NO. 44173-0-II
Cowlitz Co. Cause NO. 12-1-00128-3

COURT OF APPEALS, DIVISION II OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

LESTER JIM JAMES,

Appellant.

BRIEF OF RESPONDENT

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B. STATEMENT OF THE CASE

1) Procedural History

On July 26, 2012 the Cowlitz County Prosecuting Attorney filed an amended information charging Lester James with Failure to Register as a Sex Offender on, about, or between November 1, 2011 and January 11, 2012. CP 1-2.[1] The case proceeded to a bench trial before The Honorable Michael Evans, which commenced on October 22, 2012 before recessing a week and concluding on October 29, 2012. RP 1-129.

Judge Evans found Mr. James guilty as charged and sentenced him to a standard range sentence of 43 months. RP 119-128, 137-138; CP 3-16. On the same day he was sentenced, Mr. James filed a timely notice of appeal. RP 139-140; CP 17.

2) Statement of Facts

Mr. James is a convicted sex offender and is required to register as such. RP 3-4; Ex. 1, Supp CP. Mr. James registered his address as 1316 11th Avenue, Apartment #1 Longview, Washington on August 26, 2011 and again on October 17, 2011. RP 16, 19, 23, 79; Ex. 1, Supp CP. In order to register his address on October 17, 2011 Mr. James had to fill out

a change of address form with Christine Taff, known as the Registered Sex Offender Clerk, of the Cowlitz County Sheriff's Office. RP 8, 15-16, 19. After registering his address on October 17, 2011, Mr. James did not update his address until March 31, 2012. RP 17-18.

On December 21, 2011, Investigator Olga Lozano of the Longview Police Department attempted to verify Mr. James's residence by going to 1316 11th Avenue, Apartment #1 ("Apt. 1") and having face to face contact with him. RP 30-32. She was accompanied by Detective Danielle Jenkins. RP 32. Neither woman was able to make contact with Mr. James on that day. RP 33. Ms. Lozano tried to verify Mr. James's residence again on January 4, 2012 and on January 8, 2012. RP 34-35. Each time she went to the Apt. 1 residence she was unable to make contact with Mr. James. RP 34-35. On January 8, 2012, however, Richard Barnard answered the door at Apt. 1. RP 35.

Mr. Barnard began living at Apt. 1 on January 5, 2012. RP 68. When he moved in he did not have a roommate and the apartment was

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[1] RCW 9A.44.130(1), 4(a), 4(b), 5(a), 5(b) and RCW 9A.44.132(1)(b).

empty save a box full of clothing and some soap and shampoo. RP 69, 75-76. Mr. Barnard gave that box of clothes away and nobody ever came by the apartment looking to claim it. RP 69-70. In addition, Mr. Barnard noticed there was no food in the apartment when he moved in. RP 76. Mr. Barnard did not meet Mr. James until a month or two after moving into Apt. 1 and, in the month of January, Mr. James never stayed with Mr. Barnard at Apt. 1. RP 70.

Brian Weathers was the property manager for Precision Property Management and his properties included the complex in which Apt. 1 is found. RP 44-45. Mr. Weathers knew Mr. James as someone who rented Apt. 1 in 2011 and whose rent was due on Christmas of that year. RP 45-46. Mr. Weathers also knew that Mr. James had some things from Rent-A-Center. RP 49. Mr. Weathers explained at trial that he had a conversation with Mr. James when the rent was late and explained that he was willing to work with Mr. James, however, the overdue rent was never paid. RP 46-47. Mr. Weathers did not kick Mr. James out of the apartment, but ended up renting it to Mr. Barnard. RP 48, 50.

Upon being released from custody Mr. James was receiving $2,000 a month from the Puyallup Tribe of Indians. RP 78, 88. His rent at the

Apt. 1 residence was about $300 a month. From around December 11, 2011 until he was arrested in Shelton, Washington on January 25, 2012, Mr. James admittedly spent lots of nights at his friend Andrew Alston's residence in Kelso and stayed overnight once a week in Shelton with family members. 81-83, 89, 93. During this period of time Mr. James indicated the nights he spent at his own apartment were "[h]ere and there." RP 83. In addition to often staying at Mr. Alston's home, Mr. James kept an extra pack of bathroom supplies there, brought with him a backpack with a change of clothes, and helped Mr. Alston pay for rent and food. RP 92-93[2], 96. Subsequent to Mr. James's arrest on January 25, 2012 and his release from custody, he moved in with Mr. Alston. RP 93-94, 103.

At trial, Mr. James attempted to explain his absence from Apt. 1 while at the same time still claiming it as his residence. RP 77-97. Around December 11, 2011 Mr. James lost someone with whom he was very

[2] "Q. Okay. Um, did you ever – ever attempt to help Mr. Alston with any of his – uh – rent or food or anything like that? [Mr. James] A. Yes. Q. Okay. And you were – you were helping him pay rent? A. Yes. Q. Okay. And you were helping him buy food? A. Yes. Q. Okay. That's because you were staying there, right? A. Yes."

close, so close he considered this person a son.[3] RP 81, 100. As a result of this loss, Mr. James experienced emotional problems and did not like being alone. RP 83, 100. Thus, Mr. James testified that he was often at Mr. Alston's place for support or visiting family in Shelton, but that all of his possessions remained in Apt. 1, which he still considered his apartment. RP 81-83, 85-87, 89, 93. He also claimed that he kept food in Apt. 1. RP 89.

Mr. Alston testified on Mr. James's behalf. RP 97-107. Mr. Alston's testimony, however, was often in contradiction to that of Mr. James. Mr. Alston agreed that Mr. James, during the charging period, was often at his (Mr. Alston's) place but that he did not move in and that Mr. James still lived at Apt. 1 at that time. RP 100-101. On the other hand, Mr. Alston testified that Mr. James did not help him out with rent, did not keep an extra pack of bathroom supplies at his (Mr. Alston's) residence, did not ever bring a backpack with a change of clothes to his residence, did not help him pay for food save for maybe picking up a few things for a barbeque, and that Mr. James only travelled up to Shelton one time, which

[3] The person who passed away is referenced throughout the trial as Mr. James's son. At Mr. James's sentencing his attorney clarified that this person was not technically Mr. James's son. RP 135. This is mentioned only for the purposes of accuracy not to minimize the effect this loss had on Mr. James.

was for the funeral. RP 100-101, 104-105. Mr. Alston also asserted that after January 5, 2012 he continued to pick up and drop off Mr. James at the Apt. 1 residence though when doing so he never had occasion to see Mr. Barnhard. RP 105-107.

After considering the essentially non-contested elements of the charge, Judge Evans found Mr. James guilty because he determined that Mr. James had moved from the Apt. 1 residence. RP 120-128. In reaching his decision, Judge Evans primarily relied on; the absence of the Rent-A-Center items and food in Apt. 1 when Mr. Barnhard moved in; his belief that the clothes items left in Apt. 1were expendable especially in light of Mr. James's $2,000.00 a month income; Mr. James state of grief such that if one is "so overwhelmed by grief, that . . . not a lot matters including paying the rent or notifying somebody of a change of address;" Mr. James and Mr. Alston living together after the events at issue; and Ms. Lozano going to Apt. 1 on January 8, 2012 and finding Mr. Barnhard and not Mr. James. RP 119-128.

C. ARGUMENT

1) RCW 9A.44.130 IS NOT UNCONSTIUTIONALLY VAGUE AS APPLIED TO MR. JAMES BECAUSE A PERSON OF ORDINARY INTELLIGENCE CAN UNDERSTAND WHAT IT MEANS TO HAVE A RESIDENCE AND WHAT IT MEANS TO CHANGE ONE'S RESIDENCE ADDRESS.

The constitutionality of a statute is reviewed de novo. *City of Spokane v. Neff*, 152 Wn.2d 85, 88, 93 P.3d 158 (2004). A reviewing court "will presume that a statute is constitutional and it will make every presumption in favor of constitutionality where the statute's purpose is to promote safety and welfare, and the statute bears a reasonable and substantial relationship to that purpose." *State v. Glas*, 147 Wn.2d 410, 422, 54 P.3d 147 (2002); *State v. Lee*, 135 Wn.2d 369, 390, 957 P.2d 741 (1998). More specifically, when reviewing statutes against vagueness challenges, "the presumption in favor of a law's constitutionality should be overcome only in exceptional cases." *City of Seattle v. Eze*, 111 Wn.2d 22, 28, 759 P.2d 366 (1988).

Thus, a defendant who asserts a statue is unconstitutionally vague "bears the heavy burden of proving beyond a reasonable doubt that the statue is unconstitutional." *State v. Peterson*, ___ Wn.App ___, 301 P.3d

1060, 1068 (2013) (citing *State v. Halstien*, 122 Wn.2d 109, 118, 857 P.2d 270 (1993). This burden is appropriately placed on a defendant since "the void for vagueness doctrine is not a principle designed to convert into a constitutional dilemma the practical difficulties in drawing criminal statutes both general enough to take into account a variety of human conduct and sufficiently specific to provide fair warning that certain kinds of conduct are prohibited." *City of Spokane v. Douglass*, 115 Wn.2d 171, 179, 795 P.2d 693 (1990) (quoting *Colten v. Kentucky*, 407 U.S. 104, 110, 92 S.Ct. 1953, 1957, 32 L.Ed.2d 584 (1972)). "Where a vagueness challenge does not implicate the First Amendment" the statute at issue is evaluated "as applied to the particular facts of the case and the party's conduct. *Id.* (citing *City of Seattle v. Montana*, 129 Wn.2d 583, 597, 919 P.2d 1218 (1996).

Consequently, to successfully prove a statute is unconstitutionally vague a defendant must be prove beyond a reasonable doubt that, as it applies to him, the statute either (1) "does not define the criminal offense with sufficient definiteness so that ordinary people can understand what conduct is proscribed, or (2) ... does not provide ascertainable standards of guilt to protect against arbitrary enforcement." *State v. Jenkins*, 100

Wn.App 85, 89, 995 P.2d 1268 (2000) (citing *State v. Coria*, 120 Wn.2d 156, 163, 839 P.2d 890 (1992). Essentially, a statute is not unconstitutionally vague if persons "of ordinary intelligence can understand a penal statute, notwithstanding some possible areas of disagreement." *Peterson*, 301 P.3d at 1069 (quoting *State v. Maciolek*, 101 Wn.2d 259, 265, 676 P.2d 996 (1984)). "In other words, vagueness in the constitutional sense is not mere uncertainty." *Douglass*, 115 Wn.2d at 179 (citation and quotation omitted); *Eze*, 111 Wn.2d at 27 ("[A] statute is not unconstitutionally vague merely because a person cannot predict with complete certainty the exact point at which his actions would be classified as prohibited conduct."). This standard necessarily follows from the fact that "some vagueness is inherent in the use of language" *Id.* (citing *Haley v. Med. Disciplinary Bd.*, 117 Wn.2d 720, 740, 818 P.2d 1062 (1991).

To determine whether a statute is sufficiently definite, i.e., not unconstitutionally vague, the statute must be reviewed in "the context of the entire enactment" affording the "language used in the enactment . . . a sensible, meaningful, and practical interpretation." *Douglass*, 115 Wn.2d at 180. Accordingly, this determination "does not demand 'impossible standards of specificity or absolute agreement,' and it permits some

amount of imprecision in the language of the statute." *Jenkins*, 100 Wn.App at 90 (quoting *Coria*, 120 Wn.2d at 163). Moreover, "[t]he fact that some terms in an enactment are undefined does not automatically mean that the enactment is unconstitutionally vague." *Douglass*, 115 Wn.2d at 180. Instead, "in the absence of a statutory definition this court will give the term its plain and ordinary meaning ascertained from a standard dictionary." *State v. Watson*, 146 Wn.2d 947, 954, 51 P.3d 66 (2002); *State v. Athan*, 160 Wn.2d 354, 369, 158 P.3d 27 (2007) ("When there is no statutory definition to guide us, words should be given their ordinary meaning. Often, we rely on dictionaries to supply the ordinary meaning.").

Specific to the sex offender registration statute, when the statute has not provided a definition for its terms our courts have had no problem utilizing standard dictionary definitions or using the ordinary meaning of the words. *State v. Stratton*, 130 Wn.App 760, 764-65, 124 P.3d 660 (using Webster's Third New International Dictionary to define "fixed" and "residence" to determine what the statute meant by the term "fixed residence"); *State v. Pickett*, 95 Wn.App 475, 478-79, 975 P.2d 584 (1999) (using the ordinary meaning of the term "residence" in determining

whether there was sufficient evidence of the crime of failure to register); *Jenkins*, 100 Wn.App at 90 (relying on *Pickett* for the ordinary meaning of the term "residence").

In *Stratton*, *Pickett*, and *Jenkins*, it was not the lack of a statutory definition for, or a general vagueness in the term, "residence" that proved fatal to the conviction in each, but rather a specific problem in the way the sex offender registration statute applied to each defendant; problems that have been remedied and that are not at issue here.[4] In *Pickett*, for example, the Court of Appeals took umbrage with the fact that the sex offender registration statute at that time failed to offer offenders with no fixed residence a way to comply with the statute, i.e., one could not

[4] Mr. James claims that "[a]s noted in *Drake* and *Stratton*, the terms 'residence' and 'residence address' are inherently ambiguous . . . ." Br. Of Resp. at 15. The case law seems otherwise. *Drake*, an insufficiency of the evidence case, readily adopts a definition of residence in determining whether the State met its burden to prove that the defendant in that case changed his residence. 149 Wn.App 88, 94-95 (2009). Meanwhile, *Stratton* states that "'[r]esidence' is ambiguous *as applied here*." 130 Wn.App at 765 (emphasis added). Nonetheless, *Stratton* determined that the defendant's living situation in which he was parked at his registered address, receiving mail and telephone calls there, was sufficient for it to be considered his fixed residence. *Id.* at 766. Accordingly, the State failed to prove that the defendant lacked a fixed residence. *Id.* at 767.

register as homeless. *State v. Peterson*, 168 Wn.2d 763, 773, 230 P.3d 588. (2010) (citing 95 Wn.App at 479). Consequently, there was insufficient evidence that the defendant had a residence from which to register. Nonetheless, *Pickett* still utilized a definition of residence as "the term is commonly understood" and cited with approval out-of-state cases for the proposition that residence is a term "so easily understood by a person of common intelligence." 95 Wn.App at 479 Fn. 8 (citing *People v. McCleod*, 55 Cal.App. 64 Cal.Rptr.2d 545, 552–53 (1997); *State v. Zichko*, 923 P.2d 966, 971 (1996) (each case dealing with a sex offender registration statute that did not define residence)).

Meanwhile in *Jenkins*, the defendant registered an "address," as was required by the former sex offender registration statute, at which he received mail and messages but he slept at various friends' houses. 100 Wn.App. at 87-88. *Jenkins*, in adopting the definition of residence from *Pickett*, found that "residence" was vague because "one reasonably could conclude that a person without a fixed, regular place to sleep does not have a residence under the terms of the statute." *Id.* at 91. The infirmities in the sex offender statute identified in *Pickett* and *Jenkins* have been

remedied in that the statute now allows for those with no fixed residence to register as such. *See* RCW 9A.44.130.

Here, there is no vagueness problem. Mr. James registered Apt. 1 as his residence, moved into the apartment, and began to live there. "Residence as the term is commonly understood is the place where a person lives as either a temporary or permanent dwelling, a place to which one intends to return, as distinguished from a place of temporary sojourn or transient visit." *State v. Pickett*, 95 Wn.App. at 478. A person of ordinary intelligence can understand what it means to have a residence and what it means to change one's residence address. If Mr. James changed his residence address the sex offender registration statute instructs him that he must register that new address and if Mr. James ceased to have a fixed residence the statute likewise instructs him on how to comply with his registration requirements. Accordingly, as applied to the facts at issue, neither "residence" nor "residence address" are unconstitutionally vague. Moreover, to the extent the statute's definiteness is in question, Mr. James has failed to prove it unconstitutional beyond a reasonable doubt.

2) THE STATE'S EVIDENCE WAS SUFFCIENT TO PROVE THAT MR. JAMES KNOWINGLY FAILED TO REGISTER AS SEX OFFENDER AFTER HE CHANGED HIS RESIDENCE ADDRESS.

Evidence is sufficient to support a conviction if, when viewed in a light most favorable to the prosecution, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. *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 inferences that reasonably can be drawn therefrom." *Id.* at 201. Circumstantial and direct evidence are equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). The reviewing court defers to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990); *State v. Walton*, 64 Wn. App. 410, 415-16, 824 P.2d 533 (1992). In order to determine whether the necessary quantum of proof exists, the reviewing court "need not be convinced of the defendant's guilt beyond a reasonable doubt but only that substantial evidence supports the State's

case." *State v. Gallagher*, 112 Wn.App. 601, 613, 51 P.3d 100 (2002) (citations omitted).

State v. Drake, 149 Wn.App. 88 (2009) is instructive. There, the defendant moved into in an apartment on April 6, 2007. *Id.* at 91. His rent was paid up until May 6, 2007 and he registered that apartment as his address on May 4, 2007. *Id.* The defendant failed to pay his rent on May 7, 2007 and, as a result, employees of the apartment complex removed the defendant's belongings and placed them into storage. *Id.* Sometime after May 30, 2007, the defendant arranged to have someone pickup his property. *Id.* A warrant was issued and the defendant was arrested and charged with knowingly failing to register between May 6 and May 20, 2007. *Id.* at 92. The defendant was convicted following a bench trial. *Id.* at 91.

On appeal the defendant argued there was insufficient evidence to support his conviction. *Drake*, 149 Wn.App at 91. After reviewing the facts of the case, the *Drake* court noted:

> [T]here is no evidence that [the defendant] was aware of his eviction. There is no evidence concerning [the defendant's] whereabouts or activities between May 6 and 20, 2007. There is no evidence that [the defendant] changed addresses or maintained a residence elsewhere. Finally, there is no evidence

> from which it could be inferred that [the defendant] did not intend to return to his apartment.

Id. at 94. Furthermore, the reviewing court took issue with the trial court's conclusion that the defendant's intention to return to his apartment was immaterial. Stating that "[l]egal authority shows otherwise" the court cited *Pickett* approvingly for the proposition that a residence "is the place where a person lives as either a temporary or permanent dwelling, a place to which one intends to return, as distinguished from a place of temporary sojourn or transient visit." *Id.* (citing 95 Wn.App at 478). Moreover, the court found that "there was evidence that [the defendant] left his belongings at the apartment, which certainly implies an intention to return. These belongings were of sufficient value to [the defendant] that he had someone collect them after he was arrested." *Id* at 95. As a result, the *Drake* court concluded:

> The State proved that [the defendant's] rent was not paid, his landlord vacated him from his apartment, and his possessions were stored and picked up by someone else after he was arrested. But the State did not prove beyond a reasonable doubt that [the defendant] knowingly failed to register at a new address or as a homeless person.

Id. at 95.

Here, the State presented substantially more evidence than in *Drake*. At trial, the State proved that (1) Mr. James failed to pay his rent at Apt. 1 after December 25, 2011; (2) At the same time, Mr. James was helping to pay for rent and food at Mr. Alston's residence where he admittedly often stayed, kept items, and would eventually end up living; (3) Mr. James had an income of $2,000 a month and his rent at Apt. 1 was around $300 a month; (4) Mr. Barnhard moved into Apt. 1 on January 5, 2012 and upon moving in found a box clothes, but not any food or the Rent-A-Center items Mr. James acquired; (5) Mr. James never attempted to collect the property he left at Apt. 1 either himself or by sending someone else; (6) From at least January 5, 2012 until he was arrested in Shelton, Washington on January 25, 2012 Mr. James did not stay at Apt. 1; and (7) Mr. James was not at Apt. 1 on December 21, 2011, January 4, 2012, or January 8, 2012 when the Longview Police Department attempted to make face to face contact with him. RP 30-35, 44-50, 68-70, 75-76, 78, 81-83, 88-89, 92-94, 96, 106. The above facts, when viewed in a light most favorable to the prosecution, show that Mr. James, his testimony to the contrary, had abandoned Apt. 1 as his residence and did not intend to return. Moreover, the testimony of Mr. James and Mr.

Alston should be viewed skeptically given that the defendant's own admissions were sometimes contradicted by Mr. Alston. A reasonable inference from all the evidence is that following the loss of his loved one, Mr. James moved out of Apt. 1 and began spending all of his nights between Mr. Alston's residence and up with his family in Shelton without properly registering. Consequently, there is sufficient evidence to support his conviction.

3) THE TRIAL COURT DID NOT DENY MR. JAMES HIS RIGHT TO CONFRONT WITNESSES BECAUSE IT PROPERLY LIMITED THE SCOPE OF HIS CROSS-EXAMINATION OF MR. BARNARD.

A trial court's ruling on the admissibility of evidence is reviewed for abuse of discretion. *State v. Darden*, 145 Wn.2d 612, 620, 41 P.3d 1189 (2002). "Abuse exists when the trial court's exercise of discretion is manifestly unreasonable or based upon untenable grounds or reasons." *Id.* (quotation and citation omitted). Likewise, "a court's limitation of the scope of cross-examination will not be disturbed unless it is the result of a manifest abuse of discretion." *Id.* (citing *State v. Campbell*, 103 Wn.2d 1, 20, 691 P.2d 929 (1984)).

A defendant's right to confront and meaningfully cross-examine "adverse witnesses is guaranteed by both the federal and state constitutions." *Id* at 620 (citations omitted). Confrontation in the form of cross-examination assures "the accuracy of the fact-finding process" by testing the "perception, memory, [] credibility," and bias of witnesses. *Id.* (citations omitted). Thus, "the right to confront must be zealously guarded." *Id.* Indeed, "latitude must be allowed in cross-examining an essential prosecution witness to show motive for his testimony." *State v. Knapp*, 14 Wn.App 101, 107, 540 P.2d 898 (1975).

The right to cross-examine adverse witnesses, however, is not absolute as the scope of the examination can be limited by the trial court. *Id.*; *State v. Robbins*, 35 Wn.2d 389, 396, 213 P.2d 310 (1950) ("Where the right [to cross-examination] is not altogether denied, the scope or extent of cross-examination for the purpose of showing bias rests in the sound discretion of the trial court."); As *State v. Jones*, 67 Wn.2d 506, 512, 408 P.2d 247 (1965), has stated:

> Although the law allows cross-examination into matters which will affect the credibility of a witness by showing bias, ill will, interest or corruption . . . the evidence sought to be elicited must be material and relevant to the matters sought to be proved and specific enough to be free from vagueness;

> otherwise, all manner of argumentative and speculative evidence will be adduced.

Consequently, where a defendant's "offer of proof refer[s] to no specific acts, conduct or statements on the part of the witness, but vaguely tending to show bias in the most indefinite and speculative way," it would be "too remote to meet the purpose for which it was offered, and [a] trial court [could] properly h[o]ld it to be immaterial and irrelevant." *Id.* Simply put, "[t]here is no right, constitutional or otherwise, to have irrelevant evidence admitted." *Darden*, 145 Wn.2d at 624.

The *Hudlow* test is used to determine whether a court properly limited a defendant's cross-examination. *Darden*, 145 Wn.2d at 621; *State v. Hudlow*, 99 Wn.2d 1, 15, 659 P.2d 514 (1983). Under the *Hudlow* test:

> [f]irst, the evidence must be of at least minimal relevance. Second, if relevant, the burden is on the State to show the evidence is so prejudicial as to disrupt the fairness of the fact-finding process at trial. Finally, the State's interest to exclude prejudicial evidence must be balanced against the defendant's need for the information sought, and only if the State's interest outweighs the defendant's need can otherwise relevant information be withheld.

Darden, 145 Wn.2d at 622.[5] Consequently, if the evidence or offer of proof is of the type mentioned above in *Jones*, i.e., speculative, vague, or irrelevant, the analysis ends as the trial court properly denied cross-examination into such matters. Otherwise, if the defendant is able to adduce relevant evidence, or present an offer of proof, that is not vague or speculative, the reviewing court can then apply the remaining two prongs of the *Hudlow* test. Importantly, case law has held that a compelling State interest "includes an assurance that witnesses who come forward with evidence of a crime will not be discouraged from testifying because a prior conviction or misconduct may be revealed." *State v. Barnes*, 54 Wn.App 536, 539, 774 P.2d 547 (1989); *State v. Martinez*, 38 Wn.App. 421, 424, 685 P.2d 650 (1984).

Here, the supposed bias evidence Mr. James sought to establish through cross-examination was too vague and speculative to be considered relevant evidence. First, Mr. James's attorney objected to testimony from

[5] The *Hudlow* test, as articulated in *Darden,* is not actually applied by the Court in *Darden*. 145 Wn.2d at 623 ("For the same reason the *Hudlow* test should not have been applied in *Reed*, it does not apply here. Simply put, the situation at hand is different from the one for which the *Hudlow* test was crafted.") Consequently, Mr. James's discussion of *Darden* as it relates to this case is inapposite.

Mr. Barnhard on direct examination on the exact same subject matter, e.g., his registration, living, and current custodial status, that he would later argue was highly relevant to Mr. Barnhard's credibility as a witness and his motive for testifying. RP 54-62 *compare with* RP 72-75. Moreover, an argument that Mr. Barnhard would be biased against Mr. James or motivated to lie because Mr. Barnhard had to register as a sex offender or had past convictions for failure to register (it's not clear from the record that he did) would involve pure speculation and even lacks the support of a somewhat compelling inference.[6]

Without more, the trial court did not abuse its discretion in sustaining relevance objections to Mr. James's questions—and thus limiting the scope of his cross-examination—concerning Mr. Barnhard's reason for being in prison in the past, current duty to register, and whether he was currently registered. Furthermore, the trial court specifically stated "[o]bviously, motivation is relevant and I'll hear . . . any objections when

[6] Notably, the trial court never held that Mr. Barnhard's current charges, if he was even facing any, were off limits. RP 53-75. Mr. James likely could have cross-examined Mr. Barnhard about whether he was testifying to curry favor with the State or whether he had entered into a cooperation agreement in return for his testimony. Instead, Mr. James asked him about what charge he had been in prison for, whether he had to register as a sex offender, and whether he was currently registered. RP 71-73. There is no link between those questions and whether Mr. Barnhard would testify truthfully about his living arrangements in January of 2012.

they come up." RP 67. But Mr. James failed cross-examine Mr. Barnard on his motivations for testifying, rather he asked him questions about topics the trial court had already stated were irrelevant. RP 67, 71-73.

Even if, however, Mr. James's questions were relevant and properly went towards the bias of the witness, the trial court still did not manifestly abuse its discretion in limiting the scope of Mr. James's cross-examination because the State's interest in excluding the evidence outweighed the defendant's need to admit the evidence. As mentioned above, an assurance "that witnesses who come forward with evidence of a crime will not be discouraged from testifying because a prior conviction or misconduct may be revealed" is a compelling State interest that can outweigh a defendant's need to admit evidence. *Barnes*, 54 Wn.App at 539. Because the evidence sought, if relevant, was of such minimal relevance, the State's aforementioned compelling interest outweighed Mr. James's need for its admissibility.

That said, assuming arguendo that the trial court erred in limiting the scope of Mr. James's cross-examination said error was harmless because the most probative evidence to which Mr. Barnhard testified, that he moved into the Apt. 1 residence on January 5, 2012 was largely

corroborated by other witnesses. For instance, Investigator Olga Lozano testified that when she went to Apt. 1 on January 4, 2012 she was unable to make contact with anyone, however, when she went on January 8, 2012 she made contact with Mr. Barnhard and not Mr. James. RP 34-35. In addition, the property manager, Mr. Weathers, testified that he rented that same unit to Mr. Barnhard sometime in January. RP 45-47. Consequently, there was substantial evidence that Mr. Barnhard moved into Apt. 1 sometime around January 5, 2012 even provided he was biased against Mr. James.

4) THE TRIAL COURT PROPERLY CALCULATED MR. JAMES'S OFFENDER SCORE.

"[I]n general a defendant cannot waive a challenge to a miscalculated offender score." *In re Goodwin*, 146 Wn.2d 861, 874, 50 P.3d 618 (2002). That said, "[t]o invoke the waiver analysis set forth in *Goodwin*, a defendant *must* first show on appeal . . . that an error of fact or law exists within the four corners of his judgment and sentence." *State v. Ross*, 152 Wn.2d 220, 231, 95 P.3d 1225 (2004).

Here, at sentencing, Mr. James agreed to his offender score of nine. RP 130. He also agreed to the calculation by which his offender

score was reached. RP 130.[7] In addition to agreeing to his offender score at sentencing, Mr. James and his attorney signed off on the Judgment and Sentence in which Mr. James's criminal history was attached. CP 5, 14. His criminal history included a conviction for a "DV – PROT ORDER VIOL" with a Superior Court cause # of 06-1-00479-9 out of Thurston County, Washington. CP 5.

Mr. James's claim that his offender score was miscalculated relies entirely on his argument that a "violation of a protection order is generally a gross misdemeanor." Br. of App. at 26. This argument fails to show that an error of fact or law exists within the four corners of his judgment and sentence. Consequently, Mr. James has failed to meet the initial threshold requirement to invoke *Goodwin* and, thus, he has waived his ability to challenge his offender score.

[7] "Mr. Brittain: Your Honor, under the Defendant's criminal history, the State calculates the Defendant's score at nine. Uh, it's based off of a juvenile sex offense, which constitutes . . . three points. *Five prior felony* convictions . . . three of which are . . . Mr. Hays [(Mr. James's attorney)]: We agree with it." (emphasis added).

D. CONCLUSION

For the reasons argued above, Mr. James's conviction should be affirmed.

Respectfully submitted this 31 day of August, 2013.

SUSAN I. BAUR
Prosecuting Attorney

By:

AARON BARTLETT
WSBA # 39710
Deputy Prosecuting Attorney
Representing Respondent

APPENDIX A

RCW 9A.44.130

Registration of sex offenders and kidnapping offenders — Procedures — Definition — Penalties.

(1)(a) Any adult or juvenile residing whether or not the person has a fixed residence, or who is a student, is employed, or carries on a vocation in this state who has been found to have committed or has been convicted of any sex offense or kidnapping offense, or who has been found not guilty by reason of insanity under chapter 10.77 RCW of committing any sex offense or kidnapping offense, shall register with the county sheriff for the county of the person's residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation, or as otherwise specified in this section. When a person required to register under this section is in custody of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility as a result of a sex offense or kidnapping offense, the person shall also register at the time of release from custody with an official designated by the agency that has jurisdiction over the person.

(b) Any adult or juvenile who is required to register under (a) of this subsection must give notice to the county sheriff of the county with whom the person is registered within three business days:

(i) Prior to arriving at a school or institution of higher education to attend classes;

(ii) Prior to starting work at an institution of higher education; or

(iii) After any termination of enrollment or employment at a school or institution of higher education.

(2)(a) A person required to register under this section must provide the following information when registering: (i) Name and any aliases used; (ii) complete and accurate residential address or, if the person lacks a fixed residence, where he or she plans to stay; (iii) date and place of birth; (iv) place of employment; (v) crime for which convicted; (vi) date and place of conviction; (vii) social security number; (viii) photograph; and (ix) fingerprints.

(b) A person may be required to update any of the information required in this subsection in conjunction with any address verification conducted by the county sheriff or as part of any notice required by this section.

(c) A photograph or copy of an individual's fingerprints may be taken at any time to update an individual's file.

(3)(a) Offenders shall register with the county sheriff within the following deadlines:

(i) OFFENDERS IN CUSTODY. (A) Sex offenders who committed a sex offense on, before, or after February 28, 1990, and who, on or after July 28, 1991, are in custody, as a result of that offense, of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility, and (B) kidnapping offenders who on or after July 27, 1997, are in custody of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility, must register at the time of release from custody with an official designated by the agency that has jurisdiction over the offender. The agency shall within three days forward the registration information to the county sheriff for the county of the offender's anticipated residence. The offender must also register within three business days from the time of release with the county sheriff for the

county of the person's residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation. The agency that has jurisdiction over the offender shall provide notice to the offender of the duty to register.

When the agency with jurisdiction intends to release an offender with a duty to register under this section, and the agency has knowledge that the offender is eligible for developmental disability services from the department of social and health services, the agency shall notify the division of developmental disabilities of the release. Notice shall occur not more than thirty days before the offender is to be released. The agency and the division shall assist the offender in meeting the initial registration requirement under this section. Failure to provide such assistance shall not constitute a defense for any violation of this section.

(ii) OFFENDERS NOT IN CUSTODY BUT UNDER STATE OR LOCAL JURISDICTION. Sex offenders who, on July 28, 1991, are not in custody but are under the jurisdiction of the indeterminate sentence review board or under the department of corrections' active supervision, as defined by the department of corrections, the state department of social and health services, or a local division of youth services, for sex offenses committed before, on, or after February 28, 1990, must register within ten days of July 28, 1991. Kidnapping offenders who, on July 27, 1997, are not in custody but are under the jurisdiction of the indeterminate sentence review board or under the department of corrections' active supervision, as defined by the department of corrections, the state department of social and health services, or a local division of youth services, for kidnapping offenses committed before, on, or after July 27, 1997, must register within ten days of July 27, 1997. A change in supervision status of a sex offender who was required to register under this subsection (3)(a)(ii) as of July 28, 1991, or a kidnapping offender required to

register as of July 27, 1997, shall not relieve the offender of the duty to register or to reregister following a change in residence.

(iii) OFFENDERS UNDER FEDERAL JURISDICTION. Sex offenders who, on or after July 23, 1995, and kidnapping offenders who, on or after July 27, 1997, as a result of that offense are in the custody of the United States bureau of prisons or other federal or military correctional agency for sex offenses committed before, on, or after February 28, 1990, or kidnapping offenses committed on, before, or after July 27, 1997, must register within three business days from the time of release with the county sheriff for the county of the person's residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation. Sex offenders who, on July 23, 1995, are not in custody but are under the jurisdiction of the United States bureau of prisons, United States courts, United States parole commission, or military parole board for sex offenses committed before, on, or after February 28, 1990, must register within ten days of July 23, 1995. Kidnapping offenders who, on July 27, 1997, are not in custody but are under the jurisdiction of the United States bureau of prisons, United States courts, United States parole commission, or military parole board for kidnapping offenses committed before, on, or after July 27, 1997, must register within ten days of July 27, 1997. A change in supervision status of a sex offender who was required to register under this subsection (3)(a)(iii) as of July 23, 1995, or a kidnapping offender required to register as of July 27, 1997 shall not relieve the offender of the duty to register or to reregister following a change in residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation.

(iv) OFFENDERS WHO ARE CONVICTED BUT NOT CONFINED. Sex offenders who are convicted of a sex offense on or after July 28, 1991, for a sex offense that was committed on or after February 28, 1990, and kidnapping offenders who are

convicted on or after July 27, 1997, for a kidnapping offense that was committed on or after July 27, 1997, but who are not sentenced to serve a term of confinement immediately upon sentencing, shall report to the county sheriff to register within three business days of being sentenced.

(v) OFFENDERS WHO ARE NEW RESIDENTS OR RETURNING WASHINGTON RESIDENTS. Sex offenders and kidnapping offenders who move to Washington state from another state or a foreign country that are not under the jurisdiction of the state department of corrections, the indeterminate sentence review board, or the state department of social and health services at the time of moving to Washington, must register within three business days of establishing residence or reestablishing residence if the person is a former Washington resident. The duty to register under this subsection applies to sex offenders convicted under the laws of another state or a foreign country, federal or military statutes for offenses committed before, on, or after February 28, 1990, or Washington state for offenses committed before, on, or after February 28, 1990, and to kidnapping offenders convicted under the laws of another state or a foreign country, federal or military statutes, or Washington state for offenses committed before, on, or after July 27, 1997. Sex offenders and kidnapping offenders from other states or a foreign country who, when they move to Washington, are under the jurisdiction of the department of corrections, the indeterminate sentence review board, or the department of social and health services must register within three business days of moving to Washington. The agency that has jurisdiction over the offender shall notify the offender of the registration requirements before the offender moves to Washington.

(vi) OFFENDERS FOUND NOT GUILTY BY REASON OF INSANITY. Any adult or juvenile who has been found not guilty by reason of insanity under chapter 10.77 RCW of (A) committing a sex offense on, before, or after February 28, 1990,

and who, on or after July 23, 1995, is in custody, as a result of that finding, of the state department of social and health services, or (B) committing a kidnapping offense on, before, or after July 27, 1997, and who on or after July 27, 1997, is in custody, as a result of that finding, of the state department of social and health services, must register within three business days from the time of release with the county sheriff for the county of the person's residence. The state department of social and health services shall provide notice to the adult or juvenile in its custody of the duty to register. Any adult or juvenile who has been found not guilty by reason of insanity of committing a sex offense on, before, or after February 28, 1990, but who was released before July 23, 1995, or any adult or juvenile who has been found not guilty by reason of insanity of committing a kidnapping offense but who was released before July 27, 1997, shall be required to register within three business days of receiving notice of this registration requirement.

(vii) OFFENDERS WHO LACK A FIXED RESIDENCE. Any person who lacks a fixed residence and leaves the county in which he or she is registered and enters and remains within a new county for twenty-four hours is required to register with the county sheriff not more than three business days after entering the county and provide the information required in subsection (2)(a) of this section.

(viii) OFFENDERS WHO LACK A FIXED RESIDENCE AND WHO ARE UNDER SUPERVISION. Offenders who lack a fixed residence and who are under the supervision of the department shall register in the county of their supervision.

(ix) OFFENDERS WHO MOVE TO, WORK, CARRY ON A VOCATION, OR ATTEND SCHOOL IN ANOTHER STATE. Offenders required to register in Washington, who move to another state, or who work, carry on a vocation, or attend school in another state shall register a new address, fingerprints, and photograph with the new state within three business days after

establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. The person must also send written notice within three business days of moving to the new state or to a foreign country to the county sheriff with whom the person last registered in Washington state. The county sheriff shall promptly forward this information to the Washington state patrol.

(b) The county sheriff shall not be required to determine whether the person is living within the county.

(c) An arrest on charges of failure to register, service of an information, or a complaint for a violation of RCW 9A.44.132, or arraignment on charges for a violation of RCW 9A.44.132, constitutes actual notice of the duty to register. Any person charged with the crime of failure to register under RCW 9A.44.132 who asserts as a defense the lack of notice of the duty to register shall register within three business days following actual notice of the duty through arrest, service, or arraignment. Failure to register as required under this subsection (3)(c) constitutes grounds for filing another charge of failing to register. Registering following arrest, service, or arraignment on charges shall not relieve the offender from criminal liability for failure to register prior to the filing of the original charge.

(d) The deadlines for the duty to register under this section do not relieve any sex offender of the duty to register under this section as it existed prior to July 28, 1991.

(4)(a) If any person required to register pursuant to this section changes his or her residence address within the same county, the person must provide, by certified mail, with return receipt requested or in person, signed written notice of the change of address to the county sheriff within three business days of moving.

(b) If any person required to register pursuant to this section moves to a new county, the person must register with that county sheriff within three business days of moving. Within three business days, the person must also provide, by certified mail, with return receipt requested or in person, signed written notice of the change of address in the new county to the county sheriff with whom the person last registered. The county sheriff with whom the person last registered shall promptly forward the information concerning the change of address to the county sheriff for the county of the person's new residence. Upon receipt of notice of change of address to a new state, the county sheriff shall promptly forward the information regarding the change of address to the agency designated by the new state as the state's offender registration agency.

(5)(a) Any person required to register under this section who lacks a fixed residence shall provide signed written notice to the sheriff of the county where he or she last registered within three business days after ceasing to have a fixed residence. The notice shall include the information required by subsection (2)(a) of this section, except the photograph and fingerprints. The county sheriff may, for reasonable cause, require the offender to provide a photograph and fingerprints. The sheriff shall forward this information to the sheriff of the county in which the person intends to reside, if the person intends to reside in another county.

(b) A person who lacks a fixed residence must report weekly, in person, to the sheriff of the county where he or she is registered. The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. The person must keep an accurate accounting of where he or she stays during the week and provide it to the county sheriff upon request. The lack of a fixed residence is a factor that may be considered in determining an offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

(c) If any person required to register pursuant to this section does not have a fixed residence, it is an affirmative defense to the charge of

failure to register, that he or she provided written notice to the sheriff of the county where he or she last registered within three business days of ceasing to have a fixed residence and has subsequently complied with the requirements of subsections (3)(a)(vii) or (viii) and (5) of this section. To prevail, the person must prove the defense by a preponderance of the evidence.

(6) A sex offender subject to registration requirements under this section who applies to change his or her name under RCW 4.24.130 or any other law shall submit a copy of the application to the county sheriff of the county of the person's residence and to the state patrol not fewer than five days before the entry of an order granting the name change. No sex offender under the requirement to register under this section at the time of application shall be granted an order changing his or her name if the court finds that doing so will interfere with legitimate law enforcement interests, except that no order shall be denied when the name change is requested for religious or legitimate cultural reasons or in recognition of marriage or dissolution of marriage. A sex offender under the requirement to register under this section who receives an order changing his or her name shall submit a copy of the order to the county sheriff of the county of the person's residence and to the state patrol within three business days of the entry of the order.

(7) Except as may otherwise be provided by law, nothing in this section shall impose any liability upon a peace officer, including a county sheriff, or law enforcement agency, for failing to release information authorized under this section.

[2011 c 337 § 3. Prior: 2010 c 267 § 2; 2010 c 265 § 1; 2008 c 230 § 1; prior: 2006 c 129 § 2; (2006 c 129 § 1 expired September 1, 2006); 2006 c 128 § 2; (2006 c 128 § 1 expired September 1, 2006); 2006 c 127 § 2; 2006 c 126 § 2; (2006 c 126 § 1 expired September 1, 2006); 2005 c 380 § 1; prior: 2003 c 215 § 1; 2003 c 53 § 68; 2002 c 31 § 1; prior: 2001 c 169 § 1; 2001 c 95 § 2; 2000 c 91 § 2; prior: 1999 sp.s. c 6 § 2; 1999 c 352 § 9; prior: 1998 c 220 § 1; 1998 c 139 § 1; prior: 1997 c 340 § 3;

1997 c 113 § 3; 1996 c 275 § 11; prior: 1995 c 268 § 3; 1995 c 248 § 1; 1995 c 195 § 1; 1994 c 84 § 2; 1991 c 274 § 2; 1990 c 3 § 402.]

Notes:

Application -- 2010 c 267: See note following RCW 9A.44.128.

Delayed effective date -- 2008 c 230 §§ 1-3: "Sections 1 through 3 of this act take effect ninety days after adjournment sine die of the 2010 legislative session." [2008 c 230 § 5.]

Effective date -- 2006 c 129 § 2: "Section 2 of this act takes effect September 1, 2006." [2006 c 129 § 4.]

Expiration date -- 2006 c 129 § 1: "Section 1 of this act expires September 1, 2006." [2006 c 129 § 3.]

Effective date -- 2006 c 128 § 2: "Section 2 of this act takes effect September 1, 2006." [2006 c 128 § 8.]

Expiration date -- 2006 c 128 § 1: "Section 1 of this act expires September 1, 2006." [2006 c 128 § 7.]

Severability -- 2006 c 127: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2006 c 127 § 1.]

Effective date -- 2006 c 127: "This act takes effect September 1, 2006." [2006 c 127 § 3.]

Effective date -- 2006 c 126 § 2: "Section 2 of this act takes effect September 1, 2006." [2006 c 126 § 10.]

Expiration date -- 2006 c 126 § 1: "Section 1 of this act expires September 1, 2006." [2006 c 126 § 8.]

Effective date -- 2006 c 126 §§ 1 and 3-7: "Sections 1 and 3 through 7 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [March 20, 2006]." [2006 c 126 § 9.]

Effective date -- 2005 c 380: "This act takes effect September 1, 2006." [2005 c 380 § 4.]

Intent -- Effective date -- 2003 c 53: See notes following RCW 2.48.180.

Application -- 2002 c 31: "This act applies to all persons convicted of communication with a minor either on, before, or after July 1, 2001, unless otherwise relieved of the duty to register under RCW 9A.44.140." [2002 c 31 § 2.]

Severability -- 2002 c 31: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2002 c 31 § 3.]

Effective date -- 2002 c 31: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 12, 2002]." [2002 c 31 § 4.]

Effective date -- 2001 c 95: See note following RCW 9.94A.030.

Intent -- 1999 sp.s. c 6: "It is the intent of this act to revise the law on registration of sex and kidnapping offenders in response to the case of State v. Pickett, Docket number 41562-0-I. The legislature intends that all sex and kidnapping offenders whose history requires them to register shall do so regardless of whether the person has a fixed residence. The lack of a residential address is not to be construed to preclude registration as a sex or kidnapping offender. The legislature intends that persons who lack a residential address shall have an affirmative duty to report to the appropriate county sheriff, based on the level of risk of offending." [1999 sp.s. c 6 § 1.]

Effective date -- 1999 sp.s. c 6: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 7, 1999]." [1999 sp.s. c 6 § 3.]

Severability -- 1998 c 220: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1998 c 220 § 7.]

Findings -- 1997 c 113: See note following RCW 4.24.550.

Finding -- 1996 c 275: See note following RCW 9.94A.505.

Purpose -- 1995 c 268: See note following RCW 9.94A.030.

Intent -- 1994 c 84: "This act is intended to clarify existing law and is not intended to reflect a substantive change in the law." [1994 c 84 § 1.]

Finding and intent -- 1991 c 274: "The legislature finds that sex offender registration has assisted law enforcement agencies in protecting their communities. This act is intended to clarify and amend the deadlines

for sex offenders to register. This act's clarification or amendment of RCW 9A.44.130 does not relieve the obligation of sex offenders to comply with the registration requirements of RCW 9A.44.130 as that statute exists before July 28, 1991." [1991 c 274 § 1.]

Finding -- Policy -- 1990 c 3 § 402: "The legislature finds that sex offenders often pose a high risk of reoffense, and that law enforcement's efforts to protect their communities, conduct investigations, and quickly apprehend offenders who commit sex offenses, are impaired by the lack of information available to law enforcement agencies about convicted sex offenders who live within the law enforcement agency's jurisdiction. Therefore, this state's policy is to assist local law enforcement agencies' efforts to protect their communities by regulating sex offenders by requiring sex offenders to register with local law enforcement agencies as provided in RCW 9A.44.130." [1990 c 3 § 401.]

Index, part headings not law -- Severability -- Effective dates -- Application -- 1990 c 3: See RCW 18.155.900 through 18.155.902.

RCW 9A.44.132

Failure to register as sex offender or kidnapping offender.

(1) A person commits the crime of failure to register as a sex offender if the person has a duty to register under RCW 9A.44.130 for a felony sex offense and knowingly fails to comply with any of the requirements of RCW 9A.44.130.

(a) The failure to register as a sex offender pursuant to this subsection is a class C felony if:

(i) It is the person's first conviction for a felony failure to register; or

(ii) The person has previously been convicted of a felony failure to register as a sex offender in this state or pursuant to the laws of another state.

(b) If a person has been convicted of a felony failure to register as a sex offender in this state or pursuant to the laws of another state on two or more prior occasions, the failure to register under this subsection is a class B felony.

(2) A person is guilty of failure to register as a sex offender if the person has a duty to register under RCW 9A.44.130 for a sex offense other than a felony and knowingly fails to comply with any of the requirements of RCW 9A.44.130. The failure to register as a sex offender under this subsection is a gross misdemeanor.

(3) A person commits the crime of failure to register as a kidnapping offender if the person has a duty to register under RCW 9A.44.130 for a kidnapping offense and knowingly fails to comply with any of the requirements of RCW 9A.44.130.

(a) If the person has a duty to register for a felony kidnapping offense, the failure to register as a kidnapping offender is a class C felony.

(b) If the person has a duty to register for a kidnapping offense other than a felony, the failure to register as a kidnapping offender is a gross misdemeanor.

(4) Unless relieved of the duty to register pursuant to RCW 9A.44.141 and 9A.44.142, a violation of this section is an ongoing offense for purposes of the statute of limitations under RCW 9A.04.080.

[2011 c 337 § 5; 2010 c 267 § 3.]

Notes:

Application -- 2010 c 267: See note following RCW 9A.44.128.

CERTIFICATE OF SERVICE

Michelle Sasser, certifies that opposing counsel was served electronically via the Division II portal:

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

Signed at Kelso, Washington on August 22nd, 2013.

Michelle Sasser
Michelle Sasser

COWLITZ COUNTY PROSECUTOR

August 22, 2013 - 10:06 AM

Transmittal Letter

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