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FEBRUARY 24, 2012  
Court of Appeals  
Division III  
State of Washington

29956-2-III

COURT OF APPEALS  
DIVISION III  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

JORGE CAZARES SOSA,

Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF  
WASHINGTON FOR GRANT COUNTY

The Honorable John Knodell

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RESPONDENT'S BRIEF

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D. ANGUS LEE  
Prosecuting Attorney

by: Tyson R. Hill—40685  
Deputy Prosecuting Attorney

P.O. Box 37  
Ephrata, Washington 98823  
(509) 754-2011

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**I. IDENTITY OF RESPONDENT**

The State of Washington, represented by the Grant County Prosecutor, is the Respondent herein.

**II. RELIEF REQUESTED**

The State asserts the trial court did not abuse its discretion when it permitted the State to call an additional witness for a CrR 3.6 hearing and denied Mr. Sosa's motion to suppress.

**III. ISSUES**

A. Whether the trial court erred when it granted the State's Motion for Reconsideration and permitted it to call one additional witness for a CrR 3.6 hearing?

B. Whether the trial court erred when it denied the Appellant's Motion to Suppress Evidence?

**IV. STATEMENT OF THE CASE**

By amended Information, the State charged Jorge Luis Cazares Sosa (Mr. Sosa) with two counts of Alien in Possession of a Firearm (RCW 9A.41.171) and two counts of Unlawful Possession of a Firearm in

the Second Degree (RCW 9.41.040(2)(a)(i)).<sup>1</sup> Clerk's Papers (CP) at 8.

Prior to trial, Mr. Sosa filed a Motion to Suppress Evidence under Criminal Rule (CrR) 3.6. CP at 3-7. In his motion, Mr. Sosa argued that although he gave officers consent to search his residence for persons, the officers exceeded the scope of the search. CP at 4. After citing some general rules about unlawful searches and seizures, the entirety of Mr. Sosa's argument was as follows:

In the case at bar, Mr. Sosa maintains that the officers did not establish that he had authority to grant consent to the search as there is no indication that the trailer was his legal residence. Secondly, he maintains that the officers exceeded the scope of the consent to search. The officers requested consent to search the residence for other individuals. This consent did not give them authority to enter the closets of the residence. Therefore the officers exceeded the consent to search that was given.

CP at 5-6.

Based on Mr. Sosa's Motion, the State believed he was arguing that evidence in his case should be suppressed because Mr. Sosa 1) did not have authority to consent to a search of his residence; and 2) limited his consent to a search to a search for persons, which would not allow officers to look in the closets. 2RP at 2-6. At the suppression hearing, the State proceeded first. 1RP at 1-3. Mr. Sosa declined to make an opening

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<sup>1</sup> Prior to trial, the State dismissed the two counts of Alien in Possession of a Firearm.

statement. *Id.* The State called two of the officers involved in the search: Officer John Ingersall and Officer Anthony Valdivia. 1RP at 6, 31.

#### Testimony of Officer John Ingersall

On April 24, 2010, Mattawa police officers (including Officers Ingersall, Valdivia, and Chiprez) responded to a report of shots being fired at a certain trailer in Mattawa, Wa. 1RP at 7. Eye witnesses to the shooting identified Jorge Sosa as being one of a group of approximately five individuals involved in the shooting. 1RP at 9-10. After the shooting, the eye witnesses watched as the five individuals fled the scene. *Id.*

The officers first went to 402 S. Ellice Avenue (Ellice), which is where Mr. Sosa's mother and younger sister lived. *Id.* at 11. The officers went there first because it was located in the general direction the group was seen fleeing and the officers didn't think Mr. Sosa would return so quickly to his own residence after a shooting. *Id.* at 12. The officers received consent from Mr. Sosa's mother to search the residence and quickly determined Mr. Sosa was not there. *Id.* at 11-12. The officers then went to the residence they knew to be Mr. Sosa's at 200 East Fourth Street, Number 110 (No. 110), which was located nearby. *Id.*

Once the officers arrived at No. 110, they staged themselves outside. *Id.* at 13. Mr. Sosa's dog was outside the residence and was

barking incessantly. *Id.* After a short time, Mr. Sosa emerged from inside No. 110 and told the officers he had seen the officers' lights. *Id.* The officers explained to Mr. Sosa why they were there and requested permission to enter the residence and search it for other suspects/additional people. *Id.* at 14. Mr. Sosa gave the officers consent to search the residence and he accompanied one of the officers the entire time. *Id.* at 14-15. Mr. Sosa did not express any type of confusion as to what was being asked and gave the officers no indication that he was anything other than the homeowner and only resident of the home. *Id.* at 15.

During the search, Officer Chiprez found two shotguns in the hallway coat closet. *Id.* at 15. Officer Ingersall examined the closet later-- after the shotguns were removed. *Id.* at 15-16. The closet was a standard coat closet, with some clothing hanging inside. *Id.* The closet was easily large enough to conceal a person. *Id.* Only one other person was located in the residence, Victor Castillo, a friend of Mr. Sosa's. *Id.* at 16-17.<sup>2</sup>

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<sup>2</sup> The officers did not immediately seize the firearms. Instead, once the search for persons was concluded, the officers obtained a search warrant and then seized the firearms. See, IRP at 16.

Testimony of Officer Anthony Valdivia

Officer Valdivia testified to essentially the same facts as Officer Ingersall. However, Officer Valdivia had additional information regarding Mr. Sosa's living situation. 1RP at 32-34. Officer Valdivia testified that he and other officers knew that Mr. Sosa and his mother had lived both at Ellice and No. 110 over the course of the past few years. 1RP at 32-34. Officers had multiple contacts with Mr. Sosa at both residences. *Id.* Until 2008, Mr. Sosa had been living primarily at Ellice and his mother was living at No. 110. *Id.* However, in 2008 a fire destroyed Ellice. *Id.* Mr. Sosa then moved into No. 110. *Id.* When Ellice was rebuilt, Mr. Sosa told officers that his mother and sister would be living at Ellice and that he would remain at No. 110. *Id.* Officers knew that Mr. Sosa had been living at No. 110 for approximately a year based on multiple contacts. *Id.* All of these facts were known to Officer Valdivia when Mr. Sosa gave consent to search the residence and this testimony was admitted at the CrR 3.6 hearing

Original Ruling

After calling Officer Valdivia, the State informed the court it would have no further witnesses. 1RP at 38. Mr. Sosa did not testify and did not call any witnesses. *Id.* The court then asked for closing arguments

and the State proceeded first. *Id.* However, the court quickly interrupted the State's closing argument and asked how the State could meet its burden of proving the officers did not exceed the scope of the consent to search without hearing from Officer Chiprez. *Id.* at 39. The State responded that the only issue raised relating to scope of search was whether the closet where the shotguns were found was large enough to conceal a person and that Officer Ingersall's testimony was sufficient as to that fact. *Id.* at 39-40. The court felt that, without officer Chiprez's testimony, it could not find that the search of the closet did not exceed the scope of consent given by Mr. Sosa. *Id.* at 44-46. The court had no trouble concluding that Mr. Sosa had authority to grant consent to the officers to search No. 110 for persons, but granted Mr. Sosa's motion to suppress based on the lack of evidence as to how the shotguns were located in the closet. *Id.*

The following day, the State filed a Motion for Reconsideration and attached Officer Chiprez's police report. CP at 11. The State noted that Mr. Sosa's Motion to Suppress was limited as to the issues it raised and that Officer Chiprez would testify that he found the shotguns in plain view upon opening the closet door. *Id.* at 11-14. In its oral ruling on reconsideration, the court conceded the limited nature of the defense's motion to suppress:

The argument that was being made in the brief was that if the police are looking in the closets, that's beyond the scope of a search for a person, and so it regrettably may not have been fair for me to rule upon that until we heard from Officer Chiprez.

2RP at 10.

The court then granted the State's motion and allowed Officer Chiprez to testify. *Id.*

#### Testimony of Officer Jose Chiprez

Officer Chiprez testified at a subsequent CrR 3.6 hearing. 3RP at 6-12. Upon entering No. 110, Officer Chiprez went down the right hallway and opened the hall closet door. *Id.* at 7. Officer Chiprez described the closet as a standard coat closet with some clothing hanging inside. *Id.* Immediately upon opening the closet door he saw two shotguns standing up, leaning against the wall of the closet towards the back right corner. *Id.* Officer Chiprez did not need to move any of the clothing in order to see the firearms. *Id.* at 7-8. The firearms were in plain view. *Id.*

#### Testimony of Victor Castillo

Mr. Sosa took the opportunity to briefly call Victor Castillo, the other occupant in Mr. Sosa's residence on the night of the search. 3RP at

12. Mr. Castillo gave some conflicting testimony as to the manner in which the closet was searched, but the court did not find his testimony credible. 3RP at 24.

### Final Ruling

The court found that Mr. Sosa gave consent to the officers to search his residence for persons, the closet where the firearms were found was large enough to conceal a person, and the firearms were found in plain sight. 3RP at 24. The court concluded that the officers did not exceed the scope of the consent given by Mr. Sosa to search the residence. *Id.* The court stood by its earlier ruling that Mr. Sosa had sufficient authority to grant consent to the officers to search No. 110 and denied Mr. Sosa's motion to suppress. *Id.*

## **V. ARGUMENT**

- A. THE COURT ACTED WITHIN ITS DISCRETION WHEN IT ALLOWED THE STATE TO CALL AN ADDITIONAL WITNESS WHO COULD DEFINITELY ANSWER THE COURT'S CONCERNS REGARDING A SUPPRESSION MOTION.

Mr. Sosa first alleges that the trial court erred by granting the State's Motion for Reconsideration and permitting an additional witness to

testify at the subsequent CrR 3.6 hearing. Mr. Sosa presents no authority on point to support his argument. In truth, there is little to no case law addressing the issue of whether a trial court abuses its discretion by allowing the State to call an additional witness for a 3.6 hearing after the 3.6 hearing has already been concluded. Case law does support the conclusion that trial courts do, from time to time, grant motions for reconsideration and permit additional CrR 3.6 testimony (See e.g., *State v. Nelson*, 89 Wn. App. 179, 181, 948 P.2d 1314 (Div. III, 1997)(“The State filed a motion for reconsideration and the court granted the motion and the case was continued for additional CrR 3.6 testimony”). However, there does not appear to be any case law directly answering the question of whether a trial judge abuses his discretion by granting such a motion.<sup>3</sup>

A plain reading of CrR 3.6 suggests a trial judge has wide discretion regarding suppression hearings. For example, the rule indicates it is in the discretion of the court whether an evidentiary hearing is required at all. CrR 3.6. Additionally, under this rule, the moving party is required to put in writing the “facts the moving party anticipates will be elicited at a hearing, and a memorandum of authorities in support of the

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<sup>3</sup> The cases cited by Mr. Sosa, including *State v. McLaughlin*, 74 Wn.2d 301, 444 P.2d 699 (1968) and *State v. Wolken*, 103 Wn.2d 823, 700 P.2d 319 (1985) support the State’s position regarding the wide latitude given to a trial judge hearing a CrR 3.6 issue.

motion. CrR 3.6. This requirement would presumably be in place to put the State and the court on notice as to the alleged basis for suppression.

The combination of the discretion given to a judge regarding how or if a CrR 3.6 hearing is held, and the requirement that the defendant put the State on notice as to the facts/issues of that hearing, supports the conclusion that the court did not abuse its discretion when it granted the State's Motion for Reconsideration. It would require a very strained reading of CrR 3.6 to determine that a court could not permit additional testimony after the initial hearing is concluded.

In its ruling on the State's Motion, the court agreed that Mr. Sosa's 3.6 brief appeared to be limited to the issue of whether police had authority to search the closets for persons. 2RP at 10. The State was not put on notice, as is required under CrR 3.6, as to all of the issues being raised. The court correctly noted that, by permitting an additional witness to testify, it could make an appropriate ruling on whether evidence should be suppressed. 2RP at 10.

This court should uphold the trial court's decision. The purpose of a CrR 3.6 hearing is to determine whether evidence should be suppressed. In this case, the court determined additional testimony would be helpful in reaching its conclusion and noted that the defendant's brief did not appropriately notify the State of the specific suppression issue. Therefore,

the State asks this Court to find that the trial court did not abuse its discretion by granting the State's Motion for Reconsideration and permitting additional CrR 3.6 testimony.

**B. THE TRIAL COURT PROPERLY DENIED APPELLANT'S MOTION TO SUPPRESS EVIDENCE.**

Sosa argues the search of his residence<sup>4</sup> at No. 110 violated his constitutional rights. While Sosa does not contest that he gave officers permission to search, he claims 1) the officers did not establish that he had authority to grant consent; and 2) the officers' search exceeded the scope of what he had authorized. Both of these claims are meritless.

*Sosa had authority to give his consent to a search of No. 110.*

In essence, Mr. Sosa's challenge to the search of his residence amounts to a challenge to the trial court's CrR 3.6 findings. On appeal, these findings are reviewed for substantial evidence. *State v. Hill*, 123 Wn.2d 641, 647, 870 P.2d 313 (1994). Substantial evidence exists if there is a sufficient quantity of evidence in the record to persuade a fair-minded, rational person of the truth of the finding. *Id.* at 644.

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<sup>4</sup> Sosa even referred to No. 110 as "his residence" in his Motion to Suppress. See, e.g. CP at 1.

As Sosa is challenging the search of his residence, this court must consider Sosa's rights under the Fourth Amendment as well as his rights under Article 1, section 7 of the Washington State Constitution. While both are applicable, it is clear that the Washington Constitution would provide more protection under these circumstances. *See State v. Parker*, 139 Wn.2d 486, 493, 987 P.2d 73 (1999). Article 1, section 7 requires that the court presume that a warrantless search is per se unreasonable, unless it falls within one of the carefully drawn exceptions to the warrant requirement. *State v. Patton*, 167 Wn.2d 379, 386, 219 P.3d 651 (2009). One such exception is consent to search. *State v. Mathe*, 102 Wn.2d 537, 541, 688 P.2d 859 (1984).

Under the consent to search exception, the State must show that the person consenting had authority to do so. *State v. Thompson*, 151 Wn.2d 793, 803, 92 P.3d 228 (2004). There are certain restrictions on what a person can consent to based on their apparent authority over the residence. Usually, these restrictions involve "third parties", which include co-tenants, spouses, or temporary renters/occupants. Even under these circumstances, a third party may consent to a search if he or she possesses common authority over--or other sufficient relationship to--the premises. *State v. Holmes*, 108 Wn. App. 511, 518, 31 P.3d 716 (2001). Common authority will be found to exist when there is "mutual use of the

property by persons generally having joint access or control for most purposes.” *Id.* (quoting *State v. Matlock*, 415 U.S. 164, 171, 94 S. Ct. 988, 39 L. Ed. 2d 242 (1974)). Therefore, despite Mr. Sosa’s arguments, the State need not show that the trailer was his legal residence by producing, for example, a title or lease agreement.

In general, the cases involving limited third party consent involve situations where someone other than the defendant/appellant has consented to a search. *See, e.g. State v. Mathe*, 102 Wn.2d 537, 688 P.2d 859 (1984) (landlord, with access to defendant’s residence, consented to search of the residence); *State v. Leach*, 113 Wn.2d 735, 782 P.2d 1035 (1989) (defendant’s girlfriend consented to search of defendant’s travel agency); *State v. Morse*, 156 Wn.2d 1, 123 P.3d 832 (2005) (houseguest consented to search of defendant’s residence). In these cases, the court was considering whether third parties (not the appellants/defendants) had sufficient authority to consent to a search of the residence where the defendant had not given his or her consent.

Unlike the cases just cited, however, Mr. Sosa, the appellant/defendant, gave his consent to search the residence. There is no “third party” claiming he/she did not consent. Additionally, Mr. Sosa does not dispute that he voluntarily gave his consent to search No. 110. Therefore, the State is only required to show that Mr. Sosa had authority

to consent to the search and this may be shown, as the case law indicates, merely by showing he was living there, was using the property, or even just had access to and some control over the property.

There is no question that Sosa had authority to grant consent to the search of his residence. At a minimum, the facts show that Sosa was living at the residence (and had been for some time) at the time he granted consent. 1RP at 32-34. At the time of the search Mr. Sosa had just emerged from the residence and his bedroom was located inside.

Additionally, there is an abundance of evidence showing Sosa was not only a resident of the home, but was the owner or part owner. 1RP at 32-34. Therefore, there are more than enough facts showing that Sosa was in a position to consent to a search of his residence at No. 110. Therefore, this court should not suppress the evidence seized as a result of a consensual search of Sosa's residence.

*The officers appropriately conducted a search of Sosa's residence after receiving permission from Sosa to search for persons. Such a search would necessarily include places where persons could hide, including the closets.*

Mr. Sosa next argues that the officers exceeded the scope of their search of the residence by looking in the closets. Mr. Sosa attempts to

support this claim by arguing that he only gave police permission to search his residence “for other individuals.”

It is undisputed that the officers only asked for consent to search No. 110 for persons. However, Sosa’s argument that the officers exceeded the scope of the consent given to search by looking in the hall closet should be quickly rejected. A search of a residence for persons would necessarily involve a search of any location where a person would be likely to hide. Especially considering the surrounding facts of the case (multiple gang members involved in a shooting with at least two shooters) the officers would expect if there were individuals in the house, they may be hiding. In addition to the common sense argument that a coat closet would be large enough to conceal a person, and Officer Ingersall and Officer Chiprez’s testimony supporting that fact, even appellate case law shows that police often find individuals hiding in closets. *See, e.g., State v. Sadler*, 147 Wn. App. 97, 120, 193 P.3d 1108 (2008); *State v. Davis*, 117 Wn. App. 702, 705, 72 P.3d 1134 (2003); *State v. Shaver*, 116 Wn. App. 375, 386, 65 P.3d 688 (2003); *State v. Jacquez*, 105 Wn. App. 699, 703, 20 P.3d 1035 (2001); *State v. Gallo*, 20 Wn. App. 717, 722, 582 P.2d 558 (1978).

Sosa permitted the officers to search his residence for any individuals and did not limit or restrict that consent. The officers’ search

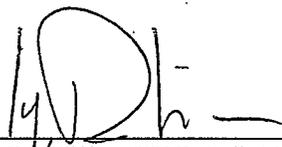
appropriately included the closets, which could conceal individuals. During this appropriate search, police found the firearms at issue. The firearms were found in plain view inside the closet. Therefore, the officers did not exceed the scope of the consent granted to search and the evidence secured in the residence should be admissible.

## **VI. CONCLUSION**

The trial court did not abuse its discretion by granting the State's Motion for Reconsideration and permitting Officer Chiprez to testify. The court's findings are supported by ample evidence that the officers appropriately limited their search of Mr. Sosa's residence to a search for persons. Therefore, this Court should uphold the trial court's findings.

Dated this 22<sup>nd</sup> day of February, 2012.

D. ANGUS LEE  
Prosecuting Attorney

By:   
\_\_\_\_\_  
Tyson R. Hill - WSBA # 40685  
Deputy Prosecuting Attorney

COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION III

STATE OF WASHINGTON,	)	
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v.	)	
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JORGE CAZARES SOSA,	)	DECLARATION OF MAILING
	)	
Appellant.	)	

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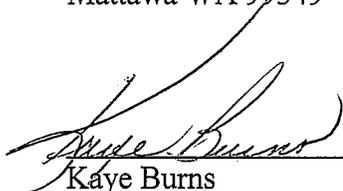
Under penalty of perjury of the laws of the State of Washington, the undersigned declares:

That on this day I deposited in the mails of the United States of America a properly stamped and addressed envelope directed to Nicholas W. Marchi, attorney for Appellant, and to Appellant, containing a copy of the *Respondent's Brief* in the above-entitled matter addressed to:

Mr. Nicholas W. Marchi  
Carney & Marchi PS  
108 S. Washington St., Ste 406  
Seattle WA 98104-3433

Jorge Cazares Sosa  
200 4<sup>th</sup> St – TRLR 110  
PO Box 1815  
Mattawa WA 99349

Dated: February 24, 2012.

  
\_\_\_\_\_  
Kaye Burns

Declaration of Mailing.