

NO. 42199-2-II

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

---

---

STATE OF WASHINGTON,

Respondent,

v.

SETH HAMLETT,

Appellant.

---

---

BRIEF OF APPELLANT

---

---

MICHELLE BACON ADAMS  
WSBA #25200  
Attorney for Appellant

Law Offices of MICHELLE BACON  
ADAMS, PLLC  
623 Dwight Street  
Port Orchard, WA 98366-4693  
(360) 876-9900

TABLE OF CONTENTS

	<u>Page</u>
A. <u>ASSIGNMENTS OF ERROR</u> .....	-1-
1. The warrantless search of Mr. Hamlett's home violated his constitutional rights to privacy under article I, section 7 of the Washington State Constitutional and the Fourth Amendment to the United States Constitution .....	-1-
2. The trial court erred in denying Mr. Hamlett's motion to suppress evidence that was obtained as the result of an unlawful search and seizure under Article I, Section 7 of the Washington Constitution.. ..	-2-
3. The trial court erred in determining the warrantless search was constitutional because the Deputies' reasons for searching the Mr. Hamlett's residence included a community caretaking function, and officer safety and the scope of the Deputies' search was reasonable .....	-2-
B. <u>ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR</u> ....	-2-
1. Where no reasonable basis to search a residence when the suspects where outside of the residence and Mr. Hamlett attempted to stop the search of his residence, was the warrantless search unjustified under the community caretaking exception to the warrant requirement? (Assignment of Error No. 1, 2) .....	-2-
2. Where the Deputy was unable to articulate specific facts that would lead to the objectively reasonable conclusion that Mr. Hamlett's home harbored a dangerous person, was the warrantless search unjustified under the officer safety exception to the warrant requirement. (Assignment of Error No. 3) .....	-2-
C. <u>STATEMENT OF THE CASE</u> .....	-3-
1. Procedural History: .....	-3-
2. Statement of the Facts: .....	-3-
a. 3.6 Hearing .....	-3-

D. ARGUMENT ..... -15-

1. The Warrantless Search of Mr. Hamlett's residence and subsequent seizure of marijuana from his home was unconstitutional. . . . . -15-

(A) The Community Caretaking Exception Did not Justify The Warrantless Search of Mr. Hamlett's Residence. . . . . -16-

(B) The Search was Not Lawful for Officer Safety Reasons Because There is No Objectively Reasonable Basis to Conclude a Search Under an Officer Safety Exception was Needed To Look For Dangerous Individuals. . . . . -17-

(C) Unlawfully Obtained Evidence Must Be Suppressed and the Charge Dismissed. . . . . -22-

E. CONCLUSION ..... -49-

FINDINGS OF FACT AND CONCLUSIONS OF LAW ..... Appendix A

TABLE OF AUTHORITIES

	<u>Page</u>
<hr/> <b>FEDERAL COURT CASES</b> <hr/>	
<i>Maryland v. Buie</i> , 494 U.S. 325, 110 S.Ct. 1093, 108 L.Ed. 2d 276 (1990) .....	21
<i>Mincey v. Arizona</i> , 437 U.S. 385, 98 S.Ct. 2408, 57 L.Ed. 2d 290 (1978)	14
<i>Terry v. Ohio</i> , 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed. 2d 889 (1968) . . . .	14
<i>United States v. Van Poyck</i> , 77 F.3d 285 (9 <sup>th</sup> Cir. 1996) . . . . .	9
<i>Wong Sun v. United States</i> , 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed. 2d 441 (1963). . . . .	23
<hr/> <b>WASHINGTON STATE CASES</b> <hr/>	
<i>Holland v. Boeing Co.</i> , 90 Wn.2d 384, 583 P.2d 621 (1978) . . . . .	8
<i>Kalmas v. Wagner</i> , 133 Wn.2d 210, 943 P.2d 1369 (1997) . . . . .	13
<i>Morgan v. Prudential Ins.Co. of America</i> , 86 Wn.2d 432, 545 P.2d 1193 (1976) . . . . .	8
<i>State v. Angelos</i> , 86 Wn.App. 253, 936 P.2d 52 (1997) . . . . .	12
<i>State v. Bakke</i> , 44 Wn.App.830, 723 P.2d 534 (1986) . . . . .	18,19
<i>State v Boyer</i> , 124 Wn.App. 593, 102 P.3d 833 (2004) . . . . .	21
<i>State v. Campbell</i> , 15 Wn.App 98, 547 P.2d 295 (1976) . . . . .	19,20
<i>State v. Chrisman</i> , 100 Wn.2d 812, 820 676 P.2d 419 (1984) . . . . .	11
<i>State v. Davis</i> , 86 Wn. App. 414, 937 P.2d 1110, 937 P.2D 1110, 1114 (1997) . . . . .	11-12
<i>State v. Dempsey</i> , 88 Wn.App. 918, 947 P.2d 265 (1997) . . . . .	12

<i>State v. Eisfeldt</i> , 163 Wn.2d 628, 185 P.3d 580 (2008) .....	9
<i>State v. Ferguson</i> , 131 Wn.App. 694, 128 P.3d 1271 (2006) .....	10
<i>State v. Garvin</i> , 166 Wn.2d 242, 207 P.3d 1266 (2009) .....	11
<i>State v. Gibson</i> , 104 Wn.App. 792, 17 P.3d 635 (2001) .....	14
<i>State v. Grundy</i> , 25 Wn.App. 411, 607 P.2d 1235 (1980) .....	10
<i>State v. Hendrickson</i> , 129 Wn.2d 61, 917 P.2d 563 (1996) .....	10
<i>State v. Hill</i> , 123 Wn.2d 641, 870 P.2d 313 (1994) .....	9
<i>State v. Hopkins</i> , 113 Wn.App. at 960 .....	21
<i>State v. Johnson</i> , 75 Wn.App. 692, 879 P.2d 293 (1996) .....	10
<i>State v. Jordan</i> , 160 Wn.2d 121, 156 P.2d 893 (2007) .....	22
<i>State v. Kinzy</i> , 141 Wn.2d 373, 388, 5 P.3d 668 (2000) .....	13
<i>State v. Kypreos</i> , 110 Wn.App. 612, 39 P.3 371 (2002) .....	9
<i>State v. Ladson</i> , 183 Wn. 2d 343, 979 p.2d 833 (1999) .....	23
<i>State v. Lawson</i> , 135 Wn.App. 430, 144 P.3d 377 (2006) .....	17
<i>State v. Leffler</i> , 142 Wn.App. 264, 62 P.3d 520 (2003) .....	13
<i>State v. Loewen</i> , 97 Wn.2d 562, 647 P.2d 489 (1982) .....	12
<i>State v. Mendez</i> , 137 Wn.2d 208, 970 P.2d 722 (1999) .....	9
<i>State v. Poling</i> , 128 Wn.App. 659, 116 P.3d 1054 (2005) .....	10,11
<i>State v. Ridgway</i> , 57 Wn.App. 915, 790 P.2d 1263 (1990) .....	10
<i>State v. Ross</i> , 141 Wn.2d 302, 4 P.3d 130 (2000) .....	10
<i>State v. Schlieker</i> , 115 Wn.App. 264, 62 P.3d 520 (2003) .....	9
<i>State v. Schroeder</i> , 109 Wn.App. 30, 32 P.3d 1022 (2001) .....	17

<i>State v. Seagall</i> , 95 Wn.2d 898, 632 P.2d 44 (1981) .....	11
<i>State v. Setterstrom</i> , 163 Wn.2d 621, 183 P.3d 1075 (2008) .....	22
<i>State v. Simpson</i> , 95 Wn.2d 170, 622 P.2d 1199 (1980) .....	9
<i>State v. Smith</i> , 113 Wn.App 846, 55 P.3d 686(2002) .....	11
<i>State v. Thompson</i> , 151 Wn.2d 793, 92 P.3d 228 (2004) .....	12,13
<i>State v. Webb</i> , 147 Wn. App. 264, 270, 274 195 P.3d 550 (2008) .....	18
<i>State v. Young</i> , 123 Wn,2d 173, 867 P.2d 539 (1994) .....	11

---

**OTHER STATES**

---

<i>People v. Madrid</i> , 168 Cal. App. 4 <sup>th</sup> 1050, 1056, 85 Cal Rptr, 3d 900 (Cal. App. 2008) .....	17,18
--	-------

---

**CONSTITUTION**

---

Article I, Section 7 of the Washington Constitution .....	22
Fourth Amendment to the United States Constitution .....	22

---

**OTHER SOURCES**

---

3 Wayne R. LaFave, <u>Search and Seizure</u> , sec. 6.4 ( c ) at 377 (4 <sup>th</sup> ed. 2004) .....	21
3 Wayne R. LaFave, <u>Seach &amp; Seizure</u> , sec. 6.6(a) at 467 (4 <sup>th</sup> ed. 2004) .....	13

### A. ASSIGNMENTS OF ERROR

1. The warrantless search of Mr. Hamlett's home violated his constitutional rights to privacy under Article I, Section 7 of the Washington State Constitutional and the Fourth Amendment to the United States Constitution.

2. The trial court erred in denying Mr. Hamlett's motion to suppress evidence that was obtained as the result of an unlawful search and seizure under Article I, Section 7 of the Washington Constitution.

3. The trial court erred in determining the warrantless search was constitutional because the Deputies' reasons for searching Mr. Hamlett's residence included a community caretaking function, officer safety and the scope of the Deputies' search was reasonable.

### B. ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR

1. Where no reasonable basis to search a residence when the suspects were outside of the residence and Mr. Hamlett attempted to stop the search of his residence, was the warrantless search unjustified under the community caretaking exception to the warrant requirement?

2. Where the Deputy was unable to articulate specific facts that would lead to the objectively reasonable conclusion that Mr. Hamlett's home harbored a dangerous person, was the warrantless search

unjustified under the officer safety exception to the warrant requirement.

### **C. STATEMENT OF THE CASE**

#### **1. Procedural History:**

Mr. Hamlet was charged with manufacture of marijuana by way of information filed on December 7, 2010. CP 1 A motion to suppress evidence pursuant to CrR 3.6 was filed. CP 19-35 A hearing on the motion occurred on April 6, 2011 and April 29, 2011 before the Honorable Leila Mills. 1RP 1-114. (The verbatim report of proceedings from the CrR 3.6 hearing which occurred on April 6<sup>th</sup> and April 29, 2011 will be referred to as 1RP.) Judge Mills denied the motion to suppress evidence. 1RP 112. Arguments regarding the language in the findings of fact and conclusions of law occurred on May 27, 2011. (The verbatim report of proceedings from the hearing of May 27, 2011 will be referred to as 2RP.) A stipulated facts trial followed on June 3, 2011 before the Honorable Leila Mills. (The verbatim report of proceedings from the stipulated facts trial and sentencing hearing which occurred on June 3, 2011 will be referred to as 3RP.) Following the trial Mr. Hamlett was found guilty of the charges. 3RP 6, CP 28-31, 36-58. Mr. Hamlett was sentenced to a term of two months confinement. 3RP 14, CP 59-69. This appeal timely follows. CP 72-74.

## **2. Statement of the Facts:**

### **a. Motion to Suppress Evidence**

On August 4, 2010 Mr. Miller, a deputy with the Kitsap County Sherriff's Office, was on duty. 1RP 4. While on duty that day, Deputy Miller was dispatched to a reported burglary. Id. CenCom relayed a caller was on the line. Deputy Miller testified as follows: "The dispatch center, CenCom, related that we had a caller on the line who was reporting that a neighbor had come to their house and reported that there were armed robbers who had broken in." Id. Deputy Miller, accompanied by Deputy Adams, went to the residence to respond to the report. Id. Upon arrival at the residence the Deputies encountered Mr. Hamlett, who was standing" a bit further down" from end of the driveway. 1RP 5 Mr. Hamlett appeared to be relatively calm. 1RP 30.

Mr. Hamlett described an attempted break in of his residence. 1RP 5. Deputy Miller recalled Mr. Hamlet reported he had been in his house and heard a tapping noise. 1RP 5. He turned and saw two masked individuals who were armed with firearms. Id. The individuals pounded on the glass and the pane of glass shattered. 1RP 5. Mr. Hamlett left the residence and went to a neighbor's house. Id. Mr. Hamlett reported he thought his dog chased after the suspects. 1RP 21. Mr. Hamlett believed

the suspects were out in the bushes outside of the home. 1RP 28. Mr. Hamlett reported hearing cracking noises in the bush. 1RP 31. Deputy Miller heard a barking dog in the background but was not certain if the barking dog belonged to Mr. Hamlett. 1RP 22. Deputy Miller did not look through the trees outside of the residence to determine if the suspects were outside. 1RP 34. The residence was surrounded by a wooded area. 1RP 42.

Deputy Miller told Mr. Hamlett to remain in the driveway. 1RP 7. Deputy Miller and Deputy Adams proceeded to go to the residence to look for suspects. Id. The Deputies first checked around the back of the residence where Mr. Hamlett had reported last seeing the individuals. Id. Deputy Miller saw a broken pane of glass from the sliding glass door during his review of the property. 1RP 8 Deputy Miller's report indicated the outer pane of the sliding glass door was broken. 1RP 19-20. A request for a K-9 unit was made to apprehend the suspects. 1RP 15 The Deputies next went to the front of the residence and went through the open door to the inside of the residence. 1RP 8. Deputy Miller did not ask Mr. Hamlett for permission to enter the residence. 1RP 8-9. Deputy Miller searched the residence looking for individuals. RP 9. During the search Mr. Hamlett entered the residence. Id. Deputy Miller recalled entering the residence, checking the living room and kitchen area, and encountering

Mr. Hamlett when he returned to the living room area. 1RP 25. Deputy Miller told Mr. Hamlett to exit the residence and go back to the foot of the driveway. 1RP 10. Mr. Hamlett attempted to direct the Deputies attention to outside the residence where his dog was chasing the suspects. 1RP 26. Mr. Hamlett followed the Deputy's order and left the residence. 1RP 26. However, Mr. Hamlett entered the residence a second time. Id. Before Mr. Hamlett could talk to the Deputy he was ordered to leave the residence again. 1RP 26. During the search of the residence Deputy Miller detected a strong order of marijuana. 1RP 10.

Deputy Adams went into the garage of the residence. 1RP 11. Deputy Adams informed Deputy Miller marijuana plants growing in the garage. Id. Upon receiving that information Deputy Miller contacted the sergeant to get in touch with WestNet to deal with the marijuana. 1RP 12. Deputy Miller next contacted Mr. Hamlett to ask questions of him. 1RP 12-13. Mr. Hamlett reported the individuals had fled into the bush outside of the residence. 1RP 13. Next Deputy Miller questioned Mr. Hamlett regarding the marijuana found in the garage. 1RP 14. At that point the investigation turned to the marijuana grow operation found in the garage. Id.

Deputy Adams also testified at the CrR 3.6 hearing. 1RP 35-60.

Deputy Adams recollection of the events of August 10, 2011 varied from Deputy Miller's recollection in some aspects. Deputy Adams recalled scanning the wood line looking for suspects. 1RP 42. Deputy Adams examined the outside of the residence as well. 1RP 52. Deputy Adams's report generated for this matter indicated "The outside pane of the door had been shattered and there was glass askew.". 1RP 53. Deputy Adams indicated in his report he found evidence of an attempted burglary at the residence. 1RP 54. Deputy Adams also heard the sound of dogs barking at the residence. 1RP 55.

Deputy Adams participated in searching the home looking for individuals inside the residence. Id. He went into the residence before he entered the residence. 1RP 56. Deputy Adams did not know if the suspects were inside the residence. Id. Mr Hamlett started to follow Deputy Adams into the residence. 1RP 56. Mr. Hamlet was asked to stay outside of the residence. 1RP 56. Mr. Hamlett tried to tell the Deputies to look outside of the residence for the suspects. 1RP 55-56. Deputy Adams testified he went into the garage of the residence as part of clearing the home. 1RP 44-45. While in the garage, Deputy Adams located a secondary room in the garage. 1RP 45. Deputy Adams testified he went inside the secondary room to look for suspects. Id. Deputy Adams opened the door to the room

and shined his flashlight in the room. 1RP 46. Deputy Adams remained at the residence while detectives from WestNET applied for a search warrant and executed that warrant. 1RP 48.

Mr. Hamlett testified at the hearing as well. RP 73-94. Mr. Hamlett saw the suspects at his back sliding glass door. 1RP 90. A suspect broke the outer pane of the sliding glass door and Mr. Hamlett ran out the front door. 1RP 90-91. The suspects ran away from the residence at the same time. 1RP 91. Mr. Hamlett then went to a neighbor's residence. 1RP 82. Mr. Hamlett was at the neighbor's residence for less than 30 seconds. 1RP 92. He heard his dog chase after the suspects as soon as he made it out his front door, 1RP 91. Mr. Hamlett was at the bottom of his driveway at the time law enforcement arrived. 1RP 74. He could see the front door of his residence from that vantage point. 1RP 75. While waiting for law enforcement to arrive, Mr. Hamlett kept an eye on the door and the bush outside of his residence. Id. Mr. Hamlett's dog had taken after the suspects and he could hear them running. Id. He was 100 percent positive the suspects were in the woods. 1RP 92. Mr. Hamlett owned a pit bull dog. Id. Mr. Hamlett was certain the suspects did not enter his home because he could hear them running outside. 1RP 77. Mr. Hamlett was afraid and was not certain of what to do. 1RP 85-86. The presence of weapons caused Mr.

Hamlett to be afraid 1RP 92. Mr. Hamlett told law enforcement his dog was chasing the suspects in the woods outside the residence. 1RP 77, 78. He motioned the Deputies to give chase to the suspects in the woods. 1RP 77. The Deputies told Mr. Hamlett a K-9 unit would be called. 1RP 77. Mr. Hamlett went into his home on two occasions and spoke to the Deputies “telling them to not be in my house.” 1RP 79. He told the Deputies the suspects were not in the residence and to leave the residence. 1RP 80. Mr. Hamlett was then detained. Id. Mr. Hamlett did not give the Deputies permission to search his residence and at no time the Deputies ask for permission to search his residence. 1RP 80. Mr. Hamlett described the rear sliding glass door. 1RP 74. The outer pane of the glass was broken during the attempted burglary but the inner pane remained in tact. 1RP 74, 90, 94.

#### **D. ARGUMENT**

**1. The Warrantless Search of Mr. Hamlett’s residence and subsequent seizure of marijuana from his home was unconstitutional.**

Where the trial court has weighed the evidence, the appellate court review is to determine whether the findings made by the trial court are supported by substantial evidence. *Holland v. Boeing Co.*, 90 Wn.2d 384, 390, 583 P.2d 621 (1978), citing *Morgan v. Prudential Ins. Co. of America*, 86 Wn.2d 432, 545

P.2d 1193 (1976). A trial court's determination of the issues raised in a motion to suppress is reviewed for substantial evidence and to see if the findings support the conclusions of law. *State v. Schlieker*, 115 Wn.App. 264, 269, 62 P.3d 520 (2003). Substantial evidence is defined as "a sufficient quantity of evidence in the record to persuade a fair-minded, rational person of the truth of the finding." *State v. Hill*, 123 Wn.2d 641, 644, 870 P.2d 313 (1994). The conclusions of law made by the trial court are to be reviewed de novo. *State v. Mendez*, 137 Wn.2d 208, 212, 970 P.2d 722 (1999).

In this case, Mr. Hamlett is assigning error to the Conclusions of Law. The Findings of Fact are supported by the testimony presented at the CrR 3.6 hearing. However, the findings do not fully describe the testimony presented.

The trial court's conclusions of law are reviewed de novo. *State v. Eisfeldt*, 163 Wn.2d 628, 634, 185 P.3d 580 (2008). The trial court's findings must support the court's conclusions of law. *State v. Garvin*, 166 Wn.2d 242, 249, 207 P.3d 1266 (2009).

Warrantless searches are per se unreasonable under both Article I, Section 7 of the Washington State Constitution and the Fourth Amendment to the United States Constitution. *State v. Simpson*, 95 Wn.2d 170, 622 P.2d 1199 (1980). The lawfulness of a warrantless search is to be reviewed de novo. *State v. Kypreos*, 110 Wn.App. 612, 616, 39 P.3 371 (2002), (citing *United States v. Van Poyck*, 77 F.3d 285, 290 (9<sup>th</sup> Cir. 1996)).

Evidence seized as fruit of an illegal, warrantless search are suppressed unless the State meets its burden of proving that the search falls under a zealously and carefully drawn exception to the warrant requirement. *State v. Ferguson*, 131 Wn.App. 694, 128 P.3d 1271, 1275 (2006), citing *State v. Hendrickson*, 129 Wn.2d 61, 70, 917 P.2d 563 (1996)). If the information contained in an affidavit of probable cause for a search warrant was obtained by an unconstitutional search, the information may not be used to support the warrant. *State v. Ross*, 141 Wn.2d 302, 304, 4 P.3d 130 (2000) (citing *State v. Johnson*, 75 Wn.App. 692, 879 P.2d 293 (1996)). The reasonableness of a search is determined at the moment of its inception. A search which is not reasonable at its inception will not be validated even if it uncovers incriminating evidence. *State v. Grundy*, 25 Wn.App. 411, 607 P.2d 1235 (1980).

Limitations exist on where officers may lawfully go when entering a private citizen's property. "[t]he curtilage of a home is so intimately tied to the home itself that it should be placed under the home's umbrella of Fourth Amendment protection." *State v. Ross*, 141 Wn.2d 3014, 312, 4 P.3d 130 (2000) (citing *State v. Ridgway*, 57 Wn.App. 915, 918, 790 P.2d 1263 (1990). Residents have an expectation of privacy in the curtilage, or area contiguous with a home." *State v. Poling*, 128 Wn.App. 659, 667, 116 P.3d 1054 (2005) Law enforcement on legitimate business may enter an area of curtilage which is impliedly open to the public, such as an access route to a house or a walkway leading to a

residence. *State v. Smith*, 113 Wn.App 846, 852, 55 P.3d 686(2002), (citing *State v. Seagall*, 95 Wn.2d 898, 902, 632 P.2d 44 (1981)). Law enforcement entering such areas must “do so as would a ‘reasonably respectful citizen.’” *State v. Poling*, 128 Wn. App at 667, quoting *State v. Seagall*, 95 Wn.2d 898, 902 632 P.2d 44 (1981). A substantial or unreasonable departure from this area exceeds the scope of the invitation and violates a constitutionally protected expectation of privacy. *Id.*

The home receives heightened constitutional protection because it is the home where a citizen is most entitled to privacy. *State v. Young*, 123 Wn.2d 173, 185, 867 P.2d 539 (1994). For this reason, “the closer officers come to intrusion into a dwelling, the greater the constitutional protection.” *Id.* (quoting *State v. Chrisman*, 100 Wn.2d 812, 820 676 P.2d 419 (1984)). The State must establish an exception to the warrant requirement by clear and convincing evidence. *State v. Garvin*, 166 Wn.2d at 250.

In the case at hand the trial court made conclusions of law and ultimately the trial court found the search of the residence reasonable. Each of the conclusions of law contested by Mr. Hamlett are addressed individually below.

**(A) The Community Caretaking Exception Did Not Justify the Warrantless Search of Mr. Hamlett’s Residence.**

The trial court entered conclusion of law II, III and IV, which states in summary the Deputies search was reasonable under a community caretaking, or

emergency exception to the warrant requirement. The community caretaking exception “allows for the limited invasion of constitutionally protected privacy rights when it is necessary for police officers to render aid or assistance or when making routine checks on health and safety.” *State v. Thompson*, 151 Wn.2d 793, 802, 92 P.3d 228 (2004). Such an intrusion is justified only if (1) the law enforcement officer subjectively believed someone likely needed assistance for health or safety concerns, (2) a reasonable person in the same situation would also believe that there was a need for assistance, and (3) there was a reasonable basis to associate the need for assistance with the place being searched. *Id.*

In this case the State conceded no discussion of a consent to search the residence occurred between Mr. Hamlett and law enforcement. 1 RP 94. Mr. Hamlett did not give permission for a search of his residence.

The State must show the law enforcement officer was both subjectively and objectively “actually motivated by a perceived need to render aid or assistance.” to satisfy the community caretaking exception. *State v. Angelos*, 86 Wn.App. 253, 256, 936 P.2d 52 (1997) quoting *State v. Loewen*, 97 Wn.2d 562, 568, 647 P.2d 489 (1982)). “The State must prove both the subjective and objective elements.” *State v. Dempsey*, 88 Wn.App. 918, 923, 947 P.2d 265 (1997). To meet this test, the law enforcement office must be able to articulate specific facts and reasonable inferences drawn from those facts in order to justify a warrantless search under the community caretaking exception. *State v.*

*Davis*, 86 Wn. App. 414, 420, 937 P.2d 1110, 937 P.2D 1110, 1114 (1997).

A proper community caretaking function is distinct from a criminal investigation. *State v. Kinzy*, 141 Wn.2d 373, 388, 395, 5 P.3d 668 (2000). Under a property community caretaking function, law enforcement must be motivated by “noncriminal noninvestigatory purposes.” *State v. Thompson*, 151 Wn.2d at 802 (quoting *Kalmas v. Wagner*, 133 Wn.2d 210, 216-217, 943 P.2d 1369 (1997)). The State must prove “the claimed emergency is not merely a pretext for conducting an evidentiary search.” *State v. Leffler*, 142 Wn.App. 264, 270, 62 P.3d 520 (2003)). Certainly the community caretaking function justified the Deputies’ initial contact with Mr. Hamlett in response to the neighbor’s 911 call. However, the search of Mr. Hamlett’s residence, including the garage, was not justifiable. In this case the Deputies exceeded the scope of an appropriate community caretaking function by searching Mr. Hamlett’s residence where Mr. Hamlett indicated the suspects fled the house and a dog was heard barking in the distance. The suspects were last seen outside of the residence. Mr. Hamlett reported to law enforcement that his dog ran after the suspects. Therefore no reasonable basis to associate the need for assistance to apprehend the suspects with searching the interior of the residence. The determination of a lawful search under a community caretaking function is a fact dependent analysis. See 3 Wayne R. LaFave, Search & Seizure, sec. 6.6(a) at 467 (4<sup>th</sup> ed. 2004).

In this case, the State failed to meet its burden by showing with clear

and convincing evidence that the warrantless search of Mr. Hamlett's residence was justified under the community caretaking function. Law enforcement may conduct a noncriminal investigation only "so long as it is necessary and strictly relevant to performance of the community caretaking function." *State v. Kinzy*, 141 Wn.2d at 395. The warrantless search must be "strictly circumscribed by the exigencies which justify its initiation." *State v. Gibson*, 104 Wn.App. 792, 797, 17 P.3d 635 (2001) (quoting *Mincey v. Arizona*, 437 U.S. 385, 393, 98 S.Ct. 2408, 57 L.Ed. 2d 290 (1978); (quoting *Terry v. Ohio*, 392 U.S. 1, 25-56, 88 S.Ct. 1868, 20 L.Ed. 2d 889 (1968))). The facts of this case do not meet those tests.

In this case no emergency or community caretaking function supported the search of Mr. Hamlett's residence. The suspects did not enter Mr. Hamlett's residence. The sliding glass door was not entirely breached. Only the outer glass panel was broken. 1RP 74, 90, 94. The reports made by law enforcement indicated only a pane of glass was broken. 1RP 8, 19, 20. In this case, the front door of the residence was open because Mr. Hamlet left through the front door. 1RP 90,91, 100. His dog followed after him. 1RP 91. Mr. Hamlett attempted several times to direct the Deputies attention to the outside of the residence where he believed his dog was chasing the suspects. 1RP 79-80. On two separate occasions, Mr. Hamlett told the officers to get out of his residence. *Id.* The testimony of the

Deputies and Mr. Hamlett differed in that regard. However, Mr. Hamlett provided a reasonable explanation and description of the events. His request for the Deputies to leave the residence is consistent with the Deputies' description of Mr. Hamlett's attempts to direct their attention to the outside of the residence. Each time Mr. Hamlett attempted to request the Deputies leave his residence, he was directed to vacate the residence and eventually he was detained. The Marijuana was found after Mr. Hamlett's two attempts to ask the Deputies to leave his residence.

While Mr. Hamlett was seeking assistance of law enforcement to apprehend the suspects, he sought assistance to catch the suspects outside rather than inside his residence. Mr. Hamlett believed the suspects were outside of his residence. IRP 80. In this case, Mr. Hamlett told the officers he heard the suspects and his barking dog who was chasing after the suspects, in the bush outside of his residence. IRP 77, 78. Mr. Hamlett was outside of the residence at the time the Deputies arrived. IRP 74. He attempted to direct the Deputies attention to the outside of the residence. It is undisputed that on two occasions Mr. Hamlett followed the Deputies inside the residence. Mr. Hamlett recalled telling the officers to vacate the home and look outside of the residence to find the suspects. The Deputies did not heed his requests and told Mr. Hamlett to leave his residence. The Deputies searched the interior of the residence, the garage of the residence, and the small room in the interior of the garage. In that

room marijuana was found. Since Mr. Hamlett repeatedly told the officers to search the outside of the residence where the suspects could be found, and thus no emergency existed inside the residence, the search of Mr. Hamlett's residence was not reasonable.

Mr. Hamlett did leave the residence with his door open and was out of view of the door of the residence for about thirty seconds. IRP 82, 92. However, Mr. Hamlett recalled hearing the suspects and his dog running in the bush outside of the residence when he returned to the residence. IRP 92. Mr. Hamlett saw only two individuals attempt to break into the sliding glass door of his residence. IRP 90. These facts do not provide a justification for the search of Mr. Hamlett's residence because Mr. Hamlett heard the suspects outside of the residence so a search of the interior of the residence was not necessary to apprehend the suspects. The extensive search of the residence did not fall under a community caretaking function because the search of the interior of the residence was not necessary to locate the suspects who were outside of the residence. The deputies were lawfully present only in the area outside of the residence where Mr. Hamlett indicated the suspects had fled. Mr. Hamlett retained his right to privacy in his residence. The Deputies indicated they wanted to search the residence for the suspects. However facts known to the Deputies did not provide a reasonable basis for the conclusion the suspects could be inside of the residence.

An emergency entry into a residence is justified “only where the officers reasonably believed that a specific person or persons need immediately help for health or safety reasons.” *State v. Lawson*, 135 Wn.App. 430, 437, 144 P.3d 377 (2006). In order to justify an emergency entry into the residence on the basis of a community caretaking exception, the State had to prove the Deputies had both a subjective and objectively reasonable belief that a suspect was in the residence. The Deputy knew that suspects were outside of the residence from the statements made by Mr. Hamlett and the sound of the barking dog outside. The Deputies did not have a reasonable basis for believing a suspect was inside the residence. Mr. Hamlett reported otherwise. The testimony of the Deputies indicated they were not certain as to whether anyone was located in the residence or the garage. This is not clear and convincing evidence that there was a suspect in the residence. The Deputies merely speculated as such. Unparticularized suspicions or hunches are of no weight in determining the objective reasonableness of an officer’s conduct. *People v. Madrid*, 168 Cal. App. 4th 1050, 1056, 85 Cal Rptr, 3d 900 (Cal. App. 2008).

An individual’s expectation of privacy in his or her home is not diminished because law enforcement receives a call for assistance. *State v. Schroeder*, 109 Wn.App. At 41. Under the trial court’s logic law enforcement may search a residence even when told by the victim that the suspects are outside of the residence so long as the officer reports a need to search around the interior

of the residence to confirm nothing was amiss. The speculative reasoning offered by the Deputies as a justification for the search is a circumstance present in every encounter between a citizen and law enforcement where a crime is reported. This is a departure from the exception to the warrant requirement which is to be carefully crafted, narrowly drawn and zealously guarded. *People v. Madrid*, 168 Cal. App. 4<sup>th</sup> at 1058. The State has the burden of proving facts to justify a warrantless search under an exception to the warrant requirement. *State v. Webb*, 147 Wn. App. 264, 270, 274 195 P.3d 550 (2008). Here the trial court by denying Mr. Hamlett's motion to suppress evidence of the marijuana found in his garage, treated the absence of facts known to the officer at the time of his warrantless entry into the residence and the garage as the reason wh he was justified in his search. Even Mr. Hamlett's attempt to convince the Deputies that there was no reason to search was not enough for the Court to find the search was unconstitutional.

The case of *State v. Bakke*, 44 Wn.App.830,723 P.2d 534 (1986) was discussed by the parties in the course of the motion to suppress evidence. In that case, law enforcement was dispatched to respond to a reported burglary in progress. *State v. Bakke*, 22 Wn.App at 831. A neighbor saw two male juveniles running from the defendant's residence. *Id.* Law enforcement found an exterior rear glass window had been broken and the break was large enough to allow a small body to enter the residence. *Id.* The defendant could not be contacted. *Id.*

Law enforcement entered the residence and found a marijuana grow operation. *State v. Bakke*, 22 Wn.App at 831-832. The trial court granted the defense's motion to suppress the evidence found by law enforcement. *State v. Bakke*, 22 Wn.App at 832. The Court of Appeals, Division I, reversed the trial court and remanded the case back for trial. *State v. Bakke*, 22 Wn.App at 840.

The case of *State v. Campbell*, 15 Wn.App 98, 547 P.2d 295 (1976) was relied on by the trial court in its decision and specifically cited in Conclusion of Law no. IV. CP 34-35. In that case a neighbor witnessed the burglary of the defendant's apartment. *State v. Campbell*, 15 Wn.App at 99. Law enforcement was dispatched to the scene and found the window to the apartment was broken and the door was wide open. *Id.* Law enforcement entered the residence to investigate the reported crime, look for suspects, search for evidence, and aid any potential victims. *Id.* During the search an officer found a marijuana grow operation inside the residence. *Id.* The Court determined the entry in to the apartment was reasonable. The Court found that it was reasonable for officers when responding to a request for police assistance, with probable cause to believe an open and unsecured dwelling had been recently burglarized, to immediately enter the dwelling for the limited purpose of investigating the crime, rendering aid to possible victims, protecting the occupant's property, and searching for remaining suspects. *State v. Campbell*, 15 Wn.App at 100.

Under the *Campbell* and *Bakke* cases, law enforcement must have

an objective suspicion that a crime is in progress. In this case the evidence does not show the officers had a suspicion under the objective test. The evidence at the scene indicated the home had not been entered by the suspects. Mr. Hamlett was on the scene, which factually distinguishes this case from the case of *State v. Campbell*, supra. Mr. Hamlett reported the suspects were in the woods outside of the residence, his dog was following the suspects, and the barking dog corroborated Mr. Hamlett's belief. In the case at hand, the back sliding glass door had not been breached. While the front door of the residence was open, the door was open as a result of Mr. Hamlett leaving the residence, not from action taken by the suspects, and Mr. Hamlett could see the front door with the exception of the estimated thirty seconds he was at the neighbor's house out of sight of the door. The facts do not support an objective suspicion that a crime was in progress inside the residence so that an emergent situation inside the residence required a police action. Mr. Hamlett had reasons to be afraid including his concern regarding armed suspects running around the outside of his residence.

For the reasons stated above, the trial court erred in concluding the search was lawful. This Court should reverse the finding of the trial court and dismiss this matter.

**(B) The Search was Not Lawful Under Officer Safety Reasons  
Because There is No Objectively Reasonable Basis to Conclude a Search**

**Under an Officer Safety Exception was Needed To Look For Dangerous**

**Individuals**

A law enforcement officer's "general desire to be sure that no one is hiding in the place to be searched is not sufficient to justify a protective sweep outside the immediate area. " *State v. Hopkins*, 113 Wn.App. 954, 55 P.3d 6911 (2002) at 960. The officers must have a reasonable suspicion of both another person is in the premises and the person is dangerous. *Id*; 3 Wayne R. LaFave, Search and Seizure, sec. 6.4 ( c ) at 377 (4<sup>th</sup> ed. 2004). The State did not produce facts demonstrating a reasonably prudent officer would have believed Mr. Hamlett's home harbored an individual posing a danger to the Deputies. The Deputies explanation as to why a sweep of the residence was conducted amounted to no more than saying he wanted to find out if there was anyone else in the house. Hunches and inchoate, unparticularized suspicions that there may be a dangerous person somewhere in the home is insufficient to justify a protection sweep. *Maryland v. Buie*, 494 U.S. 325, 332, 334, 110 S.Ct. 1093, 108 L.Ed. 2d 276 (1990); *State v Boyer*, 124 Wn.App. 593, 102 P.3d 833 (2004). The Deputies swept through the house. The Deputies did not know what was there. The Deputies failed to point to specific facts from which an objective officer could form a reasonable suspicion that there was someone in the residence who posed a safety threat to the officers. A law enforcement officer's general fear of the unknown is not objectively sufficient to justify a protective

sweep of the residence. Generalized suspicion is not enough to satisfy the particularity requirement of the protective sweep exception. The privacy of the home is carefully protected under the Fourth Amendment and Article I, Section 7 of the Washington State Constitution. Requiring law enforcement to have an objectively reasonable suspicion that a dangerous person is present in a non-arrest situation before allowing search of immediately adjoining areas is compelled by the Constitution of this State. The Supreme Court has “consistently expressed displeasure with random and suspicionless searches, reasoning that they amount to nothing more than an impermissible fishing expedition.” *State v. Jordan*, 160 Wn.2d 121, 127, 156 P.2d 893 (2007). The reasonable suspicion requirement protects individuals against arbitrary searches. *State v. Setterstrom*, 163 Wn.2d 621, 626, 183 P.3d 1075 (2008).

In this case, the invasion of Mr. Hamlett’s residence was needless. Mr. Hamlett told the officers the suspects were outside of the residence, and objected to the search of his residence. There was no justification for the invasion into Mr. Hamlett’s residence. The entry and search of a home constitutes a severe invasion of the right to privacy. A call for emergency assistance does not destroy that right to privacy. A desire to ascertain whether additional individuals are in the residence cannot trump that right when an eye witness account reports no individuals are inside the residence and the home owner repeatedly attempts to stop the search of his residence. The Deputies responded to the residence for a

community purpose, the reported attempted burglary, the intrusion into the residence without any reasonable suspicion that such a search was necessary to ensure office safety cannot be justified by an officer's general desire to confirm the absence of other occupants when he has information indicating no one is inside the residence. The Deputies' attention should have remained on the area outside of the residence. The expansion of the search to the interior of the residence, when no information supported an inference any dangerous individuals were in the residence, was unlawful.

**C. Unlawfully Obtained Evidence Must be Suppressed and the Charge Dismissed**

“When an unconstitutional search or seizure occurs, all subsequently uncovered evidence becomes fruit of the poisonous tree and must be suppressed. “ *State v. Ladson*, 183 Wn. 2d 343, 359, 979 p.2d 833 (1999) Evidence is fruit of an illegal search when it “has been come at by exploitation of the primary illegality.” *Wong Sun v. United States*, 371 U.S. 471, 488 83 S.Ct. 407, 9 L.Ed. 2d 441 (1963). In this case, the marijuana grow was discovered while the deputies entered the residence in response to the reported attempted burglary. As argued in this brief, the search of the interior of Mr. Hamlett's residence was unlawful. The evidence found int eh course of that search, the marijuana, must be suppressed. The evidence was found merely as a result of the unlawful search.

**E. CONCLUSION**

For the reasons cited above, Mr. Hamlett respectfully requests the court to reverse the conviction entered in this matter.

RESPECTFULLY SUBMITTED this 2nd day of March, 2012.



MICHELLE BACON ADAMS

WSBA No. 25200

Attorney for Appellant

NO. 42199-2-II

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

STATE OF WASHINGTON,

Respondent,

v.

SETH MARSHALL HAMLETT

Appellant.

CERTIFICATE OF MAILING

---

Alicia Lanoue declare under penalty of perjury under the laws of the State of Washington that the following statements are true and based on my personal knowledge, and that I am competent to testify to the same.

That on this day I had the Opening Brief of the Appellant in the above-captioned case hand-delivered or mailed as follows:

**Opening Brief of the Appellant Sent Electronically To:**

Clerk of Court  
Court of Appeals, Division II  
950 Broadway, Suite 300  
Tacoma, WA 98402

**Opening Brief of the Appellant Sent Electronically To:**

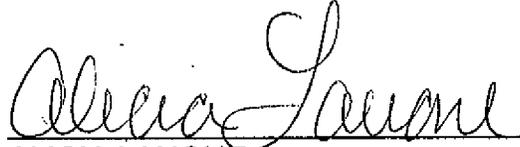
Randall Sutton  
Kitsap County Prosecuting Attorney's Office  
614 Division Street, MS-35  
Port Orchard, WA 98366

**Copy of Opening Brief of the Appellant Mailed To:**

Seth Marshall Hamlett  
857 SE Wolf Lane

Port Orchard WA 98367

DATED this 2<sup>nd</sup> day of March, 2012, at Port Orchard,  
Washington.

A handwritten signature in cursive script, reading "Alicia Lanoue", written over a horizontal line.

ALICIA LANOUE  
Legal Assistant

# KITSAP COUNTY PUBLIC DEFENDER

**March 02, 2012 - 2:53 PM**

## Transmittal Letter

Document Uploaded: 421992-Hamlett - 42199-2-II.pdf

Case Name: State of Washington V. Seth Hamlett

Court of Appeals Case Number: 42199-2

**Is this a Personal Restraint Petition?** Yes  No

### The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: \_\_\_\_

Answer/Reply to Motion: \_\_\_\_

Brief: \_\_\_\_

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_

Hearing Date(s): \_\_\_\_\_

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Other: Certificate of Service

Sender Name: Alicia A Lanoue - Email: [alanoue@cmpyd.com](mailto:alanoue@cmpyd.com)

A copy of this document has been emailed to the following addresses:

[kcpa@co.kitsap.wa.us](mailto:kcpa@co.kitsap.wa.us)

[michelleadamslaw@gmail.com](mailto:michelleadamslaw@gmail.com)