

**NO. 42534-3-II**

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

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STATE OF WASHINGTON,

Respondent,

v.

**SCOTT L. GOLDADE,**

Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR GRAYS HARBOR COUNTY

The Honorable Gordon L. Godfrey, Judge  
The Honorable F. Mark McCauley, Judge

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**APPELLANT'S BRIEF**

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**A. ASSIGNMENTS OF ERROR**

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2. The trial court erred in finding that Deputy Wilson wanted to enter the home “to ascertain the well-being of the child” under Finding of Fact 3.
3. The trial court erred in finding that “the woman” gave verbal consent to enter the “trailer” under Finding of Fact 3.
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**B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

1. Was Deputy Wilson's warrantless entry into Mr. Goldade's home lawful under the emergency aid exception when, after responding to an alleged domestic violence assault and determining that no assault occurred, Deputy Wilson entered the home to check on the status of child when he had no reason to believe the child needed emergent assistance?

2. Did Deputy Wilson make a legal consent entry to the home when he failed to get consent from Mr. Goldade, the home's available co-tenant, before entering and searching the home?

3. Did Mr. Goldade's co-tenant, Brenda, give Deputy Wilson legal consent to enter the home when Deputy Wilson never told Brenda that she had the right to refuse to allow him to enter the home, could limit the scope of his search, and could end the search at any time?

### **C. STATEMENT OF THE CASE**

#### 1. Procedural Facts

Scott Goldade was charged with being a felon in possession of a firearm. CP ("Clerk's Papers") 1-2; RCW 9.41.040(2). He filed a motion to suppress a rifle and statements. CP 3-21. In the motion, Mr. Goldade argued that Grays Harbor Sheriff's Deputy Robert Wilson seized a rifle only after making a warrantless entry into Mr. Goldade's home. CP 3-9. Absent a warrant, Deputy Wilson had no lawful authority to enter Mr. Goldade's home. *Id.* As such, all evidence obtained as a result of the warrantless entry should be suppressed. *Id.*

During the suppression motion, the court heard testimony from Deputy Wilson and Grays Harbor Sheriff's Detective Keith Peterson. RP ("Report of Proceedings") at 5-16. The court also considered Deputy

Wilson's police report that was attached to Mr. Goldade's suppression motion. CP 12-13.

In denying the suppression motion, the court considered the testimony of both police officers as well as Deputy Wilson's police report. RP at 5-16, 18-21; CP 10-13. The court later entered written Findings of Fact and Conclusions of Law. CP 22-25. Mr. Goldade waived his right to a jury trial and was found guilty at a stipulated facts trial. CP 26, 27-29; RP at 23-27.

Mr. Goldade received a four month jail sentence. CP 33.

Mr. Goldade appeals. CP 38-39.

2. Suppression Motion

On May 16, 2011, Deputy Wilson responded to a call at the Hammond Trailer Park along with Westport Police Officer Cunningham. RP at 6; CP 12. A person identifying their self as a next door neighbor told a police dispatcher there was a physical altercation between a male and a female in the home next door. RP at 11. The caller could hear the altercation but could not see anything. RP at 6, 11.

Deputy Wilson went to the home at space 305 but no one answered the door. RP at 6. Deputy Wilson heard a loud thud at the back of the home. Id. He walked to the back of the home and saw a man running

toward the entrance to the trailer park. RP at 6-7. Several neighbors yelled, “He just ran out the back.” Id.

The running man was Scott Goldade. RP at 7. Deputy Wilson caught up with him about a quarter mile away. Id. Mr. Goldade ran not because he had of any outstanding arrest warrant, but because he simply did not want any police contact. Id.

Deputy Wilson did not testify to seeing any injuries on Mr. Goldade or making any observations that Mr. Goldade had been in a recent physical altercation. RP at 5-13.

Deputy Wilson did not arrest Mr. Goldade. RP at 7. Instead, he handcuffed him and put him in the back of his patrol car. Id.<sup>1</sup>

Deputy Wilson returned to the home at space 305. RP at 8. A woman named Brenda<sup>2</sup> answered the door. Id. Brenda seemed visibly upset but there were no indications that she’d been involved in a physical altercation. RP at 8, 11. Brenda said she and Mr. Goldade lived together in the home. RP at 10. She also said that she and Mr. Goldade argued earlier but it was a verbal argument and there’d been nothing physical. RP at 8.

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<sup>1</sup> Deputy Wilson’s testimony is inconsistent with his police report on this point. In the police report, Deputy Wilson wrote that he put Mr. Goldade in Westport Police Officer Cunningham’s patrol car. CP 12.

<sup>2</sup> Only the first name is used. No disrespect is intended. Brenda has not last name in this record.

Deputy Wilson found no basis to arrest Mr. Goldade for a domestic violence offense or for any offense as it related to Brenda. CP 13.

Deputy Wilson asked if a child or anyone else was in the home. RP at 8-9. Brenda said a child was there and the child was fine. RP at 9, 12. Brenda explained that the earlier argument with Mr. Goldade was about the child: she was worried about the child and wanted Mr. Goldade to leave. RP at 12. Deputy Wilson did not ask Brenda the age of the child. He did not ask Brenda to bring the child to the door so he could see it. He did not ask Brenda why she was worried about the child, who were the child's parents, or why she wanted Mr. Goldade to leave. RP at 5-12.

Instead, Deputy Wilson asked Brenda if he could come in and see the child. RP at 9. Deputy Wilson did not tell Brenda she had a right to refuse to let him in, or could limit where he went in the home, or could stop him at any time once he was in the home. RP at 5-12. Deputy Wilson also did not ask the home's nearby co-tenant, Mr. Goldade, for permission enter the home. RP at 5-12. Only Brenda gave Deputy Wilson permission to enter the home. RP at 9.

Deputy Wilson followed Brenda into a bedroom where he found a peaceful five or six year old boy. RP at 9, 11-13. The child seemed fine and had nothing to say to Deputy Wilson. Id.

As he was walking toward the front door to leave, Deputy Wilson looked into the living room. RP at 9. He saw a rifle leaning against the wall. Id. Deputy Wilson was aware that Mr. Goldade had a prior conviction for attempting to elude a police officer.<sup>3</sup> CP 13. Deputy Wilson seized the rifle, arrested Mr. Goldade for felon in possession of a firearm and booked him into the jail. CP 13. The only other charge Deputy Wilson asked be filed against Mr. Goldade was for obstructing a law enforcement officer “due to Goldade running from law enforcement.” CP 13.

Deputy Wilson did not mentioned any charges being filed against Brenda. RP at 5-12.

The next day, Detective Keith Peterson interviewed Mr. Goldade at the jail. RP at 14. Mr. Goldade answered the detective’s questions and made a written statement. RP at 14-16.

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<sup>3</sup> RCW 46.61.024

## D. ARGUMENT

### **DEPUTY WILSON VIOLATED ARTICLE I, SECTION 7 OF THE WASHINGTON CONSTITUTION BY INVADING SCOTT GOLDADE'S HOME WITHOUT LAWFUL AUTHORITY.**

#### **1. Standard of Review.**

A trial court's denial of a motion to suppress is reviewed for 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.” *Id.* The legal conclusions of the trial court are reviewed de novo. *State v. Smith*, 165 Wn.2d 511, 516, 199 P.3d 386 (2009). A statement of fact included within a trial court's conclusions of law will be treated as a finding of fact by the reviewing court. *State v. Marcum*, 24 Wn. App. 441, 445, 601 P.2d 975 (1979).

#### **2. Scott Goldade is protected from warrantless searches to his home.**

Article I, Section 7 of the Washington State Constitution provides that “No person shall be disturbed in his private affairs, or his home invades, without authority of law. Wash. Const. Article I, Section 7. Because citizens are entitled to the greatest privacy in their homes, Article I, Section 7, applies with greatest force when officers intrude into a dwelling.

Searches conducted without a warrant are presumed to be unconstitutional. Wash. Const. Article I, Section 7; *State v. Wheless*, 103 Wn. App. 749, 753, 14 P.3d 184 (2000). Courts have outlined a small number of narrowly drawn and jealously guarded exceptions to the warrant requirement. *Wheless, supra*. The State bears the heavy burden of proving that the warrantless search fits within an established exception to the warrant requirement. *State v. Smith*, 165 Wn.2d at 517. Where the State asserts an exception, it must produce the facts necessary to support the exception. *State v. Johnston*, 107 Wn. App. 280, 284, 28 P.3d 775 (2001).

**3. The emergency aid exception to the warrant requirement did not justify a search of Mr. Goldade's home.**

There is no generalized "domestic violence exception" to the warrant requirement. In very limited circumstances, officers may enter a home without a warrant under the emergency aid exception. At Mr. Goldade's suppression motion, the court concluded that the emergency aid exception authorized Grays Harbor County Deputy Robert Wilson to search Mr. Goldade's home without a warrant. But the court's findings and conclusion are in error. It is not illegal for two people to argue in their home. And it is not illegal for two people to argue when there is a child in

their home. Much more is needed to justify a warrantless search of a home under the emergency aid exception.

The emergency aid exception emerged from the police “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.” *State v. Schultz*, 170 Wn.2d 746, 754, 248 P.3d 484, (2011); *State v. Thompson*, 151 Wn.2d 793, 802, 92 P.3d 228 (2004) (citing *State v. Kinzy*, 141 Wn.2d 373, 386, 5 P.3d 668 (2000)).

The State must establish that the police had a reasonable belief that all six of the following requirements of the emergency aid exception were satisfied before entering a residence. *Smith*, 165 Wn. App. at 312. The requirements are: (1) the searching officer subjectively believed an emergency existed; (2) a reasonable person in the same circumstances would have thought an emergency existed; (3) there must be a reasonable basis for associating the need for assistance with the place that is entered; (4) there is an imminent threat of substantial injury to persons or property; (5) police must believe a specific person or specific property are in need of immediate help; and (6) the claimed emergency is not a pretext for an evidentiary search. *Schultz*, 170 Wn.2d at 754–55. (adding the last three elements).

The failure to meet any of these elements is “fatal to the lawfulness of the State's exercise of authority.” *Schultz*, 170 Wn.2d. at 760 n.5.

**a. *Deputy Wilson did not have a subjective belief that an emergency existed.***

Deputy Wilson was dispatched after Mr. Goldade’s neighbor thought they heard, but did not see, a physical male-female assault in Mr. Goldade’s home. There was no information about when the neighbor heard the noise. There was no information about what the assault sounded like. Nothing in the record suggests that Deputy Wilson responded to the call with any urgency. After Mr. Goldade run from the home’s back door, Deputy Wilson chose to chase Mr. Goldade rather than check the home for anyone who might be injured. Although Westport Police Officer Cunningham also responded to the call, there is nothing in the record suggesting that he or she<sup>4</sup> made any effort to check the home for an injured person.

Although Mr. Goldade was placed in a police car, there was no testimony that he was arrested until later, after the rifle was found in the home.<sup>5</sup>

In his testimony, Deputy Wilson did not note any injuries to Mr. Goldade. Deputy Wilson did not say that Mr. Goldade had fresh

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<sup>4</sup> There is no first name or gender for Officer Cunningham in the record.

<sup>5</sup> Finding of Fact 3

scratches, bruising, or patches of blood. Nothing out of order about Mr. Goldade's clothing was noted. There was no mention that Mr. Goldade had been drinking alcohol or seemed to be under the influence of drugs. There was no mention that Mr. Goldade seemed frightened, nervous, or uncooperative.

When Brenda opening the door to the home, the circumstances became no more emergent. Although Brenda seemed upset, she explained that she and Mr. Goldade argued but the argument was not physical. Apparently Deputy Wilson believed Brenda's explanation. Had Deputy Wilson thought that there was probable cause to believe Brenda assaulted Mr. Goldade, or Mr. Goldade assaulted Brenda, he would have had to make a domestic violence arrest. RCW 10.99.020(6)(a). He did not.

Brenda had no apparent injury. Deputy Wilson noted no missing chunks of hair, fresh scratches, bruising, or even tears. Although Brenda was clothed and it possible her clothing could have covered an injury, there was no testimony that she was bleeding, limping, or wincing in pain as you might expect of someone who was freshly injured. Brenda's clothing was not torn other otherwise disheveled. Brenda was not described fearful, apprehension, or seemingly hiding something.

Although the court referred to Brenda as an “alleged domestic violence victim”<sup>6</sup> there is nothing in the record to suggest Brenda was a victim. Even assuming the neighbor was correct that there had been a male-female physical altercation, Brenda could have been the assailant aggressor and Mr. Goldade the victim. There was simply no evidence that suggested otherwise.

Nothing changed on the emergent front after Deputy Wilson learned that a child was in the home. Neither Brenda nor Mr. Goldade were injured, so why believe what was vaguely defined as a “child” was in need of emergency aid? It is possible – maybe - that an adequate record could have been developed if Deputy Wilson took a moment to ask a few questions. How old was the child? Was the child present during the argument? Was the child injured? Where is the child now? Can I see the child? Frankly, had there truly been an emergent situation as it related to a child, Deputy Wilson would not have asked Brenda’s permission to enter the home. Instead, he would have told Brenda he was coming in to check on the child.

These facts are nothing like the facts in other cases where emergent circumstances required a warrantless search. See *Smith*, 165 Wn.2d at 514-18 (upholding officers' safety sweep of house under exigent

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<sup>6</sup> Conclusion of Law 3 mischaracterized as a Finding of Fact

circumstances exception where they were investigating theft of tanker truck filled with 1,000 gallons of dangerous chemical, found it parked near house, and saw rifle-like object on living room floor but later saw it was gone); *State v. Menz*, 75 Wn. App. 351, 352-55, 880 P.2d 48 (1994), (upholding warrantless search under community caretaking exception where officers responded to anonymous call reporting domestic violence in progress inside home; caller believed two adults and one child lived at the house; officers found front door open, heard television playing inside, knocked several times with no response, entered to check on occupants, and found marijuana plants); *State v. Nichols*, 20 Wn. App. 462, 464-66, 581 P.2d 1371 (1978) (upholding officers' warrantless entry into garage while they were investigating report of fight at house and garage; six to eight subjects were reportedly armed with beer bottles filled with gasoline and chains; officers knocked at the house, received no response, entered open side door to seek suspects or victims, and found stolen vehicle); *State v. Campbell*, 15 Wn. App. 98, 99-101, 547 P.2d 295 (1976) (warrantless search upheld under emergency aid exception where defendant's apartment was burglarized; neighbor saw burglary in process, observed fleeing suspect, and called police; officer discovered broken apartment window and open apartment door; officer entered to investigate, look for suspects, and aid any potential victims and found marijuana plants); *State v. Lynd*,

54 Wn. App. 18, 22-23, 771 P.2d 770 (1989) (police officer had knowledge of 911 hang-up call from defendant's home, the phone line remained busy after the 911 call, a domestic violence incident between spouses had just occurred, defendant was loading his things into his vehicle and preparing to leave, and defendant did not want the officer to enter the home to check on his wife, emergency exception justified warrantless entry into defendant's home to investigate the well-being of the wife); and *State v. Gocken*, 71 Wn. App. 267, 272-77, 857 P.2d 1074 (1993) (the emergency exception justified a warrantless search where police officers entered the defendant and victim's condominium and kicked in the victim's bedroom door to perform a “routine check on [the victim's] welfare” after reports of decaying flesh odor and reports from family and friends that they had not seen the victim for several weeks).

Here, there is nothing in the trial court’s Findings of Fact to support that Deputy Wilson had a subjective belief that an emergency existed.

***b. Deputy Wilson did not have an objective belief that an emergency existed.***

The court never explains in its Findings of Fact why “the officer had reason to be concerned for the safety of the child.” Conclusion of Law 2. Instead, the court’s personal bias might shed some light on why the

court entered its unsupported finding. This bias comes through in the court's oral ruling.

The court has a concern for lawsuits:

And I hope the higher courts realize that there are other things that need to be looked at outside of mere philosophy. They have to look at reality, Catch 22. If you don't go in and check on something, when there's a body in there later of someone dies because you didn't check then you can get sued.

RP at 18.

The court thinks that purported domestic violence victims cannot be trusted:

So you put him in the car and you go up and you – what – what does a rational, hopefully well trained, officer do? You knock on the door and find out is everybody okay, because it was, quote, a physical altercation. Woman answers, you okay? Yes. Now, unfortunately as we learn in this business way too long in domestic areas, not a big deal. No violence.

And I have to segue way [sic] here. I don't know how many times I've gone done there and signed domestic protection orders. He had a knife against my throat or a gun done my throat and then they came to court and, well my momma made me do that. It really happened. And it happens a lot. But the bottom line, the woman says she was okay.

RP at 19-20.

The court made no factual findings that was an emergent basis to check on the welfare of the child. The court only found that Deputy Wilson had a reason to be concerned for the welfare of the child. Fatally for the legality of this purported emergency aid search, the record never

provides a reason for the concern. And the record supports no reason for the concern.

***c. There was no reasonable basis for associating the need for assistance with Mr. Goldade's home.***

No findings were entered on this point. There is nothing about the case to suggest that Deputy Wilson needed to enter the residence at all. Brenda was cooperative. Nothing suggests she would have refused to bring the child to the door for inspection had Deputy Wilson asked her to. As such, there was no need for the deputy to actually enter the residence to make an observation of the child.

***d. There was no imminent threat of substantial injury to persons or property.***

Brenda was not injured. Mr. Goldade was not injured. Nothing about Deputy Wilson's interaction with Brenda or Mr. Goldade suggested either was lying or trying to hide anything. The trial court made no finding that there was an imminent threat of substantial injury to anyone or anything.

***e. Deputy Wilson did not believe a specific person or specific property was in need of immediate help.***

Although the court found at Conclusion of Law 2<sup>7</sup> that Deputy Wilson "had a reason to be concerned for the safety of a minor child

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<sup>7</sup> It is accurate to characterized this as a finding of fact.

within” nothing in the record supports a reason for concern. Moreover, a mere concern is not sufficient to use the emergency aid exception to bypass a search warrant.

***f. The claimed emergency was a pretext for an evidentiary search.***

At the suppression motion, Deputy Wilson testified that his sole purpose in entering the trailer was to check on the welfare of the child. However, the police report says otherwise.

“I asked Brenda if I could enter the home to make sure everything was okay. She allowed me to enter. I entered the home in which I did not observe any signs of an altercation. However, in the living room, I did observe a rifle in the corner of the room. I asked Brenda who the rifle belonged to. Brenda stated the rifle was Scotty’s rifle.” CP 13.

A proper community caretaking function and the related emergency aid exception are separate from a criminal investigation. *State v. Kinzy*, 141 Wn.2d 373, 386–88, 5 P.3d 668 (2000). Where an officer's primary motivation is to search for evidence or make an arrest, the caretaking function does not create any exception to the search warrant requirement. *State v. Williams*, 148 Wn. App. 678, 688-689, 201 P.3d 371, *review denied*, 166 Wn.2d 1020 (2009). See also *Gocken*, 71 Wn. App. at 275-77.

In sum, the State has the burden to prove all six requirements of the emergency aid exception to the warrant requirement. Here the State can prove none.

**4. Deputy Wilson did not have consent to enter Mr. Goldade's home.**

***a. Mr. Goldade did not consent to Deputy Wilson's entry into his home.***

Consent to a search by one having the authority to give such consent constitutes one exception to the warrant requirement. *State v. Mathe*, 102 Wn.2d 537, 541, 688 P.2d 859 (1984). While consent is a recognized exception to the warrant requirement, all such exceptions are narrowly drawn. *State v. Reichenbach*, 153 Wn.2d 126, 131, 101 P.3d 80 (2004). The burden rests with the State to prove consent. *State v. Hendrickson*, 129 Wn.2d 61, 71, 917 P.2d 563 (1996), *overruled in part on other grounds by Carey v. Musladin*, 549 U.S. 70, 127 S.Ct. 649, 166 L.Ed.2d 482 (2006). The State did not, and can not prove consent in this case. Under *State v. Morse*, 156 Wn.2d 1, 13, 123 P.3d 832 (2005), when two cohabitants have equal authority to control their shared home, the consent of one cohabitant is ineffective against the nonconsenting, but present, other cohabitant. In other words, any consent Brenda gave to Deputy Wilson to enter the home she shared with Mr. Goldade was

ineffective against Mr. Goldade because Mr. Goldade was present and did not give Deputy Wilson consent to enter the home.

In *Morse*, the police were looking for Wall, a woman wanted on felony arrest warrants. *Morse*, 156 Wn.2d at 5. The police had information that Wall was at a particular apartment. *Id.* The police went to the apartment. *Id.* at 5-6. Pam Dangle answered the apartment door. *Id.* She told the police that Hall was not in the apartment and had not been there in over a week. *Id.* at 6. Dangle gave police consent to enter the apartment to look for Hall. *Id.* Dangle told the police that she and her husband were staying at the apartment for a few days while their apartment was being painted. *Id.* One of the officers went to the master bedroom, saw Morse sitting on the bed, and entered the bedroom. *Id.* Morse held the lease on the apartment. *Id.* at 14. Once in the bedroom, the officer saw suspected drugs and drug paraphernalia in the bedroom closet. *Id.* at 6. Morse was arrested and convicted of drug crimes. *Id.* at 6-7.

On appeal, Morse argued that Dangle was a temporary resident with some limited authority over the apartment. *Id.* at 6, 14. But as the leaseholder, he had at least the same amount of authority as Dangle to limit access to the apartment. *Id.* As such, because he was present when the police received Dangle's consent to enter the apartment, the police

truly did not have consent to enter the apartment unless he too gave consent. *Id.* at 6.

Morse was right. “Where two persons have equal right to the use or occupancy of the premises, either one can authorize a search.” *State v. Bellows*, 72 Wn.2d 264, 268, 432 P.2d 654 (1967). But where both persons are present,

[w]e have been quite explicit that under our constitution, the burden is on the police to obtain consent from a person whose property they seek to search. In obtaining that consent, police are required to tell the person from whom they are seeking consent that they may refuse to consent, revoke consent, or limit the scope of consent. *State v. Ferrier*, 136 Wn.2d 103, 116, 960 P.2d 927 (1998). We have never held that a cohabitant with common authority can give consent that is binding upon another cohabitant with equal or greater control over the premises when the nonconsenting cohabitant is actually present on the premises.

*Morse*, 156 Wn.2d at 13 (interpreting Article I, Section 7). *Acord*, *State v. Williams*, 148 Wn. App. 678, 688-689, 201 P.3d 371, *review denied*, 166 Wn.2d 1020 (2009).

Brenda told Deputy Wilson she and “[Mr. Goldade] both lived there together.” RP at 10. As such, based on the record, they had equal control over the home. Mr. Goldade was present when Deputy Wilson knocked on the door. He was just outside, detained in a police car. As Brenda’s available cohabitant, the police were obliged to obtain consent from both Mr. Goldade and Brenda before making a warrantless entry into

the shared home. The police never received Mr. Goldade's consent to enter the home. Brenda's consent was ineffective against Mr. Goldade. As such, Deputy Wilson did not enter the home with consent. The evidence gathered as a result of Deputy Wilson's unauthorized warrantless search must be suppressed.

***b. Brenda did not consent to the police entering the home.***

In addition to the argument above, there is another reason why Brenda did not legally consent to Deputy Wilson's entry into the shared home. Brenda's "consent" was not meaningful or informed. *Schultz*, 170 Wn.2d at 754 (protection from searches without authority of law may only be waived by meaningful, informed consent). Meaningful and informed consent requires the police, in obtaining consent, to tell the person from whom they are seeking consent that they may refuse to consent, revoke consent, or limit the scope of consent. *Ferrier*, 136 Wn.2d at 116.

In ruling on the suppression motion, the trial court was critical of Deputy Wilson because he did not "read [Brenda] the may I have your consent from the form." RP at 20. However, by merely being critical, the trial court did not abide by the law.

"[W]hen police officers conduct a knock and talk for the purpose of obtaining consent to search a home, and thereby avoid the necessity of

obtaining a warrant, they must, prior to entering the home, inform the person from whom consent is sought that he or she may lawfully refuse to consent to the search....” *Ferrier*, 136 Wn.2d at 118-19. In a “knock and talk,” the goal of the police is to search for evidence without first obtaining a warrant. *State v. Thang*, 145 Wn.2d 630, 636, 41 P.3d 1159 (2002). *Ferrier* is a bright line rule. *State v. Rankin*, 151 Wn.2d 689, 726, 92 P.3d 202 (2004).

There is an exception to *Ferrier* when the police seek entry to a home to question a resident rather than to search the home. *State v. Khounvichai*, 149 Wn2d 557, 566, 69 P.3d 862 (2003). That exception did not apply here. Deputy Wilson testified that he wanted to go into the house to “make sure the child was okay, make sure the victim was okay.” RP at 9. Deputy Wilson reiterated in his report that we wanted to go into the residence to look around. “I asked Brenda if I could enter the home to make sure everything was okay....I entered the home in which I did not observe any signs of an altercation. However, in the living room I did observe a rifle in the corner of the room.” CP 13. Deputy Wilson’s sole purpose was to get into the home without a warrant and search for evidence of a crime. He could not legally do so without first giving Brenda her *Ferrier* warnings.

*c. Mr. Goldade has standing to challenge Brenda's lack of consent.*

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). A defendant who has a legitimate expectation of privacy in the invaded place has standing to claim a privacy violation. *State v. Jacobs*, 101 Wn. App. 80, 87, 2 P.3d 974 (2000). A two-part inquiry resolves a question of standing: (1) did the claimant manifest a subjective expectation of privacy in the object of the challenged search; and (2) does society recognize the expectation as reasonable? *State v. Link*, 136 Wn. App. 685, 692, 150 P.3d 610, 614, *review denied*, 160 Wn.2d 1025 (2007). Mr. Goldade had a subjective expectation of privacy in his home. Society recognizes that as reasonable. Mr. Goldade has standing to challenge Brenda's lack of meaningful or informed consent.

**5. The illegally obtained evidence must be suppressed.**

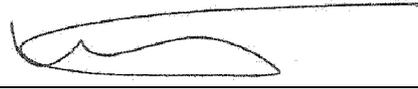
The rifle seized by Deputy Wilson and the statements obtained by Detective Peterson must be suppressed. Evidence seized during illegal searches and evidence derived from illegal searches is subject to suppression under the exclusionary rule. *State v. Gaines*, 154 Wn.2d 711, 716-17, 116 P.3d 993 (2005). The exclusionary rule applies to evidence derived directly and indirectly from illegal police conduct. *State v.*

*Smith*, 165 Wn. App. at 309; *State v. Le*, 103 Wn. App. 354, 361, 12 P.3d 653 (2000). Both the rifle and the statements were obtained as a result of the illegal entry into Mr. Goldade's home.

**E. CONCLUSION**

The suppression motion should have been granted. Mr. Goldade's conviction should be remanded for dismissal.

Respectfully submitted this 15<sup>th</sup> day of March 2012.



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LISA E. TABBUT/WSBA #21344  
Attorney for Scott L. Goldade

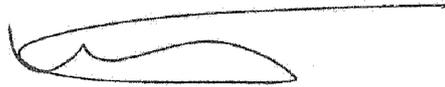
**Certificate of Service**

Lisa E. Tabbut declares as follows:

On today's date, I efiled Appellant's Brief with (1) Kraig Newman, Grays Harbor Prosecutor's Office at [knewman@co.grays-harbor.wa.us](mailto:knewman@co.grays-harbor.wa.us) and (2) the Court of Appeals, Division II, and that I (3) mailed it to Scott L. Goldade, P.O. Box 1393, Westport, WA 98595.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed March 15, 2012, in Mazama, Washington.

A handwritten signature in black ink, appearing to read 'Lisa E. Tabbut', written over a horizontal line.

Lisa E. Tabbut, WSBA No. 21344  
Attorney for Scott L. Goldade

# COWLITZ COUNTY ASSIGNED COUNSEL

**March 15, 2012 - 10:42 PM**

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