91027-8

Supreme Court No. _____
COA No. 70730-2-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

MATTHEW DANGELO,

Petitioner.

ON APPEAL FROM THE SUPERIOR COURT
OF KING COUNTY

The Honorable Susan H. Amini

PETITION FOR REVIEW

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WASHINGTON CASES

A. IDENTITY OF PETITIONER

Matthew Dangelo was the appellant in Court of Appeals No. 70730-2, and is the Petitioner herein.

B. COURT OF APPEALS DECISION

Mr. Dangelo seeks review of the decision entered November 3, 2014. **Appendix A.**

C. ISSUES PRESENTED ON REVIEW

1. Did the prosecution fail to meet its burden to prove all 6 of the criteria of the save a life, or "emergency-aid" exception to the warrant requirement of State v. Schultz, 170 Wn.2d 746, 753, 248 P.3d 484 (2011), requiring reversal of the CrR 3.6 order denying suppression of certain later-discovered drug evidence?

3. Did the court apply the wrong legal standard when it did not apply criterion 4 of the emergency exception (imminent risk of substantial injury to a person), or criterion 5 (a person in immediate need of help) of the exception, which allows limited intrusion into the home only where there is a true emergency?

D. STATEMENT OF THE CASE

1. Warrantless entry. The incident began when Seattle police officers knocked on the door of his apartment based on the claims of a 911 caller that she had heard coughing, crying, and a

female saying "let me go" from the adjacent apartment. CP 33. The officers could hear nothing when they approached the apartment door. There was no response to their knocking. Officer Graham told other officer, Jensen, that the 911 caller had heard a female inside the apartment state, "don't hurt me." CP 34-35.

However, after continued knocking, a male voice from inside the apartment yelled out to the officers they were "not coming in without a warrant," and repeated this statement after Officer Jensen stated she needed to do a welfare check. CP 33-35. Officer Jensen could hear a female whimpering and crying in the background. When Officer Jensen stated she would kick the door in, a female stated, "let them in, I don't want them to kick down the door." The female then cracked the door open slightly; she appeared frightened. Officer Jensen then "pushed the door open with her arm so that she could see both subjects." The defendant would not come out of the apartment and placed his hands in his pockets, and then he tried to close the door to his home, so the Officers pushed their way in. CP 33-35. After the police officers entered the apartment, they struggled with Mr. Dangelo and threatened to Tase him because he was resistive. The defendant was ultimately handcuffed and arrested for obstructing, and at

booking, a small pill case with some prescription medication was found in his pocket. CP 35.

2. Ruling. The trial court ruled that it was reasonable for the officer to enter the home under the emergency exception to the warrant requirement, because someone was hurt, and/or needed help or assistance. 1RP 142-45.

3. Court of Appeals Decision. Following a stipulated facts trial on the VUCSA charge, and sentencing, Mr. Dangelo timely appealed. CP 19-22, 23-30, 49. The Court of Appeals addressed Mr. Dangelo's argument that the trial court failed to mention or apply factors 4 and 5 identified by this Court in Schultz that required the court to ask if there reasonably appeared to the officers to be an imminent threat of substantial injury, and that a person was in need of immediate help for health and safety reasons. The Court held that even though the trial court did not address these factors from Schultz, the facts established this degree of imminence and immediacy. Mr. Dangelo argues that they did not, as a matter of law, and that the Court of Appeals and trial court erroneously relied on the police officers' statements regarding all the dangers they did not know were non-existent, when the exception requires *affirmative* facts.

E. ARGUMENT

THE STATE FAILED TO MEET ITS HEAVY BURDEN TO PROVE THAT THERE WAS A GENUINE EMERGENCY OF THE IMMINENT AND IMMEDIATE NATURE NECESSARY TO PERMIT WARRANTLESS ENTRY BY POLICE INTO A WASHINGTON CITIZEN'S HOME.

1. Review is warranted. On review of a CrR 3.6 motion, the appellate court first reviews a trial court's denial of a motion to suppress for whether the facts found are supported by substantial evidence. State v. Hill, 123 Wn.2d 641, 644, 647, 870 P.2d 313 (1994). "Substantial evidence exists where there is a sufficient quantity of evidence in the record to persuade a fair-minded, rational person of the truth of the finding." State v. Halstien, 122 Wn.2d 109, 129, 857 P.2d 270 (1993).

In the present case, Mr. Dangelo disagrees with the completeness of the facts found by the court following the suppression hearing, including the testimony of his girlfriend Ms. Walsh. See 1RP 6-148.

However, Mr. Dangelo argues that the set of facts found by the trial court do not support the court's legal ruling denying his CrR 3.6 motion. As stated in the Court of Appeals briefing, the appellate courts 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)). The appellate court should set forth those facts accurately on appeal and then apply the law. Here, the emergency exception is not a basis for the police to enter a home to make sure that nothing harmful is going to happen, such as by finding out what might be inside. The emergency must be affirmative. Review is warranted under RAP 13.4(b)(1), where the decision is contrary to decisions of this Court.

2. The trial court employed an erroneous, and incomplete legal standard. Review of a trial court's legal decision on a CrR 3.6 issue is *de novo*. State v. Mendez, 137 Wn.2d 208, 214, 970 P.2d 722 (1999). In ruling that the police entry was supported by authority of law, the trial court concluded 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[.]"

CP 35-36 (Conclusions of Law a.(i) and (ii)). The court 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] Finally, the court stated that, upon entry, there was probable cause to arrest Mr. Dangelo for obstructing a law enforcement officer under RCW 9A.76.020(1), and that the drug evidence later discovered on his person was therefore admissible. CP 36-37 (Conclusions a.(ii) and (iii)). Although the court also indicated that the police actions were not a pretext, the court did not substantively apply all of the six factors required under State v. Schultz, for the emergency exception to apply. State v. Schultz, 170 Wn.2d at 760-62 and n. 5 (all six factors must be met, including the requirement of imminent threat of substantial injury, and need for immediate help). The trial court abused its discretion.

The Court of Appeals decided that there was imminence and immediacy by focusing on the neighbor who heard a woman inside in seeming distress at that time, and by looking to what the officers did not know further about the situation. But the apparent conflict

[1] This Court in Schultz 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).

had subsided when the officers arrived at the residence. Contrary to the Court of Appeals decision at page 8, the woman was not "shouting" when she said "[l]et me go." Decision, at page 8, see CP 32 (Findings 1.f and 1.k). Most crucially, Mr. Dangelo argues the Court of Appeals failed to follow Schultz because the facts supporting the emergency must be affirmative. The record indicates these officers simply believed they were acting to interview the individuals. They wanted to separate the persons and question them regarding domestic violence, and determine the *absence* of other problems or weapons in the apartment, but the absence of facts cannot justify warrantless entry, only an affirmative emergency can.

3. The State did not meet its heavy burden to prove that the emergency exception to the warrant requirement applies. In the absence of a finding on a factual issue the appellate court presumes that the party with the burden of proof failed to sustain its burden on that issue. State v. Westvang, 174 Wn. App. 913, 916 and n. 4, 301 P.3d 64 (2013) (where court's CrR 3.6 findings were silent as to whether police obtained the required *informed* consent under Ferrier, reviewing court would presume State failed so to prove) (citing State v. Ferrier, 136 Wn.2d 103, 118–19, 960 P.2d

927 (1998)). Here, the State did not meet its burden. Article 1, section 7 provides, "No person shall be disturbed in his private affairs, or his home invaded, without authority of law." Wash. Const. art. 1, § 7. The Fourth Amendment protects against unreasonable searches and seizures. Payton v. New York, 445 U.S. 573, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980); U.S. Const. amend. 4. Under both guarantees, the home enjoys sacrosanct protection. State v. Schultz, 170 Wn.2d 746, 753, 248 P.3d 484 (2011). Further, under Article 1, section 7, "authority of law" specifically means a judicial warrant. See, e.g., York v. Wahkiakum Sch. Dist. No. 200, 163 Wn.2d 297, 306, 178 P.3d 995 (2008).

(1). The warrantless home entry and search violates the state and federal constitutions unless an exception to the warrant requirement applies.

The State bears the burden of establishing an exception to the warrant requirement. Under Article 1, section 7, "authority of law" means a warrant, and exceptions to that requirement have been described as few, jealously guarded, carefully drawn, and narrowly construed. State v. Parker, 139 Wn.2d 486, 987 P.2d 73 (1999); State v. Hendrickson, 129 Wn. 2d 61, 70, 917 P.2d 563 (1996); State v. Bradley, 105 Wn.2d 898, 902, 719 P.2d 546 (1986).

Because the police entered Mr. Dangelo's apartment without a warrant, the prosecution commenced the CrR 3.6 litigation facing a presumption that the officers' entry was in fact illegal. State v. Grande, 164 Wn.2d 135, 141, 187 P.3d 248 (2008). Thus, the State was required to show the imminent danger and immediacy required by the state constitution, as outlined in Schultz, supra, 170 Wn.2d 746, 750.

In Schultz, this Court held that for the emergency aid exception to apply, a true emergency must exist. Schultz, 170 Wn.2d at 754. Routine community-caretaking functions of the police, such as checking on the welfare of persons, are societally valued – but they do not outweigh citizens' sacrosanct privacy interests unless there is a true emergency need for the police to enter into a private home in order to do so. Schultz, 170 Wn.2d at 754. The same is true under the federal constitution. U.S. Const. amend. 4; Brigham City v. Stuart, 547 U.S. 398, 403, 126 S.Ct. 1943, 164 L.Ed.2d 650 (2006) (under 'emergency aid'-type exigency exception, law enforcement officers may enter a home without a warrant if it is necessary in order to render emergency assistance to an injured occupant, or to render such assistance to protect an occupant from imminent injury).

(2). There was no imminent threat of substantial injury nor was any person in need of immediate help.

In Schultz the appellant contended that police officers' entry into the appellant's home violated article I, section 7 of the Washington Constitution. This Court emphasized that under the state constitution, the home enjoys a special protection. Schultz, 170 Wn.2d at 753 (citing State v. Ferrier, 136 Wn.2d 103, 112, 960 P.2d 927 (1998)). The Court first discussed the then-existing emergency aid exception to the warrant requirement, under which the State must prove 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.

Schultz, 170 Wn.2d at 754 (citing, inter alia, State v. Kinzy, 141 Wn.2d 373, 386-87, 5 P.3d 668 (2000)).

However, the Court adopted three additional factors that the Court of Appeals had suggested in its case law, and which separate true emergencies – of the quality exigent enough to allow warrantless home entry -- from mere community caretaking:

> (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.

Schultz, 170 Wn.2d at (citing, inter alia, State v. Leffler, 142 Wn. App. 175, 181, 183, 178 P.3d 1042 (2007); and State v. Lawson, 135 Wn. App. 430, 437, 144 P.3d 377 (2006) (specific persons and imminent threat)).

Crucially, the Court noted that the failure of the State to meet its burden to prove *any one* of the above 6 factors, as so set forth, would be fatal to a prosecution request that a trial court condone a warrantless law enforcement entry into a home. Schultz, 170 Wn.2d at 760 and n. 5 ("[T]he failure to meet any factor is fatal to the lawfulness of the State's exercise of authority").

This Court noted that police investigation of domestic violence circumstances is important, but the Court reiterated that the emergency exception required that the police be encountering a circumstance of such exigency permitting entry into the sacrosanct home without a warrant, which is the sole signal way of obtaining authority of law. Schultz, 170 Wn.2d at 755 (citing State v. Raines, 55 Wn. App. 459, 464, 778 P.2d 538 (1989); and State v. Lynd, 54 Wn. App. 18, 22, 771 P.2d 770 (1989)).

Thus the Court held that the fact that police are responding to a possible domestic violence situation may be an important factor in assessing exigency, but the standard requires prosecution proof of the indispensable factors of need for **immediate** assistance, and the existence of **imminent** risk of **substantial** injury. Schultz, 170 Wn.2d at 756.

Applying these criteria and principles, the Court assessed the facts of the case before it as involving a 911 call from a resident of an apartment complex, about two people yelling in an apparent domestic incident. The responding officers confirmed the caller's concerns when, upon arrival at the door, they too overheard a man and woman talking loudly or with raised voices, and heard one person demand that he or she wanted to be left alone. When the officers knocked on the door, a person opened it, appearing agitated and flustered, and – in response to the officers' direct question -- claimed that no one else was there. The police confirmed their suspicions that this person, the suspected abuser, was lying, when a voice came out from another room. Schultz, 170 Wn.2d at 750-51, 760-61 (describing these facts and stating, "That is not enough.").

On these facts, this Court concluded that the police officers did not have a true emergency basis necessary to justify their subsequent entry into the home based upon that exception's requirement of **imminent** threat of **substantial** injury, and a need for **immediate** help – both showings being, as so stated, required. Schultz, 170 Wn.2d at 760-62.

The present case is similar, despite the woman who a neighbor said sounded like she was in distress. Police responding to a 911 call from a neighbor could not confirm the caller's assertion of domestic fighting and a female stating to another to not hurt her, but then, the officers heard crying, heard a man assert the homeowners' right against police entering, and listened to a woman asking that the door be opened when police threatened to break it down. The woman then opened the door herself. Although she appeared frightened, there was no testimony or finding that she or anyone appeared injured, no testimony or finding that the person appeared to have been crying, no testimony or finding that the person was experiencing trouble or was at all relieved to see the police, and no testimony or finding that she had any fear of the male in the apartment. CP 31-34 (CrR 3.6 Findings of fact); 1RP 33-35 (undisputed testimony of Officer Jensen). Mr. Dangelo

repeatedly asserted his right to be free of warrantless police entry into his home.[2]

This is not enough. Certainly other facts such as past police responses to this residence might have supported a reasonable belief that some person was imminently about to have substantial injury inflicted upon them, or that some person was in immediate need of police to enter the home and protect them from immediate domestic violence. There were no such facts. Although Officers Jensen and Graham no doubt believed they were acting lawfully when they pushed the door open and tackled Mr. Dangelo for refusing to come outside, there is no "good faith" exception to the exclusionary rule based on a reasonable belief by law enforcement officers that they were acting properly without need for a warrant. Day, supra, 161 Wn.2d at 889; State v. Afana, 169 Wn.2d 169, 184, 233 P.3d 879 (2010); see also State v. White, 97 Wn.2d 92, 110, 640 P.2d 1061 (1962). Ultimately, the trial court did not

[2] The Schultz Court noted that "the great majority of home dwellers confronted by police officers on their doorstep or in their home would not question the absence of a search warrant because they either (1) would not know that a warrant is required; (2) would feel inhibited from requesting its production, even if they knew of the warrant requirement; or (3) would simply be too stunned by the circumstances to make a reasoned decision about whether or not to consent to a warrantless search." (Emphasis added.) Schultz, at 758 (citing Ferrier, at 115).

apply – and the State did not meet its burden to prove -- the indispensable requirements that

> (4) there is an **imminent threat of substantial injury** to persons or property; [and] (5) state agents must believe a specific person or persons or property are in need of **immediate** help for health or safety reasons.

Schultz, 170 Wn.2d at 754-55. The State's heavy burden was not met, and the warrantless entry by police in this case was without authority of law.

(3). There is no general community caretaking exception to the warrant requirement for non-emergency situations where there might be domestic violence in the future, or where a person merely needs help or assistance.

Schultz makes eminently clear that the required criteria of *imminence*, and *immediacy*, are at the core of this exception to the warrant rule. It is inadequate that, as the trial court ruled, the police were concerned to "ensure" that violence had not occurred in the past, and it was incorrect for the trial court to state that it was "incumbent" upon the police to "ensure" that it would not occur in the future. CP 35-36.

The police can always attest to facts indicating a concern for domestic dispute circumstances, and the prosecution can certainly demonstrate, in most any situation of a 911 call or other alert to the

police of domestic unrest, that there might be a person at some risk of harm or a person who could benefit from help.

But that is not enough. As this Court reiterated, domestic violence protection is deeply valued, but when it comes to the question of the police asserting a right to push open the door and cross the threshold, literally and figuratively, of a Washingtonian's private home and private affairs, the well-intentioned desire of law enforcement to investigate and protect must *always* "be consistent with the protection the state constitution has secured for the sanctity and privacy of the home." Schultz, 170 Wn.2d at 756 (citing Wash. Const. art. I, § 7; State v. Ferrier, 136 Wn.2d at 112; and State v. Young, 123 Wn.2d 173, 185, 867 P.2d 593 (2004)).

The Schultz language therefore means something, and is not satisfied by police claims that someone generally needed help or assistance, or by police assertions regarding what the officers "did not know."[3]

[3] The prosecution-drafted findings, consistent with their erroneous assertions that the police were entitled to enter because they wanted to interview the homeowners, because they had a chance to sweep the apartment, and desired to "make sure there was nothing going on inside," are unfortunately replete with statements regarding what the police officers "did not know" in terms of whether there could be a weapon therein, and whether the persons therein "were okay." CP 33-35 (CrR 3.6 Findings of fact y, aa, bb, and cc; Conclusions of law a.i and a.ii).

The Washington courts have never applied any community-caretaking function to permit non-emergency intrusion into a private home absent a genuine emergency. 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 police entry was also not justified under any emergency exception to the federal guarantee of the Fourth Amendment. Ray v. Township of Warren, 626 F.3d 170, 175–177 (3rd Cir.2010); United States v. Erickson, 991 F.2d 529, 533 (9th Cir.1993); U.S. Const. amend. 4.

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.

4. Suppression is required. Evidence derived only "but for" a police illegality must be suppressed under the fruit of the poisonous tree doctrine. Wong Sun v. United States, 371 U.S. 471, 485–86, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963); State v. Gaines, 154 Wn.2d 711, 716–20, 116 P.3d 993 (2005).

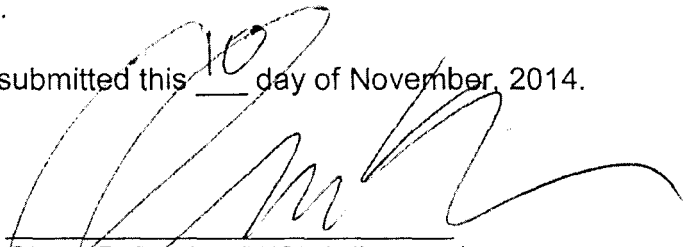
Admission of evidence seized in violation of a defendant's Fourth Amendment or state constitutional privacy rights is constitutional error that is presumed prejudicial. State v. McReynolds, 117 Wn. App. 309, 326, 71 P.3d 663 (2003). It is harmless only if the State proves beyond a reasonable doubt that the verdict would have been the same without the error. State v. Brown, 147 Wn.2d 330, 341, 58 P.3d 889 (2002).

Here, absent the drug evidence seized from Mr. Dangelo at booking, the court at the stipulated facts trial could not have found him guilty of VUCSA, and reversal of his conviction is required. State v. Gaines, 154 Wn.2d at 716 (suppression error must be harmless beyond a reasonable doubt).

F. CONCLUSION

Based on the foregoing, Matthew Dangelo requests that this Court accept review.

Respectfully submitted this 10 day of November, 2014.



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Appendix A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. MICHAEL AARON D'ANGELO, Appellant.	)	No. 70730-2-I
	)	DIVISION ONE
	)	UNPUBLISHED OPINION
	)	FILED: November 3, 2014

TRICKEY, J. — Michael D'Angelo appeals the trial court's decision denying his motion to suppress evidence of an illegal drug found on him after police officers entered his apartment without a warrant. The trial court concluded that the police officers were justified in entering D'Angelo's apartment under the emergency aid exception to warrantless searches. D'Angelo contends that the emergency aid exception did not justify the officers' warrantless intrusion because the State failed to prove two of the six criteria set forth in State v. Schultz, 170 Wn.2d 746, 248 P.3d 484 (2001). However, the undisputed findings and the record both demonstrate that these factors were met. We affirm.

FACTS

In the early hours of February 14, 2013, Bellevue Police Officers Amanda Jensen and Dirk Graham responded to unit 3 of an apartment complex after a neighbor residing in unit 2 called 911.[1] The 911 caller reported that she heard a female voice in unit 3 coughing, crying, and loudly saying, "Let me go."[2] When Officers Jensen and Graham

[1] Report of Proceedings (RP) at 11-13, 30, 46-48.
[2] RP at 11-12.

arrived, they listened outside the door of unit 3 for a while, but did not hear anything.[3] The officers then contacted the 911 caller, who reiterated what she had previously reported and stated that she was concerned for the female in the neighboring apartment.[4] The officers returned to unit 3 and knocked on the door repeatedly.[5] Again, no one answered.[6] Officer Jensen testified that she was concerned because she believed someone was still inside the apartment and could be in danger or injured.[7]

The officers eventually heard a man inside the apartment—later identified as D'Angelo—yelling at them, telling them to leave the premises, and insisting that the officers would not enter without a warrant.[8] D'Angelo sounded agitated and aggressive.[9] Officer Jensen announced themselves as police officers and informed D'Angelo that they needed to enter and check on the welfare of the people inside.[10]

At some point, Officer Jensen could hear a female voice whining, whimpering, and crying.[11] The female voice was later identified as Raquel Walsh.[12] The officers then heard Walsh request that D'Angelo open the door.[13] D'Angelo, however, continued to direct Walsh to refrain from opening the door.[14] Finally, Walsh opened the door slightly ajar.[15] The officers were only able to view part of her face.[16] Officer

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[3] RP at 13, 48.
[4] RP at 13, 48.
[5] RP at 13, 48.
[6] RP at 13, 48.
[7] RP at 14, 26.
[8] RP at 13, 49.
[9] RP at 15.
[10] RP at 14.
[11] RP at 16.
[12] RP at 50.
[13] RP at 16-17.
[14] RP at 17.
[15] RP at 17.
[16] RP at 17.

Jensen pushed the door open to allow her to see inside the apartment.[17] Officer Jensen saw Walsh and D'Angelo standing just inside the threshold of the door.[18] Although Walsh did not appear injured, she looked upset and fearful.[19]

Officer Graham then asked D'Angelo to step out of the apartment so the officers could separate him and Walsh.[20] The officers were still standing outside the apartment at this point and were unable to determine whether additional people were inside the apartment or if there were weapons involved.[21] Officer Jensen believed Walsh needed help and was concerned that D'Angelo was unwilling to cooperate.[22]

D'Angelo refused to step outside the apartment to speak to Officer Graham and began to back into the apartment and shut the door.[23] When Officer Graham noticed D'Angelo reach into his pockets, the officers entered the apartment and seized D'Angelo in an effort to prevent him from closing the door.[24] D'Angelo ended up pulling the officers back into the apartment.[25] After arresting D'Angelo, Officer Graham searched him and discovered oxycodone in his pocket.[26]

The State charged D'Angelo with one count of possession of oxycodone, in violation of the Uniform Controlled Substances Act, chapter 69.50 RCW.[27] D'Angelo subsequently brought a motion to suppress the evidence of oxycodone pursuant to CrR

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[17] RP at 17-18.
[18] RP at 17.
[19] RP at 34.
[20] RP at 17, 51.
[21] RP at 18.
[22] RP at 17-18.
[23] RP at 18.
[24] RP at 19, 52-53.
[25] RP at 19.
[26] RP at 58.
[27] Clerk's Papers (CP) at 1.

3.6.[28] Officer Jensen, Officer Graham, and Walsh testified at the suppression hearing.[29]

The trial court denied D'Angelo's motion to suppress, ruling that the officers' entry into D'Angelo's apartment was justified under the emergency aid exception to the warrant requirement.[30] The trial court concluded, in part, that "it was reasonable for officers to enter the residence to ensure that the parties were safe."[31]

D'Angelo waived his right to a jury trial and requested a bench trial on stipulated facts.[32] The trial court found him guilty as charged.[33]

D'Angelo appeals.

ANALYSIS

D'Angelo contends that the trial court applied an erroneous and incomplete legal standard when concluding that the emergency exception justified a warrantless search. In so contending, he argues that the trial court failed to "substantively" apply all of the six factors required under State v. Schultz, 170 Wn.2d 746, 248 P.3d 484 (2011), for the emergency aid exception to apply.[34] We disagree. Although the trial court did not explicitly address two of the factors articulated in Schultz, the record and unchallenged findings of facts establish that these factors were met. Accordingly, we affirm.

We review a trial court's decision on a CrR 3.6 suppression motion to determine whether substantial evidence supports the court's findings of facts and whether those findings, in turn, support the court's conclusions of law. State v. Cole, 122 Wn. App. 319, 322-23, 93 P.3d 209 (2004). Because D'Angelo does not challenge the findings of

[28] CP at 6.
[29] RP at 6, 44, 71.
[30] CP at 31-37.
[31] CP at 35.
[32] CP at 19-22.
[33] CP at 23-30.
[34] Br. of Appellant at 6.

fact from the CrR 3.6 hearing, they are verities on appeal. State v. Hill, 123 Wn.2d 641, 644, 870 P.2d 313 (1994). We review conclusions of law de novo. Cole, 122 Wn. App. at 323.

The Fourth Amendment of the United States Constitution and article I, section 7 of the Washington State Constitution prohibit an unreasonable search and seizure. State v. Williams, 102 Wn.2d 733, 736, 689 P.2d 1065 (1984). Under the Washington State Constitution, "the home enjoys a special protection." Schultz, 170 Wn.2d at 753. Despite these protections against warrantless searches, "'there are a few jealously and carefully drawn exceptions to the warrant requirement.'" Schultz, 170 Wn.2d at 753-54 (internal quotation marks omitted) (quoting State v. Reichenbach, 153 Wn.2d 126, 131, 101 P.3d 80 (2004)). The emergency aid exception to the warrant requirement is one exception. See Schultz, 170 Wn.2d at 753-54. It "'allows for the limited invasion of constitutionally protected privacy rights when it is necessary for police officers to render aid or assistance.'" Schultz, 170 Wn.2d at 754 (quoting State v. Thompson, 151 Wn.2d 793, 802, 92 P.3d 228 (2004)).

The State has the burden of establishing the facts justifying the emergency aid exception to the warrant requirement. Schultz, 170 Wn.2d at 759. The determination of whether the emergency aid exception justifies a warrantless entry is based on the facts of each case. Schultz, 170 Wn.2d at 755.

In Schultz, a case on which D'Angelo principally relies, the Washington Supreme Court discussed the then-established factors required to prove the emergency aid exception. 170 Wn.2d at 754. These factors are

> "(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."

Schultz, 170 Wn.2d at 754 (internal quotation marks omitted) (quoting State v. Kinzy, 141 Wn.2d 373, 386-87, 5 P.3d 668 (2000)). The Supreme Court adopted three additional factors gleaned from the Court of Appeals case law:

> (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 is in need of immediate help for health or safety reasons, and (6) the claimed emergency is not a mere pretext for an evidentiary search.

Schultz, 170 Wn.2d at 754, 760. All six factors must be met in order for the emergency aid exception to apply. Schultz, 170 Wn.2d at 760 n.5.

Furthermore, the Schultz court recognized the unique challenges police officers face when responding to a domestic violence situation:

> Domestic violence presents unique challenges for law enforcement. Domestic violence situations can be volatile and quickly escalate into significant injury. Domestic violence often, if not usually, occurs within the privacy of a home. Our legislature has recognized that the risk of repeated and escalating acts of violence is greater in the domestic context. RCW 10.99.040(2)(a). The legislature has sought to provide "maximum protection" to victims of domestic violence through a policy of early intervention. RCW 10.99.010.

170 Wn.2d at 755. The court continued to state that a survey of cases indicates that

> the fact that police are responding to a situation that likely involves domestic violence may be an important factor in evaluating both the subjective belief of the officer that someone likely needs assistance and in assessing the reasonableness of the officer's belief that there is an imminent threat of injury.

Schultz, 170 Wn.2d at 756.

D'Angelo contends that the State failed to meet its burden of proving that Walsh faced an imminent threat of substantial injury (Schultz factor four) and that the officers

believed that Walsh was in need of immediate help for health or safety reasons (Schultz factor five). In support of his argument, D'Angelo attempts to analogize the facts in this case to those in Schultz. In Schultz, police officers received a telephone report from a resident of an apartment complex who had called "about a yelling man and female." 170 Wn.2d at 750. When the officers arrived at the apartment, they stood outside and heard a man and woman talking with raised voices inside. Schultz, 170 Wn.2d at 750. The officers heard a man state that he wanted to be left alone and needed his space. Schultz, 170 Wn.2d at 750-51. According to the officers' version of events, Patricia Sue Schultz answered the door when the officers knocked on the door, appearing agitated and flustered. Schultz, 170 Wn.2d at 751. She denied anyone else was inside. Schultz, 170 Wn.2d at 751. One of the officers told Schultz that she had heard a male voice inside. Schultz, 170 Wn.2d at 751. Schultz called for Sam Robertson, who then appeared from a nearby room. Schultz, 170 Wn.2d at 751. Schultz stepped back and opened the door wide, and one of the officers followed her inside. Schultz, 170 Wn.2d at 751.

Applying the law to the facts, the Schultz court concluded that the warrantless entry and subsequent search were unlawful and that the motion to suppress was erroneously denied. 170 Wn.2d at 761. The court emphasized that the facts favorable to the State were insufficient to conclude that exigent circumstances existed. Schultz, 170 Wn.2d at 760. At the moment the officers crossed the threshold they did not have enough facts to justify an entry on the grounds of the emergency aid exception. Schultz, 170 Wn.2d at 760. The court added that "[c]ertainly other facts such as past police responses to the residence, reports of threats, or any other specific information to

support a reasonable belief that domestic violence had occurred or was likely to occur, or that the circumstances were volatile and could likely escalate into domestic violence, may have justified entry." Schultz, 170 Wn.2d at 761.

The circumstances that were absent in Schultz are present in this case. Here, D'Angelo's neighbor heard a woman in distress who was shouting, "[L]et me go."[35] The officers contacted the 911 caller to confirm the reliability of her call after they heard no sounds from inside D'Angelo's apartment. Unlike in Schultz, here, the officers initially heard no sounds coming from the apartment, increasing their concern that the woman inside could be in danger or injured if they did not intervene. And where Schultz appeared agitated and flustered, here, Walsh appeared frightened and upset, while D'Angelo continued to behave aggressively and in an agitated manner. Moreover, the officers' limited view of the apartment and its occupants was not sufficient to mollify their concern about Walsh's safety.

In all, D'Angelo's aggressive behavior throughout the confrontation, in conjunction with Walsh's fearful demeanor and crying, denoted a volatile situation that could escalate at any moment. See Schultz, 170 Wn.2d at 761. Thus, the officers were justified in entering the apartment to ensure that D'Angelo posed no present or continuing threat to Walsh. We conclude that the officers reasonably believed that a situation involving domestic violence was occurring or would occur in the near future and that immediate intervention was necessary to deal with the imminent threat of substantial injury to Walsh.

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[35] RP at 11-12.

In both its oral ruling and written decision, the trial court did not address factors four and five of Schultz.[36] D'Angelo contends that the court's failure to do so mandates reversal of his conviction.[37] But although the trial court did not explicitly address Schultz factors four and five, the unchallenged facts and the record support the conclusion that the officers believed there was an imminent threat of substantial injury to Walsh and that Walsh was in immediate need of help for her health and safety.

Affirmed.

Trickey, J

WE CONCUR:

Leach, J.

Becker, J.

[36] RP at 139-147; CP at 35-37.

[37] D'Angelo appears to argue that the standard of review for applying an incorrect or incomplete legal standard is for abuse of discretion. This is not the correct standard of review used by courts when reviewing CrR 3.6 decisions. Rather, as noted above, this court reviews conclusions of law de novo.

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals** under **Case No. 70730-2-I**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

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☐ Attorney for other party

MARIA ANA ARRANZA RILEY, Legal Assistant Date: November 10, 2014
Washington Appellate Project