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I. ISSUE STATEMENTS.

1. Did the trial court err when it concluded a juvenile respondent serving a deferred disposition has a diminished expectation of privacy?
2. Did the trial court err when it concluded the contraband seized without a warrant was admissible because the juvenile probation counselor had a well-founded and reasonable suspicion that drugs were present inside the defendant's apartment?

II. STATEMENT OF THE CASE.

FACTS

In December 2009, Ms. Kathryn Loran, then a juvenile, received a deferred disposition after pleading guilty to unlawful possession of a legend drug. RP (9/21/2010) at 27, 35; CP 66-70. Pursuant to the deferred disposition, the Clallam County Superior Court placed Loran on community supervision for a period of 12 months. CP 67. *See also* CP 36. Ms. Joleen Goodrich, a juvenile probation counselor, was assigned to monitor Loran's progress on community supervision. RP (9/21/2010) at 26-27, 32.

To ensure compliance with the deferred disposition, the juvenile court imposed several supervisory conditions, including that (1) she refrain from committing new offenses; (2) she regularly and timely report to probation as her assigned counselor shall schedule or direct; (3) she keep her probation counselor informed of her current address, telephone

number, and notify probation before moving to a different address; (4) she be evaluated for alcohol or other drug dependency at the direction of her probation counselor and comply with any treatment recommendations or requirements; and (5) she refrain from using illegal drugs and alcohol and be subjected to random urinalysis, PBT, BAC testing as directed by her probation counselor or commissioned law enforcement. RP (9/21/2010) at 28; CP 66-68. Additionally, the juvenile court forwarded Loran's court record to the Department of Licensing (DOL), instructing the agency to revoke the juvenile's driver's license. CP 69.

In April 2010, Loran reported to Goodrich that she was busy trying to arrange medical appointments for her newborn baby and trying to get herself into drug and alcohol treatment. CP 62, 65. Loran promised Goodrich she would call the following week and set up a meeting with her probation counselor. CP 62, 65. Loran failed to meet Goodrich as scheduled. CP 62, 65.

On May 18, 2010, Goodrich petitioned the juvenile court to issue a bench warrant for Loran. RP (9/21/2010) at 29; CP 61-65. Goodrich informed the juvenile court Loran had (1) failed to keep contact with probation, (2) failed to inform probation of changes to her local address

and phone number,¹ and (3) failed to undergo a drug and alcohol evaluation and comply with required treatment. RP (9/21/2010) at 29; CP 62, 65. Goodrich informed the juvenile court that neither probation, nor Loran's family knew her present whereabouts. RP (9/21/2010) at 30-31; CP 62, 65. The juvenile court issued a bench warrant for Loran's arrest. CP 59.

On May 20, 2010, Goodrich contacted Child Protective Services (CPS). Goodrich phoned CPS because she was concerned for the health and safety of Loran's newborn child. RP (9/21/2010) at 30. CPS informed Goodrich that Loran had a new address. RP (9/21/2010) at 30; CP 57. According to CPS, Loran was residing with her boyfriend and baby's father, Scott Horn. RP (9/21/2010) at 30; CP 57. CPS had the new address on file because the two had recently applied for benefits through the Temporary Assistance for Needy Families (TANF) program. RP (9/21/2010) at 30.

Goodrich contacted the Port Angeles Police Department (PAPD), requesting they accompany her to Horn's apartment so she could serve Loran's bench warrant. RP (9/21/2010) at 30, 32. Goodrich requested

¹ Goodrich made several attempts to contact Loran at the address she had provided the juvenile court and probation. However, every attempt proved unsuccessful. Every time Goodrich attempted to phone Loran, she received an automated message informing her that the number dialed had been disconnected. *See* RP (9/21/2010) at 31; CP 62, 65.

PAPD's assistance because she did not know Horn, but was aware he had an outstanding arrest warrant and a criminal record involving several convictions for controlled substances. RP (9/21/2010) at 30-31.

Officers Heuett and Benedict knocked on the apartment door and contacted Loran. RP (9/21/2010) at 32, 49. The officers asked if they could enter the apartment, but Loran denied their entry. RP (9/21/2010) at 49. Officer Heuett explained he only wished to determine if anyone else was home. RP (9/21/2010) at 49. Loran permitted the officers to enter the residence to conduct a protective sweep of the apartment. RP (9/21/2010) at 49, 51.

Officer Heuett then arrested Loran on the outstanding warrant and placed her in restraints. RP (9/21/2010) at 32, 50. Officer Heuett escorted Loran to his patrol cruiser, advised her of her constitutional rights, and placed her in the back of the vehicle. RP (9/21/2010) at 32, 39, 50, 53. After the officer advised Loran of her constitutional rights, she informed him that she had ended her relationship with Horn and was living in the apartment by herself. RP (9/21/2010) at 50-51.

Goodrich asked Loran if she would be able to provide a clean urinalysis sample. RP (9/21/2010) at 33; CP 57. Loran replied: "No. I just did heroin within the last couple of days." RP (9/21/2010) at 33, 38-39; CP 57.

Officer Heuett transported Loran to the Clallam County Jail. RP (9/21/2010) at 34, 40, 44, 50. Inside Loran's apartment, Goodrich located Officer Benedict, who was caring for Loran's newborn baby until CPS could arrive and take the child into protective custody. RP (9/21/2010) at 34, 40. While Officer Benedict tended to the child, Goodrich searched the apartment. RP (9/21/2010) at 34. Goodrich was suspicious she would find drugs given Loran's recent admission that she had used heroin. RP (9/21/2010) at 34, 44. *See also* RP (9/21/2010) at 52. Inside a dresser drawer containing women's underwear, Goodrich located a box that had several pills. RP (9/21/2010) at 34, 41-43. Goodrich confiscated the pills as evidence of a probation violation.

Officer Benedict radioed the discovery to Officer Heuett. RP (9/21/2010) at 50, 54. When Loran heard the report, she stated the pills were Vicodin and Percocet. RP (9/21/2010) at 50, 54.

PROCEDURAL HISTORY

The State subsequently charged Loran with two counts of unlawful possession of a controlled substance. CP 95-96.

The defense requested a suppression hearing pursuant to CrR 3.6, claiming the search of Loran's apartment was unlawful because Goodrich did not have a warrant. RP (9/21/2010) at 22; CP 76-85. The State argued

the evidence was lawfully obtained because (1) Loran had a diminished expectation of privacy because she was under community supervision by virtue of her 2009 deferred disposition, and (2) Goodrich had a well-founded and reasonable suspicion to believe drugs were inside the apartment because the defendant admitted to using drugs, failed to enroll in a drug/alcohol treatment program as reported to probation, and failed to comply with the terms of her community supervision. *See* RP (9/21/2010) at 56-58, 64-67; CP 50-70.

The defense responded no reasonable suspicion existed because Loran only admitted to using heroin in the days prior to her arrest, but never said when or where she had actually abused the illicit substance. RP (9/21/2010) at 60-63, 68. However, its primary argument was that the probation/parolee exception to the warrant requirement did not apply because Loran had never been “convicted” for the crime for which she received a deferred disposition. RP (9/21/2010) at 60-63, 68.

After requesting and reviewing supplemental briefing on the issue of whether a juvenile’s deferred disposition equates to probation, the trial court found the evidence was obtained lawfully. RP (9/21/2010) at 69-70; CP 22-24, 27-30.

After the State dismissed one of the counts alleged, the parties proceeded to a stipulated trial. CP 25-26. The Superior Court found,

beyond a reasonable doubt, Loran had unlawfully possessed a controlled substance (methadone). RP (1/19/2011) at 5. The trial court imposed a 30-day confinement period, but converted it into 240 hours of community service work. RP (1/19/2011) at 13-14; CP 11-12. Loran appeals.

III. ARGUMENT.

This Court reviews conclusions of law relating to the suppression of evidence de novo. *State v. Winterstein*, 167 Wn.2d 620, 628, 220 P.3d 1226 (2009). This Court also reviews findings of fact for substantial evidence. *Winterstein*, 167 Wn.2d at 628. “Substantial evidence is ‘evidence sufficient to persuade a fair-minded, rational person of the truth of the finding.’” *State v. McKague*, 143 Wn. App. 531, 542, 178 P.3d 1035 (2008) (citing *State v. Levy*, 156 Wn.2d 709, 733, 132 P.3d 1076 (2006)). Where findings of fact and conclusions of law are supported by substantial but disputed evidence, an appellate court is not to disturb the trial court’s ruling. *State v. Smith*, 84 Wn.2d 498, 505, 527 P.2d 674 (1974).

A. A JUVENILE SERVING A DEFERRED DISPOSITION HAS A DIMINISHED EXPECTATION OF PRIVACY.

Ms. Loran argues the exception to the warrant requirement that applies to probationers/parolees is inapplicable in the present case because

she was never “convicted and sentenced” for her juvenile offense. *See* Brief of Appellant at 5-12. She reasons a “conviction” is a prerequisite for the probation/parole exception because it is “the sole justification for depriving a convicted felon of his right to the constitutional protection of the sanctity of his home[.]” *See* Brief of Appellant at 5-6, 9. This argument fails because (1) RCW 13.40.127 treats a deferred disposition as a conviction unless/until the superior court vacates said conviction upon the successful completion of a deferred disposition; and (2) a deferred disposition, like probation or parole, seeks to rehabilitate the offender and requires the superior court to monitor closely the offender’s progress while on community supervision. This Court should affirm.

Generally, searches without a valid warrant are “unreasonable” unless an exception to the general warrant requirement applies. *State v. Lucas*, 56 Wn. App. 236, 239, 783 P.2d 121 (1989), *review denied*, 114 Wn.2d 1009, 790 P.2d 167 (1990). Under the federal and state constitutions, an exception to the warrant requirement exists for searches of individuals on probation or community supervision. *State v. Patterson*, 51 Wn. App. 202, 204-07, 752 P.2d 945, *review denied*, 111 Wn.2d 1066 (1988). These individuals have a diminished right of privacy because the State has a continuing interest in supervising the offender to effectuate his/her rehabilitation. *Lucas*, 56 Wn. App. at 239-40 (citing *State v.*

Simms, 10 Wn. App. 75, 85, 516 P.2d 1088 (1973)). See also *Griffin v. Wisconsin*, 438 U.S. 868, 872-80, 107 S.Ct. 3164, 97 L.Ed.2d 709 (1987).

One of the primary purposes of the Juvenile Justice Act (JJA) of 1977 is to provide the necessary supervision for juvenile offenders. RCW 13.40.010(2)(f). The deferred disposition statute, RCW 13.40.127(9), provides juvenile offenders an opportunity to earn vacation and dismissal of a case with prejudice upon full compliance with “conditions of supervision and payment of full restitution[.]” This meets the needs of the juvenile and the rehabilitative and accountability goals of the JJA. *State v. Watson*, 146 Wn.2d 947, 952-53, 51 P.3d 66 (2002).

When a juvenile receives a deferred disposition, she pleads guilty to an offense.² RCW 13.40.127(2), (4). Because a deferred disposition represents a finding of guilt, the juvenile court must place the respondent on “community supervision.”³ RCW 13.40.127(5). If the respondent satisfies the conditions of her community supervision, the juvenile court

² RCW 13.40.127(2) provides: “The juvenile court may ...continue the case for disposition for a period not to exceed one year from the date *the juvenile is found guilty*. The court shall consider whether the offender and the community will benefit from a deferred disposition before deferring the disposition.” (Emphasis added).

RCW 13.40.127(4) provides: “Following the stipulation, acknowledgment, waiver, *and entry of a finding or plea of guilt*, the court shall defer entry of an order of disposition of the juvenile.” (Emphasis added).

³ RCW 13.40.127(5) provides: “Any juvenile granted a deferral of disposition under this section shall be placed under community supervision. The court may impose any conditions that it deems appropriate including posting of a *probation bond*.” (Emphasis added).

must vacate the “conviction.”⁴ RCW 13.40.127(9). The juvenile court, with the aid of a probation officer, is required to supervise the child for a period of at least one year. RCW 13.40.020(4).

The JJA defines “community supervision” as an individualized program that may include community-based sanctions, community based rehabilitation, monitoring and reporting requirements, and a probation bond. RCW 13.40.020(4)(a),(b),(c),(d). “Monitoring and reporting requirements” may require the juvenile to strictly observe a curfew, regularly attend court-ordered treatment programs, timely report to a probation officer as directed, and remain under the probation officer’s supervision. RCW 13.40.020(19). This supervision, like probation/parole, is necessary to ensure the juvenile is successfully rehabilitated and does not reoffend. RCW 13.40.010(2)(f). *See also Griffin v. Wisconsin*, 483 U.S. 868, 875, 107 S.Ct. 3164, 97 L.Ed.2d 709 (1987) (“These restrictions are meant to assure that the probation serves as a period of genuine rehabilitation and the community is not harmed by the probationer’s being at large.”); *State v. Simms*, 10 Wn. App. 5, 85, 516 P.2d 1088 (1973), *review denied*, 83 Wn.2d 1007 (1974) (“[T]o minimize the social risks

⁴ RCW 13.40.127(9) provides: “At conclusion of the period set forth in the order of deferral and upon a finding by the court of full compliance with conditions of supervision and payment of full restitution, *the respondent’s conviction* shall be vacated and the court shall dismiss the case with prejudice[.]” (Emphasis added).

inherent in parole, an acceptable parole system does necessarily entail a certain degree of close supervision, surveillance, and control over the parolee.)

Loran claims RCW 13.40.127 is ambiguous. *See* Brief of Appellant at 10-11. This argument is unpersuasive. When interpreting a statute, “the court’s objective is to determine the legislature’s intent.” *In re Cruze*, 169 Wn.2d 422, 427, 237 P.3d 274 (2010). If the meaning of a statute is plain on its face, the appellate courts must “give effect to that plain meaning as an expression of legislative intent.” *Cruze*, 169 Wn.2d at 427. In determining the plain meaning of a provision, the appellate courts look to the text of the statutory provision in question as well as “the context of the statute in which the provision is found, related provisions, and the statutory scheme as a whole.” *Cruze*, 169 Wn.2d at 427. As presented above, the statute clearly establishes that a deferred disposition represents a guilty finding and serves as a “conviction” unless/until the juvenile offender earns a vacation and dismissal of the case. RCW 13.40.127(2),(4),(9).

This understanding, coupled with the fact that the deferred disposition triggers a mandatory period of “community supervision”, satisfies the dual goals of the juvenile justice system: accountability and rehabilitation. *See* RCW 13.40.010(2); RCW 13.40.020(4),(19); RCW

13.40.127(5); *Watson*, 146 Wn.2d at 952-53. Without this supervisory period, a deferred disposition would fail to satisfy the important goals of accountability and rehabilitation.

Furthermore, the Washington Supreme Court has held the deferred disposition statute is unambiguous. *Watson*, 146 Wn.2d at 957. While the *Watson* court focused its analysis on RCW 13.40.127(1), the high court cited with approval both RCW 13.40.127(3)(b) and .127(4). *See Watson*, 146 Wn.2d at 953. The Supreme Court did not find any conflict between these two subsections. This Court should reject Loran's efforts to read ambiguity into the statute simply because RCW 13.40.127(3)(b) outlines the steps a juvenile court must follow to solidify the offender's conviction at some future date.

Finally, Loran's efforts to characterize a "deferred disposition" as a "deferred prosecution" do not support her argument. Washington courts regularly treat deferred prosecutions under 10.05 RCW as a "prior offense". *See e.g. City of Seattle v. Winebrenner*, 167 Wn.2d 451, 460, 219 P.3d 686 (2009); *State v. Chambers*, 157 Wn. App. 465, 476, 237 P.3d 352 (2010). Such treatment supports the State's argument that a deferred disposition constitutes a conviction unless/until it has been vacated pursuant to RCW 13.40.127(9).

Under RCW 13.40.127, a deferred disposition is a “conviction” triggering a specific period of “community supervision” to ensure the juvenile is successfully rehabilitated. Thus, the rationale that justifies the probation/parolee exception to the warrant requirement applies to juvenile offenders serving a deferred disposition. Because Loran was serving a deferred disposition at the time of her arrest, the trial court did not err when it concluded she had a diminished expectation of privacy under both the federal and state constitutions. Therefore, she was subject to a warrantless search based upon a well-founded and reasonable suspicion of a parole violation. *See e.g. Griffin*, 438 U.S. at 872-80; *State v. Campbell*, 103 Wn.2d 1, 22, 691 P.2d 929 (1984), *cert. denied*, 471 U.S. 1094 (1985); *Lucas*, 56 Wn. App. at 239-45; *Patterson*, 51 Wn. App. at 204-07, 752 P.2d 945; *Simms*, 10 Wn. App. at 85, 87. There was no error.

B. A REASONABLE SUSPICION SUPPORTED THE PROBATION COUNSELOR’S SEARCH OF THE APARTMENT.

Ms. Loran argues that an articulable suspicion did not support the search of her apartment. *See* Brief of Appellant at 14-16. According to Loran, her probation counselor “had no reason to imagine proof of any offense involving heroin would be found in the apartment” because her admission did not provide any details regarding where and when she had

abused the illicit substance. *See* Brief of Appellant at 15. The record does not support her claim.

Even though a person under community supervision has a lesser expectation of privacy, the probation counselor's authority to search a residence extends only to the probationer's actual residence. *Winterstein*, 167 Wn.2d at 628-29 (citing former RCW 9.94A.631). Probation officers are required to have probable cause to believe that their probationers live at the residences they seek to search. *Winterstein*, 167 Wn.2d at 630. In this context, probable cause exists when an officer has information that would lead a person of reasonable caution to believe that the probationer lives at the place to be searched. *Winterstein*, 167 Wn.2d at 630. The information known to the officer must be reasonably trustworthy. *Winterstein*, 167 Wn.2d at 630. Only the facts and knowledge available to the officer at the time of the search should be considered. *Winterstein*, 167 Wn.2d at 630.

Here, Ms. Goodrich had probable cause to believe that Loran resided at the apartment searched. Goodrich made several unsuccessful attempts to contact Loran at the address she had on file. RP (9/21/2010) at 31; CP 62, 65. When Goodrich learned Loran failed to enroll in a drug treatment program, and her family did not know their daughter's whereabouts, Goodrich justifiably became concerned for the safety of

Loran's newborn and contacted CPS. RP (9/21/2010) at 29-32; CP 62, 65. CPS provided Goodrich with the address they had obtained from Loran when she recently applied for TANF benefits. RP (9/21/2010) at 30; CP 57. Finally, Goodrich admitted to law enforcement she was residing at the apartment where she had been contacted. RP (9/21/2010) at 50-51. This Court should find that Goodrich had probable cause to believe Loran lived in the apartment that she subsequently searched. *See Winterstein*, 167 Wn.2d at 630.

Once a probation officer determines she has the correct address, a warrantless search of an individual under community supervision is reasonable if the probation officer has a "well founded suspicion that a probation violation has occurred." *Lucas*, 56 Wn. App. at 244. In *Lucas*, the appellate court held there was a well-founded suspicion of a probation violation because (1) officers observed suspected marijuana through the defendant's window four days earlier, (2) the defendant was nervous when the officers asked to interview him, (3) the defendant demanded the officers produce a warrant, even though the officers had not conveyed a desire to search the home, and (4) the defendant was looking around the room immediately before the officers entered the residence. 56 Wn. App. at 244-45.

Here, the probation counselor was aware that (1) Loran was had been residing with an individual known to abuse drugs, (2) Loran had a history of illicit drug use, and (3) Loran had failed to enroll in a drug treatment program as required under her deferred disposition. RP (9/21/2010) at 26-27, 29-31, 52; CP 62, 65-70. Additionally, Loran denied the officers' entry into her apartment even though they had not conveyed a desire to search the residence for contraband. RP (9/21/2010) at 49. Most importantly, Loran admitted to consuming heroin a few days earlier and would be unable to provide a clean urinalysis sample. RP (9/21/2010) at 33, 38-39; CP 57. The totality of these facts provides the necessary "well founded suspicion" that a probation violation had occurred to justify the warrantless search of the residence. *See Lucas*, 56 Wn. App. at 244-45. This Court should affirm.

Loran relies heavily on the fact that she did not say exactly when and where she had used heroin. *See* Brief of Appellant at 15. She relies on *State v. Thein*, 138 Wn.2d 133, 140, 977 P.2d 582 (1999),⁵ for the proposition that "probable cause requires a nexus between criminal activity and the item to be seized, and also a nexus between the item to be seized and the place to be searched." *See* Brief of Appellant at 15.

⁵ In *State v. Thein*, the defendant was not on probation, parole, or community supervision at the time of the search. 138 Wn.2d at 136-40. As such, the case does not control the present analysis.

However, Loran fails to recognize that a different standard applies when the defendant is under community supervision at the time of the challenged search.

As stated above, the applicable standard is a “well founded suspicion that a probation violation has occurred.” *Lucas*, 56 Wn. App. at 244. A “well founded suspicion” is analogous to the “reasonable suspicion” requirement of a *Terry*⁶ stop. *State v. Fisher*, 145 Wn.2d 209, 224-28, 35 P.3d 366 (2001); *State v. Winterstein*, 140 Wn. App. 676, 690-92, 166 P.3d 1242 (2007), *reversed on other grounds*, 167 Wn.2d 620, 629-31, 220 P.3d 1226 (2009) (probation officers are required to have probable cause to believe that they are at the correct residence before they conduct a warrantless search). A reasonable suspicion requires only sufficient probability, not absolute certainty. *New Jersey v. T.L.O.*, 469 U.S. 325, 346, 105 S.Ct. 733, 83 L.Ed.2d 720 (1985). Given the facts presented above, the probation counselor recognized there was a sufficient probability that evidence of a probation violation was located inside the residence. This Court should affirm.

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⁶ *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

C. THE SEIZED EVIDENCE WAS ADMISSIBLE IN THE
CRIMINAL PROSECUTION.

For the first time on appeal, Ms. Loran appears to argue the evidence against her was only admissible in a probation revocation hearing and not a subsequent criminal prosecution. *See* Brief of Appellant at 12-13. She cites no authority for this proposition. *See* Brief of Appellant at 12-13.

Instead, she relies on cases holding that the exclusionary rule does not apply to probation revocation proceedings. *See* Brief of Appellant at 12-13 (citing *United States v. Rushlow*, 385 F. Supp. 795, 797 (D.C. Cal. 1974); *United States ex rel. Lombardino v. Heyd*, 318 F. Supp. 648 (D.C. La. 1970); *State v. Kuhn*, 7 Wn. App. 190, 191, 499 P.2d 49 (1972)). However, Loran's reliance on this authority is misplaced because, as argued above, the present search did not violate federal and state constitutional guarantees because it was supported by a well-founded and reasonable suspicion that a parole violation had occurred. *Compare Lombardino*, 318 F. Supp. at 650 (the seized evidence was excluded because the arresting officer did not have a reasonable suspicion that the defendant had violated his probation). Because the seized evidence was lawfully obtained, it was admissible in the subsequent criminal prosecution. This Court should affirm.

IV. CONCLUSION.

Based on the arguments above, the State respectfully requests that this Court affirm Ms. Loran's conviction for unlawful possession of a controlled substance.

DATED this 6th day of JULY, 2011.

DEBORAH S. KELLY, Prosecuting Attorney



Brian Patrick Wendt, WSBA # 40537
Deputy Prosecuting Attorney