

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

STATE OF WASHINGTON,

Respondent,

v.

JOSHUA S. VILES,

Appellant.

No. 41600-0-II

UNPUBLISHED OPINION

Armstrong, J. – Joshua S. Viles appeals his conviction of failure to register as a sex offender, arguing that insufficient evidence supports his conviction under the corpus delicti rule and that the charging document was factually deficient. We affirm.

Facts

Viles was required to register as a sex offender following his third degree child rape conviction in 2004. In March 2009, he notified the Lewis County Sheriff's Office of his move to a Chehalis apartment and provided a signed written notice of his new address. On June 3, 2010, his community corrections officer went to the apartment but could not find Viles. His roommate had not seen him for two weeks.

After his arrest on June 4, 2010, the State charged Viles with failure to register as a sex offender. The amended information described his offense as follows:

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 within 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).

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Clerk's Papers (CP) at 1.

At his bench trial, Viles's friend and roommate Brandie Jean Clark testified that Viles had lived in her Chehalis apartment before his arrest. As of his June 4 arrest date, however, she had not seen Viles for two weeks, and before that she had seen him moving some of his belongings out in tote bags. Viles had been informed that he was no longer allowed in the apartment, and he told Clark he needed his community corrections officer to approve his new address.

Viles's community corrections officer testified that he went to the Chehalis apartment on June 3, 2010, and could not locate Viles. Viles had last reported the Chehalis apartment as his current address on May 18, 2010. Viles had not reported a change of address and was required to be at his registered address overnight.

Detective Bradford Borden testified that he registered Viles as a sex offender following his release from confinement on the rape conviction. Detective Borden explained the registration requirements and Viles acknowledged that he understood them. The Chehalis apartment was the last address Viles had given the detective. After his arrest, Detective Borden interviewed Viles about his alleged failure to comply with the registration requirement. Before the detective described the interview, defense counsel objected to the admission of Viles's statements on the basis of *corpus delicti*. The trial court overruled the objection.

Detective Borden then testified that after he read Viles his *Miranda* rights,<sup>1</sup> Viles explained that he was homeless and had not lived at the Chehalis apartment for about two weeks. He had been living instead at different residences and in his girlfriend's car, all of which were in Lewis County. The detective further testified that Viles admitted failing to notify him about his

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<sup>1</sup> *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

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change of address. According to Detective Borden, Viles had not registered anywhere outside the county during that two-week period.

The trial court found Viles guilty as charged and entered written findings of fact and conclusions of law in support of its verdict. Viles received a standard range sentence.

### Analysis

#### I. Sufficiency of the Evidence: Corpus Delicti

Viles first challenges the sufficiency of the evidence to establish corpus delicti. We review this issue de novo. *State v. McPhee*, 156 Wn. App. 44, 60, 230 P.3d 284, *review denied*, 169 Wn.2d 1028 (2010).

The corpus delicti rule tests the sufficiency of the evidence, other than a defendant's confession, to corroborate that confession. *State v. Dow*, 168 Wn.2d 243, 249, 227 P.3d 1278 (2010). A defendant's incriminating statement is not sufficient to establish that a crime occurred. *State v. Brockob*, 159 Wn.2d 311, 328, 150 P.3d 59 (2006). The purpose of the corpus delicti rule is to prevent defendants from being unjustly convicted based on confessions alone. *Dow*, 168 Wn.2d at 249.

To satisfy the corpus delicti rule, the State must present evidence independent of the incriminating statement that shows the crime described in the defendant's statement occurred. *Brockob*, 159 Wn.2d at 328. In determining whether this standard is satisfied, we review the evidence in the light most favorable to the State. *Brockob*, 159 Wn.2d at 328. The independent evidence need not be sufficient to support a conviction but must provide prima facie corroboration of the crime described in a defendant's incriminating statement. *Brockob*, 159

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Wn.2d at 328. Prima facie corroboration exists if the independent evidence supports a “logical and reasonable inference” of the facts the State seeks to prove. *State v. Vangerpen*, 125 Wn.2d 782, 796, 888 P.2d 1177 (1995). The corpus delicti can be proved by direct or circumstantial evidence. *State v. Aten*, 130 Wn.2d 640, 655, 927 P.2d 210 (1996). Circumstantial evidence proving the corpus delicti must be consistent with guilt and inconsistent with innocence. *Aten*, 130 Wn.2d at 660.

To convict Viles of failure to register as a sex offender, the State had to prove that he knowingly failed to comply with the statutory registration requirements by “moving from his last registered address within Lewis County to another residence within Lewis County without sending a signed written notice to the Lewis County Sheriff’s Office within 72 hours.” CP at 1. Viles argues that without his confession, there was no evidence that he did not send a signed notice of his change of address to the sheriff’s office or that he changed his address.

The State responds that there is sufficient circumstantial evidence to satisfy the corpus delicti of failure to register. Detective Borden testified that Viles never notified the sheriff’s office of any change in his residence and that the Chehalis apartment was his last registered address. Viles’s community corrections officer testified that Viles’s last registered address was the Chehalis apartment and that Viles was not there when he checked the apartment on June 3. His roommate testified that Viles said he needed to get his new address approved, but there was no evidence that he ever informed the sheriff’s office of a new address. This evidence supports a logical and reasonable inference that Viles failed to send the sheriff’s office written notice of a change of address.

Viles makes the additional argument that the evidence is insufficient to show he changed his address, pointing to his roommate's testimony that he had not actually moved out and her failure to testify that he had a new residence. The State responds that although Clark's testimony was somewhat contradictory, she testified that someone had said Viles was not allowed in the apartment, that he had not been in the apartment for two weeks, that she had seen him move some of his belongings out before that two-week period, and that he had told her his community corrections officer needed to approve his new address. In addition, Viles's community corrections officer could not find him at the Chehalis apartment, which was Viles's last registered address. Viewing this evidence in the light most favorable to the State, it is circumstantial evidence that Viles changed his address. Finding sufficient evidence of the corpus delicti, we affirm the trial court's decision to admit Viles's incriminating statements.

## II. Sufficiency of the Information

Viles argues for the first time on appeal that the State filed a constitutionally deficient charging document because, in charging him with failure to register as a sex offender, the amended information failed to name the felony sex offense he had committed, failed to specify the "last registered address" from which he had allegedly moved, and failed to specify "another residence within Lewis County" to which he had allegedly relocated. Br. of Appellant at 9-10. Viles contends that these factual deficiencies require reversal and dismissal.

When a defendant challenges the sufficiency of the information for the first time on appeal, we liberally construe the document in favor of its validity. *State v. Kjorsvik*, 117 Wn.2d 93, 105-06, 812 P.2d 86 (1991). We consider (1) whether the necessary facts appear in any form, or by

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fair construction can be found, in the charging document; and, if so, (2) whether the defendant can nonetheless demonstrate actual prejudice suffered as a result of the inartful charging language. *Kjorsvik*, 117 Wn.2d at 105-06. Such liberal construction reinforces the primary goal of the essential elements rule, which is to provide constitutionally mandated notice to the defendant of the charges against which he or she must be prepared to defend. *Kjorsvik*, 117 Wn.2d at 101. The goal of notice is met where a fair construction of the charging document “would reasonably apprise an accused of the elements of the crime charged.” *Kjorsvik*, 117 Wn.2d at 109.

Washington courts have repeatedly distinguished informations that are constitutionally deficient from those that are merely vague. *State v. Noltie*, 116 Wn.2d 831, 843, 809 P.2d 190 (1991). If an information states each element of a crime but is vague as to some other matter significant to the defense, a bill of particulars can correct the defect. *Noltie*, 116 Wn.2d at 843. In such an instance, a defendant is not entitled to challenge the information on appeal if he has failed to timely request a bill of particulars. *Noltie*, 116 Wn.2d at 843-44; *State v. Winings*, 126 Wn. App. 75, 84, 107 P.3d 141 (2005).

Viles does not allege that the amended information fails to state the elements of failure to register as a sex offender. See *State v. Peterson*, 168 Wn.2d 763, 774-75, 230 P.3d 588 (2010) (an offender’s new residential status is not element of crime of failure to register); *State v. Brosius*, 154 Wn. App. 714, 722 n.8, 225 P.3d 1049 (2010) (citing elements of offense as (1) knowingly (2) failing to register). Rather, Viles raises claims of factual deficiency that could have been cured with a bill of particulars. Having failed to request clarification below, he has waived this claim of deficiency on appeal.

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Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

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Armstrong, J.

We concur:

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Van Deren, J.

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Worswick, A.C.J.