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

STATE OF WASHINGTON

Respondent

v.

CHRISTOPHER J. MOORE

Appellant

BRIEF OF RESPONDENT

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I. ISSUES

1. Where the uncontroverted evidence was that officers asked the defendant if they could enter his home to talk to him about a reported domestic violence assault, and the defendant said "Sure," did the defendant consent to the police entering his home?

2. Where officers subjectively believed they needed to enter the defendant's house to find and protect the named victim of a reported domestic violence assault, and a reasonable person would have had the same belief, did the emergency aid exception to the warrant requirement apply?

II. STATEMENT OF THE CASE

On December 9, 2010, a person identifying himself as Bill Grant called 911 to report "a domestic violence assault." Dispatch sent officers to 4918 60th Avenue NE, Marysville. The participants in the domestic incident were identified as Shilo Brockman and Christopher Moore. Their dates of birth were also provided. 3/16 RP 6-7, 18, 20-21, 28.

Officers Vermeulen and Xiong, Marysville Police Department, responded to the 911 call. They approached the residence and knocked on the door. The defendant answered the door and identified himself. Officer Vermeulen told the defendant

they were there to investigate a reported assault and asked if they could come in and talk. The defendant answered "sure," and he and the officers walked into his front room. 3/16 RP 8, 22.

The officers noticed there were two children in an adjacent room watching television. They did not seem to be upset, but were very quiet. 3/16 RP 9.

The defendant told the officers that his girlfriend was Shilo Brockman. He said she had been there but they had an argument about 45 minutes earlier and she left. The defendant said Shilo did not live there, and he did not know where she was. 3/16 RP 9-10, 22.

Dispatch contacted Officer Vermeulen while he was talking with the defendant. Dispatch told the officer that it had been able to contact Bill Grant. Mr. Grant told dispatch that Ms. Brockman called him from her cell phone and said that "he beat the shit out of me." Mr. Grant asked the victim who "he" was, and she replied, "you know who it was, Chris." Mr. Grant said he then heard "screaming or yelling in the background and then the phone went dead. That was when Mr. Grant called 911. 3/16 RP 12.

While Officer Vermeulen was talking with the defendant, other officers arrived, including Officer Shove. Officer Xiong and

the other officers did a sweep of the residence to see if they could find Ms. Brockman. 3/16 RP 10, 23, 30.

During the sweep, Officer Shove found a marijuana plant hanging in the bathroom. He also found three locked doors in the residence. Officer Shove asked the defendant for keys to the locked doors. The defendant said the rooms were empty and refused to provide keys. Officer Shove kicked open two of the doors. The defendant then provided a key to the third room to Officer Shove. The officers did not find Ms. Brockman in the residence. 3/16 RP 14, 30-32. They did, however, find many marijuana plants and a marijuana grow operation. 3/16 RP 14, 2 CP 41.

The officers secured the residence and obtained a search warrant. While executing the warrant, the officers seized more than 100 marijuana plants and the equipment associated with the grow. 2 CP 41-42.

The State charged the defendant with manufacture of a controlled substance. 1 CP 28. Before trial, the defendant moved to suppress all the evidence found in his residence. Relying on the criteria set out in State v. Gocken, 71 Wn. App. 267, 857 P.2d 1074 (1993), the defendant argued the police did not subjectively believe

someone in his residence needed assistance, no reasonable person would have believed someone needed assistance, and there was no reasonable basis associating any need for assistance with his residence. 2 CP 52-53.

The State responded that the information the officers had satisfied the six criteria for the emergency aid exception to the warrant requirement set out in State v. Schultz, 170 Wn.2d 746, 754, 248 P.3d 484 (2012). 2 CP 37.

On March 16, 2012, the court heard the defendant's suppression motion. Officers Vermeulen, Xiong, and Shove testified as set out above. Each officer also testified as to their training and experience in handling reports of domestic violence. They said that, in their experience, persons suspected of domestic violence are often not truthful concerning the whereabouts of the victim, and victims often hide from the police. 3/16 RP 6, 13-14, 19-20, 27-28, 30.

Each officer testified that their main concern was to locate the victim, Ms. Brockman, and determine if she needed assistance. 3/16 RP 10-11, 15, 22, 23-24, 29, 32. Even after seeing marijuana and drug paraphernalia in plain view during their sweep of the residence, the officers testified that they were only trying to locate

someone in his residence needed assistance, no reasonable person would have believed someone needed assistance, and there was no reasonable basis associating any need for assistance with his residence. 2 CP 52-53.

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Ms. Brockman. They had no interest in investigating drug crimes during the sweep of the defendant's residence. 3/16 RP 15, 24, 32.

At the conclusion of the evidentiary hearing, the defendant argued that the information known to the officers before they entered the residence did not satisfy three of the six criteria set out in Schultz. Specifically, (1) that no reasonable person would have believed there was an emergency justifying entry into his residence, (2) there was no information that the physical violence took place at his residence, and (3) there was no information that there was any imminent threat to any person inside the residence. 3/16 RP 36-37.

The State agreed that Schultz controlled resolution of the motion. The initial entry into the residence was consensual. Once inside, the officers verified the details given to them by the 911 caller: The defendant was at his residence, Ms. Brockman was the defendant's girlfriend and had been at the residence, and the defendant and Ms. Brockman had an argument. 3/16 RP 39-40.

Further, during the conversation with the defendant, Officer Vermeulen got the information from dispatch that it had made contact with Bill Grant, and he told dispatch that after the victim reported being beaten by the defendant, he heard yelling, the victim crying, and then the line went dead. The State argued that

information would have led a reasonable person to believe that there was a need for immediate assistance of Ms. Brockman. 3/16 RP 40-42.

The defendant responded that “officers may not enter a home based on acquiescence alone” and that the analysis “should begin and end at the point Officers Vermeulen and Xiong entered the home.” 3/16 RP 43.

The court denied the motion. It found that “the officers acted with lawful authority when they entered the home.” It found that the information known to the officers satisfied the Schultz criteria. 3/16 RP 45-49.

On May 18, 2012, the court filed a written Certificate Pursuant to CrR 3.6 Of the Criminal Rules for Suppression Hearings. The court found as facts that the officers were dispatched to investigate a 911 call, that the caller reported domestic violence between the defendant and Shilo Brockman based on his phone call from Ms. Brockman that had been disconnected, that the 911 caller had been unable to reach Ms. Brockman after the call was disconnected, and that they were dispatched to the defendant’s residence. 2 CP 30-31.

The court also found that Officer Vermeulen “asked if they could come inside and talk and the defendant responded, “Sure.” 2 CP 31. It found that while Officer Vermeulen was talking with the defendant, he learned from dispatch Bill Grant had been contacted and provided specific information that the defendant had beaten the victim, there was yelling or a disturbance in the background of the phone call, and then the line went and Mr. Grant was not able to reach the victim. Id.

The court entered Conclusions of Law. It gave the facts that satisfied the six Schultz criteria. The court denied the motion to suppress and dismiss. 2 CP 32-33.

On April 16, 2012, the defendant was found guilty of manufacture of a controlled substance at a bench trial on stipulated evidence. 1 CP 1, 19-26. On May 18, 2012, he was sentenced to a standard range sentence. 1 CP 3, 4.

III. ARGUMENT

The defendant only takes issue with the initial entry of the officers into his home. The defendant freely consented to that entry; he did not merely fail to object. Further, the information known to the officers was sufficient for them to enter the

defendant's home without a warrant under the emergency aid exception.

A. STANDARD OF REVIEW.

When reviewing the denial of a suppression motion, an appellate court determines whether substantial evidence supports the challenged findings of fact and whether the findings support the conclusions of law.

State v. Garvin, 166 Wn. 2d 242, 249, 207 P.3d 1266 (2009).

Facts found by the trial court are reviewed only to determine if they are supported by substantial evidence in the record, regardless of how they are denominated by the trial court. State v. Ross, 141 Wn.2d 304, 309-10, 4 P.3d 130 (2000).

[T]o justify intrusion under the emergency aid exception, the government must show that "(1) the police officer subjectively believed that someone likely needed assistance for health or safety concerns; (2) a reasonable person in the same situation would similarly believe that there was need for assistance; and (3) there was a reasonable basis to associate the need for assistance with the place being searched." (4) there is an imminent threat of substantial injury to persons or property; (5) state agents must believe a specific person or persons or property are in need of immediate help for health or safety reasons; and (6) the claimed emergency is not a mere pretext for an evidentiary search.

State v. Schultz, 170 Wn. 2d 746, 754, 248 P.3d 484 (2011)

(citations omitted).

B. THE OFFICERS INITIAL ENTRY INTO THE DEFENDANT'S HOME WAS CONSENSUAL.

The uncontroverted evidence supported the facts found below that the first responding officers knocked on the defendant's door. When he answered, he identified himself. The officers told the defendant that they were there to investigate a reported assault. Officer Vermeulen asked the defendant if they could come in and talk to him. The defendant answered "Sure." This finding is not assigned as error. It is a verity on appeal. State v. Hill, 123 Wn.2d 641, 644, 870 P.2d 313 (1994).

The facts here are similar to those in State v. Khounvichai, 149 Wn.2d 557, 69 P.3d 862 (2003). There, the police wanted to talk to a suspect about a malicious mischief incident. When they asked the occupant of the apartment who answered the door if they could come in and talk to the suspect, she answered "oh, yes" and waived the officers inside. Khounvichai, 149 Wn.2d at 559. The Supreme Court agreed with the Court of Appeals that the entry was consensual. It also held that the warnings required by State v. Ferrier, 136 Wn.2d 103, 960 P.2d 927 (1998), when the police seek entry to request consent to search without a warrant are not

required when the entry is to “question or gain information from an occupant.” Khounvichai, 149 Wn.2d at 566.

Here, the officers requested consent to enter the defendant’s home to question him about the reported assault. The defendant voluntarily consented by saying “Sure.” This voluntary consent is a recognized exception to the requirement of a warrant. Khounvichai, 149 Wn.2d at 562.

Citing Schultz, the defendant argues that “Individuals do not waive their constitutional right to be free from warrantless searches of their home by failing to object when police enter their homes.” Brief of Appellant 13. While that is a correct statement of the law, it does not apply to the facts of this case. The court below found facts showing the defendant actively consented to the police entry into his home. He did not merely fail to object.

The defendant also argues “Mr. Moore’s acquiescence to the officers entering the home does not relieve them of their duty to inform him he has the ability to refuse or revoke consent pursuant to Ferrier[.]” Brief of Appellant 15. As discussed above, Ferrier does not apply, since the initial entry was not to seek consent to search for contraband or evidence of some crime.

C. THE FAILURE TO LOCATE THE VICTIM, COUPLED WITH THE INFORMATION THAT AN ASSAULT HAD OCCURRED IN THE DEFENDANT'S HOME SATISFIED THE EMERGENCY AID EXCEPTION TO THE WARRANT REQUIREMENT.

The emergency aid exception to the requirement for a warrant before the police enter a home is part of their community caretaking function. State v. Thompson, 151 Wn.2d 793, 802, 92 P.3d 228 (2004). The six criteria for the emergency aid exception from Schultz are set out above. The court found that the State had shown that each of the criteria was met in this case. 2 CP 32-33.

The initial information known to the officers was that a domestic assault was reported to have taken place at the defendant's home with the participants being the defendant and Ms. Brockman. The officers confirmed that the address they had been given was the defendant's. They then asked the defendant's consent to enter his home to talk to him about the assault. The defendant consented.

Inside the defendant's home, he confirmed that he was in a relationship with Ms. Brockman, that she had been in his home, but that they had an argument and she left. The defendant said he did not know where Ms. Brockman was.

1. The Officers Subjectively Believed Ms. Brockman Was In Need Of Assistance.

The three officers all testified that they subjectively believed that Ms. Brockman likely needed assistance for health or safety concerns. The defendant assigned error to the court's finding that "the Officers subjectively believed that someone was likely in need of assistance for health or safety concerns[.]" Brief of Appellant 1. "Where there is substantial evidence in the record supporting the challenged facts, those facts will be binding on appeal." Hill, 123 Wn.2d at 647. The subjective belief of the officers is supported by substantial evidence in the record. The first criteria are satisfied.

The defendant argues:

The first hurdle the State must clear is demonstrating Officers Vermeulen and Xiong subjectively believed Ms. Brockman likely needed assistance for health or safety concerns. They have failed to do so[.]

Brief of Appellant 14.

The defendant conceded below "As to the police officers' subjective beliefs, I think they all testified that they were there for good purposes[.]" 3/16 RP 34. "A party may only assign error in the appellate court on the specific ground of the evidentiary objection made at trial." State v. Guloy, 104 Wn. 2d 412, 422, 705 P.2d 1182 (1985) cert. denied, 475 U.S. 1020 (1986). Since the

defendant abandoned this argument below, he may not now make it. Even if he may now make that argument, the finding is supported by substantial evidence in the record. It is binding on this Court.

2. The Other Schultz Factors Were Also Established.

The court below concluded “that a reasonable person in these Officers’ situation would similarly believe that there was a need for assistance.” 2 CP 32. This Court reviews that conclusion de novo. See State v. Grogan, 147 Wn. App. 511, 516-17, 195 P.3d 1017 (2008) remanded on other grounds 168 Wn.2d 1039 (2010) (whether a reasonable person would feel, given the factual circumstances found by the court, is a question of law reviewed de novo).

The factual circumstances found by the court, and not assigned as error, are that a domestic assault was reported, the 911 caller heard the victim crying and some yelling and a disturbance in the background of the call, then the line went dead. The caller could not get the victim back on the phone. They are verities. Hill, 123 Wn.2d at 644.

A reasonable person with the same training and experience as the officers here would believe, based on the facts found by the court, that the victim, Ms. Brockman, was in need of assistance.

The defendant outlines the facts known to the police before they entered the residence, compares them with the facts outlined in Schultz, and argues that since the officers' entry into the home in Schultz violated the privacy interests the entry here likewise violated his privacy interests. The defendant is wrong.

In Schultz, when the female who answered the door called for the male involved in the domestic incident, he immediately came out of a room. The officers could see that neither participant needed immediate assistance. Accordingly, there was no emergency requiring entry. The Supreme Court noted:

Similarly, if the officers could not have ascertained the location of the man whose voice they had heard, they would have been entitled to make further inquiries and perhaps enter the home to verify that he was safe.

Schultz, 170 Wn.2d at 761.

Here, the officers could not ascertain the location of Shilo Brockman. The defendant said he did not know where she was, and she did not come into the view of the officers. The officers

were "entitled to . . . enter the home to verify that [s]he was safe."

Id.

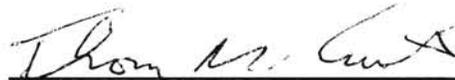
IV. CONCLUSION

The defendant consented to the officers' initial entry into his home. In any event, the emergency exception to the warrant requirement allowed the officers to enter the defendant's home. The judgment and sentence should be affirmed.

Respectfully submitted on January 23, 2013.

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