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AUG 20 2012

King County Prosecutor
Appellate Unit

NO. 68535-0-1

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

STATE OF WASHINGTON,

Respondent,

v.

ADREN COLEMAN,

Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

The Honorable Beth M. Andrus, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. Appellant received ineffective assistance of counsel when trial counsel failed to understand it was the defense's burden to produce evidence establishing appellant's standing to challenge the warrantless entry of another's apartment.

2. The trial court erred when it concluded the emergency-aid exception to the warrant requirement applied without first determining whether there was an imminent threat of substantial injury, and whether officers believed there was a need for immediate assistance.

3. The trial court erred when it entered conclusions of law 6-10.¹ See, Written Findings of Fact and Conclusions of Law on CrR 3.6 Motion to Suppress Physical Evidence, attached as an Appendix.

Issues Pertaining to Assignments of Error

1. Appellant was a guest in someone else's apartment when officers entered without a warrant to investigate a report of

¹ Appellant does not assign error to conclusions of law 1-5, because the trial court's conclusions rest upon evidence presented during the 3.6 hearing. However, appellant contends that these conclusions are tainted due to counsel's ineffective assistance, which precluded the trial court from the benefit of other evidence that had a reasonable probability of changing those conclusions.

domestic violence. At trial, appellant sought to suppress the evidence obtained after entry. As a legal prerequisite, he had to establish his standing as a social guest. During the 3.6 hearing, defense counsel failed to recognize it was the defense's burden to establish standing and, instead, expressly argued it was the State's burden to disprove this. Published case law unequivocally established otherwise. Misapprehending the defense's burden, counsel failed to produce known, relevant, and necessary evidence. Noting the lack of defense evidence, the trial court concluded appellant was without standing to challenge the warrant. Was appellant denied effective assistance of counsel?

2. The trial court ruled that even if appellant had standing to challenge the warrantless entry, the entry was justified under the emergency-aid exception to the warrant requirement. The trial court did not apply the proper legal analysis, however. The Washington Supreme Court has stated, before this exception applies, the State must prove inter alia: (1) there was an imminent threat of substantial injury to a person; and (2) police believed a person was in need of immediate help.

Where the trial court failed to recognize and analyze these factors, and where there was evidence indicating no imminent

threat or need for immediate assistance existed, did the trial court err in holding the emergency-aid exception applied?

B. STATEMENT OF THE CASE

1. Procedural History

On June 15, 2011, the King County prosecutor charged appellant Adren Coleman with one count of domestic violence felony violation of a court order under both the assault prong and the two-prior-offense prong. CP 1-5; RCW 26.50.110. On February 13, 2012, the charge was amended and the prosecutor added an aggravating factor. CP 17-18. A jury found Coleman guilty under the two-prior-offense prong, but not under the assault prong. CP 59-60. The jury also concluded the State had not proved the facts necessary to support the aggravator. CP 67. Coleman was sentence to 90 days of incarceration. CP 68-75. This appeal follows. CP 79-88.

2. Substantive Facts.

Upon meeting in 2001, Tara Brown and Coleman became a couple and had two children together. 2RP 122.² The couple had a good relationship for seven years. 2RP 123. Over the last few

² The transcripts are referred to as follows: 1RP (2-13-12); 2RP (2-15-12); 3RP (2-23-12).

years, however, due to Coleman's infidelity and the couple's resulting arguments about it, the relationship deteriorated. 2RP 123-28. When Coleman's anger escalated, Brown obtained a protection order. 2RP 78, 123, 128; 3RP 22. Despite the order, Brown and Coleman maintained an off-and-on relationship. 2RP 122, 128. During this time, Coleman twice pled guilty to violating the no-contact order. 3RP 23, 25.

The protection order allowed Coleman to visit his children at Patricia Brown's apartment, which he did on weekends.³ 2RP 140. 2RP 140, 145; 3RP 30. Patricia considered Coleman to be like a son-in-law. 3RP 36. When visiting, Coleman had access to Patricia's apartment, including the upstairs bedrooms. 3RP 31; Appendix A at 3. Coleman even brought groceries to the apartment. 3RP 30.

According to both Brown and Patricia, on the day of the incident (June 11, 2011), Coleman was visiting his children at Patricia's apartment when Brown and her friend Brittany Matthews spontaneously stopped by at about 12:30 in the afternoon. 2RP 137, 145. Although a good friend to Brown, Matthews was

³ Patricia Brown is Tara Brown's mother. 3RP 29. To avoid confusion, appellant will refer to Patricia Brown as "Patricia."

possessive and made Brown feel pressured to choose between Coleman and Matthews. 2RP 134-35. On that day, Coleman let Brown into the apartment, but slammed the door on Matthews to keep her out. 2RP 137. Angered, Matthews started pounding on the door and eventually went out to her car and called police. 2RP 137, 146.

Mathews called 911, claiming to have seen Coleman at Brown's apartment⁴ and alleging that Coleman had just assaulted Brown. 1RP 14; 2RP 40-41. Mathews also said she saw Coleman force Brown to walk to Patricia's apartment and that Brown had a "black eye."⁵ 2RP 52-54.

When officers responded, Mathews appeared distraught and claimed she was worried about the safety of her friend. 1RP 14-16. She informed them about the existence of a no-contact order and claimed there were prior assaults. 1RP 16. Officers went with Matthews to Patricia's apartment to investigate the alleged domestic violence and to check on Brown's safety. 1RP 16-17, 30.

⁴ Brown lived in the apartment building adjacent to that of Patricia. 1RP 14-16.

⁵ Officers on scene found no evidence of physical injury (2RP 76) and the jury ultimately disbelieved Matthews, concluding no assault was proven. CP 60.

While outside – but before reaching Patricia’s apartment – the officers heard an argument, but they could not confirm from which apartment it originated. 1RP 17.

When officers arrived in front of Patricia’s door, however, all was quiet. According, one officer knocked and announced his presence. 1RP 18, 37. After a second knock, a woman came to the door and asked, “Who is it?” She did not sound like she was crying. 1RP 35. An officer explained he wanted to speak with Brown in order to confirm her safety. 1RP 18. There was no response or further sounds from the apartment. 1RP 18, 39.

The officers decided not to force entry. 1RP 18. Instead, they waited fifteen minutes for the apartment manager to arrive with a key. 1RP 19. After receiving the key, an officer unlocked the door and entered the apartment. 1RP 19. Brown was sitting on the stairs and appeared as if she had been crying or was about to cry. 1RP 19-20. Brown was not physically injured, but she felt at fault for having intruded on Coleman’s visit and creating the situation. 1RP 22; 3RP 141.

Brown first told officers that Coleman had gone out the back window, but she later confessed he was upstairs with the children. 1RP 22, 24. Officers called Coleman down, escorted him out of

the home, and arrested him after confirming the existence of the no-contact order. 1RP 24-25, 59-60.

Meanwhile, Mathews had departed. 2RP 49. She called 911 again to inquire whether Coleman had been arrested and told the operator that she really wanted to get him. 2RP 60. She later returned to the apartments and gave her statement to police. 2RP 49.

3. Facts Pertaining to Motion to Suppress.

Prior to trial, Coleman moved to suppress all evidence gathered after the officer entered Patricia's apartment on the ground that the officers did not have a warrant and there was no exception justifying the warrantless entry. CP 7-16. Defense counsel understood the state would challenge Coleman's standing given that the apartment was rented by Patricia. CP at 6. Counsel did not understand, however, it was the defense's burden to produce evidence establishing Coleman had a reasonable privacy expectation triggering his standing. 1RP 96. Instead, she erroneously believed the State had the burden to disprove such an expectation. 1RP 96.

During the 3.6 hearing, the State offered the testimony of the officers who were at the scene and then argued the defendant

lacked standing or, alternatively, the emergency-aid exception to the warrant requirement applied. 1RP 14-93. The defense offered no witnesses, and argued the State could not disprove Coleman had a legitimate expectation of privacy. 1RP 94-98. It also argued the emergency-aid exception did not apply because the State was unable to show there was an imminent threat of injury or an immediate need of assistance given the officer's willingness to stand outside the apartment for 15 minutes waiting for a key. 1RP 98-101.

The trial court ruled the defense had failed to produce the evidence necessary to establish Coleman's standing. Appendix at 3. Alternatively, it ruled the emergency-aid exception applied. Appendix at 4.

C. ARGUMENT

I. APPELLANT WAS DENIED THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL.

The Sixth Amendment guarantees the right to effective counsel. Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). "This right exists, and is needed, in order to protect the fundamental right to a fair trial." Id. at 684. Ineffective assistance of counsel is established if: (1) counsel's

performance was deficient, and (2) the deficient performance prejudiced the defendant. State v. Thomas, 109 Wn.2d 222, 225-26, 743 P.2d 816 (1987) (adopting two-prong test from Strickland, 466 U.S. at 687). As shown below, both prongs are satisfied here.

“Counsel ... has a duty to bring to bear such skill and knowledge as will render the trial a reliable adversarial testing process.” Strickland, 466 U.S. at 688. Counsel fails to render constitutionally required effective assistance when he does not exercise the customary skills and diligence that a reasonably competent attorney would perform under similar circumstances. Hawkman v. Parratt, 661 F.2d 1161 (8th Cir.1981). Thus, deficient performance occurs when counsel's conduct falls below an objective standard of reasonableness. State v. Stenson, 132 Wn.2d 668, 705, 940 P.2d 1239 (1997).

To provide constitutionally adequate assistance, counsel must research and apply relevant case law. State v. Kylo, 166 Wn.2d 856, 868-69, 215 P.3d 177 (2009) (finding ineffective assistance of counsel where counsel failed to inform himself of existing case law and, consequently, proposed improper jury instructions). Here, counsel's performance was deficient because she failed to research and apply relevant case law that unequivocally established it was the

defense's burden to show Coleman had a privacy expectation while in Patricia's home and, thus, had standing as a social guest to challenge the warrantless entry.

Standing is a "party's right to make a legal claim or seek judicial enforcement of a duty or right." BLACK'S LAW DICTIONARY, at 1442 (8th ed.2004). When making a legal claim regarding the constitutionality of a home entry by police, "a claimant who has a legitimate expectation of privacy in the invaded place has standing to claim a privacy violation." State v. Link, 136 Wn. App. 685, 692, 150 P.3d 610 (2007). Coleman had standing to challenge the search because he was a social guest of Patricia and had a legitimate expectation of privacy in Patricia's apartment when visiting his children there.

An overnight guest has standing to challenge a warrantless search. Minnesota v. Olson, 495 U.S. 91, 96–97, 110 S.Ct. 1684, 109 L.Ed.2d 85 (1990). But a defendant who merely establishes that he was casually on the premises cannot show a legitimate expectation of privacy. State v. Boot, 81 Wn. App. 546, 551, 915 P.2d 592 (1996). "The middle ground, where the defendant was more than a casual guest but less than an overnight guest, requires a more fact-specific standing analysis." Link, 136 Wn. App. at 692

(citing Minnesota v. Carter, 525 U.S. 83, 91, 119 S.Ct. 469, 142 L.Ed.2d 373 (1998)).

When determining whether a social guest has standing, courts consider the following factors: (1) the defendant's relationship with the homeowner or tenant; (2) the context and duration of the visit during which the search took place; (3) the frequency and duration of the defendant's previous visits to the home; and (4) whether the defendant kept personal effects in the home. Link, 136 Wn. App. at 692-93. These four factors are relevant, but not exhaustive, guidelines for the ultimate question of whether the defendant was a social guest with a reasonable expectation of privacy in the home. Id.

It is the defendant's burden to produce evidence establishing that the entry violated his own privacy rights. State v. Cardenas, 146 Wn.2d 400, 404, 47 P.3d 127, 57 P.3d 1156 (2002); Link 136 Wn. App at 692. Despite case law clearly establishing this burden, trial counsel expressly argued it was the State's burden to prove the defendant did not have a privacy interest. 1RP 96. This was a critical mistake. In failing to recognize this burden, defense counsel failed to offer the testimony of a key witness whom the defense knew could establish facts necessary for social guest standing.

Specifically, defense counsel knew Patricia would have testified that Coleman often visited his children at her home, brought groceries for his visits, was in fact visiting the day of the arrest – upstairs watching a movie with her and the children at the time – and that he was like a son-in-law to her. 1RP 98; 3RP 30-32, 36; CP 9. These facts were relevant to the standing inquiry, but the trial court never considered them because defense counsel failed to produce the evidence at the 3.6 hearing.⁶

Counsel's performance was objectively unreasonable. Competent counsel would have been informed about the defense's burden and would have called Patricia to establish the necessary facts. By not doing so, defense counsel failed to effectively prepare and present Coleman's 3.6 motion.

Counsel's deficient performance was prejudicial. In Strickland, the United States Supreme recognized, even if counsel's errors cannot be shown by preponderance of the evidence to have determined the outcome, counsel's deficient performance can still render a proceeding unreliable. 466 U.S. at

⁶ During argument, defense counsel tried to make an "offer of proof" regarding what Patricia would have testified to (1RP 98). However, this effort was too little, too late. The trial court did not accept the offer and relied only on the testimony that was actually before it. Appendix.

693-94. Thus, the Supreme Court adopted a less demanding prejudice standard, requiring reversal where the defense shows there is a reasonable probability that the outcome of the proceeding would have differed but for counsel's errors. Strickland, 466 U.S. at 694; see also, In re Personal Restraint of Pirtle, 136 Wn.2d 467, 487, 965 P.2d 593 (1998).

This record establishes there is a reasonable probability, but for counsel's deficient performance, the outcome would have been different and the trial court would have found Coleman to have standing. As this Court has previously recognized, "[A]most all social guests have a reasonable expectation of privacy." Link, 136 Wn. App. at 693.

In finding otherwise, the trial court expressly noted the defense had not produced key evidence establishing that Coleman had made prior visits to Brown's apartment in order to be with his children. Appendix A at 3. It did not have before it evidence that Coleman brought groceries when he stayed there. The trial court also did not have before it evidence that Patricia considered Coleman to be like a son-in-law, changing the dynamic of the personal relationship between Patricia and Coleman to essentially family members. Had the defense produced this testimony, there is a reasonable probability

that standing would have been established. See, United States v. Wilcox, 357 F.Supp. 514, 518 (E.D.Pa.1973) (holding defendant had standing to challenge search of the home he was visiting based on the fact the defendant had been regularly visiting his children there on weekends). Hence, the trial court's deficient performance was prejudicial.

In sum, appellant was denied effective assistance of counsel when counsel failed to inform herself of the defense's burden and, consequently, failed to produce known, relevant, and necessary evidence for establishing Coleman's standing. As shown below, the failure to establish Coleman's standing was critical to the outcome of this case because the trial court's alternative ruling upholding the search under the emergency-aid exception was erroneous. Consequently, reversal is required.

II. THE TRIAL COURT ERRED WHEN IT CONCLUDED THE EMERGENCY-AID EXCEPTION APPLIED.

The trial court found the emergency-aid exception to the warrant requirement applied in this case. As shown below, the trial court did not apply the correct legal analysis. Once the proper legal analysis is applied, the record shows the State failed to establish all the factors necessary to support the application of this exception.

Article I, section 7 of the Washington Constitution provides, “No person shall be disturbed in his private affairs, or his home invaded, without authority of law.” Under Washington’s constitution, the home enjoys a special protection. State v. Schultz, 170 Wn.2d 746, 753, 248 P.3d 484 (2011). “[T]he closer officers come to intrusion into a dwelling, the greater the constitutional protection.” State v. Ferrier, 136 Wn.2d 103, 112, 960 P.2d 927 (1998).

The warrantless search of one’s home is presumed unlawful. State v. Grande, 164 Wn.2d 135, 141, 187 P.3d 248 (2008). However, there are a few “jealously and carefully drawn exceptions” to the warrant requirement. State v. Reichenbach, 153 Wn.2d 126, 131, 101 P.3d 80 (2004) (internal quotations marks omitted). One of these is the emergency-aid exception.

The emergency-aid exception emerges from the police’s “community caretaking function” and “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 (citing State v. Thompson, 151 Wn.2d 793, 802, 92 P.3d 228 (2004)). To justify intrusion under the emergency-aid exception, the State must show the following: (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; (3) there was a reasonable basis to associate the need for assistance with the place being searched; (4) there was an imminent threat of substantial injury to persons or property; (5) state agents believed a specific person or persons or property were in need of immediate help for health or safety reasons; and (6) the claimed emergency was not a mere pretext for an evidentiary search. Id. at 754-55.

It was the defense's position the State could not meet its burden under factors (4) and (5). 1RP 98-100. Defense counsel vigorously argued that the State could not show there was an imminent threat or an immediate need for assistance, especially given the fact the officers chose to wait outside the door for 15 minutes while the manager brought the key. Id.

Despite this argument and despite the express language in Schultz, the trial court applied only four of the six required factors, relieving the State of its burden under factors (4) and (5).⁷ Appendix at 4.

On this record, the State cannot show factors (4) and (5) have been established. The trial court found only that officers went to Patricia's apartment to investigate an assault and to determine if Brown had been injured. There is no finding that there was an imminent threat of substantial injury. As to the officer's belief of Tara's need for immediate assistance, the trial court found only that the officers "reasonably feared Tara was in danger." Appendix A at 2. There is no factual finding that officers believed Tara was in immediate need of assistance. In fact, the trial court's finding that officers decided that it was not necessary to force entry and, instead, waited fifteen minutes for the manager to bring a key belies any notion of immediacy. Appendix at 2.

⁷ It appears the trial court concluded the State's burden was mitigated because this was a domestic violence case. Appendix A at 4. However, Schultz makes clear -- even in the context of domestic violence cases -- all six factors apply and the State is required to show "the reasonableness of the officer's belief that there is an **imminent** threat of injury." Schultz, 170 Wn.2d at 754, 756 (emphasis added).

In the end, the trial court concluded only that the officers “subjectively believed that Tara was in need of assistance to ensure her safety” and that “a reasonable person in this situation would have believed, as the officers did, that they must check on the safety of Tara.” Appendix at 4. This does not establish the existence of an imminent threat or immediate need of assistance. Given the lack of such findings, this Court should indulge the presumption that the State failed to sustain its burden under Schultz factors (4) or (5). See, State v. Armenta, 134 Wn.2d 1, 14, 948 P.2d 1280 (1997) (discussing this presumption).

In sum, when the correct legal standard is applied, this record shows the State failed to establish that the emergency-aid exception justified the warrantless entry into Patricia’s apartment. Consequently, the trial court erred when it did not suppress evidence gathered after officers illegally entered the home. Because Coleman’s conviction rested substantially on this evidence, his conviction must be reversed.

D. CONCLUSION

This Court should reverse the trial court's order denying the defense's motion to suppress and vacate Coleman's conviction.

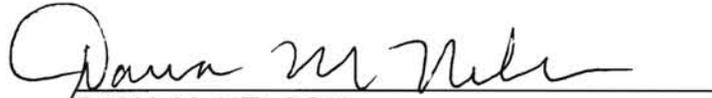
DATED this 20th day of August, 2012.

Respectfully submitted,

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)	
)	
)	Plaintiff,
)	No. 11-1-05955-0 KNT
vs.)	
)	
ADREN DERAY COLEMAN,)	WRITTEN FINDINGS OF FACT AND
)	CONCLUSIONS OF LAW ON CrR 3.6
)	MOTION TO SUPPRESS PHYSICAL
)	EVIDENCE
)	
)	
)	

A hearing on the admissibility of physical evidence was held on February 13, 2012 before the Honorable Judge Beth Andrus. After considering the evidence submitted by the parties and hearing argument, to wit: the testimony of Kent Police Officers Kellams, Blake, and Korus, and the briefing of both of the parties, the Court makes the following findings of fact and conclusions of law as required by CrR 3.6:

I. FINDINGS OF FACT

1. Mid-day on June 11, 2011, Kent police dispatched Officer Kellams, Officer Blake, and Officer Korus to the report of a domestic violence assault at the Arbor Chase Apartments in Kent.
2. Officers met the 911-caller, Brittany Matthews, at the driveway to the Arbor Chase Apartments. Ms. Matthews was visibly upset and distraught. She reported she and her close friend, Tara Brown, had been out celebrating all night, that she had dropped Tara off at her apartment, and had seen the defendant Coleman physically assault Tara Brown by pulling her into the apartment by her hair. Ms. Matthews informed the police that defendant Coleman had a history of assaulting and hurting Tara and that there was a no contact order preventing Coleman from having contact with Tara. Ms. Matthews

WRITTEN FINDINGS OF FACT AND
CONCLUSIONS OF LAW - 1

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1 reported she saw both the defendant and Tara walk to the adjacent apartment building,
2 the Ventana Apartments, where Tara's mother lived. She expressed concern that Coleman
3 would seriously hurt Tara. She pointed out the defendant's green Jaguar to the police
4 officers. It was parked in the parking lot of Tara's apartment building.

- 5 3. Officers went to the Ventana Apartments to investigate the assault and to determine
6 whether Tara had been injured. Ms. Matthews accompanied them there. As Officer
7 Kellams approached the Ventana Apartments he heard voices of a male and female
8 arguing in one of the first floor apartments. He was not sure from which apartment the
9 voices came.
- 10 4. Ms. Matthews did not know precisely which apartment Tara's mother lived in, but
11 showed officers two possible apartments. Officers went to the first of the possible
12 apartments and learned from its occupant that Tara's mother, Patricia Brown, lived in the
13 apartment next door. Officer Blake positioned himself outside at the rear of this second
apartment to ensure that no one left out the back.
- 14 5. Officers Kellams and Korus knocked on the second apartment and announced their
15 presence. Initially, there was no response. After knocking a second time, they heard
16 footsteps near the door. When they knocked a third time, a woman tentatively asked,
17 "Who is it?" Officer Kellams explained they were police officers and wanted to speak
18 with Tara to make sure she was safe. The woman did not respond. Officer Kellams
19 knocked again and said again that they needed to make sure Tara was okay. Again, no
20 one responded and they heard no further sounds of movement from within the apartment.
21 Officer Kellams believed that the voices he had heard arguing could have come from this
22 apartment.
- 23 6. Officers determined that they needed to enter the apartment to determine that Tara was
24 not injured or being held against her will. They reasonably feared that Tara was in
25 danger because they'd learned from Ms. Matthews that the defendant had previously
26 assaulted Tara, that there was a no contact order in place, and that defendant Coleman
27 was in the apartment with Tara. They also believed that Tara had been assaulted, based
28 on the eye witness account of Ms. Matthews. But they did not know if she had suffered
29 injuries as a result of the assault or the extent of her injuries. For those reasons, Officer
30 Kellams and Korus believed it necessary to actually see the alleged victim to see if she
31 needed medical attention. They also determined that it would be quick to contact the
32 manager for a key to the apartment and that this approach was more reasonable than
33 damaging the door by forcing entry. They felt it was not wise to leave the scene or to
34 wait longer than a few minutes, such as if they were to obtain a warrant, due to the
35 potential danger to Tara.
- 36 7. After approximately fifteen minutes, the manager brought the key. Officers opened the
37 door and found Tara immediately. Tara appeared as if she had been crying or was about
38 to cry, her lower lip trembled, and she spoke in a soft, apprehensive voice. She did not
39 appear injured. At first, she claimed that defendant Coleman had gone out the back
40 window. Officer Kellams knew this was not true as Officer Blake had been stationed at

1 the back of the apartment. He told her so. She then asked if she could get her kids out of
 2 the apartment first and said that defendant Coleman was in the upstairs bedroom. Officer
 3 Kellams told her to call defendant Coleman downstairs. She did so and defendant
 Coleman eventually appeared. Officers confirmed the no contact order and then arrested
 Coleman. Tara's mother, Patricia Brown, was also in the apartment.

- 4 8. Coleman did not live at the apartment and there was no evidence that he ever stayed there
 5 as an overnight guest. He did visit his children at the apartment as allowed by the no
 6 contact order, which stated he could have third party contact with Tara to arrange child
 visitation. Defendant Coleman arranged the visits through Patricia Brown, Tara's mother,
 because the no contact order prevented him from contacting Tara directly.

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 8 **II. CONCLUSIONS OF LAW AS TO THE ADMISSIBILITY OF THE PHYSICAL**
EVIDENCE SOUGHT TO BE SUPPRESSED:

- 9 1. The defendant does not have standing to challenge the entry to Patricia Brown's home.
 10 State v. Link, 136 Wn. App. 685, 150 P.3d 610 (2007), lists four factors to determine if a
 11 visitor has standing to challenge the search or entry into another's home. These factors
 12 are: (1) the defendant's relationship with the homeowner or tenant; (2) the context and
 duration of the visit during which the search took place; (3) the frequency and duration of
 the defendant's previous visits to the home; and 4) whether the defendant kept personal
 effects in the home. Under these factors, Coleman does not have standing.
- 13 2. His relationship to Patricia Brown, the tenant of the apartment, was that she was the
 grandmother of his children and the person with whom he arranged child visitation given
 that the no contact order prohibited Coleman from contacting Tara Brown.
3. The context of this visit was that he ostensibly went to Patricia Brown's apartment to
 visit his children. However, his car was not at Ms. Brown's apartment; it was seen next
 door in the parking lot before police arrived. The testimony presented was that the eye-
 witness reporting that defendant Coleman was with Tara in Tara's apartment and then
 walked with her to her mother's apartment before the police arrived. He had no
 legitimate right to be physically with Tara that day.
4. There was no evidence presented to the Court that defendant Coleman had made any
 prior visits to his children at Patricia Brown's apartment. Nor was there any evidence
 that defendant Coleman kept any personal effects in Patricia Brown's home.
5. Under State v. Jacobs, 110 Wn. App. 80, 2 P.3d 974 (2000), the defendant does not have
 a reasonable expectation of privacy in the apartment of a domestic violence victim whom
 the defendant is prohibited from contacting. In this case, the defendant also had no
 expectation of privacy in Patricia Brown's apartment. He did not live there, did not stay
 overnight there, and did not keep any personal possessions there.

- 1 6. Even if the defendant had standing to challenge the entry into Patricia Brown's
2 apartment, the emergency aid exception to the warrant requirement justified the officers'
3 entry into the apartment. The Supreme Court has acknowledged in State v. Schultz, 170
4 Wn.2d 746, 248 P.3d 484 (2011), the volatility of domestic violence situations and that
5 they may quickly escalate into situations where a person suffers significant injury.
6
7 7. Under Schultz, a warrantless entry into a home is justified under the emergency aid
8 exception if (a) the police subjectively believed that someone likely needed assistance to
9 protect their health or safety; (b) a reasonable person in the same situation would
10 similarly believe that there was a need for police assistance; (c) there was a reasonable
11 basis to associate the need for assistance with the place being searched; and (d) the entry
12 into the house was not a pretext for a search for evidence.
13
14 8. In this case, the police officers responding to this 911 call subjectively believed that Tara
15 was in need of assistance to ensure her safety because Ms. Matthews reported to them
16 that she had witnessed defendant Coleman assault Tara, that defendant Coleman had
17 assaulted Tara in the past, and that there was a no contact order that prevented Coleman
18 from contacting Tara. Officers had confirmed that a female was in the apartment and
19 could get no response to their inquiries about her well-being after she had asked who was
20 at the front door. At least one officer believed to have heard a man and woman arguing
21 inside this apartment. Based on Ms. Matthews' report, they also believed that the man
22 inside the apartment was defendant Coleman. A reasonable person in this situation
23 would have believed, as these officers did, that they must check on the safety of Tara.
24 Officers also had a reasonable basis to believe that the apartment was the place to be
25 searched given the information from Ms. Matthews and their observations. None of this
26 was a pretext for a search given the information from Matthews and the officers'
27 observations.
28 9. The State has proven the emergency aid exception by a preponderance of the evidence.
29
30 10. The State may introduce at trial the evidence of the officers entering Patricia Brown's
31 apartment and finding the defendant and Tara Brown inside.

In addition to the above written findings and conclusions, the court incorporates by
reference its oral findings and conclusions.

Signed this 8th day of June, 2012.

\s\ (E-FILED)

JUDGE BETH M. ANDRUS

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

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	
v.)	COA NO. 68535-0-1
)	
ADREN COLEMAN,)	
)	
Appellant.)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 20TH DAY OF AUGUST, 2012, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] ADREN COLEMAN
NO. 212008508
KING COUNTY JAIL
500 FIFTH AVENUE
SEATTLE, WA 98104

SIGNED IN SEATTLE WASHINGTON, THIS 20TH DAY OF AUGUST, 2012.

x- Patrick Mayovsky