Nº. 48749-7-II

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

CITY OF TACOMA
Respondent,

v.

ANTONIA RAINWATER,
Appellant.

OPENING BRIEF OF APPELLANT

Appeal from the Superior Court of Pierce County,
Cause No. 15-1-05041-1
The Honorable Frank Cuthbertson, Reviewing Judge

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A. ASSIGNMENTS OF ERROR

1. The City of Tacoma presented insufficient evidence to convict Ms. Rainwater of resisting arrest.

2. The Superior Court erred in finding that exigent circumstances existed that authorized the warrantless arrest of Ms. Rainwater in her home for a misdemeanor offense.

3. Error is assigned to the trial court's finding that "there existed exigent circumstances to enter the appellant's [home] due to the nature of the crime (domestic violence)."

B. ISSUES PRESENTED

1. Did the City present sufficient evidence to convict Ms. Rainwater of resisting arrest where the police action Ms. Rainwater allegedly resisted was an unlawful warrantless arrest for a misdemeanor inside her home? (Assignment of Error No. 1)

2. Did the Superior Court err in finding that exigent circumstances existed which authorized the warrantless arrest of Ms. Rainwater in her home for a misdemeanor offense? (Assignment of Error Nos. 2 and 3)

3. Did the Superior Court err in finding that the City of Tacoma had presented sufficient evidence to convict Ms. Rainwater of resisting arrest? (Assignments of Error Nos. 1, 2, and 3)

C. STATEMENT OF THE CASE

Factual and Procedural Background

Antonia Rainwater and Mervin Rainwater married in 2001.[1]

On June 1, 2015, Tacoma Police Officer Ryan Hovey was

[1] CP 97.

dispatched in response to a 911 call regarding domestic violence assault.[2] Officer Hovey contacted the caller at a park about a block away from the residence.[3] Officer Hovey identified the caller as Mr. Mervin Rainwater.[4]

Mr. Rainwater was calm and hesitant when he spoke to Officer Hovey.[5] Mr. Rainwater was reserved, like he had something he wanted to say but he asked a lot of questions without telling Officer Hovey why he had called 911.[6] Mr. Rainwater eventually told Officer Hovey that Ms. Rainwater struck him.[7] The most obvious injury to Mr. Rainwater that Officer Hovey could see was two or three scratches on the inside of Mr. Rainwater's bicep that were raised and red and looked fresh.[8] Mr. Rainwater also showed Officer Hovey a small cut on the inside of his lip that was not bleeding but that Mr. Rainwater claimed had been bleeding before.[9] Mr. Rainwater did not indicate that his tooth had been chipped and Officer Hovey did not see evidence that Mr. Rainwater's tooth had been chipped.[10]

Officer Hovey went to the Rainwater residence to speak with Ms.

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[2] CP 122-123.
[3] CP 123.
[4] CP 123.
[5] CP 123.
[6] CP 123
[7] CP 124-125.
[8] CP 125.
[9] CP 125.
[10] CP 125.

Rainwater.[11] Officer Hovey knocked and announced at the front door several times before he saw Ms. Rainwater appear at the window beside the front door.[12] Officer Hovey asked Ms. Rainwater to step outside so he could speak with her but Ms. Rainwater said she did not want to exit her home and that nothing had happened.[13] Officer Hovey persisted in demanding that Ms. Rainwater exit her home to speak with him and eventually Ms. Rainwater opened her door.[14] Ms. Rainwater continued to insist that nothing had happened so Officer Hovey arrested her.[15]

Officer Hovey told Ms. Rainwater that she was under arrest and grabbed her wrist.[16] Ms. Rainwater reacted by pulling her arm closer to her body, moving back further into her house, and trying to close the door.[17] At the time Officer Hovey grabbed Ms. Rainwater's wrist, Officer Hovey was standing outside Ms. Rainwater's house and she was standing inside.[18] Ms. Rainwater did not exit her house.[19] Officer Hovey decided to maintain his grip on Ms. Rainwater and follow her into her home.[20]

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[11] CP 128.
[12] CP 128-131
[13] CP 131.
[14] CP 131-132.
[15] CP 132-134.
[16] CP 133-134.
[17] CP 134.
[18] CP 143, 155-156.
[19] CP 143.
[20] CP 143.

Ms. Rainwater is 5'2" tall and weighs 116 pounds.[21] Officer Hovey is a much bigger person than Ms. Rainwater is, so he pushed her off balance and forced her to the floor in the front room area of her home.[22] Officer Hovey's intent was to put Ms. Rainwater on the ground to make it easier for him to handcuff her.[23]

Ms. Rainwater landed mostly on her stomach but also partly on her left side.[24] Officer Hovey maintained his grip on her wrist almost the entire time her was forcing her to the floor.[25] Officer Hovey straddled Ms. Rainwater with his knee in her back.[26] Ms. Rainwater kept trying to pull her arm underneath her and roll from side to side but officers Hovey and Gamble were able to handcuff her, pick her up, and put her in a patrol car.[27]

On July 2, 2015, Ms. Rainwater was charged with domestic violence related fourth degree assault and resisting arrest.[28]

At trial, Mr. Rainwater testified that on June 1, 2015, the couple got into an argument regarding finances.[29] Ms. Rainwater used her cell

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[21] CP 197.
[22] CP 132.
[23] CP 135.
[24] CP 135.
[25] CP 136.
[26] CP 157.
[27] CP 136-138, 152-153.
[28] CP 11.
[29] CP 97-98.

phone to call Mr. Rainwater's mother and spoke with her.[30] Mr. Rainwater began to walk away from Ms. Rainwater, but Ms. Rainwater told him his mother wanted to talk to him.[31] Mr. Rainwater held his hand out and Ms. Rainwater put the phone in his hand.[32] Mr. Rainwater walked out the front door of the house and toward the garage.[33]

Mr. Rainwater testified that he continued to speak with his mother and Ms. Rainwater began hitting him with a rake or a broom.[34] Mr. Rainwater stated that Ms. Rainwater grabbed his arm and the back of his neck using her fingernails, spun him around, and grabbed the phone from his hand.[35] Mr. Rainwater told the jury that after grabbing the phone Ms. Rainwater hit him in the face with it and chipped one of his teeth.[36] Mr. Rainwater testified that the phone fell to the ground and he walked away from the house and to the park where he called the police.[37]

Ms. Rainwater took the stand and testified that she had grabbed Mr. Rainwater's arm and grabbed the phone away, but she denied hitting Mr. Rainwater, scratching him, or hitting him in the face.[38] Ms. Rainwater also testified that she did not know why the police were at her home and

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[30] CP 98-99.
[31] CP 98.
[32] CP 98.
[33] CP 100-101.
[34] CP 100-101.
[35] CP 101-102.
[36] CP 102-103.
[37] CP 107-109.
[38] CP 200, 208-209.

that the police never told her she was under arrest.[39]

The jury found Ms. Rainwater guilty of both domestic violence fourth degree assault and resisting arrest.[40]

Ms. Rainwater appealed to the Superior Court of Pierce County and argued that the City had failed to present sufficient evidence to convict Ms. Rainwater of resisting arrest where her arrest was unlawful because it was a warrantless misdemeanor arrest inside her home.[41] The Superior Court denied Ms. Rainwater's appeal on the basis that exigent circumstances and the domestic violence nature of the call allowed the police to enter Ms. Rainwater's home without a warrant to arrest her for a misdemeanor crime.[42]

Ms. Rainwater filed her notice of discretionary review on April 18, 2016,[43] and this court accepted review.

D. ARGUMENT

When reviewing the decision of a Superior Court on an appeal from a court of limited jurisdiction, the Court of Appeals' inquiry is whether the court of limited jurisdiction committed an error of law and

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[39] CP 213, 215-216.
[40] CP 255.
[41] CP 52-61.
[42] CP 303-304
[43] CP 305-306.

whether substantial evidence supports the factual findings.[44] Any unchallenged findings are verities on appeal and review for errors of law is de novo.[45]

1. Standard of review.

In a criminal sufficiency claim, the defendant admits the truth of the prosecution's evidence and all inferences that may be reasonably drawn from it.[46] Evidence is reviewed in the light most favorable to the prosecution.[47] Evidence is sufficient to support a conviction if, viewed in the light most favorable to the prosecution, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt.[48]

Circumstantial evidence and direct evidence are equally reliable.[49] In determining whether the necessary quantum of proof exists, the reviewing court need not be convinced of the defendant's guilt beyond a reasonable doubt, but only that substantial evidence supports the State's case.[50]

In a criminal matter, the State must prove every element of the

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[44] *City of Seattle v. May*, 151 Wn.App. 694, 697, 213 P.3d 945 (2009); RALJ 9.1.
[45] *May*, 151 Wn.App. at 697, 213 P.3d 945.
[46] *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).
[47] *State v. Varga*, 151 Wn.2d 179, 201, 86 P.3d 139 (2004).
[48] *Salinas*, 119 Wn.2d at 201, 829 P.2d 1068.
[49] *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).
[50] *State v. Fiser*, 99 Wn.App. 714, 718, 995 P.2d 107, *review denied*, 141 Wn.2d 1023, 10 P.3d 1074 (2000).

crime charged.[51] It is the jury's function to weigh evidence, determine witness credibility, and decide disputed questions of fact; however, the jury's findings must be supported by substantial evidence in the record.[52] Substantial evidence is evidence that "would convince an unprejudiced, thinking mind of the truth of the fact to which the evidence is directed."[53] The existence of a fact cannot rest upon guess, speculation or conjecture.[54]

a. The City's burden to prove Ms. Rainwater's guilt of resisting arrest.

Ms. Rainwater was charged with resisting arrest in violation of Tacoma Municipal Code (TMC) 8.12.010(2). Under TMC 8.12.010(2), "Any person who shall intentionally...attempt to prevent a police officer...of the City of Tacoma from lawfully arresting...her" is a disorderly person. Therefore, in order to convict Ms. Rainwater of violating TMC 8.12.010(2) the City had the burden of demonstrating that Ms. Rainwater (1) intentionally (2) attempted to prevent (3) a City of Tacoma police officer (4) from lawfully arresting her.

b. The City presented insufficient evidence to establish that Officer Hovey was lawfully arresting Ms. Rainwater.

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[51] *State v. Teal*, 152 Wn.2d 333, 337, 96 P.3d 974 (2004); *In re Winship*, 397 U.S. 358, 362-363, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970).
[52] *State v. Snider*, 70 Wn.2d 326, 327, 422 P.2d 816 (1967).
[53] *State v. Hutton*, 7 Wn.App. 726, 728, 502 P.2d 1037 (1972).
[54] *State v. Carter*, 5 Wn.App. 802, 807, 490 P.2d 1346 (1971), *review denied*, 80 Wn.2d 1004 (1972), *cited in Hutton*, 7 Wn.App. at 728, 502 P.2d 1037.

At the time Officer Hovey arrested Ms. Rainwater, Officer Hovey was standing outside Ms. Rainwater's home and Ms. Rainwater was standing inside her home and Ms. Rainwater did not exit her home.[55] Further, Officer Hovey did not have a warrant for Ms. Rainwater's arrest and had not observed Ms. Rainwater commit any crimes in his presence. Officer Hovey believed that Mr. Rainwater had been scratched and had his inner lip cut by Ms. Rainwater.[56] Officer Hovey believed he had developed probable cause to arrest Ms. Rainwater for domestic violence assault based on his conversation with Mr. Rainwater.[57]

i. Officer Hovey arrested Ms. Rainwater for committing a misdemeanor assault.

Because the term assault is not statutorily defined, Washington courts apply the common law definitions to the crime.[58] Three definitions of assault are recognized in Washington: (1) an attempt, with unlawful force, to inflict bodily injury upon another (attempted battery); (2) an unlawful touching with criminal intent (actual battery); and (3) putting another in apprehension of harm whether or not the actor intends to inflict or is capable of inflicting that harm (common law assault).[59]

The different degrees of assault are defined by the degree of injury

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[55] RP 79, 91-92.
[56] RP 61.
[57] RP 69-70.
[58] *State v. Walden*, 67 Wn.App. 891, 893, 841 P.2d 81 (1992).
[59] *State v. Wilson*, 125 Wn.2d 212, 218, 883 P.2d 320 (1994).

caused by the assault and the type of weapon, if any, that was used to achieve the assault. Because Officer Hovey was not aware that any weapon had been used to assault Mr. Rainwater, the relevant definitions of each degree of assault would be as follows: first degree assault is an assault with intent to inflict great bodily harm that inflicts great bodily harm[60]; second degree assault is an intentional and reckless infliction of serious bodily harm[61]; third degree assault is the infliction of bodily harm on another through criminal negligence[62]; and fourth degree assault is a simple assault not amounting to assault in the first, second, or third degree.[63]

RCW 9A.04.110(4)(c) defines "great bodily harm" as "bodily injury which creates a probability of death or which causes a significant permanent disfigurement, or which causes a significant permanent loss or impairment of the function of any bodily part or organ."

RCW 9A.04.110(4)(b) defines "[s]ubstantial bodily harm" as "a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or which causes a fracture of any bodily part."

The fact that any assault upon Mr. Rainwater by Ms. Rainwater

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[60] RCW 9A.36.011.
[61] RCW 9A.36.021.
[62] RCW 9A.36.031.
[63] RCW 9A.36.041.

would have been an intentional assault and the minor nature of Mr. Rainwater's wounds purportedly caused by the assault mean that the only level of assault Officer Hovey could have believed Ms. Rainwater committed would be assault in the fourth degree. Fourth degree assault is a gross misdemeanor.[64]

ii. Officer Hovey could not lawfully enter Ms. Rainwater's home to arrest her for a misdemeanor not committed in his presence without first obtaining a warrant.

> All warrantless entries of a home are presumptively unreasonable. *Payton v. New York*, 445 U.S. 573, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980); *State v. Bessette*, 105 Wash.App. 793, 798, 21 P.3d 318 (2001). We have held that absent exigent circumstances, both the Fourth Amendment and article 1, section 7 of the Washington State Constitution prohibit the warrantless entry into a person's home to make an arrest. *State v. Ramirez*, 49 Wash.App. 814, 818, 746 P.2d 344 (1987) (*citing Payton*, 445 U.S. at 587–88, 100 S.Ct. 1371). "Freedom from intrusion into the home or dwelling is the archetype of the privacy protection secured by the Fourth Amendment." *Dorman v. United* States, 140 U.S.App. D.C. 313, 317, 435 F.2d 385 (1970).
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> "Exigent circumstances" involve a true emergency, i.e., "an immediate major crisis," requiring swift action to prevent imminent danger to life, forestall the imminent escape of a suspect, or the destruction of evidence. *Id.* at 319, 435 F.2d 385; *Michigan v. Tyler*, 436 U.S. 499, 509–10, 98 S.Ct. 1942, 56 L.Ed.2d 486 (1978). "The idea underlying the exigent circumstances exception to the requirement of a search warrant is that police do not have adequate time to get a warrant." *Bessette*, 105 Wash.App. at 798, 21 P.3d

[64] RCW 9A.36.041(2).

> 318. The police bear the heavy burden of showing that exigent circumstances necessitated immediate police action. *Johnson*, 128 Wash.2d at 447, 909 P.2d 293; Welsh, 466 U.S. at 749–50, 104 S.Ct. 2091. They must show why it was impractical, or unsafe, to take the time to get a warrant. *State v. Wolters*, 133 Wash.App. 297, 303, 135 P.3d 562 (2006). "When an officer undertakes to act as his own magistrate, he ought to be in a position to justify it by pointing to some real immediate and serious consequence if he postponed action to get a warrant." *McDonald v. United States*, 335 U.S. 451, 460, 69 S.Ct. 191, 93 L.Ed. 153 (1948).[65]

Absent a warrant, "police entry into a private home to make a misdemeanor arrest is per se invalid."[66]

No exigent circumstances existed at the time Officer Hovey seized Ms. Rainwater and placed her under arrest, yet Office Hovey reached into Ms. Rainwater's home to grab her wrist and arrest her. Officer Hovey's failure to obtain an arrest warrant before entering Ms. Rainwater's home to arrest her for a misdemeanor offense renders her arrest unlawful. Because the arrest of Ms. Hovey was unlawful, and because no exception to the warrant requirement applied to allow Officer Hovey to enter Ms. Rainwater's home without a warrant, the arrest of Ms. Rainwater was unlawful.

iii. <u>This court should vacate Ms. Rainwater's conviction for resisting arrest and remand for dismissal with prejudice.</u>

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[65] *State v. Hinshaw*, 149 Wn.App. 747, 753-754, 205 P.3d 178 (2009).
[66] *State v. Hatchie*, 161 Wn.2d 390, 399, 166 P.3d 698 (2007).

If there is insufficient evidence to prove an element of a crime, reversal is required and retrial is 'unequivocally prohibited.'[67]

As discussed above, the City's burden in proving Ms. Rainwater resisted arrest included proving her arrest was lawful. Also as discussed above, Ms. Rainwater was arrested in her home without a warrant for committing a misdemeanor. Warrants are required for in-home arrests of individuals who did not commit a misdemeanor in the officer's presence. Because Officer Hovey lacked a warrant to arrest Ms. Rainwater in her home, the arrest was unlawful. The city presented insufficient evidence to support a finding that Ms. Rainwater committed the crime of resisting arrest.

2. The Superior Court's decision that exigent circumstances existed which authorized the warrantless arrest of Ms. Rainwater in her home for a misdemeanor offense is contrary to numerous decisions of the Washington Court of Appeals and Supreme Court.

As a general rule, warrantless searches and seizures are per se unreasonable, in violation of the Fourth Amendment to the United States Constitution and article I, section 7 of the Washington Constitution.[68] There are "a few 'jealously and carefully drawn exceptions' to the warrant requirement," which include exigent circumstances, searches incident to a

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[67] *State v. Hickman*, 135 Wn.2d 97, 103, 954 P.2d 900 (1998).
[68] *State v. Garvin*, 166 Wn.2d 242, 249, 207 P.3d 1266, 1270 (2009), *citing State v. Duncan*, 146 Wn.2d 166, 171, 43 P.3d 513 (2002) (*citing State v. Williams*, 102 Wn.2d 733, 736, 689 P.2d 1065 (1984)).

valid arrest, inventory searches, plain view searches, and *Terry* investigative stops.[69]

The State bears a heavy burden to show the search falls within one of the "narrowly drawn" exceptions.[70] The State must establish the exception to the warrant requirement by clear and convincing evidence.[71]

The Superior Court found that the fact the police were called to a domestic violence incident created exigent circumstances which authorized the warrantless arrest of Ms. Rainwater in her home for misdemeanor assault. This was error for several reasons.

The "emergency," "community caretaking," or "medical need" exception to the warrant requirement "recognizes the community caretaking function of police officers, and exists so officers can assist citizens and protect property."[72] This exception

> was first articulated under Washington law in *State v. Sanders*, 8 Wn.App. 306, 310, 506 P.2d 892, *review denied*, 82 Wn.2d 1002 (1973), which stated that "[p]olice officers may enter a dwelling without a warrant to render emergency aid and assistance to a person whom they

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[69] *State v. Garvin*, 166 Wn.2d 242, 249, 207 P.3d 1266, 1270 (2009), *citing State v. Duncan*, 146 Wn.2d 166, 171–72, 43 P.3d 513 (2002), quoting *State v. Williams*, 102 Wn.2d 733, 736, 689 P.2d 1065 (1984), *and citing State v. Rife*, 133 Wn.2d 140, 150–51, 943 P.2d 266 (1997)).

[70] *State v. Garvin*, 166 Wn.2d 242, 250, 207 P.3d 1266, 1270 (2009), *citing State v. Jones*, 146 Wn.2d 328, 335, 45 P.3d 1062 (2002).

[71] *State v. Garvin*, 166 Wn.2d 242, 250, 207 P.3d 1266, 1270 (2009), *citing State v. Smith*, 115 Wn.2d 775, 789, 801 P.2d 975 (1990).

[72] *State v. Menz*, 75 Wn. App. 351, 353-54, 880 P.2d 48, 49 (1994), *citing State v. Swenson*, 59 Wn.App. 586, 589, 799 P.2d 1188 (1990), *State v. Hutchison*, 56 Wn.App. 863, 865–66, 785 P.2d 1154 (1990).

> reasonably believe to be in distress and in need of that assistance." *See also State v. Nichols*, 20 Wn.App. 462, 465, 581 P.2d 1371 (police responding to a reported fight could enter a garage because they had reasonable grounds to believe their assistance was necessary for the protection of life), *review denied*, 91 Wn.2d 1004 (1978).[73]
>
> This exception applies when
>
> (1) the officer subjectively believed that someone likely needed assistance for health or safety reasons; (2) a reasonable person in the same situation would similarly believe that there was a need for assistance; and (3) there was a reasonable basis to associate the need for assistance with the place searched.[74]

"In applying the rule, courts must require that the police officer 'be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.' (Footnote omitted.)"[75]

The community caretaking function is divorced from the criminal investigation.[76] This exception allows for the limited invasion of constitutionally protected privacy rights when it is necessary for police officers to render aid or assistance or when making routine checks on

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[73] *State v. Menz*, 75 Wn. App. 351, 353-54, 880 P.2d 48, 49 (1994), *citing State v. Muir*, 67 Wn.App. 149, 153, 835 P.2d 1049 (1992).
[74] *State v. Menz*, 75 Wn. App. 351, 354, 880 P.2d 48, 49 (1994), *citing State v. Gocken*, 71 Wn.App. at 276–77, 857 P.2d 1074; *see also State v. Loewen*, 97 Wn.2d 562, 568, 647 P.2d 489 (1982).
[75] *State v. Sanders*, 8 Wn.App. 306, 310, 506 P.2d 892 (1973), *citing Terry v. Ohio*, 392 U.S. 1, 21, 88 S.Ct. 1868, 1880, 20 L.Ed.2d 889 (1968).
[76] *State v. Kinzy*, 141 Wn.2d 373, 385, 5 P.3d 668 (2000), *cert. denied*, 531 U.S. 1104, 121 S.Ct. 843, 148 L.Ed.2d 723 (2001).

health and safety.[77]

If the prosecution invokes the emergency exception, a reviewing court "must be satisfied that the claimed emergency was not simply a pretext for conducting an evidentiary search."[78]

"[T]here is no domestic abuse exception to the Fourth Amendment generally, or to the limitations on the exigent circumstances exception in particular. Instead, in those domestic violence cases where courts have upheld a finding of exigent circumstances, the police were presented with clear evidence that the victim was both still in the vicinity of the abuser and still in danger."[79]

First, the City did not argue in the trial or on appeal to the Superior Court that any exigent circumstances existed. The City failed to even attempt to meet is burden that exigent circumstances existed.

Second, the "emergency" or "community caretaking" exception to the warrant requirement did not apply to the facts of this case. Mr. Rainwater, the victim who had called 911, was blocks away from the home and had already spoken with the police. The police knew that the victim of domestic violence was no longer threatened by the abuser and

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[77] *State v. Kinzy*, 141 Wn.2d 373, 386, 5 P.3d 668 (2000), *cert. denied*, 531 U.S. 1104, 121 S.Ct. 843, 148 L.Ed.2d 723 (2001).
[78] *State v. Schlieker*, 115 Wn.App. 264, 270, 62 P.3d 520 (2003) (quoting *State v. Lynd*, 54 Wn.App. 18, 21, 771 P.2d 770 (1989)).
[79] *United States v. Black*, 482 F.3d 1035, 1042 (9th Cir. 2007), Justice Berzon dissenting.

did not need further assistance. At the time the officer approached Ms. Rainwater's home, the officers were not aware of any facts that suggested someone in the home might need assistance for any reason.

Finally, even if it is assumed for the sake of argument that exigent circumstances related to the report of domestic violence authorized the entry into Ms. Rainwater's home, the entry into her home was for purposes of arresting her and was clearly not divorced from the criminal investigation.

The Superior Court's decision that exigent circumstances related to the domestic violence nature of the call authorized the warrantless entry into Ms. Rainwater's home for purposes of arresting her for committing a misdemeanor is contrary to the above cited law regarding exigent circumstances and warrantless misdemeanor arrests in a residence.

3. The Superior Court's decision that the City had presented sufficient evidence to support convicting Ms. Rainwater for resisting arrest is contrary to numerous decisions of the Washington Court of Appeals and Supreme Court.

Ms. Rainwater was charged with resisting arrest in violation of Tacoma Municipal Code (TMC) 8.12.010(2). Under TMC 8.12.010(2), "Any person who shall intentionally...attempt to prevent a police officer...of the City of Tacoma from lawfully arresting...her" is a disorderly person. Therefore, in order to convict Ms. Rainwater of

violating TMC 8.12.010(2) the City had the burden of demonstrating that Ms. Rainwater (1) intentionally (2) attempted to prevent (3) a City of Tacoma police officer (4) from lawfully arresting her.

As stated above, absent a warrant, "police entry into a private home to make a misdemeanor arrest is per se invalid."[80] Also as discussed above, Ms. Rainwater was arrested without a warrant inside her home for committing a misdemeanor.

Ms. Rainwater challenged the sufficiency of the evidence to convict of resisting arrest on the basis that the arrest she allegedly resisted was not a lawful arrest. The Superior Court ruled that the City had presented sufficient evidence to convict Ms. Rainwater of resisting arrest because the warrantless arrest was lawful due to exigent circumstances.

As discussed above, the Superior Court erred in sua sponte ruling that exigent circumstances relating to domestic violence authorized the warrantless arrest of Ms. Rainwater in her home for committing a misdemeanor. This decision was contrary to well-established law regarding the emergency exception to the warrant requirement. Since the Superior Court's ruling that the arrest was lawful is erroneous, then the Superior Court's ruling that the City presented sufficient evidence to

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[80] *State v. Hatchie*, 161 Wn.2d 390, 399, 166 P.3d 698 (2007).

convict Ms. Rainwater of resisting arrest is also erroneous and contrary to law.

E. CONCLUSION

For the reasons stated above, this court should vacate Ms. Rainwater's conviction and remand her case to the trial court for dismissal with prejudice.

DATED this 21st day of September, 2016.

Respectfully submitted,

Reed Speir, WSBA No. 36270
Attorney for Appellant

CERTIFICATE OF SERVICE

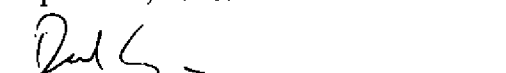
Reed Speir hereby certifies under penalty of perjury under the laws of the State of Washington that on the 21st day of September, 2016, I delivered a true and correct copy of the Brief of Appellant to which this certificate is attached by United States Mail, to the following:

Antonia Rainwater
P.O. Box 8143
Tacoma, Washington 98419

And, I delivered via legal messenger a true and correct copy of the Brief of Appellant and the Verbatim Report of Proceedings to which this certificate is attached, to

City of Tacoma Prosecuting Attorney's Office
930 Tacoma Avenue South, 4th Floor
Tacoma, WA 98402

Signed at Tacoma, Washington this 21st day of September, 2016.



Reed Speir, WSBA No. 36270

LAW OFFICE OF REED SPEIR

September 21, 2016 - 9:55 AM

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