

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

ROY EDWARD BRANDENBURG, JR.,

Appellant.

No. 38784-1-II

UNPUBLISHED OPINION

Bridgewater, P.J. — Roy Edward Brandenburg, Jr. appeals his convictions for first degree unlawful possession of a firearm, possession of marijuana with intent to manufacture or deliver, and possession of a controlled substance. We hold that the record contained substantial evidence that detectives did not use a Department of Corrections (DOC) officer as a “stalking horse” for some type of pretextual search of Brandenburg’s residence. But we reverse and remand for an evidentiary hearing using the appropriate standard of probable cause to believe that Joseph Andrew Reichert was a resident of Brandenburg’s residence.

We set forth the facts more fully in *State v. Joseph Andrew Reichert* (no. 38954-1-II), the companion case linked with this case on appeal. Basically, this case arose after a DOC officer received information from the detectives that Reichert was selling marijuana and was residing at a location he had not reported to the DOC, in violation of his probation terms. The DOC officer later contacted the detectives and asked them to accompany him on a compliance check, which they did. A subsequent search of the residence revealed evidence of the crimes as convicted.

Our analysis in *Reichert* is equally applicable here regarding the allegation that the DOC officer was a “stalking horse” for the detectives. As we point out in the *Reichert* opinion, the evidence does not support this theory; to the contrary, substantial evidence supports the opposite, that the DOC officer was performing his supervisory duties. Further, we reiterate that there is no legal basis for suppressing evidence, even if there was a conjoining of interests by the DOC and the detectives.

Lastly, the rationale in remanding the matter for an evidentiary hearing using the correct legal theory under *State v. Winterstein*, 167 Wn.2d 620, 220 P.3d 1226 (2009), is as equally applicable here as it was in *Reichert*. If the trial court finds that the DOC officer had probable cause to believe Reichert resided in the same residence as Brandenburg, then it shall reenter the judgment and sentence. If the court finds that the DOC officer did not have such probable cause, it may take appropriate action.

We reverse and remand for a hearing consistent with this opinion.

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.

Bridgewater, P.J.

We concur:

Hunt, J.

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Van Deren, J.