IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. CARL ROBERT STANLEY, Appellant.	No. 39969-5-II UNPUBLISHED OPINION

Hunt, J. — Carl Robert Stanley appeals the trial court's denial of his CrR 3.6 motion to suppress evidence and his stipulated-facts bench trial conviction for unlawful possession of a controlled substance, cocaine. He argues that the trial court erred when it (1) found that the dispatcher told the responding deputy that the reporting party had heard what sounded like someone being strangled; and (2) concluded that the community caretaking exception[1] to the warrant requirement was a viable exception under the Washington State Constitution and applied

[1] We note that in a recent opinion, the Washington State Supreme Court referred to the "emergency aid exception" as a form of "the police's 'community caretaking function.'" *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)). Recognizing that *Schultz's* narrower "emergency aid exception" applies here; we nevertheless use the parties' "community caretaking exception" terminology here to avoid confusion.

it here. We affirm.

FACTS

I. Entrance and Search

On July 23, 2009, Lewis County Sheriff's Deputy Matthew J. McKnight responded to a 911 call about a possible domestic disturbance at 321 Winston Creek Road, Space 11, in Mossyrock. The dispatcher told McKnight that the reporting party had heard a woman yelling for help, a man yelling and cursing at the woman, and "things being slammed into the wall in the residence." Clerk's Papers (CP) at 28 (Finding of Fact (FF) 1.2). Later, but before McKnight arrived at the trailer, the dispatcher also told him that "they thought they heard the female being choked, there was a long, quiet pause, [and] then heard a male scream, ['O]h, my God, oh, my God.[']" Verbatim Report of Proceedings (VRP) at 5.

When McKnight arrived, the residence was quiet and the front door was closed. No one responded when he knocked several times, so he walked around the residence to look for another entrance. "[T]he person who said they [sic] were the reporting party" verified that McKnight was at the right trailer. VRP at 12. McKnight returned to the front door, discovered it "slightly open," and saw Esther Guerra standing in the doorway. VRP at 5.

Guerra did not look upset and did not appear to have been crying, and she bore no observable marks, bruising, or scratches suggesting that she had been assaulted or choked. McKnight told Guerra that he was responding to "a possible dispute" and asked whether there was anyone else inside. VRP at 6. Guerra responded that her boyfriend was inside and looked towards a hallway area. McKnight believed that when there was a possible domestic abuse

situation, he was required to enter the residence, regardless of whether he had a warrant. Telling Guerra that he needed to check on anyone who might be inside the residence to ensure no one was injured, McKnight stepped just inside the trailer door and saw Carl Robert Stanley coming down the hallway towards the front door. Stanley admitted to McKnight that he (Stanley) and Guerra had been arguing. He, too, did not appear to have been in a physical altercation. As McKnight spoke to Stanley, Stanley stepped between McKnight and a coffee table, continuously obstructing McKnight's view of the table. McKnight, who was there alone, became concerned that Stanley was perhaps attempting to hide a weapon or something else that could be harmful. To alleviate his concerns, McKnight walked up to and just past Stanley and observed marijuana, a glass pipe, and cocaine on the table. McKnight arrested and handcuffed Stanley and continued to investigate the domestic dispute. Other deputies, who arrived after McKnight had discovered the drugs, seized the drugs.

II. Procedure

The State charged Stanley with unlawful possession of a controlled substance, cocaine. Stanley moved to suppress the evidence, arguing that McKnight's warrantless entrance into the residence was unlawful. At the suppression hearing, McKnight testified as described above. Stanley testified that he and Guerra had had an argument just before McKnight arrived. After the third time McKnight knocked, Guerra went to answer the door and Stanley went to the bathroom. McKnight then pushed his way in between Guerra and Stanley. Stanley asserted he was not trying to hide anything from McKnight but was, instead, just putting up his hands to get McKnight to stop so he (Stanley) could understand what was going on. Guerra also testified,

agreeing with Stanley that McKnight had pushed his way into the house as she and Stanley were talking to him (McKnight) at the front door.

The trial court denied the motion to suppress, issuing written findings of fact and conclusions of law. The trial court ruled that the warrantless entrance was lawful under *State v. Johnson*, 104 Wn. App. 409, 418, 16 P.3d 680, *review denied*, 143 Wn.2d 1024 (2001), because McKnight had a subjective belief that there was likely someone in need of assistance inside the trailer. The trial court also concluded that the search involved a lawful "protective sweep," CP at 29 (CL 2.5, 2.6, 2.7), during which McKnight found the cocaine in "plain view" from a "lawful vantage point." CP at 29 (CL 2.8).

Following a stipulated facts bench trial, the trial court found Stanley guilty of unlawful possession of cocaine. Stanley appeals.

ANALYSIS

Stanley challenges (1) one of the trial court's findings of fact, (2) the trial court's reliance on the community caretaking exception to the warrant requirement, and (3) the trial court's conclusion that the State established the community caretaking exception. He argues that all three rulings were in error. We disagree.

I. Standard of Review

We review a trial court's ruling on a motion to suppress evidence to determine whether substantial evidence supports the trial court's factual findings and whether the factual findings support the trial court's conclusions of law. *State v. Garvin*, 166 Wn.2d 242, 249, 207 P.3d 1266 (2009). "Evidence is substantial when it is enough 'to persuade a fair-minded person of the truth

of the stated premise.'" *Garvin*, 166 Wn.2d at 249 (quoting *State v. Reid*, 98 Wn. App. 152, 156, 988 P.2d 1038 (1999)). We consider any unchallenged findings of fact as verities on appeal. *State v. Valdez*, 167 Wn.2d 761, 767, 224 P.3d 751 (2009) (citing *State v. Gaines*, 154 Wn.2d 711, 716, 116 P.3d 993 (2005)). And we review the trial court's conclusions of law de novo. *Garvin*, 166 Wn.2d at 249.

II. Substantial Evidence Supports Finding of Fact 1.3

Stanley first argues that the record does not support the portion of the trial court's finding of fact 1.3 stating that the dispatcher informed McKnight "that the reporting party heard a sound that sounded like someone was being strangled." CP at 28 (FF 1.3). This argument fails.

At the suppression hearing, McKnight testified that while he was on his way to Stanley's trailer, the dispatcher notified him (McKnight) that "they thought they heard a female being choked." VRP at 10. Although the dispatcher used the term "choked" rather than the term "strangled," this testimony is clearly sufficient to support finding of fact 1.3 and this argument fails.

III. Community Caretaking Exception

Next, in arguments that are nearly identical to those appellate counsel raised and we rejected in *State v. Hos*, 154 Wn. App. 238, 225 P.3d 389, *review denied*, 169 Wn.2d 1008 (2010), Stanley argues that the trial court erred in denying his motion to suppress because (1) the community caretaking exception to the warrant requirement is not an exception to the warrant requirement under article I, section 7 of our state constitution; and (2) even if we recognize the community caretaking exception under article I, section 7, the exception requires law enforcement

to use the least intrusive means possible when exercising this exception. Stanley argues that we should "revisit" our holdings in *Hos*. Br. of Appellant at 6. We decline to do so.

A. *State v. Hos*

In *Hos*, a social worker and a deputy sheriff arrived at Hos's house to investigate a child abuse or mistreatment allegation. 154 Wn. App. at 242. When no one responded when they knocked on the front door several times, and the deputy looked through a nearby window and saw Hos sitting on the couch with her eyes closed and her head resting on her chest. *Hos*, 154 Wn. App. at 242. The deputy and the social worker could not tell if Hos was breathing: "[S]he seemed to be either unconscious or dead," and she did not respond when the deputy again pounded on the door. *Hos*, 154 Wn. App. at 242. The deputy opened the unlocked front door and yelled Hos's name. *Hos*, 154 Wn. App. at 242. When she still did not respond, the deputy entered the house and approached Hos as he shouted, "'Sheriff's office.'" *Hos*, 154 Wn. App. at 242 (quoting VRP at 54). Hos then slowly lifted her head and looked around. *Hos*, 154 Wn. App. at 242. The deputy (1) "noticed a butane torch of the type that methamphetamine users commonly use," (2) remained with Hos after she allowed the social worker to "look around the house and take pictures," and (3) eventually discovered a drug pipe and methamphetamine in Hos's pockets. *Hos*, 154 Wn. App. at 242. The trial court denied Hos's motion to suppress. *Hos*, 154 Wn. App. at 243.

On appeal, Hos challenged the deputy's entry into the home,[2] arguing that (1) the

[2] Hos did not challenge "her consent to [the deputy's] remaining in the house, his discovery of the glass pipe under the consent and plain view exceptions, or his search of her person incident to her arrest and seizure of methamphetamine." *Hos*, 154 Wn. App. at 245 n.3.

"'community caretaking' exception to the warrant requirement is narrower under article I, section 7 than under the Fourth Amendment to the United States Constitution"; and (2) under article I, section 7, the deputy was required to have used "the 'least intrusive means' to check on her welfare." *Hos*, 154 Wn. App. at 245. Acknowledging that our Supreme Court "has not explicitly held that community caretaking is a valid exception to the warrant requirement under article I, section 7," we noted that "we have upheld the admission of evidence obtained during a warrantless search based on the community caretaking exception" in cases in which the defendant had argued article I, section 7, and expressly adopted the community caretaking exception to the warrant requirement under article I, section 7. *Hos*, 154 Wn. App. at 247.[3] We also expressly rejected Hos's argument that officers exercising the community caretaking exception must use the least intrusive means to achieve their caretaking role. *Hos*, 154 Wn. App. at 248-49.

To the extent Stanley presents the same arguments that we addressed and rejected in *Hos*, he fails to establish any grounds justifying our reconsideration of *Hos*. All of Stanley's arguments concerning whether officers must pursue the least intrusive means of achieving a community caretaking purpose are identical to those we addressed in *Hos*. *See Hos*, 154 Wn. App. at 245-49. But some of Stanley's arguments about the availability of the community caretaking exception under article I, section 7 are sufficiently distinct from those we addressed in *Hos* to justify our addressing them here.

[3] We cited *State v. Kinzy*, 141 Wn.2d 373, 387 n. 38, 5 P.3d 668 (2000) ("While countenancing the community caretaking function exception . . . , this Court has not explicitly stated the exception applies to article I, section 7 of the Washington Constitution."), *cert. denied*, 531 U.S. 1104 (2001); *State v. Williams*, 148 Wn. App. 678, 685, 201 P.3d 371, *review denied*, 166 Wn.2d 1020 (2009); *Johnson*, 104 Wn. App. at 415-18. *Hos*, 154 Wn. App. at 247.

B. Community Caretaking Exception under Article I, Section 7

First, Stanley argues that the community caretaking exception to the warrant requirement must be "rooted in the [State] common law" before we can adopt the exception under the state constitution and that "there is no existing common law exception in Washington for 'community caretaking.'" Br. of Appellant at 6-7. We disagree.

Stanley's assertion that the community caretaking exception is not rooted in the common law is not well taken. In the very case Stanley cites to support his argument, *York v. Wahkiakum School District*, our Supreme Court stated:

> Article I, section 7 prohibits the government from intruding on a citizen's "private affairs" without "authority of law." Wash. Const. art. I, § 7. As this court has held, "authority of law" may be supplied by an exception to the warrant requirement that is rooted in "'well-established principles of the common law.'" *State v. Ladson*, 138 Wn.2d 343, 350, 979 P.2d 833 (1999) (quoting *City of Seattle v. McCready*, 123 Wn.2d 260, 273, 868 P.2d 134 (1994)). *One such well-established common law principle is that a warrantless search may be permissible when the purpose of the search is other than the detection or investigation of a crime.* For example, a warrantless inventory search of an automobile is permissible under article I, section 7 for the purposes of preventing property loss and protecting the police from liability. *State v. Houser*, 95 Wn.2d 143, 155, 622 P.2d 1218 (1980). Similarly, *under the community caretaking exception*, a warrantless search may be permissible when necessary for the purpose of rendering aid or performing routine health and safety checks. *State v. Thompson*, 151 Wn.2d 793, 802, 92 P.3d 228 (2004); *State v. Acrey*, 148 Wn.2d 738, 754, 749, 64 P.3d 594 (2003) (police justified in detaining 12-year-old shortly after midnight in an isolated area and transporting him home at mother's request) (citing and quoting *Cady v. Dombrowski*, 413 U.S. 433, 441, 93 S. Ct. 2523, 37 L. Ed. 2d 706 (1973) (enunciating "community caretaking function[ ]" exception to warrant requirement); [*State v. Kinzy*, 141 Wn.2d 373, 386, 5 P.3d 668 (2000)]).

163 Wn.2d 297, 317, 178 P.3d 995 (2008) (emphasis added). Regardless of whether the community caretaking exception is also valid under the federal constitution, this exception clearly

exists to promote searches that are not intended for the detection or investigation of a crime and is, therefore, well established in the common law according to *York*.

Second, Stanley argues that (1) article I, section 7 expressly protects and provides heightened protection to a person's individual privacy interests in one's own home but does not similarly recognize law enforcement's interest in "protect[ing] society's interest in 'community caretaking'"; and (2) therefore, this heightened privacy interest shows that our state constitution does not recognize the community caretaking exception. Br. of Appellant at 7. The law does not support this argument; on the contrary, there are many limited exceptions to the warrant requirement under article I, section 7 that are not expressly stated in the state constitution, such as the exigent circumstances exception. *See, e.g.*, *Valdez*, 167 Wn.2d at 773; *see also State v. Schultz*, 170 Wn.2d 746, 754, 248 P.3d 484 (2011) (recognizing "emergency aid exception," though holding not applicable to the specific facts of that case).[4]

---

[4] Our Washington Supreme Court's recent *Schultz* decision on this point is distinguishable on its facts: Unlike the facts here, the facts in *Schultz* did not include reports of cries for help or the sound of a woman being strangled. In contrast, the *Schultz* court noted the following facts:

> The facts most favorable to the State are as follows. The police received a phone call from a resident of an apartment complex about a yelling man and woman. The responding officers stood outside and overheard a man and woman talking loudly. The officers heard a man say that he wanted to be left alone and needed his space. The officers knocked on the door. Schultz opened it, appearing agitated and flustered. Officer Malone asked Schultz about the male occupant of the apartment. Schultz told her no one was there, but when confronted with the fact the officers heard voices, summoned Robertson from a nearby bedroom. When Robertson appeared, the officers entered Schultz's apartment based upon her acquiescence only. 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.

Schultz, 170 Wn.2d at 760. Here, in contrast, when the officer responding to alarming reports of a woman being harmed saw no marks on Guerra, the officer could reasonably have been concerned that there was someone else inside the residence who needed assistance.

These additional arguments fail and do not persuade us to reconsider and to reject our previous holdings in *Hos*. Accordingly, Stanley does not show that the trial court erred when it applied the community caretaking exception.

IV. Application of Community Caretaking Exception

Stanley next argues that even if the community caretaking exception applies under the state constitution, the trial court erred when it concluded that the State had established that the exception applied here. He argues that McKnight's entry inside the trailer was unnecessary once he saw that both Guerra and Stanley were uninjured because there was no information suggesting that anyone else had been present.[5] Again, we disagree.

> The community caretaking exception, which is detached from criminal investigation, applies only when
>
> > "(1) the officer subjectively believed that someone likely needed assistance for health and 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."

Hos, 154 Wn. App. at 246-47 (quoting *Kinzy*, 141 Wn.2d at 386-87 (quoting *State v. Menz*, 75

---

[5] Stanley also suggests that McKnight had other, less intrusive means, of determining if anyone inside the trailer was in need of assistance. Because we reject Stanley's argument that the community caretaking exception requires law enforcement to use the least intrusive means available, we do not further address this argument.

Wn. App. 351, 354, 880 P.2d 48 (1994), *review denied*, 125 Wn.2d 1021 (1995))). We also consider whether (4) "there [was] an imminent threat of substantial injury to persons or property"; (5) the state agents believed "a specific person or persons or property [were] in need of immediate help for health or safety reasons"; and (6) "the claimed emergency [was] not a mere pretext for an evidentiary search." *Schultz*, 170 Wn.2d at 754 (citing *State v. Leffler*, 142 Wn. App. 175, 181, 183, 178 P.3d 1042 (2007)).

McKnight testified that he entered the trailer because he did not know if someone else was inside the trailer and he needed to verify that there was no injured person inside. Thus, the record supports that McKnight subjectively believed someone inside the trailer may have been physically injured and in need of immediate assistance and that he entered the trailer for health or safety reasons, not as a pretext for an evidentiary search. Additionally, the dispatcher had informed McKnight that a caller reported hearing a loud argument, the sound of something banging around inside the trailer, the sound of someone being "choked," and a male voice crying out in regret or surprise. VRP at 10. Although McKnight saw Guerra and Stanley and neither appeared to have been injured, based on the dispatcher's report to McKnight, a reasonable person still could have concluded that there might have been an injured third person in need of assistance inside the trailer. Furthermore, because the 911 caller had identified Stanley's trailer

when McKnight was walking around the outside, there was clearly a reasonable basis to associate the need for assistance with the place searched. Accordingly, this argument also fails.[6]

We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Hunt, J.

We concur:

Penoyar, C.J.

Johanson, J.

[6] Stanley also argues that McKnight's entry into the trailer was not a lawful protective sweep and was not justified by exigent circumstances. Stanley's arguments focus on the alleged unlawfulness of McKnight's *entry* into the trailer, not his subsequent actions inside the trailer. Because we hold that McKnight's "entry" was lawful under the community caretaking exception, we do not further address these arguments.