IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	**No. 29034-4-III**
Respondent,	)	
	)	**Division Three**
v.	)	
	)	
MICHELE MERLYNN MARTINEZ	)	
aka MELISSA FLORES	)	
aka MICHELE M. FLORES	)	**UNPUBLISHED OPINION**
aka MELISSA GUTIERREZ	)	
aka MELIA MARTINEZ,	)	
	)	
Appellant.	)	
	)	

Kulik, C.J. — A community corrections officer (CCO) searched a car at Michele Martinez's home. She lived there with her husband, Fidel Medina, who was under the CCO's supervision. While searching the car, the CCO found methamphetamine in the trunk. Ms. Martinez was charged and found guilty of possession of a controlled substance, methamphetamine, with intent to deliver. On appeal, Ms. Martinez contends that the trial court erred by failing to suppress all of the evidence found in the car because the search performed by the CCO was invalid.

We conclude that under RCW 9.94A.631, and Ms. Martinez's consent to search the car, the search was valid and the trial court properly denied the motion to suppress the evidence. We, therefore, affirm the conviction.

FACTS

Mr. Medina, Ms. Martinez's husband, was placed on community custody after completion of his prison sentence for second degree manslaughter. The community custody conditions, requirements, and instructions form signed by Mr. Medina informed him that he was "subject to search and seizure of my person, residence, automobile, or other personal property, if there is reasonable cause on the part of the Department of Corrections to believe that I have violated the conditions/requirements or instructions." Ex. A.

On November 26, 2008, CCO Brent Martin received a report that Mr. Medina was no longer in compliance with the required community custody obligations. On the way to Mr. Medina's house to conduct a home visit, Officer Martin observed Mr. Medina driving a red Ford Escort. Officer Martin recognized this car because it had been parked at Mr. Medina's and Ms. Martinez's residence. Also, Officer Martin had seen Mr. Medina driving the red Ford Escort two weeks earlier, but did not contact him then.

Mr. Medina stopped the car and made contact with Officer Martin. Mr. Medina

told Officer Martin that the car belonged to his wife, Ms. Martinez. Mr. Medina also told Officer Martin that he did not have insurance on the car, a violation of his community custody. Mr. Medina said that he would be insuring the car that day.

Days later, Officer Martin received information that Mr. Medina was in violation of the conditions of his supervision by associating with gang contacts. On December 3, Officer Martin and Sunnyside Police Officer Robert Lehman went to Mr. Medina's residence to address the reported community custody violations. During a search of Mr. Medina, Officer Martin discovered methamphetamine. Based on the possession of methamphetamine and the community custody violations, Officer Martin and Officer Lehman arrested Mr. Medina and conducted a search of Mr. Medina's residence. Officer Martin searched the red Ford Escort, which was parked in the driveway, to confirm whether or not Mr. Medina had obtained insurance.

Prior to the search, Officer Martin told Ms. Martinez that he had seen her husband driving the red Ford Escort. Ms. Martinez stated that the car belonged to her and that both she and Mr. Medina drove it. Officer Martin asked Ms. Martinez if he could look inside. Ms. Martinez said it was "okay." Clerk's Papers (CP) at 13. She also told him that she did not have the keys but the car was unlocked.

Ms. Martinez went to the car, opened the driver's door, and removed a soda from

the center console. Officer Martin looked into the car and saw a handgun under the seat. Officer Lehman told Ms. Martinez a gun had been found in the car; she stated that it was hers. The officers learned that Ms. Martinez was a convicted felon and placed her under arrest. Because they were getting into some "criminal activity," Officer Martin and Officer Lehman decided that their best course of action was to either get a warrant or get consent to search the car. Report of Proceedings (RP) at 67.

Officer Lehman began to fill out a consent to search form with Ms. Martinez. He then learned that Ms. Martinez's mother, Mary Campos, was the legal owner of the car. Officer Lehman placed Ms. Martinez in the back of a patrol car and went to speak with Ms. Campos. Officer Lehman read the consent form to Ms. Campos. He then gave her time to read it, which she did before signing the form. Officer Martin did not obtain written consent from Mr. Medina or Ms. Martinez before searching the car.

In the trunk of the car, the officers found 113.3 grams of a white substance that was found to contain methamphetamine. The officers also found a digital scale and material for packaging. Ms. Martinez was transported to the Yakima County Jail. The admitting officers found $1,800 in cash on her person.

Prior to her trial for possession of methamphetamine with intent to deliver, Ms. Martinez moved to suppress all of the evidence found in the red Ford Escort. She

contended the search violated her constitutional right to privacy because she did not voluntarily consent to the search. The trial court denied the motion.

Ms. Martinez was convicted of possession of methamphetamine with intent to deliver. She appeals, arguing the search of her vehicle was unconstitutional under both article I, section 7 of the Washington State Constitution and the Fourth Amendment to the United States Constitution because (1) Mr. Medina's community custody did not provide legal authority to search the car; (2) Ms. Martinez did not consent to the search; (3) Ms. Martinez's mother, Ms. Campos, did not have authority to consent to a search; and, (4) even if Ms. Campos did have authority, the consent was invalid.

ANALYSIS

Conclusions of law relating to the suppression of evidence are reviewed de novo. *State v. Winterstein*, 167 Wn.2d 620, 628, 220 P.3d 1226 (2009). Challenged findings entered after a suppression hearing that are supported by substantial evidence are binding and, where the findings are unchallenged, they are verities on appeal. *State v. O'Neill*, 148 Wn.2d 564, 571, 62 P.3d 489 (2003).

Authority to Search the Car Based on Mr. Medina's Community Custody Status.

Warrantless searches and seizures are per se unreasonable under article I, section 7 of the Washington State Constitution and the Fourth Amendment to the United States

Constitution. *State v. Williams*, 102 Wn.2d 733, 736, 689 P.2d 1065 (1984). Exceptions to the warrant requirement may apply, and the burden of proof rests with the State. *State v. Ladson*, 138 Wn.2d 343, 349-50, 979 P.2d 833 (1999). Exceptions to the warrant requirement are "'jealously and carefully drawn.'" *State v. Reichenbach*, 153 Wn.2d 126, 131, 101 P.3d 80 (2004) (quoting *State v. Hendrickson*, 129 Wn.2d 61, 72, 917 P.2d 563 (1996)).

A search of a person on probation or parole is an exception to the warrant requirement recognized by both the state and federal constitutions. *State v. Patterson*, 51 Wn. App. 202, 204-06, 752 P.2d 945 (1988). A person under state supervision, such as community custody, has a reduced expectation of privacy because of the state's interest in supervising him. *State v. Reichert*, 158 Wn. App. 374, 386, 242 P.3d 44 (2010), *review denied*, 171 Wn.2d 1006 (2011). "The rationale for excepting probationers from the general requirement that a search requires a warrant based on probable cause is that a person judicially sentenced to confinement but released on probation remains in the custody of the law." *Id.* (citing *State v. Simms*, 10 Wn. App. 75, 82, 516 P.2d 1088 (1973)). Because a person in community custody is still under the state's supervision, a search by a CCO is distinguishable from that of a police officer "'ferreting out crime.'" *Simms*, 10 Wn. App. at 85 (quoting *Johnson v. United States*, 333 U.S. 10, 14, 68 S. Ct.

367, 92 L. Ed. 436 (1948)).

Former RCW 9.94A.631 (1984) provides that "[i]f there is reasonable cause to believe that an offender has violated a condition or requirement of the sentence, an offender may be required to submit to a search and seizure of the offender's person, residence, automobile, or other personal property."

In *Winterstein*, the Supreme Court of Washington held that "probation officers are required to have probable cause to believe that their probationers live at the residence they seek to search." *Winterstein*, 167 Wn.2d at 630. The court emphasized that RCW 9.94A.631 allowed for a warrantless search of "the *offender's* person, residence, automobile, or other personal property." *Id.* at 629. It reasoned that third parties not on community custody do not have a lessened expectation of privacy, and a probable cause standard "protect[s] the interests of third parties" when officers enter the homes of nonsuspects. *Id*. (citing *Motley v. Parks*, 432 F.3d 1072, 1080 (9th Cir. 2005)).

Winterstein addresses only the search of a residence, and there is no case on point dealing with RCW 9.94A.631 and the search of an automobile. However, considering the court applied the reasonable standard to one of the three enumerated areas in RCW 9.94A.631, we assume that the reasonable standard applies to the remaining two areas. The application of this standard also protects nonoffenders from having their

vehicle searched if they do not share the property with an offender. Therefore, the probation officer must have reasonable cause to believe that it is the offender's automobile or personal property in order to conduct a warrantless search under RCW 9.94A.631.

The Washington Supreme Court adopted the common authority rule in search and seizure cases involving cohabitants. *State v. Morse*, 156 Wn.2d 1, 7, 123 P.3d 832 (2005). A person who shares authority over spaces with others has a reduced expectation of privacy and reasonably assumes the risk that others with authority will allow outsiders into shared areas. *Id.* "Common authority under article I, section 7 [of the Washington Constitution] is grounded upon the theory that when a person, by his actions, shows that he has willingly relinquished some of his privacy, he may also have impliedly agreed to allow another person to waive his constitutional right to privacy." *Id.* at 8.

Here, the undisputed violations by Mr. Medina gave Officer Martin reasonable cause to believe Mr. Medina violated the conditions of his community custody. Therefore, under the Department of Corrections' "Conditions, Requirements, and Instructions"[1] and RCW 9.94A.631, Officer Martin had the authority to search Mr. Medina and his residence, automobile, and personal property. However, when applying

[1] Ex. A.

the holding of *Winterstein*, Officer Martin first needed reasonable cause to believe that the red Ford Escort was Mr. Medina's car.

Officer Martin observed Mr. Medina driving the car. When he stopped Mr. Medina in the car, Mr. Medina told him it belonged to Ms. Martinez. Officer Martin knew that Mr. Medina and Ms. Martinez were married. Officer Martin observed the car at Mr. Medina's residence. When Officer Martin discovered the car was not insured, Mr. Medina said he was going to insure the car. Additionally, Ms. Martinez told Officer Martin the car belonged to her but that she and Mr. Medina drove the car. Mr. Medina exerted control over the red Ford Escort. The facts support conclusion of law 1 that the car was "his" for purposes of supervision. CP at 18. Officer Martin conducted a valid search pursuant to RCW 9.94A.631.

As stated in *Morse*, Ms. Martinez relinquished some of her privacy rights by sharing her car with Mr. Medina. As a spouse, she shared her property with Mr. Medina. She assumed the risk of a search by allowing him to drive the car without her being present in the car. The evidence of methamphetamine found in the car was the product of a valid search and admissible at trial.

The trial court properly denied Ms. Martinez's motion to suppress the evidence found in the car. A valid, warrantless search was conducted of Mr. Medina's car

pursuant to RCW 9.94A.631.

Consent to Search. The first issue is dispositive. However, we briefly address the issue of Ms. Martinez's consent to search the car.

Generally, warrantless searches are considered unreasonable unless a well-established exception to the warrant requirement applies. *State v. Walker*, 136 Wn.2d 678, 682, 965 P.2d 1079 (1998). Consent is one exception to the warrant requirement. *State v. Leach*, 113 Wn.2d 735, 738, 782 P.2d 1035 (1989). "The State must meet three requirements in order to show that a warrantless but consensual search was valid: (1) the consent must be voluntary; (2) the person granting consent must have authority to consent; and (3) the search must not exceed the scope of the consent." *Walker*, 136 Wn.2d at 682.

The factors we consider in determining whether consent was voluntary are "(1) whether *Miranda*[2] warnings had been given prior to obtaining consent; (2) the degree of education and intelligence of the consenting person; and (3) whether the consenting person had been advised of his right not to consent." *State v. Shoemaker*, 85 Wn.2d 207, 212, 533 P.2d 123 (1975). Voluntariness is a question of fact to be considered under the totality of the circumstances with no one particular factor being

[2] *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

dispositive. *Id*.

"[Common] authority to control is determined by the shared use of the premises, the reasonable expectations of privacy, and the degree to which a cohabitant has assumed the risk that others will consent to a search." *Morse*, 156 Wn.2d at 15.

Officer Martin asked Ms. Martinez if he could look in the car. Ms. Martinez said "okay." CP at 13. She then went to the car, opened the door, and removed her drink. The trial court weighed the credibility of the parties and determined that Ms. Martinez's testimony that she did not give consent to Officer Martin was not credible.

Both parties appear to agree that Ms. Martinez had common authority over the car. The facts support the conclusion that Ms. Martinez voluntarily and knowingly consented to the search of the car. Therefore, the evidence found in the car falls under the consent exception to the warrant requirement.

Ms. Martinez also contends that the car should be considered an "effect" and not a car because no one was operating or occupying the car at the time of the search. Appellant's Br. at 11. Therefore, the consent requirement for a motor vehicle as decided by *State v. Cantrell*, 124 Wn.2d 183, 875 P.2d 1208 (1994) does not apply. Instead, Ms. Martinez maintains that the consent requirement from *Leach* for search of a residence should be adopted in this situation. Because she had equal authority and did not consent,

she asserts the search was invalid under the requirements set forth in *Leach*.

For the search of a residence, when a cohabitant who has at least equal authority is present and objects to the search, the police do not have valid consent to search the residence. *Leach*, 113 Wn.2d at 744. In *Cantrell*, the court declined to extend the consent requirements for the search of a home to the search of a car because a person enjoys a lesser expectation of privacy in a car than in a home. *Cantrell*, 124 Wn.2d at 190-92. Instead, the *Cantrell* court determined that for the search of a car, consent from one person with common authority is needed. *Id.* at 192.

Ms. Martinez's argument does not have merit. Because the right to privacy differs between a home and a car, the established consent requirement applies regardless if someone occupies the car. Additionally, the heightened requirement for consent would not benefit Ms. Martinez in this situation. She consented to the search of the car. Thus, the search was valid under either the *Leach* or *Cantrell* standards.

We need not address Ms. Martinez's remaining contentions.

Conclusion. We affirm the trial court's denial of Ms. Martinez's motion to suppress the evidence of methamphetamine found in the car and affirm the conviction for possession of methamphetamine with intent to deliver. And Officer Martin conducted a valid, warrantless search of the car based on RCW 9.94A.631 and Ms. Martinez's

voluntary and knowing consent.

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

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Kulik, C.J.

WE CONCUR:

_____ _____
Brown, J. Siddoway, J.