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Division II
State of Washington
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NO. 51428-1-II

COURT OF APPEALS OF THE STATE OF WASHINGTON,
DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

SCOTT EUGENE RIDGLEY,

Appellant.

BRIEF OF APPELLANT

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TABLE OF CONTENTS

	Page
A. TABLE OF AUTHORITIES	iii
B. ASSIGNMENT OF ERROR	
1. Assignment of Error	1
2. Issue Pertaining to Assignment of Error	1
C. STATEMENT OF THE CASE	
1. Factual History	2
2. Procedural History	5
D. ARGUMENT	
I. THE TRIAL COURT ERRED WHEN IT ENTERED FINDINGS OF FACT UNSUPPORTED BY SUBSTANTIAL EVIDENCE	10
II. THE TRIAL COURT ERRED WHEN IT DENIED THE DEFENDANT’S MOTION TO SUPPRESS EVIDENCE A COMMUNITY CORRECTIONS OFFICER SEIZED AFTER SEARCHING THE DEFENDANT’S RESIDENCE WITHOUT A REASONABLE BASIS TO BELIEVE THE DEFENDANT WAS VIOLATING HIS CONDITIONS OF RELEASE	14
E. CONCLUSION	17
F. APPENDIX	
1. Washington Constitution, Article 1, § 7	18
2. United States Constitution, Fourth Amendment	18
G. AFFIRMATION OF SERVICE	19

TABLE OF AUTHORITIES

Page

State Cases

State v. Agee, 89 Wn.2d 416, 573 P.2d 355 (1977) 10

State v. Ford, 110 Wn.2d 827, 755 P.2d 806 (1988) 10

State v. Hill, 123 Wn.2d 641, 870 P.2d 313 (1994) 10

State v. Jardinez, 184 Wn. App. 518, 338 P.3d 292 (2014) 14

State v. Massey, 81 Wn. App. 198, 913 P.2d 424 (1996) 15

State v. Nelson, 89 Wn.App. 179, 948 P.2d 1314 (1997) 10

State v. Parris, 163 Wn.App. 110, 259 P.3d 331 (2011) 15

State v. Simpson, 95 Wn.2d 170, 622 P.2d 1199 (1980) 14

Constitutional Provisions

Washington Constitution, Article 1, § 7 14

United States Constitution, Fourth Amendment 14

Statutes

RCW 9.94A.631 14

Other Authorities

R. Utter, Survey of Washington Search and Seizure
Law: 1988 Update, 11 U.P.S. Law Review 411 (1988) 14

ASSIGNMENT OF ERROR

Assignment of Error

1. The trial court erred when it entered findings of fact unsupported by substantial evidence.

2. The trial court erred when it denied the defendant's motion to suppress evidence a community corrections officer seized after searching the defendant's residence without a reasonable basis to believe the defendant was violating his conditions of release.

Issues Pertaining to Assignment of Error

1. Does a trial court err if it enters findings of fact unsupported by substantial evidence?

2. Under Washington Constitution, Article 1, § 7, and United States Constitution, Fourth Amendment, does a trial court err if it denies a defendant's motion to suppress evidence a community corrections officer seizes after searching the defendant's residence without a reasonable basis to believe the defendant was violating his conditions of release?

STATEMENT OF THE CASE

FACTUAL HISTORY

On May 2, 2016, Centralia police Detective Adam Haggerty and another officer went to a house shared by Deanna Morris and Hayden Morgan on Gore Road in rural Lewis County outside Onalaska. RP 5-6¹. At the time Detective Haggerty was working as a member of the Lewis County Joint Narcotics Enforcement Team. RP 5. Once at the residence Detective Haggerty arrested Ms. Morris on an outstanding felony warrant. RP 6-7. Following that arrest Ms. Morris told Detective Haggerty that “a person” who lived on Gish Road in rural Lewis county outside Onalaska came to the house she shared with Mr. Morgan and gave Mr. Morgan methamphetamine. RP 6-7. Detective Haggerty’s later testimony concerning Ms. Morris’s claims went as follows:

A. Just prior to going there, we looked at some records of who would be occupying the residence or who had history there, and Ms. Morris had history there, and she also had a felony warrant. So we pulled in the driveway at one point and talked to Mr. Morgan and

¹The record on appeal, bound in one continuously numbered volume, includes the report of the proceedings from the CrR 3.6 hearing held on 4/5/17, the bench trial held on 12/6/17 and 12/7/17, and the sentencing hearing held on 1/12/18. It is referred to herein as “RP [page #].” Since the defendant in this case argues that the trial court erred when it denied the defendant’s motion to suppress evidence, the facts cited in the Statement of the Case, with a few exceptions, come from the testimony of the witnesses at the suppression motion.

arrested Deanna Morris upon a confirmed felony warrant.

Q. Okay. And after speaking with Ms. Morris, did you ask her any questions?

A. Yes.

Q. And what did you ask her?

A. We asked her about the rumors of drugs being dropped off to Mr. Hayden Morgan at that address.

Q. And did she respond?

A. Yes.

Q. What was her answer?

A. She stated that he receives his drugs from a person that lives in Onalaska off of Gish Road.

Q. Did she know the identity of this person?

A. I don't believe that she had the exact identity.

Q. But she just knew where he lived?

A. Yes.

RP 6-7.

After arresting Ms. Morris, Detective Haggerty drove her to Gish Road where she pointed out the house where the "person" who delivered methamphetamine to Mr. Morgan lived. RP 7-8. The house where the "person" lived was at 517 Gish Road. *Id.*

A check with the Department of Corrections revealed that the defendant Scott Eugene Ridgley was on community custody following a drug conviction and that he had listed his current address as the house at 517 Gish Road. RP 7-8. Initially, Errol Shirer, the defendant's community corrections officer (CCO), believed Detective Haggerty's information to be "sketchy" at best. RP 16-18. However, after speaking with Ms. Morris at the Lewis County Jail and verifying what Detective Haggerty claimed she told him, CCO Shirer decided to search the defendant's residence for evidence that he was violating his conditions of release. RP 19-20. CCO Shirer then asked Detective Haggerty to act as backup for the search. *Id.*

A little while later CCO Shirer, a second CCO, Detective Haggerty, and another officer met at the defendant's home. RP 9-10. CCO Shirer then met with the defendant and ordered him to submit to a urine analysis. RP 20-23. The defendant submitted to the test, which showed positive for methamphetamine. *Id.* The defendant then admitted to recent methamphetamine use. RP 23-25. Based upon this admission and positive drug test, CCO Shirer placed the defendant in handcuffs and told him that he was under arrest. RP 26. CCO Shirer then proceeded with his search of the house after another resident told him that there "might" be a BB-gun and methamphetamine in a safe in the bedroom. RP 25-26. Once inside

the defendant's bedroom CCO Shirer found a locked safe. RP 26-27. Without asking the defendant for the combination, CCO Shirer took the safe outside and broke it open after getting permission from his supervisor and a prosecutor to do so. RP 27-28.

Inside the safe CCO Shirer found multiple ounces of what appeared to be methamphetamine, a container with 135 pills in it, a number of blister packs with pills in them, a scale, and approximately \$8,500.00 in cash in \$1,000.00 in bundles. RP 13-14, 28-29. Both Detective Haggerty and other officers later testified that the amount of drugs in conjunction with the money indicated possession with intent as opposed to simple possession. RP 54-59. Later testing revealed that the drugs in the baggies were methamphetamine, that the pills in the blister packs were hydromorphone, and that the pills were oxycodone. RP 110-115.

Procedural History

By information filed May 3, 2016, the Lewis county prosecutor charged the defendant with one count of possession of methamphetamine with intent to deliver, one count of possession of oxycodone with intent to deliver, and one count of possession of hydromorphone. CP 1-4. Following arraignment the defendant filed a Motion to Suppress Evidence arguing that the state's warrantless search of his residence was presumptively

unreasonable and the court should suppress all of the evidence seized unless the state could prove an applicable exception to the warrant requirement. CP 19-21.

The court later held a hearing on the defendant's motion, during which the state called Detective Haggerty and CCO Shirer as its only witnesses. RP 5-16, 16-29. Following their testimony and argument by counsel the trial court denied the motion. CP 33-35. The court later entered the following findings and conclusion on the motion. CP 46-48.

FINDINGS OF FACT

1.1 On May 2, 2016, Detective Adam Haggerty arrested Deana Morris for an active felony warrant.

1.2 Morris informed Detective Haggerty of a residence her roommate would purchase methamphetamine from on Gish Road.

1.3 Morris was driven to Gish Road and identified a blue house at 517 Gish Road as the location where the methamphetamine was purchased from.

1.4 This residence belongs to Scott Ridgley.

1.5 Ridgley was on community custody at the time and was being supervised by DOC.

1.6 CCO Errol Shirer was informed of what Morris had said about purchasing methamphetamine by Detective Haggerty, and contacted her at the Lewis County Jail.

1.7 Morris told CCO Shirer the same information she had told Detective Haggerty regarding her roommate purchasing

methamphetamine from the residence on Gish Road.

1.8 As part of his community custody, Ridgley was not to use, possess, or consume methamphetamine.

1.9 Ridgley agreed to the terms of community custody by signing the community custody paperwork.

1.10 CCO Shirer conducted a compliance check on Ridgley at his residence based on the information learned from Morris.

1.11 For safety reasons, CCO Shirer asked for assistance from law enforcement when conducting his compliance check.

1.12 CCO Shirer contacted Ridgley at his residence and had him provide a urine sample, which returned positive for the presence of methamphetamine.

1.13 As people from the residence were being removed for safety reasons, Detective Haggerty contacted Ridgley's girlfriend, Misty Raines.

1.14 Raines informed Detective Haggerty that there was drug paraphernalia inside Ridgley's residence and there was methamphetamine and cash in the safe next to Ridgley's bed.

1.15 Raines spoke with CCO Shirer and provided this same information regarding the paraphernalia, methamphetamine and cash.

1.16 CCO Shirer entered the residence to check the safe based on the information learned from Raines.

1.17 A locked safe was discovered next to Ridgley's bed.

1.18 The safe was forced open and found to contain a large amount of U.S. currency, unknown pills, drug paraphernalia, a digital scale, and what appear to be methamphetamine.

CONCLUSIONS OF LAW

2.1 CCO Shirer possessed a reasonable basis to conclude ridgley had violated the terms of his community custody.

2.2 There was a nexus between the community custody violation and the searches performed by CCO Shirer.

3.3 The search of Ridgley's safe along with the urine sample were reasonable.

CP 46-48.

This case later come on for a trial before a jury. RP 37. At that time the defendant, who was represented by counsel, told the court himself that he wanted a continuance and that he wanted to waive jury. RP 37-46. The trial court denied the first motion but did accept the defendant's request to waive jury after holding a colloquy with the defendant on his right to jury trial. *Id.* The case then proceeded to trial before the court, during which the state called Detective Haggerty, CCO Shirer, a Washington State Patrol (WSP) Forensic Scientist, and four other witnesses on behalf of the state. RP 51-116. Detective Haggerty and CCO Shirer testified to the facts contained in the preceding factual history. *See* Factual History. The WSP forensic scientist testified that the baggies CCO Shirer found in the safe weighed 24.4 grams and contained methamphetamine, that pills in the blister packs contained hydromorphone, and that the 135 pills in the bottle

contained oxycodone. RP 110-115. Following this evidence the state rested its case. RP 117-118. The defendant then rested without calling any witnesses. *Id.*

At this point both parties presented their closing arguments. RP 118-124. The court then found the defendant guilty on each charge and later entered finding of fact and conclusions of law in support of its verdicts as required under the court rules. RP 124-129; CP 64-67.

The court later convened a sentencing hearing on January 12, 2018. RP 133-146. At that hearing the defendant, again speaking for himself, moved for a new trial, arguing that he had not been ready for trial and that the pills found in the safe belonged to his mother, who was currently in the courtroom. RP 133-136. The trial court denied this motion. RP 136-137. The court then imposed a sentence within the standard range on each count after which the defendant filed timely notice of appeal. RP 136-146; CP 71-81.

ARGUMENT

I. THE TRIAL COURT ERRED WHEN IT ENTERED FINDINGS OF FACT UNSUPPORTED BY SUBSTANTIAL EVIDENCE.

The purpose for findings of fact and conclusions of law are to aid an appellate court on review. *State v. Agee*, 89 Wn.2d 416, 573 P.2d 355 (1977). The Court of Appeals reviews findings of fact under the substantial evidence rule. *State v. Nelson*, 89 Wn.App. 179, 948 P.2d 1314 (1997). Under the substantial evidence rule, the reviewing court will sustain findings of fact “if the record contains evidence of sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise.” *State v. Ford*, 110 Wn.2d 827, 755 P.2d 806 (1988). In making this determination, the reviewing court will not revisit issues of credibility, which lie within the unique province of the trier of fact. *Id.* Finally, findings of fact are considered verities on appeal absent a specific assignment of error. *State v. Hill*, 123 Wn.2d 641, 870 P.2d 313 (1994).

In the case at bar the trial court entered written findings of fact and conclusions of law in support of its decision to deny the defendant’s motion to suppress. The following quotes findings of fact 1.2, 1.3, 1.7, 1.14 and 1.15 in their entirety. Appellant assigns error to those portions of the findings set out in italics and bold.

1.2 Morris informed Detective Haggerty of a residence **her roommate would purchase methamphetamine from on Gish Road.**

1.3 Morris was driven to Gish Road and identified a blue house at 517 Gish Road **as the location where the methamphetamine was purchased from.**

. . . .

1.7 Morris told CCO Shirer the same information she had told Detective Haggerty regarding her roommate **purchasing methamphetamine from the residence on Gish Road.**

. . . .

1.14 Raines informed Detective Haggerty that there was drug paraphernalia inside Ridgley's residence **and there was methamphetamine and cash in the safe next to Ridgley's bed.**

1.15 Raines spoke with CCO Shirer and provided this same information regarding the paraphernalia, **methamphetamine and cash.**

CP 46-48 (emphasis added).

The gist of the emphasized portions of findings 1.2, 1.3 and 1.7 is that Ms Morris told Detective Haggerty that her room mate would periodically go to the house on Gish Road and purchase methamphetamine from someone inside the residence. In fact, Detective Haggerty's testimony concerning Ms Morris's statements to him was that a person who happened to live on Gish Road actually came to the house Ms Morris shared with her room mate and delivered the methamphetamine at that address. Detective

Haggerty's testimony concerning Ms Morris's statements went as follows:

A. Just prior to going there, we looked at some records of who would be occupying the residence or who had history there, and Ms. Morris had history there, and she also had a felony warrant. So we pulled in the driveway at one point and talked to Mr. Morgan and arrested Deanna Morris upon a confirmed felony warrant.

Q. Okay. And after speaking with Ms. Morris, did you ask her any questions?

A. Yes.

Q. And what did you ask her?

A. We asked her about the rumors of drugs being dropped off to Mr. Hayden Morgan at that address.

Q. And did she respond?

A. Yes.

Q. What was her answer?

A. She stated that he receives his drugs from a person that lives in Onalaska off of Gish Road.

Q. Did she know the identity of this person?

A. I don't believe that she had the exact identity.

Q. But she just knew where he lived?

A. Yes.

RP 6-7.

The substance of this testimony was that Detective Haggerty

believed someone who lived on Gish Road was going to the house Ms. Morris shared with her room mate on Gore Road and was delivering methamphetamine to Ms. Morris's room mate. What Detective Haggerty specifically asked, and what Ms. Morris confirmed, was that someone was coming to her house on Gore Road and delivering methamphetamine to Mr. Hayden. Detective Haggerty did not claim that Ms. Morris ever stated that either she or Mr. Hayden ever went to the Gish Road address, went inside, or obtained methamphetamine at that location, much less "purchased" it at that address. Thus, in this case, substantial evidence does not support those designated portions of findings 1.2, 1.3 and 1.7 which indicate otherwise.

In addition, in Findings of Fact 1.14 and 1.15 the court claims that a resident of the Gish Road house by the name of Ms. Rainey told Detective Haggerty and CCO Shirer that the safe in the bedroom "contained methamphetamine and cash." See Findings 1.14 and 1.15. In fact, neither Detective Haggerty nor CCO Shriver claimed that Ms. Rainey told them that the safe "contained" either methamphetamine or cash. Rather, what they testified to was that Ms. Rainey told them that there "might be" drugs and a BB gun in the safe (testimony of Detective Haggerty at RP 11-12) and that the safe contained "what she believed was cash and guns and drugs"

(testimony of CCO Shirer at RP 25). Thus, substantial evidence does not support the indicated portions of findings of fact 1.14 and 1.15.

II. THE TRIAL COURT ERRED WHEN IT DENIED THE DEFENDANT'S MOTION TO SUPPRESS EVIDENCE A COMMUNITY CORRECTIONS OFFICER SEIZED AFTER SEARCHING THE DEFENDANT'S RESIDENCE WITHOUT A REASONABLE BASIS TO BELIEVE THE DEFENDANT WAS VIOLATING HIS CONDITIONS OF RELEASE.

Warrantless searches are presumptively unreasonable under Washington Constitution, Article 1, § 7, and United States Constitution, Fourth Amendment. *State v. Simpson*, 95 Wn.2d 170, 622 P.2d 1199 (1980). As such, the courts of this state will suppress the evidence seized as the fruit of that warrantless search unless the prosecution meets its burden of proving that the search falls within one of the various "jealously and carefully drawn" exceptions to the warrant requirement. R. Utter, *Survey of Washington Search and Seizure Law: 1988 Update*, 11 U.P.S. Law Review 411, 529 (1988).

As one of the exceptions to the warrant requirement, a CCO may search an offender's residence or other personal property "[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). To have reasonable cause of a violation, the CCO must have a "well-founded suspicion that a violation has occurred." *State v. Jardinez*, 184 Wn. App. 518, 524, 338 P.3d

292 (2014) (quoting *State v. Massey*, 81 Wn. App. 198, 200, 913 P.2d 424 (1996)). The “reasonable cause standard” is analogous to the requirements of a *Terry* stop, which invalidates police detentions absent a reasonably articulable suspicion based upon objective facts that lead to a rational inference that a violation of law has occurred. *See i.e.*, *State v. Parris*, 163 Wn.App. 110, 119, 259 P.3d 331 (2011).

In the case at bar, the findings of fact from the suppression motion that are supported by substantial evidence do not support the conclusion that CCO Shirer had a reasonably articulable suspicion based upon objective facts that the defendant was in violation of his conditions of community supervision in regards to drug use. At most, the facts the court found that are supported by substantial evidence indicate that Ms. Morris told CCO Shirer that “someone” (not even designated male or female) she believed lived at a house on Gish Road she was able to point out to the police had come over to her address on Gore road and provided methamphetamine to her room mate Hayden Morgan. Ms. Morris did not say how many times this had happened; she did not say when it had happened; she did not say how much methamphetamine was delivered; she did not say what Hayden Morgan was doing with it, or even that it had happened more than once.

Additionally, Ms. Morris did not claim that either she or Mr Morgan

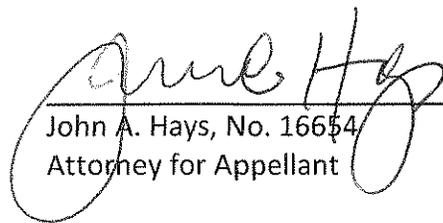
had ever been in the house she pointed out on Gish Road or that she or Mr. Morgan had seen methamphetamine in the house. The only other piece of information CCO Shirer had was that the defendant did list his residence at 517 Gish Road, although CCO Shirer presumably also knew that other persons lived at that address. Thus, in this case, the evidence CCO Shirer had at the time he went to 517 Gish Road and demanded that the defendant submit to a UA test and search did not raise to the level of a reasonably articulable suspicion sufficient to justify the search he performed. Thus, the trial court erred when it denied the defendant's motion to suppress the evidence CCO Shirer discovered when he searched the defendant's home and safe.

CONCLUSION

The trial court erred when it entered findings of fact unsupported by substantial evidence and when it denied the defendant's motion to suppress evidence. As a result this court should vacate the defendant's convictions and remand with instructions to grant the motion to suppress.

DATED this 1st day of June, 2018.

Respectfully submitted,



John A. Hays, No. 16654
Attorney for Appellant

APPENDIX

**WASHINGTON CONSTITUTION
ARTICLE 1, § 7**

No person shall be disturbed in his private affairs, or his home invaded, without authority of law.

**UNITED STATES CONSTITUTION,
FOURTH AMENDMENT**

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons and things to be seized.

COURT OF APPEALS OF WASHINGTON, DIVISION II

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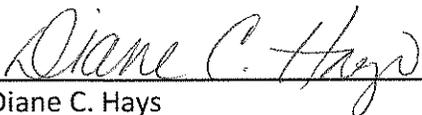
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AFFIRMATION
OF SERVICE

The under signed states the following under penalty of perjury under the laws of Washington State. On the date below, I personally e-filed and/or placed in the United States Mail the Brief of Appellant with this Affirmation of Service Attached with postage paid to the indicated parties:

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