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COURT OF APPEALS
DIVISION II
10 SEP -1 PM 1:09
STATE OF WASHINGTON
BY C DEPUTY

NO. 39986-5-II
Cowlitz Co. Cause NO. 09-1-00212-3

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON,

Respondent,

v.

RUBY ROELLA REED,

Appellant.

BRIEF OF RESPONDENT

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I. PROCEDURAL HISTORY

The appellant was charged by information with violation of the uniform controlled substances act: possession of methamphetamine and unlawful possession of a firearm in the second degree. The appellant moved to suppress the evidence against her, with a hearing being held before the Honorable Judge Stephen Warning on July 16, 2009. The appellant's motion to suppress was denied, and she proceeded to a bench trial before the Honorable Judge James Stonier on October 19, 2009. The trial court found the appellant guilty of possession of methamphetamine but acquitted her of the unlawful possession of a firearm charge. The appellant was subsequently sentenced to twenty days in jail. The instant appeal timely followed.

II. STATEMENT OF THE CASE

In general, the State agrees with the statement of the case provided by the appellant. Where appropriate, the State cites to further pertinent facts in the record.

III. ISSUES PRESENTED

1. Has the Appellant Provided a Sufficient Record for This Court to Review the CrR 3.6 Hearing?
2. Did the Trial Court Err by Denying a Motion to Suppress Evidence Under CrR 3.6?

3. Was the Appellant's Conviction for Possession of Methamphetamine Unsupported by Substantial Evidence?

IV. SHORT ANSWERS

1. No.
2. No.
3. No.

V. ARGUMENT

I. The Appellant Has Failed to Provide a Sufficient Record For this Court to Review the Trial Court's CrR 3.6 Ruling.

The appellant's first assignment of error relates to the trial court's ruling denying a motion to suppress evidence under CrR 3.6.¹ However, the appellant has failed to provide a transcript of the hearing on this issue, thus leaving this Court without a record upon which to base its review. Instead, the appellant has only provided transcripts of the bench trial.

RAP 9.2(b) provides that "[a] party should arrange for the transcription of all those portions of the verbatim report of proceedings necessary to present the issues raised on review." The appellant thus "has the burden of perfecting the record so that the reviewing court has before it all of the evidence relevant to the issue and matters not in the record will not be considered on appeal." State v. Sublett, 156 Wn.App. 160, 186, 231

¹ See Appellant's brief at 1.

P.3d 231 (2010), citing State v. Rienks, 46 Wn.App. 537, 544-545, 731 P.2d 1116 (1987), see also Bonneville v. Pierce County, 148 Wn.App. 500, 508, 202 P.3d 309 (2008).

The appellant's brief argues that the trial court erred in denying her motion to suppress the evidence. The trial court found that the officer's intent was not to search for evidence, but to interview witnesses. CP 48. In her brief, the appellant argues that "[i]t is perfectly obvious that the intent of the police officers in getting back into the house was to search for evidence of criminal activity."² In order for this Court to resolve this issue, the transcripts of the actual suppression hearing must be reviewed. However, the appellant failed to have this hearing transcribed, and has thereby failed to perfect the record on this issue. As such, this Court should refuse to consider the issue of whether the trial court erred in denying the CrR 3.6 motion.

II. The Trial Court Properly Denied the CrR 3.6 Motion, As The Police Were Not Required to Provide Ferrier Warnings.

As argued above, the appellant has failed to perfect the record on the CrR 3.6 issue. Should this Court reach the issue, it is apparent that the trial court correctly denied the motion as there is no requirement that the police

² Appellant's brief at 14.

provide Ferrier warnings prior to entering a residence to conduct witness interviews.

The appellant argues that the police were required to read her Ferrier warnings prior to entering the residence to speak with her. However, this argument runs afoul of the case-law, as there is a crucial distinction between entering a residence to conduct a general warrantless search and entering for another investigatory purpose, such as speaking with a person.

It is well established that, under the Washington constitution, when the police are conducting a “knock and talk” of a residence in an attempt to obtain consent to search, they are required to advise the occupant of his or her right to refuse to give consent. State v. Ferrier, 136 Wn.2d 103, 960 P.2d 927 (1998). However, the Supreme Court has consistently limited the application of Ferrier to the inherently coercive “knock and talk” situation where the police are attempting to conduct a warrantless search of the residence.³ Indeed, the Supreme Court has held that:

We recognize that law enforcement officers need to enter people's homes in order to provide their valuable services for the community on a daily basis. We do not find it prudent or necessary to extend Ferrier to require that police advise citizens of their right to refuse entry every time a police officer enters their home. Police officers are oftentimes invited into homes for

³ Notably, in Ferrier the resident was never advised of her Miranda warnings, and in fact consented only after the police threatened to have CPS seize her grandchildren. 136 Wn.2d at 108.

investigative purposes, including inspection of break-ins, vandalism, and other routine responses. We do not find a constitutional requirement that a police officer read a warning each time the officer enters a home to exercise that investigative duty. To apply the Ferrier rule in these situations would unnecessarily hamper a police officer's ability to investigate complaints and assist the citizenry. Instead, we limit the requirement of a warning to situations where police seek to conduct a search for contraband or evidence of a crime without obtaining a search warrant.

State v. Williams, 142 Wn.2d 17, 27-28, 11 P.3d 714 (2002).

Employing this rationale, the Supreme Court held in State v. Khounvichai, 149 Wn.2d 557, 69 P.3d 862 (2003), that the police need not read Ferrier warnings prior to entering a residence to interview or speak with a person. If the police discover evidence in plain view, after having been allowed into the residence, this evidence will not be suppressed. Khounvichai, 149 Wn.2d at 565-566.

Here, Dep. Shelton asked the appellant if he could enter the residence to speak with her about the arrest of Mr. Carpenter. She allowed the police to reenter the residence, as they had already entered once with Mr. Carpenter's permission, and spoke with them inside, likely to avoid the inclement weather outside. Once inside, Dep. Shelton observed, in plain view, various firearms. When the purpose of the entry shifted from an interview to a search for weapons, the police properly advised the

defendant of her Miranda and Ferrier warnings. She then consented to a search of the residence, during which additional evidence was discovered.

It is apparent from the police's actions that this encounter was non-coercive, and was not a "knock and talk" akin to Ferrier; instead the police simply asked permission to reenter the residence to speak with the defendant about what had happened. As the Supreme Court has clearly indicated, there is no requirement that the police read Ferrier warnings in this situation. This Court should deny the motion on this basis.

III. There Was Sufficient Evidence to Convict the Appellant of Possession of Methamphetamine.

The appellant argues there was insufficient evidence to support the trial court's finding that she was guilty as of possession of methamphetamine. Specifically, the appellant argues the evidence merely established that she "momentarily handled" the narcotics in question. However, when viewed in the light most favorable to the State, there was ample evidence to support the appellant's guilt for this charge.

When the sufficiency of the evidence is challenged, the test is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the defendant was guilty beyond a reasonable doubt. State v. Green, 94 Wn.2d 216, 220-222, 616 P.2d 628 (1980). All reasonable inferences from the evidence must be

drawn in favor of the State and interpreted most strongly against the defendant. State v. Partin, 88 Wn.2d 899, 906-907, 567 P.2d 1136 (1977). Moreover, a claim of insufficiency “admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom.” State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

Here, the evidence established the appellant had actually possessed the item in question when she smoked methamphetamine from it. Mr. Carpenter, Dep. Shelton, and the appellant each testified to this fact. The trial court noted that “What greater proof of control could there be than consumption of the item in the bowl?” RP Vol II at 307. Given this evidence, it cannot be said that no rational finder of fact could find the appellant guilty.

Indeed, it would be puzzling if a person could not be found guilty of possessing an item that they had actually held in their hands and used to consume illicit narcotics. See State v. Staley, 123 Wn.2d 794, 872 P.2d 502 (1994) (holding that “fleeting possession” is not a separate defense, but instead goes to whether the person ever had possession of the item); and also State v. Echevarria, 85 Wn.App. 777, 934 P.2d 1214 (1997) (finding there was sufficient evidence the defendant possessed a firearm where it was found in plain view underneath his car seat).

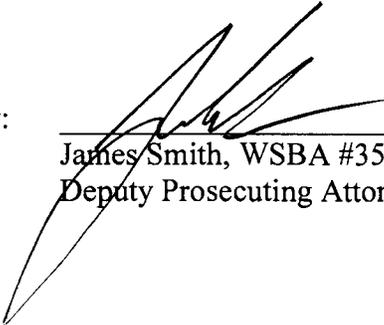
VI. CONCLUSION

Based on the preceding argument, the State respectfully requests the Court deny the instant appeal. The appellant has failed to present a sufficient record for this Court to review the CrR 3.6 hearing, and the trial court's findings were not in error. The appellant's conviction should stand.

Respectfully submitted this 27th day of August, 2010.

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STATE OF WASHINGTON,)	NO. 39986-5-II	BY <u>C</u>
)	Cowlitz County No.	DEPUTY
Respondent,)	09-1-00212-3	
)		
vs.)	CERTIFICATE OF	
)	MAILING	
RUBY ROELLA REED,)		
)		
Appellant.)		
<hr/>)		

I, Michelle Sasser, certify and declare:

That on the 30th day of August, 2010, I deposited in the mails of the United States Postal Service, first class mail, a properly stamped and address envelope, containing Brief of Respondent addressed to the following parties;

Mr. James K. Morgan
Attorney at Law
1555 Third Avenue, Suite A
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Court of Appeals, Clerk
950 Broadway, Suite 300
Tacoma, WA 98402-4454

I certify under penalty of perjury pursuant to the laws of the State of Washington that the foregoing is true and correct.

Dated this 30th day of August, 2010.

Michelle Sasser
Michelle Sasser