

No. _____

In the
Supreme Court of the United States

EDWIN ESPEJO,
Petitioner,

v.

STATE OF WASHINGTON,
Respondent.

On Petition for a Writ of Certiorari to the Court
of Appeals of the State of Washington Third
Appellate Division

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Does the community care exception to the fourth amendment allow police officers to remain in a person's home when they have determined that there is no longer an imminent threat to the life of others in order to investigate charges of domestic violence when police officers do not have reasonable suspicion that there is a clear and present danger afoot?
2. Does due process allow for a determination of premeditation when the evidence shows that the defendant has less than two seconds to think and when those two seconds or less of thought are the result of extreme pressure by police officers?

LIST OF PARTIES

All parties appear on the caption of the case on the cover page.

RELATED CASES

SUPREME COURT OF THE STATE OF
WASHINGTON
No 99536-2

State of Washington
Respondent
v.
Edwin Espejo
Petitioner

COURT OF APPEALS DIVISION III
STATE OF WASHINGTON
Case No. 36788-6

State of Washington
Respondent
v.
Edwin Espejo
Petitioner

THE SUPERIOR COURT FOR THE STATE OF
WASHINGTON
IN AND FOR FRANKLIN COUNTY
Case No. 17-1-50604

State of Washington,
Plaintiff
v.
Edwin Espejo, Defendant
DOB 09/15/1988

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**SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI**

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the State of Washington Court of Appeals Division III at Appendix A to the petition is unpublished.

JURISDICTION

The date of which the highest state court decided this case was February 2, 2021. A copy of that decision appears at Appendix A.

A timely petition for review by the Washington Supreme Court was denied on October 6, 2021. A copy of that decision appears at Appendix B.

An extension to file the petition for a writ of certiorari was granted to and including February 3, 2022, in Application No. 21A322 by Justice Kagan. The jurisdiction of this Court is invoked under 28 U.S.C. 1257 (a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

UNITED STATES CONSTITUTION

Fourth Amendment:

The right of the people to be secure in their persons, houses, paper and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, a particularly describing the place to be searched and the persons or things to be seized.

Fourteenth Amendment, section 1:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States, nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.

STATUTES

Revised Code State of Washington 9A.32.030
provides:

(1) A person is guilty of murder in the
first degree when:

(a) With a premeditated intent to
cause the death of another
person, he or she causes the
death of such person or of a third
person...

Revised Code State of Washington 9A.32.020
provides

(1) As used in this chapter, the
premeditation required to support a
conviction of the crime of murder in the
first degree must involve more than a
moment in point of time.

STATEMENT OF THE CASE

Officer Matt Griffin arrived outside a two-family house because of a dispatch report of domestic violence. Upon arrival, Officer Griffin heard children say a woman was reportedly being hit inside the basement home. Officer Griffin waited at the bottom of the stairs. He heard no woman's voice. He did hear children crying. App. 17a-35a. Two other officers joined Mr. Griffin and the three police officers entered the apartment with their guns drawn. There was no woman; there were no signs of

violence. Officer Griffin never talked to or saw a victim of domestic violence. There was a man, Edwin Espejo, sitting at the edge of his bed holding his two frightened children. The children were told to go upstairs. Mr. Espejo told the police to leave. Officer Griffin said the police would not be leaving until they got his Edgar's statement. *Trial Transcript P. 693; App. 18a-35a.*

Another officer, Officer Aquila and his volunteer ride along David Dillsworth entered the basement. They too pointed their guns at Edwin Espejo. Officer Griffin said: "Hey man you need to come over... Crawl to me". *Trial Transcript P. 619 lines 16-20.* Edwin Espejo stood up with his hands raised. *Trial Transcript P. 686 lines 1-3.* Officer Aquila shot his taser at Mr. Espejo. Mr. Espejo fell backward. *Trial Transcript P. 689 Lines 1-25.* Seconds later there were multiple gun shots. Mr. Espejo was critically injured. At trial the following dialogue occurred between defense counsel and the volunteer shooter:

Defense Counsel: "So after the taser struck him, he fired the weapon within a second."

Mr. Dillsworth: "Yes."

Defense Counsel: "You are certain of that."

Mr. Dillsworth: "It was very quick. I do not know. One second, two seconds. It was very quick." *Trial transcript. P. 650*

Sargent Allen entered the scene at the same time the shots were fired. He was surprised to hear that the police shooter was a reserve. Sargent Allan described reserve officers as follows:

So, reserve officer, that's a volunteer position. You get a limited amount of police training. Then you are supervised by a regular officer when you come out to volunteer your time on ride-alongs. They normally work like parade events or high school games.

Trial Transcript P. 568 lines 22-25. P. 569 Lines 1-2.

Mr. Dillsworth decided on his own to point his gun at Mr. Espejo and fire fourteen rounds. A reasonable person would think that a volunteer with little training had no business pointing his gun at anyone. Mr. Espejo was charged with three counts of attempted murder in the first degree: one count of illegal possession of a firearm and a dv misdemeanor count.

At the close of the prosecution's case, defense counsel moved the court for a directed verdict. Defense counsel argued that that the three counts of attempted murder should be dismissed because the defendant did not have enough time to deliberate about his actions when or if he grabbed a gun. The court denied the defendant's motion and reasoned as follows:

In considering your motion for a directed verdict the court has in mind

State versus Price, which is 103 Wn App 845, a division II case from 2000. There the discharge of two rounds into the cab of a vehicle that contained individuals was deemed by the court of appeals sufficient information from which a reasonable juror could infer not only intent but premeditation for the same charge.

Trial Transcript P. 1155 Lines 10-17.

The court went on to say

In dealing with the issue about whether or not a premeditation can occur within a period of time the court is advised that based on existing case law no particular period of time is required. The court then looks more specifically at *Price*. And the relevant period of time here is the two plus seconds because the taser is on for two seconds. The testimony is that Mr. Espejo fell backwards and the testimony to date is that he reached for the firearm brought it up and fired.

Trial Transcript P. 1164 Lines 22-25, P. 1165 Lines 1-6.

The case was submitted to the jury and Mr. Espejo was convicted of three counts of attempted murder in the first degree and one count of illegal possession of a firearm. Mr. Espejo appealed.

On appeal, the court of appeals ruled on the sufficiency of evidence claim as follows:

Our focus is not limited to the moments between when Mr. Espejo was hit with the stun gun and when he fired at officers. We take a broader approach.... there was sufficient evidence to support the jury's finding of premeditation.

Court of Appeals Decision P. 5 (Appendix A)

Before trial, petitioner brought a motion to suppress based on the police's search and seizure of his home and person without a warrant. The petitioner's motion was denied by the Franklin County Superior Court. Appendix. Mr. Espejo appealed. The court held that the record supported all the components of the community caretaking exception. (*Court of Appeals Decision P. 6 Appendix A.*) The court's opinion is contrary to a recently expressed opinion by the United States Supreme Court in *Caniglia v. Strom*, 141 S. Ct. 1596 (2021).

REASONS FOR GRANTING THE PETITION

In the recently decided case of *Caniglia v. Strom et al.*, the United States Supreme Court made it clear that there are limitations to the community caretaking rule especially when the exception is applied to warrantless searches and seizures of a person or his or her home. The "Fourth Amendment protects the right of the people to be secure in their persons, houses against unreasonable searches and seizures. The very core of this guarantee is the right

of a man to retreat into his own home and there be free from unreasonable government intrusion.” *Florida v. Jardines*, 569 U.S. 1, 6 (2013).

Justice Kavanaugh succinctly expressed the constitutional limitations of the caretaker exception when he wrote in *Caniglia v. Strom* “the Fourth Amendment allows officers to enter a home if they have ‘an objectively reasonable basis for believing that such help is needed **and if the officers’ actions inside the home are reasonable under the circumstance**” (emphasis added) court citing *Brigham City*, 547 U.S. at 406, see also *Michigan v. Fisher*, 558 U.S. 47-48. Here, police officers entered Mr. Espejo’s home because (1) they heard from children there was a fight in progress (2) the police heard children whimpering. The court of appeals believes this is sufficient information to justify an intrusion by the police with guns drawn because the case involves charges of domestic violence. The court’s analysis appears to be contrary to reason and to the dicta in *Caniglia*. A domestic violence accusation should not cause the state to dispense with the reasonableness requirements of the Fourth Amendment. Even if the Court believes that the officers’ entry was reasonable; it was only reasonable for a long as it took to determine there was no danger. Once it was clear to the police that there was no emergency and no need for caretaking, the police had a duty to retreat from the house. *United States v. Morales-Cervantes*, 219 F.3d 882, 888 (9th Cir. 2000).

Instead, they stayed in the house to investigate. The failure of the police to leave the

house was unreasonable and is contrary to the law of the United States as it is interpreted by the United States Supreme Court in the cases cited above. Here, the police are asserting they will stay in Mr. Espejo's house and limit his freedom until he talks. This expansion of the caretaking exception effectually eliminates Fourth and Fifth Amendment protection and is contrary to the United States Constitution. The Supreme Court should grant review.

The court of appeals in its opinion expresses a unique interpretation of premeditation. As defined by the Washington State legislature, premeditation "must involve more than a moment in a point of time." RCW **9A.32.020(1)**. "To establish premeditation the State must show the deliberate formation of reflection upon the intent to take a human life and involves the mental process before hand of thinking, deliberation, reflection, weighing or reasoning for a period time however short." *State v. Hoffman*, 116 Wn 2d 51, 82-84 (1991). In the present case, the court of appeals writes as follows: "We take a broader approach...Mr. Espejo's actions and words suggest he was deliberating on using his gun against officers in order to create a lethal encounter. Mr. Espejo's ultimate goal may have been to get himself killed. Regardless, there was sufficient evidence to support the jury's finding of premeditation." *Court of Appeals Decision P. 5 (Exhibit A)* The court is ascribing a period of meditation to a time, place, and circumstance which would cause any person be subjected to extreme emotional distress and actions by police officers which arouse the most primitive fears of a human being and would make any period of premeditation

impossible, The court of appeals appears to be saying that a person has free will when he faces five people with pistols pointed at him. The court of appeals appears to be saying that person is responsible for his actions when he is threatened by an overwhelming force in his own house. The court of appeals appears to be saying that a person is responsible for his reactions two seconds after being shot.

The court's opinion on premeditation is a substantial question of law under the Constitution of the United States and the State of Washington. On its face it appears to affect a substantial public interest to be free of unreasonable government actions which gives justification for Supreme Court review.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted

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