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SUPREME COURT NO. _____ Case #: 1046286

NO. 86349-5-I

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

MICHAEL DAVID MURRAY,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

The Honorable Ken Schubert, Judge

PETITION FOR REVIEW

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A. PETITIONER AND COURT OF APPEALS DECISION

Michael Murray, the appellant below, seeks this Court's review of the Court of Appeals' September 22, 2025, opinion (Op., attached), affirming his conviction of one count of failing to register as a sex offender.

B. ISSUES PRESENTED FOR REVIEW

Washington's sex offender registration statute requires certain homeless registrants to check in weekly, in person, at the sheriff's office in the county where they are registered. See RCW 9A.44.130(6)(b). When the State charges a person with violating this requirement, it must prove beyond a reasonable doubt that the person "lack[ed] a fixed residence" during the charging period. A homeless shelter may be a "fixed residence," depending on the services it provides to the registrant.

1. Does the State meet its burden, to prove the defendant "lacked a fixed residence," simply by proving that he signed a form to that effect, at the direction of registration officials who asked him unspecified questions about the shelter

where he stayed? (No. The evidence was therefore insufficient to sustain Mr. Murray's conviction.)

2. If a person signs a registration form listing a shelter as his address and indicating he lacks a fixed residence, but he thereafter begins receiving "fixed residence" services at the shelter, has this person "change[d] his . . . residence address," for purposes of the sex offender registration statute? (No. The prosecutor therefore shifted the burden when she advanced this improper argument, and defense counsel was ineffective for failing to object.)

C. STATEMENT OF THE CASE

Mr. Murray is 65 years old and chronically homeless. CP 34-36, 42. After suffering a stroke in his late forties, Mr. Murray committed a non-forcible indecent liberties offense (in 2010) and a series of indecent exposure offenses (between 2013 and 2023) found to be with sexual motivation. CP 34-42, 50; RP 101-02.

As a result of these convictions, Mr. Murray is required to register as a sex offender, under RCW 9A.44.130. RP 662. This

statute requires registrants who “lack[] a fixed residence” to check in weekly with the local county sheriff. RCW 9A.44.130(6)(b).

On October 20, 2022, Mr. Murray signed a registration form given him by an official at the King County Sheriff’s Office Registered Sex Offender (RSO) Unit. Ex. 1 at 499. This form indicated Mr. Murray lacked a fixed residence, and it listed his address as the Compass Center Shelter in Seattle (Compass). Ex. 1 at 499. Mr. Murray thereafter failed to check in weekly at the RSO Unit. RP 615, 655.

A shelter can be a fixed residence, for purposes of the sex offender registration statute, provided the registrant receives certain services at the shelter. RCW 9A.44.128(6). No State officer ever contacted Compass to determine what services it was providing Mr. Murray. RP 659-60; CP 4-5. Nevertheless, on February 23, 2023, the State charged Mr. Murray with one count of failure to register, alleging he violated the weekly check-in requirement. CP 1-2.

Mr. Murray proceeded to trial in mid-December of that year.

The State called three witnesses.

Michelle Krivacek, Program Manager for the King County RSO Unit, testified that her office does face-to-face registrations and was the only registration office in King County. RP 555-57, 571.

Ms. Krivacek explained that, when a person comes in to register or update their registration, an official will typically interview the person to determine whether they have a “fixed address” or whether they will be registering as transient. RP 575-77. She said this was usually part of a 30- to 45-minute interview, and that officials in her unit “don’t normally just throw paperwork at people and tell them to figure it out . . .” RP 577. However, she also said that officials at the registration desk tend to offer a lot of information, and that sometimes registrants did not stay to receive it. RP 578.

If the official determines a person should register as “transient,” Ms. Krivacek said, the official will put a “point of

contact” on the registration form. RP 581-82. She testified that her office used a single form for both “fixed address” and transient registrations, and officials typically crossed out the irrelevant section of the form before directing the registrant to sign it. RP 583-84.

Through Ms. Krivacek’s testimony, the State introduced several documents from Mr. Murray’s registration file, including the form he signed on October 20, 2022. RP 583-85; Ex. 1. This form had a section titled, “FIXED RESIDENCE CHANGE OF INFORMATION,” and another section titled, “LACKING A FIXED RESIDENCE INFORMATION.” Ex. 1 at 499. The “FIXED RESIDENCE” section was crossed out, and the “LACKING” section was filled in. Ex. 1 at 499. In this section, a field titled, “NAME AND FULL ADDRESS OF SHELTER WHERE YOU ARE STAYING,” was filled in with the name and address of the “Compass Center Shelter.” Ex. 1 at 499. Ms. Krivacek testified that this indicated “that Murray is transient and

has a point of contact of one of the local shelters and he signed.”

RP 582.

At the bottom of this page, the following advisement appears:

I understand that because I have registered as lacking a fixed residence, I must report weekly, in person, to the sheriff's office. As part of this weekly report, I must provide the sheriff's office with an accurate accounting of where I have stayed during the prior week, pursuant to RCW 9A.44.130(6)(b).

Ex. 1 at 499.

Ms. Krivacek testified that, if a person registers as transient and then acquires a fixed residence, they are required to come in and notify the office within three days. RP 590. Prompted by the prosecutor, Ms. Krivacek opined: “any change that they’re going to make, by law, should be within three days of it having changed,” including a change from “unhoused to housed.” RP 590. She said it would even be a violation, “technically,” for a person to keep checking in weekly when in fact they had a fixed residence: “I

mean, if you - - if you are continuing to check in homeless and you have an address, technically that's a violation." RP 590.

Finally, Ms. Krivacek testified that she was familiar with Mr. Murray and had registered him at some point in the past, but she said she neither spoke with him nor provided him with any forms on October 20, 2022. RP 561, 591-92. She also explained that a shelter can be a "fixed address," and that she did not know what kind of conversation Mr. Murray might have had about this on October 20, 2022. RP 592-93. She speculated that the person who helped Mr. Murray fill out the forms probably interviewed him thoroughly, before determining that Compass was not providing him with fixed residence services, because that is the standard practice in the office. RP 593-95.

On cross-examination, defense counsel asked Ms. Krivacek whether Compass could be a "fixed address," and Ms. Krivacek responded:

There are certain shelters that allow an individual to get residency status. We would normally ask them to provide a letter or the name of a case manager,

someone that we can confirm that with. It's very difficult to verify people at shelters.

. . . But Seattle does their best. So if we have something in writing, we have something we can - - we could go with. So we typically do ask for that or a case manager name.

RP 592.

On redirect, Ms. Krivacek testified that the questions her office asked a registrant, to determine whether his shelter was a "fixed residence," included: "Do you have the ability to come and go there?," "Are you involved in one of their programs?," and "[Do you] get kicked out at 7:00 in the morning and you got to get back there by 6:00 in the afternoon in order to get a spot?" RP 593-94.

Tina Keller, another program manager with the King County RSO Unit, testified that she "tracks" registrants and investigates alleged failures to register. RP 599-602. She said she maintained a log of Mr. Murray's check-ins, and that it showed he had not checked in on his initial expected date of October 24, 2022, or any week thereafter until his case was "deactivated" for

apparent noncompliance on December 19, 2022. RP 607; Ex. 1 at 599.

Through Ms. Keller, the State introduced a registration document Mr. Murray signed on May 31, 2017; an advisement of registration laws and requirements, which Mr. Murray signed on September 16, 2022; and a document that the Department of Corrections gave to Mr. Murray on April 27, 2017, with similar content. RP 609-14; Ex. 1 at 521, 555-67, 572-73.

The 2022 document contained the following advisement, amid a sea of other fine print:

To determine what address you should register at, please review RCWs 9A.44.128 through 9A.44.148 for detailed requirements.

“Fixed residence” means a building that a person lawfully and habitually uses as living quarters a majority of the week. Uses as living quarters means to conduct activities consistent with the common understanding of residing, such as sleeping; eating; keeping personal belongings; receiving mail; and paying utilities, rent, or mortgage. A nonpermanent structure including, but not limited to, a motor home, travel trailer, camper, or boat may qualify as a residence provided it is lawfully and habitually used as living quarters a majority of the week, primarily

kept at one location with a physical address, and the location it is kept at is either owned or rented by the person or used by the person with the permission of the owner or renter. A shelter program may qualify as a residence provided it is a shelter program designed to provide temporary living accommodations for the homeless, provides an offender with a personally assigned living space, and the offender is permitted to store belongings in the living space.

“Lacks a fixed residence” means the person does not have a living situation that meets the definition of a fixed residence and includes, but is not limited to, a shelter program designed to provide temporary living accommodations for the homeless, an outdoor sleeping location, or locations where the person does not have permission to stay.

OFFENDERS WHO LACK A FIXED RESIDENCE: Any offender who lacks a fixed residence and enters and remains within a new county for twenty-four hours is required to register with the county sheriff not more than three business days after entering the county. Offenders who lack a fixed residence and who are under the supervision of the department of corrections shall register in the county of their supervision. A person who lacks a fixed residence must report weekly, in person, to the sheriff of the county where he or she is registered. The weekly report shall be on a day specified by the county sheriff's office, which shall occur during normal business hours. (In King County, this weekly report may be on any day you choose during the week. However, you must report one time each week

in order to remain in compliance.) The person must keep an accurate accounting of where he or she stays during the week and provide it to the county sheriff upon request. The lack of a fixed residence is a factor that may be considered in determining an offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

Ex. 1 at 556. The 2017 document had identical language, except for a minor change in the second statute cited in the first line. Ex. 1 at 565.

Ms. Keller testified that, based on the documents Mr. Murray signed on October 20, 2022, it appeared Mr. Murray was required to check in weekly, because he lacked a fixed address. RP 614-15. But, like Ms. Krivacek, she said she never had a conversation with Mr. Murray about this. RP 615-16.

Finally, King County Sheriff's Detective Chris Knudsen testified that his regular duties included verifying registrants' addresses and investigating failures to register. RP 635-38. He testified that he rarely visited a transient suspect's "point of contact," when he investigated an alleged failure to register,

because the person is not legally required to be there. RP 645. Consistent with that practice, Detective Knudsen never went to Compass and never talked with Mr. Murray. RP 659-60.

Detective Knudsen testified that he checked Mr. Murray's specific registrations with King County and determined his most recent registration was "transient." RP 654-55. He said he then checked the registration log and determined that Mr. Murray had not checked in weekly, as required; searched law enforcement databases to see if Mr. Murray was in custody and determined he was not; and, finally, ascertained that Mr. Murray was not registering at another location. RP 655-56.

Based on this information, Detective Knudsen said, he determined that Mr. Murry was out of registration compliance between October 27, 2022, and December 30, 2022. RP 656-57.

Mr. Murray stipulated to a prior conviction triggering his obligation to register during the current charging window. RP 662.

After the State rested, the defense moved to dismiss, arguing the evidence was insufficient to prove that Mr. Murray lacked a

fixed residence at the Compass Shelter. RP 662, 671-73. Counsel argued that Mr. Murray's signature on the "LACKS A FIXED RESIDENCE" form was not enough, where there had been no testimony about either (1) the services he obtained at Compass or (2) his consult with the RSO Unit official who obtained that signature. RP 673-78, 680.

The court denied the motion. RP 685.

The jury was instructed that it had to find the following elements, in order to convict Mr. Murray:

(1) Prior to October 24, 2022, Michael Murray was convicted of a felony sex offense;

(2) That due to that conviction, Michael Murray was required to register in the State of Washington as a sex offender between October 24, 2022 and December 30, 2022; and

(3) That during that time period, Michael Murray knowingly failed to comply with the requirement that Michael Murray, lacking a fixed residence, report weekly on a day specified by the county sheriff's office and during normal business hours, in person, to the sheriff of the county where Michael Murray is registered.

CP 24.

The jury was also instructed on the definitions of a “fixed residence” and lack thereof. CP 27-28. These definitions were identical to those in the advisement in Exhibit 1, except for one difference. Unlike the definition in Exhibit 1, the definition in the jury instructions had the following sentence at the end of the paragraph defining a “fixed residence”: A personally assigned living space may be an assigned bed or guaranteed space within a common living area.” CP 27.

In closing, defense counsel argued the State had not proved the third element in the to-convict instruction. RP 726-27. She reminded the jury that no witness had testified that Mr. Murray lacked a fixed residence at Compass, i.e., that he lacked a bed or personal storage area there. RP 727. And she argued there was no way to tell whether the registration desk official made the right determination when they directed Mr. Murray to fill out a transient registration form. RP 729-30. Finally, counsel argued that no evidence indicated Mr. Murray was advised that he needed to come back and update his registration form if, after his initial

registration, Compass began providing him “fixed residence” services. RP 730.

The State argued that the jury could assume the registration desk official made the right determination, because Ms. Krivacek said the consultations were usually thorough. RP 719-20, 739-40.

In her closing rebuttal, the prosecutor also told the jury:

And if Mr. Murray’s address had changed, if he had acquired fixed residency status at the Compass Center, as Detective Knudsen explained, it would then be on Mr. Murray to go back to the King County Sheriff’s Office within three days of that changing and change his address to a fixed address so he would not have to check in weekly anymore.

Now, there is a document that’s going to go back with you in the jury room that I did not present on that screen, but we went over it with Tina Keller, and it is another change of address form that Mr. Murray filled out in 2017.

If he needed to change his address, if he needed to change it to a fixed address, he knew how to do that. He had done it before. And you’ll be able to see that back in the jury room.

RP 741-42.

The prosecutor appears to have been referring to page 573 of Exhibit 1. See RP 612-14. But this is not a “change of address form,” it is a long boilerplate advisement of several requirements, including what to do “[if] you *move* to a new address after registration . . .” Ex. 1 at 573 (emphasis added). It does not indicate Mr. Murray ever “moved” and then formally changed his registration address. Much less does it indicate he changed his registration address even though he did not move.

Defense counsel did not object to this argument.

The jury convicted Mr. Murray of failing to register. RP 747.

At sentencing, the court recognized that Mr. Murray’s life had been tragic, said it had no desire to punish him and wished it could impose a treatment alternative. RP 798-805. It then rejected the defense request for an exceptional sentence (based on the theory that the 2008 stroke had impaired Mr. Murray’s cognition) and imposed a low-end term of 43 months. RP 798-805; CP 34-42, 44, 46.

Mr. Murray timely appealed. CP 58.

Court of Appeals Decision

Mr. Murray's appeal raised three closely related issues.

First, he argued the evidence was insufficient to prove he lacked a fixed residence. BOA 22-30. He pointed out that it requires a complex factual analysis to determine whether a registrant is receiving "fixed residence" services at a shelter. BOA 27. And he noted that Ms. Krivacek endorsed a much narrower definition of these services than the registration statute requires. BOA 27-28. Her testimony therefore strongly suggested that King County RSO officials erroneously designate people as "transient," when they were in fact receiving fixed residence services. BOA 27-28.

Second, Mr. Murray argued the prosecutor shifted the burden in closing argument. BOA 30-38 (quoting RP 741). The prosecutor told the jury that, if the registration office made the wrong initial determination or if Mr. Murray subsequently began receiving fixed residence services at Compass, "it would then be

on Murray” to “change his address” with the registration office. RP 741. Mr. Murray argued the registration statute imposes no such requirement. BOA at 30-36.

Finally, Mr. Murray argued defense counsel was ineffective for failing to object to the prosecutor’s improper argument. BOA 39-42.

Division One rejected the sufficiency challenge. It reasoned that, because registration officials directed Mr. Murray to fill out a form indicating he had no fixed residence, and because he complied, “*the State had no burden* to show that Compass was not Murray’s fixed residence.” Op. at 8 (emphasis added).

The Court of Appeals rejected Mr. Murray’s other two claims on similar grounds. It concluded: “[A] person who registers as lacking a fixed residence, as Murray did here, necessarily *changes address* when he attains a fixed residence, no matter whether he was “staying” *at the same address*.” Op. at 11-12.

Both conclusions misinterpret the registration statute at the expense of fundamental constitutional protections for homeless individuals. This Court should grant review and reverse.

D. REASONS REVIEW SHOULD BE ACCEPTED

Under RAP 13.4(b)(2) and (4), respectively, this Court may accept review of a Court of Appeals decision that conflicts with a published Court of Appeals decision or that involves an issue of substantial public interest that should be determined by this Court. The Court of Appeals decision in Mr. Murray's case satisfies both these criteria.

1. The Court of Appeals' Decision in Mr. Murray's Case Conflicts with a Published Court of Appeals Decision

The State charged Mr. Murray with violating RCW 9A.44.130(6)(b). See CP 1-2, 24. To obtain a conviction under this statute, the State must prove a negative: specifically, that the defendant lacked a fixed residence at the time of the alleged offense. State v. Batson, 194 Wn. App. 326, 330, 377 P.3d 238

(2016). The Court of Appeals’ decision in this case conflicts with Batson, 194 Wn. App. 326.

As noted, the registration statute provides a long, complex, and somewhat nebulous definition of a “fixed residence.” RCW 9A.44.128(6). No “building” or “nonpermanent structure” can be a “fixed residence” unless the registrant “lawfully and habitually uses [it] at a living quarters a majority of the week,” and this requires something “consistent with the common understanding of residing,” which the statute defines only by way of an illustrative list. Id. The statute also provides that: “A shelter program *may qualify* as a residence provided it is . . . designed to provide temporary living accommodations for the homeless, provides an offender with a personally assigned living space, and the offender is permitted to store belongings in the living space.” Id. (emphasis added).

Under this statutory scheme, one cannot determine whether a shelter is a “fixed residence” unless one conducts a thorough and

fact-specific inquiry. The Court of Appeals' recognized this in Batson, 194 Wn. App. 326.

Like Mr. Murray, the defendant in Batson registered with the King County Sheriff's Office and listed a homeless shelter as his residence. 194 Wn. App. at 328. The State thereafter charged him with failure to register, alleging he violated the weekly reporting requirement for registrants who "lack[] a 'fixed residence.'" Id.

At Mr. Batson's trial, the State presented testimony by the shelter's director. Id. at 333-34. He testified that the shelter provided mats, in a common sleeping area, and that once a client claimed a mat it was reserved for them as long as they returned every night. Id. at 333-34. The director also testified that the shelter provided storage "cubbies" for clients, on an informal basis and accessible three designated times per night. Id. Finally, he said the shelter was meant to be temporary housing only, and that with very few exceptions no one was permitted to be there during the day. Id. at 334.

The defense argued this testimony was insufficient to prove the shelter was not a fixed residence. Id. at 329. The Court of Appeals agreed. Id. It held that the mats constituted “personally assigned living space,” that the record was unclear as to the location of the cubbies and thus insufficient to determine whether clients were “permitted to store belongings in the living space,” and that the State had therefore failed to prove the shelter did not satisfy the statutory definition of a “fixed residence.” Id. at 335-37.

Batson illustrates the complexity of determining whether a shelter is a fixed residence for purposes of the registration statute. See 194 Wn. App. at 333 (noting that both sides cited shelter director’s testimony “to support conflicting arguments”). This factual complexity is what makes the vague and speculative evidence at Mr. Murray’s trial insufficient to prove he lacked a fixed residence during the charging window.

As Ms. Krivacek indicated, RSO Unit officials must interview registrants to determine whether a shelter is fixed

residence in any given case. RP 575-77, 593-95. She said the standard interview consisted of several detailed questions about specific amenities and services. RP 593-95. But she could not say which of these questions had been asked of or answered by Mr. Murray in October of 2022, or how Mr. Murray answered them, because she did not conduct his interview. RP 561, 591-92.

None of the forms Mr. Murray signed had any specific language about shelter amenities and services. Ex. 1. The “fixed residence” language on those forms simply parroted the very general, tentative language of the statute, regarding what “may” qualify.

Nor did the State provide any evidence, at all, about Compass. Much less did it provide specific evidence about the services the shelter provided, or did not provide, to Mr. Murray. Troublingly, Ms. Krivacek testified that the RSO Unit typically required written verification before it would regard a shelter as a “fixed residence.” RP 592. But the registration statute contains no such requirement. RCW 9A.44.128-.132.

Ms. Krivacek also testified that the RSO Unit typically asked registrants questions such as whether they could “come and go” at the shelter and how early they had to leave in the morning. RP 593-94. These questions go well beyond the statutory requirements for a “fixed residence” shelter. Compare RCW 9A.44.128(6).

On this record, there is no way a reasonable juror could conclude, beyond a reasonable doubt, that Mr. Murray lacked a fixed residence between October 24, 2022, and December 30, 2022. CP 24. On the contrary, all the relevant considerations—the complexity of the “fixed residence” definition, as applied to shelters; Ms. Krivacek’s testimony that her office typically presumed anyone staying at a shelter lacked a fixed residence, absent written verification to the contrary; and Detective Knudsen’s failure to conduct any investigation whatsoever into Mr. Murray’s circumstances Compass—suggest Mr. Murray may well have received fixed residence services at the shelter during the charging window.

The Court of Appeals dismissed these concerns, and affirmed Mr. Murray’s conviction, because Mr. Murray signed a boilerplate form, at the direction of King County Sheriff’s Office employees, stating that he lacked a fixed residence. Op. at 8.¹ According to the Court of Appeals, this relieved the State of its burden to prove, at Mr. Murray’s felony trial, that this form was accurate. Op. at 8.

This Court should grant review and reverse. The Court of Appeals decision conflicts with published precedent (Batson, 194

¹ The Court of Appeals’ decision erroneously states that Mr. Murray “listed Compass as a point of contact.” Op. at 8. As Mr. Murray pointed out in his reply brief, this is not true. The registration form at issue in Mr. Murray’s trial, which he filled out on October 20, 2022, refers to Compass as his “address” four times, calling it his “New Address,” his “Mailing Address,” the “ADDRESS . . . WHERE YOU MAY BE CONTACTED,” and the “ADDRESS . . . WHERE YOU ARE STAYING.” Ex. 1 at 498-99. The form nowhere refers to any “point of contact.” Ex. 1. Nor does that term appear anywhere in the registration statute or related case law. See RCW 9A.44.128 - .148. The phrase, “point of contact,” appears only in testimony by Ms. Krivacek and Detective Knudsen; it has no legal significance. RP 581-82, 645, 654-55.

Wn. App. 326) and substantially erodes due process protections for homeless registrants.

The legislature determines the elements of a criminal offense. State v. Wadsworth, 139 Wn.2d 724, 734, 991 P.2d 80 (2000). The State bears the burden of proving those elements beyond a reasonable doubt. State v. Longshore, 141 Wn.2d 414, 420-21, 5 P.3d 1256 (2000). Law enforcement officers cannot relieve the State of this burden simply by directing the defendant to sign a form.

2. The Court of Appeals' Decision in Mr. Murray's Case Involves an Issue of Substantial Public Interest that Should Be Determined by This Court

As detailed, the evidence left substantial reasonable doubt as to whether Compass was Mr. Murray's "fixed residence." The jury likely overlooked this doubt because it was confused about the law. Ms. Krivacek suggested, and the prosecutor argued in closing, that Mr. Murray had incurred a transient-status, weekly check-in duty just by signing the October 20, 2022, registration form. But this is not true.

The registration statute provides that a person must update the county sheriff when he “*changes his . . . residence address* within the same county.” RCW 9A.44.130(5)(a) (emphases added). But no provision specifies requirements for a person who registers as “transient,” provides a shelter address, and then attains “fixed residence” status at that *same address*. While it would undoubtedly behoove a person to update his registration status, so as to foreclose a misguided prosecution or other harassment by the State, it is not a statutory requirement.

In the Court of Appeals, Mr. Murray argued that the prosecutor shifted the burden when she told the jury that, if Compass was in fact Mr. Murray’s fixed residence, “it would then be on Murray” to “change his address” with the registration office. BOA 30-38 (quoting RP 741). And he argued defense counsel was ineffective for failing to object to this argument. BOA 39-42.

The Court of Appeals rejected these arguments because it concluded a person “changes address,” for purposes of the registration statute, when he “registers as lacking a fixed

residence,” lists a shelter as the place he is “staying,” and then begins receiving “fixed residence” services at this shelter. Op. at 11-12.

This conclusion conflicts with the plain language of the registration statute and thus raises an issue of substantial public interest that should be determined by this Court. See Matter of Arnold, 189 Wn.2d 1023, 408 P.3d 1091 (2017) (order granting discretionary review, recognizing proper application of sex offender registration statute is “issue of substantial public interest” under RAP 13.4(b)(4)).

E. CONCLUSION

For the reasons stated herein, this Court should grant the petition as to all three claims raised in the Court of Appeals: insufficient evidence, prosecutorial misconduct, and ineffective assistance of counsel. And it should reverse Mr. Murray’s conviction.

I certify that this document was prepared using word processing software, in 14-point font, and contains 4,876 words excluding the parts exempted by RAP 18.17.

DATED this 26th day of October, 2025.

Respectfully submitted,

NIELSEN KOCH & GRANNIS, PLLC

A handwritten signature in black ink, appearing to read "E. J.", written over a horizontal line.

ERIN MOODY

WSBA No. 45570

Attorneys for Appellant

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

THE STATE OF WASHINGTON,

Respondent,

v.

MICHAEL DAVID MURRAY,

Appellant.

No. 86349-5-I

UNPUBLISHED OPINION

BOWMAN, A.C.J. — Michael David Murray appeals his jury conviction for failure to register as a sex offender. Murray argues insufficient evidence supports that he lacked a fixed residence, that the prosecutor committed misconduct during rebuttal closing argument, and that he received ineffective assistance of counsel. Because sufficient evidence supports Murray’s conviction, he waived his claim of prosecutorial misconduct by failing to object, and he fails to show ineffective assistance of counsel, we affirm.

FACTS

In 2018, Murray was convicted of a felony sex offense, requiring him to register as a sex offender between October 24, 2022 and December 30, 2023. At the time of the conviction, the court provided Murray with notice of his registration requirements, explaining his registration obligations and warning him that failure to comply with those obligations is a criminal offense. Murray signed the document, acknowledging receipt.

On September 16, 2022, Murray was given another sex offender registration notification. That document again explained Murray's registration requirements, including that a "fixed residence" is

a building that a person lawfully and habitually uses as living quarters a majority of the week. Uses as living quarters means to conduct activities consistent with the common understanding of residing, such as sleeping; eating; keeping personal belongings; receiving mail; and paying utilities, rent, or mortgage. . . . A shelter program may qualify as a residence provided it is a shelter program designed to provide temporary living accommodations for the homeless, provides an offender with a personally assigned living space, and the offender is permitted to store belongings in the living space.

And it explained that a person "lacks a fixed residence" when

the person does not have a living situation that meets the definition of a fixed residence and includes, but is not limited to, a shelter program designed to provide temporary living accommodations for the homeless, an outdoor sleeping location, or locations where the person does not have permission to stay.

The notification also explained the reporting requirements for a person who lacks a fixed residence. It said:

Offenders who lack a fixed residence and who are under the supervision of the department of corrections shall register in the county of their supervision. A person who lacks a fixed residence must report weekly, in person, to the sheriff of the county where he or she is registered.

Finally, the document advised Murray that "[i]f you move to a new address within the same county, you must provide . . . signed written notice of the change of address to the county sheriff within three business days of moving."

On October 20, 2022, Murray went to the "homeless check-in counter" at the former King County Administration Building and filled out a form titled "Change of Registration Information." The form has a section near the top labeled "Fixed

Residence Change of Information,” which had been crossed out. Just below that section, the form has another section labeled “Lacking a Fixed Residence Information,” which had been highlighted and filled out by Murray. He listed “Compass Center Shelter” (Compass) as a place “where [he] may be contacted” and put the shelter’s address under the section titled “Name and Full Address of Shelter Where You Are Staying.” Murray signed the document, initialing the paragraph that states:

I understand that because I have registered as lacking a fixed residence, I must report weekly, in person, to the sheriff’s office. As part of this weekly report, I must provide the sheriff’s office with an accurate accounting of where I have stayed during the prior week, pursuant to RCW 9A.44.130(6)(b).

The next week, Murray did not check in with the King County Sheriff’s Office. Nor did Murray check in during the months of November or December 2022. On December 19, 2022, the sheriff’s office declared Murray to be noncompliant and “deactivated” his file. In February 2023, the State charged Murray with failure to register as a sex offender.

On December 13, 2023, the case proceeded to jury trial. Michelle Krivacek, the project program manager for the King County Sheriff’s Office registered sex offender unit, testified about the general process of offender registry in King County. She explained that unit project managers meet with offenders at the time they register or request a change of address. The meeting typically takes 30 to 45 minutes. During that time, the manager ensures that the offender has been ordered to register and discusses individual registration requirements, including how to choose a residence status. Krivacek explained that “we have this one [Change of Registration Information] form and it covers the

two things. So depending on what we're using it for, we'll cross out the fixed address if we're going to fill out the bottom portion" for Lacking a Fixed Residence Information. And she told the jury that

[a]ny change [of residence] that [the offender is] going to make, by law, should be within three days of it having changed. So if they're no longer transient and they do have an address, . . . we then would require them to come in and fill out a new form indicating that they are at an address and we remove the expectation of them to check in weekly.

Krivacek testified that she first registered Murray when he was released from prison. And that over time, she helped Murray with "probably five or six" of his registration forms at the homeless check-in counter. But a different project manager assisted Murray on October 20, 2022. Still, Krivacek reviewed Murray's September 16, 2022 registration notification and his October 20, 2022 Change of Registration Information form. And she explained that Murray registered as lacking a fixed address, filled out the Lacking a Fixed Residence Information section, and signed that section, including initialing the acknowledgment that he needed to check in with the sheriff's office weekly.

The State also called King County Sherriff's Office Detective Chris Knudsen to testify. Detective Knudsen also explained the general check-in requirements for people who lack a fixed residence. He testified that Murray's "most recent registration was as transient" and that Murray did not meet his registration requirements. Detective Knudsen also told the jury that he confirmed Murray was not in custody or registered to report in another county.

Murray did not testify. In closing arguments, he argued it was "entirely possible" that even if he lacked a fixed address at the time he registered, he later

“established residency status at Compass and thought he simply didn’t need to report.”

In rebuttal, the prosecutor responded that

if Mr. Murray’s address had changed, if he had acquired fixed residency status at the Compass Center, as [Krivacek] explained, it would then be on Mr. Murray to go back to the King County Sheriff’s Office within three days of that changing and change his address to a fixed address so he would not have to check in weekly anymore.

The jury convicted Murray as charged. Murray appeals.

ANALYSIS

Murray argues insufficient evidence supports his conviction for failure to register as a sex offender. He also argues that the prosecutor committed misconduct in rebuttal closing argument and that his attorney was ineffective by failing to object to the prosecutor’s improper comments. We address each argument in turn.

1. Sufficiency of the Evidence

Murray argues insufficient evidence supports his conviction for failure to register because no evidence shows he lacked a fixed residence. So, according to Murray, the State failed to show that he needed to check in weekly with the Sheriff’s office. We disagree.

We review sufficiency of the evidence *de novo*. *State v. Hummel*, 196 Wn. App. 329, 352, 383 P.3d 592 (2016). To determine whether sufficient evidence supports a conviction, we view the evidence in a light most favorable to the State and consider whether “any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *State v. DeJesus*, 7 Wn. App. 2d 849, 882, 436 P.3d 834 (2019). A sufficiency challenge admits the truth of the

State's evidence and accepts the reasonable inferences made from it. *State v. O'Neal*, 159 Wn.2d 500, 505, 150 P.3d 1121 (2007). And we defer to the fact finder on issues involving conflicting testimony, witness credibility, and the persuasiveness of the evidence. *DeJesus*, 7 Wn. App. 2d at 883.

Here, the State charged Murray with failure to register as a sex offender under RCW 9A.44.130 and former RCW 9A.44.132(1)(a)(ii) (2019).¹ The trial court instructed the jury that to convict Murray, the State must prove beyond a reasonable doubt that

(1) Prior to October 24, 2022, Michael Murray was convicted of a felony sex offense;

(2) That due to that conviction, Michael Murray was required to register in the [s]tate of Washington as a sex offender between October 24, 2022 and December 30, 2022; and

(3) That during that time period, Michael Murray knowingly failed to comply with the requirement that Michael Murray, lacking a fixed residence, report weekly on a day specified by the county sheriff's office and during normal business hours, in person, to the sheriff of the county where Michael Murray is registered.

The court instructed the jury that a "fixed residence" means "a building that a person lawfully or habitually uses as living quarters a majority of the week." And that

[a] shelter program may qualify as a residence provided it is a shelter program designed to provide temporary living accommodations for the homeless, provides an offender with a personally assigned living space, and the offender is permitted to store belongings in the living space. A personally assigned living

¹ A person convicted as a sex offender has a duty to register under RCW 9A.44.130(1)(a). Under former RCW 9A.44.132(1)(a)(ii), failure to register as a sex offender is a class C felony if the person has previously been convicted of a felony failure to register as a sex offender in this state. The court bifurcated the portion of the trial regarding Murray's past conviction, and the jury found he had previously been convicted of felony failure to register as a sex offender.

space may be an assigned bed or guaranteed space within a common living area.

Finally, the court instructed the jury that “lacks a fixed residence” means

the person does not have a living situation that meets the definition of a fixed residence and includes, but is not limited to, a shelter program designed to provide temporary living accommodations for the homeless, an outdoor sleeping location, or locations where the person does not have permission to stay.

Here, the evidence shows that on October 20, 2022, Murray went to the homeless check-in counter at the King County Administration Building and filled out a Change of Registration Information form. Murray filled out and signed the section of the form labeled Lacking a Fixed Residence Information. And he initialed the paragraph that explained, “*I understand that because I have registered as lacking a fixed residence, I must report weekly, in person, to the sheriff’s office.*” From this evidence, a rational juror could conclude beyond a reasonable doubt that Murray lacked a fixed residence during the charging period and that he needed to check in with the sheriff’s office weekly.

Pointing to *State v. Batson*, 194 Wn. App. 326, 377 P.3d 238 (2016), Murray argues that sufficient evidence does not support his conviction because the State did not show that Compass was not a “fixed residence.” In *Batson*, the court ordered the defendant Benjamin Batson to register as a felony sex offender. *Id.* at 328. Batson completed the registration forms, listed the “St. Martin de Porres Shelter” as his residence, and then did not report to the sheriff’s office each week. *Id.*

The State charged Batson with failing to register as a sex offender. *Batson*, 194 Wn. App. at 328. At trial, the State argued that Batson lacked a fixed

address and needed to report weekly. *Id.* The State offered no direct evidence about where Batson lived during the charging period. *Id.* at 337. Instead, it called the director of the St. Martin de Porres program to rebut Batson's claim that he resided at the shelter. *Id.* at 328-29. The director testified generally about the shelter program but offered no testimony about Batson's specific living situation. *See id.* at 333-35. On appeal, we concluded that neither the director's testimony nor the evidence that the shelter had a waiting list and that Batson was recently released from jail were sufficient to show he did not reside at the shelter. *Id.* at 337-39.

This case is not like *Batson*. Murray did not register as having a fixed address at Compass. Instead, he registered as having no fixed address and listed Compass as a point of contact. As a result, the State had no burden to show that Compass was not Murray's fixed residence.

Murray also argues that no evidence shows that he knew the specific requirements for a shelter to qualify as a fixed residence when he filled out his registration documents. According to Murray, the evidence supports only that "an absent witness" in the registered sex offender unit concluded he lacked a fixed residence or proof of a fixed residence and directed Murray to sign documentation reflecting that conclusion. But on September 16, 2022, Murray acknowledged receipt of a document that explained the meaning of both "fixed residence" and "lacks a fixed residence." That sex offender registration notification form explained that a shelter program can qualify as a fixed residence if it is "designed to provide temporary living accommodations for the homeless, provides an offender with a personally assigned living space, and the offender is permitted to

store belongings in the living space.” And the document explained that “lacks a fixed residence” can include “a shelter program designed to provide temporary living accommodations for the homeless.”²

Viewed in a light most favorable to the State, a rational juror could conclude from this evidence that Murray knew the definition of “fixed residence” and affirmatively indicated that he had none.

2. Ineffective Assistance of Counsel

Murray argues that his lawyer was ineffective for “failing to object to the prosecutor’s burden-shifting” during rebuttal closing argument.³ We disagree.

An ineffective assistance of counsel claim presents mixed questions of law and fact that we review de novo. *State v. K.A.B.*, 14 Wn. App. 2d 677, 707, 475 P.3d 216 (2020) (citing *State v. Linville*, 191 Wn.2d 513, 518, 423 P.3d 842 (2018)). The Sixth Amendment to the United States Constitution and article I, section 22 of the Washington Constitution guarantee effective assistance of counsel. *State v. Grier*, 171 Wn.2d 17, 32, 246 P.3d 1260 (2011) (citing *Strickland v. Washington*, 466 U.S. 668, 685-86, 104 S. Ct. 2052, 80 L. Ed. 2d

² As much as Murray argues that the information in the registration notifications is inadequate, confusing, or too complex, those issues go to the weight of the evidence. And again, we do not weigh evidence on appeal. *DeJesus*, 7 Wn. App. 2d at 883.

³ Murray also argues that the prosecutor’s statements amount to prosecutorial misconduct. But Murray did not object to the prosecutor’s statements at trial. So, to prevail on a claim of prosecutorial misconduct raised for the first time on appeal, Murray must show that the conduct was “so flagrant and ill intentioned that an instruction could not have cured the resulting prejudice.” *State v. Emery*, 174 Wn.2d 741, 760-61, 278 P.3d 653 (2012). Here, the court could have instructed the jury to disregard the alleged improper statement. And we presume that a jury follows the courts instructions. *State v. Sullivan*, 3 Wn. App. 2d 376, 380, 415 P.3d 1261 (2018). Because an instruction could have cured any misconduct, Murray waives his prosecutorial misconduct argument. *Emery*, 174 Wn.2d at 760-61.

674 (1984)). Washington courts apply the two-prong *Strickland* test to determine whether a defendant has a valid ineffective assistance of counsel claim. *State v. Jefferies*, 105 Wn.2d 398, 417-18, 717 P.2d 722 (1986). Under *Strickland*, a petitioner must show both that (1) defense counsel's performance was deficient and (2) the deficient performance resulted in prejudice. 466 U.S. at 687.

A petitioner proves deficient representation by showing that defense counsel's performance fell " 'below an objective standard of reasonableness based on consideration of all the circumstances.' " *State v. Estes*, 188 Wn.2d 450, 458, 395 P.3d 1045 (2017) (quoting *State v. McFarland*, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995)). The petitioner must overcome the strong presumption that trial counsel's representation was reasonable. *State v. Kylo*, 166 Wn.2d 856, 862, 215 P.3d 177 (2009). "Defense counsel's failure to object to a prosecutor's closing argument will generally not constitute deficient performance because lawyers 'do not commonly object during closing argument absent egregious misstatements.' " *In re Pers. Restraint of Cross*, 180 Wn.2d 664, 721, 327 P.2d 660 (2014)⁴ (quoting *In re Pers. Restraint of Davis*, 152 Wn.2d 647, 717, 101 P.2d 1 (2004)), *abrogated on other grounds by State v. Gregory*, 192 Wn.2d 1, 427 P.3d 621 (2018). To show prejudice, a defendant must show there is a reasonable probability that except for counsel's unprofessional errors, the results of the proceeding would have been different. *McFarland*, 127 Wn.2d at 335.

We have repeatedly held that a prosecutor commits misconduct by burden-shifting in closing argument. See *State v. Johnson*, 158 Wn. App 677, 685, 243

⁴ Internal quotation marks omitted.

P.3d 936 (2010); *State v. Venegas*, 155 Wn. App. 507, 524-25, 228 P.3d 813 (2010). But here, the prosecutor's comments did not impermissibly shift its burden to Murray.

In closing arguments, Murray argued that it was possible he "established residence status at Compass and thought he simply didn't need to report." In rebuttal, the prosecutor stated that if Murray acquired fixed residence at Compass, "it would then be on Mr. Murray to go back to the King County Sheriff's Office within three days . . . and change his address to a fixed address so he would not have to check in weekly anymore."

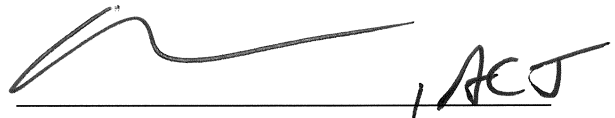
Under RCW 9A.44.130(5)(a), a person required to register must notify the county sheriff within three business days of changing "his or his residence address within the same county." Because Murray registered as having no residence address, if he gained residence at Compass, he needed to notify the sheriff's office of that change. Indeed, Krivacek testified without objection that transient residents who gain a fixed address must notify the sheriff's office. She said that notice of "[a]ny change" in address, "by law," must be made "within three days of it having changed." And that the person is required "to come in and fill out a new form indicating that they are at an address and we remove the expectation of them to check in weekly."

Murray argues that in any event, the prosecutor misstated the law because there are no statutory requirements for people registered as transients staying at a specific address to notify the sheriff's office when they attain a "fixed residence" at the same address. But a person who registers as lacking a fixed residence, as Murray did here, necessarily changes address when he attains a fixed residence,

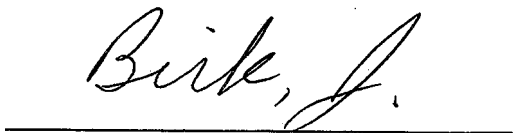
no matter whether he was “staying” at the same address. And the plain language of RCW 9A.44.130(5)(a) required Murray to notify the sheriff of any change of his residence address.

The prosecutor’s statements during rebuttal closing argument were both an accurate statement of the law and grounded in testimony elicited at trial. Murray’s attorney was not deficient for failing to object.

Because sufficient evidence shows that Murray lacked a fixed residence, he waived his claim of prosecutorial misconduct by failing to object, and he fails to show ineffective assistance of counsel, we affirm his conviction.



WE CONCUR:



NIELSEN KOCH & GRANNIS P.L.L.C.

September 26, 2025 - 3:06 PM

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