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COURT OF APPEALS
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NO. 34898-5-II

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

JOSEPH ALAN COOPER,

Appellant.

BRIEF OF APPELLANT

LISA E. TABBUT/WSBA #21344
Attorney for Appellant

1402 Broadway
Longview, WA 98632
(360) 425-8155

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I. ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED IN FINDING JOSEPH COOPER GUILTY OF FAILURE TO REGISTER AS A SEX OFFENDER WHEN THE INFORMATION FAILED TO ALLEGE ALL THE ESSENTIAL ELEMENTS OF THE CHARGE.

II. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

WHETHER JOSEPH COOPER'S SECOND AMENDED INFORMATION APPRISED HIM OF ALL THE ELEMENTS OF FAILURE TO REGISTER AS A SEX OFFENDER WHEN IT FAILED TO SPECIFY THE TIME BY WHICH HE MUST REGISTER IN WASHINGTON ESPECIALLY AS THE TO-CONVICT INSTRUCTION DID INCLUDE THE TIME REQUIREMENT FOR REGISTRATION AS AN ELEMENT OF THE CHARGE?

III. STATEMENT OF THE CASE

A. Procedural Facts

Joseph Alan Cooper was charged by a second amended information with failure to register as a sex offender.¹ CP 7. The information alleged that Cooper was convicted in Oregon in 2003 of attempted sexual abuse in the first degree. CP 7. Prior to trial, Judge John Nichols heard and denied Cooper's motion in limine in which Cooper argued that the Oregon conviction was

¹ The state had earlier filed an information and an amended information against Cooper. All informations filed against Cooper charged a single count of failure to register as a sex offender. The text remained the same on each information with changes made only to the date of the offense. CP 1, 2 & 7.

constitutionally invalid and could not be used as a predicate offense to prove the failure to register charge. CP 8-9; 2ARP² 42-113.

Judge John Nichols presided over the May 30-31, 2006, jury trial. After the state rested, Cooper challenged the sufficiency of the second amended information and moved for dismissal as the information failed to include a time by which Cooper must register in Washington as a sex offender. 3ARP 274. The court denied Cooper's motion. 3ARP 274-75. The state did not move to amend the second amended information. 3ARP 27-75.

Cooper stipulated that his Oregon conviction was comparable to a Washington felony sex offense and would require him to register as a sex offender in Washington. CP 40. The court read the stipulation to the jury. 3BRP 428.

The jury found Cooper guilty. CP 39. On June 1, Cooper was sentenced to 120 days on the charge's unranked 0-12 month range. CP 45; 4RP 516. Immediately thereafter, Cooper filed his Notice of Appeal. CP 54.

² "2ARP" refers to Volume 2A of the verbatim Report of Proceedings held on May 30, 2006. Hereafter, any reference to the verbatim Report of Proceedings will be designated by the volume number and letter – as appropriate – followed by "RP" and the specific page number for the cite.

B. Substantive Facts

In 2003, Cooper was convicted in Clackamas County, Oregon, of attempted sexual abuse in the first degree. 2BRP 141; CP 40. Because of the conviction, Cooper's Oregon probation officer required Cooper to live in Oregon. 2BRP 147. Sometime between January and August 2005, Cooper did ask his probation officer for permission to move to Washington; the probation officer denied his request. 2BRP 146-47. From the time of his conviction until the May 2006, trial, Cooper's address for probationary purposes was always in Oregon. 2BRP 147.

Nonetheless, the state's witnesses identified Cooper as living in Washington. Tammy Hearon - residing at 16311 N.E. 76th in Vancouver - testified that Cooper lived in the house directly across from her in the summer of 2004. 2BRP 184-185. She smoked outside in the morning and typically saw Cooper leaving for work. 2BRP 192. Cooper would return in the late afternoon and mow the lawn or play ball with his kids. 2BRP 192. Hearon's neighbor at 16309 N.E. 76th, Ryan Lynch, recalled regularly seeing Cooper leave for work from the house across the street. 2BRP 211. Cooper drove a white Ford Ranger and left at about 6:30 a.m. 2BRP 211. Cooper frequently loaded his truck with fencing-type

tools he took from the garage where Lynch believed Cooper lived. 2BRP 213-15. Lynch also saw Cooper at the house on the weekends playing catch with who he presumed were Cooper's kids and doing yard work. 2BRP 217-20. Lynch thought Cooper and his family lived at the house from around the Fourth of July 2004 until Christmas 2004. 2BRP 224.

Holly Frazier lived at 14004 N.E. 94th Street in Vancouver. 2BRP 232. Cooper and his family lived next door to her from approximately January–August 2005. 2BRP 232-36. There was nothing about Cooper's activities in the neighborhood during that time that suggested to Frazier that Cooper was anything other than the "man of the house." 2BRP 232-36.

From July of 2004–August of 2005, Cooper did not contact the Clark County Sheriff's Office and register as a sex offender at a Clark County address. 2BRP 247-51.

Cooper testified that he did come to Washington periodically on travel passes approved by his probation officer. 3ARP 305. He came to visit with his wife and children who had lived in rental homes first on 76th and later on 94th in Vancouver. 3ARP 291-93. He denied living at any place other than various Oregon addresses. 3ARP 289-305.

IV. ARGUMENT

BECAUSE THE SECOND AMENDED INFORMATION DID NOT ALLEGE ALL OF THE ESSENTIAL ELEMENTS OF FAILURE TO REGISTER AS A SEX OFFENDER, JOSEPH COOPER'S CASE MUST BE DISMISSED WITHOUT PREJUDICE.

The constitutional right of a person to be informed of the nature and cause of the accusation against him requires that every material element of the offense be charged with definiteness and certainty. 2 C. Torcia, Wharton on Criminal Procedures Section 238, at 69 (13th ed. 1990). In Washington, the information must include the essential common law elements, as well as the statutory elements, of the crime charged in order to apprise the accused of the nature of the charge. Sixth Amendment; Const. Art. 1, Section 22 (Amend. 10); CrR 2.1(b); State v. Kjorsvik, 117 Wn.2d 93, 812, P.2d 86 (1991). An essential element is one "whose specification is necessary to establish the very illegality of the behavior." State v. Johnson, 119 Wn.2d 143, 147, 829 P.2d 1078 (1992) (quoting Kjorsvik, 117 Wn.2d at 106). The term "elements" has also been defined as "those facts the prosecution must prove beyond a reasonable doubt to establish that the defendant

committed the offense.” State v. Johnstone, 96 Wn. App. 839, 846, 928 P.2d 119 (1999) (quoting State v. Franklin, 116 N.M. 565, 570, 865 P.2d 1209, 1214 (1993)).³

It is not fatal to an information that the exact words of the statute are not used; it is instead sufficient “to use words conveying the same meaning and import as the statutory language.” State v. Leach, 113 Wn.2d 678, 689, 787 P.2d 552 (1989). The information must, however, “state the acts constituting the offense in an ordinary and concise language” State v. Royse, 66 Wn.2d 552, 557, 403 P.2d 838 (1965). The question “is whether the words would reasonably apprise an accused of the elements of the crime charged.” Kjorsvik, 117 Wn.2d at 109. Where, as here, an information is challenged prior to verdict, it is construed strictly. State v. Johnson, 119 Wn.2d at 150. The language must not be

³ An “element of crime” is defined by Black’s Law Dictionary as “Those constituent parts of a crime which must be proved by the prosecution to sustain a conviction A term used by the common law to refer to each component part of the actus reus, causation, and the mens rea that must be proved in order to establish that a given offense has occurred. The term is more broadly defined by the Model Penal Code in section 1.13(9) to refer to each component of the actus reus, causation, the mens rea, and grading factors, and the negative of any defense.” Black’s Law Dictionary 520 (6th ed. 1990).

“inartful or vague” in setting out the elements of the crime. Id. at 149-50.

The primary purpose of a charging document is to give notice to an accused so a defense can be prepared. (citation omitted). There are two aspects of this notice requirement involved in a charging document: (1) the description (elements) of the crime charged; and (2) a description of the specific conduct of the defendant which allegedly constituted the crime.

Auburn v. Brooke, 119 Wn.2d 623, 629-30, 836 P.2d 212 (1992).

The RCW 9A.44.130(4)(a)(v) applicable to the period outlined in the charging document provides, in relevant part:

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 thirty days of establishing residence or reestablishing residence if the person is a former Washington resident.

Here, Cooper’s second amended information did not allege these elements:

That he, JOSEPH ALAN COOPER, in the County of Clark, State of Washington, between June 1, 2004 and August 2, 2005, having previously been convicted on or about the 25th day of February, 2003, of a sex offense or kidnapping offense, to wit: Attempted Sexual Abuse in the First Degree, in the Circuit Court of the State of Oregon, Clackamas, Oregon, Court Number (OR003075J) Cause Number 02-1457, and being required to register pursuant to RCW

9A.44.130, did knowingly fail to register with the county sheriffs for the counties in which the defendant resided; contrary to Revised Code of Washington 9A.44.130(4)(b) and 9A.44.130(10)(a).

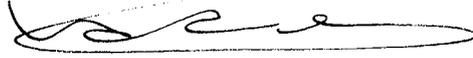
CP 7.

This information failed to apprise Cooper of the nature of the charge. It did not allege that he knowingly failed to notify the Clark County Sheriff's Office within 30 days of having moved to Washington State and establishing a residence in Clark County, though this language does appear in the court's to-convict instruction as elements of the offense of failure to register as a sex offender. Court's instruction 7; CP 36. "(S)ince both charging documents and jury instructions must identify the essential elements of the crime of which defendant is charged, " State v. McCarty, 140 Wn.2d 420, 426 n. 1, 998 P.2d 296 (2000), the information is defective, and the conviction obtained on this charge must be reversed and dismissed. State v. Kitchen, 61 Wn.App. 911, 812 P.2d 888 (1991).

V. CONCLUSION

The remedy for an insufficient information is reversal without prejudice. State v. Simon, 120 Wn.2d 196, 199, 840 P.2d 172 (1992). Joseph Cooper is entitled to that remedy.

Respectfully submitted this 7th day of November, 2006.

A handwritten signature in black ink, appearing to read 'Lisa E. Tabbut', written in a cursive style.

LISA E. TABBUT/WSBA #21344
Attorney for Appellant

APPENDIX

VI. APPENDIX OF CONSTITUTIONAL AUTHORITY, STATUTES, AND COURT RULES

United States Constitution, Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Washington State Constitution, SECTION 22

RIGHTS OF THE ACCUSED. In criminal prosecutions the accused shall have the right to appear and defend in person, or by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to meet the witnesses against him face to face, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the county in which the offense is charged to have been committed and the right to appeal in all cases: *Provided*, The route traversed by any railway coach, train or public conveyance, and the water traversed by any boat shall be criminal districts; and the jurisdiction of all public offenses committed on any such railway car, coach, train, boat or other public conveyance, or at any station or depot upon such route, shall be in any county through which the said car, coach, train, boat or other public conveyance may pass during the trip or voyage, or in which the trip or voyage may begin or terminate. In no instance shall any accused person before final judgment be compelled to advance money or fees to secure the rights herein guaranteed. [AMENDMENT 10, 1921 p 79 Section 1. Approved November, 1922.]

RCW 9A.44.130. Registration of sex offenders and kidnapping offenders -- Procedures -- Definition -- Penalties.

(1) 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. Where 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. In addition, any such adult or juvenile: (a) Who is admitted to a public or private institution of higher education shall, within ten days of enrolling or by the first business day after arriving at the institution, whichever is earlier, notify the sheriff for the county of the person's residence of the person's intent to attend the institution; (b) who gains employment at a public or private institution of higher education shall, within ten days of accepting employment or by the first business day after commencing work at the institution, whichever is earlier, notify the sheriff for the county of the person's residence of the person's employment by the institution; or (c) whose enrollment or employment at a public or private institution of higher education is terminated shall, within ten days of such termination, notify the sheriff for the county of the person's residence of the person's termination of enrollment or employment at the institution. Persons required to register under this section who are enrolled in a public or private institution of higher education on June 11, 1998, must notify the county sheriff immediately. The sheriff shall notify the institution's department of public safety and shall provide that department with the same information provided to a county sheriff under subsection (3) of this section.

(2) This section may not be construed to confer any powers pursuant to RCW 4.24.500 upon the public safety department of any public or private institution of higher education.

(3) (a) The person shall provide the following information when registering: (i) Name; (ii) address; (iii) date and place of birth; (iv) place of employment; (v) crime for which convicted; (vi) date and place of conviction; (vii) aliases used; (viii) social security number; (ix) photograph; and (x) fingerprints.

(b) Any person who lacks a fixed residence shall provide the following information when registering: (i) Name; (ii) date and place of birth; (iii) place of employment; (iv) crime for which convicted; (v) date and place of conviction; (vi) aliases used; (vii) social security number; (viii) photograph; (ix) fingerprints; and (x) where he or she plans to stay.

(4) (a) Offenders shall register with the county sheriff within the following deadlines. For purposes of this section the term "conviction" refers to adult convictions and juvenile adjudications for sex offenses or kidnapping offenses:

(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 twenty-four hours 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. Failure to register at the time of release and within twenty-four hours of release constitutes a violation of this section and is punishable as provided in subsection (10) of this section.

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 correction's 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 correction's 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 (4)(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. The obligation to register shall only cease pursuant to RCW 9A.44.140.

(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 twenty-four hours 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 (4)(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. The obligation to register shall only cease pursuant to RCW 9A.44.140.

(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 immediately upon completion 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 thirty 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, or Washington state for offenses committed 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 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 twenty-four hours 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 twenty-four hours 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 twenty-four hours of receiving notice of this registration requirement. The state department of social and health services shall make reasonable attempts within

available resources to notify sex offenders who were released before July 23, 1995, and kidnapping offenders who were released before July 27, 1997. Failure to register within twenty-four hours of release, or of receiving notice, constitutes a violation of this section and is punishable as provided in subsection (10) of this section.

(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 twenty-four hours after entering the county and provide the information required in subsection (3)(b) 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 ten 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 ten 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) Failure to register within the time required under this section constitutes a per se violation of this section and is punishable as provided in subsection (10) of this section. 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 this section, or arraignment on charges for a violation of this section, constitutes actual notice of the duty to register. Any person charged with the

crime of failure to register under this section who asserts as a defense the lack of notice of the duty to register shall register immediately following actual notice of the duty through arrest, service, or arraignment. Failure to register as required under this subsection (4)(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.

(5) (a) If any person required to register pursuant to this section changes his or her residence address within the same county, the person must send written notice of the change of address to the county sheriff within seventy-two hours of moving. If any person required to register pursuant to this section moves to a new county, the person must send written notice of the change of address at least fourteen days before moving to the county sheriff in the new county of residence and must register with that county sheriff within twenty-four hours of moving. The person must also send written notice within ten days 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.

(b) It is an affirmative defense to a charge that the person failed to send a notice at least fourteen days in advance of moving as required under (a) of this subsection that the person did not know the location of his or her new residence at least fourteen days before moving. The defendant must establish the defense by a preponderance of the evidence and, to prevail on the defense, must also prove by a preponderance that the defendant sent the required notice within twenty-four hours of determining the new address.

(6) (a) Any person required to register under this section who lacks a fixed residence shall provide written notice to the sheriff of the county where he or she last registered within forty-eight hours excluding weekends and holidays after ceasing to have a fixed residence. The notice shall include the information required by subsection (3)(b) 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 county sheriff's office may require the person to list the locations where the person has stayed during the last seven days. 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 forty-eight hours excluding weekends and holidays after ceasing to have a fixed residence and has subsequently complied with the requirements of subsections (4)(a)(vii) or (viii) and (6) of this section. To prevail, the person must prove the defense by a preponderance of the evidence.

(7) 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 five days of the entry of the order.

(8) The county sheriff shall obtain a photograph of the individual and shall obtain a copy of the individual's fingerprints.

(9) For the purpose of RCW 9A.44.130, 10.01.200, 43.43.540, 70.48.470, and 72.09.330:

(a) "Sex offense" means:

(i) Any offense defined as a sex offense by RCW 9.94A.030;

(ii) Any violation under RCW 9A.44.096 (sexual misconduct with a minor in the second degree);

(iii) Any violation under RCW 9.68A.090 (communication with a minor for immoral purposes);

(iv) Any federal or out-of-state conviction for an offense that under the laws of this state would be classified as a sex offense under this subsection; and

(v) Any gross misdemeanor that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit an offense that is classified as a sex offense under RCW 9.94A.030 or this subsection.

(b) "Kidnapping offense" means: (i) The crimes of kidnapping in the first degree, kidnapping in the second degree, and unlawful imprisonment, as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent; (ii) any offense that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit an offense that is classified as a kidnapping offense under this subsection (9)(b); and

(iii) any federal or out-of-state conviction for an offense that under the laws of this state would be classified as a kidnapping offense under this subsection (9)(b).

(c) "Employed" or "carries on a vocation" means employment that is full-time or part-time for a period of time exceeding fourteen days, or for an aggregate period of time exceeding thirty days during any calendar year. A person is employed or carries on a vocation whether the person's employment is financially compensated, volunteered, or for the purpose of government or educational benefit.

(d) "Student" means a person who is enrolled, on a full-time or part-time basis, in any public or private educational institution. An educational institution includes any secondary school, trade or professional institution, or institution of higher education.

(10) A person who knowingly fails to register with the county sheriff or notify the county sheriff, or who changes his or her name without notifying the county sheriff and the state patrol, as required by this section is guilty of a class C felony if the crime for which the individual was convicted was a felony sex offense as defined in subsection (9)(a) of this section or a federal or out-of-state conviction for an offense that under the laws of this state would be a felony sex offense as defined in subsection (9)(a) of this section. If the crime was other than a felony or a federal or out-of-state conviction for an offense that under the laws of this state would be other than a felony, violation of this section is a gross misdemeanor.

(11) A person who knowingly fails to register or who moves within the state without notifying the county sheriff as required by this section is guilty of a class C felony if the crime for which the individual was convicted was a felony kidnapping offense as defined in subsection (9)(b) of this section or a federal or out-of-state conviction for an offense that under the laws of this state would be a felony kidnapping offense as defined in subsection (9)(b) of this section. If the crime was other than a felony or a federal or out-of-state conviction for an offense that under the laws

of this state would be other than a felony, violation of this section is a gross misdemeanor.

CrR 2.1 THE INDICTMENT AND THE INFORMATION

(a) Use of Indictment or Information. The initial pleading by the State shall be an indictment or an information in all criminal proceedings filed by the prosecuting attorney.

(1) Nature. The indictment or the information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged. It shall be signed by the prosecuting attorney. Allegations made in one count may be incorporated by reference in another count. It may be alleged that the means by which the defendant committed the offense is unknown or that the defendant committed it by one or more specified means. The indictment or information shall state for each count the official or customary citation of the statute, rule, regulation or other provision of law which the defendant is alleged therein to have violated. Error in the citation or its omission shall not be ground for dismissal of the indictment or information or for reversal of a conviction if the error or omission did not mislead the defendant to the defendant's prejudice.

(2) Contents. The indictment or the information shall contain or have attached to it the following information when filed with the court:

(i) the name, address, date of birth, and sex of the defendant;
(ii) all known personal identification numbers for the defendant, including the Washington driver's operating license (DOL) number, the state criminal identification (SID) number, the state criminal process control number (PCN), the JUVIS control number, and the Washington Department of Corrections (DOC) number.

(b) Surplusage. The court on motion of the defendant may strike surplusage from the indictment or information.

(c) Bill of Particulars. The court may direct the filing of a bill of particulars. A motion for a bill of particulars may be made before arraignment or within 10 days after arraignment or at such later time as the court may permit.

(d) Amendment. The court may permit any information or bill of particulars to be amended at any time before verdict or finding if substantial rights of the defendant are not prejudiced.

(e) Defendant's Criminal History. Upon the filing of an indictment or information charging a felony, the prosecuting attorney shall request a copy of the defendant's criminal history, as defined in RCW 9.94A.030, from the Washington State Patrol Identification and Criminal History Section.

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

STATE OF WASHINGTON,)	Clark County No. 05-1-01792-9
)	Court of Appeals No. 34898-5-II
Respondent,)	
)	
vs.)	AFFIDAVIT OF MAILING
)	
JOSEPH ALAN COOPER,)	
)	
Appellant.)	

LISA E. TABBUT, being sworn on oath, states that on the 7th day of November 2006, affiant deposited in the mails of the United States of America, a properly stamped envelope directed to:

Michael C. Kinnie
Clark County Prosecuting Attorney
P.O. Box 5000
Vancouver, WA 98666

And

Mr. Joseph A. Cooper/ SID# 14742416
Clackamas County Jail
2223 Kaen Road
Oregon City, OR 97045

AFFIDAVIT OF MAILING - 1 -

LISA E. TABBUT
ATTORNEY AT LAW
1402 Broadway • Longview, WA 98632
Phone: (360) 425-8155 • Fax: (360) 423-7499

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And that said envelope contained the following:

- (1) APPELLANT'S BREIF
- (2) AFFIDAVIT OF MAILING

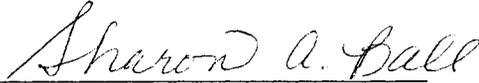
Dated this 7th day of November 2006.



LISA E. TABBUT, WSBA #21344
Attorney for Appellant

SUBSCRIBED AND SWORN to before me this 7th day of November 2006.





Sharon A. Ball
Notary Public in and for the
State of Washington
Residing at: Longview, WA 98632
My commission expires: 06/10/07

AFFIDAVIT OF MAILING - 2 -

LISA E. TABBUT
ATTORNEY AT LAW
1402 Broadway • Longview, WA 98632
Phone: (360) 425-8155 • Fax: (360) 423-7499