70730-2

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COA No. 70730-2-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

MATTHEW DANGELO,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT
OF KING COUNTY

The Honorable Susan H. Amini

REPLY BRIEF

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A. REPLY ARGUMENT

RESPONDENT CONCEDES THE TRIAL COURT FAILED TO APPLY THE ANALYSIS OF STATE V. SCHULTZ AND ARGUES IN ERROR THAT SCHULTZ HAS BEEN OVERRULED.

Mr. Dangelo has argued that the prosecution failed to meet its burden to prove all criteria of the "emergency-aid" exception to the warrant requirement, and specifically employed an inadequate legal standard when it did not apply the comprehensive legal standard and analysis set forth in the recent case of State v. Schultz, 170 Wn.2d 746, 248 P.3d 484 (2011), which clarifies that there must be an immediate and *imminent* risk of *substantial* injury to a person.

Respondent contends that the Supreme Court, in the 2013 case of State v. Smith, 177 Wn.2d 533, 303 P.3d 1047 (2011), involving police entry and intervention into a rape and assault in a hotel room, somehow abandoned the requirements of an imminent threat of substantial harm as part of the emergency exception which the Court had set forth in its 2011 case of State v. Schultz, and instead limited the requirement of the exception to situations where an "immediate" need for assistance is present.

But the Court did not do so, either explicitly, or implicitly. The Smith case primarily involved issues of suppression of evidence gained by an illegal police search of a motel guest registry, and application of the independent source exception to the exclusionary rule. Smith, 177 Wn.2d at 534-38; see State v. Jorden, 160 Wn.2d 121, 156 P.3d 893 (2007).

The Court wrote briefly that the emergency exception provided an independent source of the evidence, along with addressing numerous other issues in the case including Double Jeopardy. The issue of the emergency exception was a minor aspect of the case, and any lack of extended discussion by the Smith Court of the concept of imminence and substantial injury was a reflection of the fact that the case set forth a plain circumstance satisfying these requirements. In the case, the Court held that Lakewood police officers were justified in entering a hotel room in order to rescue a rape and assault victim (and her child) who could be seen inside "injured, sobbing, limping, and bloodied." Smith, at 537.

Thus, in Smith, detailed discussion of the specific requirements of Schultz was unnecessary because, as the Court stated, "[t]he undisputed facts of this case make it clear that a

warrantless, limited intrusion into the motel room was justified by the emergency exception to the warrant requirement, also known as the "**save a life**" exception." (Emphasis added.) Smith, at 541. The Court simply cited a treatise that collected the appropriate cases in the area of this exception. Smith, at 541 (citing 12 ROYCE A. FERGUSON, JR., WASHINGTON PRACTICE: CRIMINAL PRACTICE AND PROCEDURE § 2734, at 649–51 (3d ed. 2004) "(collecting cases analyzing warrantless searches under the 'save a life' exception)".

Smith did not mark any retrenchment from Schultz. To the contrary, the facts of Smith represent just the sort of genuine emergency that the Schultz Court posited as necessary to establish lawful entry in the absence of a warrant. *The police cannot warrantlessly enter a home simply because they believe someone is being harmed in some manner inside.*

Indeed, Schultz's discussion of imminence of substantial injury can also be viewed simply as an explication of the strictness with which the exception's requirements have always been required to be applied to warrantless entries.

Furthermore, abandonment of the strict requirements of Schultz would allow police to enter a Washingtonian's home without

a warrant merely upon belief that even grave harm might occur to a person therein in the future. No court has ever endorsed such a lax standard of protection of privacy of the home.

Ultimately, the trial court did not apply – and the State did not even come close to meeting its burden to prove -- the indispensable requirements that

> there was an **imminent threat of substantial injury** to persons or property; [and] state agents must believe a specific person or persons or property are in need of **immediate** help for health or safety reasons.

(Emphasis added.) Schultz, 170 Wn.2d at 754-55. The Court of Appeals reviews the legal conclusions of the trial court *de novo*. State v. Smith, 165 Wn.2d 511, 516, 199 P.3d 386 (2009) (citing State v. Carneh, 153 Wn.2d 274, 281, 103 P.3d 743 (2004)).

In ruling that the police entry into Mr. Dangelo's apartment was supported by authority of law, the trial court concluded that the "emergency" exception applied, because the police officers reasonably believed:

- that "there was a **likelihood** someone needed help for health or safety concerns;"
- that "there was a need for **assistance**;"
- that "someone **may** be hurt or in need of assistance;" and
- that "Dangelo or Walsh **likely** needed assistance[.]"

(Emphasis added.) CP 35-36 (Conclusions of Law a.(i) and (ii)). The court also ruled that it was "reasonable" to enter the home because "[t]he officers wanted to separate the parties and interview them," and further held that it was "incumbent upon the officers to ensure that no violence had occurred or would occur after the officers' departure." CP 36 (Conclusion a.(ii)).[1]

All of this was inadequate. Here, the trial court erred in employing a legal standard that was incomplete and inadequate under State v. Schultz. Error occurs where the court does not examine all of the factors applicable to the legal question at hand, and either enter specific findings of fact on each factor, or demonstrate by entering findings that it did, in fact, consider each factor. In re Marriage of Horner, 151 Wn.2d 884, 896, 93 P.3d 124 (2004) (defining legal error); State v. Schultz, 170 Wn.2d at 760-62 and n. 5 (all the factors of the emergency exception must be met, including the requirement of imminent threat of substantial injury, and need for immediate help).

[1] As argued in the Opening Brief, the court also erred because the Schultz Court noted that "Article I, section 7, does not use the words 'reasonable' or 'unreasonable.' Instead, it requires 'authority of law' before the State may pry into the private affairs of individuals." Schultz, 170 Wn.2d at 758 (citing State v. Day, 161 W.2d 889, 896, 168 P.3d 1265 (2007)).

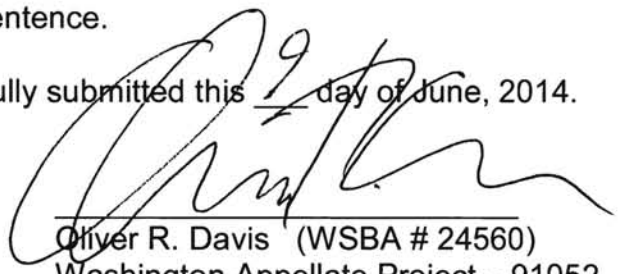
The trial court erred. The Washington courts have never allowed **non**-emergency police intrusion into a private home for community caretaking reasons. See, e.g., State v. Thompson, 151 Wn.2d 793, 802–03, 92 P.3d 228 (2004) (declining to excuse warrantless entry where "there was no immediate need for assistance for health or safety concerns"); State v. Williams, 148 Wn. App. 678, 687, 201 P.3d 371 (2009) (entry and search of hotel room was illegal because no one in the room "was in immediate danger"); cf. State v. Hos, 154 Wn. App. 238, 247–48, 225 P.3d 389 (2010) (warrantless entry justified under community caretaking function exception when officer had a reasonable belief that unresponsive resident was not breathing and in need of immediate medical attention), review denied, 169 Wn.2d 1008, 234 P.3d 1173 (2010).

The constitutional protection of the home and the case of State v. Schultz confirms that there is no "welfare check" or "community care-taking" exception to the warrant requirement, and the true exigency necessary under the emergency exception – a jealously guarded and narrowly-construed departure from the warrant rule -- was not proved in this case.

B. CONCLUSION

Based on the foregoing and on his Appellant's Opening Brief, Matthew Dangelo requests that this Court reverse the judgment and sentence.

Respectfully submitted this 9 day of June, 2014.



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DIVISION ONE

STATE OF WASHINGTON, Respondent, v. MATTHEW D'ANGELO, Appellant.	)))))))))	NO. 70730-2-I

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ANA ARRANZA RILEY, STATE THAT ON THE 9TH DAY OF JUNE, 2014, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] STEPHANIE GUTHRIE, DPA KING COUNTY PROSECUTOR'S OFFICE APPELLATE UNIT 516 THIRD AVENUE, W-554 SEATTLE, WA 98104	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____

SIGNED IN SEATTLE, WASHINGTON THIS 9TH DAY OF JUNE, 2014.

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