

SUPREME COURT OF WASHINGTON

State of Washington v. Patricia Sue Schultz, 170 Wash. 2d 746

248 P.3d 484 (2011) · No. No. 82238-7 · Decided January 13, 2011

SUMMARY

The Washington Supreme Court held that police may consider the likelihood of domestic violence when evaluating the emergency aid exception to the warrant requirement. The court also held that mere acquiescence to an officer's entry into a home does not constitute consent under article I, section 7 of the Washington Constitution. Because the State failed to establish that the warrantless entry into Schultz's apartment was justified, the court reversed and remanded.

CASE DETAILS

COURT	Supreme Court of Washington
WRITING FOR THE COURT	Chambers, J.; Charles W. Johnson, J.; James M. Johnson, J.; Debra L. Stephens, J.; Richard B. Sanders, Pro Tem, J.; Fairhurst, J.; Barbara A. Madsen, C.J.; Susan Owens, J.; Gerry L. Alexander, J.
JURISDICTION	Washington
DECIDED	January 13, 2011
DOCKET	No. 82238-7
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Petition for review of a Court of Appeals decision affirming the denial of a motion to suppress evidence obtained after a warrantless entry into Schultz's apartment.
STANDARD OF REVIEW	The court reviews factual findings underlying a suppression ruling for substantial evidence and reviews the trial court's legal conclusions de novo.
PRECEDENTIAL VALUE	Published, en banc Washington Supreme Court opinion; precedential.
PARTIES	Patricia Sue Schultz, a/k/a Patricia Sue Peterson v. State of Washington

TOPICS

[search and seizure](#)[warrant requirement](#)[suppression of evidence](#)[fourth amendment](#)[criminal procedure](#)

PRACTICE AREAS

criminal procedure

constitutional law

evidence

QUESTIONS PRESENTED

1. Whether the warrantless entry into Schultz's apartment was justified under Washington's emergency aid exception to the warrant requirement.
2. Whether the likelihood of domestic violence may be considered when evaluating the emergency aid exception.
3. Whether Schultz's failure to object or her acquiescence to the officers' entry constituted consent under article I, section 7 of the Washington Constitution.
4. Whether the evidence discovered pursuant to the later search warrant should have been suppressed because the officers' initial entry was unlawful.

HOLDINGS

1. Courts may consider the likelihood that a situation involves domestic violence when evaluating whether the requirements of the emergency aid exception to the warrant requirement have been satisfied.
2. The State failed to establish that the emergency aid exception justified the officers' warrantless entry into Schultz's apartment.
3. Mere acquiescence to an officer's entry, including failure to object when officers enter a home without requesting permission, is not consent and does not waive article I, section 7's protection against warrantless entry.
4. The methamphetamine evidence should have been suppressed because the initial warrantless entry violated article I, section 7 and was not justified by an exception to the warrant requirement.

KEY QUOTATIONS

"We further hold that mere acquiescence to an officer's entry is not consent and is not an exception to our state's constitutional protection of the privacy of the home." (at 486)

"We hold that officers may not enter a home based upon acquiescence alone." (at 490)

"At the moment the officers crossed the threshold to Schultz's apartment, they did not have enough facts to justify an entry based upon the emergency aid exception to the warrant requirement." (at 491)

"That is not enough." (at 491)

FACTUAL BACKGROUND

Police responded to a report of a yelling man and woman at an apartment and heard raised voices, including the man saying that he wanted to be left alone and needed his space. Schultz opened the door, denied that anyone else was present, and then summoned Robertson from a bedroom; the officers entered without requesting permission or advising that entry could be refused. After entering, officers observed a handgun and marijuana

pipe, obtained and later revoked consent to search, obtained a telephonic warrant, and discovered methamphetamine.

PROCEDURAL HISTORY

The trial court denied Schultz's motion to suppress methamphetamine discovered after police entered her apartment without a warrant and later obtained a telephonic search warrant. Schultz was convicted after a stipulated-facts trial, and the Court of Appeals affirmed, holding that the entry was justified by the emergency aid exception and alternatively that Schultz consented by acquiescing to the entry. The Washington Supreme Court granted review, reversed, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the courts below and remand for any further proceedings consistent with the opinion.

CASES CITED

- State v. Hill, 123 Wash. 2d 641, 644, 647, 870 P.2d 313 (1994)
- State v. Smith, 165 Wash. 2d 511, 516, 199 P.3d 386 (2009)
- State v. Ferrier, 136 Wash. 2d 103, 960 P.2d 927 (1998)
- State v. Young, 123 Wash. 2d 173, 185, 867 P.2d 593 (1994)
- State v. Day, 161 Wash. 2d 889, 168 P.3d 1265 (2007)
- State v. Reichenbach, 153 Wash. 2d 126, 131, 101 P.3d 80 (2004)
- State v. Thompson, 151 Wash. 2d 793, 802, 92 P.3d 228 (2004)
- State v. Kinzy, 141 Wash. 2d 373, 386-87, 5 P.3d 668 (2000)
- State v. Leffler, 142 Wash. App. 175, 181, 183, 178 P.3d 1042 (2007)
- State v. Lawson, 135 Wash. App. 430, 437, 144 P.3d 377 (2006)
- State v. Ladson, 138 Wash. 2d 343, 349, 979 P.2d 833 (1999)
- State v. Raines, 55 Wash. App. 459, 462, 464-65, 778 P.2d 538 (1989)
- State v. Lynd, 54 Wash. App. 18, 22, 771 P.2d 770 (1989)
- State v. Johnson, 104 Wash. App. 409, 16 P.3d 680 (2001)
- State v. Menz, 75 Wash. App. 351, 880 P.2d 48 (1994)
- State v. Khounvichai, 149 Wash. 2d 557, 563, 69 P.3d 862 (2003)
- State v. Williams, 142 Wash. 2d 17, 20, 28, 11 P.3d 714 (2000)
- State v. Morse, 156 Wash. 2d 1, 4-5, 12, 123 P.3d 832 (2005)
- State v. Afana, 169 Wash. 2d 169, 184, 233 P.3d 879 (2010)
- State v. Eisfeldt, 163 Wash. 2d 628, 639, 185 P.3d 580 (2008)

- State v. Schultz, noted at 146 Wash. App. 1057 (2008)
- State v. Schultz, 165 Wash. 2d 1036, 205 P.3d 131 (2008)
- Savage v. Ash, 86 Wash. 43, 46, 149 P. 325 (1915)
- State v. Simpson, 95 Wash. 2d 170, 178, 622 P.2d 1199 (1980)
- Boyd v. United States, 116 U.S. 616, 626 n.5, 6 S. Ct. 524, 29 L. Ed. 746 (1886)
- Fisher v. United States, 425 U.S. 391, 96 S. Ct. 1569, 48 L. Ed. 2d 39 (1976)

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