

NO. 42199-2-II

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

STATE OF WASHINGTON,

Respondent,

v.

SETH HAMLETT,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF
KITSAP COUNTY, STATE OF WASHINGTON
Superior Court No. 10-1-00918-1

BRIEF OF RESPONDENT

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This brief was served, as stated below, via U.S. Mail or the recognized system of interoffice communications. I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.
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I. COUNTERSTATEMENT OF THE ISSUES

1. Whether the trial court erred in denying the Defendant's suppression motion when the deputies' warrantless entry was justified under the "emergency aid exception" as there was a reasonable basis to conclude that the armed and masked suspects (who had last been seen breaking a rear sliding glass door) could be inside the unsecured residence?

II. STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

The Defendant, Seth Hamlett, was charged by information filed in Kitsap County Superior Court with one count of manufacture of marijuana. CP 1. After denying the Defendant's pre-trial motion to suppress, the trial court found the Defendant guilty of the charged offense following a bench trial on stipulated facts. CP 36. The trial court then imposed a standard range sentence. CP 59. This appeal followed.

B. FACTS

On August 4, 2010 Deputy Joshua Miller and Deputy Eric Adams of the Kitsap County Sheriff's Office were dispatched to a burglary in progress. RP (4/6) 4, 36. When the deputies arrived at the scene they contacted the Defendant, Seth Hamlett, who was standing near the garage of a neighboring house. RP (4/6) 5, 37-38, 49. The Defendant told the deputies that he had been sitting in his house with his back to a sliding glass door. RP (4/6) 6.

The Defendant then heard a tapping sound, turned around, and saw two masked individuals who were armed with handguns. RP (4/6) 6, 39. These individuals were pounding on the sliding glass door, and they ultimately shattered a pane of glass from the door. RP (4/6) 6. The Defendant then fled the residence and went to a neighbor's house and 911 was called. RP (4/6) 6, 40.

At some point the Defendant indicated that he thought the suspects might have gone into the nearby brush and he had heard some "crackling" noises. RP (4/6) 30-31. The Defendant, however, had not actually seen the suspects go into the brush and he was unable to say for sure what direction the suspects might have gone, nor was he able to say for sure whether the suspects had entered the residence (since the Defendant had fled to the neighbor's house once he left his residence). RP (4/6) 13. 30-31.¹

After the Defendant told the deputies what had happened, Deputy Miller told the Defendant to remain in the driveway and the deputies then went towards the residence to look for the armed suspects the Defendant had described. RP (4/6) 7. The Defendant's residence was in a fairly wooded area and there was a lot of dense brush near the home. RP (4/6) 13, 42.

¹ Deputy Miller also testified that even if one of the suspects had, in fact, gone into the brush it was still a concern that one or more suspects might have gone into the residence. RP (4/6) 30-31.

Deputy Miller saw that the front door of the residence was standing open, but rather than immediately entering the residence the deputies first checked around the back of the house where the Defendant had last seen the suspects. RP (4/6) 8. The deputies saw that a pane of glass on the sliding glass door had indeed been broken. RP (4/6) 8, 40-41. Deputy Adams then checked the “wood line” around the residence, since at that point it was unknown if the suspects were in the woods or possible inside the home. RP 42. Finding no one outside the residence, the deputies returned to the front of the residence and entered the house to “check for suspects.” RP (4/6) 8.

Deputy Miller explained that he entered the residence to look for the suspects because “the last place that they were seen was in close proximity to the residence,” and the Defendant had described the event as a robbery; thus “the logical conclusion is they were trying to steal something from the house, so the likelihood was that they could be inside.” RP (4/6) 9. Deputy Miller also gave the following explanation for why he chose to “clear” the residence before venturing into the nearby woods:

I think that as a matter of safety for everyone in the immediate area, you want to try and clear the house and make sure that that’s a safe area to turn your back on, and I think that logically, that was the last place that he saw – I mean granted, outside, but in the direct vicinity of the house was the last place he saw the suspects before he fled.

RP (4/6) 28-29. Deputy Adams also explained that, based on the initial

conversation with the Defendant (when the deputies first arrived at the scene), it was unclear where the suspects were. RP 42, 50-51. In addition, as the front door was open and the house was “unsecured” it was unknown if one or more of suspects were inside the home. RP 42, 50-51.

Both Deputy Miller and Deputy Adams explained that their only reasons for entering the house were to look for the suspects, secure the home, and to secure the safety of the Defendant and the deputies themselves, and not to search for evidence. RP (4/6) 32, 43.

Once inside the home, Deputy Miller “cleared” a number of rooms by entering the rooms and looking anywhere that was “large enough for a person to be hiding.” RP (4/6) 9-10. Deputy Adams also entered the residence, and shortly after doing so the Defendant also came inside. RP 10, 56. Given the potential danger involved in the situation, the deputies told the Defendant to go back outside and wait for the deputies to clear the house. RP 10, 56.

Deputy Adams then cleared the attached garage area as it was a location that a person inside the house could have easily gone into to hide. RP (4/6) 44. In the garage Deputy Adams found a walled off “secondary room,” and when he looked inside that room he saw a number of marijuana plants. RP (4/6) 45. Deputy Adams remained in the garage for less than a minute and stayed only long enough to make sure that nobody was inside the

garage. RP (4/6) 45-46.

Once the house was “cleared” and no suspects were found, the deputies went outside. RP (4/6) 11, 46. Deputy Adams went to check the wood line again, as that was “the next area of probability that [the] suspects could have went to.” RP (4/6) 46, 58-59. Deputy Miller contacted the Defendant in order to try to get more information about the suspects. RP (4/6) 11. The Defendant wasn’t able to give a very detailed description of the suspects other than to say that they appeared to be shorter in stature. RP (4/6) 13. Although the deputies had found the marijuana grow in the house they did not arrest or detain the Defendant at that point. RP (4/6) 14.

Other officers began to arrive and a K-9 unit was requested to possibly do a track on the suspects. RP (4/6) 46. No K-9 unit, however, was available, and no suspects were found.

Eventually narcotics detectives with WESTNET came to the scene and applied for and obtained a search warrant for the residence based on the marijuana grow that Deputy Adams had observed in the garage. RP (4/6) 48. Ultimately 189 marijuana plants were recovered from the Defendant’s residence. CP 4.²

² The Defendant also testified at the CrR 3.6 below and claimed that while the officers were clearing his house he went inside and told them not to be in his house because the suspects were outside. RP (4/6) 80. Deputy Miller confirmed that the Defendant came into the house and said he thought the suspects might be outside in the bushes, but Deputy Miller explained

The Defendant was eventually charged with one count of manufacture of marijuana. CP 1. Prior to trial the Defendant filed a motion to suppress, arguing that the warrantless search of the home by Deputy Miller and Deputy Adams was unlawful. CP 7.

After hearing the testimony from Deputy Miller and Adams outlined above, the trial court denied the Defendant's motion to suppress, and in its oral ruling the trial court held that that,

It's important for this court to consider all of the information known to the officers at the time, and I believe we have to look at all of the totality of the circumstances to determine whether the officers' action was reasonable or not. In this situation, what we know is that there were two individuals at least, and they had masks, they had semiautomatic weapons, and we know that they had tried to

that the Defendant never claimed to have seen the suspects outside; rather he only claimed to have heard noises in the bushes. RP (4/6) 27-28, 30-31. Deputy Miller also did not recall the Defendant ever saying that he didn't think the suspects could be in the house. RP (4/6) 28. In addition, the Defendant acknowledged in his testimony that he never actually saw the suspects in the bushes, that it was possible that there were more than two suspects involved, and that one or more of them could have been in his home. RP (4/6) 85, 88. He also acknowledged that he prior to the police arriving he did not return to his home because he was still afraid and that he didn't want to go close to the house "because the people had guns." RP (4/6) 86, 88. Finally, at the conclusion of the Defendant's cross-examination the prosecutor asked him if prior to the police arriving the situation was "stressful", and the following exchange then took place:

A: It's like anything can happen. I didn't want to be, you know –

Q: So isn't it safe to assume that the officers would also feel that same type of stress?

A: I guess so.

Q: Have that same type of concern for you and their safety?

A: It's a possibility.

Q: And isn't it a possibility that the officers want to assure that the home was safe before they let you go back into the home?

A: I am sure, sure, yes.

RP (4/6) 89.

gain entry. That in itself is of course highly concerning to a law enforcement officer. Foul play is afoot, and it was very, very recent. They arrived within minutes of a 911 call, and so it is not as though they are responding to a call that, you know, for example if a homeowner came home and they saw that there was evidence of foul play, but clearly nothing going on around them. This was a situation that the call was made contemporaneous with an attempted entry.

Other information known to the officers with that, not only was there glass, but there was an open front door. Officers only have so much information, and they know that there were at least two people who tried to enter the home, but they could only know as much as what was told to them. They wouldn't know, for example, if there were more than two people. There could have been more than two people. Just because Mr. Hamlett saw two individuals trying to come into the home doesn't mean to say that there weren't maybe one, two, three, four or more individuals lurking in the bushes waiting for that initial entry to be made.

We also know that that front door was open. We know that Mr. Hamlett had gone inside to attempt to make the phone call or to get help. The officers were presented with a situation where they knew there was an attempted entry, they knew there was an open door, and they knew that there was an attempt to commit a crime. It was reasonable for the officers to enter the residence to secure the residence.

And in this case specifically, they acted reasonably in responding to a request for police assistance, and they were responding reasonably to make sure that the property and the safety of all individuals in the location would be secured and safe. There was a reasonable perceived need to render aid or assistance to Mr. Hamlett, and this could not be understood based upon all of the facts and circumstances to be any form of pretext by the officers to gain entry. In fact, one would perhaps be very concerned if the officers didn't secure the location, not knowing who could be around in the vicinity, and it would appear to me, aside from any of the cases cited, whether it's *Bakke* or *Campbell*, it seems to me that it would not be in the best interests of the public and perhaps poor public policy to dictate officers securing and rendering aid

based upon the directions of a person who is shocked, a person who is afraid, a person who has almost been subject to a crime. To suggest that the officers are mandated to follow the specific instructions of a victim of a crime would not be reasonable. Officers have to act according to their training and experience, and first of all, putting the safety of victims, of the public, and also themselves, before taking directions from the victim as to his understanding of what had transpired.

Clearly Mr. Hamlett was afraid. His fear may have decreased as the officers remained there, and because the officers had guns and they began to enter the residence, but I am not aware of any authority which says that the officers have to abandon their protocol and abandon their safety measures and abandon how they perceive their need to act based upon rendering assistance because the victim's level of anxiety decreases. That I believe would cause a huge amount of confusion to law enforcement simply because the victim indicates that he's no longer afraid of the situation. The officers began this process based upon information available to them. They proceeded to secure the residence, and they were simply completing their task when apparently Mr. Hamlett said that he didn't want them to do anything further.

Based upon all of these facts and circumstances, I do believe that there was a legitimate and perceived need to render aid and assistance to Mr. Hamlett. The officers entered into the residence based upon this emergency and community caretaking function. They needed to go in to secure, and therefore, they did not need to have a warrant to do what would have been expected of them.

This is very similar to the *Campbell* case, where in that situation the perpetrators were seen fleeing. If in fact the perpetrators had fled the scene in this situation, it is very similar. It was still a contemporaneous call for help and the officers acted with all the information available to them. And again, the officers didn't know whether or not it was just two. They were just basing -- they only received information from Mr. Hamlett, but conceivably there could have been more individuals out there in the woods, and moreover, we have an open door, and there was a period of time when Mr. Hamlett wasn't watching. It was very conceivable that the intruders

had entered and a burglary was ongoing, again, contemporaneous in time to the call made to the law enforcement.

RP (4/6) 109-13.

The trial court also entered written findings of fact and conclusions of law that mirrored its oral ruling and held that the deputies' entry into the Defendant's home was not a pre-text for a warrantless search. CP 34. Rather, the present case was quite similar to the facts in *State v. Campbell*, 15 Wn. App. 98, 547 P.2d 295 (1976) and the deputies' entry was not unlawful because they entered the residence "based upon a legitimate and perceived need to render assistance, their community caretaking function and for purposes of officer safety." CP 34-35.

Eventually the Defendant agreed to a stipulated facts trial, and the trial court found the Defendant guilty of the charged offense. CP 36-58. The trial court then imposed a standard range sentence of 60 days of jail alternatives. CP 59-69. This appeal followed.

III. ARGUMENT

- A. **THE TRIAL COURT DID NOT ERR IN DENYING THE DEFENDANT'S SUPPRESSION MOTION BECAUSE THE DEPUTIES' WARRANTLESS ENTRY WAS JUSTIFIED UNDER THE "EMERGENCY AID EXCEPTION" AS THERE WAS A REASONABLE BASIS TO CONCLUDE THAT THE ARMED AND MASKED SUSPECTS (WHO HAD LAST BEEN SEEN BREAKING A REAR SLIDING GLASS DOOR) COULD BE INSIDE THE UNSECURED RESIDENCE.**

The Defendant argues that the trial court erred in denying the motion to suppress. App.'s Br. at 15. The Defendant's argument centers on his claim that "the facts known to the deputies did not provide a reasonable basis for the conclusion [that] the suspects could be inside of the residence." App.'s Br. at 16. This claim is without merit because, based on the facts available to them, the deputies could reasonably conclude that the armed and masked suspects could well have been inside the Defendant's home, thereby posing a threat to the Defendant's property as well as a threat to the Defendant's safety and the safety of the officers who had responded to the scene.

Warrantless searches of constitutionally protected areas are presumed unreasonable absent proof that one of the well-established exceptions applies. *See State v. Ladson*, 138 Wash.2d 343, 349, 979 P.2d 833 (1999). One such

exception is the “emergency aid exception” which allows warrantless entry into a building or residence in certain circumstances. This Court has previously explained that this exception recognizes the “community caretaking function of police officers, and exists so officers can assist citizens and protect property.” *State v. Leffler*, 142 Wn.App. 175, 181, 178 P.3d 1042 (2007), quoting *State v. Schlieker*, 115 Wn.App. 264, 270, 62 P.3d 520 (2003).

In a recent case the Washington Supreme Court addressed the “emergency aid exception” and held that in determining whether the exception applies a court should examine whether:

- (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 is an imminent threat of substantial injury to persons or property;
- (5) the state agents believed a specific person or persons or property are in need of immediate help for health or safety reasons; and
- (6) the claimed emergency is not a mere pretext for an evidentiary search.

State v. Schultz, 170 Wn.2d 746, 754-55, 248 P.3d 484 (2011), citing: *State v. Thompson*, 151 Wn.2d 793, 802, 92 P.3d 228 (2004); *State v. Leffler*, 142

Wn.App. 175, 181, 183, 178 P.3d 1042 (2007); and *State v. Ladson*, 138 Wn.2d 343, 349, 979 P.2d 833 (1999).

Furthermore, previous Washington cases have specifically addressed the “emergency aid exception” in situations like the present case where the police have responded to the scene of a potential burglary.

For instance, in *State v. Campbell*, 15 Wn.App. 98, 99, 547 P.2d 295 (1976), the defendant's neighbor summoned the police after observing a burglary in progress and watching a suspect flee the scene. Upon arrival, the police spoke with the neighbor and discovered a broken window and a wide-open door at the burglarized apartment. *Id.* The officer immediately entered the apartment without a warrant “to investigate the recent crime, to look for possible participants in the burglary, to search for evidence of the burglary, and to aid any victims.” *Id.* During the search, seven marijuana plants were discovered. *Id.* The Court of Appeals found the search to be valid, concluding that it met the emergency or exigent circumstances exception. *Id.* at 100. Specifically, the Court stated:

It is reasonable for officers, responding to a request for police assistance and with probable cause to believe that an open, unsecured dwelling has been recently burglarized, to immediately enter the dwelling without a warrant for the limited purposes of investigating the crime, rendering aid to any possible victims of the felony, protecting the occupant's property, and searching for remaining suspects.

Campbell, 15 Wn.App. at 100.

Similarly, in *State v. Bakke*, 44 Wn.App. 830, 842, 723 P.2d 534 (1986) the Court of Appeals reversed a suppression order and dismissal of charges in a case in which the defendant's neighbor summoned the police to respond to a burglary in progress. The neighbor had seen two juveniles running from the back door of the defendant's home. *Bakke*, 44 Wn.App. at 831. Upon arrival, the police spoke with neighbors and discovered that the window in the back door to the defendant's house had been broken and that the hole was large enough to accommodate a juvenile's body. *Id.* The police also noted that fresh muddy footprints extended from the back door through an enclosed porch to an interior door that had been broken from the door jamb. *Id.*

Without a warrant, the officers entered the house “to locate any suspects and secure the safety of the house and its contents.” *Bakke*, 44 Wn.App. at 832. They found no suspects but saw two marijuana plants and some grow paraphernalia. *Id.* Based on these facts, the officers obtained a warrant to search the house. *Id.* During the follow-up search, they found several marijuana plants and a grow light. *Id.* The trial court suppressed this evidence, concluding that the initial search was illegal and that the warrant was issued on the basis of evidence found in an illegal search. *Id.*

On appeal the Defendant in *Bakke* argued that the *Campbell* case was distinguishable because *Bakke*'s residence was not unsecured and “wide

open” as the residence had been in *Campbell. Bakke*, 44 Wn.App. at 839.

The Court of Appeals, however, rejected this argument, stating,

What is significant is not the slight factual difference, but rather the similarities in the purposes and objects of the two searches. Here, as in [*Campbell*],

[t]he challenged search followed the summoning of police to investigate a recent burglary and *was executed not against the occupant of the apartment but to protect his person and property.*

(Italics ours). What the defendant overlooks in his argument is that the police officers' attention in the instant case focused not on Bakke or upon his home as a target of a police search; rather, the challenged entry was to investigate a burglary and to secure the premises against possible damage. It was not to conduct a search against Bakke but to protect him and his property.

Bakke, 44 Wn.App. at 839. The Court of Appeals, therefore, reversed concluding that entry was justified. *Id.* at 841-42.

In the present case Deputy Miller and Deputy Adams responded to a scene of attempted burglary and were informed by the Defendant that two armed and masked men had appeared at his rear sliding glass and broken a glass pane on the door, causing him to flee. RP (4/6) 6, 39-40. As the Defendant had fled to a neighbor's house he was unable to see where exactly the armed suspects had gone. RP (4/6) 13. 30-31. The Deputies could see that the front door of the residence was open and the Deputies first checked the rear of the house and saw the broken glass described by the Defendant.

RP (4/6) 8, 40-41. Deputy Adams then checked the “wood line” around the residence, since at that point it was unknown if the suspects were in the woods or possible inside the home. RP 42. Finding no one outside the residence, the deputies returned to the front of the residence and entered the house to “check for suspects.” RP (4/6) 8.

Taking all of these facts together, the officers clearly had a reason to investigate the situation and to enter the residence without a warrant under the “emergency aid exception,” as there was a reasonable basis to conclude that there was a danger of armed intruders in the house. In addition, there was absolutely no evidence to suggest that the search of the home was in any way a pretext for an evidentiary search. Rather, as the trial court concluded,

The officers were presented with a situation where they knew there was an attempted entry, they knew there was an open door, and they knew that there was an attempt to commit a crime. It was reasonable for the officers to enter the residence to secure the residence.

And in this case specifically, they acted reasonably in responding to a request for police assistance, and they were responding reasonably to make sure that the property and the safety of all individuals in the location would be secured and safe. There was a reasonable perceived need to render aid or assistance to Mr. Hamlett, and this could not be understood based upon all of the facts and circumstances to be any form of pretext by the officers to gain entry. In fact, one would perhaps be very concerned if the officers didn’t secure the location, not knowing who could be around in the vicinity . . .

RP (4/6) 110-11.

The trial court's conclusion was consistent with Washington law regarding the "emergency aid exception" and with the opinions in *Bakke* and *Campbell*, both of which involved similar factual scenarios. In addition, the facts of the present case were even more dangerous than the facts in *Bakke* and *Campbell*, since in the present case the Defendant had seen two armed and masked men attempting to break into his home.

The Defendant's argument in the present case is that the "facts known to the deputies did not provide a reasonable basis for the conclusion that the suspects could be inside of the residence." App.'s Br. at 16. The Defendant claims that this is so because the Defendant asserts that he told the officers that he believed he heard the suspects in the bushes outside. App.'s Br. at 15-16. This argument, however, ignores the fact that it was uncontested that the Defendant did not actually see where the suspects had gone. RP (4/6) 85, 88. In addition, the deputies first looked outside the rear of the house and Deputy Adams checked the "wood line" around the residence but did not find the suspects. RP (4/6) 42. Only then did the deputies enter the residence to ensure that the armed suspects had not entered the residence. Given these facts the trial court did not err in concluding that there was a reasonable basis for the conclusion that the suspects could be inside of the residence

In conclusion, the Defendant has failed to show that the trial court erred in finding that the deputies' entry into the Defendant's home was

unlawful. As the deputies lawfully entered the Defendant's residence under the "emergency aid exception" (and as Deputy Adams' inadvertent discovery of a marijuana grow operation provided probable cause for the subsequent warrant), the trial court did not err in denying the Defendant's motion to suppress.

IV. CONCLUSION

For the foregoing reasons, the Defendant's conviction and sentence should be affirmed.

DATED June 29, 2012.

Respectfully submitted,

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