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DIVISION II

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

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In re the Detention of:

SHELDON MARTIN,

Appellant,

v.

STATE OF WASHINGTON,

Respondent.

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**RESPONDENT'S OPENING BRIEF**

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## I. ASSIGNMENTS OF ERROR

Respondent herein is the State of Washington (“the State”), by and through ROB MCKENNA, Attorney General, and MELANIE TRATNIK, Assistant Attorney General. Appellant, SHELDON MARTIN (“Mr. Martin”), appeals the decision of the trial court below finding that he is a sexually violent predator and ordering Mr. Martin civilly committed, pursuant to RCW 71.09. Mr. Martin raises the following issues pertaining to his Assignments of Error:

1. Whether the State of Washington may institute a civil commitment proceeding under RCW 71.09 in a county in which the Respondent has never been charged with or convicted of any offense.

## II. STATEMENT OF THE CASE

### A. Factual Background

The following is a chronology of Mr. Martin’s pertinent criminal history as an aid to understanding why this matter was filed in Thurston County.

1. **Burglary in the Second Degree with Sexual Motivation, Clark County Cause Number 91-1-01069-2.**

On October 22, 1991, Mr. Martin followed a female patron into a public restroom at a Fred Meyer’s Department Store in Vancouver, Washington. After she entered the stall, he pulled his pants

down over his thighs, and stared up at the woman, from underneath the bathroom stall. After the woman saw him, Mr. Martin grabbed her ankle. She kicked him and then chased him out of the bathroom as he attempted to pull up his pants. It appeared to the woman that Mr. Martin was masturbating while he peered at her from under the stall. Fred Meyer's personnel indicated that Mr. Martin had been engaging in this type of behavior since the early 1980s. Clerk's Papers (CP) 9-10.<sup>1</sup>

Mr. Martin was convicted of the crimes of Burglary in the Second Degree with Sexual Motivation and Indecent Exposure in Clark County Superior Court on March 3, 1992. These offenses are not sexually violent offenses as that term is defined in RCW 71.09.020(15) and used in RCW 71.09.030. Pending sentencing, Mr. Martin fled to Oregon where he committed and was convicted of two sexually violent offenses, as described below. Mr. Martin later was returned to Clark County by the Oregon authorities and, on March 8, 1994, was sentenced to serve thirty

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<sup>1</sup> Since Mr. Martin stipulated to commitment as a Sexually Violent Predator there was no trial, and therefore no testimony regarding the underlying facts of his prior convictions. However, in his stipulation to civil commitment Mr. Martin agreed that the Findings of Fact were agreed upon by the parties and were based upon the pleadings filed in this matter, particularly the Certification for Determination of Probable Cause. CP 102. Therefore, respondent is relying on the Certification for Determination of Probable Cause to provide the Court with background information useful to understanding this case. CP 6-16.

months in a Washington State prison at the conclusion of his Oregon incarceration. CP 10.<sup>2</sup>

**2. Kidnapping in the Second Degree and Attempted Sexual Abuse in the First Degree, Multnomah County Cause No. 92-04-32087.**

On April 8, 1992, Mr. Martin was seen in the children's clothing section at an Oregon Fred Meyer's department store. Security personnel observed Mr. Martin approach a three-year-old girl, take her by the hand, and lead her out of the store and into the parking lot towards his truck. Security personnel stopped Mr. Martin and he was arrested. After Mr. Martin was arrested, police searched his truck and recovered a machete, a 6-inch boning knife, a tan shoe containing a bong and a pill container with residue, a towel, a map with markings, a shovel, and a rake. Mr. Martin eventually admitted that he kidnapped the child and intended to drive her to another location where he could sexually molest her. CP 7.

Mr. Martin was convicted on July 22, 1992 of the crimes of Kidnapping in the Second Degree and Attempted Sexual Abuse in the First Degree in Multnomah Superior Court. He was sentenced to serve one hundred twenty months in prison for these offenses. CP 8.

On February 22, 2005, respondent stipulated to commitment as a sexually violent predator. In his stipulation Mr. Martin stipulated that his

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<sup>2</sup> See fn 1, *supra*.

Oregon conviction for Attempted Sexual Abuse in the First Degree was comparable to Child Molestation in the First or Second Degree under Washington law, and that this conviction constituted a sexually violent offense as that term is defined in RCW 71.09.020(15). CP 102-103.

**B. Procedural History**

On August 26, 2002, the Department of Corrections Community Protection Unit submitted a letter to Thurston County Prosecuting Attorney Edward Holm. The letter advised Mr. Holm that Mr. Martin appeared to meet the criteria of a sexually violent predator, and asked him to determine if he intended to file a petition for civil commitment against Mr. Martin. CP 84. On March 4, 2003, shortly before he was due to be released from total confinement, the Attorney General's Office filed a petition on behalf of Mr. Holm and the Thurston County Prosecuting Attorney's Office alleging that Mr. Martin is a sexually violent predator as defined by RCW 71.09.020(16). CP at 3-5. Consistent with its standard practice, the State filed its petition in Thurston County because Mr. Martin's sexually violent offense conviction occurred in a state other than Washington.

On October 6, 2004, Mr. Martin filed a Motion to Dismiss the petition, asserting that Thurston County Superior Court was not the proper court to hear the State's petition since he had never been convicted of an

offense there. CP 69-86. The State responded to the Motion to Dismiss on October 13, 2004, arguing that the definition of “sexually violent offense” under RCW 71.09.020(15) clearly allows the use of out-of-state convictions as predicate sexually violent offenses, and the established practice of the Attorney General’s Office is to file these petitions in Thurston County. CP 87-91.

The Motion was argued on October 29, 2004. Report of Proceedings (RP) at 1 (October 29, 2004). The court orally denied the Motion. The court noted that the Attorney General’s Office standard practice was to file in Thurston County when the sexually violent offense occurred out of state, and determined that the language of the statute “does not limit the authority of a prosecutor to make such a request of the Attorney General to only those prosecutions where the sexually violent offense was committed.” RP at 23 (October 29, 2004). The court recognized that “if the law was such, then in the case of this respondent and in the case of any respondent who is convicted of a sexually violent offense in a jurisdiction other than Washington, there would be no prosecutor who could make such a request of an attorney general [and] [a]s a consequence, the provisions for addressing sexually violent offenders who have committed their offense outside the state of Washington that are included in RCW 71.09 would have no effect at all.”

RP at 23 (October 29, 2004). The court explained that such a construction of RCW 71.09.030 would lead to an absurd result, and therefore could clearly not be the will of the Legislature. The court concluded by finding that both jurisdiction and venue were proper. RP at 23-34 (October 29, 2004).

### III. ARGUMENT

#### A. **Basic Principles Of Statutory Construction Dictate That Superior Courts Of This State Have Subject Matter Jurisdiction To Hear This Action**

It is a cardinal principle of statutory construction “to give effect, if possible, to every clause and word of a statute,” *Montclair v. Ramsdell*, 107 U.S. 147, 152, 2 S.Ct. 391 (1883). The Washington Supreme Court has observed, “Statutes must be construed so that all the language is given effect and no portion is rendered meaningless or superfluous.” *Kilian v. Atkinson*, 147 Wn.2d 16, 21, 50 P.3d 638 (2002). The legislature is presumed not to include unnecessary language when it enacts legislation. *McGinnis v. State*, 152 Wn.2d 639, 645, 99 P.3d 1240, (2004).

Washington’s Sexually Violent Predators statute, RCW 71.09, provides that any out-of-state conviction that meets the criteria for a sexually violent offense under Washington law constitutes a sexually violent offense. RCW 71.09.020(15)(b). This section of the statute must be carefully considered because it is reflective of the legislature’s intent.

In other words, it must be presumed that the legislature anticipated the possibility that an offender's predicate sexually violent offense would have been committed out of state, and created language defining these offenses as sexually violent offenses. As such, the legislature has clearly intended for prosecutors to be able to file petitions on persons who had at any time previously been convicted of a sexually violent offense, even if that offense was not committed in Washington.

Additionally, the purpose of an enactment should prevail over express but inept wording. *State ex rel. Royal v. Board of Yakima County Comm'rs*, 123 Wn.2d 451, 462, 869 P.2d 56 (1994). All parties agree that Washington's Sexually Violent Predator statute is not a model of clarity. However, in such cases, courts will "seek help in interpreting [a] statutory section by determining legislative intent in the context of the whole statute and its general purpose." *Cherry v. Municipality of Metro. Seattle*, 116 Wn.2d 794, 800, 808 P.2d 746 (1991). Here, the intent of the legislature is readily apparent. In RCW 71.09.010, the legislature notes that the group of sex offenders classified as sexually violent predators are extremely dangerous and are unique as a class of offenders due to their high recidivism rate, specialized treatment needs, and poor prognosis for recovery. The primary goal of legislature when it first enacted RCW 71.09 in 1990 was to contain sexual offenders who pose extreme risks to the

public. See, e.g., David Boerner, *Confronting Violence: In the Act and in the Word*, 15 U. Puget Sound L. Rev. 525 (1992). This goal is furthered by interpreting RCW 71.09.030 to allow prosecutors to file petitions on offenders in Washington whose predicate sexually violent offenses were committed out of state.

Finally, a court must avoid constructions that yield unlikely, absurd or strained consequences. *Kilian*, 147 Wn.2d at 21. The trial court recognized this potential for absurdity when it denied the Motion to Dismiss. If Mr. Martin's argument were to be taken to its logical conclusion, then an individual within Washington's criminal justice system who has only out-of-state convictions for sexually violent offenses could not be subject to RCW 71.09. This is an unreasonable and absurd result which could not be the intent of the legislature, for it frustrates the operation of the sexually violent predator law and gives no effect to the provisions for addressing sexually violent offenders outside the state of Washington outlined in RCW 71.09.020(15).

**B. Thurston County Superior Court Is A Proper Venue For The Filing And Adjudication Of Mr. Martin's Sexually Violent Predator Petition**

Having established that the intent of the Legislature was for Washington courts to have subject matter jurisdiction over civil commitment actions when the predicate sexually violent offense was

committed in another state, the remaining issue to address is whether Thurston County was the proper venue for such an action.

As distinguished from subject matter jurisdiction, venue concerns the actual location in the state where the action may be brought. “[V]enue is distinguished from jurisdiction in that jurisdiction connotes the power to decide a case on its merits while venue connotes locality.” *Dougherty v. Dep’t of Labor and Industries*, 150 Wn.2d 310, 316, 76 P.3d 1183 (2003).

RCW 71.09.030 provides, in pertinent part, that: “When it appears that: (1) A person who at any time previously has been convicted of a sexually violent offense is about to be released from total confinement...the prosecuting attorney of the county where the person was convicted or charged or the attorney general if requested by the prosecuting attorney may file a petition alleging that the person is a ‘sexually violent predator’ and stating sufficient facts to support each allegation.” The offense that was the basis for Mr. Martin’s incarceration at the time the petition against him was filed occurred in Clark County, Washington. However, that offense, Burglary in the Second Degree with Sexual Motivation, is not classified as a sexually violent offense under the definition provided in RCW 71.09.020(15). The sexually violent offense

for which Mr. Martin was convicted, Attempted Sexual Abuse in the First Degree, occurred in Multnomah County, Oregon.

When the sexually violent offense is from another state, RCW 71.09.030 admittedly provides little guidance as to the appropriate venue. The definition of a sexually violent offense, RCW 71.09.020(15), however, clearly allows the use of out-of-state convictions as predicate sexually violent offenses. Furthermore, the legislature has granted the Attorney General the authority under RCW 71.09.030 to file a sexually violent predator petition pursuant to the request of a county prosecutor. As a result, the Attorney General's Office has established the practice of filing such petitions in Thurston County following a request by the Thurston County Prosecuting Attorney.<sup>3</sup>

In the absence of any statutory provision governing venue in the case of Washington criminal offenders who have committed their sexually

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<sup>3</sup> In *In re the Detention of Peterschick* (Thurston County Cause Number 99-2-02367-3), the respondent was convicted of a sexually violent offense as defined in RCW 71.09.020(15)(b) in Yellowstone County, Montana. Prior to his release from total confinement in Spokane County on a sexual offense that did not constitute a sexually violent offense, the Attorney General's Office filed a petition for civil commitment in Thurston County. Additionally, in *In re the Detention of Durbin* (Thurston County Cause Number 04-2-01191-1), the respondent was convicted of a sexually violent offense as defined in RCW 71.09.020(15)(b) in Lewis and Clark County, Montana. Prior to his release from confinement on a recent overt act committed in Clark County, the Attorney General's Office filed a petition for civil commitment in Thurston County. Finally, in *In re the Detention of Dutcher* (Thurston County Cause Number 03-2-07258-1), the respondent was convicted of two sexually violent offenses as defined in RCW 71.09.020(15)(b) in Sacramento, California and Portland, Oregon. Prior to his release from confinement on a sexual offense committed in King County that did not constitute a sexually violent offense, the Attorney General's Office filed a petition for civil commitment in Thurston County.

violent offenses out of state, it cannot be denied that Thurston County is an appropriate county to hear and decide the State's petition. Thurston County is the site of the State Capitol and the seat of state government. The principal place of business of an officer of this State must necessarily be there. Moreover, the State's practice of filing in Thurston County demonstrates that it does not engage in "forum-shopping," a concern raised by Mr. Martin. As such, the choice of venue was proper.

Finally, Mr. Martin's rights were not compromised by the trial's court's dismissal of his Motion. He fails to show any prejudice resulting from the fact that the petition was filed in Thurston County. "Except in rare instances, the mills of justice grind with equal fineness in every county of the state." *Russell v. Marenakos Logging Co.*, 61 Wn.2d 761, 765, 380 P.2d 744 (1963). The choice of venue had no actual consequences in Mr. Martin's case, as Mr. Martin stipulated to civil commitment in lieu of proceeding with his trial. CP 100-154. Given that the State substantially complied with the requirements of the statute, Mr. Martin's Motion was merely an attempt to elevate procedural requirements to jurisdictional imperatives.

The trial court properly denied Mr. Martin's Motion to Dismiss.  
For the forgoing reasons, the State respectfully requests that this Court  
affirm Mr. Martin's commitment as a sexually violent predator.

RESPECTFULLY SUBMITTED this 14<sup>th</sup> day of November, 2005

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STATE OF WASHINGTON

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STATE OF WASHINGTON

*[Handwritten Signature]*  
DEPUTY

In re the Detention of:

SHELDON MARTIN,

Petitioner - Appellant.

DECLARATION OF  
SERVICE

MARTHA NEUMANN declares as follows:

On Monday, November 14, 2005, I deposited in the United States Mail, with first-class postage affixed, addressed as follows:

JOSEPH BAKER  
LAW OFFICE OF GEHRKE & BAKER  
22030 7TH AVENUE SOUTH, SUITE 202  
DES MOINES, WA 98198

a copy of the following documents: RESPONDENT'S OPENING BRIEF;  
and DECLARATION OF SERVICE.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 14<sup>th</sup> day of November, 2005, at Seattle, Washington.

*[Handwritten Signature]*  
MARTHA NEUMANN