

FILED

May 16, 2012

Court of Appeals

Division III

State of Washington

29871-0-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

RUBEN ZAMORA JURADO, APPELLANT

APPEAL FROM THE SUPERIOR COURT

OF BENTON COUNTY

APPELLANT'S BRIEF

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A. FACTS

Detective Davis told the court there was a small child located within arms' reach of the firearms he observed inside Ruben Zamora Jurado's apartment. (RP (Aug. 25, 2010) 29).

B. ARGUMENT

The State argued that Detective Davis could have lawfully seized the firearms observed inside Mr. Jurado's apartment under the community caretaking exception to the warrant requirement. (Resp. Br. at 14). This argument fails for two reasons. First, it should not be considered because it lacks citation to legal authority. *See* RAP 10.3(a)(6), (b) (the respondent's brief should contain citations to legal authority); *see also Regan v. McLachlan*, 163 Wn. App. 171, 178, 257 P.3d 1122 (2011) (issues raised without citation to legal authority will not be addressed). Second, as the State admits, Detective Davis did not immediately seize the firearms in order to remove them from the child's presence. He waited until a search warrant was obtained. The firearms were seized as part of the police investigation, not for the safety of the child. *See State v. Thompson*, 151 Wn.2d 793, 802, 92 P.3d 228 (2004) (the community caretaking exception to the warrant requirement "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.”).

With respect to the firearms, the unlawful search at issue is the obtaining and running of the serial number on the firearm. The community caretaking exception does not apply, because this unlawful search did not remove the firearms from the child’s presence. *See Thompson*, 151 Wn.2d at 802 (defining the community caretaking exception to the warrant requirement).

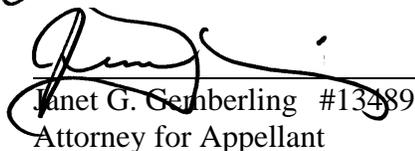
C. CONCLUSION

The community caretaking exception to the warrant requirement does not support the seizure of the two firearms found in Mr. Jurado’s apartment, or obtaining and running the serial number on the firearm. Mr. Jurado otherwise relies upon the arguments in his opening brief.

Dated this 16th day of May, 2012.

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON,

DIVISION III

STATE OF WASHINGTON,)
)
 Respondent,) No. 29871-0-III
)
 vs.) CERTIFICATE
) OF MAILING
RUBEN ZAMORA JURADO,)
)
 Appellant.)

I certify under penalty of perjury under the laws of the State of Washington that on May 16, 2012, I served a copy of the Appellant's Brief in this matter by email on the following parties, receipt confirmed, pursuant to the parties' agreement:

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I certify under penalty of perjury under the laws of the State of Washington that on May 16, 2012, I mailed a copy of the Appellant's Brief in this matter to:

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Signed at Spokane, Washington on May 16, 2012.



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