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Supreme Court No. 97706-2
(Court of Appeals No. 36643-0-III)

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

SCOTT RIDGLEY,

Appellant.

PETITION FOR REVIEW

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A. INTRODUCTION

The Court of Appeals agreed with Scott Ridgley's argument that the trial court's key factual findings in its order denying the motion to suppress were not supported by substantial evidence. Nevertheless, the Court engaged in its own fact-finding process in order to affirm the trial court's conclusions of law. The Court of Appeals' opinion usurped the role of the trial court as the finder of fact and contravened this Court's precedent in *Thorndike v. Hesperian Orchards, Inc.*, 54 Wn.2d 570, 343 P.2d 183 (1959).

This Court should grant review in order to provide guidance to the Court of Appeals as to the correct procedure when presented with unsupported factual findings. This case presents the opportunity to provide much-needed clarification on *Thorndike*'s stricture that appellate courts not engage in independent fact-finding. Accordingly, this Court should grant review, affirm the Court of Appeals' conclusion that the trial court's factual findings were not supported by substantial evidence, and remand with instructions to grant the motion to suppress.

B. IDENTITY OF PETITIONER AND DECISION BELOW

Mr. Ridgley asks this Court to review the opinion of the Court of Appeals in *State v. Ridgley*, No. 51428-1-II (filed July 18, 2019) (unpublished). A copy of that opinion is attached in the appendix, along

with a copy of the trial court's order denying Mr. Ridgley's motion to suppress.

C. ISSUE PRESENTED FOR REVIEW

The Court of Appeals agreed with Mr. Ridgley's contention that the trial court's key factual findings in the motion to suppress were not supported by substantial evidence. Nevertheless, the Court of Appeals concluded these errors were "insignificant" in light of its own interpretation of the record. Should this Court grant review in order to clarify the role of the trial court as the finder of fact and the correct procedure when appellate courts are presented with unsupported factual findings?

D. STATEMENT OF THE CASE

Following a community custody search of his residence that revealed drugs in a locked safe, Mr. Ridgley was charged with two counts of possession of a controlled substance with intent to deliver and one count of possession of a controlled substance. CP 1–4. Prior to trial, he filed a motion to suppress the drug evidence, arguing the search of his residence was unreasonable and there was no applicable exception to the warrant requirement. CP 19–21. The trial court denied the motion. *See* Appendix at 10–12.

On appeal, Mr. Ridgley argued the trial court's findings of facts in its order denying the motion were not supported by substantial evidence. Brief of Appellant at 10–14. Division III of the Court of Appeals agreed with Mr. Ridgley that substantial evidence did not support the trial court's findings of fact 1.2, 1.3, 1.7, 1.14, and 1.15. Appendix at 4. Below are the trial court's factual findings with the unsupported factual findings crossed out:

> 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 that 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 a 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 appeared to be methamphetamine.

1.19 CCO Shirer provided the contents of the safe to law enforcement.

See also Appendix at 10–12; Brief of Appellant at 11 (challenging the stricken factual findings).

Despite agreeing that the trial court's factual findings were not supported by substantial evidence, the Court of Appeals concluded that the unsupported factual findings were "of no consequence" and "insignificant." *See* Appendix at 4. The Court then supplanted its own facts for the findings of the trial court based on its own review of the record. *See id.* at 4, 6. The Court in turn determined that its own factual findings supported the trial court's conclusions of law that there was a reasonable basis to believe Mr. Ridgley had violated the terms of his community custody and that there was a nexus between the violation and the searches performed by CCO Shirer. *Id.* at 5–6; *see also* Appendix at 12 (Conclusions of Law).

Mr. Ridgley filed a motion for reconsideration on the basis the Court of Appeals impermissibly engaged in fact-finding. *See* Mot. for Reconsideration (filed Aug. 7, 2019). The motion was denied. *See* Order Denying Mot. for Reconsideration (filed Aug. 22, 2019). Mr. Ridgley now seeks review from this Court.

E. ARGUMENT WHY REVIEW SHOULD BE GRANTED

1. <u>This Court should clarify that the trial court is the sole finder of fact in the judicial process.</u>

Appellate courts review a motion to suppress to determine whether substantial evidence supports the trial court's findings of fact and whether

those findings, in turn, support the trial court's conclusions of law. *See State v. Russell*, 180 Wn.2d 860, 866, 330 P.3d 151 (2014). Deference to the finder of fact is required because trial courts are "afforded the best opportunity to evaluate contradictory testimony." *State v. Hill*, 123 Wn.2d 641, 646, 870 P.2d 313 (1994) (internal citations and quotation marks omitted).

Even if an appellate court believes the facts should have been decided differently, "the constitution does not authorize [the] court to substitute its finding for that of the trial court." *Thorndike v. Hesperian Orchards, Inc.*, 54 Wn.2d 570, 575, 343 P.2d 183 (1959). "The function of the appellate court is to review the action of the trial courts. Appellate courts do not hear or weigh evidence, find facts, or substitute their opinions for those of the trier-of-fact. Instead, they *must defer to the factual findings* made by the trier-of-fact." *Quinn v. Cherry Lane Auto Plaza, Inc.*, 153 Wn. App. 710, 717, 225 P.3d 266 (2009) (emphasis added); *State v. Bennett*, 180 Wn. App. 484, 489, 433 P.3d 815 (2014) ("Our appellate courts do not weigh evidence and *do not find facts*.") (citing *Thorndike* and *Quinn*) (emphasis added).

In sum, appellate courts cannot usurp the trial court's role as the finder of fact and affirm conclusions of law on facts not found by the trial court. *See Thorndike*, 54 Wn.2d at 575. This is "very well-settled law."

Quinn, 153 Wn. App. at 717. However, it has been considerable time since this Court has addressed the issue with any length; the seminal case was decided by this Court in 1959. *See Thorndike*, 54 Wn.2d at 575.

Since deciding *Thorndike*, this Court has provided little guidance to the Court of Appeals as to its role when findings of fact are not supported by substantial evidence. Most recently, for example, this Court cited *Thorndike* for the proposition that "[t]his [C]ourt generally cannot make findings of fact," without explaining what, if any, potential exceptions exist. *See Garcia v. Henley*, 190 Wn.2d 539, 544, 415 P.3d 241 (2018) (citing *Thorndike*). In the past two decades, *Thorndike* has received a similar passing mention in only two other cases issued by this Court. *See Mueller v. Wells*, 185 Wn.2d 1, 9, 367 P.3d 580 (2016); *In re Disciplinary Proceedings Against Bonet*, 144 Wn.2d 502, 512, 29 P.3d 1242 (2001).

Perhaps due to the lack of guidance on this issue, Division III of the Court of Appeals has issued several recent split opinions that turned on appellate fact-finding. For example, in *State v. Williams*, the majority determined that a "rough estimate" of the amount of stolen goods was insufficient to convict for possession of stolen property in the second degree. 199 Wn. App. 99, 111, 398 P.3d 1150 (2017). Judge Korsmo dissented, arguing the court should defer to the jury's determination of the

facts as appellate courts "do not weigh the evidence under any circumstance." *Id.* at 117–18 & n.4 (citing *Thorndike*).

Similarly in *Barriga Figueroa v. Prieto Mariscal*, the majority inferred that a document was disclosed by the parties' shared insurance company, not through discovery, and thus was still protected work product. 3 Wn. App. 2d 139, 143 n.1, 414 P.3d 590 (2018). Judge Korsmo again dissented, arguing that the "the majority clearly errs in making up its own theory" and that "[t]he factual basis for that theory was not established in the trial court." *Id.* at 149. Judge Korsmo concluded, "[a]ppellate courts have rejected appellate fact-finding since the Eisenhower administration," citing *Thorndike*. *Id.* at 150; *see also McKee v. Wash. State Dep't of Corr.*, 2016 WL 4371658 at *12, 195 Wn. App. 1046 (Aug. 16, 2016) (unpublished)[1] (Korsmo, J., dissenting) (citing *Thorndike* and decrying the "recent trend in the case law" of appellate courts reaching their own factual conclusions, labeling the practice "disturbing because it confuses the roles of trial courts and appellate courts.")

[1] Mr. Ridgley cites *McKee* as unpublished, persuasive authority. *See* GR 14.1

The time is ripe to provide guidance to the Court of Appeals on the correct course of action when presented with unsupported factual findings. As explained below, this case provides the Court the opportunity to do so.

2. The Court of Appeals impermissibly engaged in fact-finding.

Here, Court of Appeals agreed that the trial court's factual determinations were not supported by substantial evidence. Appendix at 4. Nevertheless, the Court engaged in independent fact-finding to manufacture support for the trial court's conclusions of law. *See id.* at 4, 6–7. The Court of Appeals' opinion conflicts with both this Court's precedent in *Thorndike* as well as other published decisions of the Court of Appeals, and thus review is warranted pursuant to RAP 13.4(b)(1) and (2). *See Thorndike*, 54 Wn.2d at 575; *Quinn,* 153 Wn. App. at 717; *Bennett*, 180 Wn. App. at 489. Upon review, this Court should clarify that this kind of appellate fact-finding is impermissible.

The following passage contains the Court of Appeals' analysis with the "new" factual findings underlined:

> [Mr. Ridgley's] challenge to the first three findings takes issue with the determination that the detective and CCO were told that drugs had been purchased at the Gish Road address instead of having been purchased from someone living at that address. His argument is correct. The arrestee merely indicated that she purchased from someone living there rather than stating that the purchases had taken place there. However, this factual error is of no consequence. The information still tied drug sales to a resident of the Gish Road house, but also was not a basis for the search of that residence.

> He challenges findings 1.14 and 1.15 to the extent that they indicate Raines informed the detective and the CCO that there was methamphetamine and cash in the safe in Ridgley's bedroom. In fact, Raines had said that she believed there *might* be drugs and cash in the safe. Ridgley is correct that these findings overstate what Raines actually said.
>
> Nonetheless, the errors Ridgley has identified are insignificant . . . .
>
> Here, CCO Shirer had received a report that someone at Ridgley's address was dealing drugs and that Ridgley had not reported for drug treatment. Random urinalysis testing was a condition of Ridgley's supervision. Under these facts, Shirer had a reason to ask Ridgley to provide a urine sample for testing. When the test result was positive, Ridgley admitted to having recently used methamphetamine, a violation of his community supervision.
>
> On these facts, Shirer had reasonable grounds to search Ridgley's residence to see if more controlled substances might be found. The tip that the safe might contain drugs and cash justified the search of that object.

Appendix at 4, 6–7. These underlined factual findings are not in the trial court's order on the motion to suppress. *See* Appendix at 10–12. The trial court did not find that the informant said that drugs were purchased from "someone living" on Gish Road; it did not find that Misty Raines said there "might be" drugs and cash in the safe; it did not find that Mr. Ridgley had not reported for drug treatment; did not find that random urinalysis was a condition of his supervision; and did not find that Mr. Ridgley admitted to having used methamphetamine. *Compare* Appendix at 6–7 *with* Appendix at 10–12.

Appellate courts must defer to the trial court's findings of fact. *See Thorndike*, 54 Wn.2d at 575. Instead of deferring, the Court of Appeals

substituted its own judgment for that of the trial court and engaged in independent fact-finding. This overreach by the Court of Appeals provides an opportunity for this Court to clarify and expand upon an important principle of appellate law. Accordingly, this Court should accept review.

3. The unchallenged facts did not provide "reasonable cause" to support the search, and the drugs should be suppressed.

Under RCW 9.94A.631(1), a community corrections officer may search an offender's person, residence, automobile, or personal property "[i]f there is reasonable cause to believe that an offender has violated a condition or requirement of the sentence." "Reasonable cause" is akin to the "reasonable suspicion" required for a *Terry* stop, which is defined as a "substantial possibility" that criminal conduct has occurred based on "specific and articulable facts and rational inferences." *See State v. Parris*, 163 Wn. App. 110, 119, 259 P.3d 331 (2011), *abrogated on other grounds by State v. Cornwell*, 190 Wn.2d 296, 412 P.3d 1265 (2018). "The circumstances must suggest a substantial possibility that *the particular person* has committed a specific crime or is about to do so." *State v. Martinez*, 135 Wn. App. 174, 180, 143 P.3d 855 (2006) (emphasis added). Additionally, there must be a "nexus between the property

searched and the alleged probation violation." *Cornwell*, 190 Wn.2d at 306.

As explained above, appellate courts must first determine whether substantial evidence supports the trial court's findings of fact, and then determine whether the findings of fact support the trial court's conclusions of law. *Russell*, 180 Wn.2d at 866. Here, the Court of Appeals agreed with Mr. Ridgley's contention that findings of fact 1.2, 1.3, 1.7, 1.14, and 1.15 were not supported by substantial evidence. Appendix at 4. Thus, the only remaining question is whether the unchallenged factual findings provided reasonable cause for the search. *See State v. Smith*, 165 Wn.2d 511, 516, 199 P.3d 386 (2009) ("Unchallenged findings of fact entered following a suppression hearing are verities on appeal.") (citations and quotation marks omitted).

Once the unsupported findings of fact are stripped away, the trial court's remaining findings fail to support reasonable cause to conclude that Mr. Ridgley violated the terms of his community custody. *See* pgs. 3–4, *supra*; *see also* Appendix at 12 (Conclusion of Law 2.1). The unchallenged facts only indicate that an arrested informant identified a house for unknown reasons, that Mr. Ridgley lived at the house, and that Mr. Ridgley was on community custody with agreed terms. *See* pgs. 3–4, *supra.* These findings do not amount to reasonable cause to believe Mr.

Ridgley violated a condition of his sentence. *See* Appendix at 12 (Conclusion of Law 2.1); *see also* RCW 9.94A.631(1). Accordingly, there was no basis to require him to provide a urinalysis. *See id.* And without the urinalysis or the informant's tip, there was no basis to search Mr. Ridgley's residence. *See* Appendix at 6 (concluding that the urinalysis and informant's tip provided the "reasonable grounds" for a search of the residence).

Even assuming, *arguendo*, that there was reasonable cause to believe that Mr. Ridgley had violated a condition of his sentence by consuming controlled substances, *see* CP 33 (listing community custody conditions), the remaining unchallenged findings fail to provide a nexus for a search of the safe. *See* pgs. 3–4, *supra;* Appendix at 12 (Conclusions of Law 2.2 and 2.3). The unchallenged findings only provide reasonable cause to believe there was drug paraphernalia inside the residence. *See* pgs. 3–4, *supra.*

"[An] individual's privacy interest is diminished only to the extent necessary for the State to monitor compliance with the particular probation condition that gave rise to the search. The individual's other property, which has no nexus to the suspected violation, remains free from search." *Cornwell*, 190 Wn.2d at 304; *see also* Appendix at 6 (citing *Cornwell*). Without Ms. Raines' statements specifically concerning the contents of the

safe, there is no nexus to justify its search. *See* Appendix at 6–7 ("The tip that *the safe might contain drugs and cash* justified the search of that object.")

The Court of Appeals concluded that the trial court's key factual findings were not supported by substantial evidence. Appendix at 4. In doing so, the Court of Appeals' only remaining task was to determine whether the unchallenged facts support the trial court's conclusions of law. *See Russell*, 180 Wn.2d at 866. Those unchallenged facts do not support the legal conclusion that there was reasonable cause to believe Mr. Ridgley had violated the terms of his community custody. *See* Appendix at 12 (Conclusion of Law 2.1). Nor do they support the legal conclusion that there was a nexus between a community custody violation and the search of the safe. *See* Appendix at 12 (Conclusions of Law 2.2–2.3). Accordingly, the search of the safe was unconstitutional. *See Cornwell*, 190 Wn.2d at 306. Upon review, this Court should reverse with instructions to grant the motion to suppress.

F. CONCLUSION

In analyzing the trial court's factual findings on the motion to suppress, Division III of the Court of Appeals concluded that the key factual findings were not supported by substantial evidence. Nevertheless, the Court of Appeals supplanted its own factual findings, in violation of

the requirement that appellate courts must defer to the trial court's findings of fact. The remaining, unchallenged factual findings did not provide reasonable cause to believe Mr. Ridgley violated the terms of his community custody. This Court should accept review in order to provide guidance to the Court of Appeals on *Thorndike*'s holding that appellate courts must not substitute their judgment for that of the trial court, and to clarify the correct procedure when a trial court's factual findings are unsupported by substantial evidence. Accordingly, Mr. Ridgley respectfully requests this Court grant the petition for review.

DATED this 23rd day of September, 2019.

Respectfully submitted,

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON, Respondent,	)	No. 36643-0-III
v.	)	
SCOTT EUGENE RIDGLEY, Appellant.	)	UNPUBLISHED OPINION

KORSMO, J. — Scott Ridgley appeals from three drug convictions entered after his community correction officer (CCO) opened Ridgley's safe and found controlled substances. We affirm the convictions, but remand for the trial court to reconsider certain legal financial obligations (LFOs) in light of statutory amendments.

FACTS

A woman arrested on an outstanding warrant advised Centralia Police Detective Adam Haggerty that she and her roommate had purchased drugs from a house on Gish Road and showed the building to the detective. The detective learned that Ridgley lived at the house and was on community custody for a prior drug conviction.

Detective Haggerty alerted CCOs Errol Shirer and Kaylyn Lucas about the information he had received concerning the drug sales. Shirer visited the woman in the

jail and decided to search Ridgley's residence for evidence that he was violating his conditions of release. Shirer then checked Ridgley's file and determined that Ridgley was in violation of his community custody for not being in treatment.

Shirer decided to search Ridgley's residence due to the report from the woman and the community custody violation. He was accompanied at the Gish Road location by Lucas, Haggerty, and another police officer. Shirer directed Ridgley to provide a urine sample. He did so; the sample field-tested positive for methamphetamine. Ridgley admitted that he had recently used the drug. Shirer arrested Ridgley and placed him in handcuffs.

Haggerty and Shirer spoke with Misty Raines, another person present at the Gish Road house. Despite being told by Ridgley not to speak to them, Raines told the detective that there was a meth pipe on a shelf in Ridgley's master bedroom, and also told Shirer that she believed there were cash, guns, and drugs in a safe in that room. Shirer searched the house.

The CCOs found a safe in the master bedroom. After consulting with a supervisor, they took the safe out in the yard and broke it open. Inside were several ounces of apparent methamphetamine, 135 pills in a container, blister packs of pills, and approximately $8,500 in cash. A search warrant was obtained. The contents of the safe constituted the vast majority of the items seized.

Charges of possession of methamphetamine with intent to deliver, possession of Oxycodone with intent to deliver, and possession of Hydromorphone were filed. Ridgley filed a motion to suppress the fruits of the search. After conducting a CrR 3.6 hearing, the trial court denied the motion and entered appropriate findings.

The case proceeded to bench trial. The judge convicted Ridgley as charged and later entered findings required by CrR 6.1(d). The court imposed concurrent sentences of 96 months. Ridgley then timely appealed.

The case was administratively transferred from Division Two to Division Three. A panel of this court considered the appeal without hearing argument.

ANALYSIS

Mr. Ridgley's appeal challenges the legality of the search of the Gish Road residence and some of the LFOs imposed by the trial court. We consider first his search argument before turning to the LFO question. We then briefly discuss one of the issues raised in Mr. Ridgley's statement of additional grounds (SAG).

Search by CCO

Mr. Ridgley argues that the CCO lacked a reasonable basis to conduct the search of his residence. His argument fails because the bulk of the trial court's findings are backed by substantial evidence and support the basis for the search.

We review findings entered following a CrR 3.6 hearing for substantial evidence. *State v. Hill*, 123 Wn.2d 641, 644, 870 P.2d 313 (1994). "Evidence is substantial when it

is enough 'to persuade a fair-minded person of the truth of the stated premise.'" *State v. Garvin*, 166 Wn.2d 242, 249, 207 P.3d 1266 (2009) (quoting *State v. Reid*, 98 Wn. App. 152, 156, 988 P.2d 1038 (1999)). The appellate court reviews de novo the conclusions derived from the factual findings. *State v. Armenta*, 134 Wn.2d 1, 9, 948 P.2d 1280 (1997).

Mr. Ridgley assigns error to findings of fact 1.2, 1.3, 1.7, 1.14, and 1.15. His challenge to the first three findings takes issue with the determination that the detective and CCO were told that drugs had been purchased at the Gish Road address instead of having been purchased from someone living at that address. His argument is correct. The arrestee merely indicated that she purchased from someone living there rather than stating that the purchases had taken place there. However, this factual error is of no consequence. The information still tied drug sales to a resident of the Gish Road house, but also was not a basis for the search of that residence.

He challenges findings 1.14 and 1.15 to the extent that they indicate Raines informed the detective and the CCO that there was methamphetamine and cash in the safe in Ridgley's bedroom. In fact, Raines had said that she believed there *might* be drugs and cash in the safe. Ridgley is correct that these findings overstate what Raines actually said.

Nonetheless, the errors Ridgley has identified are insignificant. Washington recognizes that probationers and parolees have a diminished right of privacy that permits

a warrantless search based on probable cause. *State v. Lucas*, 56 Wn. App. 236, 239-240, 783 P.2d 121 (1989). Parolees and probationers have diminished privacy rights because they are persons whom a court has sentenced to confinement but who are serving their time outside the prison walls. Therefore, the State may supervise and scrutinize a probationer or parolee closely. *Id.* at 240. Nevertheless, this diminished expectation of privacy is constitutionally permissible only to the extent necessitated by the legitimate demands of the operation of the parole process. *State v. Parris*, 163 Wn. App. 110, 118, 259 P.3d 331 (2011); *State v. Simms*, 10 Wn. App. 75, 86, 516 P.2d 1088 (1973).

RCW 9.94A.631 governs supervision of felons under the Sentencing Reform Act of 1981, ch. 9.94A RCW. It provides:

> If an offender violates any condition or requirement of a sentence, a community corrections officer may arrest or cause the arrest of the offender without a warrant, pending a determination by the court or by the department. 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.

The statute's "reasonable cause" requirement means that an officer must have a "well-founded suspicion that a violation has occurred." *State v. Massey*, 81 Wn. App. 198, 200, 913 P.2d 424 (1996). This reasonable suspicion standard requires an officer to have "specific and articulable facts" on which to act and permits "rational inferences" from those facts. *Parris*, 163 Wn. App. at 119. "Articulable suspicion" is defined as a

substantial possibility that criminal conduct has occurred or is about to occur. *State v. Kennedy*, 107 Wn.2d 1, 6, 726 P.2d 445 (1986). The officer also must establish a nexus between the property searched and the suspected probation violation. *State v. Cornwell*, 190 Wn.2d 296, 304, 412 P.3d 1265 (2018).

> First, a CCO must have "reasonable cause to believe" a probation violation has occurred before conducting a search at the expense of the individual's privacy. RCW 9.94A.631(1). This threshold requirement protects an individual from random, suspicionless searches. Second, the individual's privacy interest is diminished only to the extent necessary for the State to monitor compliance with the particular probation condition that gave rise to the search. The individual's other property, which has no nexus to the suspected violation, remains free from search.

Id.

Here, CCO Shirer had received a report that someone at Ridgley's address was dealing drugs and that Ridgley had not reported for drug treatment. Random urinalysis testing was a condition of Ridgley's supervision. Under these facts, Shirer had a reason to ask Ridgley to provide a urine sample for testing. When the test result was positive, Ridgley admitted to having recently used methamphetamine, a violation of his community supervision.

On these facts, Shirer had reasonable grounds to search Ridgley's residence to see if more controlled substances might be found. The tip that the safe might contain drugs

and cash justified the search of that object.[1] The search was justified by RCW 9.94A.631 and *Cornwell*.

The trial court did not err in denying the CrR 3.6 motion to suppress the fruits of the search.

LFOs

Mr. Ridgley next argues that because he was found indigent for purposes of appeal, the trial court erred in imposing LFOs against him. In light of *State v. Ramirez*, 191 Wn.2d 732, 426 P.3d 714 (2018), the State concedes that this matter should be remanded for hearing. We agree.

Ramirez ruled that the 2018 legislative reform of financial obligations imposed in criminal cases applied retroactively to cases on appeal. *Id*. at 747. Here, the trial court imposed only fees that were mandatory prior to *Ramirez*. Now, the filing fee and the DNA collection fee are waivable under certain conditions. In light of the possible merit of Mr. Ridgley's claims, the State agrees that the trial court should consider the claims due to *Ramirez*. We, therefore, remand the issue to the superior court for consideration.

Statement of Additional Grounds

In his SAG, Mr. Ridgley raises eight claims. All but one fail because they are either repetitious of arguments made by counsel, are dependent on facts outside the

[1] Appellant does not challenge the reasonableness of the forced opening of the safe and we do not express any opinion on that topic.

record, are not properly identified in the record of this case, or are insufficiently briefed. RAP 10.10(c).

The one issue we can address is Mr. Ridgley's challenge to the sufficiency of the evidence to support the two possession with intent to deliver charges. He argues there is insufficient evidence that he intended to deliver the methamphetamine or the Oxycodone. Properly viewed, the evidence supported the bench verdict.

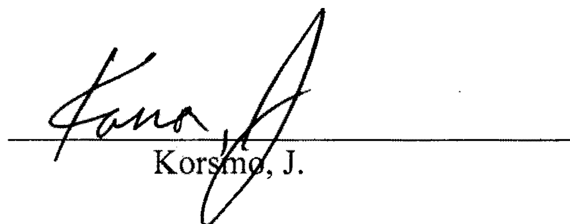
Long settled standards govern our review of this contention. "Following a bench trial, appellate review is limited to determining whether substantial evidence supports the findings of fact and, if so, whether the findings support the conclusions of law." *State v. Homan*, 181 Wn.2d 102, 105-106, 330 P.3d 182 (2014) (citing *State v. Stevenson*, 128 Wn. App. 179, 193, 114 P.3d 699 (2005)). In reviewing insufficiency claims, the appellant necessarily admits the truth of the State's evidence and all reasonable inferences drawn therefrom. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Finally, this court must defer to the finder of fact in resolving conflicting evidence and credibility determinations. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

Here, Mr. Ridgley possessed several ounces of methamphetamine and 135 Oxycodone pills. Detective Haggerty testified that both of these were large amounts beyond what would be possessed for personal use. The trier-of-fact was permitted to credit this information. *Id*. Accordingly, the evidence allowed the trial judge to find that

the intent to deliver element was proved beyond a reasonable doubt. The evidence, therefore, was sufficient to support the bench verdicts on these counts.

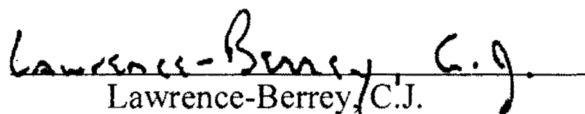
The convictions are affirmed. Remanded for consideration of the LFO challenges.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.



Korsmo, J.

WE CONCUR:



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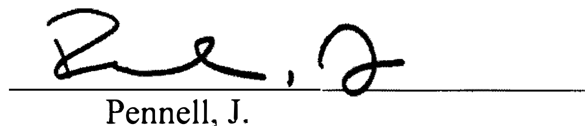

Pennell, J.

FILED
Lewis County Superior Court
Clerk's Office

JUN 08 2017

Scott Tinney, Clerk
By ______, Deputy

16-1-00221-21
FNFCL
Findings of Fact and Conclusions of Law
1427982

IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR LEWIS COUNTY

STATE OF WASHINGTON, Plaintiff, vs. SCOTT EUGENE RIDGLEY, Defendant.	No. 16-1-00221-21 FINDINGS OF FACT, CLONCLUSIONS OF LAW, AND ORDER RE: DEFENDANT'S MOTION TO SUPPRESS EVIDENCE.

On April 5, 2017, a motion to suppress made pursuant to CrR 3.6 was held in this Court before the Honorable J. Andrew Toynbee. The Defendant was present with his attorney of record, Robert Brungardt. The State was represented by Deputy Prosecuting Attorney Paul Masiello. The Court considered the testimony of Detective Adam Haggerty and Community Corrections Officer (CCO) Errol Shirer. The Court made the following findings of fact, conclusions of law and order:

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 methamphetamine was purchased from.

1.4 This residence belongs to Scott Ridgley.

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1.5 Ridgley was on community custody at that 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 a safe next to Ridgley's bed.

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

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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 appeared to be methamphetamine.

1.19 CCO Shirer provided the contents of the safe to law enforcement.

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.

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

ORDER

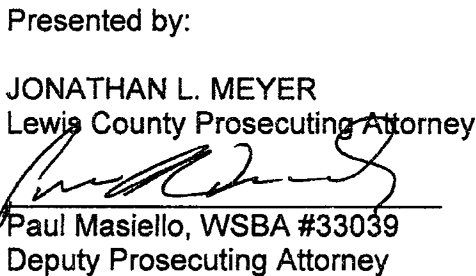
The defendant's motion to suppress evidence is denied.

DATED this 8th day of June 2017.

JUDGE / ~~COURT COMMISSIONER~~

Presented by:

JONATHAN L. MEYER
Lewis County Prosecuting Attorney



Paul Masiello, WSBA #33039
Deputy Prosecuting Attorney

Copy received; Approved as to form
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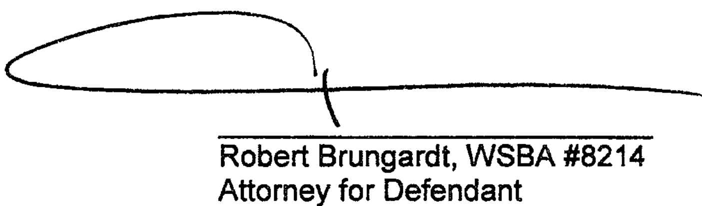

Robert Brungardt, WSBA #8214
Attorney for Defendant

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DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals – Division Three** under **Case No. 36643-0-III**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

☒ respondent Sara Beigh, Lewis County Prosecuting Attorney
[appeals@lewiscountywa.gov][sara.beigh@lewiscountywa.gov]

☒ petitioner

☐ Attorney for other party

MARIA ANA ARRANZA RILEY, Legal Assistant
Washington Appellate Project

Date: September 23, 2019

WASHINGTON APPELLATE PROJECT

September 23, 2019 - 4:41 PM

Transmittal Information

Filed with Court:	Court of Appeals Division III
Appellate Court Case Number:	36643-0
Appellate Court Case Title:	State of Washington, Respondent v. Scott Ridgley, Appellant
Superior Court Case Number:	16-1-00221-2

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