IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. EDWARD E. GANNON, Appellant.	No. 40250-5-II UNPUBLISHED OPINION

Van Deren, J. — Edward Gannon appeals his conviction of unlawful possession of methamphetamine, arguing that a search of his person by a Department of Corrections (DOC) officer violated his right to be free from unreasonable searches and seizures. We affirm.[1]

FACTS

In June 2009, brothers Edward Gannon and Tim Gannon were both under the supervision of DOC during their terms of community custody. On June 17, 2009, DOC Officers Nick Kiser and Angela Fioravanti, along with Aberdeen Police Officer Ron Bradbury, went to the Gannon residence to serve an arrest warrant on Tim.[2] Both Tim and Edward lived in their mother's house

[1] A commissioner of this court initially considered Gannon's appeal as a motion on the merits under RAP 18.14 and then transferred it to a panel of judges.

[2] Edward Gannon and Tim Gannon share the same last name. To avoid confusion, we refer to them by their first names.

in Aberdeen. Kiser told their mother, Joanne Gannon, that he was there to enter and check the residence for Tim. With her consent, Kiser went upstairs to look for Tim. Kiser went into what he knew to be Tim's bedroom but Tim was not there.

Kiser testified that he then knocked on Edward's bedroom door and gave verbal instructions to open the door and identified himself as the DOC.[3] Kiser knew someone was in the bedroom because he heard movement inside the room. Kiser testified that he repeatedly knocked and gave instructions to open the door, and after "a minute or two" Edward opened the door. Report of Proceedings (Aug. 13, 2009) at 9.

Inside the room, Kiser saw Edward and an unidentified woman. Kiser ordered Edward to get off the bed, stop fidgeting with items on his bed, to come out of the bedroom, and allow the officers to search the room for Tim. Edward remained seated on the bed going through the items on the bed. Edward eventually got off the bed and officers entered the room. Despite orders, Edward came back into the room and sat down on the bed. They told Edward again to stand up and go outside, and then Kiser placed Edward in handcuffs. A DOC officer patted down Edward's exterior clothing and removed a prescription bottle from Edward's left pants' pocket. Bradbury looked at what was in the bottle; it was an off-white crystal substance that appeared to be methamphetamine.

When he was released to begin serving his term of community custody, Edward signed the DOC form entitled "Conditions, Requirements, and Instructions," which stated that he would be subject "to search and seizure of [his] person, residence, automobile, or other personal property if there is reasonable cause on the part of the [DOC] to believe that [he] ha[s] violated the

[3] Kiser was familiar with Edward because he had arrested Edward before.

conditions/requirements or instructions" contained in the document. Ex. 1 at 1 (emphasis omitted), 3. The form stated that a condition of his release is to "[a]bide by written or verbal instructions issued by the community corrections officer." Ex. 1 at 1.

The State charged Edward with violation of the uniform controlled substances act — possession of methamphetamine. Edward moved to suppress the evidence as fruit of an illegal search. The trial court rejected the State's argument that the search was justified based on Edward's violation of the DOC officers' orders. Nonetheless, the trial court denied the suppression motion, concluding the search was "lawful, being necessary to assure the safety of the officers." Clerk's Papers at 4. After a trial and the stipulation of the parties, the court found Edward guilty as charged.

ANALYSIS

Edward renews his argument that the methamphetamine found on his person is inadmissible as fruit of an illegal warrantless search. This court reviews de novo a trial court's determination that a warrantless search was valid. *State v. Moore,* 161 Wn.2d 880, 885, 169 P.3d 469 (2007).

The Fourth Amendment of the United States Constitution, applicable to states through the Fourteenth Amendment, prohibits unreasonable searches and seizures. *See, e.g.*, *State v. Setterstrom*, 163 Wn.2d 621, 625-26, 183 P.3d 1075 (2008); *State v. Dorey*, 145 Wn. App. 423, 427, 186 P.3d 363 (2008). Washington's constitutional protections of privacy are even greater; warrantless searches are per se unreasonable. *State v. Morse*, 156 Wn.2d 1, 7, 123 P.3d 832 (2005). Exceptions to the warrant requirement are "jealously and carefully drawn." *State v. Reichenbach*, 153 Wn.2d 126, 131, 101 P.3d 80 (2004) (internal quotations marks omitted)

(quoting *State v. Hendrickson*, 129 Wn.2d 61, 70, 917 P.2d 563 (1996)). The State has the burden of showing that a challenged search falls within an exception. *State v. Williams*, 102 Wn.2d 733, 736, 689 P.2d 1065 (1984).

A person under supervision, such as community custody, has a reduced expectation of privacy because of the State's interest in supervising him.[4] *State v. Campbell,* 103 Wn.2d 1, 22, 691 P.2d 929 (1984); *Hocker v. Woody,* 95 Wn.2d 822, 826, 631 P.2d 372 (1981); *State v. Lucas,* 56 Wn. App. 236, 240, 783 P.2d 121 (1989); *State v. Patterson,* 51 Wn. App. 202, 204-05, 752 P.2d 945 (1988); *State v. Lampman,* 45 Wn. App. 228, 233, 724 P.2d 1092 (1986); *State v. Coahran,* 27 Wn. App. 664, 666, 620 P.2d 116 (1980); *State v. Simms,* 10 Wn. App. 75, 85, 516 P.2d 1088 (1973). Because of the nature of a person in community custody status, a search by a supervising DOC officer is distinguishable from that of a police officer "ferreting out crime." *See Simms*, 10 Wn. App. at 85. A community custody search is reasonable if it is authorized as a condition of a sentence and is based on a reasonable suspicion. *Griffin v. Wisconsin*, 483 U.S. 868, 878, 107 S. Ct. 3164, 97 L. Ed. 2d 709 (1987). Similarly, a DOC officer may search an offender on community custody if "there is reasonable cause to believe that [the] offender has violated a condition or requirement of [his] sentence." RCW 9.94A.631(1).

Here, a condition of Edward's release to community custody was that he was to follow instructions of DOC officers. Edward agreed that he would be subjected to a search of his person "if there is a reasonable cause on the part of the [DOC] to believe that [he] ha[s] violated the

[4] The cases below discuss probationary searches in a number of settings but, for the sake of simplicity, we will refer to searches and seizures of offenders under supervision of any type (probation, parole, community custody, community supervision, or community placement) as community custody.

conditions/requirements or instructions" that he agreed to upon release. Ex. 1 at 3. Based on the testimony of the officers, Edward did not follow their instructions. He did not open the door when instructed to do so, he continued going through his personal belongings when instructed to stop, and he reentered the room after being instructed to leave and wait outside. The officers gave these instructions to facilitate their search for Tim and to assure themselves that Edward was not concealing him. Edward violated the officers' instructions. Under the "Conditions, Requirements, and Instructions" he agreed to, the DOC officers had the legal authority to search him.

A court may affirm a "lower court's ruling on any grounds adequately supported in the record." *State v. Costich*, 152 Wn.2d 463, 477, 98 P.3d 795 (2004). Because the DOC officer's search was permissible under the terms of Edward's community custody and under the agreement Edward signed, we affirm the denial of his motion to suppress the evidence seized during that search. We affirm on this alternative basis.

Edward also argues that even if his warrantless search did not violate the Fourth Amendment to the United States Constitution, it did violate article I, section 7 of the Washington State Constitution. But he fails to show that a person under community custody has a greater privacy interest under the Washington State Constitution than under the United States Constitution, so he fails to show that we should employ a different standard for assessing

whether a community custody search is constitutional. And even if we did, RCW 9.94A.631(1) provides the "authority of law" required for a legal search. Wash. Const. art. I, § 7.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Van Deren, J.

We concur:

Worswick, A.C.J.

Armstrong, J.