Supreme Court No. 99894-9
(COA No. 52809-6-II)

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JOSEPH BONOMO,

Petitioner.

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER AND DECISION BELOW

Joseph Bonomo asks this Court to accept review of an opinion affirming his convictions for unlawful possession of a firearm and unlawful possession of a short-barreled shotgun.[1] The Court of Appeals issued the opinion on May 18, 2021. Mr. Bonomo has attached a copy of this opinion to this petition.

B. ISSUES PRESENTED FOR REVIEW

(1) Article I, section 7 forbids the government from searching individuals and their property without a warrant. There are a few narrow, jealously guarded exceptions to article I, section 7's warrant requirement, including the community corrections exception under RCW 9.94A.631. This exception permits searches of an "offender's" car without a warrant. Mr. Bonomo was on community custody when officers detained him for driving without a seatbelt. At the time of this infraction, Mr. Bonomo was driving his girlfriend's car. The officers knew the car belonged to Mr. Bonomo's girlfriend and not Mr. Bonomo, but the officers searched the car per the community corrections exception. However, the community

[1] At a bench trial, the court also convicted Mr. Bonomo of unlawful possession of a controlled substance. Op. at 5. Due to this Court's opinion in *State v. Blake*, 197 Wn.2d 170, 481 P.3d 521 (2021), the Court of Appeals reversed this conviction. Op. at 2.

corrections exception did not apply because the car did not belong to Mr. Bonomo. Consequently, article I, section 7 compelled the court to suppress the evidence the police seized during this unlawful search.

2. Even if the community corrections exception applied, it would only permit a search of the car if there was reasonable cause to believe a probation violation occurred as well as a nexus between the property searched and the alleged violation. Here, the officers did not have reasonable cause to believe Mr. Bonomo committed additional community custody violations beyond being out of county and in possession of a personal use amount of heroin. And there was no particular or specific factual basis supporting a nexus justifying a search of the trunk of the car. The search exceeded the scope of the statutory warrant exception in violation of article I, section 7.

C. STATEMENT OF THE CASE

Mr. Bonomo was driving when Officer Mark Dorn pulled him over for not wearing his seatbelt. CP 4; 12/5/18 RP 15–16. Mr. Bonomo informed Officer Dorn his license was suspended and the car belonged to his girlfriend, Ivy Winget. CP 4; 12/5/18 RP 22, 31. Officer Dorn found Mr. Bonomo was on active Department of Corrections (DOC) supervision in King County. CP 4; 12/5/18 RP 24. Officer Dorn then handcuffed Mr. Bonomo, placed him under arrest for driving with a suspended license,

read him his *Miranda* rights, and sat him on the front of the patrol vehicle. 12/5/18 RP 27–30.

Officer Dorn checked the car's plates and verified Ms. Winget registered the car under her name, as Mr. Bonomo said. 12/5/18 RP 70–72. Mr. Bonomo provided Ms. Winget's phone number to Officer Dorn. 12/5/18 RP 35. Officer Dorn then called Ms. Winget, who confirmed the car belonged to her. 12/5/18 RP 35, 72. However, Officer Dorn did not testify he obtained Ms. Winget's consent to search the car, and the declaration of probable cause contains no details about the phone call. *See* CP 4–5.

Officer Dorn decided to call DOC to the scene to "investigate further." 12/5/18 36–37. Community corrections officers (CCOs) Zachary Johnson and Steven Depoister responded. 12/5/18 RP 37, 87, 114. The CCOs believed Mr. Bonomo was not in compliance with his supervision, the "most glaring issue" being he was "out of county without permission." 12/5/18 RP 95, 116. Although Mr. Bonomo was already under arrest, the CCOs decided "we were also going to arrest him, too" for being out of county. 12/5/18 RP 118.

CCO Johnson performed a pat search of Mr. Bonomo incident to arrest. 12/5/18 RP 103. He discovered "a small amount of heroin" and a hypodermic needle in Mr. Bonomo's pocket. 12/5/18 RP 104; CP 5. CCO

Johnson called a supervisor to ask "for permission to search the vehicle for more violations." 12/5/18 RP 104–105. The CCOs proceeded to search Ms. Winget's car, including the trunk, where they found a short-barreled shotgun. 12/5/18 RP 105–106.

The State charged Mr. Bonomo with unlawful possession of a firearm in the first degree, unlawful possession of a short-barreled shotgun, and unlawful possession of a controlled substance. CP 29–30 (amended information).

Mr. Bonomo opted to waive his right to a jury trial, and the trial court held a suppression hearing simultaneously with the bench trial. 12/5/18 RP 8–10. Mr. Bonomo moved to suppress all evidence on the basis that the traffic stop was pretextual and the search of the car was unlawful. CP 23–26. The trial court denied Mr. Bonomo's motion to suppress, concluding the initial traffic stop was valid, Mr. Bonomo was in violation of his community custody conditions for being out of county, and there was a sufficient nexus to search the trunk of the vehicle after the heroin was found in Mr. Bonomo's pocket. CP 56–59. The court also found Mr. Bonomo guilty on all charges. CP 49–52.

D. ARGUMENT

Contrary to the Court of Appeals' opinion, the community corrections exception to the warrant requirement does not allow the police to search a car that does not belong to an individual on community custody.

"[W]arrentless searches are unreasonable per se" under article I, section 7 of the state constitution. *State v. Hendrickson*, 129 Wn.2d 61, 70, 917 P.2d 563 (1996). There are "a few jealously and carefully drawn exceptions to the warrant requirement which provide for those cases where the societal costs of obtaining a warrant, such as danger to law officers [or] the risk of loss or destruction of evidence, outweigh the reasons for prior recourse to a neutral magistrate." *Id.* (quoting *Arkansas v. Sanders*, 442 U.S. 753, 759, 61 L. Ed. 2d 235, 99 S. Ct. 2586 (1979) (internal quotation marks omitted)). "The burden rests with the State to prove the presence of one of these narrow exceptions." *Id.* at 70 (internal citations and quotation marks omitted).

Here, the State relied on the community corrections warrant exception under RCW 9.94A.631(1): "If there is reasonable cause to believe that an offender has violated a condition or requirement of the sentence, a community corrections officer may require an offender to submit to a search and seizure of the offender's person, residence,

automobile, or other personal property." *See also* CP 11–18 (response to motion to suppress).

Under this statutory warrant exception, "reasonable cause" is akin to the "reasonable suspicion" required for a *Terry* stop, which is defined as a "substantial possibility criminal conduct has occurred" based on "specific and articulable facts and rational inferences." *State v. Parris*, 163 Wn. App. 110, 119, 259 P.3d 331 (2011), *abrogated on other grounds by State v. Cornwell*, 190 Wn.2d 296, 412 P.3d 1265 (2018). There must also be a "nexus between the property searched and the alleged probation violation." *Cornwell*, 190 Wn.2d at 306.

The Court of Appeals erred in upholding the trial court's denial of Mr. Bonomo's motion to suppress for several reasons, First, the car belonged to Ms. Winget, not Mr. Bonomo, and thus did not satisfy the exception to the warrant requirement. Second, no reasonable cause existed to believe Mr. Bonomo violated additional community custody conditions beyond being out of county and possessing a personal use amount of heroin. Third, no nexus existed between a suspected violation and the search of the trunk.

a. There was no probable cause to believe the car belonged to Mr. Bonomo, and thus no authority existed to search it.

"If there is reasonable cause to believe that an offender has violated a condition or requirement of a sentence, a community corrections officer may require an offender to submit to a search and seizure *of the offender's* person, residence, automobile, or *other personal property*." RCW 9.94A.631(1) (emphases added). This statute clearly provides that community corrections officers may search a car without a warrant only if the car *belongs* to a supervised "offender." *See id.*

Contrary to the Court of Appeals' opinion and the State's position, the statute does not permit a search of any car *driven* by a supervised offender. *See* CP 13–14; Op. at 6-9. If that was the legislature's intent, it would have included statutory language to that effect. *See State v. Bacon*, 190 Wn.2d 458, 466–67, 415 P.3d 207 (2018) (statutory omissions "must be considered intentional"); *see also State v. Livingston*, 197 Wn. App. 590, 597 n.11, 389 P.3d 753 (2017) (concluding the legislature could have used different language if it intended to permit a search of "any" property under RCW 9.94A.631(1)).

"[I]f the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent." *State v. Jacobs*, 154 Wn.2d 596, 600, 115 P.3d 281 (2005) (internal

citation and quotation marks omitted), *superceded by statute on other grounds as stated in State v. Conover*, 154 Wn.2d 596, 115 P.3d 281 (2005). Accordingly, this Court must construe the statute to permit a search *only* "of the offender's . . . automobile." RCW 9.94A.631(1). Even if the plain language of the statute were open to another interpretation, the rule of lenity would require this Court to interpret it in Mr. Bonomo's favor. *See In re Pers. Restraint of Sietz*, 124 Wn.2d 645, 652, 880 P.2d 34 (1994) ("[T]he rule of lenity applies to the [Sentencing Reform Act] and operates to resolve statutory ambiguities, absent legislative intent to the contrary, in favor of a criminal defendant.").

In addition to the use of a possessive noun – "offender's" – the statute also references "*other personal* property," indicating a search is only permissible for those residences and automobiles *personal* to the "offender." *See State v. Roggenkamp*, 153 Wn.2d 614, 623, 106 P.3d 196 (2005) ("A single word in a statute should not be read in isolation . . . the meaning of words may be indicated or controlled by those in which they are associated.") (citations and quotation marks omitted).

Here, the officers knew the car belonged to Ms. Winget, not Mr. Bonomo. Officer Dorn testified Ms. Winget registered the car under her

name and that she confirmed ownership over the phone.[2] 12/5/18 RP 35, 70–72. The officers' search of the trunk thus went beyond the scope of the exception permitted by the plain meaning of the statute. *See* RCW 9.94A.631(1); *Jacobs*, 154 Wn.2d at 600.

In *State v. Winterstein*, this Court considered a constitutional challenge to the search of a house believed to be Terry Winterstein's residence. 167 Wn.2d 620, 625, 220 P.3d 1226 (2009). Mr. Winterstein was on community custody and thus his residence was subject to searches under the statutory warrant exception. *See id.* at 628–29. However, Mr. Winterstein had recently changed his address and provided notice to the Department of Corrections prior to the search. *Id.* at 626–27.

This Court recognized the statute only contemplates a warrant exception to "the *offender's* person, residence, automobile, or other personal property." *Id.* at 628–29; (quoting RCW 9.94A.631) (emphasis in the original). Accordingly, the court held that "the probation officer's authority to search a residence extends *only* to the probationer's residence." *Id.* at 628 (emphasis added). This Court further held that "probation officers are required to have probable cause to believe that their probationers live at the residences they search," because "though

[2] There was no evidence Ms. Winget gave consent for a search; either Officer Dorn did not request consent, or Ms. Winget refused to give it. *See* 12/5/18 RP 35, 70–72; *see also* CP 4–5.

probationers have a lessened expectation of privacy, third parties not under the control of the DOC do not." *Id.* at 630.

Similarly here, the community corrections officers were required to have probable cause to believe the car belonged to Mr. Bonomo before searching it without a warrant. *See* RCW 9.94A.631(1); *Winterstein*, 167 Wn.2d at 630. This requirement was necessary to protect the privacy interests of third parties not under DOC's supervision – namely, Ms. Winget's interest not to "be disturbed in [her] private affairs." Const. art. I, § 7; *State v. Kennedy*, 107 Wn.2d 1, 4, 726 P.2d 445 (1986) ("private affairs" includes "automobiles and their contents."); *Winterstein*, 167 Wn.2d at 630 ("third party privacy interests must be considered.").

Ms. Winget's privacy interest in the trunk was not diminished by Mr. Bonomo's driving of the car. *See Rooney*, 190 Wn. App. at 661 (living with a probationer does not diminish the privacy expectation of cohabitants). Additionally, the locked trunk was entitled to more protection from government intrusion than the passenger compartment. *See State v. White*, 135 Wn.2d 761, 772, 958 P.2d 982 (1998).

In determining probable cause, "[o]nly facts and knowledge available to the officer at the time of the search should be considered" in determining probable cause. *Winterstein*, 167 Wn.2d at 630. Here, the officers affirmatively knew at the time of the search that the car belonged

to Ms. Winget, not Mr. Bonomo. *See* 12/5/18 RP 35, 70–72. Thus they had no authority to search it pursuant to the statutory warrant exception. *See* RCW 9.94A.631(1).

This Court should grant review. RAP 13.4(b)(1)-RAP 13.4(b)(4).

b. The search of the trunk was also unconstitutional because there was no reasonable cause to believe Mr. Bonomo had committed additional violations nor was there a nexus justifying the search of the trunk.

A search is permissible pursuant to the statutory warrant exception only "[i]f there is reasonable cause to believe that an offender has violated a condition or requirement of the sentence." RCW 9.94A.631(1). There must be a "well-founded suspicion that a violation has occurred," based on "*specific and articulable* facts and rational inferences." *State v. Jardinez*, 184 Wn. App. 518, 524, 338 P.3d 292 (2014) (emphasis added) (internal citations and quotation marks omitted). "The circumstances must suggest a substantial possibility that *the particular person* has committed a specific crime or is about to do so." *State v. Martinez*, 135 Wn. App. 174, 180, 143 P.3d 855 (2006) (emphasis added). Additionally, there must be a nexus between the property searched and the alleged probation violation, thus "limit[ing] the search to areas or property about which the community custody office has reasonable cause to believe will provide incriminating evidence." *Jardinez*, 184 Wn. App. at 526.

Here, Mr. Bonomo allegedly violated a condition of his sentence requiring he not leave King County without permission. 12/5/18 RP 95, 116. This was the basis for the CCOs' decision to arrest him. *See id.* at 103, 118*; see also* RCW 9.94A.631(1). The CCOs performed a "search incident to arrest," finding a small amount of heroin. *See* 12/5/18 RP 103; CP 5. After establishing that Mr. Bonomo had violated his community custody on two separate grounds – being out of county and possessing heroin – the CCOs then called their supervisor to ask "for permission to search the vehicle *for more violations.*" 12/5/18 RP 105 (emphasis added). The trial court concluded the search of the car was conducted "based on the CCO's training and experience that when a probationer has controlled substances on his person, he is likely to have controlled substances and other contraband in his vehicle." CP 58.

However, the court did not find any factual basis for the CCOs to believe *Mr. Bonomo* had committed additional violations of his community custody, including possessing more drugs than were found in his pocket or being engaged in drug dealing. *See* CP 57–58. Mr. Bonomo was found with a one gram of heroin, a "small" amount suggesting personal use. 12/5/18 RP 43; CP 5; *see also State v. Espinoza*, 2017 WL

3267937 at *6, 200 Wn. App. 1011 (Aug. 1, 2017) (unpublished)[3] ("Street-level drug dealers will typically carry 25–28 grams of heroin or methamphetamine at a time, and one or two grams would be the typical amount carried for personal use.") The court's finding the CCOs had experience finding drugs in the vehicles of *other* probationers was neither "specific" nor "particular" to Mr. Bonomo. *See Jardinez*, 184 Wn. App. 524; *Martinez*, 135 Wn. App. at 180.

Further, an officer's experience alone, unsupported by additional facts specific to the particular probationer, amounts only to "an inchoate hunch." *See id.* Thus there was no "reasonable cause" to believe that Mr. Bonomo possessed more drugs beyond a small amount for personal use. *See* RCW 9.94A.631(1).

The fact the CCOs testified they searched the car "for more violations" belies the lack of reasonable cause for additional specific and articulable violations. *See* 12/5/18 RP 104–105. CCOs may not engage in "a fishing expedition to discover evidence of other crimes, past or present." *State v. Olsen*, 189 Wn.2d 118, 134, 399 P.3 1141 (2017) (internal citations and quotation marks omitted). In *Cornwell,* a CCO testified "that he was looking for unrelated probation violations because he

[3] *Espinoza* is not reported; Mr. Bonomo cites it as persuasive authority. *See* GR 14.1(a).

searched the vehicle 'to make sure there's no *further* violations of his probation.'" 190 Wn.2d at 306–307 (emphasis in the original). This Court labeled this "a fishing expedition" in violation of article I, section 7. *Id.* at 307.

Similarly here, the CCOs already had established two community custody violations and thus had sufficient grounds to arrest Mr. Bonomo. *See* RCW 9.94A.631(1). Regardless, the CCOs elected to conduct a fishing expedition by searching the vehicle "*for more violations*." 12/5/18 RP 104 (emphasis added). Even assuming the CCOs had authority to search a car that did not belong to Mr. Bonomo, this Court has recognized that this type of "open-ended" search is unconstitutional. *See Cornwell*, 190 Wn.2d at 307.

"[S]weeping searches conflict with article I, section 7's mandate that an individual's privacy right be reduced only when and to the extent *necessary.*" *Cornwell*, 190 Wn.2d at 305 (emphasis in the original). Accordingly, article I section 7 "permits a warrantless search of the property of an individual on probation only where there is a nexus between the property searched and the alleged probation violation." *Id.* at 306. The nexus requirement requires CCOs to have "reasonable cause" to believe that the property "will provide incriminating evidence" specific to the suspected custody violation. *See Jardinez*, 184 Wn. App. at 526, 529.

Here, even assuming there was reasonable cause to believe Mr. Bonomo committed additional custody violations, the trial court did not make any factual findings supporting a nexus between a suspected violation and *the trunk of the car*. *See* CP 57–58. The trial court made a general factual finding that "when a probationer has controlled substances on his person, he is likely to have controlled substances and other contraband in his vehicle." CP 58. Again, this finding was not "specific" nor "particular" to Mr. Bonomo as required by article I, section 7. *See Jardinez*, 184 Wn. App. 524; *Martinez*, 135 Wn. App. at 180. Further, the trial court made no particular factual finding concerning a nexus supporting a search of the trunk, only to the vehicle generally. *See* CP 58. A locked trunk is entitled to more protection than the passenger compartment of a car, and thus requires a specific nexus justifying its search. *See White*, 135 Wn.2d at 772; *see also Cornwell*, 190 Wn.2d at 304–305 (a probationer's privacy interest must only be diminished "to the extent *necessary*.") (emphasis in the original). Accordingly, the nexus requirement was not satisfied. *See id.* at 306.

This Court should accept review. RAP 13.4(b)(1)-(4).

E. CONCLUSION

The CCOs exceeded their authority when they searched the car. Further, the CCOs engaged in a fishing expedition when they searched the car for "further violations" without a specific or articulable suspected violation. And there was no reasonable suspicion to believe Mr. Bonomo was secreting additional drugs in the trunk of his car, and thus no nexus to support the search of the trunk. This Court should accept review.

DATED this 17th day of June, 2021.

Respectfully submitted,

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Washington State
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May 18, 2021

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. JOSEPH ANTHONY BONOMO, Appellant.	No. 52809-6-II UNPUBLISHED OPINION

WORSWICK, J. — After a bench trial, the court convicted Joseph Anthony Bonomo of unlawful possession of a firearm, unlawful possession of a short-barreled shotgun, and unlawful possession of a controlled substance—heroin. He appeals his convictions and sentence, arguing that (1) the trial court erred when it denied his motion to suppress evidence because RCW 9.94A.631(1)[1] did not authorize community corrections officers to search the car he was driving since it belonged to his girlfriend and the officers had an insufficient nexus to search the trunk of the car, (2) the strict liability crime of simple possession of a controlled substance violates due process, and (3) the trial court imposed improper legal financial obligations (LFOs). The State concedes that Bonomo's conviction for unlawful possession of a controlled substance should be vacated and that LFOs were improperly imposed.

[1] RCW 9.94A.631(1) authorizes community corrections officers to "require an offender to submit to a search and seizure of the offender's person, residence, automobile or other personal property," if the officer has "reasonable cause to believe that an offender has violated a condition or requirement of the sentence."

We hold that for purposes of RCW 9.94A.631(1), Bonomo possessed the car he was driving and that after finding heroin on Bonomo's person, officers had reasonable cause to believe further evidence that he possessed controlled substances could be in the trunk of the car. Therefore, we affirm the trial court's denial of Bonomo's motion to suppress and affirm his convictions for unlawful possession of a firearm and unlawful possession of a short-barreled shotgun.

However, in light of our Supreme Court's recent opinion in *State v. Blake*, 197 Wn.2d 170, 173-74, 481 P.3d 521 (2021), invalidating the state's strict liability drug possession statute, we hold that Bonomo's conviction for unlawful possession of a controlled substance should be vacated. We also accept the State's concession regarding the LFOs. Consequently, we reverse Bonomo's conviction for unlawful possession of a controlled substance—heroin, and remand for the trial court to vacate Bonomo's controlled substance possession conviction and resentence him. At resentencing, the trial court should not impose the criminal filing fee, DNA database fee, or interest accrual.

FACTS

In April 2018, Fife police officer Mark Dorn stopped Bonomo, who was driving a car without wearing a seatbelt. Bonomo stated that his license was in suspended status. Dorn observed that Bonomo was armed with a knife in his waistband.

Shortly after Officer Dorn pulled Bonomo over, the manager of the nearby Love's truck stop approached and said that he had been "trying to make contact with [Bonomo's] vehicle" after it was "seen at numerous semis throughout the better part of the morning." 1 Verbatim Report of Proceedings (Dec. 5-6, 2018) (VRP) at 25. The manager believed that Bonomo may

have been involved in drug or prostitution-related activity. He requested that the officers issue a trespass notice to Bonomo. Officer Dorn detained Bonomo for driving while his license was suspended. Bonomo "made furtive movements and did not comply fully with Officer Dorn's instructions to exit the vehicle." Clerk's Papers (CP) at 50.

Bonomo informed officers that the vehicle belonged to his girlfriend. Dorn contacted her and confirmed that she was the car's registered owner. Dorn did not testify that he obtained the girlfriend's consent to search the vehicle.

Dorn learned that Bonomo was under active Department of Corrections (DOC) supervision in King County and was prohibited from leaving that county without written authorization. Community corrections officers were summoned, and Officers Zachary Johnson and Steven Depoister responded.

The community corrections officers arrested Bonomo for the probation violation of being outside of King County without written authorization, and Johnson conducted a "pat search" of Bonomo's person prior to his transfer to jail. VRP at 103. Johnson recovered a bag of heroin and a hypodermic needle from Bonomo's pocket.

Johnson then searched the vehicle. In the trunk of the car, Johnson found a short-barreled shotgun near Bonomo's court paperwork. Johnson also found baggies and "a huffing straw used to ingest controlled substances." CP at 50. Bonomo admitted that the shotgun was his and that he had "received it as a payment" for some other items. VRP at 45.

The State charged Bonomo with first degree unlawful possession of a firearm, unlawful possession of a short-barreled shotgun, unlawful possession of a controlled substance—heroin, and third degree driving with a suspended license.[2]

Bonomo waived his right to a jury trial, and the trial court simultaneously held a CrR 3.5 hearing, a CrR 3.6 hearing, and a bench trial. At the trial, witnesses testified to the above facts. Regarding his reasons for the search of the vehicle, Johnson testified that he "believed there was possible further violations inside the car" because it is "common . . . [to] find things hidden in cars out of plain view" after finding drugs on the driver's person. VRP 104-05. Depoister agreed and estimated that he discovers contraband in a car after discovering contraband on the driver's person in "[m]ore than half" of the investigations in which he is involved. VRP at 123.

The trial court entered three sets of findings of fact and conclusion of law, one for each motion and one for the trial. The court denied Bonomo's CrR 3.5 motion to suppress his statements.[3] The court also denied Bonomo's CrR 3.6 motion to suppress the evidence seized from the car and ruled that the shotgun was recovered pursuant to a valid search. The trial court found that the vehicle search was "based on [the officers'] training and experience that when a probationer has controlled substances on his person, he is likely to have controlled substances and other contraband in his vehicle." CP at 58. The trial court concluded, "Once heroin was found, the next logical nexus was to search the vehicle, including the trunk and there was

[2] The State dropped the driving with a suspended license charge prior to trial. That charge is not at issue on appeal.

[3] Bonomo does not appeal the court's order regarding the admission of his statements.

reasonable cause . . . that a probation violation had occurred to validate such a search." CP at 59. The trial court did not enter any findings of fact regarding who owned the car.

The trial court also found Bonomo guilty of unlawful possession of a firearm, unlawful possession of a short-barreled shotgun, and unlawful possession of a controlled substance—heroin.

At sentencing, the trial court found that Bonomo was indigent and that payment of nonmandatory legal financial obligations would be inappropriate. However, the court imposed a $200 criminal filing fee, a $100 DNA database fee, and an interest accrual provision providing, "The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full." CP at 40.

Bonomo appeals his convictions and sentence.

ANALYSIS

I. VEHICLE SEARCH

Warrantless searches are generally "per se unreasonable" under the Fourth Amendment of the United States Constitution and article I, section 7 of the Washington Constitution. *State v. Doughty*, 170 Wn.2d 57, 61, 239 P.3d 573 (2010). However, there are a few "'jealously and carefully drawn'" exceptions. *Id.* (internal quotation marks omitted) (quoting *State v. Williams*, 102 Wn.2d 733, 736, 689 P.2d 1065 (1984)). One such exception permits community corrections officers to conduct warrantless searches of a probationer's personal property where the officer has reasonable cause to believe that the individual committed a probation violation and there is a nexus between the property to be searched and the suspected violation. RCW

9.94A.631(1); *State v. Cornwell*, 190 Wn.2d 296, 306, 412 P.3d 1265 (2018).[4] Thus, probationers have a diminished right to privacy under the Fourth Amendment and article 1, section 7 of the Washington Constitution. *State v. Lucas*, 56 Wn. App. 236, 239-40, 783 P.2d 121 (1989).

It is the State's burden to establish that an exception to the warrant requirement applies. *Doughty*, 170 Wn.2d at 61. The State must establish the exception by clear and convincing evidence. *State v. Garvin*, 166 Wn.2d 242, 250, 207 P.3d 1266 (2009). "Only facts and knowledge available to the officer at the time of the search should be considered." *State v. Winterstein*, 167 Wn.2d 620, 630, 220 P.3d 1226 (2009).

In reviewing a trial court's denial of a motion to suppress evidence, we review the trial court's legal conclusions de novo. *State v. Rooney*, 190 Wn. App. 653, 658, 360 P.3d 913 (2015). "Unchallenged findings of fact are verities on appeal." *Id.*

A. *Statutory Authority*

Bonomo argues the community corrections officers did not have statutory authority to conduct a warrantless search the car he was driving because RCW 9.94.631(1) is limited to searches of "'*the offender's* . . . automobile'" and the officers knew the car was registered to Bonomo's girlfriend. Br. of Appellant at 9 (quoting RCW 9.94.631(1)). We disagree.

We review issues of statutory interpretation de novo. *Cornwell*, 190 Wn.2d at 300. "[O]ur objective is to determine the legislature's intent." *State v. Livingston*, 197 Wn. App. 590,

[4] RCW 9.94A.631 was amended in 2020, after Bonomo was searched. LAWS OF 2020, ch. 82, § 2. However, we cite to the current version of the statute because the 2020 amendments did not affect subsection (1). Moreover, the legislature noted that this section of the act would "apply retroactively and prospectively regardless of the date of an offender's underlying crime." *Id.* § 6.

596, 389 P.3d 753 (2017). We look to "the ordinary meaning of the language . . . the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole." *Id.*

RCW 9.94A.631(1) permits community corrections officers to search "the offender's person, residence, automobile, or other personal property." The rationale for this exception to the warrant requirement is that "a person judicially sentenced to confinement but released on probation remains in the custody of the law" and, therefore, the State has a "continuing interest in supervising him." *State v. Reichert*, 158 Wn. App. 374, 386, 242 P.3d 44 (2010). Nevertheless, "[e]ven though probationers have a lessened expectation of privacy, third parties not under the control of the DOC do not." *Winterstein*, 167 Wn.2d at 630; *see also Rooney*, 190 Wn. App. at 661 ("[A] probationer's diminished expectation of privacy does not apply to his or her cohabitants.").

To protect the privacy interests of third parties, our Supreme Court has held that officers must have probable cause to believe a probationer lives at a particular residence before conducting a warrantless search of that residence. *Winterstein*, 167 Wn.2d at 630. The *Winterstein* rationale has not been expanded beyond residential searches. However, the key question in *Winterstein* was not whether the probationer owned the residence; it was whether the probationer "*live*[*d*] at the residence[]." *Id.* (emphasis added). Similarly, the key question here is not whether Bonomo owned the car; it is whether he was using the car. The important fact for community corrections officers is that the space subject to search is used by an individual whom they are responsible for supervising and, therefore, evidence of the individual's noncompliance may be present in the space. Officers have authority to search such spaces without a warrant, so

long as they respect the privacy interests of other individuals who use the space and are not under DOC supervision.

To address the question of who may consent to a search where there are multiple inhabitants of a residence, Washington courts adopted the common authority rule. *State v. Morse*, 156 Wn.2d 1, 7, 123 P.3d 832 (2005). Our Supreme Court has also applied this rule to vehicles. *See, e.g.*, *State v. Houston-Sconiers*, 188 Wn.2d 1, 28, 391 P.3d 409 (2017). Under the common authority rule, when the authority to control a space is shared, "persons necessarily assume some risk that others with authority to do so will allow outsiders into shared areas." *Morse*, 156 Wn.2d at 7; *see also State v. Leach*, 113 Wn.2d 735, 739, 782 P.2d 1035 (1989) ("'[A]n individual sharing authority over an otherwise private enclave inherently has a lessened expectation that his affairs will remain only within his purview, as the other cohabitants may permit entry in their own right.'"). If an individual "has common authority to use and control the premises," they have the "authority to consent to a search that is within the scope of that authority." *Morse*, 156 Wn.2d at 15.

We have previously described RCW 9.94A.631(1) as derived from the consent exception to the warrant requirement because "it requires the probationer to consent to a search." *Rooney*, 190 Wn. App. at 659; *see also* RCW 9.94A.631(1) ("[A] community corrections officer may require an offender to submit to a search."). Those who share their vehicle with individuals under DOC supervision necessarily assume some risk that the vehicle will be searched because probationers may be required to submit to a search.

Here, the investigating officers knew the car was registered to someone other than Bonomo. However, the owner of the car was not in the car, and officers observed Bonomo

driving the car and exhibiting control over the car. Even if we apply the *Winterstein* probable cause standard, officers had probable cause to believe Bonomo possessed the vehicle for purposes of his supervision.

Applying the common authority rule from *Morse*, Bonomo had common authority over the car and, therefore, he had authority to consent to a search of the car. Community corrections officers were authorized by RCW 9.94A.631(1) to require Bonomo to submit to the search. Because the car's owner was not present at the scene or charged with any unlawful activity as a result of the search, her consent, or lack thereof, is not relevant to Bonomo's motion to suppress.

We hold that because Bonomo exhibited authority over the car, he possessed the car for purposes of RCW 9.94A.631(1).

B. *Reasonable Cause & Nexus Requirements*

Bonomo next argues that even if the officers had statutory authority to search the car, they did not have reasonable cause to believe he committed any additional probation violations "beyond being out of county and possessing a small amount of heroin." Br. of Appellant at 13 (emphasis omitted). He further argues that there was no nexus established between the trunk of the car and a suspected probation violation. We disagree.

RCW 9.94A.631(1) permits a warrantless search of a probationer's property where the officer has "reasonable cause to believe that an offender has violated a condition or requirement of the sentence." We have described "reasonable cause" as a "well-founded suspicion" and explained that it "requires specific and articulable facts and rational inferences." *State v. Parris*, 163 Wn. App. 110, 119, 259 P.3d 331 (2011), *abrogated on other grounds by Cornwell*, 190

Wn.2d 296. The standard is analogous to the standard for *Terry*[5] stops. *Id.* "The Supreme Court [of the United States] embraced the *Terry* rule to stop police from acting on mere hunches." *Doughty*, 170 Wn.2d at 63.

"Presence in a high crime area . . . is not enough" to establish a particularized suspicion. *State v. Martinez*, 135 Wn. App. 174, 180, 143 P.3d 855 (2006). But where officers have "observed suspected drugs" and the probationer is "very nervous," officers may have a well-founded suspicion to support a search of the probationer's property. *Lucas*, 56 Wn. App. at 244-45. In addition, officers may "rely on experience in evaluating arguably innocuous facts." *Martinez*, 135 Wn. App. at 180.

Article I, section 7 of the Washington Constitution also requires a nexus between the property searched and the suspected probation violation. *Cornwell*, 190 Wn.2d at 297. Although individuals on probation have limited expectations of privacy, they are protected against "open-ended property searches." *Id.* at 307; *see also State v. Olsen*, 189 Wn.2d 118, 134, 399 P.3d 1141 (2017) (reaffirming that "general, exploratory searches are not permissible under article I, section 7," even where the individual is on probation).

In *Cornwell*, the defendant was pulled over due to an outstanding warrant. 190 Wn.2d at 298. Officers believed that Cornwell was "attempting to distance himself from the car," and he was apprehended with $1,573 on his person. *Id*. at 299. A community corrections officer then searched the car "'to make sure there's no further violations of his probation.'" *Id.* The Supreme Court determined that this search was "clearly 'a fishing expedition,' which article I,

[5] *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968).

section 7 does not permit," because the officer testified that he was looking for evidence of "'*further* violations.'" *Id.* at 306-07 (internal quotation marks omitted) (quoting *Olsen*, 189 Wn.2d at 134). Although the officer may have suspected additional violations, "the only probation violation supported by the record" was a failure to report, and "there is no nexus between property and the crime of failure to report." *Id.* at 306; *see also State v. Jardinez*, 184 Wn. App. 518, 523, 529, 338 P.3d 292 (2014) (holding that a warrantless search of the contents of parolee's iPod was impermissible because the officer did not expect to find any evidence of the established parole violations—failure to appear and admitted marijuana use—on the iPod).

However, if officers have a well-founded suspicion that contraband may be in a probationer's vehicle, they are authorized to search the entire vehicle. *State v. Coahran*, 27 Wn. App. 664, 667, 620 P.2d 116 (1980). This is supported by the broad language in RCW 9.94A.631(1) permitting a search of "the offender's . . . automobile."

Here, the officers had reasonable cause to believe that Bonomo violated conditions of his community custody. He was outside of the county without written authorization, and he was carrying heroin in his pocket. These clear violations were established prior to the vehicle search.

The officers also established a nexus between the car and the probation violation of possessing a controlled substance. Like the officer in *Cornwell*, Johnson testified that he "believed there was possible further violations inside the car." VRP at 104-05. However, in *Cornwell*, the only known violation was a failure to appear, so the officer's suspicion that he would find evidence of "'further violations'" in Cornwell's truck was a mere hunch. 190 Wn.2d at 299. In contrast, although officers here believed that they may find evidence of further

violations inside Bonomo's car, the search of Bonomo's car was connected to a known probation violation—possession of a controlled substance.

The specific and articulable facts that inspired the officers' suspicion were Bonomo's possession of heroin on his person, his furtive movements, and his failure to immediately comply with officer requests to exit the car. The trial court also relied on the community corrections officers' training and experience that when a probationer has controlled substances on his person, he is likely to have controlled substances and other contraband in his vehicle. These facts gave rise to a rational inference that additional contraband may be inside the car.

Although different standards may apply to searches of trunks or locked containers in other contexts, the statutory exception here applies broadly to "the offender's . . . automobile." RCW 9.94A.631(1). Because he was under the State's supervision, Bonomo had a diminished expectation of privacy. Once officers had reasonable cause to search his vehicle, they were justified in searching the entire vehicle, including the trunk.

We hold that community corrections officers satisfied the reasonable cause and nexus requirements for a warrantless search pursuant to RCW 9.94A.631(1). We affirm the trial court's denial of Bonomo's motion to suppress the evidence recovered from the car and affirm Bonomo's convictions for unlawful possession of a firearm and unlawful possession of a short-barreled shotgun.

II. UNLAWFUL POSSESSION OF A CONTROLLED SUBSTANCE

Next, Bonomo argues that the strict liability crime of simple possession of a controlled substance violates due process. *Blake*, 197 Wn.2d at 173-74. The State concedes that this conviction should be vacated. In light of the Supreme Court's recent opinion in *Blake*, which

held that the statute punishing possession of a controlled substance as a strict liability crime is unconstitutional, we agree. 197 Wn.2d at 173-74.

After the parties submitted briefs in this case, our Supreme Court held that RCW 69.50.4013(1), the strict liability drug possession statute, violated the due process clauses of the state and federal constitutions and was therefore void. *Id.* at 195. Where an individual is convicted of violating a statute that is deemed unconstitutional before their conviction is final, the appropriate remedy is to reverse the conviction. *See State v. Reynolds*, 12 Wn. App. 2d 181, 188, 457 P.3d 474 (2020).

Bonomo was convicted of unlawfully possessing heroin in violation of RCW 69.50.4013(1). The Supreme Court has since ruled that because RCW 69.50.4013(1) does not include a knowledge element, it is unconstitutional and void. We accept the State's concession, reverse Bonomo's conviction for unlawful possession of a controlled substance, and remand for the trial court to vacate the conviction and resentence Bonomo.

III. LEGAL FINANCIAL OBLIGATIONS & INTEREST ACCRUAL

Finally, Bonomo argues the trial court improperly imposed the criminal filing fee and DNA database fee and improperly included an interest accrual provision in his judgment and sentence. The State concedes that these LFOs were improperly imposed. We accept the State's concession and, on remand, direct the trial court to refrain from imposing the criminal filing fee, DNA database fee, and interest accrual.[6]

[6] Because we remand to the trial court for resentencing, we need not address Bonomo's claim that the trial court imposed a sentence based on an inaccurate offender score.

CONCLUSION

In conclusion, we hold that the search of Bonomo's car was lawful under RCW 9.94A.631(1). Bonomo possessed the car for purposes of the statute, and officers satisfied the reasonable cause and nexus requirements. Therefore, we affirm the trial court's denial of Bonomo's motion to suppress, and we affirm Bonomo's convictions for unlawful possession of a firearm and unlawful possession of a short-barreled shotgun. Because Bonomo's conviction for unlawful possession of a controlled substance was based on an unconstitutional statute, we reverse the controlled substance possession conviction and remand for the trial court to vacate the conviction and resentence Bonomo. At resentencing, the trial court should not impose the criminal filing fee, DNA database fee, or interest accrual.

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.

Worswick, J.

We concur:

Lee, C.J.

Sutton, J.

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals** under **Case No. 52809-6-II**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office / residence / e-mail address as listed on ACORDS / WSBA website:

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MARIA ANA ARRANZA RILEY, Legal Assistant Date: June 17, 2021
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