, the Sheriff’s Department must physically go out to his address twice a year to verify that he’s living at his registered address. RP 736-737. Detective Hickman did not go to Mr. George’s registered address or ask Mr. George’s neighbors if Mr. George was living at the address. He only got verbal confirmation from Mr. George’s ex wife, a bias source.

The evidence presented at trial shows that Mr. George temporarily stayed in his car or at a friend’s house. The evidence is insufficient to

prove that Mr. George actually moved out of his registered address or stayed outside of his address for long enough to be out of compliance with the registration requirements.

- b. *The evidence is insufficient to prove that Mr. George was out of compliance with the registration requirements during the charging period.*

The evidence is insufficient to support that Mr. George was out of compliance during the charging period of March 29, 2013 through May 2, 2013.

At trial, Officer Dillon testified that on April 22, 2013, Mr. George told her that his step-son, Tony, had been staying with him for the weekend and that he had dropped Tony back at his mother's house the prior day. RP 674-675. Although Mr. George told Officer Dillon that he was staying at a friend's house, he did not tell her how long he had been staying there. RP 676-677.

Detective Hickman testified that on May 2, 2013, Mr. George told him that he separated from his wife two weeks prior and had been staying at his friend's house and in his car. RP 694, 707.

There was no testimony about the date Mr. George stopped living at his registered address. The testimony presented at trial establishes that Mr. George temporarily stayed outside of his registered address but does not establish how long he was out of his registered address or what date he

left his address. Based on the testimony, Mr. George was out of his home two weeks prior to May 2, 2013 at the earliest, which would be around the middle of April. The testimony does not support that Mr. George was out of compliance as early as March 29, 2013.

c. The evidence is insufficient to prove that Mr. George knowingly failed to comply with the registration requirements.

Even if the Court finds that Mr. George was out of compliance with his registration requirements, the evidence is insufficient to prove that Mr. George knowingly failed to comply.

At trial, Detective Hickman testified that he asked Mr. George why he hadn't updated his registration and Mr. George told him that he didn't know he was allowed to register as homeless, he thought in order to register he needed to list a permanent address. RP 696-697. Mr. George's statements show that he did not know he was out of compliance with his sex offender registration requirements.

Additionally, the testimony at trial establishes that in the past, Mr. George has always updated his sex offender registration information. Detective Hickman testified that as far as he knew, Mr. George had been compliant with his registration requirements up until April 23, 2013. RP 709. Andrea Shaw with the Pierce County Sheriff's Department testified that as far as she knew, up until May 2, 2013, Mr. George had always

changed his address with the sheriff's office. RP 742. Mr. George changed his address each time he moved and even updated his employment address. RP 729-730, 734-735, 737-741.

This testimony established that Mr. George continually updated his sex offender registration information to stay in compliance with the registration requirements. It follows that if Mr. George had known that he was supposed to change his registered address when he was temporarily staying in his car or at a friend's house, he would have complied with those requirements.

The evidence is insufficient to prove that Mr. George knew he was out of compliance with his registration requirements.

V. THE FINDINGS OF FACT ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.

Following a bench trial, appellate review is limited to determining whether substantial evidence supports the findings of fact and, if so, whether the findings support the conclusions of law. *State v. Stevenson*, 128 Wn. App. 179, 193, 114 P.3d 699 (2005). "Substantial evidence" is evidence sufficient to persuade a fair-minded person of the truth of the asserted premise. *Id.* Challenges to a trial court's conclusions of law are reviewed de novo. *State v. Gatewood*, 163 Wn.2d 534, 539, 182 P.3d 426 (2008).

In the present case, Judge Hickman found that “[t]he defendant moved out of the 230th Street address prior to March 29, 2013”. CP 595-602. Judge Hickman found that “[a]ccording to the defendant, he had dropped Tony back off at his mother’s house earlier in the week.” CP 595-602. “The defendant admitted he had not been living at the Graham address and claimed he had been staying with his friend in Tacoma. His friend was able to confirm this information and provide an address to Officer Dillon.” CP 595-602. “The defendant was clearly not living at the Graham address and had not been for at least 2 weeks.” CP 595-602.

- (a) Substantial evidence does not support that “[t]he defendant moved out of the 230th Street address prior to March 29, 2013”.

At trial, Officer Dillon testified that on April 22, 2013, Mr. George told her that his step-son, Tony, had been staying with him for the weekend and that he had dropped Tony back at his mother’s house the prior day. RP 674-675. Mr. George told Officer Dillon that he was staying at a friend’s house but did not tell her how long he had been staying there. RP 676-677. Detective Hickman testified that on May 2, 2013, Mr. George told him that he separated from his wife two weeks prior and had been staying at his friend’s house and in his car. RP 694, 707.

There was no testimony about the date Mr. George stopped living at his registered address. The testimony presented at trial establishes that Mr. George temporarily stayed outside of his registered address but does not establish how long he was out of his registered address or what date he left his address. The testimony supports that Mr. George was out of his home for at most, two weeks prior to May 2, 2013 which would be around the middle of April. Substantial evidence does not support that Mr. George moved out of his registered home *prior to March 29, 2013*.

- (b) Substantial evidence does not support that the defendant “admitted he had not been living at the Graham address and claimed he had been staying with his friend in Tacoma. His friend was able to confirm this information and provide an address to Officer Dillon.”

During trial, no testimony was presented about Mr. George’s friend who allegedly confirmed that Mr. George was staying with him. Officer Dillon testified at the 3.5 hearing that when she spoke with Mr. George, he told her that he was staying with a friend, Raymond McCloud. Raymond McCloud was present at the time and confirmed his address. RP 644. This testimony was presented during the motion hearing but was not presented at trial and therefore not a fact to be considered in evidence.

At trial, the only testimony about Mr. George’s friend was that “[h]e stated that he was staying with a friend and pointed at his friend that was sitting in the vehicle.” RP 676.

Substantial evidence does not support Judge Hickman's findings of fact.

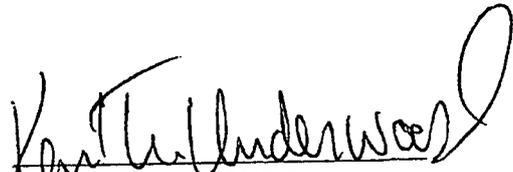
- (c) Substantial evidence does not support that the defendant "was clearly not living at the Graham address and had not been for at least 2 weeks."

Officer Dillon testified that on April 22, 2013, Mr. George told her that his step-son, Tony, had been staying with him for the weekend and that he had dropped Tony back at his mother's house the prior day. RP 674-675. Although Mr. George told Officer Dillon that he was staying at a friend's house, he did not tell her how long he had been staying there. RP 676-677. Detective Hickman testified that on May 2, 2013, Mr. George told him that he separated from his wife two weeks prior and had been staying at his friend's house and in his car. RP 694, 707.

The testimony presented at trial establishes that Mr. George temporarily stayed outside of his registered address but does not establish how long he was out of his registered address. Although Mr. George told Detective Hickman that he had been separated from his wife for two weeks, the testimony does not establish that upon separating from his wife, he moved out of his registered home. He may have temporarily stayed in his car or at his friend's house but the testimony did not support that it was two consecutive weeks that Mr. George was out of his registered home.

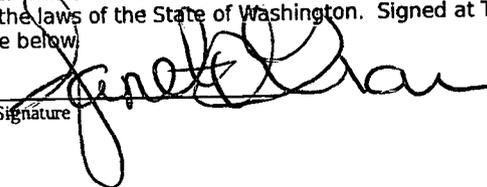
Court reverse Mr. George's conviction for Failing to Register as a Sex Offender and dismiss the charges with prejudice.

DATED: this 2nd day of January, 2015


KENT UNDERWOOD
Attorney for Appellant
WSBA # 27250

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.

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Date Signature

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

STATE OF WASHINGTON,

NO. 46323-7-II

Respondent,

Superior Court Nos. 13-1-01810-3,
13-1-03842-2

v.

CERTIFICATE OF SERVICE

HAROLD SPENCER GEORGE,

Appellant.

The undersigned certifies under penalty of perjury under the laws of the State of Washington that the following statement is true and correct: On January 2, 2015, I mailed to the following by U.S. Postal Service first class mail, postage prepaid, or provided e-mail service by prior agreement (as indicated), served a copy of the following documents.

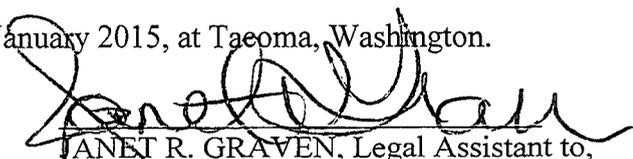
OPENING BRIEF

Harold George DOC# 747591
Coyote Ridge Corrections Center
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DATED this 2nd day of January 2015, at Tacoma, Washington.



JANET R. GRAVEN, Legal Assistant to,
Kent W. Underwood
WSBA #27250
Attorney for the Appellant