

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION I

state of washington,) No. 65468-3-I
))
 Respondent,) UNPUBLISHED OPINION
))
 v.))
))
shayne aLLEN wedemeyer,))
))

 Appellant.) FILED: January 17, 2012

Schindler, J. — A jury convicted Shayne Allen Wedemeyer of failure to register as a sex offender in violation of former RCW 9A.44.130 (2006). For the first time on appeal, Wedemeyer claims the information did not allege an essential element of the crime. Wedemeyer also claims insufficient evidence supports the jury verdict. We affirm.

FACTS

On November 2, 1993, a jury convicted Shayne Allen Wedemeyer of rape of a child in the third degree. As a convicted sex offender, state law required Wedemeyer register with the Snohomish County Sheriff and report any change in address.¹

On July 12, 2006, Wedemeyer notified the Snohomish County Sheriff's Office of a change of address. Wedemeyer stated that he was living at 44021 179th Place SE,

¹ Former RCW 9A.44.130(1)(a).

Gold Bar, Washington 98251. Wedemeyer's mother has lived at that address in Gold Bar for approximately 10 years.

During 2007, a detective in the Snohomish County registered sex offender unit, Detective David Coleman, received several reports from the patrol deputies that Wedemeyer was not living at his registered address. Detective Coleman described the process for verifying a registration address for a sex offender and the need to obtain a written statement as follows:

The process is that patrol deputies go out and do address verification. I complete a monthly list of the addresses where people need to -- where the patrol officers need to go and verify address verification. In this case I received patrol checks back that indicated that he may not live there, Mr. Wedemeyer may not live at his registered address. Normally with those I get a written statement and then I'm able to really get my investigation going and get it to the prosecutor's office. In the checks that I received regarding Mr. Wedemeyer, that didn't happen. So, what I needed to do was go out and verify whether in fact he was actually living there or not and get a written statement from someone at the residence that had that information and could give me that information, whether he lived there or not.

On December 2, 2008, Detective Coleman went to Wedemeyer's registered address at 44021 179th Place SE in Gold Bar to determine whether he still lived there and obtain a written statement. Wedemeyer's mother Lorna Galbreth confirmed that Wedemeyer had lived with her but told Detective Coleman that "she had kicked [Wedemeyer] out around the middle of August because of his continued drug use."

On December 31, the State charged Wedemeyer with failure to register as a sex offender. The information alleged that "on or about the 15th day of August, 2006, [Wedemeyer] cease[d] to reside at [his registered] residence and did knowingly fail to provide timely written notice to the county sheriff's office" as required under former

RCW 9A.44.130.

Before trial, the prosecutor stated that in order to prove Wedemeyer was a sex offender and that Wedemeyer knew he had an obligation to register a change of his residential address, the State planned to introduce into evidence certified copies of the judgment and sentence for his 1993 conviction of rape of a child in the third degree and two prior convictions for failure to register as a sex offender. In response, Wedemeyer agreed to stipulate that he “was convicted of a sex offense that requires him to register with the county sheriff for the county of his residence,” and “has actual knowledge of his registration requirements.”

The only witnesses at trial were Wedemeyer’s mother Lorna Galbreth and Detective Coleman. Galbreth testified that she told her son to leave in “July or August of 2006” and he had not resided with her or been to her house since he left.

During Detective Coleman’s testimony, the State introduced into evidence a number of exhibits showing that beginning in 1996 until July 12, 2006, Wedemeyer reported a change of his registered residential address to the Snohomish County Sherriff’s Office eight different times. As reflected in Exhibit 16, Wedemeyer’s last registered residential address is his mother’s house located at 44021 179th Place SE in Gold Bar. The uncontroverted evidence established that Wedemeyer had not reported a change in residential status or a change of address since July 12, 2006.

At the request of the parties, the court read into evidence the stipulation that Wedemeyer was a sex offender and knew he had an obligation to report a change in his residential address to the Snohomish County Sherriff’s Office.

During closing argument, the prosecutor pointed out that Wedemeyer admitted he was convicted as a sex offender and that he knew he had an obligation to comply with the sex offender registration requirements. The prosecutor argued that because the uncontroverted evidence established that Wedemeyer did not register a change of address or a change of residential status after moving out of his mother's house in mid-August 2006, he was guilty of the crime of failure to register as a sex offender. The defense argued that the delay in filing the charges against Wedemeyer was unreasonable and the State did not prove beyond a reasonable doubt exactly when Wedemeyer moved out of his mother's house.

The jury found Wedemeyer guilty of the charged crime and the court imposed a standard range sentence.

ANALYSIS

Charging Document

For the first time on appeal, Wedemeyer argues that the information is constitutionally inadequate because it does not allege as an essential element of the crime that he had an obligation to register a residential address within the same county within 72 hours.

A charging document is constitutionally adequate if it sets forth the essential elements of the charged crime. U.S. Const. amend. VI; Wash. Const. art. I, § 22 (amend. 10); State v. Campbell, 125 Wn.2d 797, 801, 888 P.2d 1185 (1995). The purpose of the essential elements rule is "to give notice of the nature and cause of an accusation against the accused so that a defense can be prepared." Campbell, 125

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Wn.2d at 801. The charging document need not use the exact words of the statute.

State v. Kjorsvik, 117 Wn.2d 93, 108, 812 P.2d 86 (1991). Rather, “the question . . . is whether all the words used would reasonably apprise an accused of the elements of the

crime charged.” Kjorsvik, 117 Wn.2d at 109.

A defendant can challenge the sufficiency of a charging document for the first time on appeal. Kjorsvik, 117 Wn.2d at 102. However, if raised for the first time on appeal, we apply a stricter standard of review and liberally construe the language of the charging document in favor of validity. Kjorsvik, 117 Wn.2d at 103–05. We “examine the document to determine if there is any fair construction by which the elements are all contained in the document.”

This stricter standard, to be used when the sufficiency of an indictment is challenged initially on appeal, permits a court to construe a charging document quite liberally. If the information contains allegations that express the crime which was meant to be charged, it is sufficient even though it does not contain the statutory language. . . . A court should be guided by common sense and practicality in construing the language. . . . Even missing elements may be implied if the language supports such a result.

State v. Hopper, 118 Wn.2d 151, 155–56, 822 P.2d 775 (1992).² However, even if such a construction is possible, the charging document is adequate only if “the defendant has suffered no prejudice as a result of the ambiguous or vague language in the information.” Hopper, 118 Wn.2d at 156.

The State charged Wedemeyer with the crime of failure to register as a sex offender and alleged that on or about August 15, 2006, Wedemeyer ceased living at the registered address and knowingly failed to provide notice as required by former RCW 9A.44.130.

During July and August 2006, the legislature enacted three versions of the statute defining the crime of failure to register: Laws of 2006, chapter 126, section 1 (in

² (Citations omitted.)

effect June 7, 2006 to September 1, 2006); Laws of 2006, chapter 128, section 1 (in effect June 7, 2006 to September 1, 2006); and Laws of 2006, chapter 129, section 1 (in effect June 7, 2006 to September 1, 2006).

Where the legislature amends a statute more than once during a legislative session, “each act shall be given effect to the extent that the amendments do not conflict in purpose.” RCW 1.12.025(1).³ The amendments enacted by the legislature in the three versions of the sex offender registration statute during the 2006 legislative session do not conflict in purpose. Chapter 126 and chapter 128 define the crime of failure to register as a sex offender as follows:

A person who knowingly fails to . . . comply with any of the requirements of this section is guilty of a class C felony if the crime for which the individual was convicted was a felony sex offense.

Laws of 2006, ch. 126, § 1(10)(a); Laws of 2006, ch. 128, § 1(10)(a).

Chapter 129 defines the crime of failure to register as follows:

A person who knowingly fails to register with the county sheriff or notify the county sheriff, or who changes his or her name without notifying the county sheriff and the state patrol, as required by this section is guilty of a class C felony if the crime for which the individual was convicted was a felony sex offense.

Laws of 2006, ch. 129, § 1(11)(a).

The amended information charging Wedemeyer with the crime of failure to register as a sex offender in violation of former RCW 9A.44.130 states, in pertinent part:

³ RCW 1.12.025(1) provides, in pertinent part:

If at any session of the legislature there are enacted two or more acts amending the same section of the session laws or of the official code, each amendment without reference to the others, each act shall be given effect to the extent that the amendments do not conflict in purpose.

FAILURE TO REGISTER, committed as follows: That the defendant, having been convicted on or about the 2nd day of November, 1993, of a sex offense or kidnapping offense, to wit: Rape of a Child in the Third Degree, being required to register pursuant to RCW 9A.44.130, and having registered as residing at a fixed residence, did, on or about the 15th day of August, 2006, cease to reside at that residence and did knowingly fail to provide timely written notice to the county sheriff's office; proscribed by RCW 9A.44.130, a felony.

Wedemeyer argues that the information is constitutionally inadequate because the State did not allege as an essential element of the crime that he was required to report within 72 hours. The three versions of former RCW 9A.44.130 that were enacted during the 2006 legislative session contain nearly identical deadlines.⁴ A sex offender who moves to another residential address within the same county must register within 72 hours. If the sex offender moves to a new county, the offender must register with the sheriff of the new county within 24 hours. Laws of 2006, ch. 126, § 1(5)(a); Laws of 2006, ch. 128, § 1(5)(a); Laws of 2006, ch. 129, § 1(5)(a). If the sex offender ceases to have a fixed residence, the offender must provide written notice to the county sheriff within 48 hours, excluding weekends and holidays. Laws of 2006, ch. 126, § 1(6)(a); Laws of 2006, ch. 128, § 1(6)(a); Laws of 2006, ch. 129, § 1(6)(a).⁵

The elements of a crime are defined as “ [t]he constituent parts of a crime — usu[ally] consisting of the actus reus, mens rea, and causation — that the prosecution

⁴ The only difference between the versions is that chapter 126 added the requirement that written notice to the county sheriff about a change of address must be signed. Laws of 2006, ch. 126, § 1(5)(a), 1(6)(a).

⁵ In 2010 and 2011, the legislature amended RCW 9A.44.130. Laws of 2010, ch. 265, § 1; Laws of 2010, ch. 267, §§ 1-3; Laws of 2011, ch. 337, §§ 3-5. RCW 9A.44.132(1) defines the crime of failure to register as a sex offender:

A person commits the crime of failure to register as a sex offender if the person has a duty to register under RCW 9A.44.130 for a felony sex offense and knowingly fails to comply with any of the requirements of RCW 9A.44.130.

Laws of 2011, ch. 337, § 5(1). RCW 9A.44.130 now describes the procedures for registering as a sex offender, and adjusts the various registration deadlines to “three business days.” Laws of 2010, ch. 267, § 2.

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must prove to sustain a conviction.’ ” State v. Fisher, 165 Wn.2d 727, 754, 202 P.3d 937 (2009) (quoting Black's Law Dictionary 559 (8th ed. 2004)).

The essential elements of failure to register as a sex offender as defined in

former RCW 9A.44.130(11) are the knowing failure to timely register with the county sheriff a residential change of address as required by the statute. Laws of 2006, ch. 126, § 1(10)(a); Laws of 2006, ch. 128, § 1(11)(a); Laws of 2006, ch. 129, § 1(11)(a). In State v. Peterson, 168 Wn.2d 763, 230 P.3d 588 (2010), our supreme court held that “the failure to register statute contemplates a single act that amounts to failure to register: the offender moves without alerting the appropriate authority.” Peterson, 168 Wn.2d at 770.⁶ The court also states that “it is possible to prove that a registrant failed to register within any applicable deadline without having to specify the registrant’s particular residential status.” Peterson, 168 Wn.2d at 772.

Here, the amended information charging Wedemeyer with the crime of failure to register in violation of former RCW 9A.44.130 is constitutionally adequate. The State alleged that Wedemeyer ceased living at the registered address on or about August 15 and knowingly failed to register as required by former RCW 9A.44.130. Moreover, even if the language used in the information is ambiguous or vague, Wedemeyer cannot show prejudice where his status was unknown and he did not comply with any of the applicable deadlines.

Wedemeyer’s reliance on a footnote in Peterson to argue the information is constitutionally inadequate is misplaced. The footnote is related to sufficiency of the evidence, and not whether the information was constitutionally adequate.⁷

⁶ (Emphasis in original.)

⁷ The footnote states:

Common sense suggests the statutory deadline is part of the State’s burden of proof. It would not be sufficient for the State to prove failure to register within 24 hours, for example. . . . But we need not decide this particular question. The issue before us is whether the offender’s residential status must be proved in order to convict.

Peterson, 168 Wn.2d at 771 n.7.

Sufficiency of the Evidence

In the alternative, Wedemeyer asserts insufficient evidence supports his conviction of failure to register. Wedemeyer argues that under the law of the case doctrine, the State assumed the burden of proving that he committed the crime of failure to register on August 15, 2006. The State contends Wedemeyer ignores the language used in the to-convict jury instruction, and asserts that use of the phrase “on or about” August 15, 2006 supports the jury finding that the crime was committed sometime in August. In support, the State cites State v. Hayes, 81 Wn. App. 425, 914 P.2d 788 (1996), to argue that “on or about” does not require the State to prove that Wedemeyer ceased to reside at his registered address on a particular date. In Hayes, we held that use of the language “on or about” is sufficient to prove the act at any time within the statute of limitations, as long as there is no alibi defense and time is not a material element of the charged crime. Hayes, 81 Wn. App. at 432-33.

In determining the sufficiency of the evidence, we view the evidence in the light most favorable to the State and determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. State v. Townsend, 147 Wn.2d 666, 679, 57 P.3d 255 (2002). A challenge to the sufficiency of the evidence admits the truth of the evidence. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). “[A]ll reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant.” Salinas, 119 Wn.2d at 201.

Under the law of the case doctrine, if the State does not object, the jury

instructions become the law of the case, and “[i]n criminal cases, the State assumes the burden of proving otherwise unnecessary elements of the offense when such added elements are included without objection, in the ‘to convict’ instruction.” State v. Hickman, 135 Wn.2d 97, 102, 954 P.2d 900 (1998).

The to-convict jury instruction used in this case states:

To convict the defendant of the crime of failure to register as a sex offender, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 15th day of August, 2006, the defendant was required to register as a sex offender;
- (2) That on or about [the] 15th day of August, 2006 the defendant knowingly failed to comply with the following requirements of sex offender registration;
 - (i) the requirement to register a change of address with the county sheriff within seventy-two hours (excluding weekends and holidays) of ceasing to permanently reside at the registered address;
- (3) That the acts occurred in the State of Washington.

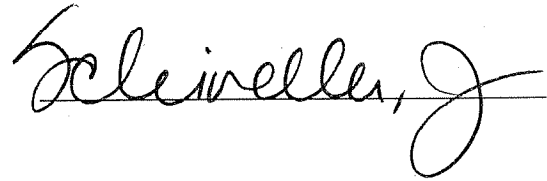
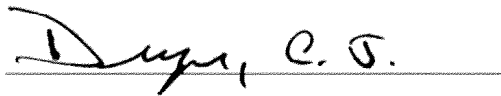
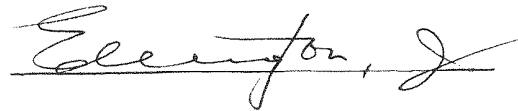
Wedemeyer argues that the State did not prove beyond a reasonable doubt that he moved out of his mother’s house 72 hours before August 15, 2006. Although the State assumed the burden of proving that “on or about the 15th day of August, 2006, [Wedemeyer] was required to register as a sex offender,” we reject Wedemeyer’s argument that insufficient evidence supports his conviction.

Contrary to Wedemeyer’s argument, the to-convict instruction did not require the jury to find that the duty to register occurred on August 15 but, rather, “on or about” August 15. Viewing the evidence in the light most favorable to the State, a rational jury

could have found beyond a reasonable doubt that Wedemeyer knowingly failed to comply with the requirement to register a change of address with the county sheriff on or about August 15. The undisputed evidence shows that Wedemeyer moved out of his mother's house sometime in July or August 2006 and that he had not registered a new address or change in residential status since July 12, 2006.

We affirm.

WE CONCUR:

A handwritten signature in cursive script, appearing to read "Schweitzer, J.", written over a horizontal line.A handwritten signature in cursive script, appearing to read "Dyer, C. S.", written over a horizontal line.A handwritten signature in cursive script, appearing to read "Eberly, J.", written over a horizontal line.