

RECEIVED  
JUN 29 2011

CLERK OF COURT OF APPEALS DIV II  
STATE OF WASHINGTON

No. 41771-5-II

THE COURT OF APPEALS FOR THE STATE OF WASHINGTON  
DIVISION II

---

**STATE OF WASHINGTON,**

Respondent,

vs.

**JEREMY P. MASON,**

Appellant.

---

Appeal from the Superior Court of Washington for Lewis County

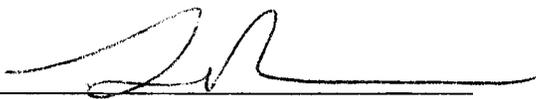
---

**Respondent's Brief**

---

JONATHAN L. MEYER  
Lewis County Prosecuting Attorney

By:

  
SARA I. BEIGH, WSBA No. 35564  
Senior Deputy Prosecuting Attorney

Lewis County Prosecutor's Office  
345 W. Main Street, 2nd Floor  
Chehalis, WA 98532-1900  
(360) 740-1240

**TABLE OF CONTENTS**

TABLE OF AUTHORITES ..... ii

STATEMENT OF THE CASE ..... 1

ARGUMENT ..... 3

A. THE AMENDED INFORMATION CONTAINS ALL  
ESSENTIAL ELEMENTS OF THE CRIME FAILURE TO  
REGISTER AS A SEX OFFENDER AND IS THEREFORE  
LEGALLY SUFFICIENT ..... 3

B. MASON'S FAILURE TO REQUEST A BILL OF  
PARTICULARS WAIVES ANY FACTUAL DEFICIENCY IN  
THE CHARGING DOCUMENT ..... 7

CONCLUSION ..... 9

**TABLE OF AUTHORITIES**

**Washington Cases**

*State v. Hopper*, 118 Wn.2d 151, 822 P.2d 775 (1992)..... 6

*State v. Kjorsvik*, 117 Wn.2d 93, 812 P.3d 86 (1991)..... 3, 7

*State v. Leach*, 113 Wn.2d 679, 782 P.2d 552 (1989)..... 7, 8

*State v. Peterson*, 168 Wn.2d 763, 230 P.3d 588 (2010) ..... 4, 6, 8

*State v. Vangerpen*, 125 Wn.2d 782, 888 P.2d 1177 (1995)..... 3

*State v. Williams*, 162 Wn.2d 177, 170 P.3d 30 (2007) ..... 3, 4

*State v. Winnings*, 126 Wn. App. 75, 108 P.3d 141 (2005) ..... 7, 8

**Washington Statutes**

RCW 9A.44.130 ..... 4, 5, 8

RCW 9A.44.130(1)(a)..... 5

RCW 9A.44.130(5)(a)..... 6

RCW 9A.44.130(11)(a)..... 4, 6

**Constitutional Provisions**

Washington Constitution, Article 1, section 22 ..... 3

U.S. Constitution, Sixth Amendment ..... 3

## I. ISSUES

- A. Did the State violate Mason's constitutional rights by filing an Amended Information that was legally insufficient due to omission of an essential fact?
- B. Is the Amended Information factually deficient due to its failure to notify Mason of the specific facts of the allegation alleged by the State?

## II. STATEMENT OF THE CASE

The State filed an Amended Information, on January 4, 2011, charging Jeremy Paul Mason with one count of Failure to Register as a Sex Offender. CP 1-2. The Affidavit of Probable Cause, supporting the Amended Information, was filed back on October 5, 2010. Supp. CP.<sup>1</sup> The Amended Information stated:

On or about and between March 27, 2010, and April 19, 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 and having a duty to register as a sex offender under former RCW 9A.44.130 in effect at the time of the charged offense, did knowingly fail to comply with any of the registration requirements of former RCW 9A.44.130 in effect at the time of the charged offense; contrary to former Revised Code of Washington 9A.44.130(11) in effect at the time of the charged offense.

CP 1.

---

<sup>1</sup> State is filing a supplement designation of Clerk's Papers to include the Affidavit of Probable Cause filed on October 5, 2010.

Mason elected to exercise his right to a jury trial. RP 4; CP 3. The State called four witnesses, Detective Darryl Leischner of the Thurston County Sheriff's Office, Stephanie Jones who works for Thurston County, Detective Bradford Borden of the Lewis County Sheriff's Office and Richard Cannon. RP 11, 22, 24 and 33. The State recalled Detective Borden and rested its case at the conclusion of his testimony. RP 39. Mason's trial counsel moved the court to dismiss the case based on insufficiency of the information. RP 40. Trial counsel argued that the State failed to indicate in the charging document that Mason had a duty to register with the sheriff, which trial counsel argued was an essential element of the crime. RP 40. The trial court denied the motion and the jury convicted Mason. RP 47, 78; CP 3.

Mason was sentenced by the trial court to 13 months in the Department of Corrections. CP 3-15. Mason timely appealed his conviction. CP 16-27.

//

//

//

//

## ARGUMENT

### **A. THE AMENDED INFORMATION CONTAINS ALL ESSENTIAL ELEMENTS OF THE CRIME FAILURE TO REGISTER AS A SEX OFFENDER AND IS THEREFORE LEGALLY SUFFICIENT.**

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). The court first looks “to the statute because the legislature defines elements of crimes, to determine the elements that the prosecution must prove to sustain a conviction.” *State v. Williams*, 162 Wn.2d 177, 182, 170 P.3d 30 (2007).

A challenge to the sufficiency of the charging document, when brought after the close of the State’s case, requires the reviewing court to strictly construe the information. *State v. Vangerpen*, 125 Wn.2d 782, 788, 888 P.2d 1177 (1995). The

sufficiency of a charging documents is reviewed de novo. *State v. Williams*, 162 Wn.2d at 182.

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.<sup>2</sup> 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).

Mason argues the Amended Information the State filed is deficient because it did not allege that “Mason’s sex offense conviction required him to register ‘with the county sheriff of the county of his residence;’ nor did it allege he failed to ‘register with the county sheriff for the county of his residence.” Brief of Appellant 5. The Amended information stated:

On or about and between March 27, 2010, and April 19, 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 and

---

<sup>2</sup> 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.

having a duty to register as a sex offender under former RCW 9A.44.130 in effect at the time of the charged offense, did knowingly fail to comply with any of the registration requirements of former RCW 9A.44.130 in effect at the time of the charged offense; contrary to former Revised Code of Washington 9A.44.130(11) in effect at the time of the charged offense.

CP 1. The charging language in the Amended Information sufficiently states the elements of the crime of failure to register as a sex offender. To convict Mason of failure to register as a sex offender the State must prove that Mason, a person required to register as a sex offender, knowingly failed to comply with the requirements of RCW 9A.44.130.

There are a number of things a person must do in order to comply with RCW 9A.44.130. Registering with the sheriff in the county where the person resides is just one of the many requirements. RCW 9A.44.130(1)(a). A person who is under the custody of DOC, state department of social and health services, local jail or juvenile facility, local youth services “must register with an official designated by the agency that has jurisdiction over the person.” RCW 9A.44.130(1)(a). Does that language also need to be in the charging language as an essential element? What about the requirement to send notice to the county sheriff where you are going to be moving to 14 days in advance of moving into the

county? RCW 9A.44.130(5)(a). Or perhaps, the requirement that a person send notice to the county sheriff where they were previously registered within 10 days of moving to a new county? RCW 9A.44.130(5)(a). The answer quite plainly is no.

The charging document used in Mason's case was sufficient. It contained all of the essential elements of the charged offense of failure to register as a sex offender. See RCW 9A.44.130(11)(a). Because failure to register is not an alternative means crime there is not a requirement to set forth the subsection or a to wit within the charging language of the information. See *State v. Peterson*, 168 Wn.2d 763. While the court in *Peterson* specifically stated it was not going to address what the elements of failure to register as a sex offender were, except to note that it was not an alternative means crime and a person's residential status was not an element, this Court should adopt the rule that the language, "knowingly failed to comply with any of the requirements of RCW 9A.44.130" is sufficient and contains all the essential elements of failure to register as a sex offender. Mason's conviction should be affirmed.

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

As argued in the previous section, it is the State's position that the charging document used by the State, the Amended Information, was legally sufficient as it contained all of the essential elements of the charge. CP 1-2. Mason argues that the State failed to supply a sufficient factual allegation in the Amended Information, making the charging document insufficient. Brief of Appellant 5. In actuality Mason is arguing the charging document is vague because it did not allege the specific requirement Mason knowingly failed to abide by and the State did not specify Mason's prior sex offense conviction. Brief of Appellant 7. Yet, nowhere in this section of Mason'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.

As stated previously, failure to register as a sex offender is not an alternative means crime. See *State v. Peterson*, 168 Wn.2d 763. The Amended Information included the range of time the State alleged the conduct occurred; the place, Lewis County; that Mason had previously been convicted of a felony sex offense which imposed a duty to register and that Mason knowingly failed to comply with any of the registration requirements of former RCW 9A.44.130. CP 1-2. Further, the probable cause statement, outlining the states alleged facts was filed back in October of 2010. Supp. CP. If Mason 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 RP. Mason's trial counsel did not argue that the Amended Information was factually deficient, thereby not giving Mason adequate notice as to what conduct the State was alleging violated RCW 9A.44.130. See RP 40-47. Nor did Mason's trial counsel, or Mason in his briefing, allege this vagueness prejudiced him in his

ability to prepare his defense. See RP 40-47; Brief of Appellant 5-8.

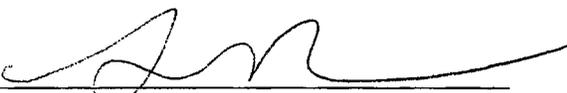
Mason waived any vagueness challenge of the charging document due to his failure to request a bill of particulars from the State. Mason's conviction should be affirmed.

**CONCLUSION**

For the foregoing reasons, this court should affirm Mason's conviction for failure to register as a sex offender.

RESPECTFULLY submitted this 28<sup>th</sup> day of June, 2011.

JONATHAN L. MEYER  
Lewis County Prosecuting Attorney

by:   
SARA I. BEIGH, WSBA 35564  
Attorney for Plaintiff