



## EXIGENT CIRCUMSTANCES AT A DOMESTIC VIOLENCE INCIDENT

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On December 13, 2017, the Eighth Circuit Court of Appeals decided the *United States v. Scott*, in which the court examined whether warrantless entry into private premises at the scene of a domestic violence incident was lawful under the Fourth Amendment. The relevant facts of *Scott*, taken directly from the case, are as follows:

Early one afternoon, local law enforcement responded to multiple security alarms at a rural residence in Fulton County, Arkansas. The officers drove down the long driveway and stopped at a cattle gate. A truck simultaneously pulled up on the other side of the gate, and Scott got out. According to the officers, Scott had blood on his clothes and was visibly shaken up. He told the officers that his wife, who he claimed was on drugs, had run over him with the truck, shot at him, and thrown the gun in the yard. Scott expressed concern for the safety of his young children, who were still with his wife at the house. At this point, the officers considered Scott to be the potential victim of a domestic dispute. They asked Scott to stay at the gate area and drove their cars to the house.

At the house, the officers dispersed to observe both front and rear exits. Those officers who approached the front of the house saw a woman sitting in a chair at, or just within, the threshold of the open side of a two-bay garage. She was smoking and using her cell phone. She did not appear armed or threatening. She did not say anything to the officers, nor did she gesture for them to come in or keep out. The officers approached this woman and began speaking with her. As they approached, two little boys entered the garage from the house.

The woman identified herself as Scott's wife, Stacy. She told them that earlier she attempted to drive away in the truck with her small child but that Scott tried to stop her. He fired four shots at the truck and had grabbed and clung to the truck's side mirror, ripping it off. He then jumped into the bed of the truck and broke the rear window. In fear, Stacy and her children left the truck and ran inside the house. Stacy told the officers that Scott eventually threw the gun into the yard. She asked her small son where "Daddy" had thrown the gun, and the boy pointed to the yard near the house. Some of the officers

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searched the yard for a gun, but they did not find it. The officers reported Stacy's demeanor during this conversation variously as angry, calm, and frightened, but all described her as cooperative. She did not appear to be on drugs. With the family now secure, one of the officers went back to the cattle gate and placed Scott in the backseat of the police car.

The senior officer present called Scott's parole officer, who granted permission for the officers to enter Scott's home to conduct a parole search. The senior officer and parole officer recalled the conversation differently, but the parole officer acknowledged that it was a fluid situation and that a gun was involved. The parole officer went to Scott's house and, upon his arrival, did not object to the search, which was then underway.

Stacy told the officers that the house contained other firearms, besides the gun that Scott had discarded, which belonged to her husband and son. She said that she would take the officers inside and show them the guns as well as the home's security camera. The officers accepted her offer and followed her inside. Unfortunately, the memory card was missing from the security equipment resulting in no recording of the incident. Stacy then showed the officers around the house, leading them to a hidden gun and a gun safe. To open the safe, Stacy called her older son at school who told her the safe's code. The officers found several firearms inside the safe. The officers uniformly testified that Stacy freely cooperated and appeared relieved by their presence. When an investigator arrived, the officers informed him of Stacy's cooperation. The investigator discussed a consent-to-search form with Stacy, who then signed it.<sup>ii</sup>

Scott was charged with federal weapons violations. He filed a motion to suppress and argued that the officers violated his rights under the Fourth Amendment; the district court denied the motion. Scott appealed the denial of the motion to suppress to the Eighth Circuit Court of Appeals.

On appeal, Scott raised three issues. First, he argued that the officer's warrantless entry into his garage to speak to Stacy violated the Fourth Amendment. Second, he argued that Stacy's later written consent did not purge the taint of the prior alleged unlawful entry. Third, he argued that the search was not a lawful parole search, contrary to the holding of the district court.

The court first examined the law pertaining to entry into private residences. The court stated

An action is 'reasonable' under the Fourth Amendment, regardless of the individual officer's state of mind, 'as long as the circumstances, viewed *objectively*, justify [the] action.'" *Id.* at 404 (alteration in original) (quoting *Scott v. United States*, 436 U.S. 128, 138 (1978)).

**The prohibition against warrantless entries does not apply if voluntary consent has been obtained. *Illinois v. Rodriguez*, 497 U.S. 177, 181 (1990). Likewise, a warrant is not required if "'the exigencies of the situation' make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment." *Stuart*, 547 U.S. at 403 (citation omitted). "One exigency obviating the requirement of a warrant is the need to assist persons who are seriously injured or threatened with such injury." *Id.* Thus, "legitimate concern for**

**the safety of individuals may constitute 'exigent circumstances' justifying warrantless entries and searches."** *United States v. Janis*, 387 F.3d 682, 687 (8th Cir. 2004) (citations omitted) (holding exigent circumstances justified a warrantless entry where officers knew a gun had discharged and injured someone, were told the gun was in the house, and observed blood in the driveway).<sup>iii</sup> [emphasis added]

The first issue was whether the warrantless entry into the garage to speak with Stacy was lawful. The court noted that the officers were responding to multiple alarms at the residence. They encountered a male who appeared injured and described a violent domestic dispute, involving a gun, where his wife, Stacy was said to be the suspect. When the officers approached the residence, they observed Stacy sitting just inside the garage near the open door and, objectively, they still had concerns for the children that Scott said were in the residence.

Scott argued that the officer's exigency dissipated when the officers saw Stacy sitting calmly, in a non-threatening manner. Further, testimony in court from the officers varied. Some responding officers testified that they were unable to determine that the exigency had dissipated until they entered the garage, spoke to Stacy, and saw the children come out of the house into the garage. Whereas, other officers testified that they thought the exigency was dissipated when they saw Stacy sitting in the garage, in a non-threatening manner.

The court of appeals opined that the differing opinions of the officers shows that the scene was highly fluid and rapidly evolving when the officers arrived.

The court then held

Viewed objectively, however, reasonable officers were indeed justified in crossing the garage threshold to fully assess the situation and determine the safety of everyone present, including the children, who some officers did not observe until after entering the garage.<sup>iv</sup>

The court also held that Stacy subsequently consented to the officers' entry into the home. This renders the second and third issues irrelevant so the court did not address those issues.

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<sup>i</sup> No. 16-4052 (8<sup>th</sup> Cir. Decided December 13, 2017)

<sup>ii</sup> Id. at 2-3

<sup>iii</sup> Id. at 5

<sup>iv</sup> Id. at 6