

FILED
SUPREME COURT
STATE OF WASHINGTON
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BY SUSAN L. CARLSON
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No. 99536-2
IN THE SUPREME COURT FOR THE STATE OF
WASHINGTON

STATE OF WASHINGTON, Respondent,

v.

EDWIN ESPEJO, Appellant

ANSWER TO PETITION FOR REVIEW

Respectfully submitted:
SHAWN P. SANT
Prosecuting Attorney

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A. IDENTITY OF RESPONDENT

State of Washington is the respondent.

B. COURT OF APPEALS DECISION

A copy of the Court of Appeals opinion affirming the convictions of Edwin Espejo is in the appendix at A-1 through A-7.

C. ISSUES PRESENTED FOR REVIEW

The State respectfully submits that the instant case presents no issues in need of review by the Washington Supreme Court.

D. STATEMENT OF THE CASE

A detailed recitation of the facts appears in the Counterstatement of the Case at pages 2-22 of the Brief of Respondent. It is incorporated by reference. The Court of Appeals accurately summarized the facts in its unpublished opinion as follows:

Law enforcement officers were dispatched to Mr. Espejo's home in response to a domestic violence call. When the first officer arrived, he encountered several children outside. The children were crying and yelling "he is hitting her" while motioning their fists to their eyes. 4 Report of Proceedings (Feb. 25, 2019) at 612. The children said the incident was taking place inside the house. The officer called for

backup and asked to be taken into the home. A child took the officer inside to the top of the basement stairs and told the officers that the assailant, named 'Edwin,' was downstairs. The officer waited at the top of the stairs for backup to arrive. While waiting, the officer could hear the sounds of children downstairs, whimpering and crying.

Once backup arrived, the initial officer called for Edwin to come upstairs. He did not. The officers then headed downstairs. About halfway down the stairs the officers noticed a child walking back and forth and crying, and helped him to get upstairs. Once in the basement, officers saw Edwin Espejo sitting on a bed with two young children in his lap. The children were crying and upset. The officers convinced Mr. Espejo to let the children go.

As soon as all the children were gone, Mr. Espejo moved his hands to his pants pockets. The outline of a firearm could be seen in Mr. Espejo's left pocket. Mr. Espejo was ordered to show his hands. He did not immediately comply. Instead, he removed a handgun from his pocket and slid it under a pillow on the bed. Mr. Espejo began to cry and writhe on the bed while the officers unsuccessfully ordered him to move away from the gun. Mr. Espejo told the officers to get out of his house. He insisted he was not going back to jail and kept saying, "I am going to grab it. I am going to grab it." *Id* at 620.

Additional officers arrived and entered the basement area. Several officers drew firearms, keeping them at low ready position. At one point, an officer drew a stun gun.

Officers went back and forth with Mr. Espejo for a few minutes, ordering him to stay away from the gun and come toward them. At one point, Mr. Espejo picked up the gun. Officers ordered Mr. Espejo to drop the gun on the bed, which he did. Mr. Espejo then clenched his fists and began to stand up while

removing his shirt. It appeared to the officers Mr. Espejo was preparing to fight. The stun gun was deployed on Mr. Espejo in an effort to get him detained.

The stun gun was only partially effective. After being hit, Mr. Espejo fell onto the bed and then reached for the gun. Officers told Mr. Espejo, "Don't grab it; don't grab it; don't grab it." *Id.* at 623. Mr. Espejo grabbed the gun and began firing at the officers. Officers returned fire, hitting Mr. Espejo multiple times. After the shooting, bullet holes were found in the washing machine and staircase behind the officers. One of the officers found a bullet hole through his pants.

Slip opinion, at 1-3 (A-1 through A-3).

E. ARUMENT WHY REVIEW SHOULD NOT BE ACCEPTED

(1) The Washington law applied by the Court of Appeals is completely consistent with *Caniglia v. Storm*.

Mr. Espejo claims the United States Supreme Court's recent decision in *Caniglia v. Storm*, 593 U.S. ___, 141 S. Ct. 1596, ___ L. Ed. 2d ___ (2021) is somehow relevant to this case. However, the Washington law applied by the Court of Appeals is completely consistent with *Caniglia*.

Caniglia involved officers responding to a report of a suicidal person. After the subject had left in an ambulance to receive

medical attention, the officers entered his home without a warrant to look for his firearm despite the fact that the emergency has passed. The Court explained that its ruling in *Cady v. Dombrowski*, 413 U.S. 433, 93 S. Ct. 2523, 37 L. Ed. 2d 706 (1973), that a warrantless search of an impounded vehicle for an unsecured firearm did not violate the Fourth Amendment, did not create a “standalone doctrine that justifies warrantless searches and seizures in the home.” 141 S. Ct. at 1598. In *Cady*, the Court observed that police officers who patrol the public highways are often called to discharge noncriminal “community caretaking functions” such as responding to disabled vehicles or investigating accidents. 413 U.S. at 441. *Cady*’s “unmistakable distinction between vehicles and homes” places “into proper context its reference to ‘community caretaking.’” 141 S. Ct. at 1599. “What is reasonable for vehicles is different from what is reasonable for homes. *Cady* acknowledged as much, and this Court has repeatedly ‘declined to expand the scope of . . . exceptions to the warrant requirement to permit warrantless entry into the home.’” *Id.* at 1600.

At the same time, the unanimous opinion in *Caniglia* notes: “We have recognized a few permissible invasions of the home and its curtilage. . . . We have held that law enforcement officers may enter private property without a warrant when certain exigent circumstances exist, including the need to render emergency assistance to an injured occupant or to protect an occupant from imminent injury.” *Caniglia*, 141 S. Ct. at 1599 (citations and quotes omitted). There are also three separate concurring opinions highlighting various scenarios where officers may enter a home without a warrant. *See, e.g., Caniglia*, 141 S. Ct. at 1600 (“A warrant to enter a home is not required . . . when there is a ‘need to assist persons who are seriously injured or threatened with such injury.’”) (Roberts, C.J., concurring); *id.* at 1601 (discussing cases “involving warrantless, nonconsensual searches of a home for the purpose of ascertaining whether a resident is in urgent need of medical attention and cannot summon help”) (Alito, J., concurring); *id.* at 1604 (explaining that “the Court’s exigency precedents . . . permit warrantless entries when police officers have an objectively reasonable basis to believe that there is a current, ongoing crisis for which it is reasonable to act now”) (Kavanaugh, J., concurring).

The term “community caretaking” has been applied to a wide array of police activities. As explained in *Hudson v. City of Wenatchee*, 94 Wn. App. 990, 974 P.2d 342 (1999):

Courts have recognized that police officers acting in their community caretaking function occasionally perform services in addition to the enforcement on the penal laws. Many citizens look to the police to assist them in a variety of circumstances, including delivering emergency messages, giving directions, searching for lost children, assisting stranded motorists, and rendering first aid.

Id. at 996 (citations omitted). It has never been suggested that all of these services would justify the warrantless entry of a home.

Rather, the Court of Appeals in our case focused on a narrow subset of the community caretaking function: “*emergency actions* taken as part of the officers’ community caretaking responsibilities.”

Slip opinion, at 6 (A-6) (emphasis added). The Court of Appeals relied on this court’s opinion in *State v. Boisselle*, 194 Wn.2d 1, 14, 448 P.3d 19 (2019), in noting an exception to the warrant requirement exists where officers are not acting under an investigative pretext and three factors are met:

(1)The officers subjectively believed that an emergency existed requiring that [they] provide immediately assistance to protect or preserve life or

property, or to prevent serious injury, (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.

Slip opinion, at 6 (A-6). The Court of Appeals applied these factors as follows:

There was no evidence of pretext; at the time of entry, the sole objective was to respond to an ongoing domestic disturbance. In addition: (1) officers made plain their subjective concern was to protect the individuals in Mr. Espejo's home from further injuries, (2) this concern was reasonable, particularly given the dangers posed by domestic violence, and (3) it was abundantly clear the ongoing danger was occurring in Mr. Espejo's basement. Given the information available to law enforcement, it would have been irresponsible for officers to ignore the cries and distress of the children and decline entry into Mr. Espejo's home. Once inside, the officers appropriately continued their response to the ongoing emergency. No warrant was necessary under these circumstances.

Slip opinion, at 6-7 (A-6 through A-7). These facts in no way resemble *Canigula*, where the emergency was over before the officers entered the home. The instant case fits squarely within the emergency circumstances recognized in *Canigula* where the warrantless entry of a home is justified. Not only did an emergency

exist at the moment the officers entered the home, it continued throughout the encounter due to Mr. Espejo's words and actions. Notably, the Washington law is identical to *Canigula* in requiring an emergency that necessitates police assistance to protect or preserve life or property, or to prevent serious injury. *Boiselle*, 194 Wn.2d at 14.

Other cases hold that a warrant is not required to respond to a domestic violence emergency in a home without using the term "community caretaking." See, e.g., *State v. Johnson*, 104 Wn. App. 409, 16 P.3d 680 (2001); *State v. Lynd*, 54 Wn. App. 18, 20-21, 771 P.2d 770 (1989); *State v. Raines*, 55 Wn. App. 459, 778 P.2d 538 (1989); *Georgia v. Randolph*, 547 U.S. 103, 118-19, 126 S. Ct. 1515, 1525-26, 164 L. Ed. 2d 208 (2006). It is clear that this emergency exception exists regardless of whether a "community caretaking" label is attached to it.

Finally, as the Court of Appeals observed: "Even if the emergency exception did not apply, Mr. Espejo's arguments would fail because the exclusionary rule does not apply to evidence of an assault against law enforcement officers. *State v. Mierz*, 127

Wn.2d 460, 473-74, 901 P.2d 286 (1995).” Slip opinion, at 7 n. 2 (A-7).

The Court of Appeals correctly applied clearly settled Washington law, which is not altered in any way by recent United States Supreme Court precedent. No issues are presented requiring review by this court.

(2) There is no debatable issue regarding the sufficiency of the evidence to support the convictions.

Mr. Espejo further contends that the evidence is insufficient to support his convictions. The Court of Appeals was clearly correct in finding to the contrary and there is no need for this court to review the matter.

Mr. Espejo’s description of the facts of the case is almost entirely inaccurate. For the true facts, please see the Brief of Respondent at 2-22 and the Court of Appeals opinion at 1-4 (A-1 through A-4).

It is claimed that the evidence does not show premeditation. As noted by the Court of Appeals at 4-5, “Premeditation is the deliberate formation of and reflection upon the intent to take a

human life and involves the mental process of thinking beforehand, deliberation, reflection, weighing or reasoning for a period of time, however short.” *State v. Barajas*, 143 Wn. App. 24, 36, 177 P.3d 106 (2007). Factors relevant to premeditation include “[m]otive, procurement of a weapon, stealth, and the manner of killing.” *Id.* “The defendant’s statements may be considered when determining whether the defendant acted with premeditation.” *Id.* Moreover, premeditation may be shown by either direct or circumstantial evidence. *State v. Gibson*, 47 Wn. App. 309, 311, 734 P.2d 32 (1987).

Mr. Espejo makes the same mistake he made in the Court of Appeals in focusing only on the moments between the time the stun gun was deployed and when he opened fire on the officers. The evidence shows he was deliberating and premeditating about using lethal force against the officers throughout the encounter in the basement. It was obviously necessary for him to arm himself with a firearm in order to commit the crime, and the evidence shows he took considerable time deciding what to do with the firearm. First, he slid it out of his pocket and placed it under a pillow. RP 618-19. Later, he picked it up by two fingers before

again setting it down. RP 620-21. Finally, he grabbed the gun and opened fire on the officers. RP 623-24. Throughout the encounter, he ignored the officers' pleas with him to move forward away from the gun. RP 619, RP 635. As Officer David Dillsworth testified: "It seemed like he was considering the whole time that we were talking, just trying to decide what he was going to do, I guess." RP 637.

The Court of Appeals stated it well:

The evidence here amply supports premeditation. Our focus is not limited to the moments between when Mr. Espejo was hit with the stun gun and when he fired at the officers. We take a broader perspective. Testimony from law enforcement showed Mr. Espejo began thinking about using his gun against the police when he reached into his pocket and moved his hands around. Throughout the encounter in the basement, Mr. Espejo refused orders to distance himself from the firearm. Prior to being hit with the stun gun, Mr. Espejo twice accessed his gun and put it down. During the entire process, Mr. Espejo was emotional and angry. He told the officers to get out of his house, that he was going to grab his firearm, and that he would not go back to jail. Viewed in a light most favorable to the State, Mr. Espejo's actions and words suggest he was deliberating on using his gun against the officers in order to create a lethal encounter.

Slip opinion, at 5 (A-5).

Mr. Espejo claims he was threatened and humiliated by the police. Actually, Officer Matt Griffin is a trained hostage negotiator and drew on his training and experience in speaking with Mr. Espejo. RP 617. He continued to take the lead in speaking with Mr. Espejo to minimize confusion. RP 622. Officer Griffin talked to Mr. Espejo “as a negotiator would talk to somebody over the phone”:

And I just tried to talk to him, It's not about the kids man. It not about the kids. It's something not serious right now, man. Just think about your kids. Think about what they are going to go through and stuff.

RP 621. (The entire encounter was recorded on the officer's body microphone and the jury had an opportunity to hear and consider it. RP 624-26.)

It is further claimed that Mr. Espejo was told to crawl away from the gun in order to dehumanize him. Officer Dillsworth's testimony actually was:

. . So [Officer Griffin] started communicating with Edwin and pleading with him to come to us. And Edwin was indicating that he was going to grab the gun at that point.

. . . And so Officer Griffin was asking him; I would say pleading with him not to grab the gun. And he, Officer Griffin indicated that we do not want to hurt him while we were down there and just asking him to please come to us.

And at one point he asked him to get down and just crawl to us if that would be easier and give him different options. And they both just communicated back like that.

RP 635.

Mr. Espejo focuses on Officer Dillsworth, even though he was only one of three officers who fired or attempted to fire their sidearms at him. RP 569. Like many officers, he used the experience he gained as a volunteer reserve officer to lead to a law enforcement carrier; at the time of trial, he had been hired by the Pasco Police Department as a full time officer and was in the process of attending the regular law enforcement academy. RP 629. He was not untrained. To become a reserve officer, he had to attend a six-month academy consisting of three nights a week from 7:00 to 10:00 p.m. and several weekends throughout that time period. RP 644. He had three years of experience as a reserve officer before being hired full time. RP 629. Officer Dillsworth did not force himself to the front during the encounter with Mr. Espejo:

Officer John D'Aquilla moved Officer Ana Ramos to the side because he was the more experienced officer, RP 744; Officer D'Aquilla was Officer Dillsworth's supervising officer with whom he was riding, so he was naturally beside him. RP 630. Sergeant David Allen was asked if Officer Dillsworth was carrying a weapon issued by the Pasco Police Department, to which he explained:

No. He was carrying a weapon that was authorized by Pasco police. The reserves have to purchase or supply their own firearm, but they have to meet our standards and be inspected by the firearms instructors. He has to qualify at the range on the same test as the regular officers do and score at the same level as the regular officers do.

RP 593.

Mr. Espejo also glosses over the fact that he initiated gunfire against the officers, requiring his victims to return fire in self-defense. RP 665-66; 687-89; 750; 639. Trevor Allen of the Washington State Patrol Crime Lab conducted a crime scene analysis and was able to determine the number of bullets fired from Mr. Espejo's weapon. RP 914. The weapon was empty when it was recovered at the scene. RP 966. Cartridge cases recovered at the scene were Speer and Winchester brands. RP 957. It was possible to

distinguish those fired by the officers from those originating from Mr. Espejo's gun, as the Pasco Police Department uses Speer brand ammunition. RP 933. A total of seven Winchester brand cartridge cases were recovered at the scene. RP 958, 959, 961, 963. Contrary to the image portrayed in his petition for review, Mr. Espejo fired seven shots at his victims standing directly in front of him, completely emptying his ammunition clip.

There is no basis to argue that the convictions are not supported by sufficient evidence. Review by this court is not warranted.

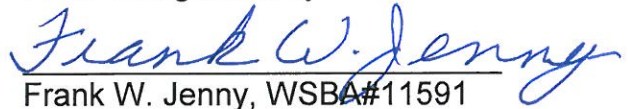
F. CONCLUSION

It is respectfully requested that the Petition for Review of Edwin Espejo be denied.


DATED: July 6, 2021.

Respectfully submitted:

SHAWN P. SANT
Prosecuting Attorney



Frank W. Jenny, WSBA#11591
Deputy Prosecuting Attorney

<p>John Gary Metro garymetrolawfirm@gmail.com</p>	<p>A copy of this brief was sent via U.S. Mail or via this Court's e-service by prior agreement under GR 30(b)(4), as noted at left. I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. DATED July 6, 2021 Pasco, WA  Misty McBrearty, Legal Secretary Original filed at the Court of Appeals, 500 N. Cedar Street, Spokane, WA 99201</p>
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APPENDIX

FILED
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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON,)	No. 36788-6-III
)	
Respondent,)	
)	
v.)	UNPUBLISHED OPINION
)	
EDWIN ESPEJO,)	
)	
Appellant.)	

PENNELL, C.J. — Edwin Espejo appeals his convictions for attempted first degree murder and unlawful possession of a firearm. We affirm.

FACTS

Law enforcement officers were dispatched to Mr. Espejo’s home in response to a domestic violence call. When the first officer arrived, he encountered several children outside. The children were crying and yelling “‘he is hitting her’” while motioning their fists to their eyes. 4 Report of Proceedings (Feb. 25, 2019) at 612. The children said the incident was taking place inside the house. The officer called for backup and asked to be taken into the home. A child took the officer inside to the top of the basement stairs and told the officer that the assailant, named “Edwin,” was downstairs. The officer waited at the top of the stairs for backup to arrive. While waiting, the officer could hear the sounds of children downstairs, whimpering and crying.

Once backup arrived, the initial officer called for Edwin to come upstairs. He did not. The officers then headed downstairs. About halfway down the stairs the officers noticed a child walking back and forth and crying, and helped him to get upstairs. Once in the basement, officers saw Edwin Espejo sitting on a bed with two young children in his lap. The children were crying and upset. The officers convinced Mr. Espejo to let the children go.

As soon as all the children were gone, Mr. Espejo moved his hands to his pants pockets. The outline of a firearm could be seen in Mr. Espejo's left pocket. Mr. Espejo was ordered to show his hands. He did not immediately comply. Instead, he removed a handgun from his pocket and slid it under a pillow on the bed. Mr. Espejo began to cry and writhe on the bed while the officers unsuccessfully ordered him to move away from the gun. Mr. Espejo told the officers to get out of his house. He insisted he was not going back to jail and kept saying, "I am going to grab it; I am going to grab it." *Id.* at 620.

Additional officers arrived and entered the basement area. Several officers drew firearms, keeping them at a low ready position. At one point, an officer drew a stun gun.

Officers went back and forth with Mr. Espejo for a few minutes, ordering him to stay away from the gun and to come toward them. At one point, Mr. Espejo picked up the gun. Officers ordered Mr. Espejo to drop the gun on the bed, which he did. Mr. Espejo

then clenched his fists and began to stand up while removing his shirt. It appeared to the officers Mr. Espejo was preparing to fight. The stun gun was deployed on Mr. Espejo in an effort to get him detained.

The stun gun was only partially effective. After being hit, Mr. Espejo fell onto the bed and then reached for the gun. Officers told Mr. Espejo, “‘Don’t grab it; don’t grab it; don’t grab it.’” *Id.* at 623. Mr. Espejo grabbed the gun and began firing at the officers. Officers returned fire, hitting Mr. Espejo multiple times. After the shooting, bullet holes were found in the washing machine and staircase behind the officers. One of the officers found a bullet hole through his pants.

Mr. Espejo survived the shooting with several injuries. He was taken into custody and charged with three counts of attempted first degree murder, second degree unlawful possession of a firearm, fourth degree domestic violence assault, and interfering with the reporting of domestic violence. Before trial, Mr. Espejo moved under CrR 3.6 to suppress the evidence collected from his home, arguing the officers unlawfully searched the home without a warrant. The trial court denied the motion.

At the close of the State’s evidence at trial, Mr. Espejo unsuccessfully moved for a directed verdict. Mr. Espejo then called one of the officers back as a witness in the defense case-in-chief. The jury found Mr. Espejo guilty of three counts of attempted first

degree murder and one count of second degree unlawful possession of a firearm.

Mr. Espejo now appeals.

ANALYSIS

Sufficiency of the evidence

Due process requires the State to prove all elements of a charged crime beyond a reasonable doubt. *State v. Chacon*, 192 Wn.2d 545, 549, 431 P.3d 477 (2018). Our review of whether the State has met its burden requires substantial deference to the jury. When assessing the sufficiency of the State’s proof, we view the evidence in the light most favorable to the State. *State v. Crowder*, 196 Wn. App. 861, 868, 385 P.3d 275 (2016). “Evidence is sufficient to support a conviction where . . . any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Id.*¹

Attempted first degree murder requires proof of premeditated intent. *State v. Barajas*, 143 Wn. App. 24, 36, 177 P.3d 106 (2007). “Premeditation is ‘the deliberate formation of and reflection upon the intent to take a human life and involves the mental

¹ Mr. Espejo contends the trial court should have granted his motion for a directed verdict because the State failed to present sufficient evidence of premeditation during its case-in-chief. However, because Mr. Espejo presented evidence during his case-in-chief, his assignment of error is properly treated as a challenge to the sufficiency of the evidence presented at the entire trial. *State v. Allen*, 116 Wn. App. 454, 465 n.6, 66 P.3d 653 (2003).

process of thinking beforehand, deliberation, reflection, weighing or reasoning for a period of time, however short.’” *Id.* (quoting *State v. Hoffman*, 116 Wn.2d 51, 82-83, 804 P.2d 577 (1991)). Factors relevant to premeditation include “[m]otive, procurement of a weapon, stealth, and the manner of killing.” *Id.* “The defendant’s statements may be considered when determining whether the defendant acted with premeditation.” *Id.*

The evidence here amply supports premeditation. Our focus is not limited to the moments between when Mr. Espejo was hit with the stun gun and when he fired at the officers. We take a broader perspective. Testimony from law enforcement showed Mr. Espejo began thinking of using his gun against the police when he reached into his pockets and moved his hands around. Throughout the encounter in the basement, Mr. Espejo refused orders to distance himself from the firearm. Prior to being hit with the stun gun, Mr. Espejo twice accessed his gun and put it down. During the entire process, Mr. Espejo was emotional and angry. He told the officers to get out of his house, that he was going to grab his firearm, and that he would not go back to jail. Viewed in the light most favorable to the State, Mr. Espejo’s actions and words suggest he was deliberating on using his gun against the officers in order to create a lethal encounter. Mr. Espejo’s ultimate objective may have been to get himself killed. Regardless, there was sufficient evidence to support the jury’s finding of premeditation.

Suppression motion

In addition to challenging the jury's verdict, Mr. Espejo appeals the trial court's denial of his suppression motion. Because Mr. Espejo has not disputed any of the trial court's factual findings, our review is limited to a de novo assessment of the law.

See State v. Griffith, 11 Wn. App. 2d 661, 670, 455 P.3d 152 (2019).

Law enforcement officers generally need a warrant to enter a private residence; however, an exception exists for emergency actions taken as part of the officers' community caretaking responsibilities. The community caretaking exception applies when officers are not acting under an investigative pretext and three factors are met:

(1) the officer[s] subjectively believed that an emergency existed requiring that [they] provide immediate assistance to protect or preserve life or property, or to prevent serious injury, (2) a reasonable person in the same situation would similarly believe that there was a need for assistance, and (3) there was a reasonable basis to associate the need for assistance with the place searched.

State v. Boisselle, 194 Wn.2d 1, 14, 448 P.3d 19 (2019).

The record here supports all components of the community caretaking exception. There was no evidence of pretext; at the time of entry, the sole objective was to respond to an ongoing domestic disturbance. In addition: (1) officers made plain their subjective concern was to protect the individuals in Mr. Espejo's home from further injuries, (2) this concern was reasonable, particularly given the dangers posed by domestic violence, and

(3) it was abundantly clear the ongoing danger was occurring in Mr. Espejo's basement. Given the information available to law enforcement, it would have been irresponsible for officers to ignore the cries and distress of the children and decline entry into Mr. Espejo's home. Once inside, the officers appropriately continued their response to the ongoing emergency. No warrant was necessary under these circumstances.²

CONCLUSION

The judgment of conviction is affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

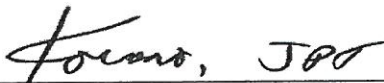


Pennell, C.J.

WE CONCUR:



Fearing, J.



Korsmo, J.P.T.³

² Even if the emergency exception did not apply, Mr. Espejo's arguments would fail because the exclusionary rule does not apply to evidence of an assault against law enforcement officers. *State v. Mierz*, 127 Wn.2d 460, 473-74, 901 P.2d 286 (1995).

³ Judge Kevin M. Korsmo was a member of the Court of Appeals at the time argument was held on this matter. He is now serving as a judge pro tempore of the court pursuant to RCW 2.06.150.

FRANKLIN COUNTY PROSECUTING ATTORNEY'S OFFICE

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