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On Certiorari to the Colorado Court of Appeals Court of Appeals Case No. 08CA2694	
THE PEOPLE OF THE STATE OF COLORADO, Petitioner, v. CAREY ANDRE GRIFFIN, Respondent.	▲ **COURT USE ONLY** ▲
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PEOPLE'S OPENING BRIEF

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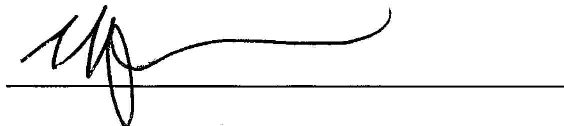

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ISSUES ACCEPTED FOR REVIEW

1. Whether physical presence or occupancy is required to establish a residence under the Colorado Sex Offender Registration Act.

2. Whether the Court of Appeals erred in finding that the evidence was insufficient to support the defendant's conviction for the continuing offense of failure to register as a sex offender.

STATEMENT OF THE CASE

The defendant, Carey Andre Griffin, was found guilty at a trial to the court of Failure to Register as a Sex Offender. The defendant was sentence to thirty months in Community Corrections. However, the defendant was subsequently terminated from Community Corrections and he was transferred to the Department of Corrections (CD, 8/27/08, p. 128; CD 11/12/08, p. 19; CD 2/11/09, p. 6).

The defendant brought a direct appeal from his conviction, and the Colorado Court of Appeals vacated the conviction. The Court held that the People had failed to prove an element of the charged offense. The Court of Appeals held that the evidence was insufficient to support

a finding that the defendant had "established a residence" in Adams County. *People v. Griffin*, ___ P.3d ___, 08CA2694, 2011 WL 915714 (Colo. App. March 17, 2011).

The People petition this Court for certiorari review, and this Court granted review on the two issues set forth above.

STATEMENT OF THE FACTS

The complaint and information were amended three times in this case. These amendments reflect the prosecution's effort to properly charge the offense of Failure to Register as a Sex Offender in a manner that encompassed the defendant's several violations of the Failure to Register statute between June of 2006 and February of 2007.

The defendant was initially charged with Failure to Register as a Sex Offender in a count alleging that on February 27, 2007, he had "unlawfully and feloniously failed to complete a registration form with the local law enforcement agency of the jurisdiction in which the defendant would no longer reside" (v. I, p. 2).

The People subsequently moved for and were granted leave to amend the information and complaint by adding a second count. This

count alleged that on March 9, 2007, the defendant had "unlawfully and feloniously failed to register with the local law enforcement agency in each jurisdiction in which he resided upon changing an address" (v. I, pp. 6-7).

On July 8, 2008, the People filed a motion to amend the dates of the offense, which set forth the following grounds for amendment (v. I, pp. 25-27).

The date of the offense charged in Count One of the information was February 27, 2007. However, Failure to Register is a continuing offense under *People v. Lopez*, 140 P.3d 106 (Colo. App. 2005). The discovery and anticipated evidence at trial showed that the defendant "de-registered"[1] in Denver on June 2, 2006 and never re-registered anywhere in Colorado between June 2, 2006 and February 27, 2007. The People wanted to avoid the types of jury questions that arose in

[1] As discussed below, a sex offender "de-registers" by providing written notice in person to the local law enforcement agency where he currently registers that he will be moving out of that jurisdiction. Consequently, the registrant will no longer register in the current jurisdiction and will now register in the new jurisdiction. As part of this notice, the registrant must provide his new address.

Lopez concerning the need to register on an exact date. Therefore, the People moved to amend the information to provide that the offense occurred between June 2, 2006 and February 27, 2007 (v. I, pp. 25-26).

The court held a hearing on the motion to amend on July 9, 2008. The People moved to dismiss Count One and to amend Count Two, seeking to strike the March 9, 2007 date of the offense and substitute "on or between June 2, 2006 and February 27, 2007" (7/9/08, pp. 2-6). The court granted the motion (7/9/08, pp. 12-13).[2]

Under these amendments to the information and complaint, then, the charge would read as follows:

> Don Quick, District Attorney ... informs the court of the following offenses committed, or triable, in the county of Adams:
>
> AND AS A FURTHER AND SECOND COUNT ... further informs the court that at the said County of Adams in the State of Colorado, on or between June 2, 2006 and February 27, 2007,
>
> Carey Andre Griffin, a person convicted of felony unlawful sexual behavior unlawfully and

[2] The court apparently documented this amendment by striking out the date and substituting the new dates on the earlier motion to add a second count (v. I, p. 6).

> feloniously failed to register with the local law enforcement agency in each jurisdiction in which he resided upon changing an address; in violation of section 18-3-412.5(1)(g),(2), C.R.S., contrary to the form of the statute in such case made and provided, and against the peace and dignity of the People of the State of Colorado.

(v. I, pp. 2, 6).

The defendant subsequently waived his right to a jury trial, and a trial to the court was held on August 27, 2008 (8/27/08, pp. 4-6). The following evidence was presented at trial.

Denver Police Detective Richard Schneider testified that he conducted the day-to-day operations of the Denver Police Department's Sex Offender Registration Unit. In that position, he had had contact with the defendant. The Detective conducted the defendant's initial registration in February of 2006 when the defendant was released from the Department of Corrections and had moved to the Crossroads Shelter. He again met with the defendant on June 2, 2006, when the defendant came to the Department to de-register because he was moving from Denver to Adams County (8/27/08, pp. 13-14, 16-19).

The Detective explained "de-registration" at trial:

> De-registration would mean that he was going to move from our jurisdiction, he would come to our office, give us the address, phone number and zip code where he was going to move to, and we would advise him which police department or sheriff's office to respond to within the allotted time to reregister as a sex offender in Colorado.

(8/27/08, p. 18). As part of this process, the defendant signed a "Denver Police Department Change of Residency to New Jurisdiction Form" (8/27/08, pp. 19-20; People's ex. 1 and 2). On this form, the defendant's employer was listed as "PSA Interviewing" (People's ex. 2).

The Change of Residency Form included the defendant's Denver address, from which he was moving, and the defendant provided his new address in Adams County: 6920 Kearney, Commerce City, CO 80229 (8/27/08, pp. 21-22, People's ex. 1 and 2). Detective Schneider told the defendant that he had "exactly one week, five business days, to change his address to his new jurisdiction," and that he needed to register with the Commerce City Police Department (8/27/08, p. 23).

In February of 2007, Commerce City Police Detective Mike Saunders reviewed his Police Department's sex offender registration records to determine whether the defendant had ever registered with

the Commerce City Police. His office had been notified by the Colorado Bureau of Investigation that eight months earlier, in June of 2006, the defendant had de-registered in Denver and stated that he was moving to the Kearney Street address. Detective Saunders' review of his registration records and the CCIC and NCI systems indicated that the defendant had not registered there or anywhere else (8/27/08, pp. 38-40).

As part of his investigation, Detective Saunders went to the home at 6920 Kearney Street and contacted Kathryn Dunston, who lived there. Ms. Dunston told the Detective that she did not know the defendant (8/27/08, pp. 40-41).

Ms. Dunston testified at trial that her daughter and son-in-law had purchased the Kearney Street home in January of 2007 and that she had lived in the house from January 2007 into February of 2008. The defendant had never lived there while she was there (8/27/08, pp. 47-49).

During the time she had lived there, Ms. Dunston had received mail addressed to the defendant. She had probably received mail in

2007 for the defendant and had returned it to the post office. She had also received mail for the defendant in 2008 and, once she was subpoenaed in this case, she began collecting the mail (8/27/08, pp. 49-52, People's ex. 6 through 9 and 11 and 12).

At trial, Ms. Dunston identified mail that she had received for the defendant at the Kearney Street address. This included mail from:

- The Ninth Judicial District;
- The Fourth Judicial District;
- The Colorado Department of Revenue;
- The Nineteenth Judicial District; and
- Schneider National (a trucking company).

(People's ex. 6-8 and 11-12). She also received mail addressed to "Casey Griffin" from the Kroger company (People's ex. 9).

Agents Dory Weidert and Dennis Davenport, who handle sex offender registration for the Commerce City Police Department, testified that the defendant had never registered with the Department. Sex offenders must come in to the Department in person to register, and neither Agent had ever had contact with the defendant either in person or by phone. Agent Davenport testified that he had reviewed the

Department's registration records for 2006 and 2007, and the defendant's name was not in the file (8/27/08, pp. 57-60, 63-64).

Judy Kinyon, a Sex Offender Registration Coordinator with the Colorado Bureau of Investigation, testified about C.B.I.'s role in Colorado's sex offender registration system. By statute, law enforcement agencies are required to notify the C.B.I. whenever an offender registers. The C.B.I. also coordinates information between different agencies. In her position, Ms. Kinyon insures that information from different agencies is entered into the registration system and she coordinates information between different law enforcement agencies. For example, if a registrant disappears, Ms. Kinyon works to insure that law enforcement agencies are looking for the missing registrant. Also, when verifying records in the CCIC system,[3] Ms. Kinyon

[3] "CCIC" stands for the Colorado Crime Information Center. On the Colorado Bureau of Investigation website, CCIC is described as follows: "CCIC is the statewide criminal justice computer system which delivers criminal justice information to law enforcement and criminal justice agencies in the effort to protect the citizens within our communities. CCIC allows Colorado law enforcement agencies to obtain information such as, but not limited to, statewide and national warrants, criminal history records, driver's license information, missing persons, protected

sometimes discovers a registrant who has failed to re-register on a registration date. In this situation, she would try to determine what had happened to the registrant (8/27/08, pp. 66-67).

When the C.B.I. receives information that a registrant no longer lives in a particular jurisdiction, Ms. Kinyon contacts the law enforcement agency in that jurisdiction to determine whether the agency knows where the registrant has gone. If so, Ms. Kinyon then contacts the agency in the new jurisdiction to determine if the registrant has registered there.[4] If neither agency can determine the registrants current location, Ms. Kinyon will investigate further to try to determine if the registrant has registered somewhere else (8/27/08, pp. 68-69).

Ms. Kinyon testified that she had reviewed the sex offender registration database and, after the defendant had de-registered in

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parties, stolen property, sex offenders, and intelligence information." *See*, cbi.state.co.us/psu/PSU_FAQ.html

[4] Under the registration system, when a registrant moves from one jurisdiction to another, the law enforcement agency in the former jurisdiction is responsible for notifying the law enforcement agency in the new jurisdiction that the registrant is moving there (8/27/08, p. 68).

Denver in June of 2006, there was no record of the defendant registering again until he returned to Denver in 2007. More specifically, there was no active registration for the defendant between June 2, 2006 and February 27, 2007 (8/27/08, pp. 70-72).

Denver Detective Schneider, who had conducted the defendant's initial registration and his de-registration in 2006, did not see the defendant again until November 1, 2007 when the defendant re-registered in Denver (8/27/08, pp. 24-25; People's ex. 3). The re-registration form signed by the defendant stated that his previous address was 6920 Kearney Street, Commerce City, CO 80229 (8/27/08, p. 25; People's ex. 3). Detective Schneider did not prepare the form and did not know if the defendant provided this as his prior address or whether it was obtained from the Police Department's database (8/27/08, pp. 34-36).

Prior to trial, Detective Schneider reviewed the Denver Police Department's registration records. The defendant had never re-registered in Denver between June 2, 2006, when he de-registered, and November 1, 2007 (8/27/08, p. 26).

The defendant testified on his own behalf.

The defendant testified that he recalled de-registering in Denver on June 2, 2006. At that time, he said that he was moving to 6920 Kearney in Commerce City, Colorado. When he filled out his de-registration form, he intended to move to that address (8/27/08, pp. 90-91).

The defendant testified that he did not move to the Kearney Street address:

> [The Defendant:] I had gotten married a couple of months before that and my wife and I were trying to buy a house and we were told – you know, I was told that I was – was prequalified and, you know, my credit was good at the time, and I was going to be able to get this house.
>
> Q. So you were intending on buying the Kearney Street address?
>
> A. Yes.
>
> ....
>
> Q. And was your closing scheduled for sometime around June 2nd?
>
> A. Well, it was – yeah, it was supposed to be like June – it was – it was supposed to be after –
>
> Well, I was told everything was – was approved, and that it was going to be okay. And so I just

> went down and de-registered because we were told that everything was going to be fine.
>
> So then, like about the day after, everything just fell through.
>
> What happened was that because of my being in the penitentiary for eight years, I wasn't really able to show, like, any financial track record. And then the fact that I didn't have a certain amount of money in the bank was also a negative.

(8/27/08, pp. 92-93).

All of this happened the very next day after he de-registered, he claimed (8/27/08, p. 93). Then, that very same night, his employer (a trucking company) told him to leave Colorado and go to Montana:

> Q. Okay. Now, when you found out that you weren't going to be able to purchase that home, what did you do?
>
> A. Well, we were totally devastated because we were just told, you know, for, you know, weeks, days, you know, we were going to be able to qualify for this house, and, like, we were looking forward to moving into this house.
>
> So what happened was that I was working for an asphalt company as a truck driver, dump truck driver. Next thing I know, they tell us to – to pack it up, and we went to Montana.
>
> Q. Okay. How long after June 2nd was that?
>
> A. Like, I guess, maybe two days later, a day or two – yeah, maybe two days later, because we

found out that the house fell through. And, then, you know I think it was like that night that, you know, we were – we were given a calling [sic] and said: Look, you know, pack it up, we were going to be going to Montana.

Q. Okay. So how long were you in Montana?

A. Well, actually, we went to Wyoming for about, I guess, two or three days. Then we went to Montana, and we were there for about two, three days. Then we went through Utah, then we went through Oregon.

Q. And ultimately where did you get your next residence.

A. Washington.

(8/27/08, pp.93-94).

The defendant was subsequently arrested in Washington for his failure to register in Colorado. He bonded out of jail, and "a couple of weeks after," he moved back to Colorado: "I had put – saved money, you know, get a car – saved money and then come out here" (8/27/08, pp. 94-95). The defendant moved back to Denver, and registered when he came back (8/27/08, p. 95).[5]

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[5] In its opinion, the Court of Appeals stated that the defendant was "brought to Colorado and was charged with failure to register." *Griffin*, slip op. at 1. However, the defendant testified that he chose to return to, and drove himself to, Colorado.

With regard to the form he signed when he re-registered in Denver in 2007, the defendant initially testified that he did not provide the Kearney Street address as his prior address – it was on the printed form he had been given to sign. He then testified that he did not want to provide all of the places he had been, and he "just told them that."

> Q. Why didn't you correct that?
> A. Well, I – I – I just – I really didn't even really think about it, I didn't think twice about it, I just – I just signed it. You know, I really didn't want to get into, you know, all the different places, you know, I'd been. I just told them that, yeah – I just – I signed it.

(8/27/08, p. 95).

The defendant concluded his direct examination testimony by stating that he had never lived at the Kearney Street address and had never lived in Adams County (8/27/08, p. 87).

The defendant testified on cross-examination that he was required to register and that he had been advised of his duty to register and de-register, and that he signed a form when he left prison that informed him of this responsibility (8/27/08, pp. 97-98).

The defendant had filled out a form giving his name and address at the time he left prison in early 2006, and he listed his address in Denver. The defendant also knew that he was required to register annually on his birthday. The defendant had only registered once, when he left prison, before he de-registered in June of 2006 (8/27/08, pp. 99-101).

The defendant testified that when he de-registered in Denver on June 2, 2006, he had filled out the form stating that he was moving from 5342 Scranton in Denver to 6920 Kearney Street in Commerce City. He filled out the form with the Kearney Street address because he intended to live there at that time he de-registered in Denver. And he knew that he would have to go to the Commerce City Police Department to register (8/27/08, pp. 102-104).

The defendant never registered with the Commerce City Police Department, nor did he notify the Denver Police Department that he was intending to move to some other location other than the Kearney Street address within seven days of de-registering (8/27/08, p. 104-105).

The defendant testified that he moved to several states and then ultimately came back to Denver after he was arrested, although he was uncertain about when:

> Q. When did you come back to Denver, sir?
>
> A. I – I guess it was around June. I'm not sure of the date, but it was after I got arrested in Washington –
>
> Q. Well, do you remember –
>
> A. – which would – well, I got arrested in April, April 4th, and I came back, I think, a month and a half – month and a half later.
>
> Q. And then you lived in Denver?
>
> A. Yes.
>
> Q. And so that would have been about May or early June of 2007 that you moved back to Denver?
>
> A. Yes.
>
> Q. And then you did not register within early June of 2007 that you moved back to Denver?
>
> A. Yes.
>
> Q. And then you did not register within seven days of moving back to Denver?
>
> A. Oh, no, I registered right away.
>
> Q. Well, you registered on November 1st of '07, correct?
>
> A. All right. Let me see. Wait a minute wait a minute. Let me –

> I'm getting my dates mixed up.
>
> I got arrested – I got arrested in April of, I believe – yeah 2000 – 2007.
>
> Well, as soon as I – as soon as I got back to Denver, I registered.

(8/27/08, 105-106).

The prosecutor pointed out that the defendant appeared in Adams County Court on September 18, 2007 (8/27/08, pp. 106-107) . Now, the defendant claimed that he had come back temporarily for court before moving back to Denver.

> [The Defendant:] I – I think – I think I just came back for – to -- you know – and I don't recall exactly what happened. I know I came back for the bond, for the bond hearing, because I had to come back from Washington to – to come to court for the – for the hearing.
>
> But I do know that I registered right away and I registered in the amount of time.
>
> Q. So you're saying that on September 18th of 2007, you were living in Washington State, even though you appeared in Adams County on bond?
>
> A. I don't – I don't recall the exact date, sir, I don't recall at all.

(8/27/08, p. 107).

With regard to the mail that was sent to him at the Kearney Street address by the Ninth Judicial District, the Fourth Judicial District, the Colorado Department of Revenue, and the Nineteenth Judicial District, and from Kroger and from Schneider Trucking Company, the defendant said that he was unaware of how any of them got the Kearney Street address. He specifically testified that he did not recall giving that address to the Fourth Judicial District (8/27/08, 110-112).

On redirect examination, in response to a question from the prosecutor, defense counsel asked the defendant why he had written his sister-in-law's address on a public defender application that he had filled out on September 19, 2007 (8/27/09, pp. 108-109, 114). The defendant said that it was because "the places that I have been living, I can't receive mail." He testified that he was currently living in a shelter where he could not receive mail (8/27/08, pp. 114-115).

Following the defendant's testimony, the defense rested and the prosecution stated that it had no rebuttal. The Court heard argument from counsel and then made its findings and entered its verdict.

THE COURT: The real issue in this case is, what is the meaning under 16-22-105 of establishing a residence?

And by way of instruction, I think, the Court has reviewed the definitions under 16-22-102, specifically 5.7, and it says that: A "residence" means a place or dwelling that is used, intended to be used or usually used for habitation. "Residence" may include but is not limited to a temporary shelter or institution, if the owner of the shelter or institution consents, et cetera, et cetera; and if the residence of the person at the shelter or institution is capable of verification.

And finally, it says: A person may establish multiple residences by residing in more than one place or dwelling.

16-22-105 says: For the purpose of this article – and it creates a presumption that any person who is required to register must register in all jurisdictions in which he or she establishes a residence.

And there is a presumption that if there is an intent to establish a residence that the individual is required to register in that location.

It doesn't say that you actually live there. It just says: If you establish a residence.

And it makes some reference to individuals in the military, for example, who establish a residence in one place but then spend the next year in Iraq or some other foreign country; they're still required to register in the place where they intend to establish residence.

Residence is established by showing –
establishing a mailing address.

And I will say that Exhibit 6 –

....

Exhibit 6 through, I believe it is 9, and 11 and 12 are envelopes – copies of envelopes which have the address of 6920 Kearney Street on them, it stretches the bounds of credibility to think that Schneider Trucking Company, Kroger, Incorporated, and a company in Utah, the 19th Judicial District, the Colorado Department of Corrections and the Fourth Judicial District and the Ninth Judicial District all came up with this coincidentally, the same address in Kearney Street, in Commerce City, Colorado, at which the defendant never resided, and they all just mysteriously came up with that address.

It stretches the bounds of credibility to suggest that the defendant didn't in some way provide that information as his residence for the purpose of establishing a mailing address.

Notwithstanding that, I might also point out that those letters were all sent in 2008, which is not the effective date of the offense. So Court will take that evidence with a grain of salt.

However, it goes on to say, as I indicated at the time of the motion for judgment of acquittal: Any other evidence or actions demonstrating such intent –

– and I've already ruled or found that the expression of intent – and by the defendant's own testimony, he intended to live at 6920 Kearney

Street – whether he was doing that in truth or whether he just made that up or picked an address or went there with the intention of moving there and it didn't work out, he expressed an intent, under the statute, to establish a residence there. And in this Court's mind, he was required to register in that jurisdiction.

If he also found himself going somewhere else, which the defendant testifies just coincidentally happened on the same weekend that he was required to register there, that all of a sudden his paperwork or his background or whatever prohibited him from buying that residence and, coincidentally, that same weekend, he was ushered off to Wyoming, and Montana, and Utah, and other parts of the Northwest as part of his employment, he still had established an intent to register there and he still had an obligation to register there or go back to Denver and say: I've got to reregister somewhere else because that residence isn't going to be my residence.

In either event, he failed to do that.

The Court will find that the presumption that he resided or established a residence –not so he lived there but established a residence – in Commerce City, Adams County, Colorado, has not been overcome.

Taking the most credible evidence before the Court, including the documentation – and I have to rely very strongly on Exhibit No. 3, which is the form that he filled out when he returned – whether he returned from Washington State or Virginia or anywhere else – to Denver to

> reestablish his registration or his residence in Denver, he still lists 6920 Kearney Street.
>
> And I know the defendant testified: Gee, I didn't know what I was signing.
>
> Well, the Court finds that that is not the most credible evidence before it; the most credible evidence before it is Exhibit No. 3 in which the defendant asserted that his address was 6920.
>
> Taking all of that evidence, together with the other evidence before this Court that I referred to in my ruling on the motion for judgment of acquittal, the Court will find beyond a reasonable doubt that the defendant was required to register in Adams County, and that he is guilty of violating the registration statute, guilty of the offense pursuant to 18-3-412.5, failure to register as a sex offender, and the court will enter judgment for that violation
>
> ....
>
> of violating that statute.

(8/27/08, pp. 123-128).

Thus, the trial court found both that the defendant had established a residence in Adams County and failed to register there and that he failed to return to Denver and re-register there or provide a new address. "In either event, he failed to do that" (8/27/08, pp. 126-127).

On appeal, the Court of Appeals reversed. The Court held that intent to establish a residence was insufficient to trigger a duty to register under the applicable statutory provisions; and physical presence or occupancy is required to "establish a residence" under the sex offender registration statutes. Without discussing the evidence adduced at trial, the Court of Appeals summarily concluded that the defendant had not "established a residence" in Adams County. *Griffin* slip op. at 4-11.

In reaching its conclusion, the Court of Appeals acknowledged that the defendant might be guilty for failing to register in other jurisdictions other than Adams County, but declined to address this issue "because this case rests solely on Griffin's failure to register in Adams County." *Griffin,* slip op. at 2 n.1.

SUMMARY OF THE ARGUMENT

The Court of Appeals incorrectly held that physical presence or occupancy is required to establish a residence under Colorado's sex offender registration laws. The statutory language clearly permits a

registrant to establish a residence by other means than obtaining physical presence of occupancy. Further, the registration laws impose a duty on registrants to provide the address for their future residences in circumstances where it is impossible for them to have been physically present at or occupy the new residence. The Court of Appeals construction of the statutory language is unduly narrow and contrary to the nature of the registration laws as a seamless registration system.

The evidence was sufficient to support the defendant's conviction for the continuing offense of Failure to Register as a Sex Offender. First, under the plain language of the statute, the evidence demonstrated that the defendant established a residence at the Adams County address by establishing a mailing address there and formally identifying it on the registration forms as his new address. Further, even under the Court of Appeals approach, the evidence supported a finding that the defendant had physical presence or occupancy at the Adams County address. Finally, because the offense is a continuing one, evidence that the defendant failed to re-register in Colorado for well over a year, and never updated his Denver de-registration

information during that period, the evidence supported his conviction for a series of violations of the registration law.

ARGUMENT

I. Evidence of physical presence or occupancy in a residence is not required to prove that a defendant has "established a residence" under the Colorado Sex Offender Registration Act.

The first issue accepted for certiorari review concerns whether physical presence or occupancy is required to establish residence under the Colorado Sex Offender Registration Act. The Court of Appeals held that it was required and that the evidence was insufficient to support such a finding. However, the Court of Appeals was incorrect and construed the statute too narrowly.

As will be discussed below, the Registration Act provides a procedure by which a registrant continuously maintains current registration information with law enforcement. This is so, whether the registrant is moving within a jurisdiction, moving to a new jurisdiction, or moving out of the State. Where a defendant is moving out of a jurisdiction to a new jurisdiction or to another State, registration

information must be contemporaneously provided to law enforcement agencies in the jurisdiction from which he is departing and in the jurisdiction to which he is moving.

The Registration Act imposes a duty upon some registrants to provide registration information concerning where they plan to reside even before they can actually move to the new location. For example, an offender who is incarcerated is required to provide such information before being released from custody, when it is typically unlikely that there has been an opportunity to be physically present or occupy the new residence. Section 16-22-106(3)(c), C.R.S. (2011); section 16-22-107(3), C.R.S. (2011). It is unlawful to provide false information regarding this new address. Section 18-3-412.5(1)(c), C.R.S. (2011).

The Act also contemplates a defendant having multiple residences. Section § 16-22-108(3)(c), C.R.S. (2011). Where a registrant has multiple residences, the registrant must register with the local law enforcement agency in each jurisdiction where he has established a residence. Section § 16-22-105(3), C.R.S. (2011). In this situation, too,

it is unlikely, if not impossible, that the registrant is simultaneously physically present and occupying multiple residences.

Finally, the Act provides a list of methods of proving a defendant's intent to establish a residence by reference to: (1) hotel or motel receipts; (2) a lease of real property; (3) ownership of real property; (4) proof that the registrant accepted responsibility for utility bills; (5) proof that the registrant established a mailing address; or (6) any other action demonstrating such intent. Section 16-22-105(3). None of these require proving physical presence or occupancy.

Standard of review. The initial question presented is whether the registration statutes require physical presence or occupancy to prove that the defendant had established a residence. The interpretation of a statute is a question of law subject to *de novo* review. *Hendricks v. People*, 10 P.3d 1231 (Colo. 2000).

In construing a statute, the primary task is to ascertain the intent of the legislature and to give effect to that intent whenever possible. A construction must be avoided when it would defeat an obvious purpose of a statute when that purpose is shown clearly on the statute's face.

People v. Swain, 959 P.2d 426, 429 (Colo. 1998). To discern that intent, courts must first look to the plain language of the statute. *People v. McNeese*, 892 P.2d 304, 310 (Colo. 1995). When that language is clear so that the intent can be discerned with reasonable certainty, there is no need to resort to other rules of statutory interpretation. *People v. Wiedemer*, 852 P.2d 424, 428 (Colo. 1993). Indeed, when the statutory language is clear and unambiguous, the statute must be interpreted as written without resort to interpretive rules and statutory construction. *People v. Zapotocky*, 869 P.2d 1234, 1238 (Colo. 1994).

If the statutory language lends itself to alternative constructions and its intended scope is unclear, a court may apply other rules of statutory construction and look to pertinent legislative history to determine which alternative construction is in accordance with the objective sought to be achieved by the legislation. It is presumed that the General Assembly intends a just and reasonable result when it enacts a statute, and courts will not follow a statutory construction that defeats the legislative intent or leads to an unreasonable or absurd result. *People v. Trujillo*, 983 P.2d 124, 126 (Colo. App. 1999).

Each provision of a statute must be construed in harmony with the overall statutory scheme in order to accomplish the purpose for which the statute was enacted. *Wilczynski v. People*, 891 P.2d 998, 1001 (Colo. 1995). To reasonably effectuate the legislative intent, a statute must be read and considered as a whole and should be interpreted so as to give consistent, harmonious, and sensible effect to all its parts. *People v. Andrews*, 871 P.2d 1199, 1201 (Colo. 1994). An interpretation that would render a particular clause meaningless should be avoided. *People v. Terry*, 791 P.2d 374, 376 (Colo. 1990); *People v. Marquez*, 983 P.2d 159, 160 (Colo. App. 1999).

Before turning to the specific statutory provisions at issue, it is appropriate to outline some general principles applicable to Colorado's sex offender registration laws.

There are two sets of statutory provisions relevant to the offense of Failure to Register. First, Colorado's Sex Offender Registration Act provides the registration requirements and procedures for sex offenders who are required to register in Colorado. Second, the statute governing

law enforcement office where he currently resides of the new address where he plans to reside and must formally register with the local law enforcement agency in the jurisdiction in which he plans to reside or establish a residence. Section 16-22-108(1)(c) and (4)(a).

Section 18-3-412.5, C.R.S. (2010)[7] provides that a registrant who fails to comply with any of the statutory requirements placed on registrants by the Registration Act, including but not limited to committing any of the acts specified in § 18-3-412.5, commits the offense of Failure to Register as a Sex Offender.

Just as the duty to register is an ongoing duty, the Failure to Register is a continuing offense. *People v. Lopez*, 140 P.3d 106 (Colo. App. 2006).[8] "A defendant does not commit the crime only at the

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[7] Section 18-3-412.5 was amended in 2011 to add an affirmative defense to failure to register that uncontrollable circumstances prevented registration, § 18-3-412.5(1.5), C.R.S. (2011), and to make intensive supervision probation an option, rather than mandatory, for a sentence to probation for a conviction for a felony conviction of Failure to register. § 18-3-412.5(2)(b), C.R.S. (2011). Neither of these amendments is relevant to the issues in this case.

[8] This Court granted certiorari review in *Lopez* on the issue of whether the offense of Failure to Register is a strict liability crime or whether it includes the *mens rea* of "knowingly." *People v. Lopez*, 06SC219, Order

particular moment the obligation arises, but every day it remains unsatisfied." *Lopez*, 140 P.3d at 109; *quoting State v. Goldberg*, 819 So.2d 123, 129 (Ala. Crim. App. 2001). Thus, once the registrant initially commits the offense of Failure to Register, the registrant may continue to violate the statute by failing to comply with additional registration requirements under the Registration Act. Any one of these violations may support a conviction for Failure to Register, but these multiple violations are treated as one continuing offense under the Failure to Register statute. *Lopez*, 140 P.3d 106 (holding that evidence of the defendant's failure to register on dates beyond the date charged constituted a variance since Failure to Register is a continuing offense).

Section 18-3-412.5(1), C.R.S. (2010) sets forth the various methods of committing the offense of failure to register as a sex offender:

> (1) A person who is required to register pursuant to article 22 of title 16, C.R.S., and who fails to comply with any of the requirements placed on registrants by said article, including but not

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of Court: *Cert. Granted* (Colo. Aug. 14, 2006). However, the Court ultimately denied certiorari review as having been improvidently granted. *People v Lopez*, 06SC219, Order of Court: *Cert. Denied as Improvidently Granted* (Colo. March 16, 2007).

limited to committing any of the acts specified in this subsection (1), commits the offense of failure to register as a sex offender:

(a) Failure to register pursuant to article 22 of title 16, C.R.S.;

(b) Submission of a registration form containing false information or submission of an incomplete registration form;

(c) Failure to provide information or knowingly providing false information to a probation department employee, to a community corrections administrator or his or her designee, or to a judge or magistrate when receiving notice pursuant to section 16-22-106(1), (2), or (3), C.R.S., of the duty to register;

(d) If the person has been sentenced to a county jail, otherwise incarcerated, or committed, due to conviction of or disposition or adjudication for an offense specified in section 16-22-103, C.R.S., failure to provide notice of the address where the person intends to reside upon release as required in sections 16-22-106 and 16-22-107, C.R.S.;

(e) Knowingly providing false information to a sheriff or his or her designee, department of corrections personnel, or department of human services personnel concerning the address where the person intends to reside upon release from the county jail, the department of corrections, or the department of human services. Providing false information shall include, but is not limited to, providing false information as described in

section 16-22-107(4)(b), C.R.S.;

(f) Failure when registering to provide the person's current name and any former names;

(g) Failure to register with the local law enforcement agency in each jurisdiction in which the person resides upon changing an address, establishing an additional residence, or legally changing names;

(h) Failure to provide the person's correct date of birth, to sit for or otherwise provide a current photograph or image, to provide a current set of fingerprints, or to provide the person's correct address;

(i) Failure to complete a cancellation of registration form and file the form with the local law enforcement agency of the jurisdiction in which the person will no longer reside;

(j) When the person's place of residence is a trailer or motor home, failure to register an address at which the trailer or motor home is lawfully located pursuant to section 16-22-109(1)(a.3), C.R.S.;

(k) Failure to register an e-mail address, instant-messaging identity, or chat room identity prior to using the address or identity if the person is required to register that information pursuant to section § 16-22-108(2.5), C.R.S.

Subsection (1)(a) makes clear that any failure to register as required under the Colorado Sex Offender Registration Act constitutes the offense of Failure to Register. Subsections (1)(b) and (c) are directed at the providing of false or incomplete registration information either on a registration form or in relation to receiving notice from correctional or judicial personnel.

Subsection (1)(d) concerns failure to provide an address to correctional personnel of where the registrant intends to reside upon release from custody. Subsection (1)(e) concerns providing false information to correctional personnel or to law enforcement in the jurisdiction where the registrant intends to reside upon release from custody.

Subsection (1)(f) concerns failure to provide the registrant's current and any former names when registering. Subsection (1)(h) concerns the failure to provide a correct date of birth, to provide a current photograph, or current fingerprints, or to provide the registrants correct address.

Subsection (1)(g), which is at the center of this case, concerns failure to register in each jurisdiction in which the registrant resides upon changing an address, establishing an additional residence, or legally changing names. Subsection (1)(i) concerns the failure to complete a cancellation of registration form with the jurisdiction where a person will no longer reside.

Subsection (1)(j) and (1)(k) became effective on May 30, 2007, and were not in effect during the dates encompassed by the charge against the defendant. In any case, they would not be applicable to the facts in this case. Subsection (1)(j) concerns the failure to register the address where a trailer or motor home is located when it is the registrant's place of residence. Subsection (1)(k) concerns the failure to provide an email address, instant-messaging identity, or chat room identity.

As set forth above, the trial court found that the defendant had established a residence in Adams County and failed to register there and that he failed to return to Denver and re-register there or provide a new address (8/27/08, pp. 126-127). In reaching this determination, the trial court applied the following reasoning.

Under section 16-22-102(5.7), residence means a place or dwelling that is used, intended to be used for habitation and a person may establish multiple residences by residing in more than one place or dwelling. Section § 16-22-105(3), provides that a registrant "shall register in all jurisdictions in which he or she establishes a residence." This subsection provides for a presumption of an intent to establish a residence based on proof of several facts, including establishing a mailing address at the home (8/27/08, pp. 123-125).

Here, numerous businesses and Judicial Districts were sending mail to the defendant at the Adams County address, and it "stretches the bounds of credibility to suggest that the defendant didn't in some way provide that information as his residence for the purpose of establishing a mailing address" (8/27/08, p. 125). Additionally, the defendant testified that he intended to live there. And whether he was doing that in truth or just made that up or picked an address or went there with an intention of moving there and it didn't work out, he expressed an intent under the statute to establish a residence there

(8/27/08, p. 126). Therefore, he was required to register in that jurisdiction. (*Id.*).

> If he also found himself going somewhere else, which the defendant testifies just coincidentally happened on the same weekend that he was required to register there, that all of a sudden his paperwork or his background or whatever prohibited him from buying that residence and, coincidentally, that same weekend, he was ushered off to Wyoming, and Montana, and Utah, and other parts of the Northwest as part of his employment, he still had established an intent to register there and he still had an obligation to register there or go back to Denver and say: I've got to reregister somewhere else because that residence isn't going to be my residence.
>
> In either event, he failed to do that.

(8/27/08, pp. 126-127).

The court also relied on the defendant's signing the registration form upon his return to Denver that stated that his prior residence was at the Kearney Street address. The court did not find credible the defendant's testimony that he did not know what he was signing.

The court found that the defendant was required to register in Adams County and that he was guilty of Failure to Register in violation of 18-3-412.5 (8/27/08, pp. 127-128).

The Court's reasoning was correct. Review of the registration statutes demonstrates that the duty to register arises upon the defendant's establishment of a residence in a jurisdiction even where he has not yet occupied or been physically present in that residence. The registration provisions place a duty on a defendant to provide a truthful statement in his de-registration concerning where he plans to reside upon leaving his current residence. Section 18-3.412.5(1)(b) and (c).

The defendant was charged with failing to register with the local law enforcement agency in each jurisdiction in which he resided upon changing his address under § 18-3-412.5(1)(g). Subsection (1)(g) provides:

> (1) A person who is required to register pursuant to article 22 of title 16, C.R.S., and who fails to comply with any of the requirements placed on registrants by said article, including but not limited to committing any of the acts specified in this subsection (1), commits the offense of failure to register as a sex offender:
>
> ....
>
> (g) Failure to register with the local law enforcement agency in each jurisdiction in which the person resides upon changing an address,

> establishing an additional residence, or legally changing names.

Under section 16-22-102(5.7) a residence, as pertinent here, is defined as follows:

> (5.7) "residence" means a place or dwelling that is used, intended to be used, or usually used for habitation by a person who is required to register....
>
> .... A person may establish multiple residents by residing in more than one place or dwelling.

In turn, under section § 16-22-105(3), a registrant must register where he "establishes a residence:"

> (3) For purposes of this article, any person who is required to register ... shall register in all jurisdictions in which he or she establishes a residence. A person establishes a residence through an intent to make any place or dwelling his or her residence. The prosecution may prove intent to establish residence by reference to hotel or motel receipts or a lease of real property, ownership of real property, proof that the person accepted responsibility for utility bills, proof the person established a mailing address, or any other act demonstrating such intent. Notwithstanding any other evidence of intent, occupying or inhabiting any dwelling for more than fourteen days in any thirty-day period shall constitute the establishment of residence.

Thus, under the plain meaning of subsection (3):

- A registrant must register in every jurisdiction where the registrant establishes a residence.
- A registrant establishes a residence through an intent to make any place or dwelling his residence.
- The prosecution may prove the registrant's intent to establish a residence through various documents or actions reflecting intent to establish a residence.

Given that the plain language clearly provides for establishing a residence based on an intent to establish a residence, as demonstrated by various acts, that plain language should control. *McNeese, supra; Zapotocky, supra.*

The Court of Appeals rejected the People's contention that, under the statutes, a mere intent is sufficient to establish a residence, and the Court held that physical presence or occupancy is required. *Griffin*, slip op. at 3-4. In reaching this conclusion, the Court noted that subsection (3) lists methods for proving the intent to establish a residence beyond mere intent.

The Court of Appeals was correct that "mere intent," that is, simply forming the mental state of intending to establish a residence, is

insufficient to establish a place as a residence. As subsection (3) indicates documents or other acts demonstrating an intent to establish a residence is required. However, the Court of Appeals incorrectly determined that, therefore, physical presence or occupancy must be required. As the statutory list of methods of proof demonstrate, various overt acts short of physical presence or occupancy – signing a lease, accepting responsibility for utilities, or establishing a mailing address – may demonstrate an intent to establish a residence.

Thus, while mere intent may be insufficient, a registrant may establish a residence by taking steps that demonstrate intent to establish a residence at a particular address without necessarily obtaining physical presence or occupancy at the particular address.

This is in keeping with the plain language of the Registration Act and better reflects the Act's requirements that a registrant provide the address of the place he plans to reside even where he could not have yet occupied or been physically present in that residence. Section 16-22-106(3)(c); section 16-22-107(3).

While the Court of Appeals relied on *Carlson v. District Court*, 116 Colo. 330, 180 P.2d 525 (1947) to find that "residence" requires bodily presence, that case is inapposite. There, the Court was distinguishing between domicile and residence, to determine the statutory meaning of "non-resident." *Carlson*, 116 Colo. at 338, 180 P.2d at 529-530. The *Carlson* Court did not address whether one may establish a residence without physical presence or occupancy.

Further, this Court has held that one may have a residence in a jurisdiction without first having physical presence or occupancy. *Gordon v. Blackburn*, 618 P.2d 668 (Colo. 1980). There, two voters sold their home in the jurisdiction and were living in another jurisdiction at the time of the election while awaiting the building of a new home in the jurisdiction. The trial court had held that, absent physical presence, they did not have a residence in the first jurisdiction so that their votes were invalid.

In rejecting the contention that physical presence was required to have a residence in the jurisdiction, the *Gordon* Court stated:

> "If the relation of person to place were determined by mere physical presence the question of what constitutes legal residence would be relatively simple; but the intent of the individual is an important element in the problem which cannot be ignored and such intent can only be inferred from acts and declarations of a very diverse and often inconclusive character."

Gordon, 618 P.2d at 672, *quoting* K. Kennan, *Residence and Domicile,* § 1 at 1-2 (1934). Thus, contrary to the Court of Appeals' conclusion, residence does not necessarily require physical presence or occupancy. The plain language of the Registration Act should control.

The plain language of the Registration Act demonstrates that is does not require physical presence or occupancy before establishing a residence. As set forth above, the definition of residence under the Act includes a place *intended* to be used for habitation. More significantly, it provides that one "establishes a residence" through an intent to make a place one's dwelling. And such intent may be proven by, among other things, establishing a mailing address. The Court of Appeals' imposition of a requirement of actual presence or occupancy improperly

renders this language meaningless and superfluous. *People v. Terry*, 791 P.2d at 376.

Further, requiring physical presence or occupancy before one establishes a residence in this manner is contrary to the seamless registration system provided under the Registration Act. Although the defendant signed a form stating that he was moving to the Kearney Street address and had his mail sent there, he would be temporarily relieved of the duty to register unless it can be proven that he was actually physically present or actually occupied the home on Kearney Street.

Instead, as the trial court held, the evidence here amply demonstrated that the defendant established his residence at Kearney Street by filling out the de-registration form stating he was moving there and providing this as his mailing address to several judicial districts, the Colorado Department of Revenue, and several businesses. This establishment as his residence was further verified by his later re-registration in Denver where he signed a form stating that his prior address was the Kearney Street address.

The defendant's conduct was sufficient to establish this as his residence.

II. The evidence was sufficient to support the defendant's conviction for the continuing offense of Failure to Register as a Sex Offender.

The evidence was sufficient to support the defendant's conviction for Failure to Register as a Sex Offender. First, contrary to the Court of Appeals holding, evidence of physical presence of occupancy is not required, although the evidence here would support such a finding. Additionally, as the trial court held, even under the defendant's testimony, the defendant failed to return to the Denver Police Department to correct his de-registration form to indicate that he was leaving the State. Since the offense is a continuing one, the defendant's conviction may be supported by this evidence, too.

Standard of Review. When reviewing for sufficiency, the Court must view the evidence in the light most favorable to the People to determine if the conviction was supported beyond a reasonable doubt. *People v. Dunaway,* 88 P.3d 619,625 (Colo. 2004); *People v. Bennett,* 183 Colo. 125, 130, 515 P.2d 466, 469 (1973). The People must be given the

benefit of every reasonable inference which might be fairly drawn. *People v. Brassfield*, 652 P.2d 588, 592 (Colo. 1982).

It is the fact finder's function to determine what weight should be given to all parts of the evidence and to resolve conflicts, inconsistencies, and disputes in the evidence. *People v. Kogan*, 756 P.2d 945, 950 (Colo. 1988). Thus, an appellate court is not permitted to sit as a thirteenth juror and set aside a verdict because it might have drawn a different conclusion from the same evidence. *People v. Sprouse*, 983 P.2d 771, 778 (Colo. 1999); *Kogan*, 756 P.2d at 950. Where reasonable minds could differ, the evidence is sufficient to sustain a conviction. *People v. Fuller*, 791 P.2d 702, 706 (Colo. 1990); *People v. Carlson,* 72 P.3d 411, 416 (Colo. App. 2003).

As set forth in Arugment I, above,, the Failure to Register is a continuing offense. *People v. Lopez.* "A defendant does not commit the crime only at the particular moment the obligation arises, but every day it remains unsatisfied." *Lopez,* 140 P.3d at 109; *quoting State v. Goldberg*, 819 So.2d 123, 129 (Ala. Crim. App. 2001). Thus, once the registrant initially commits the offense of Failure to Register, the

registrant may continue to violate the statute by failing to comply with additional registration requirements under the Registration Act. Any one of these violations may support a conviction for Failure to Register, but these multiple violations are treated as one continuing offense under the Failure to Register statute. *Lopez*, 140 P.3d 106 (holding that evidence of the defendant's failure to register on dates beyond the date charged constituted a variance since Failure to Register is a continuing offense).

First, the evidence was sufficient to support the trial court's finding that the defendant had established a residence in Adams County. The evidence demonstrated that the defendant informed the Denver Police Department that he was moving to the Adams County address. Under the law, the defendant is required to be truthful in providing this registration information. § 18-3-412.5(1)(b)and (c). The evidence also showed that the defendant established this address as his mailing address and that he continued to receive official government mail and other mail at the Adams County home. Finally, when the defendant re-registered in Denver, he signed a form stating that his

prior residence was the Adams County residence. Under § 16-22-105(3), the establishment of a mailing address and the other actions of formally identifying the Adams County home as his residence was sufficient.

Further, even if evidence of physical presence or occupancy were required, the evidence provided would support a finding that the defendant had met this requirement. The defendant informed Denver at the time he de-registered that he was moving to the Adams County address, and was told that he had one week to re-register in Adams County. The defendant also established a mailing address at the address. This evidence was sufficient to support a finding that the defendant had physical presence or occupancy sufficient to satisfy the Court of Appeals construction of the statute.

As the trial court found, while the defendant testified that a series of events "coincidentally" occurred within a day of his plan to move into the house, that account lacked credibility. In its analysis, the Court of Appeals essentially treated the defendant's assertion that he did not ever live at the Adams County address as if it were an affirmative defense that must be disproven by the People. However, the question is

whether the evidence would support a finding that the defendant established a residence at the Adams County home. The evidence was sufficient on this point even under the Court of Appeals construction of the statutory language.

Additionally, as the trial court held, the evidence also demonstrated that the defendant failed to return to the Denver Police Department to correct his de-registration form. By this failure, the defendant committed Failure to Register by not notifying Denver that his de-registration was in fact based on his moving out of the State and also by not correcting the false statement in his de-registration form.

The defendant is not relieved of his duty to correct this form even if, as he contends, at the time his filled it out he intended to move to Adams County. Once he knew he was not moving to Adams County, he remained a resident of Denver and either had a duty to re-register there or to correct his de-registration form to indicate that he was not moving to Adams County or was moving out of State.

The Court of Appeals acknowledged that the evidence could support a conviction for failure to register in another jurisdiction.

Griffin, slip op. at 2 n.1. However, the Court held that the case rests solely on the defendant's failure to register in dams County. *Id.* However, this is incorrect.

First, the information stated that the defendant was being charged for offense committed, or triable, in Adams County, thus extending beyond offenses committed solely in Adams County. Although the second count, which was amended to the information uses the phrase "at the said County of Adams," the charge states that the defendant "failed to register with the local law enforcement agency in each jurisdiction in which he resided upon changing his address..." between June 2, 2006 and February 27, 2007 (v. I, pp. 2, 6). As the People noted in their July 8, 2008 motion to amend the dates in the information, the evidence indicated that the defendant had never re-registered anywhere in Colorado, and the offense was a continuing one (v. I, pp. 25-27).

Thus, the charge reached beyond the failure to register in Adams County and extended to the defendant's failure to register in each jurisdiction. Finally, in reaching its holding, the trial court found that

the defendant had failed to correct his registration in Denver, if, as he claimed, he never moved to Adams County, but instead left the State.

Finally, given that the duty to register is ongoing and offense of Failure to Register is a continuing offense, the evidence that the defendant de-registered in June of 2006 in Denver and was required to register in Adams County within a week, but never registered again in Colorado until November 1, of 2007 was sufficient to prove that he committed the offense. "A defendant does not commit the crime only at the particular moment the obligation arises, but everyday it remains unsatisfied." *Lopez*, 140 P.3d at 109, *quoting State v. Goldberg*, 819 So.2d at 129.

The evidence was sufficient.

CONCLUSION

For the foregoing reasons and authorities, the Court of Appeals should be reversed and the judgment of conviction should be upheld.

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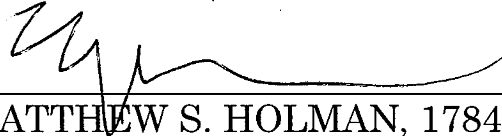

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AG File: \\DOL02\DATA\AP\APHOLMMS\GRIFFIN CAREY SCT\GRIFFIN CAREY OPENING BRIEF FINAL.DOCX

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **OPENING BRIEF** upon **ELIZABETH PORTER-MERRILL**, Deputy State Public Defender, by delivering copies of same in the Public Defender's mailbox at the Colorado Court of Appeals office this _30th_ day of April 2012.