

FILED
Court of Appeals
Division II
State of Washington
4/9/2021 10:58 AM

FILED
SUPREME COURT
STATE OF WASHINGTON
4/9/2021
BY SUSAN L. CARLSON
CLERK

No. 99655-5

IN THE SUPREME COURT OF THE
STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

RUSSELL ARTHUR MARTIN,

Petitioner.

PETITION FOR REVIEW

Court of Appeals No. 53447-9-II
Appeal from the Superior Court of Pierce County
Superior Court Cause Number 17-1-01043-1
The Honorable Michael Schwartz, Judge

STEPHANIE C. CUNNINGHAM
Attorney for Petitioner
WSBA No. 26436

4616 25th Avenue NE, No. 552
Seattle, Washington 98105
Phone (206) 526-5001

TABLE OF CONTENTS

I.	IDENTITY OF PETITIONER	1
II.	COURT OF APPEALS DECISION	1
III.	ISSUES PRESENTED FOR REVIEW.....	1
IV.	STATEMENT OF THE CASE	1
V.	ARGUMENT & AUTHORITIES	6
VI.	CONCLUSION	15

TABLE OF AUTHORITIES

CASES

<i>State v. Broadaway</i> , 133 Wn.2d 118, 942 P.2d 363 (1997)	8
<i>State v. Cardenas</i> , 146 Wn.2d 400, 47 P.3d 127, 57 P.3d 1156 (2002).....	9
<i>State v. Hill</i> , 123 Wn.2d 641, 870 P.2d 313 (1994).....	8
<i>State v. Johnson</i> , 128 Wn.2d 431, 909 P.2d 293 (1996)	8
<i>State v. Ladson</i> , 138 Wn.2d 343, 979 P.2d 833 (1999)	14
<i>State v. Smith</i> , 165 Wn.2d 511, 199 P.3d 386 (2009).....	7, 8, 9
<i>State v. Tibbies</i> , 169 Wn.2d 364, 236 P.3d 885 (2010)	9

OTHER AUTHORITIES

RAP 13.4	7
U.S. Const. amend. IV	7
Wash. Const. Art. I, § 7	7

I. IDENTITY OF PETITIONER

The Petitioner is Russell Arthur Martin, Defendant and Appellant in the case below.

II. COURT OF APPEALS DECISION

Petitioner seeks review of the unpublished opinion of the Court of Appeals, Division 2, case number 53447-9, which was filed on March 23, 2021. (Attached in Appendix) The Court of Appeals affirmed the conviction entered against Petitioner in the Pierce County Superior Court.

III. ISSUES PRESENTED FOR REVIEW

1. Were there sufficient facts presented at the CrR 3.6 hearing to support the trial court's determination that the warrantless entry into Russell Martin's trailer was necessary for officer safety reasons, where there was no indication that Martin could escape capture, where the Deputy's interactions with Martin before entering the trailer were calm and nonthreatening, where there were at least a dozen officers on the scene to provide backup to the Deputy, and where the Deputy testified that the most dangerous location he could have been in was actually located inside the trailer?
2. Should the trial court have granted Russell Martin's CrR 3.6 motion to suppress the evidence collected during the execution of a search warrant for the trailer, where the items that provided probable cause for the warrant were only discovered after the Deputy conducted an unjustified warrantless entry into the trailer?

IV. STATEMENT OF THE CASE

Based on information provided by a confidential informant

(CI), Pierce County Sheriff's Deputy Robert Tjossem sought a warrant to search a residence belonging to Russell Martin. (10/23/18 RP 24; CP 41-45, 46-47)¹ According to Deputy Tjossem, a "reliable" CI participated in two successful controlled drug buys and provided information that lead to the successful seizure of controlled substances and to charges being filed against several individuals. (CP 43)

The CI had recently provided information that Russell Martin was selling controlled substances from his residence. (CP 43) The CI told Deputy Tjossem that they had recently been inside Martin's house and had seen Martin weigh and sell a large amount of heroin, and saw that Martin had a firearm. (CP 44) The reviewing magistrate signed the search warrant, permitting law enforcement to search Martin's house and his person for controlled substances, weapons, and evidence of a drug distribution operation. (10/23/18 RP 24; CP 46-47)

Deputy Tjossem and about a dozen other members of the Special Investigations Unit arrived at Martin's property around 6:00 AM on March 10, 2017, to execute the warrant. (10/23/18 RP 22,

¹ All transcripts will be referred to by the date of the proceeding contained therein.

25, 42; CP 220) While the other officers focused their attention on the house, Deputy Tjossem walked the perimeter and noticed a fifth wheel trailer parked in the driveway about 10 feet from the house. (10/23/18 RP 24, 26) As he walked between the house and the trailer, Deputy Tjossem heard multiple voices and banging sounds coming from inside the trailer. (10/23/18 RP 26) A man opened the door and looked outside. (10/23/18 RP 27) Deputy Tjossem ordered the man to go back inside, and the man complied. (10/23/18 RP 27) Deputy Tjossem then realized the man was Russell Martin. (10/23/18 RP 28)

Deputy Tjossem testified that he was concerned for his safety because he knew there were at least two people inside the trailer, and knew that the confidential informant had reported seeing Martin with a firearm. (10/23/18 RP 29) He did not know if the people inside might be arming themselves. (10/23/18 RP 29) So he called to the other officers and requested backup. (10/23/18 RP 29)

Sergeant Paul Schneider arrived shortly after. (10/23/18 RP 65) Deputy Tjossem then knocked on the trailer door and Martin answered. (10/23/18 RP 29) Deputy Tjossem entered without drawing his firearm, and took Martin into custody without incident.

(10/23/18 RP 30-31) One by one, Deputy Tjossem ordered the other occupants of the trailer to exit as well. (10/23/18 RP 31)

While he was inside the trailer, Deputy Tjossem saw what appeared to be a methamphetamine smoking device (bong) and a surveillance monitor that showed the driveway and approach to the residence and trailer. (10/23/18 RP 29; CP 220) Based on these new observations, Deputy Tjossem sought and obtained a second search warrant for the trailer. (CP 48-53)

Upon searching the trailer, officers found several packages of what they believed were controlled substances, a large amount of cash, packaging materials and a digital scale, multiple cellular telephones, a ledger with notes and dollar amounts, and five operable firearms. (03/11/19 RP 549, 551-55, 568-69, 571, 589-90, 595-96; 03/12/19 RP 617-18, 620, 622, 623, 634-35, 643-44, 646, 682, 683, 685, 700, 704, 722, 724, 726, 743, 747) Martin also had \$2,700.00 in cash in his pocket. (03/11/19 RP 503) The officers did not find any contraband inside the house. (10/23/18 RP 29 51; CP 222)

The State charged Martin with two counts of unlawful possession of a controlled substance with intent to deliver (count 1 heroin and count 2 methamphetamine). (CP 3-6) The State

alleged that Martin was armed with a firearm when he committed these crimes, and that both crimes were major violations of the uniform controlled substances act. (CP 3-6) The State also charged Martin with five counts of unlawful possession of a firearm. (CP 3-6)

Martin moved to suppress the items collected during the search of the trailer, arguing that no exigency existed and that the original search warrant for the house was invalid because Deputy Tjossem failed to inform the magistrate of the CI's multiple convictions for crimes of dishonesty. (CP 27-40) The trial court found that the facts presented a "close case," but ultimately denied the motion. (10/23/18 RP 79, 83-84, 93-94, 96-110; CP 218-226)

After viewing the previously undisclosed surveillance video showing Deputy Tjossem's initial approach and entry into the trailer, and another Deputy's subsequent entry while waiting for the second search warrant, Martin moved the court to reconsider its decision. (Exh. 8; CP 154-207) The trial court again denied the motion and declined to suppress the evidence. (02/26/19 RP 270-74; CP 226-31)

At trial, the State presented testimony that the substances located in the trailer were tested and determined to contain heroin

and methamphetamine. (03/12/19 RP 713-18) The five firearms were tested and found to be operable. (03/12/19 RP 672-75) Martin also stipulated that he had a prior conviction and as a result was forbidden from possessing a firearm. (03/13/19 RP 809-10)

The officers testified that the large amount of drugs was inconsistent with personal use, and that the large amount of cash, the digital scale, multiple cellular telephones, and packaging materials were all consistent with a drug distribution operation. (03/11/19 RP 569; 03/12/19 RP 624, 628-29, 647-48, 650-51, 724, 755)

A jury convicted Martin as charged. (03/14/19 RP 887-90; CP 316-26) The jury also found that Martin was armed with each of the five different firearms when he committed the two possession of a controlled substance crimes. (CP 317-18, 320-21) The trial court imposed a term of confinement totaling 262 months. (03/19/19 RP 917; CP 369) Martin filed a timely Notice of Appeal. (CP 367) The Court of Appeals affirmed Martin's conviction and sentence.

V. ARGUMENT & AUTHORITIES

The issues raised by Russell Martin's petition should be addressed by this Court because the Court of Appeals' decision conflicts with settled case law of the Court of Appeals, this Court

and of the United State's Supreme Court. RAP 13.4(b)(1) and (2).

The original warrant allowed the officers to search Martin's house. (CP 46-47) Deputy Tjossem obtained a second warrant to search the trailer only because he observed the meth bong and surveillance monitor after he entered the trailer to seize Martin. (CP 48-53) The trial court incorrectly found that Deputy Tjossem was reasonably justified in entering the trailer without a search warrant. The evidence did not establish that exigent circumstances existed.²

The United States and Washington Constitutions prohibit most warrantless searches of homes. *State v. Smith*, 165 Wn.2d 511, 517, 199 P.3d 386 (2009).³ Police may only search without a warrant under one of the "few jealously and carefully drawn exceptions to the warrant requirement." *Smith*, 165 Wn.2d at 517 (quoting *State v. Kinzy*, 141 Wn.2d 373, 384, 5 P.3d 668 (2000)). The State bears the burden of proving that any warrantless search

² The trial court also found that the entry was permitted in order to execute an arrest warrant. On appeal Martin argued, and the Court of Appeals agreed, "that the trial court mistakenly found that the initial search warrant for Martin was an arrest warrant when it authorized only a search of the residence and Martin's person." (Opinion at 6)

³ U.S. Const. amend. IV ("The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated."); Wash. Const. Art. I, § 7 ("No person shall be disturbed in his private affairs, or his home invaded, without authority of law.").

fits within one of these exceptions. *Smith*. 165 Wn.2d at 517.

On appeal of a denial of a motion to suppress evidence based on an improper warrantless search, the superior court's factual findings are reviewed for substantial evidence. *State v. Broadaway*, 133 Wn.2d 118, 130, 942 P.2d 363 (1997). Evidence is substantial if "there is a sufficient quantity of evidence in the record to persuade a fair-minded, rational person of the truth of the finding." *State v. Hill*, 123 Wn.2d 641, 644, 870 P.2d 313 (1994). The trial court's legal conclusions are reviewed de novo. *State v. Johnson*, 128 Wn.2d 431, 443, 909 P.2d 293 (1996).

The trial court concluded that Deputy Tjossem's entry was permissible under the exigent circumstances exception to the warrant requirement. (CP 224; 10/23/18 RP 83-84) The trial court concluded that Deputy Tjossem "had concerns that Russell Martin or one of the other occupants might be able to access a weapon and surprise the officers," and that "it makes sense he wanted to see the other occupants inside the trailer for officer safety reasons." (CP 224, 229) However, the facts do not support the trial court's conclusions, so the Court of Appeals erred when it found that "that Deputy Tjossem initially entered Martin's trailer based on exigent circumstances." (Opinion at 9)

Under the exigent circumstances exception, police may conduct a warrantless search when exigent circumstances justify the search. *State v. Cardenas*, 146 Wn.2d 400, 405, 47 P.3d 127, 57 P.3d 1156 (2002). “The rationale behind the exigent circumstances exception ‘is to permit a warrantless search where the circumstances are such that obtaining a warrant is not practical because the delay inherent in securing a warrant would compromise officer safety, facilitate escape or permit the destruction of evidence.’” *Smith*, 165 Wn.2d at 517 (quoting *State v. Audley*, 77 Wn. App. 897, 907, 894 P.2d 1359 (1995)). Danger to the arresting officer or to the public can present an exigent circumstance. *State v. Tibbies*, 169 Wn.2d 364, 370, 236 P.3d 885 (2010) (quoting *State v. Counts*, 99 Wn.2d 54, 60, 659 P.2d 1087 (1983)).

In determining whether exigent circumstances exist, courts consider the totality of the situation in which the circumstance arose. *Smith*, 165 Wn.2d at 518. Six nonexclusive factors guide this analysis:

- (1) the gravity or violent nature of the offense with which the suspect is to be charged;
- (2) whether the suspect is reasonably believed to be armed;
- (3) whether there is reasonably trustworthy information that the suspect is guilty;
- (4) there is strong reason to

believe that the suspect is on the premises; (5) a likelihood that the suspect will escape if not swiftly apprehended; and (6) the entry [can be] made peaceably.

Cardenas, 146 Wn.2d at 406. “[I]t is not necessary that every factor be met to find exigent circumstances, only that the factors are sufficient to show that the officers needed to act quickly.”

Cardenas, 146 Wn.2d at 408.

Here, the trial court addressed the six factors in its written

Findings of Fact:

13. ...Deputy Tjossem does not indicate whether he believes that Mr. Martin was armed. But the court needs to take into consideration that there was a search warrant which was signed based on reliable information by an informant that Mr. Martin had access to weapons.

14. From the facts that Deputy Tjossem reasonably understood, there was more than one person inside the trailer.... Given the entry way into the trailer was small enough that the ability of Mr. Martin to grab a weapon which at the time was unseen by the Deputy, is always an issue in these types of cases.

15. There was reasonably trustworthy information that the suspect was guilty....

16. Mr. Martin was on the premises and the Deputy saw him.

17. Mr. Martin was not likely to escape because of the number of Officers present and where he was positioned in the threshold of the fifth wheel trailer.

18. This was not a grave offense.

19. Entry into the fifth wheel trailer was peaceable as there were no guns drawn, no evidence

of threats, and Mr. Martin was cooperative.

(CP 221-22) The trial court thus found that four of the six factors were met.

However, considering the totality of the situation in this case, these four factors are insufficient to show that Deputy Tjossem “needed to act quickly.” *Cardenas*, 146 Wn.2d at 408. The idea that Deputy Tjossem needed to enter the trailer for his own or other officers’ safety is contradicted by his testimony and also defies logic.

Deputy Tjossem testified that Martin opened the door and looked outside, then complied with Tjossem’s command to go back inside. (10/23/19 RP 27) Then Deputy Tjossem stood next to the trailer and waited for backup to arrive. (10/23/19 RP 28-29) Later, when Tjossem knocked on the door, Martin opened it and submissively stepped back to allow Tjossem to enter. (10/23/19 RP 29; CP 221) There was “no evidence of threats, and Mr. Martin was cooperative.” (CP 222) Martin was non-combative and non-threatening, and gave Deputy Tjossem no reason to believe he posed any danger to the Deputy’s safety.

Deputy Tjossem also testified that he was concerned because he was outnumbered and did not know if the occupants

were arming themselves. (10/23/18 RP 29) But there were at least a dozen other highly trained officers on the scene that were available as backup. (10/23/19 RP 42; CP 220) And if Deputy Tjossem believed the occupants had armed themselves, it seems illogical that he would choose to enter into the small confined trailer to confront them.

Deputy Tjossem also testified that he moved through the entryway and into the main part of the trailer (where he observed the meth bong) because he did not want to be stuck “standing in the fatal funnel,” which he explained is the narrow, confined entryway into the main living area of the trailer that is “a bad place to be in if there is going to be a gun fight.” (10/23/18 RP 53-54; CP 220) But Deputy Tjossem would not have been in the “fatal funnel” if he had not chosen to enter the trailer, and had instead taken cover outside and ordered the occupants to exit.

The facts simply do not show that Deputy Tjossem needed to act quickly and enter the trailer in order to protect himself or the other officers from harm. The trial judge said it best when, after hearing testimony and viewing the surveillance video, he states:

The whole issue about officer safety has to be based on particularized facts. Okay. An officer can't just say, “I did this for officer safety reasons,” without

some facts. When you watch the video, he doesn't have his service weapon drawn. He has nobody, nobody at all, despite the fact that there is a tactical squad present covering the windows and peering in the windows. Okay. The evidence didn't demonstrate that there was any commands given to anybody inside, okay. There is nothing from the evidence indicating here that Mr. Martin was uncooperative. In fact, Mr. Martin answered the door first, was told to go back inside, again, that's contrary to any notions of officer safety, and then knocked or announced the second time. He comes to the door a second time, okay, he still -- there is no indication that he has a weapon, or that he wants -- or that he is attempting to flee, or that he is being combative, or anything else.

Here is the other thing. Okay. This whole argument about not stepping into the threshold because that's the fatal funnel, because there is nowhere to move. Your officer is incorrect. He actually stepped into the fatal funnel. He stepped into an enclosed area and where he stepped there was no escape. If he remains outside of the trailer, there are plenty of places for him to take cover and also draw his weapon.

And so Mr. [Prosecutor], with all due respect, the officer safety issue is not one that I think is well demonstrated by the facts here thus far[.]

(10/23/18 RP 67-68)

But then, when the trial court makes its final ruling on the motion to suppress, the judge inexplicably finds that an exigency did exist because Deputy Tjossem "wants to be able to see the other occupants, and from an officer's safety standpoint that makes sense." (10/23/18 RP 83) But the judge's initial reasoning was

correct because “the officer safety issue is not ... well demonstrated by the facts[.]” (10/23/18 RP 67-68) Deputy Tjossem did not need to enter the trailer to ensure his safety or to see the occupants of the trailer, when he could have instead called for additional backup and ordered the occupants to exit.

The trial court’s conclusion that Deputy Tjossem’s warrantless entry into the trailer was justified is not supported by the facts. Deputy Tjossem violated Martin’s constitutional privacy rights when he entered without a warrant and where no valid exception to the warrant requirement existed. When an unconstitutional search occurs, all subsequently uncovered evidence becomes fruit of the poisonous tree and must be suppressed. *State v. Ladson*, 138 Wn.2d 343, 359, 979 P.2d 833 (1999) (citing *State v. Kennedy*, 107 Wn.2d 1, 4, 726 P.2d 445 (1986)).

Any evidence discovered as a result of Deputy Tjossem’s entry into the trailer is fruit of the poisonous tree, and should not have been used to obtain the second warrant to search the trailer. Any evidence discovered during the search of the trailer is also fruit of the poisonous tree, and should have been suppressed.

VI. CONCLUSION

There were insufficient facts to warrant a conclusion that entry into the trailer was necessary to protect Deputy Tjossem's safety. Deputy Tjossem did not have legal authority to enter the trailer. Everything he saw after he entered the trailer, and all evidence gathered as a result of the subsequent search of the trailer, is fruit of the poisons tree. All of this evidence must be suppressed. This Court should accept review, reverse Martin's convictions, and remand for a new trial.

DATED: April 9, 2021



STEPHANIE C. CUNNINGHAM, WSB #26436
Attorney for Petitioner Russell Arthur Martin

CERTIFICATE OF MAILING

I certify that on 04/09/2021, I caused to be placed in the mails of the United States, first class postage pre-paid, a copy of this document addressed to: Russell Arthur Martin, DOC# 878521, Washington Corrections Center, P.O. Box 900, Shelton, WA 98584.



STEPHANIE C. CUNNINGHAM, WSBA #26436

APPENDIX

Court of Appeals Opinion in *State v. Russell Arthur Martin*, No. 53447-9-II

March 23, 2021

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

RUSSELL ARTHUR MARTIN,

Appellant.

No. 53447-9-II

UNPUBLISHED OPINION

SUTTON, A.C.J. — Russell A. Martin appeals his convictions for two counts of unlawful possession of a controlled substance with intent to deliver and five counts of unlawful possession of a firearm in the second degree, all with aggravating factors. Russell argues that the trial court erred by denying his CrR 3.6 motion to suppress and his motion to reconsider. Martin repeats this claim in his statement of additional grounds (SAG). We hold that the trial court did not err and affirm.

FACTS

I. BACKGROUND HISTORY

On March 3, 2017, Pierce County Sheriff Deputy R. Vance Tjossem was granted a search warrant for a residence in unincorporated Pierce County. Deputy Tjossem requested the warrant based on a confidential informant's (CI) observations after he or she conducted two recent controlled buys with Martin at this residence. The CI informed Deputy Tjossem that while inside

the residence, he or she saw Martin weighing a large amount of heroin with a black handgun next to Martin. The search warrant authorized a search of Martin's residence and his person for controlled substances, weapons, and evidence of a drug distribution operation.

Deputy Tjossem and about one dozen other members of the Special Investigations Unit arrived at the property to execute the search warrant at 5:53 am on March 10, 2017. While other deputies searched the residence, Deputy Tjossem walked the perimeter and noticed a fifth wheeler trailer sitting on the property about 10 to 15 feet from the residence. This trailer was not named in the search warrant.

As he walked between the house and the trailer, Deputy Tjossem "could hear a male and female voice yelling inside the fifth wheel and [he] could hear items banging and things being thrown." Verbatim Report of Proceedings (VRP) (Oct. 23, 2018) at 26. At that time, Deputy Tjossem was alone in the backyard. When a man opened the door of the fifth wheel trailer, Deputy Tjossem ordered "him to go back inside." VRP (Oct. 23, 2018) at 27. Deputy Tjossem then realized that the man was Martin.

Deputy Tjossem was concerned for his safety because he knew there were at least two people inside the trailer, and he knew from the CI that Martin may be armed. Deputy Tjossem later testified that he was "not going to sit there with an unknown number of people inside after hearing what [he] heard. . . . I had the exigency to the warrant requirement to enter the trailer and secure it for a search warrant and take Mr. Martin into custody." VRP (Oct. 23, 2018) at 58. At that point it was unknown "if people are arming themselves, if they are destroying evidence, there [are] so many unknowns and it's a huge officer safety issue." VRP (Oct. 23, 2018) at 29. "[D]rugs and guns go hand in hand. . . . You couldn't leave [the occupants] in there. They could destroy

evidence. They could arm themselves, all of those safety concerns, evidentiary concerns.” VRP (Mar. 11, 2019) at 539-40.

Deputy Tjossem then called other officers and requested backup. Shortly thereafter, Sergeant Paul Schneider arrived to provide backup. Deputy Tjossem knocked on the door of the trailer, Martin opened the door and stepped back into the trailer’s threshold. Deputy Tjossem was concerned that Martin was advancing toward some type of weapon, so he entered the trailer to take Martin into custody. Deputy Tjossem handcuffed Martin and handed him to Sergeant Schneider who was outside at the base of the stairs to the trailer.

Once Deputy Tjossem was inside the trailer, he noticed a methamphetamine smoking device—a bong—sitting on a table, as well as a video surveillance system that showed the driveway and approach to the residence and trailer. The bong had black and white residue on it consistent with having been used to smoke methamphetamine. Deputy Tjossem also found three other individuals inside the trailer, who were taken into custody.

Deputy Tjossem interviewed Martin, who confirmed that he owned the trailer and he allowed people on the property to use it. Based on his observations of the methamphetamine bong and the surveillance system, Deputy Tjossem applied for and was granted a second search warrant specifically for drugs and firearms inside the trailer.

Upon executing the warrant to search the trailer, officers found over 3.5 pounds of heroin, over \$30,000 in cash, numerous scales, multiple cell phones, Ziploc bags, two safes, a ledger with notes and dollar amounts, and five operable firearms. On Martin’s person, officers discovered \$2,700 in cash in his pocket.

II. PROCEDURAL HISTORY

The State charged Martin with two counts of unlawful possession of a controlled substance with intent to deliver, with aggravating factors that Martin was armed with a firearm when he committed these crimes and that both crimes were major violations of the Uniform Controlled Substances Act,¹ and five counts of unlawful possession of a firearm in the second degree.

Martin moved to suppress the evidence found during the search of the trailer. He argued that exigent circumstances did not exist to justify Deputy Tjossem's entry into the trailer when the search warrant was only for the residence and for himself, and that Deputy Tjossem failed to inform the judge of the CI's multiple convictions for crimes of dishonesty. The trial court held a CrR 3.6 hearing, where Deputy Tjossem and Sergeant Schneider testified. The court also viewed a video of Deputy Tjossem's initial approach and entry into the trailer and another video showing his subsequent entry into the trailer while executing a second search warrant.

The court ruled that Deputy Tjossem had authority by the search warrant to enter the trailer:

That warrant gave [Deputy Tjossem] the authority to seize [Martin's] person, that's an arrest, and search him, okay. The fact that it didn't say arrest warrant, there is also – it's clear also, and I don't know if you dispute that, that [the deputy] had probable cause even without the warrant to arrest [Martin], because [there is] a reliable informant say[ing] [they] watched [Martin] deal drugs. That amounts to probable cause. And whether he gets a conviction for that, that's not the issue. But [the deputy] did have a warrant to seize the person of [] Martin and search him for drugs, as well as other evidence. That's an arrest.

VRP (Oct. 23, 2018) at 78. The court also ruled that exigent circumstances existed to justify the intrusion “in accordance with the warrant.” VRP (Oct. 23, 2018) at 84.

¹ Ch. 69.50 RCW.

The court entered written findings of fact and conclusions of law consistent with its oral ruling denying the motion. Finding of fact 11 stated, “The warrant in Exhibit A was also an arrest warrant to seize Mr. Martin and search his person.” Clerk’s Papers (CP) at 221.

Martin later filed a motion to reopen the previous motion to suppress,² arguing that there was new evidence that supported suppression. The court held a hearing where, again, Deputy Tjossem and Sergeant Schneider testified, as did three other police officers. The court orally denied Martin’s motion for the same reasons it denied his first motion. The court again entered written findings of fact and conclusions of law consistent with its oral ruling. In denying reconsideration, the court entered finding of fact 4, which stated, “Deputy Tjossem knocked on the trailer door and then entered the trailer to arrest Russell Martin pursuant to the warrant.” CP at 227.³

Trial began on March 7, 2019. The officers testified consistent with the above stated facts. The jury found Martin guilty of all charges and all aggravating factors. The court sentenced Martin to 262 months in prison and 12 months of community custody.

Martin appeals.

² The court treated the motion to reopen as a motion to reconsider the court’s denial of the motion to suppress.

³ In his opening brief, Martin’s cites and quotes to the record do not match regarding finding of fact 4, but it appears that he means to appeal finding of fact 4 of the undisputed facts.

ANALYSIS

I. STANDARD OF REVIEW

We review a trial court's decision on a CrR 3.6 motion to suppress evidence to determine whether substantial evidence support the court's findings of fact and whether those findings support the conclusions of law. *State v. Russell*, 180 Wn.2d 860, 866, 330 P.3d 151 (2014). "Substantial evidence is evidence sufficient to persuade a fair-minded, rational person of the finding's truth." *State v. Stewart*, 12 Wn. App. 2d 236, 240, 457 P.3d 1213 (2020). Unchallenged findings are verities on appeal. *Stewart*, 12 Wn. App. 2d at 240. We review conclusions of law de novo. *Stewart*, 12 Wn. App. 2d at 240. Similarly, whether exigent circumstances exist is a legal question that we review de novo. *State v. Inman*, 2 Wn. App. 2d 281, 290, 409 P.3d 1138 (2018).

II. MOTION TO SUPPRESS

Martin argues that the trial court erred by denying his motions to suppress evidence and reconsider because (1) Deputy Tjossem's entry into the trailer was not justified under the warrant which authorized only a search of Martin's residence and person, and (2) Deputy Tjossem's entry into the trailer was not justified by exigent circumstances. We agree that the trial court mistakenly found that the initial search warrant for Martin was an arrest warrant when it authorized only a search of the residence and Martin's person. But we hold that Deputy Tjossem's initial entry into the trailer was justified by exigent circumstances.

Warrantless searches and seizures are per se unreasonable and in violation of the Fourth Amendment and article 1, section 7 of the Washington State Constitution. *State v. Muhammad*, 194 Wn.2d 577, 596, 451 P.3d 1060 (2019) (plurality opinion). A recognized exception to the

warrant requirement allows a warrantless search or seizure when exigent circumstances exist. *Muhammad*, 194 Wn.2d at 596. The State has the burden of showing exigent circumstances by clear and convincing evidence. *State v. Garvin*, 166 Wn.2d 242, 250, 207 P.3d 1266 (2009).

“The warrant requirements must yield when exigent circumstances demand that police act immediately.” *Muhammad*, 194 Wn.2d at 597. Exigent circumstances exist where “obtaining a warrant is impractical because delay inherent in securing a warrant would compromise officer safety, facilitate escape, or permit destruction of evidence.” *Muhammad*, 194 Wn.2d at 597. A court examines the totality of the circumstances to determine whether exigent circumstances exist. *Muhammad*, 194 Wn.2d at 597.

Six factors further guide our analysis of whether exigent circumstances exist: (1) the gravity or violent nature of the offense with which the suspect is to be charged, (2) whether the suspect is reasonably believed to be armed, (3) whether there is reasonably trustworthy information that the suspect is guilty, (4) a strong reason to believe the suspect is on the premises, (5) a likelihood that the suspect will escape if not quickly apprehended, and (6) entry is made peaceably. Every factor need not be present, but they must show that officers needed to act quickly.

Muhammad, 194 Wn.2d at 597 (internal citation omitted).

“To prove exigent circumstances, the State must ‘point to specific, articulable facts and the reasonable inferences therefrom which justify the intrusion.’” *Muhammad*, 194 Wn.2d at 597 (internal quotations omitted) (quoting *State v. Coyle*, 95 Wn.2d 1, 9, 621 P.2d 1256 (1980)). The particularly requirement is met if the officers are “‘confronted with some sort of contemporaneous sound or activity alerting them to the possible presence of an exigent circumstance.’” *Muhammad*, 194 Wn.2d at 630 (Gordon McCloud, J., opinion) (internal quotation marks omitted) (quoting *Coyle*, 95 Wn.2d at 10). “Police officers are justified in taking reasonable actions to secure their

safety when entering a premise under exigent circumstances.” *State v. Cardenas*, 146 Wn.2d 400, 410, 47 P.3d 127 (2002).

Here, Deputy Tjossem was conducting an investigation of Martin for drug dealing based on reliable information from a CI and believed that Martin had access to firearms. Deputy Tjossem testified that in his experience, firearms are often involved in drug distribution cases, and the CI had informed him that Martin had a firearm.⁴ The court found that “[t]here was a valid warrant based on reliable information from a reliable informant that Mr. Martin had drugs present in the house” and that “Mr. Martin was on the premises and [] Deputy [Tjossem] saw him.” CP at 222.

Significantly, the trial court found that there were officer safety concerns justifying Deputy Tjossem’s need to act quickly. Deputy Tjossem initially approached the trailer because he heard banging and yelling from inside. At that time, he was alone by the trailer. Deputy Tjossem testified that Martin opened the door and looked outside, and that he immediately ordered Martin to go back inside the trailer because Deputy Tjossem believed he was outnumbered and wanted to call for backup.

Deputy Tjossem testified that he had reason to believe the people inside the trailer may be arming themselves or destroying evidence. The court found that “Deputy Tjossem had concerns that Russell Martin[] and the other occupants may have access to firearms and could pose a threat

⁴ The State also argues that exigent circumstances existed based on possible destruction of evidence. Deputy Tjossem testified that he was concerned that the people inside the trailer were destroying evidence. Therefore, although the trial court did not make specific findings about the destruction of evidence, the evidence would have supported a finding of exigent circumstances on this basis as well. *State v. Streepy*, 199 Wn. App. 487, 500, 400 P.3d 339 (2017) (holding that we can affirm on any grounds supported by the record).

to the officers on the scene due to their ability to suddenly access a weapon.” CP at 227. The court also found that:

From the facts that Deputy Tjossem reasonably understood, there was more than one person inside the trailer. Where the [d]eputy was standing outside the trailer all he could see was [] Martin. Given the entry way into the trailer was small enough that the ability of Mr. Martin to grab a weapon which at the time was unseen by the [d]eputy, is always an issue in these types of cases.

CP at 222. Once backup arrived, Deputy Tjossem removed Martin without incident, and then removed the others and secured the trailer.

Based on the record, substantial evidence supports the findings of fact and the findings support the conclusion of law that Deputy Tjossem initially entered Martin’s trailer based on exigent circumstances. Deputy Tjossem had reasonably trustworthy information that Martin was involved in drug distribution and had access to firearms. Deputy Tjossem knew Martin was on the premises because he saw and recognized him. Deputy Tjossem needed to secure Martin and any drugs and firearms Martin had, as authorized by the search warrant. Deputy Tjossem also needed to ensure that no one remained in the trailer who had access to a firearm or who could destroy evidence. Deputy Tjossem was concerned that others in the trailer were arming themselves. Deputy Tjossem’s initial entry into the trailer was done peaceably, and he secured Martin without incident. There were specific and articulable facts to establish that the court correctly concluded that Deputy Tjossem’s intrusion into the trailer was justified by exigent circumstances.

Thus, we hold that Deputy Tjossem’s entry into the trailer was justified due to exigent circumstances.

III. SAG


In his SAG, Martin argues that Sergeant Schneider violated his constitutional right to privacy when he entered the trailer prior to receiving the second search warrant.

A SAG must adequately inform us of the nature and occurrence of alleged errors. *State v. Calvin*, 176 Wn. App. 1, 26, 316 P.3d 496 (2013). We consider only arguments not already adequately addressed as raised by the defendant’s appellate counsel. *State v. Thompson*, 169 Wn. App. 436, 493, 290 P.3d 996 (2012). Martin’s SAG argument has already been raised and thoroughly addressed in his appellate brief. Accordingly, we decline to address his SAG argument.

CONCLUSION


We affirm Martin’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.




SUTTON, A.C.J.

We concur:



MAXA, J.



CRUSER, J.

April 09, 2021 - 10:58 AM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 53447-9
Appellate Court Case Title: State of Washington, Respondent v. Russell Arthur Martin, Appellant
Superior Court Case Number: 17-1-01043-1

The following documents have been uploaded:

- 534479_Petition_for_Review_20210409105654D2159326_1559.pdf
This File Contains:
Petition for Review
The Original File Name was Martin P4R.pdf

A copy of the uploaded files will be sent to:

- PCpatcecf@piercecountywa.gov
- Theodore.Cropley@piercecountywa.gov

Comments:

Sender Name: Stephanie Cunningham - Email: sccattorney@yahoo.com
Address:
4616 25TH AVE NE # 552
SEATTLE, WA, 98105-4183
Phone: 206-526-5001

Note: The Filing Id is 20210409105654D2159326