IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON,	)	No. 29871-0-III
Respondent,	)	
v.	)	UNPUBLISHED OPINION
RUBEN ZAMORA JURADO,	)	
Appellant.	)	

Kulik, J. — Ruben Jurado appeals his convictions for assault in the fourth degree, alien in possession of a firearm, and possession of a stolen firearm. He contends that the trial court erred by failing to suppress the evidence of a firearm found in the home. We first conclude that Mr. Jurado's wife consented to the officers entering the home. While walking through the home to talk to Mr. Jurado, one officer saw a serial number on a gun—without touching the gun—and later ran the number. The gun was stolen. Here, the "mere recording of the serial numbers" on the gun in plain view did not constitute a seizure.[1] Therefore, we reject Mr. Jurado's arguments and affirm the convictions.

[1] *Arizona v. Hicks*, 480 U.S. 321, 324, 107 S. Ct. 1149, 94 L. Ed. 2d 347 (1987).

FACTS

On June 25, 2010, three Kennewick police department detectives went to Ruben Zamora Jurado's residence to speak to Mr. Jurado regarding an assault investigation. Mr. Jurado's wife, Aracellia Carrillo Deniz,[2] answered the door. Ms. Deniz, a Spanish speaker, was informed in English that the detectives were there to speak with her husband. Ms. Deniz spoke limited English, but was able to communicate with the officers. The detectives did not give Ms. Deniz *Ferrier*[3] warnings, but one of the detectives asked her in Spanish if the detectives could enter the residence. Ms. Deniz opened the door, backed away, and motioned with her arm for the detectives to enter. She told the detectives her husband was sleeping. She walked down a hallway and the detectives followed her. Mr. Jurado was found in a bedroom, asleep in bed. Mr. Jurado was handcuffed and taken out of the residence.

While inside the residence, one of the detectives observed two firearms on a coffee table, as well as several rounds of ammunition. The firearms were in arms-length proximity to a small child in the residence. The detective did not have probable cause to

[2] We note different spellings in the record for Mr. Jurado's wife's name. We use the spelling found in the court's findings of fact and conclusions of law from the CrR 3.5 and CrR 3.6 hearings.

[3] *State v. Ferrier*, 136 Wn.2d 103, 960 P.2d 927 (1998) (requiring police officers to warn home dwellers of their right to refuse consent to a warrantless search when employing the "knock and talk" procedure).

believe the firearms were stolen. The detective read the serial number on one of the firearms without touching it. Later, the detective ran the serial number on the firearm and discovered it was stolen. A search warrant was obtained for the residence, and two firearms and ammunition were seized. Both firearms were stolen.

Mr. Jurado was charged with one count of second degree assault, later amended to one count of fourth degree assault; one count of alien in possession of a firearm; and one count of possession of a stolen firearm. Mr. Jurado moved to suppress the evidence found in the home. He asserted that the detectives unlawfully entered the residence without consent. A CrR 3.6 hearing was held and the trial court denied Mr. Jurado's motion to suppress. The matter proceeded to a stipulated facts trial in which Mr. Jurado was found guilty of all three charges.

Mr. Jurado appeals, arguing the trial court erred by denying his motion to suppress the evidence found as a result of the unlawful entry and unlawful search. Mr. Jurado also contends that the trial court erred by failing to include his total legal financial obligations in his judgment and sentence.

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, are verities on appeal. *State v. O'Neill*, 148 Wn.2d 564, 571, 62 P.3d 489 (2003). "Substantial evidence exists where there is 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). Credibility determinations are the province of the trier of fact and are not subject to appellate review. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

Consent to Enter. As an initial matter, the detectives were not required to give Ms. Deniz *Ferrier* warnings because a warrantless search was not conducted at the residence. *Ferrier* warnings target searches not contacts between the police and individuals. *State v. Khounvichai*, 149 Wn.2d 557, 564, 69 P.3d 862 (2003). More specifically, "the *Ferrier* requirement is limited to situations where police request entry into a home for the purpose of obtaining consent to conduct a warrantless search." *Id.* at 563.

In this case, the trial court determined that *Ferrier* warnings were not required because the detectives were seeking entry into the residence to question Mr. Jurado, not

to conduct a search of the residence; therefore, "the home is merely incidental to the purpose." *Id.* at 564. Washington courts have declined to broaden the rule to apply outside the context of a request to search; therefore, the detectives were not required to give Ms. Deniz *Ferrier* warnings.

When the State is not employing the "knock and talk"[4] procedure, the court employs a "totality of circumstances" test to determine whether consent to search is valid. *State v. Bustamante-Davila*, 138 Wn.2d 964, 981, 983 P.2d 590 (1999). Generally, once consent is given, a police officer may go where the consent allows. *State v. Cotten*, 75 Wn. App. 669, 679, 879 P.2d 971 (1994).

The facts support the conclusion that Ms. Deniz consented to entry. Although Ms. Deniz testified that her English is limited, she was able to understand that the detectives were law enforcement officers. Ms. Deniz also testified that she understood the detectives were at her residence to speak with her husband. Additionally, one of the detectives asked Ms. Deniz in Spanish if she could enter the residence. This request was heard by another detective on the scene.

Moreover, the detectives testified that Ms. Deniz invited them into the residence

[4] The "knock and talk" is a procedure "'like any other follow-up investigation that a detective or police officer would do. You go to the door, knock on the door, make contact with the resident, [and] ask if you can come in to talk about whatever the complaint happens to be.'" *Ferrier*, 136 Wn.2d at 107.

by opening the door, backing away, and motioning with her arm for the detectives to enter the residence. Ms. Deniz told the detectives Mr. Jurado was sleeping and the detectives followed her to a back bedroom where Mr. Jurado was located. As the trier of fact, the trial judge was entitled to conclude that one witness was more believable than another. In this case, the judge found that the detectives' testimony concerning consent to enter the residence was what actually occurred, and the findings are supported by the record. Thus, the detectives entered the residence lawfully.

Gun Serial Number—Search. Warrantless searches and seizures are per se unreasonable under article I, section 7 of the Washington 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, 350, 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).

A discovery made in "plain view" is not a search. *Khounvichai*, 149 Wn.2d at 565. The plain view doctrine applies when an officer has a prior justification for the intrusion and immediately recognizes the item as contraband. *Bustamante-Davila*, 138 Wn.2d at 982 (quoting *State v. Myers*, 117 Wn.2d 332, 346, 815 P.2d 761 (1991)); *see*

also State v. Kull, 155 Wn.2d 80, 85 n.4, 118 P.3d 307 (2005). Consent to enter a home provides prior justification for the intrusion into an area protected by a reasonable expectation of privacy. *Myers*, 117 Wn.2d at 346 (quoting *State v. McAlpin*, 36 Wn. App. 707, 714, 677 P.2d 185 (1984)).

In *State v. Murray*, our Supreme Court determined that the plain view doctrine did not apply to the seizure of a serial number on a television when an officer, who had consent to be in the home, had to turn the television over to see the serial number. *State v. Murray*, 84 Wn.2d 527, 527 P.2d 1303 (1974). The court determined that the owner had a privacy interest in the serial number stamped on the bottom of the television and completely concealed from the police officers. *Id*. at 529-30.

Here, the detectives had a prior justification for entering the living area because they were given consent to enter and question Mr. Jurado. Under *Arizona v. Hicks*, 480 U.S. 321, 324, 107 S. Ct. 1149, 94 L. Ed. 2d 347 (1987), the "mere recording of the serial numbers did not constitute a seizure." The recording of the number did not "meaningfully interfere" with Mr. Jurado's possessory interest in either the serial numbers or the guns and, therefore, did not amount to a seizure. *Id.* The detective who ran the serial numbers discovered the firearm was stolen only after he read the serial number and ran the weapons check.

In short, the detectives were given consent to enter the residence for the purpose of talking to Mr. Jurado about an assault. Mr. Jurado was not a suspect in the crime. The recording of the serial numbers did not constitute a seizure.

The trial court did not err by failing to suppress evidence of the firearm.

Legal Financial Obligations. RCW 9.94A.760(1) states that:

> Whenever a person is convicted in superior court, the court may order the payment of a legal financial obligation as part of the sentence. The court must on either the judgment and sentence or on a subsequent order to pay, designate the total amount of a legal financial obligation and segregate this amount among the separate assessments made for restitution, costs, fines, and other assessments required by law.

The judgment and sentence states Mr. Jurado owes: (1) restitution in the amount of $279.81 to crime victim's compensation; (2) $500.00 victim assessment; (3) $500.00 fine; and a (4) $100.00 felony DNA[5] collection fee. The judgment and sentence states Mr. Jurado will be charged court costs, and states, "See Attached Cost Bill." Clerk's Papers (CP) at 128. The cost bill sets forth the costs Mr. Jurado incurred, including: (1) $200.00 filing fee; (2) $60.00 sheriff's service fee; (3) $10.00 witness fee; and (4) $700.00 attorney's fee. The cost bill also provides a "Total Ordered And/Or Assessed" portion

[5] Deoxyribonucleic acid.

indicating the total court costs assessed. CP at 135. However, the total legal financial obligation line on page five of the judgment and sentence is empty. Therefore, we remand so that the judgment and sentence and cost bill will comply with RCW 9.94A.760 by designating the total amount of legal financial obligations owed.

We affirm the denial of Mr. Jurado's motion to suppress evidence, and we affirm his convictions for assault in the fourth degree, alien in possession of a firearm, and possession of a stolen firearm. We remand for clarification of the legal financial obligations in the judgment and sentence.

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, J.

WE CONCUR:

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Sweeney, J. Brown, J.