SUPREME COURT NO. _____
COURT OF APPEALS NO. 47425-5-II

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JEFFREY JOHNSON,

Appellant.

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

The Honorable James Lawler, Judge

PETITION FOR REVIEW

LISA E. TABBUT
Attorney for Appellant
P. O. Box 1319
Winthrop, WA 98862
(509) 996-3959

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Cases

Other Authorities

A. IDENTITY OF PETITIONER

Petitioner, JEFFREY JOHNSON, by and through his attorney, LISA E. TABBUT, requests the relief designated in part B.

B. COURT OF APPEALS DECISION

Johnson seeks review of the July 26, 2016, unpublished decision of Division Two of the Court of Appeals affirming his convictions and sentence (attached as Appendix) and the Order Denying Motion for Reconsideration entered September 1, 2016.

C. ISSUES PRESENTED FOR REVIEW

Whether the Court of Appeals misapplied this Court's holding in *State v. Budd*, 185 Wn.2d 566, 374 P.3d 137 (2016) when it is undisputed that Officer Haggerty unlawfully entered Johnson's home to conduct a knock and talk search without first receiving Johnson's consent to search his home pursuant to *Ferrier*?

D. STATEMENT OF THE CASE

On January 22, 2014, two Centralia police officers—Officer Haggerty and Officer Withrow—received a tip from an informant that Johnson had a couple of ounces of methamphetamine in his RV, which was located inside his home, a large barn and trailer. RP2 8-9, 14, 17-18. Without obtaining a search warrant, they, accompanied by Lewis County

deputy Kimsey, drove up Johnson's driveway after dark and parked their undercover Cadillac Escalade in front of the home, a barn, playing loud music in an effort to lure him out. RP2 9-10, 17. They were hoping to do a "knock and talk" and find out where Johnson bought methamphetamine and seize any methamphetamine he had. RP2 9, 20, 38.

The officers knew Johnson had a camera on the barn residence, and they parked so that Johnson would see them and hopefully come out. RP2 18. Johnson saw the Escalade on a monitor he had inside the barn; because he did not recognize the Escalade, he stayed inside the barn and continued working on cars. RP2 69.

Officer Haggerty, testifying at a pre-trial suppression hearing, said that because Johnson did not respond to their car being parked out front, the officers "walked in through the big barn" whose "main huge door … was all closed up." RP2 18. They "gave [Johnson] a yell, 'Mr. Johnson' or 'Jeff. Police. Can we talk?'" RP2 18. Officer Haggerty estimated that he and Officer Withrow "went probably a couple feet into the barn to yell to see if he was in there." RP2 19. Though Officer Haggerty admitted they went into the barn, he emphasized that they "did not go into the trailer in question." RP2 19. Once Johnson came forward, they said, "Can we talk to you? Can we go outside and talk?" RP2 19.

Johnson remembered seeing the officers' car on his video monitor and then the officers entering the barn to talk to him. RP2 69. He described the officers' approach:

> I was sitting in my trailer and a neighbor from across the street was just leaving. I have a little monitor that sits at the end of my bed. I caught a bright light. I looked at my monitor and there was some one and I still couldn't make out what kind of rig it was, so I went out the front of my trailer, peaked through the barn doors and seen officers getting out of this Escalade, so I walked over and just kept working on a car. They came in the barn around the front of the trailer and said, "Hey, Mr. Johnson, have you seen Mr. Hall lately?"

RP2 69. Johnson never heard the officers knock at all and the officers "just walked into the barn." RP2 69-70. Johnson estimated that the officers got "probably 30 feet through a couple of rooms and then around in front of the trailer" before making contact with him. RP2 70.

Ms. Hamilton, who was in a house adjacent to the barn, saw the officers approach. She saw the officers "g[e]t out of the vehicle and [go] into the barn." RP2 65. She remembered thinking that they entered the barn in an odd way because they went through the tack room. RP2 65. Usually people went in through the big doors on the front of the barn. RP2 65.

Officer Withrow agreed that the officers stayed in the Escalade with the music turned up for a while, hoping Johnson would come out. RP2 37. Contrary to Officer Haggerty's testimony, he said the officers did not go inside the barn. RP2 38. He testified that they got Johnson's attention by

knocking on the outside of the barn and asking him to come out, and that Johnson eventually emerged. RP2 31-32, 38. He said their conversation with Johnson "began outside." RP2 39.

Deputy Kimsey testified the officers "approached the shop or the barn area where Jeff Johnson lives" and "when we were walking up to the door, I think the Centralia officers were calling out for Jeff Johnson." RP2 49. He did not see the officers go into the barn to get Johnson. RP2 52. He "remember[ed] [Johnson] com[ing] out of the doors of the barn" and talking to the officers in front of the barn door. RP2 51-52. At that point, Deputy Kimsey left for about ten minutes to pursue a person with a warrant. RP2 50. When he returned, the officers were inside the barn talking to Johnson. RP2 50.

Once outside, Officer Haggerty encouraged Johnson to sign a *Ferrier* consent form. Johnson signed the *Ferrier* consent form. The officers then searched his RV and found two ounces of methamphetamine, a digital scale, and packaging material. RP2 11-12; CP 30. Johnson was charged with possession of Methamphetamine with Intent to Manufacture or Deliver.

Johnson filed a motion to suppress evidence from the search, arguing his consent to the search was invalid under both the state and federal constitutions. CP 4-10.

The trial court denied the motion to suppress and entered the following pertinent Findings of Fact and Conclusions of Law:

> 2. Officers Haggerty and Withrow wanted to conduct a "knock and talk" with Johnson regarding information obtained from an earlier arrest where it was learned that Johnson was selling methamphetamine from a trailer stored inside a barn.
>
> ...
>
> 5. When Officers Haggerty and Withrow arrived at Johnson's residence, they parked their vehicle in front of a security camera and turned their music up loud in an attempt to contact Johnson.
>
> 6. When nobody responded to their presence, Officers Haggerty and Withrow approached the garage and were able to summon Johnson from within.
>
> ...
>
> 11. Johnson agreed to cooperate with law enforcement.
>
> ...
>
> 13. Officer Haggerty completed a Consent to Search form that contained Ferrier warnings. Officer Haggerty was in the practice of verbally summarizing the Ferrier warnings for people as they went over the form. Officer Haggerty also had Johnson read the form. Officer Withrow was able to hear Officer Haggerty verbally reviewing the consent to search form with Johnson at this time.
>
> ...
>
> 15. Johnson consented to the Ferrier warnings verbally, by granting permission to enter the trailer. Johnson also consented by signing the form where he was supposed to sign. The Ferrier warnings were reviewed with Johnson, and consent was granted while outside the trailer and barn area.
>
> ...

> 19. While inside the trailer, Officer Haggerty discovered the methamphetamine Johnson had mentioned, a digital scale, and packaging materials.

RP2 100, 102; CP 28-30.

Rather than resolving the dispute between Haggerty's testimony that both he and Withrow initially entered Johnson's barn prior to *Ferrier* consent, and Withrow's testimony that they had not done so, the trial court sidestepped the issue and held – correctly – that Johnson was summoned "from within." The trial court concluded that "Ferrier warnings were given to Johnson by Officer Haggerty," that "[v]alid consent was given by Johnson," and the consent was "knowing[ly], intelligently, and voluntarily given." RP2 100, 102; CP 31. Johnson objected to these findings overall and specifically to Findings of Fact 6, 11, 13, and 15. RP3 6-7.

Johnson waived his right to a jury trial and was found guilty as charged on stipulated facts. RP2 103-05; CP 11, 12, 13-17.

E. ARGUMENT WHY REVIEW SHOULD BE GRANTED

Under RAP 13.4, a petition for review will be accepted by the Supreme Court:

> (1) If the decision of the Court of Appeals conflicts with a decision of the Supreme Court; or
>
> (2) If the decision of the Court of Appeals conflicts with a published decision of the Court of Appeals; or

(3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved.

THE COURT OF APPEALS MISAPPLIED THIS COURT'S DECISION IN *STATE V. BUDD* WHEN IT FAILED TO FIND ERROR IN THE WARRANTLESS PRE-*FERRIER* ENTRY INTO JOHNSON'S HOME.

Article I, Section 7, of the Washington Constitution provides: "No person shall be disturbed in his private affairs, or his home invaded, without the authority of law." Wash. Const. Article I, Section 7. The Fourth Amendment of the United States Constitution provides that the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." *Florida v. Jardines*, ___ U.S. ___, 133 S. Ct. 1409, 1414, 185 L. Ed. 2d 495 (2013).

Warrantless searches are per se unreasonable unless justified by a limited set of carefully drawn exceptions. *State v. Snapp*, 174 Wn.2d 177, 187-88, 275 P.3d 289 (2012); *see also Payton v. New York*, 445 U.S. 573, 586, 100 S. Ct. 1371, 63 L. Ed. 2d 639 (1980) (warrantless searches "presumptively unreasonable"). This creates an "almost absolute bar to warrantless arrests, searches, and seizures." *State v. Ringer*, 100 Wn.2d 686, 690, 674 P.2d 1240 (1983).

"[W]hen it comes to the Fourth Amendment, the home is first among equals." *Jardines*, 133 S. Ct. at 1414. A person's right "to retreat into his [or her] own home and there be free from unreasonable governmental

intrusion" stands at the core of Article 1, Section 7, and the Fourth Amendment. *See Silverman v. United States*, 365 U.S. 505, 511, 81 S. Ct. 679, 5 L. Ed. 2d 734 (1961); *State v. Young*, 123 Wn.2d 173, 189, 867 P.2d 593 (1994); *State v. Rose*, 128 Wn.2d 388, 391-92, 909 P.2d 280 (1996). The areas "immediately surrounding and associated with the home"—the curtilage—are "part of the home itself" for purposes of the Fourth Amendment and state constitutional counterparts. *Oliver v. United States*, 466 U.S. 170, 176, 104 S. Ct. 1735, 80 L. Ed. 2d 214 (1984); *Jardines*, 133 S. Ct. at 1414.

A "knock and talk" investigation is an exception to the warrant requirement. In this kind of investigation, police officers approach a person's home without a search warrant to seek consent to search. *State v. Budd*, 185 Wn. 2d 566, 374 P.3d 137 (2016). For a knock and talk search to be valid, police must follow several carefully drawn rules.

First, officers must approach the home—and make contact with a person authorized to consent to the search—in a lawful manner. In general, "[t]he license granted by the knock and talk rule is the same license granted to an unknown visitor: it 'typically permits the visitor to approach the home by the front path, knock promptly, wait briefly to be received, and then (absent invitation to linger longer) leave.'" *Rosen v. Wentworth*, 13 F. Supp.

3d 944, 949 (D. Minn. 2014) (*citing Jardines*, 133 S. Ct. at 1415 (emphasis added)).

Second, officers must "inform the person from whom consent is sought that he or she may lawfully refuse to consent to the search and that [he or she] can revoke, at any time, the consent [he or she] gives, and can limit the scope of the consent to certain areas of the home." *State v. Ferrier*, 136 Wn.2d 103, 118, 960 P.2d 927 (1998) (emphasis added). The officers must do this "prior to entering the home." *Id.* (emphasis added). At the suppression hearing, the state bore the burden of demonstrating by clear and convincing evidence these requirements were met. *Id.* at 116.

Constitutional issues are reviewed de novo. *State v. Gresham*, 173 Wn.2d 405, 419, 269 P.3d 207 (2012). When a trial court denies a motion to suppress, the trial court's conclusions of law are reviewed de novo. *State v. Winterstein*, 167 Wn.2d 620, 628, 220 P.3d 1226 (2009).

Here, the state did not satisfy its burden of proving a lawful search because officers entered Johnson's home before giving *Ferrier* warnings. Officer Haggerty's testimony at the suppression motion was clear. He and Officer Withrow initially entered into Johnson's home and tried to call him out of the large structure Officer Haggerty equated to an "airport hangar." RP2 18-19. Officer Withrow denied a pre-*Ferrier* entry into Johnson's home. The trial court made no specific finding as to the pre-*Ferrier*

excursions. Instead, the court found the officers "summoned" Johnson outside, Finding of Fact 6, which was, literally, true.

But the summoning did not occur until after the officers illegally entered the home. Officers engaging in a knock and talk must give the resident the *Ferrier* warnings. *State v. Ruem*, 179 Wn.2d. 195, 205, 313 P.3d 1156 (2013). *Ferrier* requires that police officers "must, prior to entering the home, inform the person from whom consent is sought that he or she may lawfully refuse to consent to the search and that they can revoke, at any time, the consent that they give, and can limit the scope of the consent to certain areas of the home." 136 Wn.2d at 118.

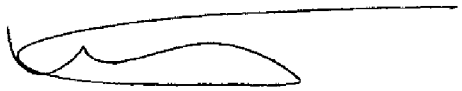
Officers must give these warnings before entering the home because the resident's knowledge of the privilege is a "threshold requirement for an intelligent decision as to its exercise." *Id.* at 117 (quoting *Miranda v. Arizona*, 384 U.S. 436, 468, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966)). "The failure to provide these warnings, prior to entering the home, vitiates any consent given thereafter." *Id.* at 118–19, 960 P.2d 927; *Budd*, 185 Wn.2d at 573.

The Court of Appeals erred in holding that a critical fact was not found by the trial court, i.e., that Officer Haggerty entered into the home. pre-*Ferrier* and was not included in the trial court's Findings of Fact and was in violation of the court's holding in *State v. Budd*.

F. CONCLUSION

For the reasons discussed above, this Court should grant review and reverse Mr. Johnson's conviction and sentence.

Respectfully submitted October 3, 2016.



LISA E. TABBUT/WSBA 21344
Attorney for Jeffrey Johnson

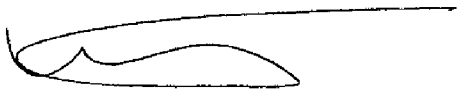
CERTIFICATE OF SERVICE

Lisa E. Tabbut declares as follows:

On today's date, I efiled the Petition for Review to (1) Lewis County Prosecutor's Office, at appeals@lewiscountywa.gov and sara.beigh@lewiscountywa.gov; (2) the Court of Appeals, Division II; and (3) I mailed it to Jeffrey Johnson/DOC#866918, Larch Corrections Center, 15314 NE Dole Valley Road, Yacolt, WA 98675.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed October 3, 2016, in Winthrop, Washington.



Lisa E. Tabbut, WSBA No. 21344
Attorney for Jeffrey Johnson, Appellant

APPENDIX

Filed
Washington State
Court of Appeals
Division Two

July 26, 2016

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. JEFFREY JEROME JOHNSON, Appellant.	No. 47425-5-II UNPUBLISHED OPINION

MAXA, J. – Jeffrey Johnson appeals his conviction of unlawful possession of methamphetamine with intent to deliver. He argues that the trial court erred in denying his motion to suppress evidence officers discovered after he consented to their search of his home.

We hold that substantial evidence supports the trial court's finding of fact that the police officers gave proper *Ferrier*[1] warnings to Johnson before entering his barn to speak with him and that Johnson voluntarily consented to the search of his trailer inside the barn. We also reject Johnson's assertions made in his statement of additional grounds (SAG). Therefore, we affirm Johnson's convictions.

[1] *State v. Ferrier*, 136 Wn.2d 103, 118, 960 P.2d 927 (1998).

FACTS

On January 22, 2014, City of Centralia police officers Adam Haggerty and Chad Withrow and Lewis County Sheriff's Deputy Bruce Kimsey went to Johnson's home in Vader to conduct a "knock and talk"[2] with Johnson based on information they had received that Johnson was selling methamphetamine from his home. Johnson lived in a trailer parked inside a barn, adjacent to a house. When Haggerty and Withrow arrived at Johnson's residence, they parked their unmarked vehicle outside the barn in front of a security camera and turned their music up loud hoping to alert Johnson. Kimsey arrived in his own patrol vehicle.

When Johnson did not come out, Haggerty and Withrow "approached the garage and were able to summon Johnson from within." Clerk's Papers (CP) at 29. Johnson then came outside and the officers explained why they were there. Haggerty told Johnson that he wanted to know Johnson's source for the methamphetamine he had sold and that if he cooperated, Johnson would sleep in his own bed that night. Johnson agreed to cooperate. After Kimsey left to investigate another matter, Haggerty asked Johnson about his methamphetamine and Johnson replied that he had about two ounces, a digital scale, and some packaging materials.

Haggerty then presented Johnson with a consent to search form that contained *Ferrier* warnings. Haggerty verbally summarized the warnings rather than read them verbatim and had Johnson read the form himself. Johnson read the form without comment and verbally consented.

[2] During a knock and talk, officers go to a home without a warrant and ask for the resident's consent to search the premises. *State v. Budd*, No. 91529-6, 2016 WL 2910207, at *3 (Wash. May 19, 2016).

He then signed the form before the officers entered the barn and trailer. Kimsey returned to the scene at about the same time.

Haggerty seized methamphetamine, a digital scale, and packaging materials from inside the trailer. The State later charged Johnson with unlawful possession of methamphetamine with intent to manufacture or deliver.

Johnson filed a motion under CrR 3.6 to suppress the evidence that officers discovered in the search of his trailer, arguing that the advisement of the *Ferrier* warnings was insufficient. The trial court conducted a suppression hearing and heard testimony from the three officers, Johnson, Melissa Alderman, who lived in a residence adjacent to the barn, and Alderman's daughter Jessica Hamilton. The trial court entered findings of fact and conclusions of law, finding that the officers talked with Johnson outside the barn and gave *Ferrier* warnings to Johnson and that Johnson's consent was knowing, intelligent, and voluntary. Therefore, the trial court denied Johnson's CrR 3.6 motion to suppress.

Johnson waived his right to a jury trial, and the trial court found Johnson guilty of unlawful possession of methamphetamine with intent to deliver based on a stipulation to the facts in the police report. Johnson appeals his conviction.

ANALYSIS

A. MOTION TO SUPPRESS – *FERRIER* WARNINGS

1. Legal Principles

Both the Fourth Amendment to the United States Constitution and article I, section 7 of the Washington Constitution prohibit warrantless searches unless an exception applies. *State v. Weller*, 185 Wn. App. 913, 922, 344 P.3d 695, *review denied*, 183 Wn.2d 1010 (2015). The

State has the burden of showing that an exception to the warrant requirement applies by clear and convincing evidence. *State v. Green*, 177 Wn. App. 332, 340, 312 P.3d 669 (2013).

One exception to the warrant requirement is when the police obtain voluntary consent while conducting a knock and talk. *State v. Khounvichai*, 149 Wn.2d 557, 562, 69 P.3d 862 (2003). When the police use this procedure, they must inform the resident of his constitutional rights by giving what are commonly referred to as *Ferrier* warnings: that he may lawfully refuse to give consent, revoke that consent at any time, and limit the scope of that consent to particular areas of the residence. *State v. Ferrier*, 136 Wn.2d 103, 118, 960 P.2d 927 (1998). Significantly, the officers must give these warnings before entering the home. *State v. Budd*, No. 91529-6, 2016 WL 2910207, at *3 (Wash. May 19, 2016).

Even if officers properly provide *Ferrier* warnings before conducting a search, the State still must show that the defendant's consent to search was voluntary. *State v. Monaghan*, 165 Wn. App. 782, 789, 266 P.3d 222 (2012). For consent to be valid, a person with authority to consent must do so freely and voluntarily. *Id.*

2. Standard of Review

When reviewing a trial court's findings of fact and conclusions of law on a motion to suppress evidence, we determine whether substantial evidence supports the findings of fact and whether those findings of fact support the conclusions of law. *State v. Russell*, 180 Wn.2d 860, 866, 330 P.3d 151 (2014). Substantial evidence is evidence that is sufficient to persuade a fair-minded person of the truth of the stated premise. *Id.* at 866-67. We treat unchallenged findings of fact from a suppression hearing as verities on appeal. *State v. Homan*, 181 Wn.2d 102, 106, 330 P.3d 182 (2014). We review conclusions of law de novo. *Id.* at 867.

3. Providing *Ferrier* Warnings Before Entering the Barn

Johnson claims that the State failed to prove with clear and convincing evidence that the police gave him *Ferrier* warnings before they entered the barn. We disagree.

a. Failure to Enter Express Finding

Johnson argues that the trial court did not enter a finding of fact expressly stating that the officers gave Johnson the *Ferrier* warnings before entering the barn. He claims that without such an express finding, the State cannot satisfy its burden of proving that the officers gave the *Ferrier* warnings before entering the barn.

The trial court entered the following findings of fact that relate to whether the officers entered the barn before they gave the *Ferrier* warnings:

> 6. When nobody responded to their presence, Officers Haggerty and Withrow approached the garage and were able to summon Johnson from within.
>
> 7. Johnson was asked to step outside, which he complied. While outside the barn, Johnson was informed of why law enforcement was contacting him.
> . . . .
>
> 15. . . . . The Ferrier warnings were reviewed with Johnson, and consent was granted while outside the trailer and barn area.
> . . . .
>
> 18. Once permission was granted, Officer Haggerty and Withrow, along with Johnson entered the barn area.

CP at 29-30.

Finding of fact 6 states that the officers "approached" the garage. CP at 29. Approaching the garage is different than entering it, and use of that word indicates that the officers did not go into the barn. Finding of fact 6 also states that the officers summoned Johnson "from within," CP at 29, and finding of fact 7 states that Johnson was asked to step outside the barn. These

findings indicate that Johnson was inside the barn and the officers drew him outside with them. Finally, finding of fact 18 states that the officers entered the barn after permission was granted. This finding implies that they had not entered the barn before speaking with Johnson.

The trial court's findings could have been more explicit. But we hold that these findings are sufficient to establish that the officers did not enter the barn until after they gave Johnson the *Ferrier* warnings.

b. Substantial Evidence

Johnson assigns error to finding of fact 6 to the extent that it suggests that the officers did not enter the barn until they had provided Ferrier warnings. He argues that there was conflicting testimony at the suppression hearing about whether the officers entered the barn when they were calling for Johnson to come out.

Johnson is correct that some witnesses testified that officers entered the barn before providing *Ferrier* warnings. Johnson himself testified that the officers walked into and through the barn before contacting him. Haggerty testified that the officers walked into the barn before yelling for Johnson. Hamilton testified that she saw the officers get out of their vehicle and enter the barn through the tack room.

However, the other two officers testified that nobody went inside the barn before *Ferrier* warnings were given. Withrow testified that they contacted Johnson outside the barn. He said they knocked on the door and asked him to come out. During cross examination, defense counsel asked Withrow, "So if you didn't go into the barn, how did you get Mr. Johnson out?" Report of Proceedings (RP) (3/19/2015) at 38. Withrow responded, "Knocked on the outside and asked and he just came out." RP (3/19/2015) at 38. Kimsey explained that the officers

called out to Johnson as they were approaching the barn and Johnson came out. Defense counsel asked during cross-examination whether the officers went into the barn and Kimsey responded, "No, not that I saw. . . . I remember him coming out to the doors of the barn." RP (3/19/2015) at 52.

As noted above, we examine challenged findings of fact to determine if substantial evidence in the record supports them. *Russell*, 180 Wn.2d at 866. Here, Withrow's and Kimsey's testimony supported finding of fact 6. Although there was conflicting testimony, the trial court considered all the testimony and entered finding of fact 6.[3] We do not second guess the trial court's resolution of conflicts in the evidence. *See Homan*, 181 Wn.2d at 106.

We hold that substantial evidence supported the trial court's finding of fact that the officers did not enter the barn until after they had given Johnson the *Ferrier* warnings.

3. Voluntary Consent

Johnson argues that the trial court erred in finding that he voluntarily consented to the search of his trailer. He argues that the surrounding circumstances were too coercive to support such a finding. We disagree.

The trial court entered a conclusion of law that Johnson's consent to search was voluntary. We employ a totality of the circumstances test to determine whether a defendant voluntarily consented. *State v. Ruem*, 179 Wn.2d 195, 207, 313 P.3d 1156 (2013). We consider

[3] At the sentencing hearing, Johnson objected to finding of fact 6, stating: "We had mixed testimony, one where they went in and got him, one where they said they stayed out and he came to them." RP (4/1/2015) at 6. The trial court responded, "Well, just because there was conflicting testimony, that doesn't mean that the Court can't make a finding. That's what the Court does." RP (4/1/2015) at 6.

(1) the education and intelligence of the consenting person; (2) whether *Miranda*[4] warnings, if applicable, were given prior to consent; and (3) whether the consenting person was advised of his right not to consent. *Id.* Although these three factors are essential to the consent analysis, no single factor is determinative and we consider other relevant facts such as coercive tactics. *State v. Dancer*, 174 Wn. App. 666, 676, 300 P.3d 475 (2013).

Here, the *Ruem* factors were met. First, Johnson had a 12th grade education and Haggerty presumably assumed from this that Johnson could read and write. While it appeared to Haggerty that it took Johnson longer than usual to read the consent form, Johnson gave no indication that he could not read it or understand it. Second, Haggerty did not give *Miranda* warnings because they were not applicable as Johnson was not under arrest. And third, Haggerty informed Johnson both in writing and verbally that he had the right to refuse consent.

Johnson argues that the other circumstances were coercive. He notes that it was a dark night, multiple officers approached the barn, and the officers were persistent even though he indicated his preference to be left alone. He claims the officers made a thinly veiled threat to arrest and jail him by stating that if he cooperated, he could sleep in his own bed that night. And he argues that the threat involved deception because in actuality the officers were out of their primary jurisdiction and lacked authority to arrest him.

We disagree that these facts undermine the voluntariness of Johnson's consent. Although Johnson was approached by three officers, the trial court found that Haggerty was the only officer communicating directly with Johnson. Withrow remained in the background as did Kimsey, who had left the scene during the time Johnson consented. Further, there was ample

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

testimony that the situation was not coercive. Haggerty, Withrow, and Kimsey testified that the conversations with Johnson were low-key, casual, cordial, and not threatening. Finally, given the tone of the communications, we do not regard Haggerty's statement about sleeping in his own bed that night as a threat that could unlawfully coerce Johnson into consenting to a search. *See State v. Trout*, 125 Wn. App. 403, 414-16, 105 P.3d 69 (2005) (implied promise of lenient treatment did not render confession involuntary).

We hold that substantial evidence supports the trial court's finding that Johnson freely, intelligently, and voluntarily consented to the search of his trailer.

B. SAG ASSERTIONS

Johnson makes two assertions of error in his SAG. First, Johnson asserts that the two Centralia officers had no jurisdiction in rural Cowlitz County to obtain his consent to search because Kimsey had left the scene when he signed the consent form. We disagree.

Johnson did not challenge the police officers' authority to obtain his consent below. Therefore, the record is inadequate to determine whether the officers acted lawfully under Title 10.93 RCW or some other mutual agency agreement. Generally, a party's failure to raise an issue at trial waives the issue on appeal unless the party can show the presence of a manifest error affecting a constitutional right. *State v. Robinson*, 171 Wn.2d 292, 304, 253 P.3d 84 (2011); RAP 2.5(a). Johnson neither preserved this claim nor makes an adequate showing of manifest constitutional error. Therefore, we do not address this assertion.

Second, Johnson asserts that when an officer conducts a knock and talk, it is unlawful to enter any areas of the property other than the residence. We disagree.

An officer may approach a residence by entering the curtilage that is impliedly open to the public. *State v. Seagull*, 95 Wn.2d 898, 902, 632 P.2d 44 (1981); *State v. Ague-Masters*, 138 Wn. App. 86, 98, 156 P.3d 265 (2007). A curtilage area includes an access route to a house such as a driveway or walkway leading to a residence, or the porch of the residence itself. *State v. Ferro*, 64 Wn. App. 181, 183, 824 P.2d 500 (1992). Here, the officers knew that Johnson lived in the barn, not in the adjacent residence, and therefore approached his home directly from the driveway. We reject Johnson's assertion.

CONCLUSION

We affirm Johnson's convictions.

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

MAXA, J.

We concur:

JOHANSON, J.

BJORGEN, C.J.

LISA E TABBUT LAW OFFICE

October 02, 2016 - 8:41 PM

Transmittal Letter

Document Uploaded: 3-474255-Petition for Review.pdf

Case Name: State v. Jeffrey Johnson
Court of Appeals Case Number: 47425-5

Is this a Personal Restraint Petition? Yes ■ No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: ____

Answer/Reply to Motion: ____

Brief: ____

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: ____
Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

■ Petition for Review (PRV)

Other: _____

Comments:

indigent petitioner/appellant

Sender Name: Lisa E Tabbut - Email: ltabbutlaw@gmail.com

A copy of this document has been emailed to the following addresses:

appeals@lewiscountywa.gov

LISA E TABBUT LAW OFFICE

October 03, 2016 - 7:23 AM

Transmittal Letter

Document Uploaded: 3-474255-Petition for Review.pdf

Case Name: State v. Jeffrey Johnson
Court of Appeals Case Number: 47425-5

Is this a Personal Restraint Petition? Yes ■ No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: ____

Answer/Reply to Motion: ____

Brief: ____

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: ____
Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

■ Petition for Review (PRV)

Other: _____

Comments:

No Comments were entered.

Sender Name: Lisa E Tabbut - Email: ltabbutlaw@gmail.com

A copy of this document has been emailed to the following addresses:

appeals@lewiscountywa.gov
sara.beigh@lewiscountywa.gov