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COURT OF APPEALS
DIVISION II

NO. 40215-7-II

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STATE OF WASHINGTON

BY  DEPUTY

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

DALPHINE HOOPII, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Judge Thomas Larkin
The Honorable Judge Brian Tollefson

No. 09-1-00390-6

Brief of Appellant

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Whether a Community Corrections Officer violated the defendant's right to privacy where that officer reviewed a hotel registry to confirm the residential status of another probationer, observed the defendant's name on the registry and knew there was an arrest warrant for the defendant for violating her conditions of probation, confirmed the defendant's room number and identity, then arrested the defendant at her room and searched the room as a result of her probation violation.

B. STATEMENT OF THE CASE.

1. Procedure

On January 22, 2009, based on an incident that occurred two days earlier, the State filed an information that charged the defendant with three counts of Unlawful Possession of a Controlled Substance with Intent to Deliver, for methamphetamine, oxycodone and lorazepam respectively. CP 1-2.

The defense filed a motion to suppress the evidence under CrR 3.6 claiming that it was the fruit of an unlawful search where as part of a compliance check on another DOC supervisee, DOC officers reviewed the motel registry for information on that person when they observed the

defendant's name, who they also recognized to be a DOC supervisee with an active warrant at the time. *See*, CP 4-9; 10-16; 20-43; 44-57.

The suppression motion was heard by the Honorable Judge Thomas Larkin on September 2, 2009, and he denied the motion. CP 59-64; 126-27; RP 09-02-09.

The State filed an Amended Information adding school bus route stop enhancements to counts I-III, and adding a fourth count of Bail Jumping based on a failure to appear at a prior hearing. CP 65-67.

On December 23, 2009, the case was assigned to the Honorable Judge Brian Tollefson for trial. CP 128-135; 136. The defendant waived jury trial and agreed to a bench trial. CP 128-135; RP 1 RP 1-4. At the conclusion of the bench trial the court found the defendant guilty. CP 74-83; 128-135; 3 RP 349-52.

On January 8, 2010, the court sentenced the defendant to a total of 132 months in custody. CP 84-98. The defendant timely filed a notice of appeal on January 13, 2010.

2. Facts

a. Facts From 3.6 Hearing

The court entered the following findings of fact and conclusions of law after the suppression hearing. *See*, CP 59-64.

THE UNDISPUTED FACTS

I.

On January 20, 2009, Community Corrections Officer (CCO) Springer, along with Corrections Officers Ohman and Holton, went to the Homotel Inn in Fife, WA to conduct compliance checks of two known offenders, Shirley Butts and Robert Brown. Both offenders had previously reported to the Department of Corrections (DOC) that the Homotel Inn was their primary residence and CCO Officers went to the motel to verify this information and approve the living arrangements of each.

II.

The Homotel Inn keeps two running registries. The first is a one page list with two columns. The column on the left is a list of room numbers. The column on the right lists the corresponding guest that is registered to each room. All of the rooms and guests are listed on this one page registry for quick reference. The second running registry is a filing system that contains detailed information pertaining to each guest, including the number and names of all guests staying in each room, copies of their identification, information on their vehicles, and how many nights each guest has paid for.

III.

When she arrived at the Hometel Inn, CCO Springer asked the front desk clerk if she could verify the room numbers for Ms. Butts and Mr. Brown. While checking the registry list for their names and room numbers, CCO Springer noticed the name “Hoopii” on the list.

IV.

CCO Springer recognized the name “Hoopii” because she knew two people with that name. CCO Springer had dealt with Dalphine Hoopii in the past, and knew that she was on active supervision. CCO Springer was also aware that Dalphine Hoopii had an active DOC felony warrant for absconding from supervision.

V.

CCO Springer asked to see the registration card for room 245, Hoopii’s room. The registration card for room 245 confirmed that Dalphine Hoopii was registered to that room. CCO Springer recognized Dalphine Hoopii from the photocopy of her picture identification.

VI.

CCO Springer contacted Fife Police Department (FPD) for assistance. CCO Springer frequently asks Fife patrol officers to assist her when she is going to arrest offenders on supervision.

VII.

On this occasion, Fife Police Officers responded to the Hometel Inn to assist CCO Springer for officer safety.

VIII.

When CCO Springer and the other officers went to room 245 and knocked, Hoopii answered the door. She was immediately taken into custody by CCO Springer on the outstanding warrant.

IX.

There were two other people present in the room- Matthew Perry and Brenda Marshall-both of whom were confirmed to be on active supervision with DOC. Mr. Perry and Ms. Marshall are prohibited from consuming alcohol while on supervision. There were open beer cans in plain view. Perry and Marshall admitted that they had been drinking alcohol. CCO Holton and CCO Ohman placed Perry and Marshall in handcuffs.

X.

Hoopii told CCO Springer that she had used marijuana, which is a violation of her conditions of supervision. CCO Springer then announced that she was going to search the room.

XI.

A search of the motel room produced a backpack and purse containing various illegal substances and other contraband including, a

smoking pipe, methamphetamine, Oxycodone, Methadone, and Lorazepam. Hoopii claimed ownership of each of the various items.

XII.

A search of Mr. Perry's vehicle revealed a digital scale, which Hoopii also admitted was hers.

XIII.

The evidence was given to the Fife Police Officers and CCO Springer transported Hoopii to the Pierce County Jail.

THE DISPUTED FACTS

None.

FINDINGS AS TO DISPUTED FACTS

None.

REASONS FOR ADMISSIBILITY OR INADMISSIBILITY OF
THE EVIDENCE

I.

The defendant, Dalphene Hoopii, is a convicted felon under the supervision of the Department of Corrections. As such, she has diminished privacy rights and must abide by the conditions of her supervision.

II.

CCO Springer legitimately viewed the Hometel Inn's guest registry while conducting a compliance check on the residence and living arrangements of two offenders, as required under RCW 9.94A700. This

was not the kind of suspicionless search that is prohibited under *State v. Jordan*, 160 Wn.2d 121, 156 P.3d 893 (2007), because CCO Springer did not randomly view the motel registry in a “fishing expedition.” Instead, CCO Springer looked at the motel registry solely for the purpose of conducting compliance checks on two offenders, Mr. Brown and Ms. Butts, who had each reported the Hometel Inn as their primary residence.

III.

In the process of conducting compliance checks on Ms. Butts and Mr. Brown, CCO Springer inadvertently saw Hoopii’s name on the motel registry. CCO Springer was not obligated to ignore Hoopii’s name when she knew that there was a felony warrant for her arrest.

IV.

The search of Hoopii’s room was a legal probationer’s search under RCW 9.94A.631 because there was reasonable cause to believe that she had violated her conditions of supervision. Specifically, there was a well-founded suspicion that the defendant had failed to report to her community corrections officer, hence the bench warrant. Additionally, Hoopii admitted to CCO Springer that she had smoked marijuana, which is a violation of her conditions of supervision.

V.

The search of Matthew Perry’s automobile was likewise legal under RCW 9.94A.631 because there was reasonable cause to believe that he too had violated the conditions of his supervision. Specifically, Mr.

Perry admitted to recently consuming alcohol, which was a violation of his probation.

VI.

The defendant's motion to suppress evidence under CrR 3.6 is denied. The fruits of the searches will be admissible at trial.

b. Facts At Trial

The court held a bench trial after which it entered the following findings of fact. *See*, RP 1-4; CP 74-83.

FINDINGS OF FACT

I.

On January 22nd, 2009, the original Information was filed charging the defendant with UNLAWFUL POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER; UNLAWFUL POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER; UNLAWFUL POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER.

II.

On October 1, 2009, an Amended Information was filed adding school bus route stop enhancements to counts I-III, and adding a count of Bail Jumping from July 8, 2009.

III.

Department of Corrections Community Corrections Officer (CCO) Joanne Springer testified that on January 20, 2009, she and CCO Ohman and CCO Holton, went to the Hometel Inn, located at 3520 Pacific Highway East, in Fife, Washington, to conduct compliance checks of two known offenders, Shirley Butts and Robert Brown.

IV.

When she arrived at the Hometel Inn, CCO Springer checked the registry for the room numbers for Ms. Butts and Mr. Brown. While checking the registry list for their names and room numbers, CCO Springer noticed the name "Hoopii" on the list. She knew two people with the name "Hoopii" and knew that Dalphine Hoopii (the defendant) was on community custody, and there was a DOC warrant for her arrest. CCO Springer confirmed that it was "Dalphine Hoopii" and she was registered to room 245.

V.

CCO Springer contacted Fife Police for assistance. Fife Officers Morales, Green and Vradenburg arrived at the Hometel Inn to assist the Corrections Officers for officer safety.

VI.

When CCO Springer and the other officers went to room 245 and knocked, the defendant peeked through the curtains and then answered the

door. She was immediately taken into custody by CCO Springer on the outstanding DOC warrant.

VII.

Officers identified the other two people in the room as Matthew Perry and Brenda Marshall. The officers determined that they were under DOC supervision as well. Officers detained Perry and Marshall for violating their conditions of probation when officers saw an open beer can in the room, when they are prohibited from drinking alcohol.

VIII.

CCO Springer announced to Perry, Marshall, and the defendant that she was going to search the room because they were in violation of their conditions of supervision. CCO Springer and the other Corrections Officers began to search the room.

IX.

CCO Springer searched a large backpack that was near the bathroom sink. Inside of the outer pocket, CCO Springer found a glass pipe, which she recognized through her training and experience as a methamphetamine pipe. She told Officer Morales that she had found the pipe.

X.

Officer Morales read all of the Miranda rights to the defendant, Perry, and Marshall. All three indicated that they understood their rights and were willing to speak with the officers.

XI.

After being advised of her rights, the defendant claimed that the backpack being searched by CCO Springer belonged to her.

XII.

CCO Springer continued to search the backpack and she found a large baggie containing a white crystalline substance. The defendant volunteered, "I guess you found my salts."

XIII.

Officer Scott Green testified that cutting agents are frequently used by dealers to expand the amount of the drug, thereby expanding the potential profit. A cutting agent would be a non-drug that looks like a drug so that you could mix it in with the drug. Salt would be an example of a cutting agent for methamphetamine.

XIV.

CCO Springer searched the main portion of the backpack and found a red/pink zippered pouch. Inside of the pouch, CCO Springer found small zippered pouches of pills, two bottles of pills labeled Endocet / Oxycodone, and a bottle of pills labeled Methadone. These items were turned over to the Fife Police Department.

XV.

Post-Miranda, Officer Green asked the defendant to confirm what items were in the backpack. The defendant successfully named the items

inside, including the pills, candles, phone chargers, and miscellaneous hygiene items. The defendant confirmed that it was all hers several times.

XVI.

Meanwhile, CCO Ohman searched a purse that was in the room. She found five baggies that contained a crystalline substance, three baggies that were empty, and a similar baggie that contained one unidentified pill. Also inside of the purse, CCO Ohman found a plastic card, in the shape of a credit card, with the defendant's name on it, and \$305 cash. The evidence from the purse was turned over to the Fife Police Department.

XVII.

The defendant admitted that the purse CCO Ohman was searching belonged to her.

XVIII.

The purse went to the jail with the defendant. On the way to the jail, CCO Springer reviewed the contents and discovered a small black notebook with crib notes inside. These notes contained the names of several pill types, quantities, and dollar amounts. There were also entries in the book that appeared to be signed by "Dalphine" and "Wally."

XIX.

Officer Green described that in his training and experience, people who sell drugs or intend to sell drugs commonly have crib notes to keep

track of different types of drugs, quantities, dollar amounts, names and numbers.

XX.

CCO Ohman and CCO Holton also searched a car in the parking lot that belonged to Perry. In the center console area, CCO Ohman watched CCO Holton remove a weighing scale.

XXI.

Post-Miranda, the defendant admitted that the scale was hers and it must have fallen out of her pocket when they went to get food earlier that evening. The defendant specifically confirmed the size and shape of the scale when Officer Morales asked her.

XXII.

Officer Green testified that in his training and experience, scales are more frequently found with dealers or people who intent to deal drugs, because they use the scale to weigh out and package the drugs. Officer Green also stated that in his training and experience, it is common for drug dealers to carry large amounts of drugs, different types of drugs, packaging materials such as empty baggies, scales, cash, crib notes, and cutting agents. In his training and experience, Officer Green testified that if all of these items were found together it would be more consistent with a person who intends to deliver the drugs, rather than a person who is possessing drugs for personal use.

XXIII.

Officer Morales packaged and secured all of the evidence in the Fife property room and then brought the evidence to court for trial.

XXIV.

Forensic Scientist Maureena Dudschus from the Washington State Crime Lab testified that she conducted standard chemical tests on the evidence in this case to determine whether there were controlled substances. She determined that the five small baggies with crystalline substance contained methamphetamine, a schedule II controlled substance. One bottle of pills contained 119 pills of Oxycodone, a schedule II controlled substance. Another bottle of pills contained 50 pills that matched the Oxycodone pills from the previous bottle and 45 pills that were different. The 45 pills were also Oxycodone. One zippered pouch contained 205 pills of Lorazepam, a schedule IV controlled substance. Another zippered pouch contained 100 white pills of Lorazepam. The third zippered pouch contained 60 pills of Lorazepam.

XXV.

Damien Jenkins, Director of Transportation for the Fife Public School District, testified that there were two bus route stops at the Hometel Inn on January 20, 2009. There was a stop for special education children at the entrance to room #235, and a stop where the driveway to the Hometel Inn meets Pacific Highway East.

XXVI.

Officer Morales used a Lidar Unit to measure the distances between these bus stops and room #245. Officer Morales tested the unit before and after to confirm that it was operating properly. The measurement between room #235 and #245 is 55.6 feet. Officer Morales took a series of measurements to determine the distance between the driveway to the motel and room #245. The measurements were 66.4, 273.7, and 268.6 feet. When added together, the total distance from room #245 to the bus stop at the driveway is 608.7 feet. Both of these bus route stops are within 1000 feet.

XXVII.

On January 22, 2009, when the defendant was originally arraigned, the court ordered conditions of release, including a bail amount of \$15,000.

XXVIII.

The defendant posted the bail amount and was released from custody.

XXIX.

On May 14, 2009, the defendant signed an order setting a CrR 3.6 motion hearing for July 8, 2009.

XXX.

On July 8, 2009, Deputy Prosecuting Attorney Mark Sanchez called the defendant's name in the following courtrooms: CDPJ, CD1,

CD 2, and Judge Stolz' courtroom where the motion had been assigned. No one answered DPA Mark Sanchez and he never saw the defendant; although defense counsel was present in Judge Stolz' courtroom.

XXXI.

DPA Mark Sanchez requested a bench warrant because the defendant had failed to appear for the hearing on July 8, 2009. Judge Stolz granted his motion and issued a bench warrant for the defendant's arrest.

XXXII.

The court found all of the witnesses credible.

C. ARGUMENT.

1. THE FINDINGS FROM BOTH THE SUPPRESSION HEARING AND TRIAL ARE VERITIES ON APPEAL WHERE ERROR HAS NOT BEEN ASSIGNED TO THEM.

An appellate court reviews only those findings to which error has been assigned; unchallenged findings of fact are verities upon appeal. *State v. Hill*, 123 Wn.2d 641, 644, 647, 870 P.2d 313 (1994). As to challenged factual findings, the court reviews the record to see if there is substantial evidence to support the challenged facts; if there is, then those findings are also binding upon the appellate court. *Hill*, 123 Wn.2d at 644. Substantial evidence exists when there is a sufficient quantity of

evidence to persuade a fair-minded, rational person of the truth of the finding. *Hill*, at 644. Credibility determinations are for the trier of fact and are not subject to appellate review. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

In *Henderson Homes, Inc v. City of Bothell*, 124 Wn.2d 240, 877 P.2d 176 (1994), the Supreme Court was faced with an appellant who assigned error to the findings of fact, but did not argue how the findings were not supported by substantial evidence; made no cites to the record to support its assignments; and cited no authority. The court held that under these circumstances, the assignments of error to the findings were without legal consequence and that the findings must be taken as verities.

It is elementary that the lack of argument, lack of citation to the record, and lack of any authorities preclude consideration of those assignments. The findings are verities.

Henderson, 124 Wn.2d at 244; *see also, State v. Jacobson*, 92 Wn. App. 958, 964 n.1, 965 P.2d 1140 (1998).

A finding of fact that is erroneously denominated as a conclusion of law will be treated as a finding of fact. *Rickert v. Pub.Disclosure Comm'n*, 161 Wn.2d 843, 847, 168 P.3d 826 (2007) (citing *State v. Luther*, 157 Wn.2d 63, 78, 134 P.3d 205 (2006)). *See, Hoke v. Stevens-Norton, Inc*, 60 Wn.2d 775, 778, 375 P.2d 743 (1962); *See also, Neil F.*

Lampson Equip. Rental & Sales, Inc v. West Pasco Water Sys., Inc., 68 Wn.2d 172, 174, 412 P.2d 106 (1966) (stating that where conclusions of law are incorrectly denominated as findings of fact, the court still treats them as conclusions of law).

The court reviews conclusions of law *de novo*. *State v. Smith*, 154 Wn. App. 695, 699, 226 P.3d 195 (2010) (citing *State v. O’Neill*, 148 Wn.2d 564, 571, 62 P.3d 489 (2003); *State v. Eisfeldt*, 163 Wn.2d 628, 634, 185 P.3d 580 (2008)).

2. THE OFFICERS LAWFULLY CHECKED THE MOTEL REGISTRY

a. As A Probationer The Defendant Had A Diminished Expectation Of Privacy Permitting The Warrantless Search.

Washington courts have recognized an exception to the search warrant requirement to search parolees or probationers and their home or effects. *State v. Campbell*, 103 Wn.2d 1, 22, 691 P.2d 929 (1984), *cert. denied*, 471 U.S. 1094, 105 S. Ct. 2169, 85 L. Ed 2d 526 (1985). This exception to the warrant requirement allows a community corrections officer to search a probationer’s person and property if the officer has a well-founded suspicion the probationer is in violation of his conditions of probation. *State v. Lucas*, 56 Wn. App. 236, 783 P.2d 121 (1989), *review*

denied, 114 Wn.2d 1009 (1990); *State v. Lozano*, 76 Wn. App. 116, 882 P.2d 1191 (1994). The well-founded suspicion that justifies a warrantless search of a probationer's person or effects need not rise to the level of probable cause. *Lucas*, at 243-44.

This exception stems from probationers' diminished privacy rights. *Campbell*, 103 Wn.2d at 22. One rationale behind this reduced privacy right is that a person sentenced to confinement but released on probation remains in the custody of Department of Corrections while serving the remainder of the sentence. *Lucas*, 56 Wn. App. at 240. Additionally, these individuals have a diminished right of privacy because "the State has a continuing interest in the defendant and its supervision of him or her as a probationer." *Lucas*, 56 Wn. App. at 240 (quoting *State v. Lampman*, 45 Wn. App. 228, 233 n. 3, 724 P.2d 1092 (1986)).

The Legislature has codified this exception in RCW 9.94A.631, which provides in part,

If there is a reasonable cause to believe that an offender has violated a condition or requirement of the sentence, an offender may be required to submit to a search and seizure of the offender's person, residence, automobile, or other personal property.

The Washington Supreme Court has held that reasonable cause need only be a well founded suspicion of a violation; probable cause is not required. *State v. Fisher*, 145 Wn.2d 209, 224-28, 35 P.3d 366 (2001). Thus, it is the statute's "reasonable cause" language as interpreted by the

courts that leads to the “well founded suspicion” legal standard.

Knowledge of a probationer’s history and his or her terms of probation are appropriate factors to consider in determining the reasonableness of a warrantless search. *State v. Lampman*, 45 Wn. App 228, 233 724 P.2d 1092 (1986). When conducting a search pursuant to this exception, a corrections officer may be accompanied by law enforcement escorts to ensure his or her safety. *State v. Simms*, 10 Wn. App. 75, 85, 516 P.2d 1088 (1974).

State v. Lucas is illustrative. *See, Lucas*, 56 Wn. App. 236. There, community correction officers went to the defendant’s home to conduct a transfer interview, but the defendant was not home. While standing in the driveway, the officers looked through a sliding glass door and observed a plastic container that appeared to contain marijuana and rolling papers. Several days later, the officers returned to the defendant’s residence and upon meeting the defendant at the front door, informed him that they were there to conduct the transfer interview. The defendant became nervous and asked the officers if they had a warrant.

Because the officers had not mentioned the possibility of searching the defendant’s home, the officers found the defendant’s behavior suspicious. The officers informed the defendant that pursuant to his probation, they did not need a warrant. The defendant allowed the officers

into his home, but continued to act nervously. When the officers discovered narcotics in the defendant's living room, the defendant was arrested and his home searched.

Lucas's sentence had been stayed due to a pending appeal, so that Lucas was only subject to conditions of release imposed by the court pending appeal. Nonetheless, the court held that the exception to warrantless search that applies to parolees and probationers also applied to Lucas.

In determining that the search of the defendant's residence was lawful, the court in *Lucas* addressed multiple issues. First, the court held that the search did not violate Article 1, Section 7 of the Washington Constitution because the defendant's status as a convicted criminal gave him a diminished expectation of privacy. *Lucas*, 56 Wn. App. at 239-41. The court then went on to determine that the search of the defendant's residence was lawful because the community correction officers had a well-founded suspicion that the defendant was in violation of his probation. *Lucas*, 56 Wn. App. at 245.

In *State v. Simms*, the court addressed these same issues in the context of evaluating when an informant's tip justifies a probationary search. *State v. Simms*, 10 Wn. App. 75, 516 P.2d 1088 (1973). First, the court distinguished between varying degrees of privacy intrusion ranging

from police investigatory contact to a full-fledged search. *Simms*, 10 Wn. App. at 82-87. The court also established the now long-standing rule that probationary searches may be conducted on less than probable cause. *See, Simms*, 10 Wn. App. at 87.

In *State v. Patterson*, the court also discusses a probationer's diminished expectation of privacy under article I, section 7 of the Washington constitution. *See, State v. Patterson*, 51 Wn. App. 202, 204-05, 752 P.2d 945 (1988).

Here, Hoopii was a probationer. As such, she had a diminished expectation of privacy. CP 62 (Reason for admissibility II). Moreover, Hoopii who was in violation of her probation conditions, and as a result had a warrant out for her arrest, something that could not increase her expectation of privacy, but rather only diminish it. Because of her status as a probationer, and one in violation of her conditions, Hoopii had a diminished expectation of privacy that was not violated by CCO Springer's review of the registry in this case.

- b. The Review Of The Motel Registry List Was Lawful Where The Officers Had An Individualized Particularized Suspicion That Caused Them To Check It.

Where checks of a hotel registration list are based on individualized suspicion they are proper. *Jorden*, 160 Wn.2d at 130-31.

In *State v. Jorden*, the Washington Supreme Court took issue with officers' practice of conducting random suspicionless checks of hotel registration lists. *Jorden*, 160 Wn.2d at 130. The court stated,

... we hold that the practice of checking the names in a motel registry for outstanding warrants without individualized or particularized suspicion violated the defendant's article I, section 7 rights.

State v. Jorden, 160 Wn.2d 121, 130, 156 P.3d 893 (2007).

Pursuant to RCW 9.94A.700, the Department of Corrections is charged with supervising any sentence of community placement. The terms of supervision for offenders placed on community custody shall include department approval and verification of an offender's residence location and living arrangements.

RCW 9.94A, The Sentencing Reform Act of 1981, contains the guidelines and procedures used by the courts to impose sentences for adult felonies. RCW 9.94A.700 provides in part,

When a court sentences an offender to a term of total confinement in the custody of the department for any offenses specified in this section, the court shall also sentence the offender to a term of community placement as provided in this section. Except as provided in RCW 9.94A.501, the department shall supervise any sentence of community placement imposed under this section.

RCW 9.94A.700(4) further states,

Unless a condition is waived by the court, the terms of any community placement imposed under this section shall include the following conditions...(e) The residence location and living arrangements shall be subject to the

prior approval of the department during a period of community placement.

This statute gives the court the authority to sentence an offender to community custody. Additionally, this statute authorizes the Department of Corrections (DOC) to supervise the offender during that period of community custody by enforcing the terms set by the court and ordering the offender to comply with any additional conditions set by the department. Specifically, RCW 9.94A.700(4) requires, among other things, that DOC verify and approve the conditions and location of the residence of any offender on community supervision (conduct a compliance check).

In January of 2009, Shirley Butts and Robert Brown were both offenders on court ordered community placement. Ms. Butts had reported to DOC on January 7, 2009, that she would be staying at the Hometel Inn for the next two weeks, but she did not know what her room number was. Mr. Brown was a new assignment for CCO Springer who had also reported his primary residence as the Hometel Inn.

Pursuant to RCW 9.94A, Community Corrections Officers Springer, Holton and Ohman went to the Hometel on January 20, 2009, to conduct compliance checks on Ms. Butts and Mr. Brown. To carry out these checks, CCO Springer intended to verify that the Offenders were

staying at the Homotel Inn, as they had each reported, and conduct a cursory inspection of their living arrangements to ensure an environment conducive to the probationers' success. CCO Spring had no suspicion or basis for believing that either Ms. Butts or Mr. Brown had violated the conditions of their release. None was needed. This was not a search of the probationer's residence for suspected probation violations as suggested by the defense. This was a mandatory compliance check to verify the offenders' residence under RCW 9.94A, authorized by the court and carried out by the Department of Corrections. As such, it was entirely appropriate and lawful.

CCO Springer's initial search of the registry was not a random and suspicionless search, amounting to an illegal fishing expedition, as prohibited by *Jordan*. Rather, the initial search of the motel registry was to confirm the residence and living arrangements of Mr. Brown and Ms. Butts, pursuant to RCW 9.94A.700(4)(e). This provided CCO Springer with reasonable individualized and particularized suspicion to search the guest registration list. She inadvertently saw the defendant's name on the registry that was provided to her. CCO Springer was not obligated to ignore Hoopii's name, when CCO Springer knew that Hoopii had a felony DOC warrant for her arrest. CCO Springer's search of the motel registry

was permissible under the majority opinion in *State v. Jordan*. 160 Wn.2d 121, 156 P.3d 893 (2007).

Here, the actions of Officers Springer were permissible and consistent with those outlined in *Jorden*. Unlike in *Jorden*, the officers in this case did not perform a random search of the guest registry. CCO Springer was at the Hometel Inn because two active DOC offenders had reported that the inn was their primary residence. CP 59 (Undisputed Finding I). CCO Springer was there to conduct compliance checks on both of them. CP 59 (Undisputed Finding I).

The Hometel Inn kept two running registries. CP 60 (Undisputed Finding II). The first one was a page list with two columns listing room numbers in one column and the corresponding guest in the other column. CP 60 (Undisputed Finding II). A second running registry is a filing system that contains detailed information pertaining to each guest. CP 60 (Undisputed Finding II).

Consistent with the requirements of *Jorden*, Officer Springer contacted the front desk and looked at the list to verify the room numbers for Mr. Brown and Ms. Butts. CP 60 (Undisputed Finding III); CP 62 (Reason for Admissibility II). As CCO Springer viewed the list, CCO Springer recognized Dalphine Hoopii's name. CP 60 (Undisputed Finding III, IV). CCO Springer knew that Hoopii was on active DOC supervision

and had an active DOC felony warrant. CP 60 (Undisputed Finding IV). CCO Springer requested Hoopii's detailed registration card for confirmation. CP 60 (Undisputed Finding V). Based on this information, CCO Springer contacted Fife Police Department for assistance, and subsequently found and arrested Hoopii in the motel room – room #245. CP 61 (Undisputed Finding VIII).

CCO Springer's conduct in searching the motel registration list did not violate the defendant's right to privacy because she had a reasonable individualized suspicion to view the registration in the first place. CP 62 (Reason for Admissibility II). CCO Springer was searching to confirm that Mr. Brown and Ms. Butts were at the motel when she inadvertently saw the defendant's name. CP 60 (Undisputed Finding III); CP 62 (Reason for Admissibility III). CCO Springer was not obligated to ignore Hoopii's name, when CCO Springer knew that Hoopii had a felony DOC warrant for her arrest. *See*, CP 63 (Reason for Admissibility III).

The defense claim that Springer's search was random and suspicionless is not supported by the facts in this case, and it is contrary to the court's findings, which are verities. For that reason, the defendant's reliance on *Jorden* is misplaced. Br. App. 10-13

Attempting to rely on *State v. Jorden*, the defense claims that CCO Springer's search of the motel registry violated the defendant's right to privacy under article I, section 7. Br. App. 9ff. (citing *Jorden*, 160 Wn.2d at 130). The defense argues that CCO Springer's conduct was a "random

and suspicionless search of the guest registry” which amounted to an illegal fishing expedition prohibited by *Jorden*, 160 Wn.2d 129.

c. The Officer Had An Individualized Suspicion As To Hoopii And Was Entitled To Further Review Her Registration Records.

CCO Springer’s discovery of Hoopii’s name was analogous to the plain view exception. Under the plain view exception, an officer intrudes into an area where a reasonable expectation of privacy exists, but may seize evidence if the intrusion was lawfully justified and in the course of that intrusion the officer inadvertently discovers other evidence. *See, State v. Gibson*, 152 Wn. App. 945, 954, 219 P.3d 964 (2009).

In the instant case, CCO Springer had much more than a well founded suspicion that the defendant had committed a probation violation. CCO Springer had dealt with the defendant in the past and knew that the defendant was on active DOC supervision. CP 60 (Undisputed Finding IV). CCO Springer was not suspicious that a violation had occurred; rather she was sure that one had occurred. Undoubtedly, under these circumstances there was reasonable cause to search the defendant’s motel room and belongings pursuant to the warrantless search exception for probationers. *See*, CP 63 (Reason for Admissibility IV). Upon being arrested, the defendant also admitted to another violation of her conditions: using marijuana. CP 61 (Undisputed Finding X).

Once CCO Springer observed Hoopii's name in the registry and knew Hoopii to be on warrant status, she had a particularized suspicion that warranted her further investigation specifically as to Hoopii. Upon arresting Hoopii, CCO Springer had a reasonable basis to believe that Hoopii was in violation of her warrant conditions both because she had failed to report and because Hoopii admitted to using marijuana. Those violations warranted CCO Springer in searching Hoopii's room.

d. The Defendant Consented To The Records Check When She Registered.

In his concurring opinion in *State v. Jordan*, Justice Johnson outlined an additional procedure which would serve to provide compliance with the Washington Constitution. *Jordan*, 160 Wn.2d at 131. He stated, “[a] hotel owner may constitutionally require that prospective patrons consent at registration to a fully disclosed waiver of their claim to registry privacy as a condition of renting the room.” *Jordan*, 160 Wn.2d at 131 (Johnson, J., concurring). Such consent would “tell prospective guests that their identification would be provided to the police” *Jordan*, 160 Wn.2d at 133 (Johnson, J., concurring). Such a procedure would protect patrons’ constitutional rights “through the use of proper disclosure resulting in knowing, voluntary consent” and thereby complying with the consent exception to the search warrant requirement. *Jordan*, 160 Wn.2d at 133-134 (Johnson, J., concurring). As Justice Johnson points out, if a patron does not want to consent to having his or her information available

to law enforcement, the patron is free to take his or her business elsewhere. *Jorden*, 160 Wn.2d at 134 (Johnson, J., concurring).

A search conducted with consent is a well-recognized exception to the warrant requirement. *Schneckloth v. Bustamonte*, 412 U.S. 218, 93 S. Ct. 2041, 36 L. Ed. 2d 854 (1973); *State v. Hastings*, 119 Wn.2d 229, 234, 830 P.2d 658 (1992), *State v. Leach*, 113 Wn.2d 735, 738, 782 P.2d 1035 (1989). The State bears the burden of proving consent by clear and convincing evidence. *State v. Cantell*, 70 Wn. App. 340, 343, 853 P.2d 479 (1993). Valid consent requires: 1) the consent be voluntary, 2) the person giving consent has the authority to consent, and 3) the search does not exceed to scope of consent. *State v. Reichenbach*, 153 Wn.2d 126, 131, 101 P.3d 80 (2004) (citing *State v. Thompson*, 151 Wn.2d 793, 803, 92 P.3d 228 (2004); *State v. Nedergard*, 51 Wn. App. 304, 308, 753 P.2d 526 (1988)).

Here, the Hometel Inn gave patrons notice of the fact that it shared records with officers, so that Hoopii was properly on notice. Patrons of a motel validly consent to disclosure of the information contained in the motel registry when disclosure waiver language is conspicuously displayed both on the motel registration desk and on the wall of the motel lobby. *See, Jorden*, 160 Wn.2d at 132-34 (Johnson concurring).

Visitors to the Hometel Inn must consent to a waiver of their registration privacy as a condition of renting the room. RP 09-02-09, p. 31, ln. 15 to p. 32, ln. 14; p. 71, ln. 9 to p. 74, ln. 10. This procedure

squarely falls within the program outlined by Justice Johnson in his concurring opinion. The following is an excerpt from the posted City Ordinance:

“The records required by this section shall be kept available for inspection by any police or code enforcement officer at any reasonable time, or in a police or fire emergency at any time of day or night.”

FIFE, WA., MUNICIPAL CODE ch. 5.34 § 010. This section was highlighted and located on the registration desk. RP 09-02-09, p. 71, ln. 18 to p. 72, ln. 2. The records required referenced above include “name, current address, number of people, and the make, model and license number of the vehicle being used by registering guest.” FIFE, WA., MUNICIPAL CODE ch. 5.34 § 010.

Having voluntarily registered as a guest of the Homotel Inn, with conspicuous disclosures of waiver posted, the defendant knowingly and voluntarily consented to a search of her registration information.

The provisions of the posting in this case are specific and clear, as opposed to the “innocuous posting provisions” at issue in *Jorden. Jorden*, 160 Wn.2d at 133. The disclosure in this case was complete and unambiguous and resulted in knowing and voluntary waiver of motel patrons’ protected private affairs.

If a patron does not wish to consent to having his or her registry information available to law enforcement, the patron is free to take his or

her business elsewhere. *Jorden*, 160 Wn.2d 121 at 134 (Johnson concurring).

Having voluntarily registered as a guest of the Homotel Inn, with conspicuous disclosures of waiver posted, the defendant knowingly and voluntarily consented to a search of her registration information. Additionally, CCO Springer had an individualized and particularized reason for viewing the motel registry. Therefore, CCO Springer lawfully viewed the information in the motel registry.

D. CONCLUSION.

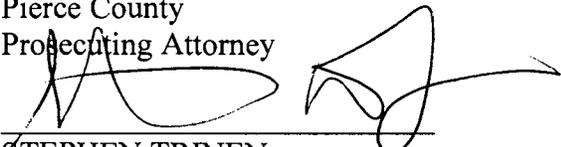
The review of the hotel registry by CCO Spring was valid in this case and did not fall under that prohibited in *State v. Jorden*. First, the defendant had a diminished expectation of privacy as a probationer on warrant status. Second, when CCO Springer first checked the hotel registry, she did so lawfully as part of a statutorily permitted process of verifying another probationer's address. Once CCO Springer observed Hoopii's name on the register and knew Hoopii to be on warrant status, she had a reasonable basis to review the more detailed registry information

for Hoopii. Finally, because Hoopii was on warrant status, once CCO Spring verified the defendant's identity she was entitled to go to Hoopii's room and arrest her, and then to search Hoopii's room as a probationer in violation of her conditions.

This Court should uphold the search as valid and deny the defendant's claim.

DATED: September 14, 2010.

MARK LINDQUIST
Pierce County
Prosecuting Attorney


STEPHEN TRINEN
Deputy Prosecuting Attorney
WSB # 30925

Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

9.14.10 
Date Signature

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