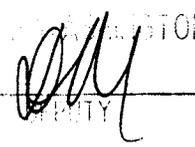


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STATE OF WASHINGTON

BY  _____
ATTORNEY

NO. 33672-3-II
Cowlitz Co. Cause NO. 03-1-00133-1

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON,

Respondent,

v.

BROR A. SODERLIND,

Appellant.

BRIEF OF RESPONDENT

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WINTERSTEIN WAS REQUIRED TO PRE-APPROVE ANY
CHANGE OF ADDRESS. AS WINTERSTEIN DID NOT OBTAIN
CCO RONGEN’S APPROVAL TO CHANGE HIS ADDRESS TO
646 ½ ENGLERT ROAD, HE HAD NOT PROPERLY CHANGED
HIS ADDRESS PRIOR TO THE SEARCH. 3**

**B. CCO RONGEN BELIEVED WINTERSTEIN RESIDED AT
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I. INTRODUCTION

The Appellant entered a plea of guilty to the charge of manufacturing methamphetamine on July 3rd, 2003. Subsequently, during the trial of co-defendant, Terry Winterstein, additional information came to light regarding when the Department of Corrections had received notice of a change of address by Mr. Winterstein from 646 Englert Road to 646 ½ Englert Road.

To address this issue, the parties agreed the Appellant would pursue a CrR 7.8 motion on the basis of newly discovered evidence or misrepresentation. This motion took the form a suppression hearing to determine whether or not Community Corrections Officer Kris Rongen's warrantless entry into a residence at 646 Englert Road was lawful.

Following a lengthy hearing on June 28th, 2005, the trial court denied the Appellant's CrR 7.8 motion. The lower court held that while Winterstein had properly notified DOC of his change of address, this change of address was in fact a ruse and CCO Rongen's search was conducted in good faith and was lawful. The instant appeal timely followed.

II. STATEMENT OF THE CASE

The State agrees with the factual and procedural history as set forth by the Appellant.

III. ASSIGNMENTS OF ERROR

THE STATE ASSIGNS ERROR TO THE TRIAL COURT'S FINDING OF FACT THAT TERRY WINTERSTEIN WAS NOT REQUIRED TO OBTAIN CCO RONGEN'S APPROVAL PRIOR TO CHANGING HIS ADDRESS. RP (6-28-05) 181.

THE STATE SIMILARLY ASSIGNS ERROR TO THE TRIAL COURT'S FINDING OF FACT THAT TERRY WINTERSTEIN HAD PROPERLY EFFECTED A CHANGE OF ADDRESS WITH THE DEPARTMENT OF CORRECTIONS PRIOR TO THE SEARCH ON FEBRUARY 6, 2003. RP (6-28-05) 181-182.

These assignments of error are proper, even without the State filing notice of a cross appeal. Under State v. Kindsvogel, 149 Wn.2d 447, 69 P.3d 870 (2003), a prevailing party that does not seek affirmative relief is not required to cross appeal in order to assign error to the lower court's findings of fact.

IV. ISSUES PRESENTED

- 1. CAN A PROBATIONER IGNORE THE DIRECTIVES OF HIS COMMUNITY CORRECTIONS OFFICER AND CHANGE HIS ADDRESS WITHOUT PRIOR APPROVAL?**
- 2. IF A PROBATIONER ATTEMPTS TO CHANGE HIS ADDRESS WITH THE DEPARTMENT OF CORRECTIONS IN AN UNAPPROVED MANNER, IS THE PURPORTED CHANGE OF ADDRESS EFFECTIVE AND BINDING UPON THE DEPARTMENT?**
- 3. DID CCO RONGEN HAVE LAWFUL AUTHORITY TO ENTER WINTERSTEIN'S RESIDENCE AT 646 ENGLERT ROAD ON FEBRUARY 6TH, 2006?**

4. **IF THE COURT FINDS THAT CCO RONGEN ERRED BY SEARCHING 646 ENGLERT ROAD RATHER THAN 646 ½ ENGLERT ROAD, WAS THE SEARCH NONETHELESS JUSTIFIED AS HE WAS ACTING IN GOOD FAITH?**

V. SHORT ANSWERS

1. No.
2. No.
3. Yes.
4. Yes.

VI. ARGUMENT

- A. **PURSUANT TO CCO RONGEN'S DIRECTIVE, WINTERSTEIN WAS REQUIRED TO PRE-APPROVE ANY CHANGE OF ADDRESS. AS WINTERSTEIN DID NOT OBTAIN CCO RONGEN'S APPROVAL TO CHANGE HIS ADDRESS TO 646 ½ ENGLERT ROAD, HE HAD NOT PROPERLY CHANGED HIS ADDRESS PRIOR TO THE SEARCH.**

During the intake process with DOC, Winterstein was provided with a copy of the standard conditions of supervision. Exhibit 8. This document requires the probationer to notify his CCO prior to changing address or employment. Exhibit 8, RP (6-28-05) 21. This document also states that the probationer is to "abide by written or verbal instructions issued by a community corrections officer." Exhibit 8.

Winterstein's Community Corrections Officer was Kris Rongen. CCO Rongen testified that he informed Winterstein that any change of address would need to be pre-approved. RP (6-28-05) 21, 24. While DOC has a kiosk system that allows a probationer to electronically change his address, CCO Rongen stated this process did not comply with his own requirements, and that he had instructed Winterstein accordingly. Id. 21-24.

The State agrees with Appellant that at some point prior to the search on February 6th, 2003, Winterstein attempted to electronically change his address with DOC using the kiosk. However, the State does not agree with the Appellant or the trial court that this act constituted proper and effective change of address with the Department. Instead, at the time of the search, the only approved address registered by Winterstein with CCO Rongen was 646 Englert Road.

As reflected by Exhibit 8, a probationer is required to abide by the verbal instructions of his CCO. In this case, CCO Rongen instructed Winterstein that the only way he could properly change his address was to provide a proposed address for Rongen to verify and approve. Instead of doing so, Winterstein engaged in a transparent ruse to evade this requirement by attempted to use the kiosk to change his address to 646 ½ Englert Road. However, as Winterstein did not follow the proper

procedure for changing his address, the attempted change was not effective prior to the February 6th search.

Thus, when CCO Rongen conducted the search at 646 Englert Road, he searched the last address properly listed by Winterstein as his residence. The Appellant has conceded that CCO Rongen had a reasonable suspicion a probation violation had occurred, allowing for a search of Winterstein's residence under RCW 9.94A.631 and State v. Simms, 10 Wn.App. 75, 85, 516 P.2d 1088 (1973). As CCO Rongen searched the last properly registered address for Winterstein, this warrantless search was proper and the trial court appropriately denied the Appellant's CrR 7.8 motion. To rule otherwise would, as the trial court noted, allow Winterstein to benefit from perpetrating a fraud on DOC and CCO Rongen.

B. CCO RONGEN BELIEVED WINTERSTEIN RESIDED AT 646 ENGLERT ROAD AT THE TIME OF THE SEARCH, AND ACTED IN GOOD FAITH BY SEARCHING THAT RESIDENCE.

Should the Court find that Winterstein had properly changed his address with DOC, the State asks the Court to find that CCO Rongen's search was justified under the good faith exception to the warrant requirement. On the date of the search, CCO Rongen's actual subjective belief was that Winterstein resided at 646 Englert Road. This belief was

confirmed by the condition of the residence and the motor home during the search. Considering this, CCO Rongen was acting in good faith when he conducted the search, as he actually believed Winterstein resided at that address.

The State asks this court to adopt a good faith exception to the lawful authority requirement imposed by Article I, Section 7 of the Washington State Constitution. Under the United States Constitution, the exclusionary rule does not apply to evidence seized illegally when the state was acting in good faith. See United States v. Leon, 468 U.S. 897, 82 L. Ed. 2d 677, 104 S. Ct. 3405 (1984). Moreover, prior decisions by Washington courts have not invoked the exclusionary rule where doing so would serve no deterrent effect.

In State v. McFarland, 84 Wn.2d 391, 526 P.2d 361 (1974), the court allowed contraband seized during a jail house search to be admitted, despite the fact the defendant was being booked into jail pursuant to a void municipal court judgment. Similarly, in State v. Smith, 16 Wn.App. 425, 558 P.2d 265 (1976), the court did not exclude evidence obtained pursuant to a warrant signed by a judge who was a potential witness against the defendant. There the court noted “[p]olice deterrence is simply not involved and the underlying purposes of the Fourth Amendment would not

be advanced by invoking the exclusionary rule.” Smith, 16 Wn.App. at 428.

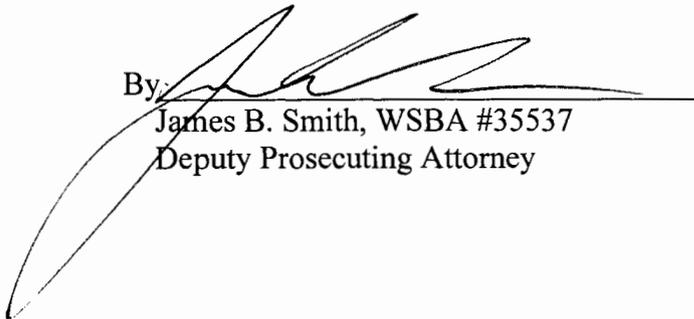
The State therefore asks this court to find that even if CCO Rongen’s search was lacking in lawful authority, it was nonetheless justified under the good faith exception to the exclusionary rule.

VII. CONCLUSION

Based on the preceding argument, the State respectfully requests the court find that Winterstein did not properly change his address with DOC and the search of 646 Englert Road was therefore proper. In the alternative, the State urges the court to find the search was justified under the good faith exception to the exclusionary doctrine. Under either theory, the court should uphold the lower court and deny the Appellant’s CrR 7.8 motion.

Respectfully submitted this 27th day of September, 2006.

Susan I. Baur
Prosecuting Attorney

By: 
James B. Smith, WSBA #35537
Deputy Prosecuting Attorney

COURT OF APPEALS, STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,)
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 Appellant.)
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03-1-00133-1
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STATE OF WASHINGTON

I, Audrey J. Gilliam, certify and declare:

That on the 27 day of September, 2006, I deposited in the mails of the United States Postal Service, first class mail, a properly stamped and address envelope, containing Brief of Respondent addressed to the following parties:

Court of Appeals
950 Broadway, Suite 300
Tacoma, WA 98402

Anne M. Cruser
Attorney at Law
P. O.Box 1670
Kalama, WA 98625

I certify under penalty of perjury pursuant to the laws of the State of Washington that the foregoing is true and correct.

Dated this 27 day of September, 2006.


Audrey J. Gilliam