

70730-2

70730-2

NO. 70730-2-1

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

MATTHEW AARON D'ANGELO,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE SUSAN AMINI

BRIEF OF RESPONDENT

FILED
COURT OF APPEALS DIV I
JAN 11 2011
10:23 AM
CLERK

DANIEL T. SATTERBERG
King County Prosecuting Attorney

STEPHANIE FINN GUTHRIE
Deputy Prosecuting Attorney
Attorneys for Respondent

King County Prosecuting Attorney
W554 King County Courthouse
516 3rd Avenue
Seattle, Washington 98104
(206) 296-9650

TABLE OF CONTENTS

	Page
A. <u>ISSUE PRESENTED</u>	1
B. <u>STATEMENT OF THE CASE</u>	1
1. PROCEDURAL FACTS	1
2. SUBSTANTIVE FACTS	2
C. <u>ARGUMENT</u>	6
THE TRIAL COURT PROPERLY RULED THAT THE OFFICERS' ENTRY INTO THE HOME WAS LAWFUL UNDER THE EMERGENCY AID EXCEPTION TO THE WARRANT REQUIREMENT	6
1. The Officers Reasonably Believed That There Was An Imminent Threat Of Injury Requiring Immediate Assistance To A Specific Person For Safety Reasons	10
2. Any Error In Not Explicitly Addressing All Six <u>Schultz</u> Factors Was Harmless	16
D. <u>CONCLUSION</u>	17

TABLE OF AUTHORITIES

Page

Table of Cases

Washington State:

State v. Acrey, 148 Wn.2d 738,
64 P.3d 594 (2003)..... 10

State v. Garvin, 166 Wn.2d 242,
207 P.3d 1266 (2009)..... 7, 16

State v. Gocken, 71 Wn. App. 267,
857 P.2d 1074 (1993)..... 8

State v. Harris, 106 Wn.2d 784,
725 P.2d 975 (1986)..... 7

State v. Johnson, 104 Wn. App. 409,
16 P.3d 680 (2001)..... 7, 8

State v. Lynd, 54 Wn. App. 18,
771 P.2d 770 (1989)..... 11, 12

State v. Menz, 75 Wn. App. 351,
880 P.2d 48 (1994)..... 13

State v. Raines, 55 Wn. App. 459,
778 P.2d 538 (1989)..... 10, 13

State v. Schultz, 170 Wn.2d 746,
248 P.3d 484 (2011)..... 7, 8, 9, 10, 12, 13, 14, 15, 16

State v. Smith, 177 Wn.2d 533,
303 P.3d 1047 (2013)..... 9

State v. Thompson, 151 Wn.2d 793,
92 P.3d 228 (2004)..... 7

Constitutional Provisions

Federal:

U.S. Const. amend. IV 7

Washington State:

Const. art. I, § 7 7

Other Authorities

Webster's Third New International Dictionary 1130 (1993) 9

A. ISSUE PRESENTED

A warrantless entry into a residence is justified under the emergency aid exception if an officer reasonably believes that someone inside needs immediate assistance for health or safety concerns. Here, a woman inside the defendant's apartment was heard crying, coughing, and stating "let me go" and "don't hurt me," and when officers knocked on the door the defendant aggressively and repeatedly refused to let them in to check on the woman, who appeared frightened when the door was finally opened. The officers believed that this was a domestic violence situation and that immediate assistance was required to ensure the present and continued safety of the woman. Was their warrantless entry lawful under the emergency aid exception?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS.

The defendant, Matthew Aaron D'Angelo, was charged by Information with one count of possession of oxycodone. CP 1. D'Angelo brought a motion to suppress the oxycodone, which had been found in his pocket after he was arrested during a welfare check at his home, as the product of an unlawful seizure. CP 6-12.

The trial court denied the motion, ruling that the officers' entry into the home and seizure of D'Angelo were justified under the emergency aid exception to the warrant requirement. RP 139-46; CP 31-37.

D'Angelo waived his right to a jury trial and requested a bench trial on stipulated facts. CP 19-22. The trial court found him guilty as charged. CP 16-18. D'Angelo timely appealed. CP 49.

2. SUBSTANTIVE FACTS.

Police officers Amanda Jensen and Kirk Graham were dispatched around 1:13 a.m. to respond to a 911 call about a female in distress. RP 6, 11, 44, 46. The caller, Raquel Gabriotte, stated that she could hear a woman coughing, crying, and saying "let me go" in the apartment next door. RP 11. Gabriotte told dispatch that she was in unit two, and the female in distress was in unit three. RP 12.

Jensen and Graham arrived on the scene within a few minutes of the 911 call, but initially heard nothing from unit three. RP 13. Jensen then contacted Gabriotte in unit two to verify the information she had provided. RP 13. Gabriotte told Jensen that she heard a female in unit three crying, coughing, and saying what

sounded like “let me go” and “don’t hurt me.” RP 13, 47, 77.

Gabriotte expressed great concern for the woman’s welfare and feared she might be hurt. RP 13, 32.

Jensen and Graham returned to unit three and knocked on the door. RP 13. When no one answered, they knocked several more times, identifying themselves as police officers. RP 13, 33. Finally, a male voice yelled at them to go away and said that they weren’t coming in without a warrant. RP 13. The officers informed the male that they needed to come in to check on the welfare of those inside, but the man, later identified as D’Angelo, repeated four or five times that they could not come in, sounding agitated and aggressive. RP 14-15.

Jensen and Graham were now very concerned for the welfare of the woman Gabriotte had heard. RP 14, 49. Given the short time between Gabriotte’s 911 call and the officers’ arrival, they believed the woman was likely still inside the apartment, yet she could no longer be heard, and the officers now knew that an agitated, aggressive man was also inside and did not want the officers to come in. RP 14-15. These circumstances raised red flags for the officers, whose training and experience caused them to believe that a domestic violence incident was occurring in the

apartment and that the female might be injured and in need of assistance. RP 14-15, 49.

When the officers finally did hear a female voice inside the apartment, the woman was whimpering and crying. RP 16. Officer Jensen told the occupants that she would kick the door in if they did not let the officers in. RP 16. The officers then heard the female say, "Let them in. I don't want them to kick the door in." RP 16. As Jensen repeatedly instructed the occupants to open the door, D'Angelo repeatedly told the woman not to open the door, and told the officers that they were not going to come in. RP 17.

Finally, the female occupant, later identified as Raquel Walsh, opened the door. RP 17, 50, 71. The officers observed that Walsh and D'Angelo were just inside the doorway, next to each other. RP 64, 79. Walsh appeared fearful. RP 34, 102. Officer Graham asked D'Angelo to step out of the apartment so that the officers could talk to each of them and make sure they were both okay, but D'Angelo refused. RP 17, 51. Graham then instructed D'Angelo to come out of the apartment, but he again refused and began to back up and try to close the apartment door. RP 19, 51.

Officer Graham observed D'Angelo begin to reach into his pockets, which caused fear for the officers' safety based on their

training and experience. RP 52. The officers still did not know whether anyone else was in the apartment, or whether there were any weapons involved. RP 17-18, 51-52. Graham and Jensen then stepped into the apartment and grabbed D'Angelo's arms. RP 19, 52-53. Based on their training and experience, they believed that separating D'Angelo and Walsh was necessary in order to ascertain whether Walsh was in danger or would be in danger after they left. RP 9-10, 26, 68.

D'Angelo actively resisted the officers by tensing his muscles and pulling away, and refused repeated commands to stop resisting and put his hands behind his back. RP 20-21, 53. After a struggle that delayed their check of Walsh's welfare, Graham and Jensen were finally able to get D'Angelo under control, and they arrested him for obstruction of a law enforcement officer. RP 21-24, 53-54. Oxycodone pills were later found in D'Angelo's pocket in a search incident to arrest. CP 16.

Once D'Angelo was under control, Jensen explained to Walsh that the officers had come to check on Walsh's welfare, and asked about what had been going on that night and whether there was a history of domestic violence in the relationship. RP 22. Walsh claimed that she and D'Angelo had just been having an

argument about her needing space, but would not elaborate, and declined to provide a formal statement. RP 25. Jensen gave Walsh a domestic violence pamphlet and explained what would happen to D'Angelo as a result of his arrest for obstruction, before departing the scene. RP 25.

At a hearing on D'Angelo's pre-trial motion to suppress the oxycodone found in his pocket, Jensen, Graham, and Walsh all testified. RP 6, 44, 71. The trial court found Jensen and Graham credible, but found Walsh's testimony less credible, particularly regarding "the full context of that night." CP 35.

C. ARGUMENT

THE TRIAL COURT PROPERLY RULED THAT THE OFFICERS' ENTRY INTO THE HOME WAS LAWFUL UNDER THE EMERGENCY AID EXCEPTION TO THE WARRANT REQUIREMENT.

D'Angelo contends that the trial court erred in denying his motion to suppress the oxycodone as the fruit of an unlawful entry into his home. This claim should be rejected. Because the officers reasonably believed that the female occupant of the home needed immediate assistance for health or safety reasons, the trial court

properly ruled that the officers' entry into the home was lawful under the emergency aid exception to the warrant requirement.

When reviewing the denial of a motion to suppress, an appellate court determines whether substantial evidence supports the trial court's findings of fact, and reviews de novo whether the trial court's conclusions of law are correct and supported by the findings of fact. State v. Garvin, 166 Wn.2d 242, 249, 207 P.3d 1266 (2009). Unchallenged findings of fact are verities on appeal. State v. Harris, 106 Wn.2d 784, 790, 725 P.2d 975 (1986).

The Fourth Amendment to the United States Constitution and article I, section 7 of the Washington State Constitution prohibit unreasonable searches and seizures. State v. Johnson, 104 Wn. App. 409, 414, 16 P.3d 680 (2001). Although warrantless searches or seizures in a residence are presumptively unreasonable, the emergency aid exception to the warrant requirement emerges from law enforcement's "community caretaking function" and "allows for the limited invasion of constitutionally protected privacy rights when it is necessary for police officers to render aid or assistance." State v. Schultz, 170 Wn.2d 746, 754, 248 P.3d 484 (2011) (quoting State v. Thompson, 151 Wn.2d 793, 802, 92 P.3d 228 (2004)).

Under the emergency aid exception, an officer has traditionally been allowed to enter a home without a warrant when (1) the officer subjectively believes that someone likely needs assistance for health or safety reasons, (2) the belief is objectively reasonable, and (3) the officer has a reasonable basis to associate the need for assistance with the place searched. Johnson, 104 Wn. App. at 415 (citing State v. Gocken, 71 Wn. App. 267, 276-77, 857 P.2d 1074 (1993)). In 2011, the Washington Supreme Court articulated three additional, somewhat overlapping requirements: “(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.” Schultz, 170 Wn.2d at 754.

The additional three factors in Schultz appear to be dicta, as the court’s ruling in that case turned solely on the original second factor of whether the belief that someone needed assistance for health or safety concerns was reasonable. Id. at 760-61 (majority), 763 (J. Fairhurst, dissenting). In the only Washington Supreme Court case to address the emergency aid exception since Schultz, the court returned to a three-factor test without addressing Schultz,

holding that a warrantless search of a residence is lawful if (1) the officer “has a reasonable belief that assistance is immediately required to protect life or property, (2) the search is not primarily motivated by an intent to arrest and seize evidence, and (3) there is probable cause to associate the emergency with the place to be searched.” State v. Smith, 177 Wn.2d 533, 541, 303 P.3d 1047 (2013).

Smith’s focus on an immediate need for assistance, rather than requiring an immediate need *and* an imminent threat, accomplishes the purposes of Schultz while creating a rule of more universal application. Schultz’s requirement of an “imminent threat” of injury, construed strictly, would exclude situations where emergency assistance is needed for injuries already inflicted. Webster’s Third New International Dictionary 1130 (1993) (defining “imminent” as “ready to take place; near at hand; impending”).

D’Angelo challenges the trial court’s ruling only as to the fourth and fifth factors of the Schultz test; he does not contest that the other factors are met under the facts found by the court. Brief of Appellant at 10-15. Whether this case is analyzed under the six factors of Schultz or the three factors of Smith, the record and the trial court’s factual findings support the conclusion that all

requirements were met for the officers' entry into D'Angelo and Walsh's apartment to be lawful under the emergency aid exception.¹

1. The Officers Reasonably Believed That There Was An Imminent Threat Of Injury Requiring Immediate Assistance To A Specific Person For Safety Reasons.

As the Schultz court observed, domestic violence presents unique challenges to law enforcement. 170 Wn.2d at 755. Domestic violence situations typically occur within the privacy of a home, are volatile, and can quickly escalate into significant injury. Id. As a result, police officers responding to a likely domestic violence incident "have a duty to ensure the present and continued safety and well-being of the occupants." Id. (quoting State v. Raines, 55 Wn. App. 459, 465, 778 P.2d 538 (1989)).

The fact that police are responding to what is likely a domestic violence situation is an important factor when evaluating whether an officer subjectively believes that someone likely needs immediate assistance as well as "the reasonableness of the

¹ Because D'Angelo does not challenge any of the trial court's findings of fact, this court need only ascertain whether the trial court's conclusions of law are supported by the findings of fact. State v. Acrey, 148 Wn.2d 738, 745, 64 P.3d 594 (2003).

officer's belief that there is an imminent threat of injury." Id. at 756. Furthermore, whether a warrantless entry was lawful under the emergency aid exception "is a matter to be evaluated in relation to the scene as it reasonably appeared to the officer at the time, not as it may seem to a scholar after the event with the benefit of leisured retrospective analysis." State v. Lynd, 54 Wn. App. 18, 22, 771 P.2d 770 (1989) (internal quotation marks omitted).

In this case, the record and the trial court's unchallenged factual findings indicate that the officers reasonably believed that there was an imminent threat of substantial injury to Walsh that put her in need of immediate help. The information provided by Gabriotte indicated that she feared Walsh was hurt after hearing her crying, coughing, and saying "let me go" and "don't hurt me," yet when the officers knocked on Walsh's door minutes later, no one answered. RP 13, 37, 77. After repeatedly knocking and announcing themselves as police, they discovered that there was also an agitated, aggressive male in the apartment who did not want them to come in even though they explained that they just needed to check on the welfare of those inside. RP 13-15.

The officers then heard Walsh whimpering and crying, and threatened to kick the door open. RP 16. When Walsh finally

opened the door after repeated commands from D'Angelo not to do so, the officers observed that she was visibly frightened and that D'Angelo had followed her to the door. RP 34, 64. Given all of these circumstances, the officers believed that they were dealing with a domestic violence incident, and that Walsh likely needed immediate assistance to avert an imminent threat of injury or deal with an injury already inflicted. CP 35; RP 14-15, 18, 26, 69.

Although Jensen and Graham were not able to see any injuries on Walsh's face when she opened the door, that fact did not change their belief that immediate assistance was likely needed, as the officers knew that injuries might be hidden by clothing and believed that Walsh would continue to be in danger of injury if they left without intervening. RP 10-11, 68.

The fact that a suspect in a likely domestic violence incident does not want officers to enter the home to look for the victim has been cited by the courts as contributing to a reasonable belief that emergency aid is needed. Lynd, 54 Wn. App. at 22-23 (cited with approval in Schultz, 170 Wn.2d at 755). The lack of any response when officers come to the door has also been held to support a reasonable belief that immediate aid is needed, where the officers receive an anonymous report of domestic violence and have

reason to believe someone is still inside the home. State v. Menz, 75 Wn. App. 351, 354, 880 P.2d 48 (1994) (cited with approval in Schultz, 170 Wn.2d at 755).

Furthermore, a witness's report of hearing a victim tell the suspect not to hurt her son has been held to contribute to a reasonable belief that immediate intervention is needed even when neither mother nor child has visible injuries, where officers have reason to distrust the victim's assurances that everything is fine. Raines, 55 Wn. App. at 466 (cited with approval in Schultz, 170 Wn.2d at 755). As this Court observed in Raines, "the fact that the occupants appear[] to be unharmed when the officers enter[] d[oes] not guarantee that the disturbance ha[s] cooled to the point where their continued safety [i]s assured." Id.

Under the caselaw, the combination of a neighbor hearing the victim crying and saying "let me go" and "don't hurt me," the victim crying and whimpering, the defendant aggressively refusing to let the officers inside, and the victim appearing frightened when the door was finally opened all made the officers' subjective belief about the necessity of immediate intervention reasonable.

D'Angelo contends that this case is similar to the facts of Schultz and that Officer Jensen and Officer Graham's belief that

immediate aid was needed was therefore not reasonable. Brief of Appellant at 12-14. However, the facts of Schultz were quite different. There, police received a call about a male and female yelling inside a neighboring apartment. Schultz, 170 Wn.2d at 750. As responding officers stood outside the apartment, they could hear that the man and woman were not yelling, but were merely talking in loud voices, and heard the man say he wanted to be left alone and needed his space. Id. at 750-51. When the officers knocked on the door, the woman answered the door, and appeared agitated and flustered. Id. at 751. After the woman initially denied that anyone else was present, officers told her that they had heard a male voice, and the woman then called for the man, who came into view. Id. The officers then entered the home. Id.

On the facts present in Schultz, the court held that the emergency aid exception did not apply because the officers had insufficient information “to support a reasonable belief that domestic violence had occurred or was likely to occur, or that the circumstances were volatile and could likely escalate into domestic violence.” Id. at 761. The court noted that had there been any indication at all that the confrontation had involved, or was likely to escalate into, violence, the emergency aid exception likely would

have applied.² Id. The fact that the court made such a statement without analyzing the degree of injury likely to result is a reflection of the court's acknowledgment that domestic violence situations can "quickly escalate into significant injury," and suggests the court believed that the requirement of an imminent threat of substantial injury would be met in any ongoing domestic violence situation. Id. at 755.

The kinds of circumstances that were lacking in Schultz are present in this case in abundance. The fact that the neighbor heard Walsh coughing, crying, and saying "let me go" and "don't hurt me" indicated that this was indeed a domestic violence situation, not just a verbal disagreement. The initial silence when the officers knocked, D'Angelo's aggressive refusal to open the door, and Walsh's frightened appearance when the door finally opened only reinforced the reasonable belief that this was a volatile situation in which domestic violence likely had occurred or would occur in the near future.

Given all of these circumstances, Officers Jensen and Graham reasonably believed that immediate intervention was

² The court even stated that if the officers had not been able to locate the man whose voice they had heard, that alone might have justified a warrantless entry to verify that he was safe. Schultz, 170 Wn.2d at 761.

needed to deal with an imminent threat of substantial injury to Walsh. Their warrantless entry into the apartment was therefore lawful under the emergency aid exception.

2. Any Error In Not Explicitly Addressing All Six Schultz Factors Was Harmless.

The trial court's conclusion that the officers' entry was lawful under the emergency aid exception is reviewed de novo. Garvin, 166 Wn.2d at 249. This Court therefore looks at the record and the trial court's findings of fact to decide for itself whether that decision was legally correct. Id. Even assuming that the trial court did err in not explicitly addressing all six of the Schultz factors in its ruling, the error is harmless if this Court determines that the emergency aid exception does in fact apply on the facts before the trial court.

The officers in this case entered D'Angelo's home after receiving a report that Walsh had been heard coughing, crying, and saying "let me go" and "don't hurt me." They had gotten no response to their initial knocks on the door, and then D'Angelo aggressively refused to open the door despite repeated commands, as Walsh was again heard whimpering and crying. When the door finally opened, Walsh was visibly frightened. Based on those facts

and their training and experience, the officers reasonably believed that they were dealing with a domestic violence incident, and that there was an imminent threat of substantial injury to Walsh, who required immediate assistance. The trial court therefore correctly ruled that the officers' entry in to D'Angelo's apartment was lawful under the emergency aid exception.

D. CONCLUSION

For all of the foregoing reasons, the State respectfully asks this Court to affirm the trial court's denial of D'Angelo's motion to suppress the oxycodone and to affirm D'Angelo's conviction.

DATED this 28th day of May, 2014.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: 
STEPHANIE FINN GUTHRIE, WSBA #43033
Deputy Prosecuting Attorney
Attorneys for Respondent
Office WSBA #91002

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Oliver R. Davis, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the BRIEF OF RESPONDENT, in STATE V. MATTHEW AARON D'ANGELO, Cause No. 70730-2-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Dated this 21st day of May, 2014.

U Brame
Name
Done in Seattle, Washington

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2014 MAY 21 PM 3:23