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

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STATE OF WASHINGTON,

Respondent,

v.

ULUI TEULILO,

Petitioner.

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# PETITIONER'S OPENING MEMORANDUM

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## B. INTRODUCTION

Petitioner Ului Teulilo, Defendant in Douglas County Superior Court case number 18-1-00163-09, respectfully requests this court reverse the decision of the Douglas County Superior Court denying Petitioner's Motion to Suppress all evidence filed on August 11, 2021. Petitioner's motion to suppress is based on the unlawful search of Petitioner's residence conducted by the Douglas County Sheriff's Office deputies, detectives, and command staff.

The court should grant this Petition because the trial court justified the numerous searches of the residence on a community caretaking exception to the warrant requirement which does not exist as well as various misstatements of the facts of this case.

More specifically, Petitioner asserts that: 1) there is not substantial evidence supporting at least two of the trial court's Findings of Fact, 2) every Conclusion of Law as determined by the trial court is legally erroneous, and thus 3) the decision of the

trial court denying Petitioner's Motion to Suppress must be vacated and reversed.

## C. ASSIGNMENTS OF ERROR

1. The trial court erred in its August 11, 2021, ruling by making Findings of Fact #'s 2.17, and 2.19.

2. The trial court erred in its August 11, 2021, ruling as every Conclusion of Law is based on either erroneous use of facts, or misunderstanding of the law.

3. The trial court erred in its August 11, 2021, ruling by denying Petitioner's motion to suppress.

## D. ISSUES PRESENTED FOR REVIEW

1. Under Washington State case law and the "substantial evidence standard", should this court strike the trial court's Findings of Fact #'s 2.17, and 2.19 following Defendant's CrR 3.6 Motion to Suppress, when these Findings of Fact are not based on substantial evidence because they: 1) alter testimony from the hearing, and/or 2) are based on no evidence at all, and/or 3) are completely irrelevant to any legal issues in the case but were nevertheless used to justify the outcome?

2. Under the Washington State and United States Constitutions, as well as case law and a de novo standard of review, should this court reverse all of the trial court's Conclusions of Law when on every single Conclusion of Law the trial court either: 1) failed to properly consider critical evidence, 2) justified its ruling based on legally

irrelevant evidence, 3) justified its ruling using false factual pretenses, and 4) used the wrong legal standard?

3. Under the Washington State and United States Constitutions, as well as case law, should this court reverse the trial court and suppress the evidence in this case when the facts at issue are not legal justification for the search conducted on Petitioner's residence?

## E. STATEMENT OF THE CASE

On July 25, 2018, at about 10:26 am, Okanogan County Sheriff's Department ("OCSD") Deputy Black was sent to Riverside Drive to conduct a welfare check. RP 6:4-5; 12:11-15; 13:2-4; 14:10-13. The reporting party, Michael Sines, informed dispatch that Peggy Teulilo was supposed to pick up his mother that morning but had not arrived. RP 12:11-15. Sines further advised that Ms. Teulilo was involved in a domestic incident with her husband, Ului Teulilo, the previous day. RP 12:25-13.

Prior to arrival at the Teulilo residence, Deputy Black read Spillman reports about previous alleged threats from Mr. Teulilo to Ms. Teulilo, including an alleged threat in May to shoot Ms. Teulilo and then to kill himself. RP 15:8-15. Aside from the

incident from the previous day, as far as Deputy Black was aware the other previous threats could have been very old. RP 39:25-40:5. As part of the call from the previous evening, Ms. Teulilo had stated that she did not want assistance and that she was going to pack up and leave her husband. RP 40:11-13; CP 86 (Findings of Fact 2.1).

At about 10:46 am, Deputy Black arrived at the Teulilo residence. RP 14:22. Upon arrival, Deputy Black spoke with the property owner, Earl Wilson, who identified the fifth wheel residence belonging to Peggy and Ului Tuililo. RP 16:1-12. However, Mr. Wilson was unable to say whether the Dodge Caravan parked at the residence was normally driven by Peggy or Ului Teulilo. RP 16:13-18.

Following identification of the residence, Deputy Black knocked on the side of the trailer and the door and received no answer. RP 16:19-17:13. He also announced "sheriff's office" several times and called out Peggy's name loud enough so that someone in the trailer could hear, but received no response. *Id.*

Deputy Black then re-contacted Earl Wilson who advised Deputy Black that he knew where Mr. Teulilo worked and could call him. RP 17:13-16. Mr. Wilson told Deputy Black that Mr. Teulilo worked at WW Pumping. RP 17:23-18:1. Mr. Wilson was unable to reach Mr. Teulilo's employment, so Deputy Black called WW Pumping and spoke to Mr. Teulilo at 10:53 am. RP 18:2-7; 35:15-22. During this conversation, Deputy Black informed Mr. Teulilo that they needed to speak to his wife and asked where she was. RP 18:17-19. Mr. Teulilo informed Deputy Black that Ms. Teulilo should be at work at the Sines residence, and that the Dodge Caravan outside their residence was the one driven by Mrs. Teulilio. RP 18:17-19:13. Mr. Teulilo also provided a number for Ms. Teulilo that he had obtained for her the previous evening. RP 18:17-21. During this conversation, Deputy Black neither asked Mr. Teulilo to come check the residence, nor asked for permission to enter the residence. RP 60:20-61:11. In addition, Mr. Teulilo may not have even known that Deputy Black was at his residence. RP 62:22-23.

Deputy Black proceeded to call this number as well as other numbers he found associated with Ms. Teulilo on Spillman several times with no response nor sound of a phone ringing from inside the Teulilo fifth wheel residence. RP 20:7-21:8; RP 20:17-22.

Following his inability to locate Ms. Teulilo by telephone, Deputy Black called DCSO Sergeant Caille to get Sgt. Caille's input to see what Sgt. Caille thought should happen. RP 21:19-24. After advising Sgt. Caille that Ms. Teulilo should be at work, her car was in the driveway and she was not answering her phone, Sgt. Caille instructed Deputy Black to check the front door of the home, and if the door was unlocked, open the door, announce "sheriff's office", and then call Sgt. Caille back. RP 22:12-21

Prior to checking the door, however, Deputy Black called Ms. Teulilo's number again, then called Michael Sines. RP 22:22-23:11. Mr. Sines informed Deputy Black that Ms. Teulilo was supposed to pick up his mother and take his mother to a hair appointment, but Ms. Teulilo did not show up. RP 23:10-23. Mr. Sines also informed Deputy Black that Ms. Teulilo would

normally call if she was unable to attend work. *Id.* Mr. Sines did not inform Deputy Black what time Ms. Teulilo had been expected that morning and Deputy Black was unaware of this information prior to entering the residence. RP 38:25-39:11.

Following this conversation, Deputy Black checked the fifth wheel door, which was closed, but unlocked. RP 24:7-10. Deputy Black opened the door without entering, and announced "sheriff's office". RP 24: 24-25. There was no response and no sounds from the trailer. RP 25:10-13. From his vantage point on the porch, Deputy Black was able to only see the wall of the hallway. RP 25:6-9.

Deputy Black then called and updated Sergeant Caille again. RP 25:14-25. Sergeant Caille instructed Deputy Black to look around the residence make sure there was nothing amiss, justifying the search as a community caretaking search for Ms. Teulilo due to the totality of the circumstances. RP 26:1-11. Prior to entering the residence, it had been about 30-40 minutes since Deputy Black received his call out. RP 37:19-38:7.

Deputy Black opened the door, again announced "sheriff's office" and entered the residence which was cluttered but tidy. RP 26:17-27:3. Upon looking down the hallway Deputy Black observed a female laying on her back. RP 27:23-28:3. He approached her and it was obvious to Deputy Black that the female was deceased. RP 29:6-11. It appeared to Deputy Black that the significant trauma to the deceased females head was due to a gunshot wound, possible by suicide. RP 28:4-7, 45:12-15.

Prior to entering the residence, Deputy Black had no idea what, if anything had happened to Ms. Teulilo. RP 32:20-22, 40:23-25, 41:1-12, 42:9-25, 47:20-25, 52:11-12. In addition, prior to entering the residence Deputy Black had no idea if Ms. Teulilo was even in the residence, where she was at all, whether she needed any help, whether she had been the victim of an assault or other crime, whether she was deceased, whether she was injured, whether she slept in, or whether she was simply ignoring him. RP 32:23-33:3; 36:5-9; 40:23-41:6, 42:9-25, 49:7-10, 49:15-19, 49:23-50:3, 50:11-13, 51:16-18, 51:19-52:12, 61:4-5. What

Deputy Black did know was that there had been someone in the residence, they would have heard his knocking and calling. RP 41:7-12, 46:24-47:3.

Moreover, prior to entering the residence, Deputy Black did not go to the neighbor's residence approximately 20-25 feet away and make any inquiries about Ms. Teulilo. RP 13:17-19, 40:14-22, 40:20-41:4, 43:1-7, 51:23-52:3.

Following this first entry into the home Deputy Black again called Sergeant Caille and updated him. RP 29:11-16. Deputy Black then re-entered the residence looking for a firearm which he did not locate. RP 29:20-24. Without moving or touching anything, Deputy Black observed blood spattered on the bedroom cabinets above the bed and on the bed sheets. RP 29:24-30:9. Deputy Black also re-entered the residence to take photographs. RP 31:5-10.

Deputy Black called Sgt. Caille again and then DCSO Chief Criminal Deputy Gloseclose arrived at the residence shortly thereafter. RP 30:10-17. Chief Groseclose then entered and

viewed the interior of the residence without touching anything. 74:9-10. Chief Groseclose did not believe his actions nor Deputy Black's actions even constituted a search. RP 81:13-24.

DCSO Detective DeMyer arrived at the Teulilo residence sometime after Chief Groseclose. RP 84:17-23. While standing on the front porch, Detective DeMyer reached his hand inside and took a photograph down the hallway to where Ms. Teulilo was said to be laying. RP 84:6-14. All of these searches of the Teulilo residence occurred prior to obtaining a search warrant. RP 75: 20-25, 84:6-17.

On April 20, 2021, Mr. Teulilo filed a CrR 3.6 Motion to Suppress arguing that the searches at issue here were unlawful. CP 1-26. The State filed a Response on May 6, 2021. CP 27-45. The Superior court set a hearing for May 20, 2021. CP 85-91.

On May 17, 2021, the Supreme Court of the United States ("SCOTUS") decided the case of *Caniglia v. Strom* which is directly on point to the issue of what constitutes a legal community caretaking search. 141 S.Ct. 1596, 209 L.Ed. 2d 604 (2021); CP

46-62. On May 19, 2021, Mr. Teulilo filed a copy of this case with the Superior court so that the case would be discussed at the hearing. CP 46-62.

On May 20, 2021, the trial court heard Mr. Teulilo's CrR 3.6 Motion to Suppress and orally denied the motion. CP 85-91; RP 134:2-6. On August 11, 2021, the trial court entered its Findings of Fact ("FOF") and Conclusions of Law ("COL") and Decision on Motion to Suppress. CP 85-91.

Finally, on September 1, 2021, the parties entered a RAP 2.3(b)(4) stipulation agreeing that there is substantial ground for difference of opinion and that immediate review of the order may materially advance the ultimate termination of the litigation. CP 93.

## *F.* **ARGUMENT**

1. ***This court should strike the trial court's FOF #'s 2.17, and 2.19 following Defendant's CrR 3.6 Motion to Suppress, as these FOF are not based on substantial evidence because they: 1) alter testimony from the hearing, 2) are based on no evidence at all, and/or 3) are completely irrelevant to any legal issues in the case but were nevertheless used to justify the outcome.***

On review, Washington State appellate courts look at whether substantial evidence supports challenged findings of fact. *State v. Ward*, 182 Wn.App. 574 (2014). Substantial evidence is defined as "a quantum of evidence sufficient to persuade a rational fair-minded person the premise is true." *Sunnyside Valley Irrigation Dist. V. Dickie,* 149 Wn.2d 873, 879, 73 P.3d 369 (2003). Here, substantial evidence does not support the challenged findings of fact.

Petitioner first challenges Finding of Fact ("FOF") # 2.17. The first clause of which states, "Dep. Black, based on the totality of the circumstances, was concerned for Peggy's physical well-being." This statement is an exaggeration of Dep. Black's testimony and takes his testimony out of context. Deputy Black repeatedly testified that he had no idea if there was anything wrong with Ms. Teulilo and that he had no idea where she was. RP 32:20-22, 40:23-25, 41:1-12, 42:9-25, 47:20-25, 52:11-12.

While Deputy Black expressed a general concern as he didn't know where Ms. Teulilo was, this COL implies a deeper concern that far exceeds Deputy Black's repeated statement that he "had no idea" where she was or what was going on. Conversely, what Deputy Black did know was, 1) Ms. Teulilo was planning to pack up and leave, so it was possible she had done just that, and 2) he had not checked the residence just 20-25 feet away and it was very possible that Mrs. Teulilo was there. CP 86 (FOF 2.1, and 2.3); RP 13:17-19; 40:14-22, 40:20-41:4, 43:1-7, 51:23-52:3.

Petitioner also challenges the last clause of FOF 2.17 where the trial court states that "Dep. Black believed that the trailer was the most likely place to search for Peggy." CP 88. This statement is without evidentiary support as Deputy Black repeatedly testified that he "had no idea" where Mrs. Teulilo was. RP 36:5-9, 40:23-41:6, 42:9-25, 49:7-10, 49:15-19, 49:23-50:3, 51:19-21, 52:2-12.

Therefore, substantial evidence does not support FOF # 2.17.

Along with FOF # 2.17, FOF # 2.19 is equally problematic but for different reasons. In FOF # 2.19, the trial court discussed how Deputy Black has entered numerous homes under similar circumstances. CP 88-9. This finding is inappropriate for two basic reasons. First, whether Deputy Black has a practice of entering homes as he did in this case is completely irrelevant to whether or not the entry is lawful. This was the basis of the Defendant's objection to the admission of this testimony. RP 55:11-57:24.

The second issue is an extension of the first issue. When a court allows testimony that has zero evidentiary value, but has emotional power, this leads to bad legal decisions.

This problem is exemplified by FOF 2.18 where the trial court made the finding that, prior to finding Mrs. Teulilo's body, Deputy Black "was not investigating a crime but was conducting a community caretaking routine health and welfare check when he entered the residence." CP 88. Defendant understands this FOF to mean that Deputy Black believed he was conducting a

routine health and welfare check on the home. Assuming Defendant correctly understands what this FOF is saying, it is not being challenged as Deputy Black did testify to FOF 2.19. However, if this FOF is saying that community caretaking routine health and welfare checks in a person's home are legal, then Defendant also challenges this FOF as entirely improper as that is not a factual finding at all, but a legal conclusion—a legal conclusion which is also false.

Either way FOF # 2.18, is the fundamental problem with FOF # 2.19. The trial court was under the mistaken belief law enforcement can legally walk into a home to check on a person whenever there is any question about the person's whereabouts. This is not an accurate statement of the law.

Therefore, the court should strike FOF # 2.19 (and possibly 2.18) as it has no evidentiary value and functionally acts as a basis for an improper understanding of the law.

***2. This court should vacate all of the trial court's COL because the trial court: 1) failed to properly consider critical evidence, 2) justified its COL based on legally irrelevant evidence, 3)***

***justified its ruling using false factual pretenses, and 4) used the wrong legal standards.***

Fundamentally, the issue in this case comes down to whether courts mean what they say. When looking at generic warrantless search caselaw, one would think that there is no way for a court to rule that the search in this case was lawful. For example, in *Payton v. New York*, SCOTUS uses forceful language to draw the boundary for searches at the threshold of the home by stating that "physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed." 445 U.S. 573, 585 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980).

The Court, however, did not stop there. The Court continued stating "[i]n terms that apply equally to seizures of property and to seizures of persons, the Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant." *Id* at 590.

Washington State appellate decisions have echoed this strong language, noting that, as with any warrantless search, a warrantless search of a home is presumptively unreasonable. *See example State v. Cotton*, 75 Wn. App. 669, 678 (1994). In addition, as SCOTUS Fourth Amendment decisions illuminate, the Constitutional protections for the home outweigh those of other location.

In *State v. Young*, the Washington State Supreme Court discussed the increased protections of the home, stating "[i]n no area is a citizen more entitled to his privacy than in his or her home." 123 Wn.2d 173, 185, 867 P.2d 593 (1994). These privacy protections increase the closer officers come to the home. *State v. Chrisman*, 100 Wn.2d 814, 820, 676 P.2d 419 (1984) ("the closer officers come to intrusion into a dwelling, the greater the constitutional protection.").

In fact, the protections of article I, section 7 are at their "apex where the invasion of a person's home is involved." *State v. Eisfeldt*, 163 Wn.2d 628, 185 P.3d 580 (2008). *See also State*

*v. Budd*, 186 Wn. App. 184, 202 (2015) (*aff'd* 185 Wn.2d 566 (2016)) ("The home, as a highly private place, receives heightened constitutional protection").

The Washington State Supreme Court has even gone so far as say that "[t]he heightened protection afforded state citizens against unlawful intrusion into private dwellings, places an onerous burden upon the government to show a compelling need to act outside of our warrant requirement." Additionally, in comparison to the federal constitution, "article I, section 7 affords greater protection from an officer's search of a home than the Fourth Amendment." *State v. Johnson* 104 Wn.App. 409, 415 (2001) citing *State v. Ferrier,* 136 Wash.2d 103, 111–13, 960 P.2d 927 (1998).

This is critical distinction when analyzing the recent SCOTUS case of *Caniglia v. Strom.* In *Caniglia*, the Court analyzed under what circumstances a law enforcement officer can enter a private home without a warrant. 141 S.Ct. 1596. In *Caniglia*, SCOTUS addressed a situation where Mr. Caniglia

brought out a firearm and asked his wife to shoot him. *Id* at 1598. Mr. Caniglia subsequently agreed to go by ambulance for a psychiatric evaluation, but allegedly only on the condition that the police not confiscate his firearms. *Id.* However, upon Mr. Caniglia's departure, the police entered the residence and took his firearms. *Id.* Mr. Caniglia sued for unlawful entry into his residence. *Id.* The District Court granted summary judgment in favor of respondents. *Id.* In affirming the summary judgment,

> "the First Circuit extrapolated a freestanding community-caretaking exception that applies to both cars and homes. Accordingly, the First Circuit saw no need to consider whether anyone had consented to respondents' actions; whether these actions were justified by 'exigent circumstances'; or whether any state law permitted this kind of mental-health intervention. All that mattered was that respondents' efforts to protect petitioner and those around him were 'distinct from 'the normal work of criminal investigation,' ' fell 'within the realm of reason,' and generally tracked what the court viewed to be 'sound police procedure.'

*Id* at 1598-9 (internal citations omitted).

In a unanimous opinion, SCOTUS reversed the First Circuit confirming that entry into the home must be based on

either a warrant or exigent circumstances—not community caretaking. *Id* at 1599-1600. Thus, while SCOTUS stated that "the Fourth Amendment does not prohibit all unwelcome intrusion 'on private property,'—only 'unreasonable' ones," the Court clarified that what is "reasonable" depends on the location. *Id* at 1599, 1600 ("What is reasonable for vehicles is different from what is reasonable for homes").

While the State may assert that *Caniglia* does not entirely eliminate the community caretaking exception for homes, this argument is without merit. For example, in *Graham v. Barnette*, the 8th Circuit upheld a home search based on the community caretaking exception to the warrant requirement. 970 F.3d 1075 (8th Circuit 2020). SCOTUS, however, in a two-sentence opinion vacated and remanded for further consideration in light of *Caniglia*. *Graham v. Barnette*, 141 S.Ct. 2719 (Mem), 210 L.Ed.2d 881 (2021).

Similarly in *Sanders v. United States*, SCOTUS vacated and remanded in light of *Caniglia* another case of community

caretaking being used as the basis to enter a home. 141 S.Ct. 1646 (Mem), 210 L.Ed.2d 867 (2021). However, of more significance is Justice Kavanaugh's concurrence, which was joined by Chief Justice Roberts. In this concurrence, Justice Kavanaugh stated, "[i]n this Fourth Amendment case, the Eighth Circuit relied on the 'community caretaking' doctrine to uphold the warrantless entry into a home. This Court's recent decision in *Caniglia v. Strom*, —— U.S., at p. ——, 141 S.Ct., at 1600, rejected that doctrine as applied to homes." *Sanders* at 1646.

Thus, any argument that the community caretaking exception applies to the home is without merit.

What is left for a legal entry into the home is either entry by way of: 1) judicially authorized search warrant, or 2) a valid exigent circumstance. Here no warrant was obtained until after all the searches at issue occurred.

In this case, the trial court functionally rejected the case law listed herein with its COL. Thus they must be vacated.

COL are reviewed de novo. *Sunnyside Valley Irrigation Dist. V. Dickie*, 149 Wn.2d 873, 880, 73 P.3d 369 (2003). In addition, FOF that are mislabeled as COL are also reviewed de novo. *Id citing Hegwine v. Longview Fibre Co., Inc.*, 132 Wn.App. 546, 556, 132 P.3d 789 (2006).

Here, under the de novo standard, all of the trial court's COL must be vacated. As there is 11 COL, they will be addressed herein based on their paragraph number. CP 89-91.

***COL 3.1 (CP 89):*** The numbered factual assertions here are accurate. The issue, is the first clause within which the trial court stated, "Dep. Black's concern for Peggy's health and safety was subjectively reasonable under the totality of the circumstances…" The issue here is that this statement greatly exaggerates Deputy Black's position and doesn't include important facts to the consideration.

Specifically, Deputy Black repeatedly stated that he "had no idea" what was going on, where Mrs. Teulilo was, or what, if

anything had happened. In addition, if Deputy Black was actually concerned for Mrs. Teulilo, his actions make little sense. If he was so concerned, why did he do additional investigation after Sgt. Caille instructed him to enter the residence? The logical conclusion is that he wasn't personally concerned, and only went into the residence because he was told to.

Therefore COL 3.1 should be vacated.

***COL 3.2 (CP 90):*** There are no facts to support the legal conclusion that a reasonable person would believe that Ms. Teulilo was in need of assistance. First, Deputy Black did not even check the neighboring residence 20-25 feet away for Ms. Teulilo. Second, Ms. Teulilo had stated she was leaving her husband. Third, it is possible that Ms. Teulilo had simply gone for a long walk. There are a plethora of other alternatives.

Deputy Black himself repeatedly agreed he "had no idea" if anything was wrong. If the on scene deputy had no idea if anything

was wrong, it is not a reasonable conclusion to believe that a person ***was*** in need of assistance.

Therefore, the FOF do not support this COL and it must be vacated.

***COL 3.3 (CP 90):*** Here, the trial court concluded that Deputy Black's belief that Ms. Teulilo was in the residence was subjectively and objectively reasonable. This COL must be vacated for several reasons. First, Deputy Black did not subjectively believe Ms. Teulilo was "likely" inside the residence as he repeatedly testified that he "had no idea" where Ms. Teulilo was. Second, Deputy Black did not subjectively believe Ms. Teulilo was likely in need of assistance as he repeatedly testified that he "had no idea" what was going on or if there was even anything wrong.

Similarly, there was insufficient facts for an objective finding of either of these facts. As previously discussed, there are multiple very likely explanations of where Mrs. Teulilo was that

would not necessitate her being in the residence or in need of aid. Thus this COL must be vacated.

***COL 3.4 (RP 90):*** Here, it is not entirely clear upon what the trial court based this COL that the entry by Deputy Black was subjectively and objectively reasonable under the totality of the circumstances. In any circumstances, the facts discussed herein do not justify this conclusion—particularly when considering that the standard for reasonableness is dramatically elevated when it comes to the home. Thus this COL must be vacated.

***COL 3.5 (RP 90):*** Here, as parents tell their children, actions speak louder than words. The idea Deputy Black's actions were totally divorced from the criminal investigation is non-sensical considering he cited the prior DV incidents as a basis for potential concern about Ms. Teulilo. CP 89 (COL 3.1). In other words, the only reason prior negative DV incidents would be an issue is if there was a concern that Mr. Teulilo had harmed Ms. Teulilo—

which would be a crime. Looking into a potential crime is, by definition, a criminal investigation. Thus the Deputy Black's actions were not totally divorced from a criminal investigation and this COL must be vacated.

***COL 3.6 (RP 90):*** This conclusion of law is factually inaccurate and legally mistaken. First, if Deputy Black was re-entering the home to look for something he did not see during his first entry, he was necessarily exceeding the scope of the first entry. Otherwise, he would have no need to look again as he had already looked everywhere he was going to look. In other words, the only reason to look for something a second time, is if you are going to look new places that you haven't looked before which, by definition, exceeds the scope of the initial search.

Second, this COL is legally mistaken as search extensions are only allowed if the initial search was legal. *See State v. Smith*, 177 Wn.2d 533, 543, 303 P.3d 1047 (2013). Considering the initial search was not legal, all subsequent searches are also

unlawful absent an independent source of information, which is not present here. *Id* at 539-40.

Therefore this COL must be vacated.

***COL 3.7 (RP 90):*** This COL is directly contrary to the SCOTUS holding in *Caniglia*. *Caniglia v. Strom*, 141 S.Ct. at 1600. Specifically, this COL states that Deputy Black's warrantless entry was justified by a community caretaking health and safety check—something that is patently ***not*** allowed per SCOTUS. *Sander v. United States*, 141 S.Ct. 1646, citing *Caniglia v. Strom*, 141 S.Ct. at 1600. Thus this COL must be vacated.

***COL 3.8 (RP 90):*** This COL is almost comical. It is difficult to understand how the court could say that Deputy Black was entering on an emergency basis to protect or preserve life when Deputy Black "had no idea" if Mrs. Teulilo was even in the trailer of if anything was wrong with her. Further, if there was an emergency, why didn't Deputy Black enter immediately upon

arrival? Why did he wait around, make numerous phone calls if there was an emergency? The facts are clear. There was no emergency. This COL must unquestionably be vacated as there are no facts that support this legal conclusion.

***COL 3.9 (RP 90):*** Here the trial court stated that Deputy Black's initial entry was reasonable where Deputy Black "acted the same as an ordinary citizen would have given the totality of the circumstances. This COL is an attempt to bootstrap the statement in *Caniglia* that an officer may "generally take actions that 'any private citizen might do' without fear of liability. Aside from being irrelevant this COL is based on a misunderstanding of the law. It doesn't matter "what" a person would do, only what they legally can do.

Criminal trespass is committed when a person knowingly enters or remains unlawfully in a building. RCW 9A.52.070. A person "enters or remains unlawfully" when the person enters without license or privilege to do so. RCW 9A.52.010(2).

Keeping in mind that this is what is required for a criminal charge as opposed to a legal right of entry, a person could not legally enter the Teulilo residence under the facts here without, at a minimum attempting to determine if Ms. Teulilo was at the neighbors residence and/or given time to return from a walk, had obtained permission from Mr. Teulilo, etc.

In other words, a person not showing up for work on time is not grounds to enter their home when no one is answering the door. Particularly when the other homeowner is spoken to and permission is not requested. To rule as a matter of law otherwise is to functionally eliminate any protections that are afforded to the home. Thus this COL must be vacated.

***COL 3.10 (RP 90):*** As previously discussed, subsequent entries are only lawful if the original entry was lawful. Here the original entry was not lawful, thus all subsequent entries were unlawful and this COL must be vacated.

***COL 3.11 (RP 90-1):*** Same argument as COL 3.10 above.

***3. Under the Washington State and United States Constitutions, as well as case law, should this court vacate the trial court's ruling and suppress the evidence in this case when the facts at issue are not legal justification for the search conducted on Petitioner's residence?***

Here the law and facts are clear. There is no community caretaking exception to the warrant requirement and there was no emergency. Thus the searches were unlawful.

This is the rabbit hole that the State and trial court have run down in this case. The State and trial court put great emphasis on the testimony of officers at the CrR 3.6 hearing whereby the officers stated that they have entered people's homes on many occasions they considered to be similar, and have seen and/or learned about other instances where private citizens have entered neighbor's homes and found them deceased and called the police. While, as previously discussed, the Defense vehemently objected to this testimony at the hearing as irrelevant, it was clear the State's position is that because law

enforcement and private citizens have similarly entered people's homes in the past, these actions must now be legal as community caretaking. Aside from the complete lack of relevance to this argument, it is not legally sound.

It is fascinating to see the example the SCOTUS cites in *Caniglia* for the circumstance whereby an officer an officer acts within his/her legal rights. Specifically, SCOTUS notes that "officers may ***generally*** take actions that 'any private citizen might do' without fear of liability" and gave the pertinent example of *Florida v. Jardines* where SCOTUS approved an of an officer "approaching a home and knocking on the front door." *Caniglia* at 1599 (emphasis added), citing *Florida v. Jardines*, 569 U.W. 1, 6, 133 S.Ct. 1409, 185 L.Ed.2d 495 (2013).

In other words, instead of saying "of course it would be reasonable to enter a home under the Fourth Amendment in x circumstance", SCOTUS did not even give an example of ***entering*** a home, but ***knocking on the front door*** as something that would be allowed. The Court then addressed *Cady v.*

*Dombrowski*, the case heavily relied upon by the 1st Circuit from which SCOTUS had taken Cert in *Caniglia*. 413 U.S. 433, 93 S.Ct. 2523, 37 L.Ed.2d 706 (1973).

SCOTUS chastised the 1st Circuit for attempting to create a community caretaking rule that exceeds what is allowed by the Fourth Amendment. *Caniglia* at 1599. In analyzing the 1st Circuit's mistake in its *Cady* analysis, SCOTUS stated:

> *"Cady*'s unmistakable distinction between vehicles and homes also places into proper context its reference to 'community caretaking.' This quote comes from a portion of the opinion explaining that the 'frequency with which ... vehicle[s] can become disabled or involved in ... accident[s] on public highways' often requires police to perform noncriminal 'community caretaking functions,' such as providing aid to motorists. 413 U.S. at 441, 93 S.Ct. 2523. But, this recognition that police officers perform many civic tasks in modern society was just that—a recognition that these tasks exist, and not an open-ended license to perform them anywhere."

*Caniglia* at 1599-1600.

Thus, SCOTUS makes it abundantly clear that the home is not a location that is open to common "community caretaking

functions". In other words, the rumors of the warrant requirements death via the community caretaking exception have been greatly exaggerated. When taken in conjunction with article I, section 7's enhanced privacy protections above and beyond those of the United State's Constitutional protection, the legal bar for the State to justify a warrantless search of a home is truly astronomical.

Nevertheless, there are many issues when addressing the law on this topic. For purposes of this case, two intertwining issues are of particular significance. The first issue is that many courts have only given lip service to the concrete barrier privacy protections courts claim are possessed by the home. The second issue is that many courts forget, and/or fail to analyze how quick and easy it is for law enforcement to get a telephonic search warrant.

These two issues are embodied by the simple fact that in the time Deputy Black took attempting to locate Ms. Teulilo while at the Teulilo residence, he could have ***easily*** obtained a

telephonic search warrant. In the alternative, if there was not probable cause for a search warrant, the trial must consider the possibility that Deputy Black should not have entered the home at all.

Here, the trial court failed to analyze, or give any weight to the added protections of the home in its analysis. CP 85-91. In addition, the trial court's FOF and COL leave out a critical piece of information—that Deputy Black had no idea how long it had been since Ms. Teulilo was supposed to be at work—something which Deputy Black testified to at the CrR 3.6 hearing. RP 39:6-8.

In sum, the trial court ruled that the search in this case was legal based on a non-existent exception to the warrant requirement.

The law and the facts are clear. The trial court erred by failing to suppress the evidence and that decision must be vacated and reversed.

## G. CONCLUSION

Based on the argument outlined herein, Mr. Teulilo respectfully requests this court vacate and reverse the decision of the trial court denying Mr. Teulilo's CrR 3.6 Motion to Suppress.

Respectfully submitted this 2nd day of June, 2022.

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## HALL AND GILLILAND PLLC

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