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IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION 11

STATE OF WASHINGTON,
Respondent,

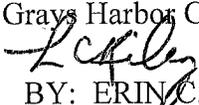
JOHN MILAM, Appellant.

APPEAL FROM THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR GRAYS HARBOR COUNTY

THE HONORABLE THOMAS A. COPLAND, JUDGE

BRIEF OF RESPONDENT

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I. COUNTER STATEMENT OF THE CASE

a. Procedural History

The appellant was originally charged by Information filed on March 1, 2017. CP 1-2. The appellant was charged with Failure to Register as a Sex Offender. CP 1-2. The allegation was that the appellant was convicted in Union County, Oregon of Sexual Abuse in the First Degree on August 9, 1989. CP 5. As a result of that conviction, the appellant was required to register as a sex offender while living in Grays Harbor County. CP 5. Hoquiam Police were called out to a welfare check on appellant's wife and had information that the appellant was a registered sex offender out of Oregon. CP 5. There was evidence from an early law enforcement contact with the appellant that he had been living in Grays Harbor County since at least January 5, 2017, but there was no record that the appellant had ever registered with Grays Harbor County. CP 5. The last known registered address for the appellant was a residence in Troutdale, Oregon. CP 6. The case proceeded to trial on May 2, 2017 and the appellant opted for a bench trial. CP 19, 20.

b. Statement of Facts

On or about August 9, 1989, the appellant was convicted of Sexual Abuse in the First Degree under Union County Oregon Circuit Court Cause Number 88-10-32235. Trial Exhibit 1, CP 25. Danny Sutherland testified at trial that he owns the rental property located at 505 Polk Street in Hoquiam and that he rented the property to the appellant and his wife. RP Vol. 1 at 8-9. Mr. Sutherland also testified that he knew the appellant as John Barber, which is the last name of the appellant's wife, when he rented the property to him and that he later came to find out that the appellant's name was actually John Milam. RP Vol. 1 at 9. Mr. Sutherland identified the appellant in the courtroom as the same person he rented the property to under the last name of Barber and that he now knew to be Milam. RP Vol. 1 at 9-10.

The rental agreement between the appellant and his wife and Mr. Sutherland was admitted into evidence, which showed that the appellant entered into the agreement on August 4, 2016. Trial Exhibit 2, CP 25 and RP Vol. 1 at 10. Mr. Sutherland testified that the appellant lived at that property continually from August of 2016 until the police contacted him in February of 2017 after arresting the appellant for not registering as a sex offender. RP Vol. 1 at 10, 12. Officer Jared Spaur of the Hoquiam Police Department next testified at trial about his

contact with the appellant on January 5, 2017 when he was assigned to a welfare check at 505 Polk Street in Hoquiam. RP Vol. 1 at 14, 15. Officer Spaur identified the appellant during his testimony. RP Vol. 1 at 19. Officer Spaur further testified that he had additional contact with the appellant from another welfare check called in from Swanson's Grocery related to the appellant and his wife. RP Vol. 1 at 18. During that contact, Officer Spaur was looking for the appellant's wife, who he had apparently lost while at the grocery store, and went back to his residence with him to 505 Polk Street in order to attempt to locate her. RP Vol. 1 at 19-20. Officer Spaur testified that he went inside the home and there was evidence that the appellant was living there at that time. RP Vol. 1 at 21. Officer Spaur testified that his wife was located, which concluded the welfare check without further action. RP Vol. 1 at 21.

Sergeant Jeff Salstrom of the Hoquiam Police Department also testified about the contact with the appellant at the grocery store on January 13, 2017. RP Vol. 1 at 24. Sergeant Salstrom identified the appellant during his testimony. RP Vol. 1 at 26-27. Sergeant Salstrom also testified about going to the appellant's home at 505 Polk Street and that he also went inside the home. RP Vol. 1 at 27. Sergeant Salstrom specifically testified about the appellant pointing out the room

where he and his wife slept and that the appellant described how they kept the home heated in only one room. RP Vol. 1 at 27, 28. Sergeant Salstrom also noted that the dogs, which were present in the home and barking, responded to the appellant when he told them to go away. RP Vol. 1 at 27. Sergeant Salstrom testified that, at the time, their focus was only on finding the appellant's wife so he was not run for warrants or for any other type of check. RP Vol. 1 at 28-29.

Sergeant Salstrom further testified that he had been contacted by the sister of the appellant's wife for a welfare check. RP Vol. 1 at 29. The relative, Roxi Wilke, had concerns about her sister's welfare and that she had not been able to get ahold of her sister. RP Vol. 1 at 30. Ms. Wilke also voiced concerns about the way the appellant treated her sister and advised Sergeant Salstrom that the appellant was a registered sex offender out of Oregon. RP Vol. 1 at 30. Sergeant Salstrom testified that he did some independent research and found that the appellant was a registered sex offender in Multnomah County, Oregon. RP Vol. 1 at 31. Sergeant Salstrom testified that he contacted Multnomah County and found that the appellant was registered or supposed to be registered as a sex offender in Troutdale, Oregon. RP Vol. 1 at 31. Sergeant Salstrom testified that he then contacted Leanna

Ristow, who is responsible for sex offender registration in Grays Harbor County. RP Vol. 1 at 32. Sergeant Salstrom testified that he received information from her and he then forwarded the case for charging. RP Vol. 1 at 32.

Ms. Ristow testified at trial as the records custodian for sex offender registration for the Grays Harbor County Sheriff's Office. RP Vol. 1 at 33. Ms. Ristow testified about the process of registration, including the process if a person from out of State moved to Grays Harbor County. RP Vol. 1 at 35. Ms. Ristow's testimony included the process for those who are in Grays Harbor County temporary, on vacation for example, and also for those who are intending to move to the County and remain. RP Vol. 1 at 35-36. Ms. Ristow testified about her familiarity with the appellant and that she had become aware of him after being contacted by Hoquiam Police Department. RP Vol. 1 at 36. Ms. Ristow testified that there had been difficulties getting copies of the appellant's judgment and sentence from Oregon and the department was asking for help and that the department was also inquiring into whether or not he had registered with Grays Harbor County. RP Vol. 1 at 36-37.

Ms. Ristow testified that she advised Hoquiam that he had made no contact with the Sheriff's Office and that he had never registered in Grays Harbor County. RP Vol. 1 at 37. Ms. Ristow testified that the appellant had a duty to register in Grays Harbor County due to his conviction out of Oregon, which she verified through the Oregon State Patrol by obtaining copies of the appellant's judgement and sentence. RP Vol. 1 at 37. Ms. Ristow testified that she forwarded the judgement and sentence paperwork she received to Hoquiam to assist with their investigation. RP Vol. 1 at 37. After a lengthy argument by defense, the certified copies of the appellant's judgement and sentence and related documents were admitted into evidence as Exhibit 1. RP Vol. 1 37-46. Ms. Ristow testified that she would not have known that the appellant was living in Grays Harbor County but for Hoquiam contacting her to make the inquiry into the appellant's registration status. RP Vol. 1 at 47. Ms. Ristow further testified that a person such as the appellant who had been convicted of a sex offense in another state, then moved to Washington had a lifetime duty to register. RP Vol. 1 at 47.

Defense asked no questions of Ms. Ristow and the State rested its case. RP Vol. 1 at 47-48. Defense put on no defense and also rested

its case. RP Vol. 1 at 48. The State presented argument from the facts presented at trial, beginning with the signed rental agreement for 505 Polk Street in Hoquiam, which was entered into evidence, showing that property was rented to John and Toni Barber as a month to month lease beginning on August 4, 2016 and ending upon his arrest in February of 2017. RP Vol. 1 at 48. The State further argued that officers testified about their contact with the residence on January 5th and 13th and the evidence that was presented that showed the appellant was living there at the time of the contacts. RP Vol. 1 at 48-49. The State argued that the evidence showed the appellant moved to Grays Harbor County as far back as August of 2016 and should have registered within three business days of moving to the county. RP Vol. 1 at 49. The State pointed out that by the time the officer contacted him on January 13th, it was well over three business days since he moved to the county and that he never registered with the county at any time while living in Grays Harbor. RP Vol. 1 at 49.

The State argued that the evidence presented showed that the appellant was convicted of a sex crime in Oregon that was equivalent to Child Molestation in the First Degree, which is a class A felony, so had a duty to register as a sex offender. RP Vol. 1 at 49-50. The State

argued that the admitted exhibit related to his conviction showed that the conviction involved a child under the age of 12 and that he had touched her crotch. RP Vol. 1 at 50. The State further pointed out that regardless of the underlying charge, based on the testimony of Ms. Ristow regarding an out of State offender who moves to Washington State, the appellant's duty to register in Washington was indefinite. RP Vol. 1 at 50. The State emphasized that the appellant failed to register and that the State would have never known about him but for the Hoquiam police conducting further investigation into his registration status, which is not the point of registration in the need to know where sex offenders are living, to give them an appropriate offender level, and to ensure community safety. RP Vol. 1 at 50.

Defense argued three main issues – that the State did not establish knowledge, that the charge of sex abuse in the first degree was not factually analogous to child molestation in the first degree, and that the charging language was insufficient – and asked the trial court to find the appellant not guilty. The State responded to defense's argument that there was no showing of knowledge by pointing out that the appellant had to register since 1989 so he had ample experience with his responsibility as a sex offender to register and that the idea that the

appellant would simply move from Oregon to Washington and think he didn't need to register anymore was ludicrous. RP Vol. 1 at 55. The State further pointed out that the evidence presented at trial showed that the appellant gave a false name when he rented from Mr. Sutherland, indicating that he was trying to hide who he was and what he was from the public. RP Vol. 1 at 56.

The State argued that the charging language in the Information did support the charges that the appellant moved to Grays Harbor County and failed to register within the requisite three business days, pointing out, as the trial court did as well, that the information contained language that stated, "did knowingly fail to comply with the requirements of RCW 98.44.130, to wit, the requirement that sex offenders who move to Washington State from another state must register within three business days of establishing residence." RP Vol. 1 at 53, 56. Defense then made the argument that he was unsure if the State laid sufficient foundation to indicate that the man in court was the same man listed in the judgment and sentence documents admitted as part of Exhibit 1. RP Vol. 1 at 57.

The trial court then ruled that the evidence was pretty clear that the appellant had been in Grays Harbor since August of 2016. RP Vol. 1 at 57. The trial court stated that Mr. Sutherland had identified the appellant as the person who signed the lease, that he gave him a false name, giving his name as Barber instead of his true name of Milam, and that he signed the lease under that false name of John Barber. RP Vol. 1 at 57. The trial court ruled that it could not think of any other reason that he would have signed a lease under a false name if it wasn't to hide from something, that something being his duty to register, which showed evidence of knowledge. RP Vol. 1 at 57-58.

The trial court also ruled that the charging language was sufficient, repeating the earlier statement by the court that the information clearly charged that the appellant did knowingly fail to wit the requirement that sex offenders who move to Washington State from another state must register within three business days of establishing residence. RP Vol. 1 at 58. The trial court then found the appellant guilty as charged and sentencing was set over for another day and time. RP Vol. 1 at 58. There was no further argument presented or clarification requested by either party.

II. RESPONSE TO ASSIGNMENTS OF ERROR

A. Did the trial court err by not entering findings of fact and conclusions of law at the conclusion of a bench trial?

Yes. CrR 6.1(d) requires entry of written findings of fact and conclusions of law at the conclusion of a bench trial, which was not done in this case.

The purpose of CrR 6.1(d)'s requirement of written finds of fact and conclusions of law is to enable an appellate court to review the questions raised on appeal. *State v. Head*, 136 Wn.2d 619, 622, 964 P.2d 1187 (1998). A trial court's oral opinion and memorandum opinion are no more than oral expressions of the court's informal opinion at the time rendered. *Id.* (quoting *State v. Mallory*, 69 Wn.2d 532, 533, 419 P.2d 324 (1966)). An oral opinion "has no final or binding effect unless formally incorporated into the findings, conclusions, and judgement." *Id.* The proper remedy is remand for entry of written findings and conclusions. *Id.*

While reversal may be appropriate where a defendant can show actual prejudice resulting from the absence of findings and conclusions, the burden of proving any such prejudice would be on the defendant. *Id.* at 623-24 (quoting *State v. Royal*, 122 Wn,2d 413, 423, 858 P.2d

(1993)). Furthermore, prejudice will not be inferred from delay in entry of written findings of fact and conclusions of law. *Id.* at 625.

The State, therefore, concedes that the court erred by not entering findings of fact and conclusions of law at the conclusion of the bench trial in this case and acknowledges that the case must be remanded for entry of written findings and conclusions. There is neither evidence nor any argument by the appellant that he has been prejudiced by the court's failure to enter findings of fact and conclusions of law so remand is the proper remedy rather than dismissal in this case.

B. Did the State present sufficient evidence to establish that the appellant was the same individual named in the documents presented at trial to prove that he had a duty to register as a sex offender?

Yes. That State did present sufficient evidence to establish that the appellant was the same individual named in the documents presented at trial to prove that he had a duty to register as a sex offender.

In *State v. Hill*, the Washington Supreme Court held that the State has the burden of proving identity through relevant evidence. The court said:

It is axiomatic in criminal trials that the prosecution bears the burden of establishing beyond a reasonable doubt the identity of the accused as the person who committed the offense.

Identity involves a question of fact for the jury and any relevant fact, either direct or circumstantial, which would convince or tend to convince a person of ordinary judgment, in carrying on his everyday affairs, of the identity of a person should be received and evaluated.

State v. Hill, 83 Wash.2d 558, 520 P.2d 618 (1974).

The State must do more than authenticate and admit a document that pertains to a person; it also must show beyond a reasonable doubt “that the person named therein is the same person on trial.” *State v. Kelley*, 52 Wash.2d 676, 678, 328 P.2d 362 (1958). Because “in many instances men bear identical names,” the State cannot do this by showing “identity of names alone.” *Gravatt v. United States*, 260 F.2d 498, 499 (10th Cir. 1958); *United States v. Jackson*, 368 F.3d 59, 63 (2d Cir.2004). Rather, it must show, “by evidence independent of the record,” that the person named therein is the defendant in the present action. *State v. Furth*, 5 Wash.2d 1, 10, 104 P.2d 925 (1940).

The State can meet this burden in a variety of specific ways. Depending on the circumstances, these may include otherwise-admissible booking photographs, booking fingerprints, eyewitness identification, or, arguably, distinctive personal information. *State v. Murdock*, 91 Wash. 2d 336, 338, 340, 588 P.2d 1143 (1979); *State v. Johnson*, 33 Wash.App. 534, 538, 656 P.2d 1099 (1982); *State v. Brezillac*, 19 Wash.App. 11, 13, 573 P.2d 1343 (1978).

Here, the State presented and admitted multiple pieces of evidence to meet its burden of identifying the appellant as the person named in the admitted conviction documents for the appellant. Namely, the admitted rental agreement for the appellant and his wife, that included his signature, and the eyewitness identification of the appellant by Mr. Sutherland and the officers who testified at trial. Taking into consideration the entirety of the evidence and testimony, the appellant's identity was established independent of the conviction documents.

11. CONCLUSION

For the reasons above, the State respectfully asks that the Court to affirm the verdict and the sentence imposed by the trial court and remand

for the sole purpose of entering written findings of fact and conclusions of law.

DATED this 11th day of May, 2018.

Respectfully Submitted,

By: 
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