

No. 39969-5-II
THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II

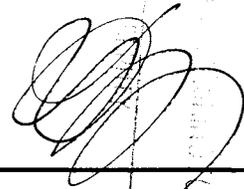
STATE OF WASHINGTON,

Respondent,

vs.

CARL STANLEY

Appellant.

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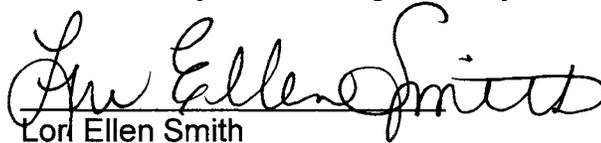
FILED
COURT OF APPEALS

Appeal from the Superior Court of Washington for Lewis County

RESPONSE BRIEF

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STATEMENT OF THE CASE

On July 23, 2009, Lewis County Sheriff's Deputy Matthew McKnight was dispatched to 321 Winston Creek Road on the report of a female yelling for help. RP 4,5. The reporting party also said there was loud banging coming from inside the residence and a male's voice was yelling and cussing. RP 5,9. The reporting party said it sounded like a female was being "choked," and then there was a long pause and then a male's voice screamed, "oh, my God, oh, my God." RP 5,11.

Upon arriving at the residence, Deputy McKnight knocked on the door several times, but was unable to get anyone to come to the door. RP 5. Deputy McKnight thought there might be another entrance, so he walked around the house--but there was not another entrance. Id., 12. As the deputy re-approached the front entrance, he saw that the door was slightly open. RP 5. As the deputy walked towards the door, he saw a female standing just inside the doorway. RP 5. The female was later identified as Ms. Guerra. RP 5,6. Deputy McKnight told Ms. Guerra that he was dispatched to the residence for a possible dispute and he asked if there was anyone else inside the house. RP 6. Ms. Guerra said

that her boyfriend was there. RP 6. Ms. Guerra did not appear to be upset or injured. RP 12,13

Deputy McKnight asked Ms. Guerra where her boyfriend was, and she looked towards the hallway area. RP 6. Deputy McKnight told Ms. Guerra that he needed to come inside the residence to check on the welfare of all parties involved. RP 6. Deputy McKnight explained that in a possible domestic violence situation, it is not uncommon for either the victim or the aggressor to state the other person wasn't there, or there were additional persons there that they don't want police to know about. RP 6,7. Deputy McKnight explained that in a domestic dispute he needs to verify that all parties inside are okay. RP 15,16. Deputy McKnight also said, "when we go to a house in a domestic situation, they can change from calm demeanor to angry very quick." RP 19. Deputy McKnight then took a few steps inside the residence, when he saw the defendant, Mr. Stanley, walking down the hallway towards the officer. RP 7.

As Deputy McKnight was talking to Mr. Stanley about the incident, the deputy was also looking around to make sure there weren't any weapons or any other parties in the residence. RP 7,21. As Deputy McKnight was looking around, Mr. Stanley kept

"sidestepping between" the deputy "and the coffee table obstructing [the] view of the coffee table." RP 7,20. The deputy was concerned about this, fearing there might be a weapon on the coffee table, or something else that could be used to harm someone. RP 7,8,21. At this time, Deputy McKnight was at the scene by himself. RP 8. Deputy McKnight then walked past Mr. Stanley to see what was on the table--he said he was about "shoulder to shoulder" with Stanley when he could see what was on the table. RP 8. Deputy McKnight then saw "green vegetable matter [he] believed to be marijuana, a glass pipe, and a small plastic bag with a white powdery substance in it" on the coffee table. RP 8. Deputy McKnight thought that the white substance was cocaine, and this turned out to be true, as it field-tested positive for cocaine. RP 8. Deputy McKnight had not had contact with Mr. Stanley in the past. RP 20.

Mr. Stanley testified at the 3.6 hearing. Stanley said that on the date in question, when officers came to the door, "[w]e were laying in bed just about to fall asleep. . . . it was early in the morning. We stayed out all night then we came home, and so it was pretty early in the morning when we went to bed." RP 23. Stanley said they heard a loud banging on the door, and Stanley

said to Ms. Guerra, "it is probably the cops" because they had just gotten into an argument. RP 23. Stanley said he went to use the restroom and Ms. Guerra went to answer the door. RP 24. Mr. Stanley said when he came to the door, Ms. Guerra was talking to Deputy McKnight and that the deputy had asked Ms. Guerra to unzip her jacket and take it off so the deputy could see if Ms. Guerra had any injuries. RP 27. Mr. Stanley said that the deputy then walked into the house between him and Ms. Guerra. RP 28. Stanley said the deputy asked him what he was trying to hide. RP 28. Stanley said the deputy then went over to the table and picked up a "white baby sock that the coke matter was in." RP 29. The deputy then arrested Mr. Stanley. RP 29. The residence is a trailer with a living room that is about 12 x 12, and a long hallway that goes all the way back to the end of the trailer--about 25 feet. RP 30. Ms. Guerra testified consistent with Mr. Stanley. RP 32-37.

Deputy McKnight said that he did not ask Ms. Guerra to remove her jacket, but that Sergeant Wetzel did. RP 39. This concluded the testimony at the suppression hearing. The trial court denied the suppression motion, and findings were entered. After a stipulated facts trial, Stanley filed a timely notice of appeal. The

State submits this brief in response to Stanley's opening appellant's brief.

A. THE TRIAL COURT DID NOT ERR WHEN IT DENIED STANLEY'S MOTION TO SUPPRESS BECAUSE THE DEPUTY'S WARRANTLESS ENTRY WAS PROPER UNDER THE EMERGENCY / COMMUNITY CARETAKING EXCEPTION TO THE WARRANT REQUIREMENT.

Stanley argues that the trial court erred when it denied his motion to suppress, arguing, in essence, that the officer's initial entry was not justified under the community caretaking, protective sweep, or exigent circumstances exceptions to the warrant requirement. The State disagrees.

The Fourth Amendment to the United States Constitution and article I, section 7 of the Washington Constitution prohibit unreasonable searches and seizures. State v. Johnson, 104 Wn.App. 409, 414, 16 P.3d 680 (2001). Warrantless searches or seizures inside a residence are *per se* unreasonable, but there are several well-settled exceptions, including the emergency or community caretaking exception, and the exigent circumstances exception to the warrant requirement. Id., at 44-45; State v. Terrovona, 105 Wn.2d 632, 644, 716 P.2d 295 (1986); State v. Bakke, 44 Wn.App. 830, 832-40, 723 P.2d 534 (1986). It is the

State's burden to establish an exception to the warrant requirement.

State v. Potter, 156 Wn.2d 835, 840, 132 P.3d 1089 (2006).

The emergency exception recognizes the "community caretaking function of police officers, and exists so officers can assist citizens and protect property." State v. Schlieker, 115 Wn.App. 264, 270, 62 P.3d 520 (2003)(quoting State v. Menz, 75 Wn.App. 351, 353, 880 P.2d 48 (1994)). Put differently, the emergency or community caretaking exception justifies a warrantless entry by police as part of their responsibility to aid persons believed to be in danger of physical harm or death. Mincey v. Arizona, 437 U.S. 385, 392-93, 98 S.Ct. 2408, 57 L.Ed.2d 290 (1978); State v. Thompson, 151 Wn.2d 793, 802, 92 P.3d 228 (1004); State v. Gocken, 71 Wn.App. 267, 275, 857 P.2d 1074 (1993).

This exception applies to investigations of possible domestic violence, because domestic violence disturbances are inherently volatile. State v. Raines, 55 Wn. App. 459, 465-66, 778 P.2d 538 (1989)(officers responding to a domestic violence call "have a duty to ensure the present and continued safety and well-being of the occupants"); Johnson, 104 Wn.App. at 418-419(police responding

to domestic violence call justified in entering the residence to talk to apparent victim and to check for other potential victims).

To invoke the emergency exception, the State must show that the claimed emergency was not a pretext for conducting an evidentiary search. State v. Lynd, 54 Wn.App. 18, 21, 771 P.2d 770(1989). This showing is made if (1)the officer subjectively believed that someone likely needed assistance for health or safety reasons, (2) a reasonable person in the same situation would similarly believe that there was a need for assistance, and (3) there was a reasonable basis to associate the need for assistance with the place searched. State v. Kinzy, 141 Wn.2d 373, 386-878, 5 P.3d 668 (2000). When applying these criteria, we view the officers' actions in light of how the situation appeared to them *at the time*. Lynd, 54 Wn.App. at 22.

The facts of the present case satisfy all of the emergency or community caretaking exception criteria, and the deputy's warrantless entry was lawful under these facts. Here, Deputy McKnight was dispatched to a possible domestic violence incident upon the report of a female yelling for help, with loud banging coming from inside the house, and a male's voice yelling and cussing. RP 4,5,9. The reporting party also said it sounded like a

female was being "choked," and that then there was a long pause, and then a male's voice screamed, "oh, my God, oh, my God." RP 5,11. It was these facts that the deputy had in his mind as he proceeded to the location of the reported incident--facts that Deputy McKnight reasonably interpreted to mean a person or persons could be in danger inside the residence at the location.

Upon arriving at the residence, Deputy McKnight knocked on the door several times, but was unable to get anyone to come to the door. RP 5. This would also be concerning--since loud banging and yelling was recently heard coming from the residence--but now no one came to the door. RP 3-5. Not getting an answer, Deputy McKnight thought there might be another entrance, so he walked around the house--but there was not another entrance. Id., 12. As the deputy re-approached the front entrance, he saw that the door was then slightly open. RP 5. As the deputy walked towards the door he saw a female standing just inside the doorway. RP 5. The female was later identified as Ms. Guerra. RP 5,6. Deputy McKnight told Ms. Guerra that he was dispatched to the residence for a possible dispute and he asked if there was anyone else inside the house. RP 6. Ms. Guerra said that her boyfriend was there. RP 6. Ms. Guerra did not appear to be upset or injured. RP 12,13.

However, Deputy McKnight wanted to be sure there was no one else injured, and wanted to find out where Ms. Guerra's boyfriend was.

Deputy McKnight asked Ms. Guerra where her boyfriend was, and she looked towards the hallway area. RP 6. Deputy McKnight told Ms. Guerra that he needed to come inside the residence to check on the welfare of all parties involved. RP 6. Deputy McKnight then took a few steps inside the residence, when he saw the defendant, Mr. Stanley, walking down the hallway towards the officer. RP 7. As Deputy McKnight was talking to Mr. Stanley about the incident, the deputy was also looking around to make sure there weren't any weapons or any other parties in the residence. RP 7,21. As Deputy McKnight was looking around, Mr. Stanley kept "sidestepping between" the deputy "and the coffee table obstructing [the] view of the coffee table." RP 7,20. The deputy was concerned about this, fearing there might be a weapon on the coffee table, or something else that could be used to harm someone. RP 7,8,21. At this time, Deputy McKnight was still at the scene alone. RP 8.

Upon seeing that Mr. Stanley appeared to be trying to prevent the deputy from seeing something in the room, Deputy

McKnight walked past Mr. Stanley to see if what might be on the table--he said he was about "shoulder to shoulder" with Stanley when he could see what was on the table. RP 8. Deputy McKnight then saw "green vegetable matter [he] believed to be marijuana, a glass pipe, and a small plastic bag with a white powdery substance in it" on the coffee table. RP 8. Deputy McKnight thought that the white substance was cocaine, and this turned out to be true, as it field-tested positive for cocaine. RP 8. Deputy McKnight's actions were proper under these facts, based upon well-established exceptions to the warrant requirement.

As Deputy McKnight further explained at the 3.6 hearing, in a possible domestic violence situation, it is not uncommon for either the victim or the aggressor to state the other person wasn't there, or there were additional persons there that they don't want police to know about., or to be otherwise evasive with police RP 6,7; See also State v. Jacobs, 101 Wn.App. 80, 84, 2 P.3d 974 (2000)(noting that "victims of domestic violence are sometimes uncooperative with police because they fear retribution from their abusers.>"). Thus, despite Ms. Guerra's acting like everything was just fine, it was entirely reasonable for Deputy McKnight to further investigate the circumstances at the residence--given his knowledge of

domestic violence issues. After all, once summoned to the scene of a possible emergency, the police can investigate suspicious circumstances and are not required to accept statements at face value. Raines, 55 Wn. App. at 465-66. Deputy McKnight also said that in a domestic dispute he needs to verify that all parties inside are okay. RP 15,16. Deputy McKnight further said, "when we go to a house in a domestic situation, they can change from calm demeanor to angry very quick." RP 19.

Indeed, if an officer has a good faith belief that someone's health or safety may be endangered, the officer could be considered negligent in his duties by not acting quickly to determine whether someone needed help. Donaldson v. City of Seattle, 65 Wn.App. 661, 667, 831 P.2d 1098 (1992)(The Domestic Violence Protection Act imposes a duty on police to protect victims of domestic violence); Raines, 55 Wn. App. at 465-66(officers responding to a domestic violence call "have a duty to ensure the present and continued safety and well-being of the occupants"); Johnson, 104 Wn.App. at 418-419(police responding to domestic violence call justified in entering the residence to talk to apparent victim and to check for other potential victims); Menz, 75 Wn.App. at 351(warrantless entry valid where police responded to a

domestic violence report and the front door of the home was open and lights and t.v. were on, but no cars were in driveway and no one answered the door).

The bottom line here is that all of the facts, as they appeared to Deputy McKnight at the time, having been dispatched to a location for a report of a possible domestic violence incident, justified Deputy McKnight's action of entering the residence to make sure everyone was safe. Raines, supra; Johnson, supra. "The primary duty of peace officers, when responding to a domestic violence situation, is to enforce the laws allegedly violated and to protect the complaining party." RCW 10.99.030(5). Here, Deputy McKnight did not know upon first arriving at the residence *who* needed "protection"--he only knew that various sounds indicating a possible assault were heard coming from inside the residence. RP 4,5,9,11. But such facts reasonably gave Deputy McKnight a proper basis to further investigate the situation to determine whether anyone inside the residence was hurt.

Then, when Mr. Stanley appeared to want to block the deputy from seeing something inside the room, the deputy could reasonably be concerned that there might be an easily-accessible weapon there--which could be used to harm either the deputy or

Ms. Guerra, or Mr. Stanley for that matter. Unfortunately, weapons most certainly have played a part in many domestic violence incidents--and used against either a victim or an officer or the suspect himself. Anyone with access to the news would know of this possible danger in cases involving domestic violence. So, it certainly cannot be unreasonable for a trained law enforcement officer to have the same concerns when investigating such a case.

Because the facts surrounding the warrantless entry into the residence in this case meet the criteria for the emergency or community caretaking exception to the warrant requirement, the warrantless entry by Deputy McKnight was proper. "It is well-established that the police's warrantless entry onto the premises in response to a 911 call, or a report of someone needing assistance, is justifiable under the emergency aid exception." State v. Schroeder, 109 Wn.App. 30, 39, n. 6, 32 P.3d 1022 (2001)(citations omitted). Such facts existed here, and Deputy McKnight's warrantless entry was justified.

Stanley also claims that the community caretaking exception has not been "explicitly adopted by the Washington Supreme Court," citing Kinzy, 141 Wn.2d at 387 n.38, for this proposition. Brief of Appellant. 6. But neither has any case made the giant leap

suggested by Stanley--that this Court should hold that under Article I, Section 7, "'community caretaking' cannot justify the admission of evidence seized following a warrantless search." Id. This approach is illogical, impractical, dangerous, and unsupported by any on-point authority.

Moreover--given the fact that the term "community caretaking exception" and "emergency exception" are commonly discussed in the same breath--it seems highly unlikely that any Court would rule that the community caretaking exception (itself an "emergency" based exception) is incompatible with Article I, Section 7. See e.g., Johnson, 104 Wn.App. at 414 ("[t]he emergency exception *recognizes the 'community caretaking function of police officers*, and exists so officers can assist citizens and protect property")(all emphasis added)(*quoting State v. Menz*, 75 Wn.App at 353. Indeed, it is frankly unimaginable that the Washington Supreme Court would completely "toss out" the community caretaking exception--even under Article I, Section 7. In fact, the Johnson Court was similarly urged to severely limit the scope of the emergency exception--which allows the police to carry out their "community caretaking function" under Article I, Section 7. However, the Johnson Court wisely refused to adopt such a

restricted approach to the emergency exception under Article I, Section 7, correctly noting that such a standard "would frustrate the purpose of the emergency exception" and adhering "to the federal test." Johnson at 685.

And, most importantly, all of these same arguments Stanley makes to dispense with the community caretaking exception under Article I, Section 7 (including the "least restrictive means" argument), were made by his appellate counsel, and were resoundingly rejected, in this Court's well-reasoned, practical, opinion in State v. Hos 154 Wash.App. 238, 245-249, 225 P.3d 389 (2010). These arguments should likewise be rejected here. For the very same reasons that Mr. Stanley claims his "least restrictive means" argument does not defeat the purpose of the exception because it "only prohibits officers from intruding unnecessarily"--neither does the community caretaking function violate Article I, Section 7. And that is because the community caretaking exception has never been allowed to run slipshod over our citizens' heightened privacy rights in their homes. See e.g., Schlieker, 115 Wn.App. at 270(reversing the trial court's community caretaking based denial of a suppression motion); State v. Lawson, 135 Wn.App. 430, 144 P.3d 377 (2006)(rejecting trial court's

community caretaking based suppression ruling); State v. Williams, 148 Wn.App. 678, 201 P.3d 371 (2009)(rejecting, *inter alia*, community caretaking exception argument). In short, Mr. Stanley's arguments that the community caretaking exception is incompatible with Article I, Section 7, are not persuasive, and this Court should agree.

B. THE TRIAL COURT DID NOT "MISCHARACTERIZE THE EVIDENCE" IN ADOPTING FINDING OF FACT NO. 1.3.

Stanley also claims that finding of fact no. 1.3 does not reflect the actual testimony presented at the suppression hearing. This argument is also without merit.

A trial court's factual findings on a motion to suppress evidence will be upheld if they are supported by substantial evidence. State v. Crane, 105 Wn.App. 301, 305-06, 19 P.3d 1100 (2001), *overruled on other grounds* by State v. O'Neill, 148 Wn.2d 564, 62 P.3d 489 (2003). Substantial evidence 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).

In the present case, Mr. Stanley argues that the finding of fact which states, "the reporting party heard a sound that sounded like someone was being strangled and then everything was silent,"

is not supported by the evidence and "mischaracterizes the evidence." Brief of Appellant 19. First of all, there was no objection to this finding when these findings were entered in the trial court. RP 48,49. Secondly, for lack of a "loftier" phrase, Mr. Stanley is splitting hairs.

The testimony by the deputy at the suppression hearing was that in a follow-up 911 call, the reporting party further said that, "they thought they heard the female being choked, *there was a long, quiet pause*, then heard a male scream, oh my God, oh my God." RP 5 (emphasis added). Now, the State may be going out on a limb here, but, without burdening us with quotes from Webster's, it is probably safe to say there is no discernible difference between the meaning of the words "choked" (the word used in the testimony) and "strangled" (the word used in the findings). *Ergo*, there is no discernible difference between "hearing a sound like the female was being choked" and "hearing a sound that sounded like someone was being strangled." Nor can the State see any discernible difference between the meaning of "there was a long, quiet pause" (testimony) and "then everything was silent" (finding of fact). RP 5; CP 28. That Mr. Stanley can now think of some other imaginative interpretation of this finding does

not mean the trial court's finding is unsupported by the evidence. The finding made by the trial court regarding what the reporting party heard coming from Mr. Stanley's residence is supported by the only unobjected-to testimony presented, which resulted in an unobjected-to finding using synonymous terminology. RP 5; CP 28. Stanley's argument to the contrary is without merit, and this Court should uphold the trial court's findings and ruling denying the suppression motion.

CONCLUSION

For all of the foregoing reasons, this Court should affirm the trial court's ruling denying Mr. Stanley's motion to suppress, and should affirm his conviction in all respects.

RESPECTFULLY SUBMITTED this 28th day of June, 2010.

L. MICHAEL GOLDEN
LEWIS COUNTY PROSECUTING ATTORNEY

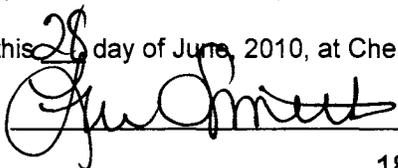
by:


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Declaration of Service

The undersigned certifies that a copy of the document to which this certificate is attached was served upon the Appellant by U.S. mail, postage prepaid, addressed to Appellant's Attorney as follows: Jodi R. Backlund, ("Backlund & Mistry"), 203 E. Fourth Avenue, Suite 404, Olympia, WA 98501.

Dated this 28 day of June, 2010, at Chehalis, Washington.



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