

FILED
COURT OF APPEALS
DIVISION II
2012 JUN 11 AM 9:14
STATE OF WASHINGTON
BY 
DEPUTY

NO. 42534-3-II

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

STATE OF WASHINGTON,
Respondent,

v.

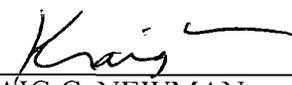
SCOTT L. GOLDADE,
Appellant.

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

BRIEF OF RESPONDENT

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COUNTER STATEMENT OF THE FACTS

The defendant was convicted with the crime of Unlawful Possession of a Firearm. On July 11, 2011, the court heard the defendant's motion to suppress the firearm in the case against him. This was based on unlawful entry of his residence. At this hearing, Robert Wilson, deputy for the Grays Harbor County Sheriff's Department, testified as to the events that occurred on the night that the defendant was arrested and his home was entered. There was no other testimony regarding these events.

The deputy testified that on May 16, 2011, he was on duty and dispatched to a physical altercation that was taking place at a residence in the Hammond Trailer Park, at space number 305. RP 6. The deputy knocked on the door, but no one answered. He heard a loud thud from the back of the residence and he went to investigate.

He observed a male subject running toward the entrance of the trailer park, and several neighbors yelled, "he just ran out the back." RP 7. The defendant was apprehended and identified as Scott L. Goldade, the appellant. He was placed in handcuff restraints and put in the deputies patrol vehicle. The deputy asked why he ran, and the defendant responded that he did not want to have police contact.

After arresting the defendant the deputy went to the door of the residence and knocked. A female answered who was later identified as "Brenda." RP 8. She was visibly upset, but the deputy did not see any physical indications of a struggle. She denied any physical altercation.

The deputy asked if there were other persons in the residence. RP 9. She advised that there was a child. The deputy asked to enter the residence and make sure the child was safe. The female advised him verbally that he could enter the residence.

The deputy walked to the back room and observed the child who seemed to be unaffected by the situation. RP 9. As he walked back through the living room, the deputy observed a rifle leaning up against a wall. This was located in a common area where both the appellant and “Brenda” had mutual control. RP 10.

ARGUMENT

1. The trial court’s findings of fact were based on substantial evidence.

The appellant assigns a number of errors to the court’s findings of fact. On appeal the court reviews trial court’s finding of facts based on whether substantial evidence support them. *State v. Vickers*, 148 Wn.2d 91, 59 P.3d 58 (2002). The party challenging the findings of fact bears the burden of demonstrating that the findings are not supported by substantial evidence. *Id.* Substantial evidence is evidence sufficient to persuade a fair minded person of the truth of the findings. *Id.* All of these findings were based on the testimony of Deputy Wilson and were not contradicted during the hearing.

The first assignment of error is that the court made the finding that the “defendant was arrested.” During the hearing the deputy was asked; “when you arrested him what did you do with him?” RP 7. The officer stated “I placed him - I detained him in cuffs, walked him back to my patrol car.” This is substantial evidence that defendant was in fact arrested at the time he was placed in handcuffs and put in the patrol vehicle.

The appellant also objects to the court’s finding that the deputy entered the residence to “ascertain the well being of the child.” The deputy stated during his testimony that he entered the residence for the purpose of “community care taking, make sure the child was okay, make sure that the victim was okay.” This is a substantial evidence that in fact was the purpose of the officer when he entered the residence.

The appellant objects to the court’s finding that the female gave verbal consent to enter the trailer. During the deputies testimony, when asked if she verbally advised him he could enter the residence, the deputy stated “yes.” No evidence contradicts this and the court could rely on it in finding that in fact the female part of this situation gave verbal consent to enter the dwelling.

The appellant also objects to the court’s finding that when entering the trailer the deputy had reason to fear for the safety of the minor child. As the appellant has indicated in his brief, the court drew on experience common among judges regarding domestic violence to come to the conclusion that the female part of this situation may not be completely

honest with the officer at the time. For this reason, the court found that a reasonable officer could have suspicion that a person in the residence might be in need of assistance.

Substantial evidence supported the courts finding that “[t]he intent in entering was not to search the dwelling for contraband or evidence, but to ascertain the well-being of a child.” The deputy specifically stated this and there is nothing in the record indicating otherwise.

Issues of credibility are resolved by the trial court and can not be reviewed on appeal. *State v. Reed*, 56 Wash.2d 668, 678, 354 P.2d 935, 941 (1960). By denying the validity of these findings the appellant is asking the Court of appeals to do just that, re-evaluate the credibility of Deputy Wilson and find that his statement cannot be believed.

2. The emergency aid exception to the warrant requirement based on the courts finding of facts.

As the appellant stated in his brief, the Supreme Court defined the “emergency aid exception” to the warrant requirement in *State v. Schultz*, 170 Wn.2d 746, 248 P.3d 484 (2011). It is a six prong test and all prongs must be satisfied. In order to claim this exception the state must prove that: (1) the police officer subjectively believed that someone likely needed assistance for health or safety concerns; (2) a reasonable person in the same situation would similarly believe that there was need for assistance; and (3) there was a reasonable basis to associate the need for

assistance with the place being searched, (4) there is an imminent threat of substantial injury to persons or property; (5) state agents must believe a specific person or persons or property are in need of immediate help for health or safety reasons; and (6) the claimed emergency is not a mere pretext for an evidentiary search. *Id.* at 754.

In this case the officer stated, implicitly, that he subjectively believed an emergency existed. The deputy stated that he entered the residence to “make sure the child was okay.” By stating this, he implies that he has reason to believe that the child was not “okay.”

The deputy was called to a “physical altercation.” On scene, the deputy finds a man flee from the residence and then he finds a woman in the residence who was visibly upset but uninjured. When he was informed that there was also a child in the residence during the “physical altercation,” it reasonable to be concerned that if noone else was injured then maybe the child was the one that was injured. If it is at all possible that a child was injured in a domestic violence incident the officer cannot walk away.

The state must prove that a reasonable person would also believe that such an emergency existed. The trail court specific stated it believed that this was such a situation to justify the emergency exception of the warrant requirement. Implicit in this finding this that any reasonable person would agree.

The third requirement is met in this case in that the place searched was where the child was located. Appellant suggested the female could have been asked to bring the child to the door. What if she is the one that injured the child. Sending her back in the residence alone would be imprudent. Moreover, she has already denied a “physical altercation,” which might motivate her to hide the child’s injuries. If a child could possible be injured the officer must go to the child.

The fourth requirement is met because one can infer from the fact that a “physical altercation” may have occurred between a child and an adult that substantial injury could have resulted. The physical disparity between children and adults is one of the reasons that child abuse is so rampant in our society and injury to the child is often so horrible.

The fifth requirement is met because the officer was concerned about the safety of a specific person when he entered the dwelling. This prong is meant to prevent a generalized search all person or all property that may be in danger. In this case there was a particular concern which justified entry, and once that concern was satisfied he left.

Finally, the court specifically found that the justification for the search was not a pretext to search for evidence or contraband.

3. Consent in this case was valid.

The trial court held that: “an occupant of the dwelling, an alleged victim of domestic violence, gave consent for the officer to enter. The

intent in entering was not to search the dwelling for contraband or evidence, but to ascertain the well-being of a child. For this reason her consent was sufficient to allow the officer to enter the dwelling, even if the defendant was present.”

This ruling distinguishes *State v. Morse*, 156 Wash 2d 1 123 P.3d 832 (2005), in that the deputy entered the appellant dwelling not to search it, but the check on the welfare of a child, and the defendant was locked in a patrol car. The appellant suggest that, given the reasonable suspicion that a child may have been the victim of an assault, the officer should have turned around walked to the patrol car, removed the appellant, explained to him that he had a right to refuse the search, and they only after receiving consent should he go into the house to check the welfare of the child.

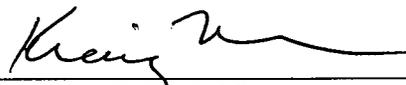
This situation demands more urgency. What if the appellant was asked and denied consent? Would the deputy have to get a warrant to make sure the child had not been injured despite the fact that a resident is giving consent? When faced with the possibility that the child may be the victim of this situation, consent by one party to a domestic violence situation should be adequate for law enforcement the check on the welfare of the other persons in the house.

CONCLUSION

For the reasons stated above the State asks this court to deny the appellant's claims of error.

DATED this 8 day of June , 2012.

Respectfully Submitted,

By: 
KRAIG C. NEWMAN
Senior Deputy Prosecuting Attorney
WSBA #33270

KCN/lh

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DECLARATION OF MAILING

SCOTT L. GOLDADE,

Appellant.

DECLARATION

I, Barbara Chapman hereby declare as follows:

On the 8th day of June, 2012, I mailed a copy of the Brief of Respondent to Lisa E. Tabbut, Attorney at Law, P. O. Box 1396, Longview, WA 98632, by depositing the same in the United States Mail, postage prepaid.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge and belief.

DATED this 8th day of June, 2012, at Montesano, Washington.

Barbara Chapman