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I. **ISSUES**

- A. Did the trial court improperly admit Vile's statements in violation of the *corpus delicti* rule?
- B. Is the Amended Information factually deficient due to its failure to notify Viles of the specific facts of the allegation alleged by the State?

II. **STATEMENT OF THE CASE**

Viles was required to register as a sex offender following a conviction in 2004 for Rape of a Child in the Third Degree. 2RP 38-39.¹ On November 3, 2010 the State filed an Amended Information charging Viles with one count of Failure to Register as a Sex Offender. CP 1-3. The Amended Information read:

On or about the 3rd day of June, 2010, in the County of Lewis, State of Washington, the above-named defendant, having been convicted of a felony sex offense or a federal or out-of-state conviction for an offense that under the laws of this state would be a felony sex offense did knowingly fail to comply with registration requirements by moving from his last registered address within Lewis County to another residence with Lewis County without sending a signed written notice to the Lewis County Sheriff's Office within 72 hours; as required by RCW 9A.44.130; contrary to Revised Code of Washington 9A.44.130(11).

CP 1.

¹ There are two reports of proceedings in this case. The trial and sentencing transcript will be referred to as 2RP. The transcript of the motion hearing dated 09-02-10 will be referred to as 1RP.

Viles elected to exercise his right to a bench trial. 2RP 4-5.

Brandi Jean Clark had known Viles since high school. 2RP 8. On June 4, 2010 Ms. Clark was living at 628 Northwest Washington Street, Apartment two in Chehalis, Washington. 2RP 8. The apartment is also known under the address of 621 Rhode Island Place, Apartment two. 2RP 10. Ms. Clark explained that both addresses are used for the same address, which she acknowledged was very confusing. 2RP 10. Viles had lived with Ms. Clark at the apartment for approximately six to nine months prior to June 4, 2010. 2RP 8-9. Apparently someone had told Viles he was no longer welcome at that apartment. 2RP 13-14. Ms. Clark testified that as of June 4, 2010 she had not seen Viles for two weeks. 2RP 10, 12. Ms. Clark explained that prior to that Viles had been moving his stuff out, using totes. 2RP 12. Viles had told Ms. Clark that he needed his Community Corrections Officer (CCO) to okay his new residence. RP 15.

Christopher Cruzan is a CCO for the Department of Corrections. 2RP 31. Viles was one of the offenders CCO Cruzan supervised. 2RP 32. Viles was on community custody for a prior offense. 2RP 32. As part of Viles's community custody conditions CCO Cruzan monitored where Viles was living. 2RP 32. CCO

Cruzan monitors Viles residence by physically going to the residence. 2RP 32. On June 3, 2010 CCO Cruzan went to 621 Northeast Rhode Island Place, Apartment two, in Chehalis, which was the last residence Viles had reported to CCO Cruzan as Viles's residence. 2RP 32-33. Viles had informed CCO Cruzan as recently as May 18, 2010 that the Rhode Island Place apartment was his address. 2RP 33. On June 3, 2010 CCO Cruzan was unable to locate Viles. 2RP 33. Viles had not reported any change of address to CCO Cruzan. 2RP 33. Viles was required to report any deviation from his staying at his residence to his CCO. 2RP 34-35. CCO Cruzan explained that Viles had a curfew and that he was required to be at his residence overnight. 2RP 36.

Detective Bradford Borden² testified that he was the sex offender coordinator for the Lewis County Sheriff's Office, and had been so for the past nine years. 2RP 36-37. Detective Borden stated he was the person who originally registered Viles after he had been convicted of a felony sex offense. 2RP 38-39. Detective Borden explained the registration process, the forms that are filled out and the requirements that are explained to persons required to register as a sex offender. 2RP 39-40. Detective Borden stated

² Detective Bradford Borden's first name is erroneously stated as Bradley in the bench trial findings CP 4-7. This is error was unintentional on the part of the trial deputy.

this process was completed with Viles. 2RP 41-43; Ex. 5, 6.³ One form was the Washington State Patrol Identification Sex/Kidnapping Offender Registration Change of Address Form (WSP Form). Ex. 6. This form contains Viles information, including the address he is registering as his residence. Ex. 6 The WSP Form was completed on March 18, 2009 in Detective Borden's presence and contained both Detective Borden and Viles's signatures. 2RP 43; Ex. 6. WSP Form lists Viles's address as 621 NW Rhode Island Pl; Apt 2, Chehalis, WA. Ex. 6. The 621 Northwest Rhode Island Place, Apartment two address was the last address Viles had provided to Detective Borden prior to June 7, 2010. 2RP 44, 46. Detective Borden also went over the Lewis County Sheriff's Office Sex/Kidnapping Offenders Registration Requirements Form (Registration Requirements Form) with Viles on October 1, 2007. 2RP 41; Ex 5. Detective Borden requires an offender to affirmatively acknowledge each of the requirements listed on the form by initialing each one, which Viles did. 2RP 41; Ex. 5. Viles also signed and dated the form. 2RP 41; Ex. 5. Viles was also given a copy of the Registration Requirements Form. 2RP 41-42.

³ State will be submitting a supplement designation of Clerk's Papers to include trial exhibits 5 and 6. They will be referred to as Ex. 5 and Ex. 6 throughout the brief.

Detective Borden interviewed Viles in regards to his alleged failure to comply with the registration requirement. 2RP 46, 51-54. Viles was in custody at the time and Detective Borden followed *Miranda*⁴ procedures and Viles agreed to speak with Detective Borden. 2RP 51. Viles's trial counsel objected to the admission of Viles's statement on the basis of corpus delicti. 2RP 46-49. The trial court overruled the objection. 2RP 50.

Viles explained to Detective Borden that he was homeless and that he had not been living at 621 NW Rhode Island for about two weeks. 2RP 51-52. Viles told Detective Borden that he had been living at different residences and in his car, all which were in Lewis County. 2RP 53, 55. Viles acknowledged that he knew he had a duty to come and check in with Detective Borden and had failed to notify Detective Borden of his change of address. 2RP 53-54. Detective Borden testified that Viles did not come into the Sheriff's Office and change his address during that two week period. 2RP 54. Viles had not properly registered in any other place outside of Lewis County during that two week period of time. 2RP 55.

⁴ *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602 (1966).

The trial court found Viles guilty of Failure to Register as a Sex Offender. 2RP 71; CP 8-19. Viles was sentenced by the trial court to 45 months in the Department of Corrections. CP 8-195. Viles timely appealed his conviction. CP 20-32

ARGUMENT

A. THE TRIAL COURT PROPERLY ADMITTED VILES STATEMENTS BECAUSE THERE WAS CORPUS DELICTI FOR THE CRIME OF FAILURE TO REGISTER AS A SEX OFFENDER.

The corpus delicti rule requires the state to present evidence sufficient to support the inference that a criminal act has occurred.

State v. Brockob, 159 Wn.2d 311, 327, 150 P.3d 59 (2006).

Corpus delicti must be established for a criminal defendant's statements to be admitted into evidence. *State v. Brockob* at 328, This rule ensures that a criminal defendant's statements, with nothing more, will not be sufficient evidence to convict him or her of a crime. *Id.* "The State must present evidence independent of the incriminating statement that the crime a defendant *described in the statement* actually occurred." *Id.* (emphasis original).

Review of a trial court's determination that corpus delicti has been established is reviewed de novo. *State v. Pineda*, 99 Wn. App. 65, 77-78, 992 P.2d 525 (2000). The evidence is reviewed in

the light most favorable to the State. *State v. Brockob*, 159 Wn.2d at 328. The evidence also must be consistent with guilt and inconsistent with a hypothesis of innocence. *Id.* at 329. If the independent evidence supports reasonable and logical inferences of both guilt and innocence, then it is insufficient to corroborate a criminal defendant's admissions of guilt. *Id.*

The independent evidence need not be sufficient to support a conviction, but it must provide prima facie corroboration of the crime described in the defendant's incriminating statement. Prima facie corroboration of a defendant's incriminating statement exists if the independent evidence supports a logical and reasonable inference of the facts sought to be proved.

Id. (citations and emphasis omitted).

To prove the crime of Failure to Register as a sex offender the state must prove that a person knowingly failed to comply with any of the requirements of RCW 9A.44.130.⁵ RCW 9A.44.130(11)(a); CP 1. Viles argues that the State did not establish corpus delicti for two reasons. First he alleges that the State failed to introduce independent evidence that Viles had not sent signed written notice of the change of address. Brief of Appellant 5. While there was not any direct evidence admitted that

⁵ All references to RCW 9A.44.130 and its subsections will be as it existed March through April 2010. The State recognizes that the crime of failure to register as a sex offender has been recodified under RCW 9A.44.132.

Viles had not sent signed written notice, there was testimony that Viles had not changed his address with the Lewis County Sheriff's Office. 2RP 44, 46. When examining the sufficiency of the evidence, circumstantial evidence is just as reliable as direct evidence. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

Detective Borden met with Viles on June 7, 2010 at the Lewis County Jail. 2RP 46. Prior to that date the last known address Viles had provided to Detective Borden was 621 Northwest Rhode Island Place, Apartment two in Chehalis, Washington. 2RP 44; Ex. 6. This information came in through the direct testimony of Detective Borden. If Viles had sent a signed written notice, as required by RCW 9A.44.130, to the Lewis County Sheriff's Office within 72 hours to report his change of address, the 621 Northwest Rhode Island Place, Apartment two, address would not be the last known address for Viles. There was sufficient independent evidence, through the testimony of Detective Borden that Viles did not change his address with the Lewis County Sheriff's Office, be it in person or by mail.

Next, Viles contends there was insufficient evidence to show that Viles had changed his residence because Ms. Clark stated

Viles had not moved out. Brief of Appellant 6. While the State does acknowledge that some of Ms. Clark's testimony was a little contradictory and could lead Viles to make such an assertion, this statement does not reflect all the evidence submitted by the State.

Ms. Clark stated that Viles had been told by someone that he was no longer welcome at the apartment and he had begun to pack up his items. 2RP 12-14. Ms. Clark explained that Viles was using totes to remove his possessions from the apartment. 2RP 12. Viles told Ms. Clark he was waiting for approval from his CCO to move. 2RP 15. Ms. Clark stated that prior to June 4, 2010 she had not seen Viles for two weeks and he had not been at the apartment. 2RP 10-12. Ms. Clark stated that prior to May 21, 2010 she had seen Viles on and off and he had been moving his stuff out. 2RP 12.

CCO Cruzan stated Viles, as recently as May 18, 2010, had reported he was still residing at 621 Northwest Rhode Island Place, Apartment two. 2RP 33. On June 3, 2010 CCO Cruzan went to the apartment and was unable to locate Viles. 2RP 33. CCO Cruzan also explained that any change in residency status, including overnight trips would have to be cleared through him. 2RP 34-36.

The evidence presented to the trial court, as stated above was sufficient to make a prima facie finding that Viles had indeed not been residing at the 621 Northwest Rhode Island Place, Apartment two address nor had he properly changed his address with the Lewis County Sheriff's Office. The independent evidence supports a reasonable and logical inference of criminal activity and it is not supportive of a hypothesis of innocence. Viles had not been at his registered address in two weeks. Prior to that time he was packing his belongings and removing them from the apartment. While a few items may have remained, there was sufficient independent evidence of the crime of failure to register as a sex offender and therefore, the trial court properly admitted Viles statements, confirming that he had not been living at the address and had not properly registered the change with the sheriff's office. Viles conviction should be affirmed.

B. VILES'S FAILURE TO REQUEST A BILL OF PARTICULARS WAIVES ANY FACTUAL DEFICIENCY IN THE CHARGING DOCUMENT.

The State is required by the Sixth Amendment of the United States Constitution and Const. article I, section 22 to include all essential elements of the crime in its charging document. The essential elements include statutory and nonstatutory elements

which are to inform the defendant of the charge against him or her so to allow the defendant to prepare his or her defense. *State v. Hopper*, 118 Wn.2d 151, 155, 822 P.2d 775 (1992), *citing State v. Kjorsvik*, 117 Wn.2d 93, 102, 812 P.3d 86 (1991).

A challenge to the sufficiency of the charging document, raised for the first time on appeal, requires the reviewing court to liberally construe the information. *State v. Kjorsvik*, 117 Wn.2d 105. The sufficiency of a charging documents is reviewed de novo. *State v. Williams*, 162 Wn.2d 177, 182, 170 P.3d 30 (2007).

The crime of failing to register as a sex offender is not an alternative means crime. *State v. Peterson*, 168 Wn.2d 763, 771, 230 P.3d 588 (2010). There are numerous ways a person who is required to register as a sex offender can violate the registration requirements. See RCW 9A.44.130. The statute states, “A person who **knowingly fails to comply with any of the requirements** of this section is guilty of a class C felony...” RCW 9A.44.130(11)(a) (emphasis added).

Viles is claiming the Amended information is factually deficient. Brief of Appellant 9. In actuality Viles is arguing the charging document is vague because it did not allege the specific name of the felony sex offense which Viles had previously

committed, it did not give the last registered address and did not specify another residence in Lewis County where Viles had allegedly relocated. Brief of Appellant 9-10. Yet, nowhere in this section of Vile's brief does he state that this alleged vagueness prejudiced him in his ability to prepare a defense to the crime charged.

It is important to remember the primary reason the essential elements rule exists, to ensure the accused has notice of the nature of the crime to allow the accused the ability to prepare his or her defense. *State v. Kjorsvik*, 117 Wn.2d at 101. A State may correct a charging document that is vague via a bill of particulars. *State v. Leach*, 113 Wn.2d 679, 687, 782 P.2d 552 (1989); *State v. Winnings*, 126 Wn. App. 75, 86, 108 P.3d 141 (2005). A defendant who fails to request a bill of particulars at trial has waived any vagueness challenge of the charging document. *State v. Leach*, 113 Wn.2d at 687; *State v. Winnings*, 126 Wn. App. at 86.

The Amended Information included the range of time the State alleged the conduct occurred; the place, Lewis County; that Viles had previously been convicted of a felony sex offense which imposed a duty to register, that Viles knowingly failed to comply with the registration requirements of RCW 9A.44.130(11) and that

Viles had moved from his last registered address without sending notice within 72 hours. CP 1. If Viles was confused as to the specific facts which led to the allegation, he could have requested a bill of particulars from the trial court. A review of the record reveals no such request. See 2RP; CP. Viles's trial counsel did not argue that the Amended Information was factually deficient, thereby not giving Viles adequate notice as to what conduct the State was alleging violated RCW 9A.44.130. See 2RP. Nor did Viles's trial counsel, or Viles in his briefing, allege this vagueness prejudiced him in his ability to prepare his defense. See 2RP; Brief of Appellant 9-10.

Viles waived any vagueness challenge of the charging document due to his failure to request a bill of particulars from the State. Viles's conviction should be affirmed.

CONCLUSION

For the foregoing reasons, this court should affirm Viles's conviction for Failure to Register as a Sex Offender.

RESPECTFULLY submitted this 5th day of ~~June~~ ^{July}, 2011.

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COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,)
Respondent,)
vs.)
JOSHUA SCOTT VILES,)
Appellant.)
_____)

NO. 41600-0-II
DECLARATION OF
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STATE OF WASHINGTON
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Lewis County Prosecuting Attorney Office

Ms. Teri Bryant, paralegal for Sara I. Beigh, Senior Deputy Prosecuting Attorney, declares under penalty of perjury under the laws of the State of Washington that the following is true and correct: On July 5, 2011, the appellant was served with a copy of the **Respondent's Brief** by depositing same in the United States Mail, postage pre-paid, to the attorney for Appellant at the name and address indicated below:

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DATED this 5th day of July, 2011, at Chehalis, Washington.

Teri Bryant
Teri Bryant, Paralegal
Lewis County Prosecuting Attorney Office