

Original

No. 36338-1-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Appellant.

vs.

WYATT E. DOERING,
HAROLD E. DOERING, and
MYRNA J. DOERING,

Respondents.

FILED
COURT OF APPEALS
DIVISION II
07 SEP 14 PM 2:03
STATE OF WASHINGTON
BY *[Signature]*
DEPUTY

APPEAL FROM THE JUDGMENT OF THE SUPERIOR COURT

OF THE STATE OF WASHINGTON FOR

WAHAKIAKUM COUNTY

The Honorable Michael J. Sullivan, Judge

BRIEF OF APPELLANT

Daniel H. Bigelow
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Prosecuting Attorney
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PM 9/12/07

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ASSIGNMENTS OF ERROR

1. Insofar as Conclusion of Law #1 implies that Deputy Howell's permission to enter the Doering residence was limited solely to completing hulk vehicle paperwork to the exclusion of the regular activities of a reasonably respectful guest, that conclusion does not follow from the Findings of Fact.

2. Conclusion of Law #4, that the evidence the deputy noticed was not in "plain view," is erroneous.

3. Conclusion of Law #5, that the deputy's walking to the other end of the living room was "unreasonable," is erroneous. The same conclusion of law's statement that such movement "was totally unnecessary to accomplish the purpose for which the deputy had entered the home" applies an erroneous test to the legality of the deputy's actions.

4. Conclusion of Law #6, reiterating the characterization of the deputy's walking closer to a rack of antlers in the living room as "unreasonable," is erroneous, as is the further statement in the same conclusion of law that such conduct violates the state and federal constitutions.

5. Conclusion of Law #7, that the deputy did not have the right to go closer to the antlers and that therefore everything he saw from that vantage point must be suppressed under the state and federal constitutions, is erroneous.

6. Conclusion of Law #8, that what the deputy saw while near the antlers cannot form the basis of an affidavit for search warrant, is erroneous.

7. Conclusion of Law #9, that the evidence herein must be suppressed, is erroneous.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Does the trial court's finding of a limitation on the deputy's permission to enter the Doering residence follow from the facts?

2. What is the correct standard for determining the admissibility in a search warrant of a deputy's observations while legally on private property?

STATEMENT OF THE CASE

The facts of the case are set out in the court's Findings of Fact and Conclusions of Law (FFCL), appended hereto and incorporated herein as though fully set forth. Basically, Deputy Gary Howell, who was on the Doering family property by invitation to take care of a junk vehicle matter entered the Doering residence with the Doering patriarch, Harold. Findings of Fact (FF) 1-3. While in the first room off the entrance, a living room, the deputy saw a set of deer antlers and walked closer to them, and in examining the antlers, he noticed rifles in a cabinet near them. FF 7. Later checking Mr. Doering's criminal record, Howell confirmed that Harold Doering was a

convicted felon. FF 10. Howell got a search warrant for the property based on this information. The search resulted in contraband sufficient to lay numerous felony charges against Harold, Myrna, and Wyatt Doering, mostly for unlawful possession of firearms.

ARGUMENT

1. There is no evidence Deputy Howell was allowed entry for any "sole purpose."

The trial court ruled that Deputy Howell had permission to enter the residence. Conclusion of Law (CL) 1. As a conclusion of law, it ruled that based on the fact that he entered to complete hulk vehicle paperwork, that was the "sole purpose" for which he had permission to enter. CL 1. But the trial court cited no authority for this limitation of purpose, which the findings of fact do not indicate was made expressly. There is no authority for the proposition that when an officer enters for some particular reason, that reason constitutes a limitation on any granted permission. This court must determine whether this conclusion of law follows from the court's findings of fact. State v. Vickers, 148 Wn.2d 91, 116, 59 P.3d 58 (2002). The State submits that where, as here, there is no evidence the householder limited the officer's scope of permission to enter, a conclusion of law to the opposite effect cannot avail.

2. The trial court failed to apply the correct test for the legality of Deputy Howell's actions.

The trial court ruled that since crossing the living room was "totally unnecessary to accomplish the purpose for which the deputy had entered the home," the deputy had no right to do it and therefore did so unlawfully. CL 5-7. The state argues the trial court used the incorrect standard for determining the legality of the deputy's presence.

The court cited no authority in favor of the idea that a deputy may only take actions "necessary to accomplish the purpose for which" he or she enters a home. This being the case, all the State can do is set forth the correct test and illustrate how the court's test differs.

The correct test is set forth in the similar case of State v. Campbell, 13 Wn.App. 722, 537 P.2d 1067 (1975), review denied, 86 Wn.2d 1007. There, police officers entered Mr. Campbell's apartment and two officers stationed themselves in the far end of the living room despite having received nothing but a nonspecific grant of permission for them to enter. Campbell, 13 Wn.App. at 725. There, the officers at the rear of the living room saw contraband not in the same room, but in another room visible from their vantage point. Id. (Here, Deputy Howell saw contraband in the living room itself.) There, the officers immediately seized the contraband by walking into that other room. Campbell, 13 Wn.App. at 726. (Here, Deputy Howell left

without disturbing anything and returned with a warrant.) In Campbell, the defendant made the same arguments made here: that absent some additional permission on top of permission to enter, an officer cannot so much as cross the first room he or she enters, nor do anything else not directly and immediately related to his or her purpose of entry. The court's response was, "the question here is not whether the officers were given express permission to 'station themselves on the north perimeter of the living room,' but whether they exceeded the bounds of reasonable conduct by moving to that point in the room before receiving specific permission to do so." Id. at 728. The court goes on, ruling that "once the officers were admitted, our inquiry is directed only to the reasonableness of their movement to various points in the room after they gained entry." Id.

This is in accord with the traditional and still operative rule of law regarding police conduct on private property: "An officer is permitted the same license to intrude as a reasonably respectful citizen." State v. Seagull, 95 Wn.2d 898, 902, 632 P.2d 44 (1981). "What is reasonable cannot be determined by a fixed formula." Id. at 903, cited in State v. Dyreson, 104 Wn.App. 703, 17 P.3d 668 (2001). (Dyreson applies the Seagull test to state constitutional issues.) "It must be based on the facts and circumstances of each case." Id. And while legally on private premises, officers "are free to keep their eyes open." Seagull, 95 Wn.2d at 902.

In other words, a police officer's conduct on private property is no more constrained than anyone else's. An officer, like anyone else, can cross a room in which he or she is a guest to look at a decoration. The inquiry does not revolve around what is "necessary to accomplish the purpose" for which the officer is on private property, as the trial court found. No case has used this formulation.

Even though there is no finding in this case of any investigative motive on Deputy Howell's behalf, it is worth bearing in mind as the court considers this issue that, that permission to enter a house gained by a police agent who operates under a false name and utterly false pretenses -- to wit, an undercover operative whose purpose in receiving permission to enter a defendant's residence was to gain evidence against the defendant when the defendant had no idea of that purpose when granting permission -- is entirely permissible. E.g., State v. Sabbot, 116 Wn.App. 929, 937-8, 561 P.2d 212 (1977), review denied, 113 Wn.2d 1036 (1990). Therefore, it is against prior authority (and long-accepted police practice) to limit an officer to requesting permission for every step he or she takes on private property. If anything, a police officer has greater latitude in gaining entry and the scope of reasonable activities after entry than one might expect.

The courts have to date proved unwilling to circumscribe police conduct to the extent the court here did. Compared to the officer in Sabbot,

or even the officers in Campbell, Deputy Howell's conduct here was much more reasonable and less intrusive.

Therefore, Deputy Howell was in a place he had a right to be when he observed firearms in Harold Doering's residence. When a police officer observes evidence of crime while in a place he or she has a right to be, that evidence, and the officer's sight of it, is admissible. E.g., Campbell, supra. Such conduct does not even constitute a search. Id. It would have been legal for the officer to have seized the firearms then and there. Id.

People have a full panoply of rights to protect them from police officers who come to their houses searching for contraband. E.g., State v. Kennedy, 107 Wash.App. 972, 976-77, 29 P.3d 746 (2001). But there is no finding here that there was any pretext or intent to search: rather, the officer came in response to a call from one of the defendants. The deputy was a guest. As observed in Sabbot, supra, 16 Wn.App. at 936, "when one invites another into his home, whether friend, acquaintance, or stranger, the Fourth Amendment does not afford protection to the householder against what the friend, acquaintance, or stranger sees or hears there."

CONCLUSION

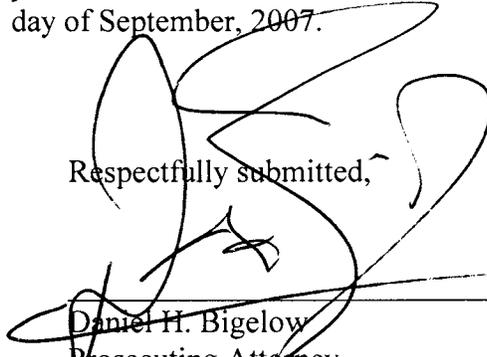
This is not a case in which it is necessary to engage in deep analysis or fine distinctions. The trial court herein did not make a subtle error of law

that requires step-by-step analysis to make clear. Rather, the trial court simply applied an incorrect test. Its idea that the fact that Deputy Howell arrived at the Doering residence to take a junk vehicle complaint meant that Howell could only take a step if that step directly related to the junk vehicle complaint is simply wrong. That is not the law.

Rather, Deputy Howell was entitled to reasonable latitude as a guest; the Campbell case shows that walking across the room to which Harold Doering admitted him constitutes such reasonable latitude; and therefore, Deputy Howell was well within the law when he observed the firearms that formed the basis for the search warrant in this case. The trial court's analysis should be reversed and this case should be remanded for further proceedings.

DATED this 12th day of September, 2007.

Respectfully submitted,



Daniel H. Bigelow
Prosecuting Attorney
Attorney for Appellant
WSBA No. 21227

CERTIFICATE

I certify that I mailed a copy of the foregoing Appellant's Brief to the following addresses postage prepaid, on September 12, 2007.

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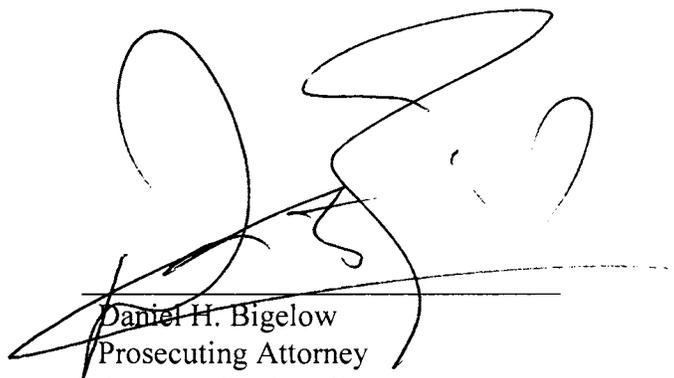
Nathaniel L. Needham
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STATE OF WASHINGTON
BY _____
DEPUTY



Daniel H. Bigelow
Prosecuting Attorney
Attorney for Appellant
WSBA No. 21227

FILED

07 MAY 14 PM 12:39

CLERK OF SUPERIOR COURT
WAHKIAKUM COUNTY, WA

BY _____ DEPUTY

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5
6 **Exhibit "A"**
7

8 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
9 FOR WAHKIAKUM COUNTY

10 STATE OF WASHINGTON,

11 Plaintiff,

12 v.

13 WYATT E. DOERING,

14 Defendant.

No. 05-1-00035-5

FINDINGS OF FACT
AND CONCLUSIONS OF LAW

15
16 THIS MATTER having come on for suppression hearing before the undersigned
17 on the 26th day of October, 2006 and a continued hearing on December 18, 2006,
18 Daniel H. Bigelow appearing on behalf of the Plaintiff, State of Washington; and
19 Defendant, WYATT E. DOERING being present with his attorney, Kevin G. Blondin,
20 and the Court having taken testimony from the parties and from witnesses, having
21 visited the scene of the alleged incident, having reviewed a prepared transcript of the
22 proceedings and having reviewed the live recorded testimony of all testifying witness,
23 having heard argument of counsel, and being fully advised, now makes the following
24 Findings of Fact:
25
26

FINDINGS OF FACT:

1. On the night of Monday, November 21, 2005, Deputy Howell of the Wahkiakum County Sheriff's Office responded to 3504 West SR 4 in Grays River, Washington to assist Defendant Harold Doering with the title to a hulk vehicle he had purchased in Oregon.
2. After examining the hulk vehicle located outside Defendant Harold Doering's residence and obtaining the required number documentation from the vehicle, Deputy Howell and Defendant Harold Doering entered Defendant Harold Doering's home to complete the hulk vehicle paperwork. To complete the hulk vehicle paperwork, the deputy only needed to sign it.
3. Upon entry into the residence, the deputy took four or five steps into the home with the hulk vehicle paperwork and placed it on top of a nearby speaker to have something to write on.
4. As one enters the front door of Defendant Harold Doering's residence, the living room area of the home extends to the immediate right and a hallway is visible directly ahead. In the living room, a couch and ~~love seat~~^{davenport} abut at a 90-degree angle and extends partially into the center of the living room area.
5. At the time of the deputy's entry into the home, a speaker was located near the entry to the hallway, approximately four or five feet directly ahead of the front door.

///

- 1 6. Beyond the love seat and facing inward against the outside wall, which
2 houses the front door, is a cabinet with a glass door. The contents of this
3 cabinet can not be viewed immediately upon entry through the front door, nor
4 can they be seen from the area where the deputy initially placed the hulk
5 vehicle paperwork.
6
- 7 7. On the night in question, after entering the residence and setting the hulk
8 vehicle paperwork down near the front door, Deputy Howell proceeded well
9 into the home and toward the far living room wall past the end of the
10 davenport to view the antlers, *which were partially viewable upon entry.*
11
- 12 8. While at this location the deputy looked into a glass faced cabinet and saw
13 what he believed to be several "long guns," including hunting rifles and
14 shotguns.
- 15 9. At this point, Deputy Howell moved back around the love seat, approached
16 Defendant Harold Doering, who was still near the front door, leaned down on
17 the nearby speaker with the hulk vehicle paperwork and wrote on it. The
18 Deputy then handed the paperwork back to Defendant Harold Doering and
19 left the residence.
20
- 21 10. Upon the deputy's return to the office, the deputy performed a search of
22 Defendant Harold Doering's available criminal history and learned that he
23 was a convicted felon. The deputy then applied for a search warrant for
24 Defendant Harold Doering's residence based upon his unlawful possession of
25 firearms.
26

///

1 11. ~~The Court accepts the affidavit and complaint for search warrant as Exhibit A.~~

2 RCB

3 **CONCLUSIONS OF LAW:**

4
5 FROM THE FOREGOING Findings of Fact, the court now makes the following
6 Conclusions of Law:
7

- 8 1. The deputy had permission to enter the residence for the sole purpose of
9 completing the hulk vehicle paperwork.
- 10 2. The sole reason for the deputy to be in Defendant Harold Doering's
11 residence was to sign this paperwork. The deputy was not called in response
12 to any 9-1-1 emergency, nor was there any immediate concern for officer
13 safety once inside the residence.
- 14 3. While in Defendant Harold Doering's home the deputy observed what he
15 believed to be several "long guns," including hunting rifles and shotguns. The
16 deputy did not immediately recognize these items as evidence of contraband.
- 17 4. From the initial vantage point where the deputy entered the home and placed
18 the hulk vehicle paperwork on a speaker, the contents of the glass cabinet
19 are not plainly visible. Therefore, the deputy could not view the contents of
20 the cabinet in "plain view," and the "plain view" exception to the warrant
21 requirement does not apply.
- 22 5. The deputy's movements once inside the home from the area of the speaker
23 to the far side of the room beyond ^{the davenport} ~~furniture which clearly divides the room~~
24 were not reasonable. The movement of the deputy about the residence after
25
26

1 setting down the hulk vehicle paperwork (even if innocent in nature) was
2 totally unnecessary to accomplish the purpose for which the deputy had
3 entered the home, that being to sign hulk vehicle papers.

4
5 6. Defendant Harold Doering's inquiry about what the deputy was "looking for"
6 expressed a clear concern about the deputy's movement. The deputy's
7 movement and actions after setting down the hulk vehicle paperwork are per
8 se unreasonable as they constituted an unlawful search of Defendant Harold
9 Doering's residence. Such actions, viewed by an objective standard, were in
10 violation of provisions of the Fourth Amendment to the United States
11 Constitution and Article 1, §7 of the Washington Constitution, both of which
12 guard against unreasonable searches and seizures.

13
14 7. Moreover, the deputy did not have a lawful right to be in the location from
15 which he observed the contents of the glass faced cabinet. Therefore, the
16 deputy was not in a location in which he had a lawful right to be and the "plain
17 view" exception to the warrant requirement does not apply. These actions,
18 viewed by an objective standard, were also in violation of the provisions of
19 the Fourth Amendment to the United States Constitution and Article 1, §7 of
20 the Washington Constitution, both of which guard against unreasonable
21 searches and seizures.

22
23 8. The affidavit in support of the search warrant in this case cannot form the
24 basis for the lawful issuance of a search warrant as the information upon
25 which it was based was not lawfully observed in "plain view," the result of a
26 lawful search, or some exception to the warrant requirement.

1 9. All evidence seized by the State of Washington by and through either Deputy
2 Howell's testimony or the search warrant issued in this case is suppressed.

3 As a practical matter, this ruling terminates the case.

4 DATED: May 14, 2007.

5
6 

7 HONORABLE MICHAEL J. SULLIVAN

8 Presented by:

9
10 

11 KEVIN G. BLONDIN, WSB #29272
12 Of Attorneys for Defendant Wyatt Doering

13 Approved as to form and notice of presentation
14 waived this _____ day of May, 2007:

15
16 _____
17 JERRY WETLE, WSB # _____
18 Of Attorneys for Plaintiff State of Washington

I CERTIFY that I hand delivered a copy of the following to Attorney for Plaintiff on

5/14/17

Nathan L. Needham
Nathan L. Needham, Attorney for Defendant

FILED

07 MAY 14 PM 12:48

BARBARA A. CLIX, CLERK
WAKIAKUM COUNTY, WA

BY D DEPUTY

Exhibit "B"

IN SUPERIOR COURT OF THE STATE OF WASHINGTON COUNTY OF WAKIAKUM

STATE OF WASHINGTON)	
)	No. 05-1-00037-1
Plaintiff,)	
)	FINDINGS OF FACT &
vs.)	CONCLUSIONS OF LAW
)	
HAROLD E. DOERING)	
)	
Defendant.)	

THIS MATTER having come on for suppression hearing before the undersigned on the 26th day of October, 2006 and a continued hearing on December 18, 2006, Daniel H. Bigelow appearing on behalf of the Plaintiff, State of Washington; and Defendant, HAROLD E. DOERING being present with his attorney, Nathan L. Needham, and the Court having taken testimony from the parties and from witnesses, having visited the scene of the alleged incident, having reviewed a prepared transcript of the proceedings and having reviewed the live recorded testimony of all testifying witness, having heard argument of counsel, and being fully advised, now makes the following Findings of Fact:

**FINDINGS OF FACT &
CONCLUSIONS OF LAW**

Page 1 of 6

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98

FINDINGS OF FACT:

1. On the night of Monday, November 21, 2005, Deputy Howell of the Wahkiakum County Sheriff's Office responded to 3504 West SR 4 in Grays River, Washington to assist the Defendant with the title to a hulk vehicle the Defendant had purchased in Oregon.
2. After examining the hulk vehicle located outside the Defendant's residence and obtaining the required number documentation from the vehicle, Deputy Howell and the Defendant entered the Defendant's home to complete the hulk vehicle paperwork. To complete the hulk vehicle paperwork, the deputy only needed to sign it.
3. Upon entry into the residence, the deputy took four or five steps into the home with the hulk vehicle paperwork and placed it on top of a nearby speaker to have something to write on.
4. As one enters the front door of the Defendant's residence, the living room area of the home extends to the immediate right and a hallway is visible directly ahead. In the living room, a couch and davenport abut at a ninety degree angle and extends partially into the center of the living room.
5. At the time of the deputy's entry into the home, a speaker was located near the entry to the hallway, approximately four or five feet directly ahead of the front door.
6. Beyond the davenport and facing inward against the outside wall, which houses the front door, is a cabinet with a glass door. The contents of this

cabinet can not be viewed immediately upon entry through the front door, nor can they be seen from the area where the deputy initially placed the hulk vehicle paperwork.

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7. On the night in question, after entering the residence and setting the hulk vehicle paperwork down near the front door, Deputy Howell proceeded well into the home and toward the far living room wall past ^{the} end of the davenport and began looking at a mounted elk head with antlers lying on the floor behind the davenport, *which was partially visible to the deputy upon entry.*
8. While at this location the deputy looked into a glass faced cabinet and saw what he believed to be several "long guns," including hunting rifles and shotguns.
9. At this point, Deputy Howell moved back around the love seat, approached the Defendant, who was still near the front door, leaned down on the nearby speaker with the hulk vehicle paperwork and wrote on it. The Deputy then handed the paperwork back to the Defendant and left the residence.
10. Upon the deputy's return to the office, the deputy performed a search of the Defendant's available criminal history and learned that he was a convicted felon. The deputy then applied for a search warrant for the Defendant's residence based upon the Defendant's unlawful possession of firearms.

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CONSLUSIONS OF LAW:

FROM THE FOREGOING Findings of Fact, the court now makes the following

Conclusions of Law:

**FINDINGS OF FACT &
CONSLUSIONS OF LAW**
Page 3 of 6

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1. The deputy had permission to enter the residence for the sole purpose of completing the hulk vehicle paperwork.
2. The sole reason for the deputy to be in the Defendant's residence was to sign this paperwork. The deputy was not called in response to any 9-1-1 emergency, nor was there any immediate concern for officer safety once inside the residence.
3. While in the Defendant's home the deputy observed what he believed to be several "long guns," including hunting rifles and shotguns. The deputy did not immediately recognize these items as evidence of contraband.
4. From the initial vantage point where the deputy entered the home and placed the hulk vehicle paperwork on a speaker, the contents of the glass cabinet are not plainly visible. Therefore, the deputy could not view the contents of the cabinet in "plain view," and the "plain view" exception to the warrant requirement does not apply.
5. The deputy's movements once inside the home from the area of the speaker to the far side of the room beyond ~~the door which he had to go to~~ ^{the doorway} were not reasonable. The movement of the deputy about the residence after setting down the hulk vehicle paperwork (even if innocent in nature) was totally unnecessary to accomplish the purpose for which the deputy had entered the home, that being to sign hulk vehicle papers.
6. The deputy's movement and actions after setting down the hulk vehicle paperwork are per se unreasonable as they constituted an unlawful search of

1 the Defendant's residence. Such actions, viewed by an objective standard,
2 were in violation of provisions of the Fourth Amendment to the United States
3 Constitution and Article 1, §7 of the Washington Constitution, both of which
4 guard against unreasonable searches and seizures.

5 7. Moreover, the deputy did not have a lawful right to be in the location from
6 which he observed the contents of the glass faced cabinet. Therefore, the
7 deputy was not in a location in which he had a lawful right to be and the
8 "plain view" exception to the warrant requirement does not apply. These
9 actions, viewed by an objective standard, were also in violation of the
10 provisions of the Fourth Amendment to the United States Constitution and
11 Article 1, §7 of the Washington Constitution, both of which guard against
12 unreasonable searches and seizures.

13 8. The affidavit in support of the search warrant in this case cannot form the
14 basis for the lawful issuance of a search warrant as the information upon
15 which it was based was not lawfully observed in "plain view," the result of a
16 lawful search, or some exception to the warrant requirement.

17 9. All evidence seized by the State of Washington by and through either Deputy
18 Howell's testimony or the search warrant issued in this case is suppressed.

19 10. As a result of the suppression of the evidence in this case, the State is without
20 grounds to pursue the charges against the Defendant herein.

21
22 DONE IN OPEN COURT this 14th day of May 2007.

23
24
25 **FINDINGS OF FACT &
CONCLUSIONS OF LAW**
Page 5 of 6

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5/14/07 Michael Sullivan
JUDGE

Presented by:

1
2 Nathan Needham
3 Nathan L. Needham, WSBA #30400
4 GUY M. GLENN LAW FIRM
5 Attorney for Defendant

6 Approved as to form:

7 Daniel H. Bigelow
8 Daniel H. Bigelow, WSBA #21227
9 Prosecuting Attorney
10
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25 **FINDINGS OF FACT &
CONCLUSIONS OF LAW**
Page 6 of 6

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FILED

07 MAY 14 AM 11:53

CLERK OF SUPERIOR COURT
WAHKIAKUM COUNTY, WASH.

DEPUTY

Exhibit "C"

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF WAHKIAKUM

STATE OF WASHINGTON,

No. 05-1-00038-0

Plaintiff,

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

vs.

MYRNA J. DOERING,

Defendant.

THIS MATTER having come on for suppression hearing before the undersigned on the 26th day of October, 2006 and a continued hearing on December 18, 2006, Daniel H. Bigelow appearing on behalf of the Plaintiff, State of Washington; and Defendant, MYRNA J. DOERING being present with her attorney, Heidi L. Heywood, and the Court having taken testimony from the parties and from witnesses, having visited the scene of the alleged incident, having reviewed a prepared transcript of the proceedings and having reviewed the live recorded testimony of all testifying witness, having heard argument of counsel, and being fully advised, now makes the following:

*FINDINGS OF FACT AND
CONCLUSIONS OF LAW - 1*

HEIDI HEYWOOD, PLLC
ATTORNEY AT LAW
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957 STEAMBOAT SLOUGH ROAD, BOX 233
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S
9c

FINDINGS OF FACT:

1. On the night of Monday, November 21, 2005, Deputy Howell of the Wahkiakum County Sheriff's Office responded to 3504 West SR 4 in Grays River, Washington to assist the Defendant's husband, Harold Doering, with the title to a hulk vehicle he had purchased in Oregon.
2. After examining the hulk vehicle located outside the Defendant's residence and obtaining the required number documentation from the vehicle, Deputy Howell and Harold Doering entered the Defendant's home to complete the hulk vehicle paperwork. To complete the hulk vehicle paperwork, the deputy only needed to sign it.
3. Upon entry into the residence, the deputy took four or five steps into the home with the hulk vehicle paperwork and placed it on top of a nearby speaker to have something on which to write.
4. As one enters the front door of the Defendant's residence, the living room area of the home extends to the immediate right and a hallway is visible directly ahead. In the living room, a ^{davenport} ~~sofa~~ and love seat abut at a ninety degree angle and extends partially into the center of the living room area.
5. At the time of the deputy's entry into the home, a speaker was located near the entry to the hallway, approximately four or five feet directly ahead of the front door.
6. Beyond the love seat and facing inward against the outside wall, which houses the front door, is a cabinet with a glass door. The contents of this

1 cabinet can not be viewed immediately upon entry through the front door, nor
2 can they be seen from the area where the deputy initially placed the hulk
3 vehicle paperwork.

4 7. After entering the residence and setting the hulk vehicle paperwork down 

5 near the front door, Deputy Howell proceeded well into the home and toward
6 *and began looking at a mounted elk head with antlers lying on the floor*
7 *the far living room wall past the end of the davenport, to view the antlers. Behind the*
8 *which was partially visible to the deputy upon entry. davenport,*

9 8. While at this location the deputy looked into a glass faced cabinet and saw
10 what he believed to be several "long guns," including hunting rifles and
11 shotguns.

12 9. At this point, Deputy Howell moved back around the love seat, approached
13 Harold Doering, who was still near the front door, leaned down on the nearby
14 speaker with the hulk vehicle paperwork and wrote on it. The Deputy then
15 handed the paperwork back to Harold Doering and left the residence.

16 10. Upon the deputy's return to the office, the deputy performed a search of the
17 Defendant's available criminal history and learned that she was a convicted
18 felon. The deputy then applied for a search warrant for the Defendant's
19 residence based upon the Defendant's unlawful possession of firearms.

20 ~~11. The Court adopts the affidavit and complaint for search warrant as Exhibit A.~~ 

21 FROM THE FOREGOING Findings of Fact, the Court now makes the following:

22 **CONCLUSIONS OF LAW:**

23 1. The deputy had permission to enter the residence for the sole purpose of
24 completing the hulk vehicle paperwork.

25 *FINDINGS OF FACT AND
CONCLUSIONS OF LAW - 3*

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- 1 2. The sole reason for the deputy to be in the Defendant's residence was to sign
2 this paperwork. The deputy was not called in response to any 9-1-1
3 emergency, nor was there any immediate concern for officer safety once
4 inside the residence.
- 5 3. While in the Defendant's home the deputy observed what he believed to be
6 several "long guns," including hunting rifles and shotguns. The deputy did not
7 immediately recognize these items as evidence of contraband.
- 8 4. From the initial vantage point where the deputy entered the home and placed
9 the hulk vehicle paperwork on a speaker, the contents of the glass cabinet
10 are not plainly visible. Therefore, the deputy could not view the contents of
11 the cabinet in "plain view," and the "plain view" exception to the warrant
12 requirement does not apply.
- 13 5. The deputy's movements once inside the home from the area of the speaker
14 to the far side of the room beyond ^{the davenport} ~~furniture which clearly divides the room~~
15 were not reasonable. The movement of the deputy about the residence after
16 setting down the hulk vehicle paperwork (even if innocent in nature) was
17 totally unnecessary to accomplish the purpose for which the deputy had
18 entered the home, that being to sign hulk vehicle papers.
- 19 6. ~~Harold Doering's inquiry about what the deputy was "looking for" expressed a~~
20 ~~clear concern about the deputy's movement.~~ ~~The deputy's movement and~~
21 ~~actions after setting down the hulk vehicle paperwork are per se~~
22 ~~unreasonable as they constituted an unlawful search of the Defendant's~~
23
24

25 FINDINGS OF FACT AND
CONCLUSIONS OF LAW - 4

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1 residence. Such actions, viewed by an objective standard, were in violation
2 of provisions of the Fourth Amendment to the United States Constitution and
3 Article 1, §7 of the Washington Constitution, both of which guard against
4 unreasonable searches and seizures.

5 7. Moreover, the deputy did not have a lawful right to be in the location from
6 which he observed the contents of the glass faced cabinet. Therefore, the
7 deputy was not in a location in which he had a lawful right to be and the "plain
8 view" exception to the warrant requirement does not apply. These actions,
9 viewed by an objective standard, were also in violation of provisions of the
10 Fourth Amendment to the United States Constitution and Article 1, §7 of the
11 Washington Constitution, both of which guard against unreasonable searches
12 and seizures.

13
14 8. The affidavit in support of the search warrant in this case cannot form the
15 basis for the lawful issuance of a search warrant as the information upon
16 which it was based was not lawfully observed in "plain view," the result of a
17 lawful search, or some exception to the warrant requirement.

18 9. All evidence seized by the State of Washington by and through either Deputy
19 Howell's testimony or the search warrant issued in this case, and the
20

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24 /

25 *FINDINGS OF FACT AND
CONCLUSIONS OF LAW - 5*

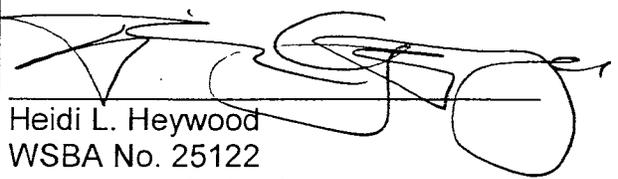
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1 subsequent interview of the Defendant, is suppressed. As a practical matter, this
2 ruling terminates the case.

3 DONE IN OPEN COURT this 14th day of May, 2007.

4
5 
6 _____
7 JUDGE

8 Presented by:

9 
10 Heidi L. Heywood
11 WSBA No. 25122
12 Attorney for Defendant

13 Approved as to form:

14 _____
15 Daniel H. Bigelow
16 WSBA No. 21227
17 Prosecuting Attorney

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25 FINDINGS OF FACT AND
CONCLUSIONS OF LAW - 6

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