

NO. 40848-1-II

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

STATE OF WASHINGTON, RESPONDENT

v.

HOPEANN EVAN, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Bryan Chushcoff
No. 09-1-01149-6

BRIEF OF RESPONDENT

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Table of Contents

A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR. 1

1. Whether the unchallenged findings of facts support the court's conclusions of law. 1

2. Whether the State adduced evidence sufficient for any reasonable trier of fact to conclude defendant was guilty beyond a reasonable doubt of the crime of failure to register as a sex offender. 1

3. Whether defendant waived his objection to the conditions of his sentence when he failed to object to them in the trial court. 1

B. STATEMENT OF THE CASE. 1

1. Procedure 1

2. Facts 3

C. ARGUMENT. 11

1. THIS COURT SHOULD TREAT THE UNCHALLENGED FINDINGS OF FACT AS VERITIES AND FIND THAT THE COURT'S CONCLUSIONS ARE PROPERLY DERIVED FROM ITS FINDINGS. 11

2. THE STATE ADDUCED SUFFICIENT EVIDENCE FOR A REASONABLE FINDER OF FACT TO FIND DEFENDANT GUILTY OF THE CRIME OF FAILURE TO REGISTER AS A SEX OFFENDER. 15

3. DEFENDANT FAILED TO OBJECT TO ANY IMPROPER DELEGATION OF AUTHORITY TO THE DEPARTMENT OF CORRECTIONS AND THEREBY FAILED TO PRESERVE ANY CLAIM OF ERROR ON THIS STATUTORY ISSUE FOR APPELLATE REVIEW. 22

4.	THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DELEGATING TO THE CCO DETAILS OF THE DEFENDANT'S CONDITIONS OF COMMUNITY CUSTODY.....	25
5.	THE CONDITIONS IMPOSED BY THE SENTENCING COURT COMPORT WITH DEFENDANT'S RIGHT TO DUE PROCESS IN THAT THEY ARE CLEAR TO ANY ORDINARY PERSON.	32
D.	<u>CONCLUSION</u>	35

Table of Authorities

State Cases

<i>City of Seattle v. Heatley</i> , 70 Wn. App. 573, 584, 854 P.2d 658 (1993), review denied, 123 Wn.2d 1011 (1994).....	23
<i>City of Spokane v. Douglass</i> , 115 Wn.2d 171, 178, 795 P.2d 693 (1990).....	32, 33
<i>Haley v. Medical Disciplinary Board</i> , 117 Wn.2d 720, 739, 818 P.2d 1062 (1991).....	32
<i>In re Pers. Restraint of Rainey</i> , 168 Wn.2d 367, 374, 229 P.3d 686 (2010).....	25
<i>In re Rainey</i> , 168 Wn.2d 367, 374, 229 P. 3d 686 (2010)	25
<i>Seattle v. Gellein</i> , 112 Wn.2d 58, 61, 768 P.2d 470 (1989).....	15
<i>State v. Anderson</i> , 72 Wn. App. 453, 458, 864 P.2d 1001, review denied, 124 Wn.2d 1013 (1994)	16
<i>State v. Armenta</i> , 134 Wn.2d 1, 9, 948 P.2d 1280 (1997)	11
<i>State v. Autrey</i> , 136 Wn. App. 460, 467, 150 P.3d 580 (2006).....	25
<i>State v. Bahl</i> , 164 Wn.2d 739, 754, 193 P.3d 678 (2008).....	32, 33, 35
<i>State v. Barrington</i> , 52 Wn. App. 478, 484, 761 P.2d 632 (1987), review denied, 111 Wn.2d 1033 (1988).....	16
<i>State v. Castillo</i> , 144 Wn. App. 584, 589-590, 183 P.3d 355 (2008).....	13, 21
<i>State v. Galisia</i> , 63 Wn. App. 833, 838, 822 P.2d 303 (1992), review denied, 119 Wn.2d 1003, 832 P.2d 487 (1992).....	16
<i>State v. Green</i> , 94 Wn.2d 216, 221-22, 616 P.2d 628 (1980)	16
<i>State v. Hill</i> , 123 Wn.2d 641, 647, 870 P.2d 313 (1994)	11

<i>State v. Hoang</i> , 101 Wn. App. 732, 738, 6 P.2d 602 (2000).....	11
<i>State v. Holbrook</i> , 66 Wn.2d 278, 401 P.2d 971 (1965).....	16
<i>State v. Jones</i> , 118 Wn. App 199, 205 76 P. 3d 258 (2003)	34
<i>State v. Joy</i> , 121 Wn.2d 333, 338, 851 P.2d 654, 659 (1993).....	15-16
<i>State v. Letourneau</i> , 100 Wn. App. 424, 432, 997 P.2d 436 (2000).....	25
<i>State v. Lord</i> , 161 Wn.2d 276, 284, 165 P.3d 1251 (2007).....	25
<i>State v. Lynn</i> , 67 Wn. App. 339, 342, 835 P.2d 251 (1992)	23
<i>State v. Mabry</i> , 51 Wn. App. 24, 25, 751 P.2d 882 (1988).....	15
<i>State v. McCullum</i> , 98 Wn.2d 484, 488, 656 P.2d 1064 (1983).....	15
<i>State v. McFarland</i> , 127 Wn.2d 322, 333, 889 P.2d 1251 (1995).....	23
<i>State v. Mulcare</i> , 189 Wn 625, 628, 66 P.2d 360 (1937).....	27
<i>State v. Rehak</i> , 67 Wn. App. 157, 162, 834 P.2d 651 (1992)	26
<i>State v. Riles</i> , 135 Wn.2d 326, 348, 957 P.2d 655 (1998).....	32
<i>State v. Riley</i> , 121 Wn.2d 22, 37, 846 P.2d 1365 (1993)	26
<i>State v. Sansone</i> , 127 Wn. App. 630, 642, 111 P. 3d 1251 (2005).....	27, 30, 31
<i>State v. Scott</i> , 110 Wn.2d 682, 688, 757 P.2d 492 (1988).....	22, 23
<i>State v. Smith</i> , 130 Wn. App 721, 728, 123 P. 3d 896 (2005)	23, 24, 32
<i>State v. Vanderpool</i> , 99 Wn. App. 709, 713-714, 995 P.2d 1004 (2000).....	12, 13, 20
<i>State v. Veltri</i> , 136 Wn. App. 818, 821, 150 P.3d 1178 (2007).....	11
<i>State v. Walton</i> , 64 Wn. App. 410, 415-16, 824 P.2d 533, <i>review denied</i> , 119 Wn.2d 1001, 833 P.2d 386 (1992).....	16

Federal and Other Jurisdictions

United States v. Padilla, 415 F.3d 211,
221 (1st Cir. (Mass.) Jul 25 2005) 24

Statutes

Former RCW 9A.08.010(1)(b)(ii) (1975)..... 12

RCW 9.94A.700..... 25

RCW 9.94A.700(4)..... 27, 28

RCW 9.94A.700(5)..... 27, 28

RCW 9.94A.715..... 27

RCW 9.94A.715(2)(a) 34

RCW 9.94A.715(2)(b) 28, 34

RCW 9.94A.715(b)..... 31

RCW 9.94A.720(1)(a) 28

RCW 9.94A.720(1)(c) 29

RCW 9A.44.13..... 17

RCW 9A.44.130..... 17

RCW 9A.44.130(4)(c) 13

RCW 9A.44.132(1)..... 17

Rules and Regulations

RAP 2.5..... 23

RAP 2.5(a) 22

RAP 2.5(a)(3)..... 23

A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Whether the unchallenged findings of facts support the court's conclusions of law.
2. Whether the State adduced evidence sufficient for any reasonable trier of fact to conclude defendant was guilty beyond a reasonable doubt of the crime of failure to register as a sex offender.
3. Whether defendant waived his objection to the conditions of his sentence when he failed to object to them in the trial court.

B. STATEMENT OF THE CASE.

1. Procedure

On March 4, 2009, the Pierce County Prosecutor's Office filed cause number 09-1-01149-6 charging appellant Hopeann Evan, hereinafter "defendant," with failure to register as a sex offender. CP 1-2. At two points during the pending proceedings, defendant failed to appear - for a hearing on October 27, 2009, and a scheduled plea on February 2, 2010 - which resulted in the issuance of a bench warrant. CP 14, 21. The State

filed an amended information on April 1, 2010, which added two counts of bail jumping. CP 33-34.

On May 10, 2010, the case was assigned to the Honorable Bryan Chushcoff for trial at which time defendant signed a waiver of jury trial and stipulated to a bench trial. CP 36. The court found defendant guilty of all counts on May 13, 2010. 4 RP 250. The court entered findings of fact and conclusions of law on the determination of guilt. CP 46-55, *see* Appendix A. Defense did not object to any of the findings or conclusions. 5 RP 261.

On June 11, 2010, the court sentenced defendant to 17 months on the charge of failure to register and 12+ months in custody on the two counts of bail jumping. CP 59-77. The court imposed 36 months of community custody and standard legal financial obligations. 5 RP 272, CP 59-77. In several sections of the judgment, the court ordered that the defendant comply with specific conditions of community custody. CP 59-77 (*see* sections 4.4, 4.6 and Appendix F). Defendant did not object to any of these conditions ordered by the court.

Defendant timely filed a notice of appeal from entry of this judgment. CP 78-97.

2. Facts

Paul Post testified that he owns rental unit B at 1303 South 8th Street in Tacoma, Washington. 1 RP 58. He rented that unit to defendant on approximately April 6, 2006. On September 4, 2007, Mr. Post got a court order for defendant to vacate the unit due to her non-payment of rent. 1 RP 60-61, 65. Defendant did not live at Mr. Post's unit located at 1303 South 8th, unit B at any time during 2008. 1 RP 67.

Angela Shaw testified that she has been employed as an office assistant to the Pierce County Sheriff's Department in the Sex Offender Registration Unit (PCSD SORU) for the past seven and a half years. 1 RP 15-16. Ms. Shaw is a records keeper for the unit. 1 RP 18. A conviction for child rape in the first degree requires lifetime registration for an offender. 1 RP 53.

Ms. Shaw personally deals with the offenders as they fill out their registration packet, and have their fingerprints and photos taken. 1 RP 17, 19. Ms. Shaw testified that the unit determines the type of paperwork each offender needs to complete and gives them the registration packet, including transient packets for homeless offenders. 1 RP 16. If offenders are just moving within Pierce County, they complete a change of address form or a transient form which contains their name, and physical

description. 1 RP 20, 22. After the forms are completed they are entered into the databases at the Sheriff's Office. 1 RP 22-23.

The Pierce County Sheriff's Office has a sex offender registration file for defendant which contains her photo. 1 RP 24. Ms. Shaw identified defendant in the courtroom as the person who is depicted in the photo in defendant's registration file. 1 RP 25. On April 26, 2006, defendant filed a notice¹ that she was moving from 816 North Pine, apartment 6 to 1303 South 8th Street, apartment B in Tacoma. RP 42-43, exhibit 11. Ms. Shaw searched defendant's registration records and offender file, and found no other registrations between April 28, 2006 and June 15, 2009. 1 RP 48.

Defendant's file contains an initial change of address form completed on November 9, 1992, which changed defendant's address from 33010 South 99th, Snoqualmie, in King County, to 1920 North Union, Tacoma, WA 98406. 1 RP 26, 29, exhibit 3.

Defendant's second change of address form was filed on July 20, 1995, reflecting her move from 1920 North Union to 1301 Sixth Avenue, Apartment 1, in Tacoma. 1 RP 30-31, exhibit 4. Defendant registered a third time on November 25, 1997, when she moved from 1301 Sixth Avenue apartment 1 at to 3320 Sixth Avenue apartment 7 in Tacoma. 1

¹ Chronologically, the ninth notice she filed before November 18, 2008.

RP 32-33, exhibit 5. Defendant's fourth registration on January 15, 1998, reflected her move from 1301 Sixth Avenue, apartment 1, to 3320 6th Avenue, apartment 1. 1 RP 33-34, exhibit 7.

Defendant filed a fifth change of address on October 6, 1999, notifying of her move from 3320 Sixth Avenue, apartment 7 to 2918 South 13th in Tacoma. 1 RP 36-37, exhibit 8. Defendant's sixth change of address form filed on March 13, 2001, notified of her move from 2918 South 13th to 809 Junet Street in Tacoma. 1 RP 37-38, exhibit 6. Her seventh notice was of a move on April 1, 2004, from 809 Junet to 11436 Washington Avenue Southwest apartment 8 in Lakewood Tacoma. RP 40-41, exhibit 9. Defendant's eighth notice reflected her move from 11436 Washington Avenue Southwest to 816 North Pine Street, apartment C on October 18, 2004. 1 RP 41, exhibit 10. On June 15, 2009 defendant registered a change of address from 1303 South 8th Street, apartment B, to 5382 South Warner Street, Tacoma, WA. 1 RP 45-46, exhibit 12.

Scott Yenne testified that he was employed as a detective with the Tacoma Police Department and assigned to the Special Assault Unit in November 2008. 2 RP 126, 127-128. Detective Yenne's duties included going to the homes of sex offenders to confirm that they lived at the address where they were registered. 2 RP 128. Detective Yenne testified that on November 18, 2008, he went to defendant's registered address at

1303 South 8th Street, Unit B, Tacoma, WA. 2 RP 129-130. Based on his conversation with the occupants, Detective Yenne determined that defendant did not live at that address. 2 RP 131-132. Detective Yenne returned to the police department and learned that there was a recent pawn for defendant which listed a phone number. 2 RP 130-132. He testified that he was able to determine defendant's address from the information on the pawn slip. 2 RP. Detective Yenne wrote a report indicating that on November 18, 2008, defendant did not reside at 1303 South 8th Street, apartment B, her registered address. 2 RP 133. That report was forwarded to the prosecutor. 2 RP 133.

Lisa Stephenson testified that she is a U.S. Marshal currently assigned to the Sex Offender Investigation Branch. 2 RP 114. During the second week of June in 2009 she led a federal team which helped state law enforcement serve search warrants on sex offenders who had failed to register. 2 RP 116. On June 10th, 2009, between 8 and 9 a.m. Ms. Stephenson's team located defendant at 5823 South Warner Street, Tacoma Washington, and arrested her on an outstanding warrant for failure to register. 2 RP 117, 119-120. Defendant was there with her infant child and made a phone call to her boyfriend to come home to care for the children. 2 RP 122. Ms. Stephenson testified that as the defendant left, she asked a young man to watch her three children for her. 2 RP 123.

Ms. Stephenson testified that defendant appeared to live at that address. 2 RP 124.

John Cummings testified that he is a prosecutor with the Pierce County Prosecutor's Office and was assigned to courtroom CD 2 from July until October 2009. 2 RP 75. Mr. Cummings testified that defendant signed a scheduling order on October 15, 2009, by which she promised to appear in court on October 27, 2009 at 1:30 p.m. for an omnibus hearing, and which also informed her that a warrant would issue for her arrest if she did not appear. 2 RP 87-88, exhibit 15, CP 104. On October 27, 2009, defendant failed to appear for the hearing, and Mr. Cummings requested a bench warrant for her arrest. 2 RP 89, exhibit 16, CP 12.

Mr. Cummings testified that defendant appeared before the court on January 5, 2010, and again signed a scheduling order which was her promise to appear for a plea on February 2, 2010, and for a trial on February 4, 2010. 2 RP 96, exhibit 21, CP 105. Defendant failed to appear for both the plea scheduled on February 2nd, and for the trial which was scheduled for February 4th, 2010. 2 RP 98-99. A bench warrant was authorized for defendant's failure to appear on February 2nd, but was not issued until February 4, 2010, when she failed to appear for the trial. 2 RP 98-101, exhibit 23, CP 19.

Chris Conant testified that he is a deputy prosecutor who was in court where defendant was scheduled to appear for her plea on the afternoon of February 2, 2010. 2 RP 104, 108. Mr. Conant prepared a bench warrant for defendant's failure to appear, and it was authorized by the court. 2 RP 109-110. At the Court's order, Mr. Conant held the warrant for two days until the trial date on February 4, 2010. 2 RP 110, exhibit 22, CP 19. Mr. Cummings issued the warrant when defendant failed to appear for trial on February 4th.

Defendant testified that she was convicted of rape of a child in the first degree in 1991, and was in custody at Echo Glen for over a year. 4 RP 172-173, 182. She does not recall getting a registration packet when she left Echo Glen. 4 RP 173. She registered her move from Echo Glen to a group home on November 9, 1992. 4 RP 183-186, exhibit 3. Defendant stayed at the group home until she was 18. 4 RP 173. When she left the group home she was told that she needed to register. 4 RP 174. She testified that she registered once but did not know that she needed to register on subsequent moves. 4 RP 186.

Defendant admitted that she pleaded guilty to "failure to register" in 1998, and was notified at that time of her duty to register. 4 RP 188, exhibit 29. She complied with the requirement for a couple of years, and then stopped registering when she was evicted from her apartment in

September of 2007 and did not have a permanent address. 4 RP 174-176, 189.

Defendant testified that when she was in court on October 15th, she signed a scheduling order on which she promised to appear for a court date of October 27th, and put her copy of the order in her purse. 4 RP 195-196, exhibit 15, CP 104.

Defendant testified that she signed a scheduling order on January 5, 2010, promising to appear for a plea on February 2, 2010. 4 RP 199, exhibit 21. She did not appear for that hearing because she recalled that her court date was February 4th, and she had a babysitter for that later date. 4 RP 199. When defendant was notified she had missed her court date on the 2nd, she called her attorney and learned that she should go to court on February 4th. Defendant testified that she did not hear the scheduled time her attorney told her to appear because her daughter disrupted the phone call. 4 RP 179-180. She also testified that she forgot about her court date on February 4th and went shopping at Wal-Mart. 4 RP 179.

Defendant called Anthony Nuno to testify on her behalf. 3 RP 145. Mr. Nuno testified that he has been in a relationship with defendant for three and a half years, and they currently live together. 3 RP 146. Mr. Nuno stated that when he met defendant she was living in a hotel with her three children and a boyfriend. 3 RP 149. Two and a half years ago

defendant and her boyfriend moved into Mr. Nuno's mother's house at 5831 South Warner in Tacoma.² 3 RP 149-150. The house was foreclosed on a year later so the defendant and Mr. Nuno moved in with defendant's sister in University Place. 3 RP 150.

Mr. Nuno testified that he arrived home early on February 2, 2010, and was surprised that defendant was at home as she had a court date. 3 RP 146. Mr. Nuno said he mentioned the court date to defendant and she seemed surprised. 3 RP 146-147. Defendant checked the paperwork which was in her purse, and saw that she was 10 minutes late for court. 3 RP 152, 153. Mr. Nuno urged defendant to go ahead to court but defendant responded that a warrant might have already issued. 3 RP 152. Mr. Nuno identified defendant's signature on the scheduling order which gave her notice of her February 2nd and 4th court dates. 3 RP 146, exhibit 21.

Alicia Waffle, defendant's older sister, testified that she only knows what her sister told her about her court dates. 4 RP 213-216. Defendant told her that she had missed a court date (February 2, 2010). 4 RP 214. Defendant then missed her court date on February 4th because she believed it was scheduled for the afternoon and not the morning. 4 RP 214, 215.

² This time frame would have encompassed November 2008.

C. ARGUMENT.

1. THIS COURT SHOULD TREAT THE UNCHALLENGED FINDINGS OF FACT AS VERITIES AND FIND THAT THE COURT'S CONCLUSIONS ARE PROPERLY DERIVED FROM ITS FINDINGS.

Appellate courts do not review unchallenged findings of fact; but treat them as verities on appeal. *State v. Hill*, 123 Wn.2d 641, 647, 870 P.2d 313 (1994). The appellate court reviews a trial court's conclusions of law to decide whether they were properly derived from factual findings. *State v. Hoang*, 101 Wn. App. 732, 738, 6 P.2d 602 (2000) (citing *State v. Armenta*, 134 Wn.2d 1, 9, 948 P.2d 1280 (1997)). When a defendant does not assign error to any of the findings of fact entered by the trial court, review "is limited to a *de novo* determination of whether the trial court derived proper conclusions of law from those findings." *Id.* Under the *de novo* standard, the trial court's conclusions of law must be supported by its findings of fact. *State v. Veltri*, 136 Wn. App. 818, 821, 150 P.3d 1178 (2007).

In the case now before the court, defendant did not assign error to any of the factual findings entered by the trial court, consequently they are all verities. *See* appellant's brief at p. 1. A copy of the trial court's findings and conclusions is attached as an appendix to this brief. *See* Appendix A; CP 46-55.

Defendant challenges conclusions of law 4 and 5. Conclusion 4

states:

4. The Court finds that there was sufficient evidence to show that, although the defendant may not have completely understood the registration requirements upon her initial release as a juvenile from Echo Glen she did register as the authorities advised her to do, in 1992, and then registered, in person, at the Pierce County Sheriff's Department, nine times thereafter over the intervening years, during which time the defendant was also convicted of Failure to Register as a Sex Offender in 1998; thus the defendant knew she was required to register as a sex offender on or about November 18, 2008.

CP 46-55. This conclusion drives from the unchallenged Findings of Fact Nos. 3, 4 and 5. Conclusion of law number four essentially repeats the evidence which the trial judge relied on in his findings that defendant knew that she was required to register as a sex offender on or about

CP 46-55. A person acts "knowingly" when either he is aware of facts described by a statute defining an offense or when "he has information which would lead a reasonable man in the same situation to believe that facts exist which facts are described by a statute defining an offense."

Former RCW 9A.08.010(1)(b)(ii) (1975).

As noted in above, the *Vanderpool* court found that a sex offender "knowingly" failed to register when he had a history of registering in the past. *State v. Vanderpool*, 99 Wn. App. 709, 713-714, 995 P.2d 1004

(2000). The same conclusion was reached in *Castillo*. The Court of Appeals looked at the fact that Castillo had registered in the past and concluded that it was reasonable for the jury to conclude that he had knowledge of his registration requirements. *State v. Castillo*, 144 Wn. App. 584, 589-590, 183 P.3d 355 (2008). *Vanderpool* and *Castillo* are analogous to this case, in which defendant registered nine times between 1991 and 2006. CP 46-55, FOF No. 5.

Defendant was convicted of failure to register in 1998. CP 46-55, FOF No. 5. RCW 9A.44.130(4)(c) states:

An arrest on charges of failure to register...constitutes actual notice on the duty to register. Any person charged with the crime of failure to register under 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 (4)(c) constitutes grounds for filing another charge of failing to register.

As the court below concluded, it is reasonable to infer that defendant's prior conviction for failure to register provided her notice of her ongoing obligation to register. Finding No. 5 properly derives from the trial court's findings and should be upheld.

Defendant also challenges Conclusion of law number 5 which reads as follows:

5. The court concludes that the defendant ceased to reside at 1303 S. 8th Street #B, Tacoma, Washington, the address that she provided to the

Pierce County Sheriff's Department Sex Offender Registration Unit when she registered on April 28, [sic] at least 10 days prior to November 18, 2008, and failed to update her sex offender registration with the Pierce County Sheriff's Department Sex Offender Registration Unit and either provide a new address or register transient.

CP 46-55. This conclusion is based on the facts outlined in findings numbered 6 through 12. Again, defendant has not assigned error to any of these findings of fact.

Finding of fact number 6 states that before November 18, 2008, the defendant had last registered her address as 1303 South 8th Street in Tacoma, WA on April 26 2006. Finding of fact number 7 summarizes testimony from Paul Post and defendant regarding defendant's eviction from the address at 1303 South 8th Street, apartment 8 in September of 2006 and the fact that she did not reside there again. Findings of fact number 8 and 12 reflect the evidence that defendant did not live at 1303 South 8th, apartment B when Detective Yenne conducted an address verification for her there on November 18, 2008. Findings 6, 7 and 8 each support conclusion of law number 5.

Conclusion of law number 5 continues with the statement that defendant had failed to reside at 1303 South 8th apartment B, for more than 10 days before November 18, 2006. This conclusion is based on the facts in findings 9, 10, 11 and 12. CP 46-55. Finding number 10 outlines

the various residences where defendant lived between September 2006 and January 2009, none of which were 1303 South 8th Street. Finding number 9 reflects that defendant and her boyfriend Mr. Nuno lived at 5823 South Warner Street from early January 2009, until her arrest on June 10, 2009. Findings number 10 and 11 also include testimony from Ms. Shaw that the PCSD SORU records show that defendant filed no registration from September 2006 until June 2009. Conclusion of law number 5 is entirely supported by findings of fact numbered 6 through 12.

The trial court drew proper conclusions of law from its findings and those conclusions should be upheld on appeal.

2. THE STATE ADDUCED SUFFICIENT EVIDENCE FOR A REASONABLE FINDER OF FACT TO FIND DEFENDANT GUILTY OF THE CRIME OF FAILURE TO REGISTER AS A SEX OFFENDER.

Due process requires that the State bear the burden of proving each and every element of the crime charged beyond a reasonable doubt. *State v. McCullum*, 98 Wn.2d 484, 488, 656 P.2d 1064 (1983); *see also Seattle v. Gellein*, 112 Wn.2d 58, 61, 768 P.2d 470 (1989); *State v. Mabry*, 51 Wn. App. 24, 25, 751 P.2d 882 (1988). The applicable standard of review is that, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime charged beyond a reasonable doubt. *State v. Joy*, 121 Wn.2d 333,

338, 851 P.2d 654, 659 (1993); *State v. Green*, 94 Wn.2d 216, 221-22, 616 P.2d 628 (1980). Also, a challenge to the sufficiency of the evidence admits the truth of the State's evidence and any reasonable inferences from it. *State v. Barrington*, 52 Wn. App. 478, 484, 761 P.2d 632 (1987), *review denied*, 111 Wn.2d 1033 (1988) (citing *State v. Holbrook*, 66 Wn.2d 278, 401 P.2d 971 (1965)). All reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant. *State v. Anderson*, 72 Wn. App. 453, 458, 864 P.2d 1001, *review denied*, 124 Wn.2d 1013 (1994).

In determining 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. Galisia*, 63 Wn. App. 833, 838, 822 P.2d 303 (1992), *review denied*, 119 Wn.2d 1003, 832 P.2d 487 (1992).

Therefore, when the State has produced evidence of all elements of a crime, the decision of the trier of fact should be upheld. A reviewing court must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v. Walton*, 64 Wn. App. 410, 415-16, 824 P.2d 533, *review denied*, 119 Wn.2d 1001, 833 P.2d 386 (1992).

To prove defendant committed the crime of failure to register as a sex offender, the State needs to establish beyond a reasonable doubt that:

the defendant had a duty to register under RCW 9A.44.130 for a felony sex offense; the defendant knowingly failed to comply with any of the requirements of RCW 9A.44.130, and the acts occurred in the State of Washington. RCW 9A.44.132(1).

The State adduced several pieces of evidence regarding the defendant's obligation to register as a sex offender. It was undisputed that defendant entered a guilty plea to rape of a child in the first degree in 1991 and that she registered as a sex offender following that conviction. 4 RP 172-173, 182; EX 1. She later pleading guilty to a charge of failing to register and her statement on plea of guilty notified her of her obligation to register as a sex offender. EX 29; RP 187-189; *see also* CP 46-55 (FOF 3). The State provided evidence sufficient that a reasonable trier of fact could easily have found that defendant is a sex offender who is required to register her address.

The State provided adduced evidence to prove that the defendant resided at an address where she had not registered. Ms. Shaw from the Pierce County sex offender registration unit testified that defendant last registered her address on April 26, 2006 as 1303 South 8th, apartment B. 1 RP 15-16, 42-43, exhibit 11. Defendant testified that she stopped registering in September of 2007 when she was evicted from 1303 South 8th Street, Unit B, Tacoma, Washington. 4 RP 189. Mr. Post testified that

defendant was evicted from that address on September 4, 2007, and did not live there again. 1 RP 60-61, 65, 67. 1 RP 48; *see also* CP 46-55 (FOF 6, 7, 8, 9, 10, 11 and 12).

This count of failure to register charged that defendant had not registered the address where she resided on November 18, 2008. This was confirmed by Detective Yenne who went to her registered address on that date and learned that defendant did not live there. 2 RP 129-130. Ms. Stephenson testified that she arrested defendant at 5823 South Warner on June 10, 2009. Ms. Shaw testified that defendant did not register at any subsequent address until June 15, 2009. *See also* CP 46-55 (FOF 6, 7, 8, 9, 10, 11 and 12).

Defendant admitted that she moved to the Madigan Hotel where she lived for a week and then to a hotel on South Tacoma Way where she lived for three or four months. 4 RP 176, 191. In early 2009, defendant moved into a house at 5823 South Warner Street in Tacoma where she lived until Ms. Stephenson arrested her there on June 10, 2009. 4 RP 192, 2 RP 117, 119-120. Defendant admitted that she did not register at any of these addresses. 4 RP 194-195. Any reasonable trier of fact could easily have adduced from the presented evidence that defendant was living at an address other than that where she was registered on November 18, 2008.

Finally, the State must show that the above acts occurred within the State of Washington. Ms. Shaw testified that she is a records custodian for sex offenders in Pierce County, and that she forwards the registration forms to the Washington State Patrol. *See also* CP 46-55 (FOF 10). Based on this evidence the jury could easily have inferred that these events occurred in Washington State.

The State provided sufficient evidence that a jury of reasonable people could have found defendant guilty beyond a reasonable doubt of every element of the crime of failure to register.

Defendant does not argue that she did not know of her requirement to register, as she admitted that she had been informed of her obligation when she was released from Echo Glen and again after she entered a plea to failure to register in 1998. 4 RP 188. Defendant argues that she did not know that she was required to register when she was “homeless” or that she was required to register for more than 10 years.³ Given the fact that defendant was well aware of her obligation to register, she had the option of going to the sheriff’s office where she had registered nine times in the past to inquire about her ongoing obligations. She cannot nullify her duty

³ Defendant never explains whether her belief was that she register for 10 years after her 1991 conviction for child rape or 10 years after her 1998 conviction for failure to register.

to register simply by choosing to avoid obtaining the information available to her.

The facts of this case are similar to those in *State v. Vanderpool*, 99 Wn. App. 709, 995 P.2d 104 (2000). Vanderpool was convicted of indecent liberties and registered as a sex offender for four years. *Vanderpool*, 99 Wn. App. at 711. At that time he entered a residential treatment program. When he was released he was informed that he needed to continue to register, but he did not do so. *Id.* Vanderpool was arrested and tried for failure to register. His defenses were that he had substantially complied with the registration requirements, and that he did not knowingly fail to register because he did not understand the registration statute. *Id.* at 713. The court rejected Vanderpool's claim that substantial compliance was sufficient to satisfy the strict compliance standards which would allow law enforcement officers to protect their communities, conduct investigations, and quickly apprehend sex offenders. *Id.* at 712. As for Vanderpool's claim that he was unable to understand the statute, the *Vanderpool* court noted that "a good faith belief that a certain activity does not violate the law is...not a defense in a criminal prosecution." *Id.* at 714. Defendant's claimed ignorance of the law is not a defense to this criminal prosecution.

The issue of knowingly failing to register was also addressed in *State v. Castillo*, 144 Wn. App. 584, 183 P.3d 355 (2008). Castillo was a convicted sex offender who registered his address but moved and did not register his new address. *Id.* at 587. The Appellate Court noted that Castillo had registered before and it was reasonable for the jury to that he knew the registration requirement. *Id.* at 590.

Defendant argues that her case differs from *Castillo* as she did not know she was required to register when she did not have an address. Defendant explains that she did not register during this time because she did not have a “permanent” address. 4 RP 190. However, defendant testified that she always did live at a house or hotel; buildings which do have addresses. She was never, as she explained, “homeless in the sense that she was staying in a car.” 4 RP 190. Defendant testified that she did mail her registration information to the Sheriff’s office while she lived at the first hotel. 4 RP 192. She does not explain why she took this step if she believed that she was “homeless” and no longer required to register.

According to defendant’s trial testimony, she was never “homeless” as she always had a place to stay. Defendant was evicted from her apartment in September 2007, and she moved into a hotel with her boyfriend. She stayed at that hotel for a week and then moved to another where she lived for three or four months. 4 RP 191. Mr. Nuno testified

that defendant moved from the Vagabond Hotel to his mother's house where she lived for a year. 3 RP 149. He and defendant then moved with his mother, and later lived with her sister. 3 RP 150. According to the testimony provided by Mr. Nuno and defendant, she did always have a place to stay. Defendant's excuse that she did not know she needed to continue registering her presence at temporary addresses is not plausible.

The State adduced sufficient evidence to convince a reasonable trier of fact beyond a reasonable doubt that defendant knowingly failed to register the address where she lived on November 18, 2008. The conviction in this case was proper and should not be disturbed on appeal.

3. DEFENDANT FAILED TO OBJECT TO ANY IMPROPER DELEGATION OF AUTHORITY TO THE DEPARTMENT OF CORRECTIONS AND THEREBY FAILED TO PRESERVE ANY CLAIM OF ERROR ON THIS STATUTORY ISSUE FOR APPELLATE REVIEW.

Generally, issues not raised in the trial court may not be raised for the first time on appeal. RAP 2.5(a). While some issues of constitutional magnitude may be raised for the first time on appeal, not every constitutional issue qualifies. *State v. Scott*, 110 Wn.2d 682, 688, 757 P.2d 492 (1988). This limitation is especially important considering that criminal law is so largely "constitutionalized" that most claimed errors can be phrased in constitutional terms. *See State v. Lynn*, 67 Wn. App. 339,

342, 835 P.2d 251 (1992). RAP 2.5(a)(3) is not intended to afford criminal defendants a means for obtaining new trials whenever they can identify some constitutional issue not raised before the trial court. *State v. McFarland*, 127 Wn.2d 322, 333, 889 P.2d 1251 (1995). The exception to the preservation requirement is actually a narrow one, affording review only of certain constitutional questions. *Scott*, 110 Wn.2d at 687 (citing *Comment (a)*, RAP 2.5, 86 Wn.2d 1100, 1152 (1976)). See also *City of Seattle v. Heatley*, 70 Wn. App. 573, 584, 854 P.2d 658 (1993), review denied, 123 Wn.2d 1011 (1994).

Defendant now seeks to challenge certain community custody conditions of hers sentence, arguing that the trial court improperly delegated authority to the department of corrections. Defendant raises these issues for the first time on appeal, as she did not object to the imposition of these conditions in the sentencing court.

In *State v. Smith*, the defendant appealed a condition the sentencing court had imposed upon him, arguing that the court had improperly delegated to the DOC its duty to define crime-related prohibitions. *State v. Smith*, 130 Wn. App 721, 728, 123 P. 3d 896 (2005). The *Smith* Court concluded that the issue of whether the sentencing court erroneously delegated its authority was not of constitutional magnitude, but rather was statutory. *Id.* Because the SRA

in effect at the time of *Smith*'s sentence did allow the DOC to impose conditions, the error violated a statutory right rather than a constitutional right. *Id.* at 729.

The *Smith* Court's conclusion was based on *United States v. Padilla*, 415 F.3d 211,221 (1st Cir. (Mass.) Jul 25 2005). *Padilla* appealed his sentence arguing that the sentencing court erred when it delegated authority to the probation officer to determine the number of drug tests he must take while on probation. The *Padilla* Court held that *Padilla* had waived his right to object on appeal as he had not raised the issue before the sentencing court. *Id.* at 217. The *Padilla* Court further noted:

A party's best safeguard against judicial error is a contemporaneous objection. Where, as here, no such objection was interposed, plain error principles cannot be used as a surrogate for the foregone objection.

Padilla, *Id.* at 221. Based on the *Padilla* Court's reasoning, the *Smith* Court concluded that "any improper delegation of judicial authority that may have occurred did not amount to a manifest constitutional error warranting appellate review despite the lack of objection below."

As defendant failed to object to sentencing court's delegation of the terms of community custody to the CCO at the time defendant was sentenced, he is barred from raising the issue for the first time on appeal.

4. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DELEGATING TO THE CCO DETAILS OF THE DEFENDANT'S CONDITIONS OF COMMUNITY CUSTODY.

The Sentencing Reform Act authorizes a trial court to impose “crime-related prohibitions” as a condition of a sentence. RCW 9.94A.700; *In re Pers. Restraint of Rainey*, 168 Wn.2d 367, 374, 229 P.3d 686 (2010). Our prior case law has not definitively set forth the standard of review for a trial court’s imposition of crime-related prohibitions. *In re Rainey*, 168 Wn.2d 367, 374, 229 P. 3d 686 (2010). The courts generally review sentencing conditions for abuse of discretion. *Id.* at 374. Nevertheless, because the imposition of crime-related prohibitions is necessarily fact-specific and based upon the sentencing judge’s in-person appraisal of the trial and the offender, the appropriate standard of review remains abuse of discretion. A court abuses its discretion if, when imposing a crime-related prohibition, it applies the wrong legal standard. *Id.* citing *State v. Lord*, 161 Wn.2d 276, 284, 165 P.3d 1251 (2007).

When a court does impose crime-related prohibitions, they must be directly related to the circumstances of the crime but need not be causally related. *State v. Autrey*, 136 Wn. App. 460, 467, 150 P.3d 580 (2006); *State v. Letourneau*, 100 Wn. App. 424, 432, 997 P.2d 436 (2000). Our

primary concern when reviewing prohibitions is to prevent coerced rehabilitation. *State v. Riley*, 121 Wn.2d 22, 37, 846 P.2d 1365 (1993). If the imposed conditions are not coercive, a sentencing court has broad discretion and we review only for an abuse of that discretion. *Id.* at 37. An abuse of discretion exists only when no reasonable person would have taken the position adopted by the trial court. *State v. Rehak*, 67 Wn. App. 157, 162, 834 P.2d 651 (1992).

The sentencing court ordered several conditions of community custody in this case. They are:

Law abiding behavior
Follow all direction, conditions and instructions of CCO
Register as a sex offender as required by law

CP 59-77, page 64, section 4.4

Defendant must remain within a specified geographical boundary, to wit: Per CCO

The defendant shall participate in the following crime-related treatment or counseling services: Per CCO

The defendant shall comply with the following crime related prohibitions: Per CCO

Other conditions may be imposed by the court of DOC during community custody, or are set forth here: Per CCO

CP 59-77, page 67,

The court may also order any of the following special conditions:

- (I) The offender shall remain within specified geographical boundary: Per CCO
- (V) The residence location and living arrangements of a sex offender shall be subject to the prior approval of the department of corrections
- (VI) The offender shall comply with any crime-related prohibitions.
- (VII) Other: Per CCO

CP 59-77 (*see* Appendix F). Defendant challenges the propriety of all of the community custody conditions ordered in her case.

“Sentencing courts have the power to delegate some aspects of community placement to the DOC. While it is the function of the judiciary to determine guilt and impose sentences, ‘the execution of the sentence and the application of the various provisions for the mitigation of punishment and the reformation of the offender are administrative in character and are properly exercised by an administrative body, according to the manner prescribed by the Legislature.’” *State v. Sansone*, 127 Wn. App. 630, 642, 111 P. 3d 1251 (2005) *citing* *State v. Mulcare*, 189 Wn. 625, 628, 66 P.2d 360 (1937).

RCW 9.94A.715 controls the terms of community custody a court orders for failure to register as a sex offender. Section (2)(a) indicates that the conditions of community custody shall include those provided for in RCW 9.94A.700(4) and (5).

RCW 9.94A.700(4) gives conditions which shall be imposed by the sentencing court, and includes:

(e) The residence, location, and living arrangements shall be subject to the prior approval of the department during the period of community placement.

RCW 9.94A.700(5) lists conditions which the sentencing court may impose. These include:

- (a) The offender shall remain within, or outside of, a specified geographical boundary;
- (c) The offender shall participate in crime-related treatment or counseling services; or
- (e) The offender shall comply with any crime-related prohibitions.

These are verbatim the conditions which the sentencing court imposed.

RCW 9.94A.715(2)(b) continues:

As part of any sentence that includes a term of community custody imposed under this subsection, the court shall also require the offender so comply with any conditions imposed by the department⁴ under RCW 9.94A.720.

This section makes clear that the DOC has the authority to require instructions and conditions for the offender.

RCW 9.94A.720(1)(a) mandates that the Department of Corrections (DOC) supervise offenders after their release from custody.

⁴ The Department of Corrections.

It states:

(1)(a) Except as provided in RCW 9.94A.501, all offenders sentenced to terms involving community supervision, community restitution, community placement, or community custody shall be under the supervision of the department and shall follow explicitly the instructions and conditions of the department. The department may require an offender to perform affirmative acts it deems appropriate to monitor compliance with the conditions of the sentence imposed...

Section (b) continues:

The instructions shall include, at a minimum, reporting as directed to a community corrections officer, remaining within prescribed geographical boundaries, notifying the community corrections officer of any change in the offender's address or employment, and paying the supervision fee assessment.

RCW 9.94A.720(1)(c) further orders:

For offenders sentenced to terms involving community custody for crimes committed on or after June 6, 1996, the department may include, in addition to the instructions in (b) of this subsection, any appropriate conditions of supervision, including but not limited to, prohibiting the offender from having contact with any other specified individuals or specific class of individuals.

These sections of the SRA make it very clear that DOC is authorized to add conditions and instructions to the conditions imposed by the court. This is reasonable, as the DOC employees are responsible to refer offenders to appropriate treatment providers who know what conditions are appropriate for specific offenses, especially sex offenses

which may have unique prohibitions. The DOC employees are also in a position to know what community resources are available to rehabilitate specific offenders, whereas the sentencing courts may not be as knowledgeable about these administrative details.

The types of details which a sentencing court may delegate to the DOC was addressed in *State v. Sansone*, 127 Wn. App. 630, 642, 111 P.3d 1251 (2005). Though the Court of Appeals held that the sentencing court had acted improperly in delegating authority to the CCO to define pornography, the *Sansone* court noted that its holding is limited to the circumstances at hand. It went on to say:

A delegation would not necessarily be improper if Sansone were in treatment and the sentencing court had delegated to the therapist to decide what types of materials Sansone could have. In such a circumstance, the prohibition is not necessarily static – it is a prohibition that might change as the probationer’s treatment progressed and thus is best left to the discretion of the therapist.

Sansone, 127 Wn. App. at 643.

According to the sentence at issue, the defendant was to:

- Remain within a specified geographical boundary
- Participate in crime related treatment or counseling
- Comply with crime-related prohibitions
- Reside at a location with living arrangements approved by the CCO
- Comply with other conditions as set forth by the CCO.

Follow all direction, conditions and instructions of the
CCO
Register as a sex offender as required by law
Have law abiding behavior

Again, it is quite clear that statutory law authorizes the court to impose each but the last two of these sentencing conditions.⁵ As *Sansone* reads, the court may properly delegate responsibility to the CCO to determine specific details of the geographical boundaries, counseling requirements, living arrangements, and prohibitions. Statute also allows the CCO to impose “other” conditions. RCW 9.94A.715(b).

The sentencing court did not abuse its discretion when it imposed the above conditions which were statutorily authorized. The conditions are not manifestly unreasonable or based on untenable grounds. *Sansone* states that it is proper for the sentencing court to impose conditions but delegate to the DOC the oversight of the administrative details. The court did not abuse its discretion in imposing the conditions in this sentence, and they should not be disturbed on appeal.

⁵ The last two conditions listed do not delegate any authority to the CCO and will be dealt with in the section of this brief which addresses “vagueness.”

5. THE CONDITIONS IMPOSED BY THE SENTENCING COURT COMPORT WITH DEFENDANT’S RIGHT TO DUE PROCESS IN THAT THEY ARE CLEAR TO ANY ORDINARY PERSON.

A statute or condition is presumed to be constitutional unless the party challenging it proves that it is unconstitutional beyond a reasonable doubt. *City of Spokane v. Douglass*, 115 Wn.2d 171, 178, 795 P.2d 693 (1990), citing *Haley v. Medical Disciplinary Board*, 117 Wn.2d 720, 739, 818 P.2d 1062 (1991). Some degree of vagueness is inherent in the use of our language. In addition, due process does not require impossible standards of specificity or mathematical certainty. *Id.* citing *State v. Riles*, 135 Wn.2d 326, 348, 957 P.2d 655 (1998). Under the due process clause, a prohibition is void for vagueness if either (1) it does not define the offense with sufficient definiteness that ordinary people can understand what conduct is prohibited, or (2) it does not provide ascertainable standards of guilt to protect against arbitrary enforcement. *State v. Smith*, 130 Wn. App, 721, 726, 123 P. 3d 896 (2005), citing *City of Spokane v. Douglass*, 115 Wn.2d 171, 178, 795 P.2d 693 (1990).

In considering whether a term is constitutionally vague, the court may consider the plain and ordinary meaning as set forth in a standard dictionary. *State v. Bahl*, 164 Wn.2d 739, 754, 193 P.3d 678 (2008). “If “persons of ordinary intelligence” can understand what the [law]

proscribes, notwithstanding some possible areas of disagreement, the [law] is sufficiently definite.” *Bahl*, 164 Wn.2d at 754, citing *Douglass*, 115 Wn. 2d at 179.

Bahl challenged the conditions of his sentence, alleging that the imposed prohibition against frequenting “establishments whose primary business pertains to sexually explicit or erotic material.” *Bahl*, 164 Wn. 2d, at 757. Bahl decried that he was not sure how often “frequent” was, and suggested that the dictionary defined “frequent” as “to visit often.” Bahl wanted guidance on how often he could visit these businesses without violating his conditions. The Supreme Court of Washington clarified that, in context, the word was meant as a ban from visiting such businesses at all. *Bahl*, 164 Wn.2d at 758. The Court also chided Bahl for his artificial parsing of the terms “sexually explicit” and “erotic” which he alleged were also vague. *Bahl*, 164 Wn.2d at 759.

The conditions imposed by the sentencing judge in this case are written in clear and plain language. The defendant is notified that she will have restrictions on her travel and her living conditions, that she should obey all laws, that she will have counseling if the CCO orders it, and that the CCO will set other conditions. These other conditions would presumably include paying her legal financial obligations as the court instructed her to do “per the CCO” in section 4.1 of her sentence, which

defendant has not objected to. CP 59-77, page 3 of 12. In fact, some of these conditions were imposed on defendant after her 1998 conviction for failure to register as a sex offender, including the order that she register as a sex offender. Given that it is the crime she was just convicted of, that she has registered before, and that she has been notified many times of the requirement and terms, this condition is not vague.

The final condition of “law abiding behavior” may be categorized as affirmative conduct reasonably related to the offender’s risk of re-offending or to the safety of the community. *State v. Jones*, 118 Wn. App 199, 205 76 P. 3d 258 (2003). The *Jones* Court points out that RCW 9.94A.715(2)(a) authorizes the department to order the offender to affirmative conduct reasonably related to the circumstances of the offense. RCW 9.94A.715(2)(b) allows the department to order the offender to “obey all laws.” *Id.* at 205. By the plain terms used in the phrase “law abiding behavior” the offender is required to obey all the community’s laws.

The court’s condition that defendant have law abiding behavior is not vague. As do all of the conditions outlined above, it defines the expected conduct with sufficient definiteness that ordinary people can understand what conduct is required. It also provides an ascertainable of standard of guilt sufficient to protect defendant against arbitrary

enforcement. The condition that defendant have law abiding behavior is not vague and is a proper condition of community custody. Furthermore, the correct remedy for a finding that the conditions were vague would be a remand to the sentencing court for resentencing which imposed more specific conditions rather than striking the conditions from the sentence. *Bahl*, 164 Wn. 2d at 762.

D. CONCLUSION.

For the reasons stated above, the State respectfully requests that this Court affirm the decision and the conclusions of law entered by the trial court, and uphold the community custody conditions imposed.

DATED: MARCH 9, 2011

MARK LINDQUIST
Pierce County
Prosecuting Attorney

Karen Platt by K. Probst
KAREN D. PLATT *14811*
Deputy Prosecuting Attorney
WSB # 17290

Certificate of Service:
The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

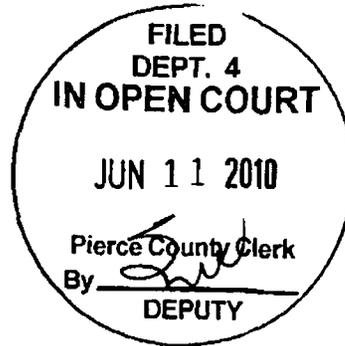
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APPENDIX “A”

Finding of Fact and Conclusion of Law



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

JUN 14 2010

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 09-1-01149-6

vs.

HOPEANN KIUNUCK EVAN,

FINDINGS OF FACT AND
CONCLUSIONS OF LAW FOLLOWING
BENCH TRIAL

Defendant.

THIS MATTER coming on for bench trial before the Honorable Bryan Chushcoff, Judge of the above entitled court, on the 10th day of May, 2010, the State being represented by Kara E. Sanchez, Deputy Prosecuting Attorney; the Defendant being present and represented by John Felleisen, the Defendant having been charged by amended information with the crimes of Failure to Register as a Sex Offender (Count I) and two counts of Bail Jumping (Counts II and III); the Defendant having waived her right to jury trial and submitted the case to the Court; the Court having heard the witness testimony, the witnesses having been sworn; the Court having reviewed the admitted exhibits; the Court having considered the evidence in light of the State's burden to prove each element of the crimes charged beyond a reasonable doubt; the Court makes the following Findings of Fact and Conclusions of Law.

09-1-01149-6

FINDINGS OF FACT

1. The exhibits admitted into evidence by the State are credible and are incorporated into the Court's findings of fact.
2. Andrea Shaw, Legal Assistant with the Pierce County Sheriff's Department Sex Offender Registration Unit, Paul Post, Detective Scott Yenne, US Marshal Service Senior Inspector Lisa Stephenson and Deputy Prosecuting Attorneys John Cummings and Chris Conant were credible witnesses.
3. The exhibits and the testimony of witnesses have established that the defendant is a registered sex offender in Pierce County, with an ongoing duty to register resulting from her 1991 conviction for Rape of a Child in the First Degree and her 1998 conviction for Failure to Register as a Sex Offender.
4. The defendant's duty to register included the period of the offense as charged, on or about November 18, 2008.
5. The evidence proved that the defendant was informed on multiple occasions of her duty to register as a sex offender. The Sentencing Order for the defendant's Rape of a Child in the First Degree conviction, the Judgment and Sentence and Defendant's Statement on Plea of Guilty from her 1998 Failure to Register as a Sex Offender conviction, the nine Sex Offender Change of Address forms completed by the defendant between 1991 and 2006 at the Pierce County Sheriff's Department, all admitted into evidence, provided credible evidence that the defendant had actual notice and knowledge of her duty to register, as did the defendant's own testimony that she knew she was required to register as a sex offender.

09-1-01149-6

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6. At the time of offense set forth in the amended information, on or about November 18, 2008, which is hereby incorporated by reference, the defendant had last registered with the Pierce County Sheriff's Department Sex Offender Registration Unit on April 28, 2006 and provided an address of 1303 S. 8th Street #B, Tacoma, Washington.
 7. The evidence has shown that Paul Post owned the residence known as 1303 S. 8th Street #B, Tacoma, Pierce County, Washington, also known as 1303B S. 8th Street, Tacoma, Pierce County, Washington, and rented the residence to the defendant, but that in September, 2007, Paul Post evicted the defendant from that residence. The evidence has shown that Paul Post did not rent that residence to the defendant at any point in time after September, 2007 including the month of November, 2008, to include between November 8, 2008 and November 18, 2008. The defendant also testified that she was evicted from that residence in September, 2007 and did not return at any point to live at that address.
 8. The evidence has shown that when Detective Yenne conducted an address verification check of the defendant on November 18, 2008 at 1303 S. 8th Street #B, Tacoma, Washington, he contacted a female at the residence and observed others in the residence, but did not observe the defendant at the residence, nor did he observe anyone matching the defendant's description. Detective Yenne concluded that the defendant was no longer residing at her registered address, in violation of the registration law, and prepared a report which he forwarded to the Prosecutor's Office for review.
 9. The evidence has shown that the defendant was arrested on June 10, 2009 at 5823 S. Warner Street, Tacoma, Pierce County, Washington by US Marshal Service Senior Inspector Lisa Stephenson. The defendant appeared to Inspector Marshal to reside at that address and the defendant provided that address to the Pierce County Sheriff's

09-1-01149-6

1 Department Sex Offender Registration Unit on June 15, 2009 when she registered after
2 being arraigned on this matter on June 11, 2009. The defendant and Anthony Nuno also
3 testified that 5823 S. Warner Street, Tacoma, Washington is Mr. Nuno's mother's
4 residence and that the defendant resided there beginning in approximately early January,
5 2009.

6 10. The evidence has shown, through the defendant's testimony, that the defendant resided at
7 several locations or was transient between the time she was evicted from 1303 S. 8th
8 Street #B, Tacoma, Washington in September, 2007 and the time she was arrested on
9 June 10, 2009 at 5823 S. Warner Street, Tacoma, Washington. The defendant testified
10 that she resided at the Vagabond Motel in Tacoma, Washington for a period of
11 approximately four months from September, 2008 to December, 2008 and that at some
12 point during that time period she sent a letter to the Pierce County Sheriff's Department
13 Sex Offender Registration Unit (PCSD SORU) advising that she was staying at the motel.
14 Ms. Andrea Shaw testified regarding the defendant's sex offender registration file and the
15 PCSD SORU did not have any record of any such written notice. The court finds that the
16 defendant's testimony that she sent written notice to the PCSD SORU at some point
17 during the months of September, 2008 and December, 2008 is not credible.

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19 11. The evidence has shown that the defendant did not register with the Pierce County
20 Sheriff's Department Sex Offender Registration Unit between April 28, 2006 and June
21 15, 2009, during which time the defendant was either transient or living at several
22 different fixed residences.

23 12. The evidence has shown that the defendant was not residing at 1303 S. 8th Street #B,
24 Tacoma, Pierce County Washington on or about November 18, 2008.
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09-1-01149-6

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13. The evidence has shown that the defendant was arraigned on this matter, one count of Failure to Register as a Sex Offender, a felony, on June 11, 2009 and the court imposed \$1,000 bail as a condition of release.
 14. The evidence has shown that the defendant was ordered by the court at her arraignment on June 11, 2009 to reside at 5823 S. Warner Street, Tacoma, Washington.
 15. The evidence has shown that on October 15, 2009 the defendant signed and received a copy of a Scheduling Order, which scheduled an Omnibus Hearing on October 27, 2009 at 1:30 p.m. in courtroom 260.
 16. The evidence has shown that on December 15, 2009 the defendant signed and received an Order Continuing Trial that scheduled a trial date of February 4, 2010 in Courtroom 260 / CDPJ and an Omnibus hearing on January 5, 2010.
 17. The evidence has shown that on January 5, 2010 the defendant signed a Scheduling Order setting a Plea Date on February 2, 2010 at 1:30 p.m. in Courtroom 250. The Scheduling Order also listed the trial date as remaining on February 4, 2010 at 8:30 a.m. in Courtroom 260.
 18. The testimony of Deputy Prosecuting Attorney John Cummings has shown that he is employed by the Pierce County Prosecutor's Office as a deputy prosecuting attorney and he was assigned as a "barrel deputy" in the Criminal Division, or "CD," courts from July, 2009 through March, 2010 and that he was specifically assigned to courtroom 260, which is Criminal Division Presiding Judge, or "CDPJ," from October, 2009 through March, 2010.
 19. The testimony of Deputy Prosecuting Attorney John Cummings has shown that Mr. Cummings was present in CDPJ in his capacity as barrel deputy on October 27, 2009 and

09-1-01149-6

1 February 4, 2010 and that the defendant was not present in court on October 27, 2009 for
2 the Omnibus Hearing and that the defendant was not present in court on February 4, 2010
3 for the trial.

4 20. Mr. Cummings' testimony and exhibits admitted at trial establish that a bench warrant
5 was issued for the defendant's arrest for failure to appear in court on October 27, 2009

6 20. Mr. Cummings testified as to his normal practice as a barrel deputy regarding taking roll
7 to determine if out-of-custody defendants are present in court, and that had the defendant
8 been present on October 27, 2009 and answered roll call a bench warrant would not have
9 been requested or issued.

10 21. Deputy Prosecuting Attorney Chris Conant testified that he has been employed with the
11 Pierce County Prosecutor's Office as a deputy prosecuting attorney since April 13, 1987
12 and that he has most recently been assigned as a "barrel deputy" in Criminal Division 1,
13 or "CD 1," and was present in CD 1 in his capacity as a barrel deputy on February 2,
14 2010.

15 22. Mr. Conant testified as to his common practice and procedure in determining whether out
16 of custody defendants are present in court on their scheduled court dates, which involves
17 taking roll and waiting until the end of the docket to request bench warrants on those
18 defendants who are not present.

19 23. Mr. Conant testified that on February 2, 2010 he was the barrel deputy in CD 1 /
20 Courtroom 250 and that at the end of the docket on that day he requested a bench warrant
21 for the defendant for failure to appear for her plea scheduled for that date after following
22 his common practice of taking roll to determine that the defendant was not present in
23 court.
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09-1-01149-6

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24. Mr. Conant testified that the judge assigned to Courtroom 250 that day was Judge Kitty-Ann van Doorninck and that Judge van Doorninck authorized the bench warrant on that date, but also ordered the warrant held for two days, until February 4, 2010, in the event that the defendant appeared for her trial date on February 4, 2010 in Courtroom 260 / CDPJ.
25. Mr. Cummings testified that he was the barrel deputy in Courtroom 260 / CDPJ on February 4, 2010 and that he followed his standard practice and procedure to determine that the defendant was not present in court for trial on that day, which involved taking roll of the out of custody defendants.
26. Mr. Cummings testified that the motion for bench warrant previously requested by Mr. Conant on February 2, 2010 in CD 1 / courtroom 250 was heard by Judge Hogan in Courtroom 260 / CDPJ on February 4, 2010 and Judge Hogan granted the motion and issued the bench warrant.

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CONCLUSIONS OF LAW

1. The Court has jurisdiction over the parties and the subject matter.
2. The defendant had actual notice of her duty to register as a sex offender prior to the offense date, on or about November 18, 2008.
3. The Court concludes that based on the totality of the circumstances, and beyond a reasonable doubt, that in the State of Washington, Pierce County, the defendant, a Pierce County resident having been previously convicted of a prior felony "sex offense" as defined in *RCW 9A.44.030* triggering a duty to register under *RCW 9A.44.130* that was still in effect on the offense date, on or about November 18, 2008, did knowingly fail to

09-1-01149-6

1 comply with his sex offender registration requirements by failing to update her
2 registration with the Pierce County Sheriff's Department Sex Offender Registration Unit
3 when she ceased residing at her previously registered address of 1303B S. 8th Street,
4 Tacoma, Washington as required by *RCW 9A.44.130*.

5 4. The Court finds that there was sufficient evidence to show that, although the defendant
6 may not have completely understood the registration requirements upon her initial release
7 as a juvenile from Echo Glen she did register as the authorities advised her to do, in 1992,
8 and then registered, in person, at the Pierce County Sheriff's Department, nine times
9 thereafter over the intervening years, during which time the defendant was also convicted
10 of Failure to Register as a Sex Offender in 1998; thus the defendant knew she was
11 required to register as a sex offender on or about November 18, 2008.

12 5. The Court concludes that the defendant ceased to reside at 1303 S. 8th Street #B, Tacoma,
13 Washington, the address that she provided to the Pierce County Sheriff's Department Sex
14 Offender Registration Unit when she registered on April 28, 2006, at least ten days prior
15 to November 18, 2008 and failed to update her sex offender registration with the Pierce
16 County Sheriff's Department Sex Offender Registration Unit and either provide a new
17 address or register transient.

18 6. The Court concludes that on June 11, 2009 the defendant was arraigned in this matter on
19 one count of Failure to Register as a Sex Offender, a felony, and that the court imposed
20 \$1,000 bail in addition to other conditions of release.

21 7. The Court concludes that the defendant had actual notice and knowledge of the October
22 27, 2009 omnibus hearing, which was to occur at 1:30 p.m. in Criminal Division
23 Presiding Judge, or CDPJ, courtroom 260.
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09-1-01149-6

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8. The Court concludes that the defendant had actual notice and knowledge of the February 4, 2010 trial date, which was to occur at 8:30 in CDPJ, courtroom 260.

9. The Court concludes that based on the totality of the circumstances, and beyond a reasonable doubt, that in the State of Washington, Pierce County, the defendant, having been charged with a felony and admitted to bail, had knowledge of the omnibus hearing on October 27, 2009 and knowingly failed to appear before CDPJ, courtroom 260, a court in the State of Washington on October 27, 2009.

10. The Court concludes that based on the totality of the circumstances, and beyond a reasonable doubt, that in the State of Washington, Pierce County, the defendant, having been charged with a felony and admitted to bail, had knowledge of the trial date on February 4, 2010 and knowingly failed to appear before CDPJ, courtroom 260, a court in the State of Washington on February 4, 2010.

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09-1-01149-6

11. The Court's oral ruling on these issues was given in open court in the presence of the defendant on May 13, 2010, and is hereby incorporated into these conclusions of law.

These findings and conclusions were signed this 11th day of June, 2010.

[Signature]
JUDGE

Presented by:

[Signature]
Kara E. Sanchez, Deputy Prosecuting Attorney
WSB# 35502

Approved as to form and content; or
 Approved as to form but not content:

[Signature]
John Felleisen, Attorney for the Defendant
WSB#

