

NO. 82238-7

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

PATRICIA SCHULTZ

Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF  
CLALLAM COUNTY, STATE OF WASHINGTON  
Superior Court No. 05-1-00114-2

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*Supplemental* BRIEF OF RESPONDENT

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## I. COUNTERSTATEMENT OF THE ISSUES<sup>1</sup>

1. Whether the emergency exception to the warrant requirement allows police officers to enter a residence in order to provide assistance to potential victims of domestic violence when (1) a concerned neighbor reported a domestic disturbance coming from an apartment, (2) the responding officers heard a male and a female yelling from behind closed doors, (3) the female tenant appeared visibly upset and had red marks on her face and neck, and (4) the female tenant lied about the other male's presence in the apartment.
2. Whether a police officer, who responds to a domestic violence call and interviews one of the disputants separately, may enter a residence to confer with his or her partner who interviewed a second disputant inside the residence.

## II. STATEMENT OF THE CASE

### A. PROCEDURAL HISTORY

The State charged the defendant, PATRICIA SCHULTZ (Schultz), with possession of methamphetamine. Clerk's Papers (CP) 25. Prior to trial, Schultz moved the superior court to suppress the evidence against her, which police discovered when they investigated a report of a possible domestic violence situation. Report of Proceedings (RP) 8. The superior court denied the motion to suppress, reasoning that the officers were in a lawful position to observe the drug paraphernalia, which served the basis for a search warrant, because the two officers were investigating an incident of domestic violence.

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<sup>1</sup> RAP 13.7(b) limits this Courts review only to those issues properly raised in the Defendant's petition for review as directed in RAP 13.4(c)(5). State v. Korum, 157 Wn.2d 614, 624, 141 P.3d 13 (2006). Because Schultz's petition only challenged the officers' entry into her apartment, the State confines its response to that specific issue. The State does not address the concerns presented to the Court of Appeals regarding probable cause for the ultimate arrest or the scope of the subsequent search warrant.

RP 145. The superior court convicted Schultz based on stipulated evidence. CP 6-19. Schultz appealed. CP 5. On September 19, 2008, the Court of Appeals affirmed the judgment and sentence in an unpublished opinion. See Petition for Review – Appendix. Schultz petitioned this Court for review. See Petition for Review. On March 31, 2009, this Court granted review.

B. FACTS<sup>2</sup>

On April 4, 2004, Sequim police officers, Kori Malone (Malone) and Michael Hill (Hill), responded to an apartment complex to investigate a possible domestic disturbance.<sup>3</sup> RP 11-13, 25, 59-60, 136. A concerned neighbor contacted the police and requested that officers investigate a situation where a male and female were yelling and arguing in their apartment. RP 12-13, 26, 60, 73, 136. The tenants of the apartment in question were Patricia Schultz (Shultz) and Sam Robertson (Robertson). RP 136.

When Malone and Hill arrived at the apartment, they waited on the porch outside the front door and listened to a male and female shouting. RP 13, 46, 60-61, 73-74. Malone heard the male yell that he “just wanted to leave and needed space.” RP 12-13, 26, 109, 136-37. Hill recalled that the male shouted that he “wanted to be left alone.” RP 61, 74, 109.

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<sup>2</sup> The report of proceeding citations are to the CrR 3.6 hearing, which the trial court held on August 2, 2005.

<sup>3</sup> As a matter of police policy, investigating officers do not respond to domestic violence calls alone. RP 25.

When Malone knocked on the door, Shultz answered. RP 14, 27, 61, 93. Shultz appeared agitated and flustered. RP 16-17, 49, 62, 99, 138. Malone asked where the male occupant was in the apartment, but Shultz replied that no one else was present. RP 14, 27, 61-62, 75, 93, 137. Malone informed Shultz that “[she and her partner had] heard a male voice [coming from the apartment].” RP 14, 27, 62, 93. Shultz opened the door wider, stepped back from the threshold, and called to Robertson.<sup>4</sup> RP 14-15, 27, 75, 137. While the officers waited outside, Robertson exited a second bedroom. RP 14, 27, 76, 137.

The officers interviewed the disputants separately. RP 63. Hill invited Robertson to speak with him, and he interviewed the disputant outside on the apartment’s porch. RP 14-16, 28, 63, 76-77, 106, 138. Because the porch was not large enough for two people to stand without crowding one another, Hill stood in the threshold of the doorway and Robertson stood a little further outside. RP 63. Robertson told Hill that he had argued with Schultz about the locks on the apartment door, and that there had not been any assault between the two tenants. RP 80, 139. Hill testified that the focus of his investigation

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<sup>4</sup> Shultz gave a slightly different account: “Malone and Hill said they heard [a male’s voice] through the door and they were coming in.” RP 93. At that point, she testified that “[t]hey were coming in, I stepped to the side.” RP 93. She also testified that she “yelled, ‘Sam, they’re coming in.’” RP 93-94.

was to make sure there had not been any incidents of violence.<sup>5</sup> RP 64.

When Schultz stepped away from the door she opened the door wider and Malone followed her inside.<sup>6</sup> RP 15, 77, 137. Malone did not force her way inside the apartment and Schultz did not object to the officer's presence. RP 15, 64, 101. Malone testified that she entered the apartment with the sole intent to (1) investigate a possible domestic violence situation that existed between Schultz and Robertson, and (2) make sure that Schultz was alright. RP 15, 28, 45, 49-50. Malone interviewed Schultz inside the apartment's main living area. RP 14-16, 138.

Inside the apartment, Malone asked Schultz to sit down. Malone made the request because Schultz "was moving around a lot and talking fast and agitated and trying to pick things up inside the apartment[,] and [Malone] wanted her to sit down for officer safety reasons and to try to get her to focus so [they] could talk." RP 16, 45, 138. Schultz ignored Malone's request and continued to move about, grabbing things in the apartment. RP 16, 45, 138-39. Malone cautioned Schultz that if she did not sit still, Malone would have

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<sup>5</sup> Hill testified:

Our duty [was] to respond to the call, investigate fully if there had been an incident of domestic violence, and make a determination if there was or wasn't a crime. RP 88.

<sup>6</sup> The trial court found that the officers did not request permission to enter the apartment, and that Schultz did not verbally grant the officers permission to enter. RP 138.

to restrain her to ensure officer safety.<sup>7</sup> RP 18, 29-31.

Malone noticed that the skin around Schultz's neck was red and blotchy. RP 16-17, 32, 100, 138. Malone believed this was a sign that an assault may have occurred. RP 16-17, 32, 100, 138. Malone asked Schultz if Robertson had assaulted her. RP 17, 32. Schultz denied any assault and insisted her neck was red only because she was upset. RP 17, 32, 98. Schultz explained that she and Robertson had been arguing because he had not changed the locks on the door. RP 18, 32, 98, 139.

When Hill came into the apartment to confer with Malone,<sup>8</sup> Schultz leaned out of her chair and grabbed more items off the table. RP 19, 32-33, 65, 83, 139-40. Hill noticed that Schultz had uncovered a gun and a marijuana pipe. RP 19-20, 34, 39, 48, 66, 83, 140. Hill removed, unloaded, and secured the gun. RP 20, 67, 140. Schultz denied that she owned the pipe. RP 21, 68-69, 140. Hill asked Schultz if he could check the table for other

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<sup>7</sup> Malone testified:

In the particular context of responding to a possible domestic disturbance, domestic disturbance[s] are per our training highly emotional and volatile situations and we always don't know what could happen and we try to prevent anything from happening by being as safe as possible, which includes trying to control movements of both victims and possible suspects. RP 49.

<sup>8</sup> Hill explained that he entered the apartment to confer with Malone and see if the recollections of the two disputants were consistent. RP 65. Schultz did not object to Hill's entrance. RP 65, 88.

narcotics.<sup>9</sup> RP 21, 69. Schultz initially agreed, but then stood up and began grabbing items off the table. RP 21, 36-37, 70, 101-02. Malone handcuffed Schultz to prevent her from removing any evidence or other weapons. RP 21-22, 38, 42, 140-41. Malone testified that Schultz was not under arrest at this point.<sup>10</sup> RP 23, 42-43.

Schultz requested her anti-anxiety medication, and Hill and Robertson went to look for it. RP 23, 42-43, 70, 84. At some point, Hill also observed a small tin container with burnt residue and a bloody band-aid inside, which he recognized from his training and experience to be consistent with methamphetamine use. CP 41. While Hill and Robertson were looking for the medication, Robertson admitted that he had smoked marijuana with the pipe earlier that day. RP 70-71, 140. Hill arrested Robertson for possession of drug paraphernalia – unlawful use. RP 23, 43, 71, 140.

After Robertson's arrest, Schultz insisted that the officer obtain a search warrant before they looked at the items on the table. RP 24, 39, 44, 71, 85, 102, 141. After Hill obtained a valid warrant,<sup>11</sup> Malone and Hill searched

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<sup>9</sup> Hill also asked for Robertson's permission to search the immediate area for narcotics. RP 70. Robertson gave his permission to search the apartment. RP 70, 84. At no point did Robertson object to the officers' presence in the apartment. RP 88, 110.

<sup>10</sup> The trial court found that Schultz was under arrest once Malone restrained her with handcuffs. RP 141.

<sup>11</sup> The trial court found that Schultz withdrew her consent to search the table and that the officers did not rely on her previous consent to search the immediate area. RP 141.

the apartment and discovered methamphetamine and marijuana. RP 24, 41, 71-72, 141-42.

### III. ARGUMENT

#### A. THE OFFICERS LAWFULLY ENTERED THE APARTMENT

When the defendant fails to challenge the trial court's findings of fact following a motion to suppress, they become verities on appeal. State v. Kinzy, 141 Wn.2d 373, 5 P.3d 668 (2000); State v. Hill, 123 Wn.2d 641, 644, 870 .2d 313 (1994); State v. Johnson, 104 Wn. App. 409, 413-14, 16 P.3d 680 (2001), *review denied* 143 Wn.2d 1024, 25 P.3d 1020 (2001). This Court reviews only those facts to which the defendant assigns error. Id.

When the defendant does challenge the findings of fact, appellate courts review the record for substantial evidence that support the findings. State v. Mendez, 137 Wn.2d 208, 214, 970 P.2d 722 (1999); State v. Lawson, 135 Wn. App. 430, 434, 144 P.3d 3777 (2006). Substantial evidence is evidence in the record that is sufficient "to persuade a fair-minded, rational person of the truth of the finding." Mendez, 137 Wn.2d at 214; Hill, 123 Wn.2d at 644; Lawson, 135 Wn. App. at 434.. This Court reviews the legal conclusions of the trial court de novo. State v. Levy, 156 Wn.2d 709, 733, 132 P.3d 1076 (2006).

In her petition for review, Schultz argues that the facts did not give

rise to a reasonable belief that exigent circumstances existed to allow the officers to enter her apartment without a warrant. Petition for Review at 6. Schultz also argues that Officer Hill's entry into the apartment was improper because there was no need for him to confer with his partner regarding the domestic violence investigation. Petition for Review at 7.

This Court should affirm both the superior court and the Court of Appeals because there is substantial evidence in the record to support the officers' lawful entry: the officers had a reasonable belief that someone in the apartment was a potential victim of domestic violence and required assistance; the officers had a legal duty to investigate and confer with one another until they were convinced that the emergency had abated; and the tenants consented to the officers' entry.

The Fourth Amendment of the United States Constitution establishes the people's right "to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." Article I, section 7 of the Washington State Constitution provides: "No person shall be disturbed in his private affairs, or his home invaded, without authority of law." These constitutional provisions protect both a person's home and his or her private affairs from warrantless searches. State v. Kull, 155 Wn.2d 80, 84, 118 P.3d 307 (2005).

This Court presumes that a warrantless search of a constitutionally protected area is per se unreasonable absent proof that one of the well established exceptions applies.<sup>12</sup> Katz v. United States, 389 U.S. 347, 357, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1967); Kull, 155 Wn.2d at 85; State v. Khounvichai, 149 Wn.2d 557, 562, 69 P.3d 862 (2003); State v. Ladson, 138 Wn.2d 343, 349, 979 P.2d 833 (1999); Lawson, 135 Wn. App. at 434. The State bears the burden of establishing an exception to the warrant requirement. State v. Potter, 156 Wn.2d 835, 840, 132 P.3d 1089 (2006).

As noted above, the warrant requirement is subject to narrowly drawn exceptions. State v. Kull, 155 Wn.2d 80, 85, 118 P.3d 307 (2005); Johnson, 104 Wn. App. at 414. One important exception that allows police to enter a residence without a warrant occurs when officers face exigent circumstances (emergency exception). Lawson, 135 Wn. App. at 434. This exception recognizes the “community care-taking function of police officers, and exists so officers can assist citizens and protect property.” Lawson, 135 Wn. App. at 434 (quoting State v. Menz, 75 Wn. App. 351, 353, 880 P.2d 48 (1994), *review denied*, 125 Wn.2d 1021 (1995)).

The community care-taking exception applies to situations involving either emergency aid or routine checks on health and safety. Kinzy, 141

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<sup>12</sup> Under the Washington State Constitution, the home receives heightened constitutional

Wn.2d at 386. But compared with routine checks on health and safety, the emergency aid function involves circumstances of greater urgency and searches resulting in greater intrusion. Id. at 387. When the State invokes the emergency aid exception, it must satisfy the appellate courts that the claimed emergency was not simply a pretext for conducting a criminal evidentiary search. Lawson, 135 Wn. App. at 436; Johnson, 104 Wn. App. at 414. The emergency exception applies when:

- (1) The officer subjectively believes that someone likely needs 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.

Kinzy, 141 Wn.2d at 386-87, (quoting Menz, 75 Wn. App. at 354). In support of these factors, the officer must be able to articulate facts and reasonable inferences. Johnson, 104 Wn. App. at 415. If these factors are met, and the search is not a pretext for an investigation, no greater protection against an unreasonable search is needed. Id. at 418.

When the appellate courts analyze the requisite factors for the emergency exception, they review the officer's actions in light of the situation

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protections. State v. Kull, 155 Wn.2d 80, 84, 118 P.3d 307 (2005).

as it appeared to the officer at the time of the incident. Lawson, 135 Wn. App. at 435 (citing State v. Lynd, 54 Wn. App. 18, 22, 771 P.2d 770 (1989)).

The appellate courts have generally endorsed an emergency entry where the officers reasonably believe that a specific person or persons needs immediate help for health or safety reasons. Leffler, 142 Wn. App. 175, 182, 178 P.3d 1042 (2007).

The appellate courts determine whether police officers encountered exigent circumstances at the scene based on the specific facts involved. State v. Raines, 55 Wn. App. 459, 464, 778 P.2d 538 (1989). Whether a police officer acted in a reasonable manner depends on what he or she knew at the time of the search. State v. Lynd, 54 Wn. App. 18, 22, 771 P.2d 770 (1989).

A survey of Washington law reveals two factors that must be present for the emergency exception to apply. First, there must be a substantial risk of serious injury to individuals.<sup>13</sup> Leffler, 142 Wn. App. at 183. Second, the risk to persons must be imminent. Leffler, 142 Wn. App. at 184. In sum, the emergency exception applies where there is an imminent risk of substantial injury to another individual. Id.

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<sup>13</sup> The Ninth Circuit defines “exigent circumstances” as “those circumstances that would cause a reasonable person to believe that entry... was necessary to prevent physical harm to the officers and other persons, the destruction of relevant evidence, the escape of the suspects, or some other consequence improperly frustrating legitimate law enforcement efforts.” United States v. Echegoyen, 799 F.2d 1271, 1278 (9th Cir. 1986) (quoting United States v. McConney, 728 F.2d 1195, 1199 (9th Cir.), cert. denied, 469 U.S. 824 (1984).

Finally, the Washington State Legislature has recognized that domestic violence is a serious crime with serious consequences for both the victim and society. RCW 10.90.010. “Police officers responding to a domestic violence report have a duty to ensure the present and continued safety and well-being of the [disputants].” Raines, 55 Wn. App. at 465; *See also* RCW 10.99.010. RCW 10.99.030(6)(b) requires police officers who respond to a domestic violence call to “take a complete offense report including the officer’s disposition of the case.” Thus, within these legal bounds, the emergency exception allows police officers to enter a residence to provide immediate assistance to potential victims of domestic violence.<sup>14</sup>

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<sup>14</sup> *See e.g.* Johnson, 104 Wn. App. at 412-13 (The emergency exception justified warrantless entry when officers received a domestic violence report from the victim’s relative that the victim had locked herself in the bathroom; the defendant was slow to acknowledge victim’s presence; the victim was still in the bathroom; and the defendant had a bloody cut on his wrist.); Menz, 75 Wn. App. at 353 (The warrantless entry was valid where police responded to a domestic violence report and the front door of the home was open; the lights and a television were on; no cars were in the driveway; and no one responded when the officers knocked and called out); Raines, 55 Wn. App. at 460-61, 464-66 (The emergency exception justified warrantless entry into an apartment when officers received a neighbor’s report of domestic violence; officers knew the male had a violent temper; officers saw a man in the apartment window; the adult female and her child appeared to be unharmed; the female lied about the defendant’s presence; and the defendant was hiding in the bedroom when officers arrived.); Lynd, 54 Wn. App. at 22-23 (The emergency exception justified warrantless entry into defendant’s home to investigate the well-being of the wife when a police officer had knowledge of a 911 hang-up call from defendant’s home; the phone line remained busy after the 911 call; a domestic violence incident between spouses had just occurred; the defendant was loading his things into his vehicle and preparing to leave; and the defendant did not want the officer to enter the home to check on his wife.)

1. Sufficient facts support the officers' reasonable belief that a domestic violence emergency existed.

In State v. Raines, 55 Wn. App. 459, 464, 778 P.2d 538 (1989) the Court of Appeals stated that for a search to come within the emergency exception, the State must show that: (1) the searching officer subjectively believed an emergency existed; and (2) a reasonable person in the same circumstances would have thought an emergency existed. Based on the individual facts in Raines, the appellate court determined that an emergency justified a warrantless search: the officers received a neighbor's report of domestic violence; officers knew the male defendant had a violent temper; officers saw a man in the apartment window; the adult female and her child appeared to be unharmed; the female tenant lied about the defendant's presence; and the defendant was hiding in the bedroom when officers arrived. 59 Wn. App. at 460-61.

Like Raines, the evidence in the present case establishes that Officers Malone and Hill believed they were responding to a possible domestic violence emergency. The officers were dispatched to investigate a domestic disturbance, which was serious enough to motivate a neighbor to report the incident to police and request that officers investigate the yelling and arguing coming from the Schultz apartment. RP 11-13, 59-60. As a result of the call, the officers reasonably believed they would encounter a volatile situation,

which is why they accompanied one another pursuant to police policy. RP 25. Through the front door, both officers heard a male and a female shouting. RP 13, 46. When the officers knocked on the door, Schultz appeared agitated and flustered. RP 62. The trial court found that Schultz “was highly emotional, talking fast, flushed in the face . . . she appeared, agitated, flustered, and was not calm, [and] was clearly upset.”<sup>15</sup> RP 138. Under these circumstances, the officers had a duty to ensure that conditions in the apartment returned to a state of normalcy to ensure the protection of any potential domestic violence victim. See RCW 10.99.010, .030; See Raines, 55 Wn. App. at 464; Lynd, 54 Wn. App at 23. Thus, the initial entry into the apartment was reasonable and justified by exigent circumstances.

Furthermore, as in Raines, Schultz initially lied to the officers about Robertson’s presence in the apartment. RP 14, 27, 61-62, 75, 93, 137. This falsehood reasonably raised the officer’s concerns that a domestic violence situation was ongoing because “victims of domestic violence are sometimes uncooperative with police because they fear retribution from their abusers.” See State v. Jacobs, 101 Wn. App. 80, 84, 2 P.3d 974 (2000); State v. Grant, 83 Wn. App. 98, 107 n.5, 920 P.2d 609 (1996).

Finally, Schultz also had red blotches on her neck, which the officers

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<sup>15</sup> Because Shultz does not challenge this factual finding, it is a verity on appeal. See Hill,

and the trial court believed to be a possible sign of an assault. RP 16-17, 32, 100, 138. Even though Schultz asserted the redness was a reaction to stress and that Robertson had not assaulted her, these statements (in light of her previous falsehood) did not guarantee that the disturbance had subsided to the point where the officers could trust that the disputants' safety was assured. The officers had obvious reasons to be concerned and entered the apartment to protect the occupants.<sup>16</sup>

This Court should affirm, finding that the instant case presented sufficient facts to support the conclusion that (1) the officers subjectively believed that Schultz or Robertson needed immediate assistance for health or safety reasons, (2) a reasonable person in the same situation would similarly believe there was an immediate need for assistance to guard against any domestic violence, and (3) the need for assistance reasonably related to the place searched – the apartment.

2. Because Officer Hill confronted a potential domestic violence emergency, he had a duty to enter the apartment.

As noted above, Officers Malone and Hill lawfully entered the apartment because they had a reasonable belief that a domestic violence

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123 Wn.2d at 647.

<sup>16</sup> The trial court concluded that there was “no indication that the officers’ entry into the apartment was in any way a pretextual search for evidence. CP 23. Schultz did not challenge this conclusion on appeal.

emergency existed. Schultz claims that Hill should not have entered the apartment after he interviewed Robertson because both officers had determined that no violence had occurred. Petition for Review at 6.

Schultz fails to recognize that the two officers had yet to share the results of their interview with one another. Thus, neither officer had concluded that the dispute was non-violent. In light of the facts that Hill encountered, he had a reasonable belief that a domestic violence emergency existed. Thus, he had duty to continue with his investigation. RCW 10.99.030. His subsequent entry into the apartment was lawful.

At the time Officer Hill entered the apartment he had only heard Robertson's account of the dispute. RP 79-80, 139. Hill testified that he entered the apartment only to confer with Malone and see if the recollections of the two disputants were consistent. RP 65. The trial court found that Hill's sole purpose in speaking with Officer Malone was to see if the two stories matched and discover if there had been any domestic violence. RP 139. Until Hill received confirmation from Malone, that there was no violence, he was required to continue with his police duties – taking the necessary steps that would allow him to take a complete offense report, including the officer's disposition of the case. RCW 10.99.030(6)(b). This required him to confer with Officer Malone inside the apartment to see if the disputants' stories were

consistent.

Schultz argues that Hill should have conferred with Malone outside the apartment. Petition for Review at 6. However, “whether a police officer’s acts in the face of a perceived emergency were objectively reasonable is a matter to be evaluated in relation to the scene as it reasonably appeared to the officer at the time.” Lynd, 54 Wn. App. at 22. Hill had an obligation to conduct a thorough and orderly investigation, which required him to enter the apartment. Hill’s entry allowed him to confer with Malone free from any possible interruption from Robertson, the disputant he had interviewed on the porch. Hill’s entry also allowed him to personally observe Schultz. This Court should find that Hill acted reasonably and lawfully under the circumstances.

3. Schultz consented to the officers’ entry.

If a tenant is in a position to communicate a refusal of admittance, and circumstances surrounding the warrantless entry “are such that [the officers] can reasonably conclude [they are] not being refused entry, then no invitation, express or implied is necessary to make the [officers’] entry lawful.” State v. Sabbot, 16 Wn. App. 929, 937-38, 561 P.2d 212 (1977).

When a tenant gives police consent to enter and conduct a warrantless search, officers need not obtain a search warrant, but “the State bears the

burden of establishing the exception.” Khounvichai, 149 Wn.2d at 562. This Court has held that Ferrier warnings<sup>17</sup> are not required in all instances that police officers enter an individual’s home because “there is a fundamental difference between requesting consent to search a home and requesting consent to enter a home for other legitimate investigatory purposes.” Id. at 564.

In the present case, the trial court found that Schultz consented to the officers’ entry when “she stepped away from the door, opening it further, and the officers entered.” CP 21; RP 137. The trial court concluded as a matter of law that “neither [Schultz or Robertson] told them to leave and that the defendant initially acquiesced to their entry, stepping back and opening the door further, and at no time told or asked them to leave.” CP 23-24. As the Court of Appeals correctly noted, this constituted an affirmative act and conveyed implied consent to allow the officers entry. See State v. Bustamante-Davila, 138 Wn.2d 964, 981, 983 P.2d 590 (1999); Raines, 55 Wn. App. at 462.

Both officers testified that they entered the apartment with intent only to check on the tenants’ welfare. RP 15, 28, 45, 49-50, 64. Therefore,

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<sup>17</sup> State v. Ferrier, 136 Wn.2d 103, 118, 960 P.2d 927 (1998), held “article I, section 7 is violated whenever the authorities fail to inform home dwellers of their right to refuse consent to a warrantless search.”

Malone and Hill did not need to warn Schultz of her right to refuse their entry because they only sought to investigate the report of possible domestic violence. See Khounvichai, 149 Wn.2d at 563-64. Because Schultz consented to the officers' entry, this Court should find that the officers were lawfully present in the apartment at the time they observed the contraband.

#### IV. CONCLUSION

This Court should hold that the officers entered the apartment for the sole purpose to investigate a domestic violence report, and that the facts were sufficient to give rise to a reasonable belief that Schultz and or Robertson were at risk of an injury and needed immediate assistance inside their apartment. In the alternative, the entry was permissible because Schultz consented to the officers' entry.

For the foregoing reasons, this Court should affirm the conviction and sentence.

RESPECTFULLY SUBMITTED this 28th day of April, 2009.

DEBORAH KELLY, Prosecuting Attorney



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BRIEF OF RESPONDENT  
Schultz – No. 82238-7