IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	NO. 67633-4-I
	)	
Respondent,	)	DIVISION ONE
	)	
v.	)	
	)	
ISAAC W. FORGEY,	)	UNPUBLISHED OPINION
	)	
Appellant.	)	FILED: March 5, 2012
	)	

Lau, J. — Isaac Forgey challenges his judgment and sentence for one count of failure to register as a sex offender. Because the routine booking exception applies to his statements, no Miranda[1] violation occurred. And because the prosecutor's closing argument was neither flagrant nor incurably prejudicial, the prosecutor misconduct challenges are waived. Forgey's challenges to his community custody conditions and his statement of additional grounds are without merit. We affirm.

FACTS

Isaac Forgey must register as a sex offender due to a 1992 third degree child

[1] Miranda v. Arizona, 384 U.S. 436, 444, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

rape conviction. RCW 9A.44.130. He moved to Pierce County and registered there on May 19, 2008, providing 19016 106th Street Court East in Bonney Lake, Washington (Bonney Lake house) as his address.

Bonney Lake Police Officer David Thaves conducted one or two address checks at the Bonney Lake house. Residents said Forgey lived there but was not often home. On a later November 2, 2008 check at the same house, Thaves spoke to Michael Hellerud, who said Forgey no longer lived there.

On January 26, 2009, Forgey sent a letter to the Pierce County Sheriff's Department reporting a move from the Bonney Lake house to 22304 62nd Avenue East in Spanaway, Washington (Spanaway house). Forgey made no contact with the Sex Offender Registration Unit between May 19, 2008, and January 26, 2009.

Pierce County Sheriff Deputy Andrew Gerrero went to the Spanaway house on February 19, 2009. Resident Helen Klinger told Gerrero that Forgey was asked to leave the first week of January and no longer lived there.

A warrant was issued for Forgey's arrest. He was later booked on this warrant into the Pierce County jail. Following a CrR 3.5 hearing,[2] the court made the following

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[2] CrR 3.5 provides in relevant part:

"(a) Requirement for and Time of Hearing. When a statement of the accused is to be offered in evidence, the judge at the time of the omnibus hearing shall hold or set the time for a hearing, if not previously held, for the purpose of determining whether the statement is admissible. A court reporter or a court approved electronic recording device shall record the evidence adduced at this hearing.

". . . .

"(c) Duty of Court to Make a Record. After the hearing, the court shall set forth in writing: (1) the undisputed facts; (2) the disputed facts; (3) conclusions as to the disputed facts; and (4) conclusion as to whether the statement is admissible and the reasons therefor." (Boldface omitted.)

findings of fact regarding the booking, all of which are verities on appeal because Forgey assigns no error to them:

> 1. On May 29, 2009 Corrections Officer Todd Klemme booked the defendant, ISAAC W. FORGEY, into the Pierce County Jail under this cause number.
> 2. Officer Klemme identified the defendant, ISAAC W. FORGEY, in open court as the individual named Isaac W. Forgey that Officer Klemme booked into the Pierce County Jail on May 29, 2009.
> 3. Officer Klemme has been employed by the Pierce County Sheriff's Department as a corrections officer in the Pierce County Jail for 17 years.
> 4. Officer Klemme has worked specifically as a booking officer for 15 years, in addition to being trained in, and performing, other duties within the jail, such as identification and courts.
> 5. On May 29, 2009 Officer Klemme was working as a booking officer in the Pierce County Jail.
> 6. Officer Klemme asked the defendant several questions during the booking process, including but not limited to, his name, date of birth, address, next of kin, social security number and employer information.
> 7. The defendant provided his information in response to the questions asked by Officer Klemme and provided his address as 1213 Hillcrest Loop, Kettle Falls, Washington.
> 8. The questions that Officer Klemme asked the defendant during the booking process were standard questions that are asked of every individual when they are booked into the Pierce County Jail.
> 9. Officer Klemme was not involved in any investigation relating to the defendant's current failure to register as a sex offender criminal charge, although Officer Klemme was aware of the charge as the reason the defendant was being booked into the jail, and did not ask the standard questions pursuant to any investigation.
> 10. Officer Klemme did not coerce the defendant, threaten him or make any promises to him to induce the defendant to make any statements.
> 11. Officer Klemme did not advise the defendant of his Miranda warnings as it is not standard procedure to do so during the booking process.

Forgey was charged with one count of failing to register as a sex offender. An amended information expanded the violation period to November 2, 2008, through April 7, 2010. At trial, witnesses provided conflicting testimony about Forgey's living arrangements.[3] Forgey testified that he provided the Kettle Falls address to the

booking officer at the Pierce County jail because he planned to move there. Forgey testified that he moved to Kettle Falls in June 2009, and registered in Stevens County. He did not report his Kettle Falls move to the Pierce County Sheriff's Department. A jury found Forgey guilty as charged. The court sentenced Forgey within the standard range. Forgey appeals.

ANALYSIS

Miranda

Forgey argues the court should have suppressed the Kettle Falls address he provided to booking officer Todd Klemme. The State counters that the address falls within the routine booking exception to Miranda. The parties dispute only whether the questioning constitutes "interrogation."

Miranda warnings are mandatory where an officer interrogates a suspect in custody. State v. Walton, 64 Wn. App. 410, 413, 824 P.2d 533 (1992); see also Miranda, 384 U.S. at 444. Interrogation is questioning that is reasonably likely to elicit an incriminating response. Walton, 64 Wn. App. at 414. Whether the police should know a question is reasonably likely to elicit an incriminating response is an objective standard. State v. Sargent, 111 Wn.2d 641, 650, 762 P.2d 1127 (1988). "[T]he defendant's perception of an interrogation, not the questioner's intent, is determinative." State v. Denney, 152 Wn. App. 665, 672, 218 P.3d 633 (2009).

[3] The State's witnesses included Spanaway house residents Helen and Michael Klinger, Officer David Thaves, Bonney Lake house resident Michael Hellerud, Pierce County Sheriff's Department Office Assistant Andrea Shaw, Pierce County Sheriff's Department community service officer Sandra Estep, Pierce County Deputy Andrew Gerrero, Edmonds Municipal Court clerk Amber Cook, and Officer Todd Klemme. Defense witnesses included Bonney Lake house residents Ben Duffy and Carla Hellerud, Forgey's aunt Vicki Mills, and Forgey.

Not all police questioning constitutes interrogation. The Washington Supreme Court has noted that routine booking procedures do not require Miranda warnings where questions necessarily relate to booking a suspect. Sargent, 111 Wn.2d at 651; State v. Wheeler, 108 Wn.2d 230, 238, 737 P.2d 1005 (1987). "A request for routine information necessary for basic identification purposes is not interrogation even if the information revealed is incriminating." Walton, 64 Wn. App. at 414. Because the determination of interrogation is essentially factual, we will not reverse the court's finding unless its determination was clearly erroneous. Walton, 64 Wn. App. at 414. Under a clearly erroneous standard, we will not overturn a finding of the lower court unless we are "left with a definite and firm conviction that a mistake has been committed." State v. Handley, 54 Wn. App. 377, 380, 773 P.2d 879 (1989).

Forgey relies primarily on Denney. Denney was arrested for theft and possession of a controlled substance. Denney, 152 Wn. App. at 667. Denney invoked Miranda and was booked into jail. Denney, 152 Wn. App. at 667. Jail personnel administered a standard questionnaire to determine if they could safely book Denney into jail or if they should transfer her to a medical facility. Denney, 152 Wn. App. at 667-68. The questionnaire asked about drug use, and Denney admitted she had taken one morphine tablet that day. Denney, 152 Wn. App. at 668. The investigating officer overheard Denney tell the booking officer she used morphine earlier in the day. Denney, 152 Wn. App. at 668. The investigating officer and the booking officer testified about Denney's statements at trial. Denney, 152 Wn. App. at 669. We reversed Denney's conviction, holding that "regardless of their routine nature, the

questions in this case were reasonably likely to produce an incriminating response." Denney, 152 Wn. App. at 673. We stated that the booking exception to Miranda "allowing background biographical questions necessary to accomplish booking procedures does not encompass all questions asked during the booking process." Denney, 152 Wn. App at 671. We noted that the relationship between the question asked and the crime suspected is highly relevant. Denney, 152 Wn. App. at 671-72. The question about drug use to someone charged with drug possession "invited an answer that would be a direct admission of guilt." Denney, 152 Wn. App. at 673-74.

We conclude Walton controls. Walton was arrested when police executed a search warrant at "the Mallon residence" and found heroin. Walton, 64 Wn. App. at 412. During booking, Walton told a booking officer and a pretrial investigator that he lived at the Mallon residence. At his trial for possession of a controlled substance, the State presented Walton's admission to establish constructive possession. Walton, 64 Wn. App. at 412-13. We affirmed Walton's conviction, holding that the booking officer's questions "were routine background questions necessary for identification" and "precisely the routine statements which are admissible, even though they ultimately prove to be incriminating." Walton, 64 Wn. App. at 414.

In Denney, the question about drug use did not involve basic identifying information. But here, like in Walton, the booking officer asked Forgey routine booking questions including his address. The trial court's unchallenged finding establishes these were "standard questions that are asked of every individual when they are booked into the King County jail." Finding of Fact (FF) at 8.

Unlike Denney, the question here did not "invite[] an answer that would be a direct admission of guilt." Denney, 152 Wn. App. at 673. Although Officer Klemme knew Forgey was charged with failure to register as a sex offender, nothing in the record indicates Forgey would incriminate himself with an unregistered address. The booking officer did not ask Forgey whether he complied with registration requirements or lived at the address he registered. Officer Klemme "was not involved in any investigation relating to the defendant's current failure to register as a sex offender criminal charge . . . ." FF at 9. We conclude no Miranda violation occurred.[4]

Prosecutorial Misconduct

Forgey argues the prosecutor committed reversible misconduct by presenting the jury with a "false choice," which misstated the jury's role and led them to believe they had to find that the State's witnesses lied to acquit. He also argues the prosecutor misstated the law of residence. The State counters that the prosecutor properly informed the jury they should weigh the witnesses' credibility and correctly stated the law of residence.

Prosecutorial misconduct requires a showing that the prosecutor's conduct was

[4] Moreover, interrogation involves some form of compulsion. State v. Warner, 125 Wn.2d 876, 884, 889 P.2d 479 (1995). "The routine question exception recognizes that such questions rarely elicit an incriminating response and do not involve the 'compelling pressures which . . . undermine the individual's will to resist and compel him to speak where he would not otherwise do so freely.'" Denney, 152 Wn. App. at 671 (quoting United States v. Booth, 669 F.2d 1231, 1237 (9th Cir.1981)). Here, the court's unchallenged finding states, "Officer Klemme did not coerce the defendant, threaten him or make any promises to him to induce the defendant to make any statements." FF 10. The address question involved no measure of compulsion beyond that inherent in custody alone.

both improper and prejudicial in the context of the entire record and circumstances at trial. State v. Hughes, 118 Wn. App. 713, 727, 77 P.3d 681 (2003) (citing State v. Stenson, 132 Wn.2d 668, 718, 940 P.2d 1239 (1997)). The court reviews a prosecutor's comments during closing argument in the context of the total argument, the issues in the case, the evidence addressed in the argument, and the jury instructions. State v. Boehning, 127 Wn. App. 511, 519, 111 P.3d 899 (2005). Where the defense fails to timely object to an allegedly improper remark, the error is deemed waived unless the remark is "so flagrant and ill intentioned that it causes an enduring and resulting prejudice that could not have been neutralized by an admonition to the jury." State v. Russell, 125 Wn.2d 24, 86, 882 P.2d 747 (1994).

Forgey never objected to the prosecutor's comments at trial. Forgey first argues that the prosecutor improperly suggested that to acquit him, the jury would have to find that the State's witnesses were lying. See State v. Casteneda-Perez, 61 Wn. App. 354, 362-63, 810 P.2d 74 (1991) (misleading to suggest that an acquittal requires the jury to find that police officers are lying).

Forgey challenges the following argument by the prosecutor:

> The Judge read to you in the instructions that you are the sole judges of the credibility of the witnesses in this case. It is your duty to weigh their testimony and determine credibility, who is being truthful. Remember in voir dire you were asked what you do when you hear different versions of an event, things that you look at or that you use to help you determine what really happened and some mentioned things like consistencies between versions, body language, eye contact, word phrasing. It is your job. Because you are the sole judges of credibility, it is your job to use those tools that you have, your common sense tools that you've used in the past to help you determine who is being truthful, but also consider motivation. And that is in your instruction that you can consider, the motivation of the witnesses.
>
> The officers have no motivation to be untruthful. This is just one sex

> offender check of hundreds, for both Officer Thaves and Deputy Gerrero. They didn't know the defendant from any other registered sex offender. The same holds true for Officer Klemme in the jail. He's been doing -- he's been a booking officer for 15 years. What's his motivation? The same for Ms. Shaw and Community Officer Estep with the Pierce County Sheriff's Department. Again, this is the job that they do day in and day out.

Report of Proceedings (Apr. 21, 2010) (RP) at 511-12.

The prosecutor later argued in rebuttal,

> And just because defense counsel argued that [Officer Thaves's] report wasn't clear, keep in mind his report is not evidence. The evidence is the testimony that you heard on the stand. And he explained. He explained why he conducted the investigation the way that he did and maybe the one sentence in his report, as he wrote it, didn't make it clear that when he spoke to the other people, it was actually on the previous occasions he had been out, doesn't make his testimony more or less true.

RP at 541.

The prosecutor's comments that these officers had no motivation to lie occurred during a lengthy review of the specific testimony and evidence. Viewed in context, the prosecutor's argument was a permissible attempt to draw inferences about the credibility of witnesses from the specific evidence before the jury. "The prosecutor is permitted a reasonable latitude in arguing inferences from the evidence, including references to a witness's credibility. Counsel may comment on a witness's veracity so long as it does not constitute a personal opinion and is based on the evidence." State v. Graham, 59 Wn. App. 418, 429, 798 P.2d 314 (1990) (citations omitted). Consistent with jury instruction 1,[5] the prosecuting attorney left it to the jury to determine whether

[5] Jury instruction 1 informed the jury that they could consider "any personal interest that the witness might have in the outcome or the issues; any bias or prejudice that the witness may have shown; the reasonableness of the witness[es'] statements in the context of all of the other evidence; and any other factors that affect your evaluation

the witnesses were telling the truth by explaining it was the jury's duty to determine "who is being truthful." We conclude the challenged remarks were not improper.

Even if improper, defense counsel failed to object. Reversal is required only if the misconduct was so prejudicial that it could not have been cured by a timely objection and curative instruction. State v. Thompson, 73 Wn. App. 654, 664, 870 P.2d 1022 (1994). Forgey establishes no prejudice here. See State v. Barrow, 60 Wn. App. 869, 876, 809 P.2d 209 (1991) (curative instruction could have obviated any prejudice engendered by prosecutor's "liar" remarks). This challenge is waived.

Forgey also contends for the first time on appeal that the prosecutor misstated the law of residence. Forgey cites the following arguments by the prosecutor:

- "Circumstantial evidence requires you to make a reasonable inference, a logical leap." RP at 504.
- "[K]eeping belongings at a place doesn't make it your residence. You can keep belongings in a storage unit." RP at 517.
- "The only piece of mail we know for sure is his W-2 form that he says went to the Bonney Lake address, but that doesn't mean he was living there." RP at 517.
- The "jumble" of information presented at trial meant that the jury did not know and "No one is clear where the defendant was living at any given time . . . ." RP at 518. "He was all over the place, at family, friends and associates' houses." RP at 518.
- "So what if he kept a box of clothes at Carla's house during that time? That does not mean that was his residence." RP at 518.
- The jury should convict because Forgey moved to a new residence and did not report it within 72 hours, or he "ceased at some point to have a fixed residence when he stayed at all of these places and did not notify the Sex Offender Registration Unit within 48 hours and, in fact, obviously never notified them that he was transient," RP at 519, or Forgey moved to the Kettle Falls address on

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or belief of a witness or your evaluation of his or her testimony."

June 5, 2009, but sent no notice to Pierce County. RP at 519-20.

- "I submit to you that just because you may intend to return someplace at some point in time because you left some stuff there, that does not make it your residence. Use your common sense about what makes a place a residence, a fixed residence, and what it means not to have a fixed residence." RP at 539.

- "So if you gather up all of the times that he spent out of the house overnight for work and all of the times that he spent out overnight visiting, how many nights, really, are left that he stayed at his Aunt Carla's house or at Helen Klinger house? Did he really have a fixed residence? Or was he actually transient?
  "I submit to you that the evidence is that he didn't have a fixed residence. And if he did at some point stay most of the time at his Aunt Carla's house, that ended some time in the fall of 08 when it became crowded because Ben Duffy and his family moved in." RP at 540-41.

- Forgey "failed to register as a sex offender, either by not staying where he had registered, at the Bonney Lake address or the Spanaway address, or by becoming transient because he stayed all over the place and not at these two places that he registered, or by not sending written notice back ten days after moving to Kettle Falls, Washington, or all three." RP at 545-46.

Forgey claims the prosecutor misstated the law because a person still has a fixed residence "even if they are not at a place all the time and do not intend to stay long-term" or "authorities can contact the person by mail, phone or in person at times." Appellant's Br. at 36. But the cases Forgey relies on do not support the broad proposition he advocates.[6] In State v. Pray, 96 Wn. App. 25, 30, 980 P.2d 240 (1999), Pray lived in three Bellingham locations for approximately 10 days each. He "knew the place he would sleep that night," "intended to return to that place and did not plan to leave on any definite date." Pray, 96 Wn. App. at 29. We affirmed the conviction, holding that "a rational trier of fact could find that Pray established a 'residence' in

[6] The court instructed the jury on residence: "A residence is a temporary or permanent dwelling place, abode, or habitation, to which one intends to return, as distinguished from a place of temporary sojourn or transient visit." Jury instruction 10.

Bellingham and thus was required to register with the Whatcom County Sheriff." Pray, 96 Wn. App. at 30.

In State v. Stratton, 130 Wn. App. 760, 124 P.3d 660 (2005), we reversed defendant's conviction because the evidence failed to support the charge that he failed to report a change of address or status as a person lacking a fixed residence. Stratton defaulted on a loan and moved his belongings out of a house, but he continued parking his car in the driveway behind the house, slept in the car there, paid for phone service at a telephone box on the property that he used daily for his business, drove his car on and off the property daily, and left some items on the property. Stratton, 130 Wn. App. at 762-63. Because he received mail there, intended to return daily, and had no definite departure day, this was still his fixed residence and he did not fail to report himself as a person with no fixed residence. Stratton, 130 Wn. App. at 765-67.

Here, the prosecutor properly argued from the evidence presented. The evidence supported the prosecutor's argument that Forgey lacked a fixed residence. When asked whether he was homeless, Forgey equivocated, "That's a good question. I wouldn't say that I was homeless. Like I say, I still had stuff at Lucy's or Helen's. . . . I can say I slept more nights in my car than most people would like to, sometimes, like I said, in front of Helen's place." RP (Apr. 20, 2010) at 454.

The prosecutor properly argued that the evidence showed either that Forgey failed to report an address change or failed to report that he lacked a fixed residence. This argument conforms to the rule that "'all sex and kidnapping offenders whose history requires them to register shall do so regardless of whether the person has a

fixed residence.'" Pratton, 130 Wn. App. at 766 (quoting Laws of 1999, 1st Spec. Sess., ch. 6, § 1 (effective date June 7, 1999)).

Forgey also criticizes the prosecutor for asking jurors to use their common sense in determining his residence. Defense counsel made the same argument:

> [The prosecutor] said to you, both in opening and just now, that this case is about common sense and choices, and indeed it is. I think that this is something that you can exercise your common sense in determining and make a choice as to whether the State has met its burden of proof in this action.

RP at 527. Defense counsel discussed jury instruction 10 defining a residence and asked the jury to consider it "very carefully." RP at 529. She continued with a methodical discussion of the evidence. The absence of an objection to the prosecutor's statements here constitute waiver of the claimed error.

Forgey also asserts ineffective assistance by trial counsel based on his counsel's failure to object to the arguments discussed above. To prevail on a claim of ineffective assistance, a defendant must show both deficient performance and resulting prejudice. Strickland v. Wash., 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). Forgey shows no deficient performance because the court likely would have overruled any objection and counsel's decision not to object was tactical.

Community Custody Conditions

Forgey next argues the court violated due process, improperly delegated its authority, and acted without statutory authority, by ordering at sentencing that certain community custody conditions would be determined "per CCO [community corrections officer]." We disagree.

"We review a sentencing court's application of the community custody provisions of the Sentencing Reform Act of 1981 . . . de novo." State v. Motter, 139 Wn. App. 797, 801, 162 P.3d 1190 (2007). We also review constitutional challenges de novo. State v. Brown, 95 Wn. App. 952, 956, 977 P.2d 1242 (1999).

The parties disagree about whether Forgey can raise these arguments for the first time on appeal. Even assuming, without deciding, that Forgey can raise these arguments for the first time on appeal, the claims fail.

The court ordered several conditions in section 4.4 of the judgment and sentence, including that Forgey comply with "[o]ther conditions [that] may be imposed by the court or DOC during community custody, or are as set forth here: per CCO [community corrections officer]." In the section pertaining to community custody, next to checked boxes providing that Forgey "shall participate in the following crime-related treatment or counseling services" and "comply with the following crime-related prohibitions," the court ordered "per CCO." Likewise, in appendix F to the judgment and sentence, the court required Forgey to comply with crime-related treatment and prohibitions, "per CCO."

Forgey argues the court improperly delegated to the community corrections officer the task of deciding what treatment and prohibitions he must follow. Here, the court specified the applicable prohibitions and treatment: engage in law abiding behavior; register as a sex offender as required by the law; and follow the directions, instructions, and conditions of the CCO. The judgment and sentence also included standard preprinted community custody conditions.

Further, the court was required to impose as a condition of community custody that Forgey "comply with any conditions imposed by the department under RCW 9.94A.704." RCW 9.94A.703(1)(b). Under that provision, the department has authority to decide what "rehabilitative programs" and "affirmative conduct" is required during Forgey's term of community custody. RCW 9.94A.704(4). His improper delegation claim fails.

Forgey also argues that his sentence is unconstitutionally vague because it leaves to the community corrections officer the unfettered ability to define what is, in fact, prohibited conduct. RCW 9.94A.704(4) defines the parameters of the department's supervision during community custody, so the community correction officer's discretion is not "unfettered." Further, the department determines the conditions of community custody "based upon the risk to community safety," not their relation to the crime. RCW 9.94A.704(2). Forgey relies on State v. Sansone, 127 Wn. App. 630, 638, 111 P.3d 1251 (2005), but that case does not apply here. Sansone involved an overly vague condition prohibiting defendant from possessing pornography, but the challenge here involves possible conditions not yet imposed.

Finally, Forgey argues that the delegation to the community corrections officer to decide the conditions of community placement was improper and deprives him of his opportunity for review. If any additional conditions are imposed, Forgey will have the opportunity to request administrative review within the department. See RCW 9.94A.737(1) ("If an offender is accused of violating any condition or requirement of community custody, he or she is entitled to a hearing before the department prior to the

imposition of sanctions."). Forgey's community custody challenges fail.

Statement of Additional Grounds

Forgey argues the court erred by denying a defense motion for continuance after the State amended the information just before trial. This amendment occurred on April 12, 2010. Our record contains no transcript from April 12, 2010, no defense motion for continuance on or around that day, or any order denying a motion to continue. On April 13, 2010, Forgey's counsel indicated she was prepared to go to trial. RP (Apr. 13, 2010) at 3. The record fails to support Forgey's claim.

Forgey next argues in grounds two and three that his counsel's failure to prepare constitutes deficient performance. The record fails to support this claim.

In his fourth ground, it is unclear whether Forgey challenges sufficiency of the evidence or jury unanimity. To the extent he challenges evidence sufficiency, his claim fails.[7] Sufficient evidence supports a conviction if "after viewing the evidence in a light

[7] Jury instruction 8, the "to convict" instruction, provided:

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

(1) That prior to November 2, 2008 the defendant had previously been convicted of a felony sex offense;
(2) That between the dates of November 2, 2008 and April 7, 2010 the defendant was required to register as a sex offender;
(3) That during the period between November 2, 2008 and April 7, 2010 the defendant knowingly failed to comply with the duty to register as a sex offender; and
(4) That the acts occurred within the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

"On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one or more of these elements, then it will be your duty to return a verdict of not guilty."

most favorable to the State, any rational trier of fact could have found the essential elements of the charged crime beyond a reasonable doubt." State v. Rempel, 114 Wn.2d 77, 82, 785 P.2d 1134 (1990). Failure to register as a sex offender is not an "alternative means" crime, and we therefore need not determine whether sufficient evidence supports each "means" of committing the offense. State v. Peterson, 168 Wn.2d 763, 771, 230 P.3d 588 (2010) ("We hold that the failure to register is not an alternative means crime."). Our review of the record shows that a reasonable jury could have found all elements of the crime beyond a reasonable doubt. Although Forgey asserts several officers "perjured themselves on the stand," we review no jury credibility determinations. Statement of Additional Grounds (SAG) at 4.

To the extent Forgey also challenges his right to a unanimous jury verdict, we reject this challenge because the offense of failure to register is generally a continuing course of conduct crime.[8] See Peterson, 168 Wn.2d at 766; see also State v. Green, 156 Wn. App. 96, 100, 230 P.3d 654 (2010) (statute requiring a convicted sex offender to register "'in person, every ninety days'" indicates that the unit of prosecution is an ongoing course of conduct) (quoting RCW 94.44.130)).

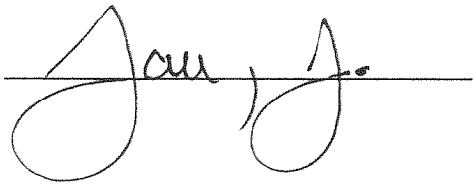
Forgey next asserts prosecutorial misconduct because the prosecutor "portray[ed] me to be some type of homeless petifile (sic)" and she "badgered" defense witnesses. SAG at 6-7. The court allowed the judgment and sentence relating to Forgey's original sex offense conviction only to prove an element of the failure to

[8] State v. Petrich, 101 Wn.2d 566, 571, 683 P.2d 173 (1984) (no unanimity instruction required where evidence indicates a "continuing course of conduct").

register charge. Our review of the record shows no support for these claims.

Forgey next argues his SAG contains a witness statement from a person who overheard several jurors leaving the courtroom. The statement is not a part of our record for review.

For the reasons discussed above, we affirm Forgey's judgment and sentence.



WE CONCUR: