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THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

SCOTT EUGENE RIDGLEY,

Appellant.

Appeal from the Superior Court of Washington for Lewis County

Respondent's Brief

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I. ISSUE

- A. Did the trial court err when it denied Ridgley's motion to suppress the evidence recovered from his residence pursuant to the warrantless search by the Community Corrections Officers?

II. STATEMENT OF THE CASE

Detective Adam Haggerty is a City of Centralia police officer and member of the Joint Lewis County Narcotics Enforcement Team (JNET). RP 5. Detective Schlecht, another member of JNET, received information that Hayden Morgan would be receiving a large amount of drugs. RP 6. Detectives went to rural Onalaska on May 2, 2016 to contact Hayden Morgan out on Gore Road. RP 6-7. Prior to arriving at the residence at Gore Road detectives, through their investigation, discovered Deanna Morris was associated with the Gore residence and had a felony warrant issued for her arrest. RP 6. Upon arriving at the Gore Road residence, detectives spoke with Mr. Morgan and arrested Ms. Morris on her warrant. *Id.*

Detectives questioned Ms. Morris about rumors of drugs being dropped off to Mr. Morgan at the Gore Road address. RP 7. Ms. Morris told the detectives Mr. Morgan receives drugs from a person who lives off Gish Road in Onalaska. RP 7. Ms. Morris did not have the exact identity of the person, but did know the residence where the person lived. RP 7. JNET had received

information drugs were coming being distributed out of Scott Ridgley's residence. RP 7. A deputy took Ms. Morris out to Gish Road and she pointed out 517 Gish Road, Ridgley's residence, as the drug dealer's house. RP 7.

Detective Haggerty knew Ridgley was on supervision with the Washington State Department of Corrections (DOC). RP 8. Detective Haggerty contacted community corrections officers (CCO) Errol Shirer and Kaylyn Lucas regarding the information relayed about Ridgley from Ms. Morris. RP 8.

CCO Shirer, after being relayed the information regarding Ridgley from CCO Lucas contacted Detective Haggerty. RP 17. CCO Shirer was informed Ms. Morris was currently located at the Lewis County Jail. RP 18. CCO Shirer went to the Lewis County Jail and spoke with Ms. Morris. RP 18. Ms. Morris told CCO Shirer, "that her and Hayden Morgan were purchasing methamphetamine from the house on Gish Road that she had showed the detectives." RP 18.

CCOs Shirer and Lucas went to the Gish Road residence. RP 18-19. CCO Shirer was not familiar with Ridgley, as CCO Shirer was not supervising Ridgley, and CCO Shirer was not familiar with the Gish Road residence. RP 19, 23-24. It is a common practice to

have law enforcement accompany CCOs for officer safety purposes. RP 9, 19.

CCO Shirer did some research on the case prior to going out to Gish Road. RP 19-20. CCO Shirer looked at the chronological file, as Ridley was not on Shirer's caseload and Ridgley's CCO was not available. RP 19. CCO Shirer believed Ridgley was in violation of his community custody conditions for not being in chemical dependency treatment, and based upon the information regarding methamphetamine being used and sold, CCO Shirer wanted to get a urinalysis test from Ridgley. RP 19-20.

Ridgley had a number of different conditions of his community custody. Ex. 1.¹ Ridgley had entered into and successfully complete certified substance abuse treatment. *Id.* at 1. Ridgley was required to obey all laws. *Id.* Incorporated into Ridgley's community custody conditions are the terms in his Judgment and Sentence. *Id.* at 3. Ridgely's Judgment and Sentence prohibits the consumption of alcohol and non-prescribed controlled substances. Ex. 2 at page 5. Ridgley was also required

¹ The State will be designating both exhibits admitted at the Suppression Hearing in a supplemental designation of Clerk's papers. The State will note the Exhibit List only lists Exhibit 2 as being admitted. This is in error. Exhibit 1 was admitted. *See* RP 20.

to “perform affirmative acts as required by DOC to confirm compliance with the orders of the court.” *Id.*

When the CCOs and Detective Haggerty arrived at the residence, Ridgley exited the bedroom on the right-hand side prior to speaking to CCO Shirer. RP 24. CCO Shirer introduced himself, explained why they were at the residence, and requested Ridgley comply with a urinalysis test. RP 23-24. Ridgley complied with the urinalysis test and it was positive for methamphetamine. RP 24. Ridgley admitted he had used methamphetamine. RP 25.

Misty Raines was also located at the residence. RP 10. While inside the residence Detective Haggerty attempted to ask Ms. Raines questions, but Ridgley told Ms. Raines not to answer. RP 15. Ms. Raines walked out of the house. RP 15.

Detective Haggerty and CCO Shirer spoke to Ms. Raines outside the residence. RP 11, 16, 25. Ms. Raines told Detective Haggerty there was a meth pipe on a shelf or something similar in Ridgley’s master bedroom. RP 11. Ms. Raines also mentioned a safe where there may be drugs and fake guns or a BB gun. RP 12. Ms. Raines told CCO Shirer she believed there was cash, guns, and drugs in the safe. RP 25. CCO Shirer searched Ridgley’s residence due to there being reasonable cause to believe there

was a violation of community custody and evidence of such violations could be contained in the house. RP 27-28.

The CCOs removed a locked safe from the master bedroom. RP 12. The safe was locked and CCO Shirer had to force it open. RP 13. The safe contained “130-some pills, hydrocodone or oxy’s, a little over three ounces of methamphetamines, bulk currency, and I believe some marijuana at some point was located.” RP 13. A search warrant was obtained, but the bulk of the evidence was what was located inside the safe. RP 13.

The State charged Ridgley on May 3, 2016 with Count I: Possession of a Controlled Substance with the Intent to Deliver – Methamphetamine, and Count II: Possession of a Controlled Substance with Intent to Deliver – Oxycodone, and Count III: Possession of a Controlled Substance – Hydromorphone. CP 1-2. Ridgley filed a motion to suppress due to an alleged illegal warrantless search. RP 19-21. The State filed a response. RP 24-28. The CrR 3.6 hearing was held on April 5, 2017. See RP; CP 43. The State prevailed and Findings of Facts and Conclusions of Law were entered. CP 46-48. Ridgley proceeded to a trial to the bench and was convicted as charged. See RP; CP 60-62, 64-70. Ridgley

was sentenced to 96 months in prison. CP 75. Ridgley timely appeals. CP 84.

The State will supplement the facts as necessary in its argument section below.

III. ARGUMENT

A. THE TRIAL COURT CORRECTLY DENIED RIDGLEY'S MOTION TO SUPPRESS THE EVIDENCE.

Ridgley argues the trial court incorrectly denied his motion to suppress the evidence discovered when Community Corrections Officers searched his residence. Ridgley contends the CCOs did not have a reasonable basis to believe Ridgely was in violation of his community custody conditions, and therefore any search of his residence was unlawful. Brief of Appellant 14-16. Ridgley also contends Findings of Fact 1.2, 1.3, 1.7, 1.14, and 1.15 are not supported by substantial evidence.² Brief of Appellant 10-14. The Findings of Fact are supported by substantial evidence. Further, the CCOs had reasonable suspicion, personally verified by the CCO Shirer, that Ridgley was in violation of his community custody conditions. The search of the residence was lawful and this Court

² Ridgley breaks the Findings of Fact argument into a separate section, the State is reorganizing the briefing to include both into one section of argument.

should find the motion to suppress the evidence was properly denied.

1. Standard Of Review.

When an appellant challenges a trial court's denial of a motion to suppress, the reviewing court determines whether there is substantial evidence to support the challenged findings of fact and whether those findings support the trial court's conclusions of law. *State v. Campbell*, 166 Wn. App. 464, 469, 272 P.3d 859 (2011). Determination of whether a person has been seized by the police "is a mixed question of law and fact." *State v. Butler*, 2 Wn. App. 2d 549, 556, 411 P.3d 393 (2018) (internal quotations and citations omitted).

Findings of fact entered by a trial court after a suppression hearing will be reviewed by the appellate court only if the appellant has assigned error to the fact. *State v. Hill*, 123 Wn.2d 641, 647, 870 P.2d 313 (1994). Findings of fact not assigned error are considered verities on appeal. *State v. Stevenson*, 128 Wn. App. 179, 193, 114 P.3d 699 (2005).

Substantial evidence exists when the evidence is sufficient to persuade a rational, fair-minded person of the truth of the finding based upon the evidence in the record. *State v. Lohr*, 164 Wn. App.

414, 418, 263 P.3d 1287 (2011) (citation omitted). The appellate court defers to the fact finder regarding the credibility of witnesses and the weight to be given reasonable but competing inferences. *State ex. rel. Lige v. County of Pierce*, 65 Wn. App. 614, 618, 829 P.2d 217 (1992), *review denied* 120 Wn.2d 1008 (1992).

A trial court's conclusions of law are reviewed de novo, with deference to the trial court on issues of weight and credibility. *State v. Sadler*, 147 Wn. App. 97, 123, 193 P.3d 1108 (2008).

2. There Was Substantial Evidence Presented To Sustain The Challenged Findings Of Fact.

Ridgley asserts the trial court erred by entering the following findings of fact: 1.2, 1.3, 1.7, 1.14, and 1.15, setting forth specific language out of each finding of fact Ridgley claims is not supported by the record and is actually assigning error to. See Brief of Appellant 10-11; CP 46-48.

Finding of facts 1.2 and 1.3 are supported by Detective Haggerty and CCO's Shirer's testimony. RP 7, 18; CP 46. The finding states, "Morris informed Detective Haggerty of a residence her roommate would purchase methamphetamine from on Gish Road." CP 46. Ridgley argues Ms. Morris simply informed Detective Haggerty she and Mr. Morgan receive their drugs from a person who happens to live on Gish Road and delivers the

methamphetamine to them. Brief of Appellant 11-13. Ridgley further asserts Ms. Morris never stated that she or Mr. Hayden ever went to the Gish Road address, purchased methamphetamine there, or went inside the location. *Id.* at 13. It is true Detective Haggerty questioned Ms. Morris about rumors regarding Mr. Morgan having drugs dropped off at the Gore residence. RP 7. Ms. Morris told Detective Haggerty, “he receives his drugs from a person that lives in Onalaska off Gish Road.” RP 7. Ms. Morris could not give an exact identity but she knew where the person lived and accompanied a transporting deputy out to the drug dealer’s house. RP 7. Ms. Morris identified Ridgely’s residence, 517 Gish Road. RP 7. The inference in the testimony, in particular describing the actions of Ms. Morris taking the deputy out to the house on Gish Road, was Ms. Morgan and Mr. Hayden also purchased drugs at The Gish Road residence.

Finding of fact 1.7 is supported by CCO Shirer’s testimony. RP 18. Finding of fact 1.7 states, “Morris told CCO Shirer the same information she had told Detective Haggerty regarding her roommate purchasing methamphetamine from the residence on Gish Road.” CP 48. CCO Shirer went to the Lewis County Jail and spoke with Ms. Morris. RP 18. Ms. Morris told CCO Shirer, “that her

and Hayden Morgan were purchasing methamphetamine from the house on Gish Road that she had showed the detectives.” RP 18.

In regards to findings of fact 1.14 and 1.15, the State concedes the finding omits that Ms. Raines stated she “believed” there was cash and drugs in the safe. See RP 12-13, 25, 29; CP 47. This appears to be the only issue Ridgley asserts in regards to these two findings. The remaining facts contained within the findings are an accurate reflection of the record.

Therefore, all evidence outlined above is sufficient for this court to find substantial evidence to support the challenged findings of fact with the exception of the State’s concession regarding 1.14 and 1.15. This Court should find the trial court’s findings were supported by substantial evidence.

3. The CCO Did Have The Requisite Reasonable Cause To Believe Ridgley Had Violated A Condition Of His Community Custody, Therefore The Search Of Ridgley’s Residence Was Permissible.

Citizens have the right to not be disturbed in their private affairs except under authority of the law. U.S. Const. amend IV; Const. art. I, § 7. The right to privacy in Washington State is broader than the right under the Fourth Amendment of the United States Constitution. Const. art. I, § 7; *State v. Eisfeldt*, 163 Wn.2d

628, 634-35, 185 P.3d 580 (2008). Washington State places a greater emphasis on privacy and recognizes individuals have a right to privacy with no express limitations. Const. art. I, § 7; *State v. Ladson*, 138 Wn.2d 343, 348, 979 P.2d 833 (1999). Generally, a search is not reasonable unless it is based on a warrant issued upon probable cause. *Skinner v. Ry Labor Executives' Ass'n*, 489 U.S. 602, 619, 109 S. Ct. 1402, 103 L. Ed.2d 639 (1989).

A probationer has a lessened expectation of privacy in his or her person, home and property. *Hocker v. Woody*, 95 Wn.2d 822, 826, 631 P.2d 372 (1981); *State v. Jardinez*, 184 Wn. App. 518, 523, 338 P.3d 292 (2014). The lessened expectation of privacy does not give a CCO carte blanche to search a probationer's residence. *In re Winterstein*, 167 Wn.2d 620, 628-29, 220 P.3d 1226 (2009). A CCO must have a reasonable suspicion the probationer has committed a probation violation. RCW 9.94A.631; *Winterstein*, 167 Wn.2d at 628-29. This requirement is codified in the RCW,

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.

RCW 9.94A.631(1). "Analogous to the requirements of a *Terry*

stop, reasonable suspicion requires specific and articulable facts and rational inferences.” *Jardinez*, 338 P.3d at 295, *citing State v. Parris*, 163 Wn. App. 110, 119, 259 P.3d 331 (2011) (referring to *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed.2d 889 (1968)).

Further, there must be a nexus between the probation violation and the property to be searched for the warrantless search to be deemed constitutional. *State v. Cornwell*, 190 Wn.2d 296, 306, 412 P.3d 1265 (2018). “Limiting the scope of a CCO’s search to property reasonably believed to have a nexus with the suspected probation violation protects the privacy and dignity of individuals on probation while still allowing the State ample supervision.” *Cornwell*, 190 Wn.2d at 306.

In *Cornwell* there was only one probation violation supported by the record, Cornwell’s failure to report to his CCO. *Id.* The Supreme Court noted the CCO may have suspected Cornwell had violated other probation conditions, but the record did not support other violations. *Id.* While the CCO searched the vehicle Cornwell had been driving, the CCO conceded he had no expectation the vehicle would contain evidence regarding Cornwell’s failure to report. *Id.* There was no nexus between the vehicle search and the violation, and the court even called the search an impermissible

“fishing expedition.” *Id.* at 306-07.

In contrast, there was ample evidence Ridgley was in violation of multiple terms of his community custody. CCO Shirer independently verified all information Detective Haggerty provided to the CCOs. CCO Shirer went to the Lewis County Jail personally and spoke to Ms. Morris. RP 18. Ms. Morris told CCO Shirer, “her and Hayden Morgan were purchasing methamphetamine from the house on Gish Road that she showed to the detectives.” RP 18. Ms. Morris did not state the person from Gish Road came and delivered it, she said they were purchasing drugs from the house. Ridgley’s address is listed on his “Conditions, Requirements, and Instructions” sheet that he signs for Department of Corrections as 517 Gish Road, the same address Ms. Morris took the deputy out to and identified as the drug dealer’s house. RP 7; Ex. 1.

Ridgley had numerous conditions of community custody, including, but not limited to, he must be in substance abuse treatment, obey all laws, and not consume non-prescribed controlled substances. RP 22-23; Ex. 1, 2. According to the terms of Ridgley’s judgment and sentence, Ridgley shall “perform affirmative acts as required by DOC to confirm compliance with the orders of the court...” Ex. 2, page 5.

CCO Shirer explained, "I believed that he was in violation for not being in chemical dependency treatment, but I wasn't comfortable with just that. And based on the information methamphetamines being used and sold and those type of things, that I wanted to get a urinalysis test from Mr. Ridgely." RP 19-20. Ridgley is required to do affirmative acts to show he is in compliance, and a urinalysis is such a permissible affirmative act. *State v. Olsen*, 189 Wn.2d 118, 132-34, 399 P.3d 1141 (2017). CCO Shirer's request for a urinalysis was a legitimate request. There were allegations Ridgley had possessed a controlled substance, failed to abide the laws, and the earlier concern he was not in chemical dependency treatment. RP 19-20, 23.

Ridgley complied with the urinalysis request, as he is required to do, and the results were positive for methamphetamine. RP 24. Ridgley also admitted to methamphetamine use. RP 25. At this point CCO Shirer has the ability to search Ridgley's residence, where Ridgley currently is at, for further evidence of his possession of methamphetamine, a violation of his community custody conditions confirmed by a urinalysis and Ridgley's own admission. Ms. Raines' statements about what she believed were in the safe, while helpful, are not required for the CCOs to search the safe for

evidence of drugs.

The CCOs located a locked safe in the master bedroom, Ridgley's bedroom. RP 12. CCO Shirer forced open the safe, after consultation with others, and located over 100 narcotic pain pills, three ounces of methamphetamine, bulk currency, and a pellet gun. RP 13, 28-29.

There was reasonable cause to believe Ridgley had violated multiple conditions of his probation, but in particular, he had been in possession of and consumed methamphetamine. It was reasonable to believe there was a nexus between the search of his residence and the probation violation. The trial court's ruling affirming the legality of the search and denying the motion to suppress should be affirmed. The Court should also affirm Ridgley's conviction and sentence.

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IV. CONCLUSION

The trial court properly denied Ridgley's motion to suppress the evidence recovered from the search of his residence. The CCO had reasonable suspicion Ridgley had violated the terms of his community custody and there was a nexus between those violations and the property searched. The trial court's denial of the motion to suppress should be affirmed and Ridgley's conviction and sentence should be affirmed.

RESPECTFULLY submitted this 13th day of August, 2018.

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