

BACKGROUND

On May 13, 2013, Detective Danielle Bishop and Detective Darren Carlock of the Tulsa Police Department's Child Crisis Unit, conducted a welfare check on nine-year-old E.R. and took him into emergency custody. The day before an unidentified family member reported injuries on the child's back and Tulsa police attempted, without success, to check on the child's welfare pursuant to their community-caretaking function.² The officers' failed attempt to verify E.R.'s condition resulted in the assignment to Detectives Bishop and Carlock on May 13.

Detective Bishop contacted E.R.'s school and learned he was absent, leading her to go to E.R.'s apartment to see if she could locate him there. Detective Bishop watched the apartment for 45 minutes but saw no sign of E.R.; she did, however, see both appellees enter the apartment. Suspecting but unsure E.R. was inside with Appellees, Detective Bishop called Detective Carlock and several uniformed patrol officers for assistance. Once they arrived, one of the uniformed officers knocked on appellees' door and announced "Tulsa police." The officer knocked "multiple" times and they waited several minutes without any response. Detective Bishop knocked one last time calling out the appellees' names and Appellee Lang opened the door. Detective Bishop informed Appellee Lang they were there to check on E.R.'s well-being and Lang stepped back and said the child was in his bedroom. Detectives Bishop and Carlock went to E.R.'s bedroom and explained they were there to check on his safety. The child was

² Tulsa police officers and E.R.'s grandfather went to E.R.'s apartment and attempted to see him on the evening of May 12, but the appellees refused.

sitting on his bed clutching a stuffed toy in no apparent distress. One of the detectives asked to look at E.R.'s back because of the reported injuries, lifted his shirt and saw multiple "loop mark" type injuries, ranging from fairly new and scabbed over to healed and scarred. Detective Carlock took E.R. into emergency custody and escorted him out of the apartment.³ The officers immediately arrested Appellee Lang, but Appellee Rangel was no longer present in the home. Uniformed officers located him later and arrested him. Detective Bishop obtained a search warrant, returned to the apartment and searched it, finding several items that corroborated E.R.'s and the appellees' statements concerning the beating in which E.R. sustained his most recent injuries.⁴

The Appellees argued below that the officers' warrantless entry into the apartment violated the Fourth Amendment because the purpose was not to check the welfare of E.R., but to investigate and collect evidence of a crime. They argued the intrusion could not be justified by consent based on Lang's capitulation to police authority. Even if the officers' entry could be justified, Appellees argued the officers exceeded the limited scope of their entry based on a welfare check when they found the boy in no apparent distress and asked him to raise his shirt revealing injuries. These actions, according to Appellees,

³ E.R. told Detective Carlock on the way out of the apartment that "it was the best day ever."

⁴ Both appellees made admissions during their respective police interviews. Appellee Rangel admitted that he spanked E.R. with a belt too hard. Rangel explained that he bound the boy's hands while he was nude from the waist down and struck him all over his body, including his penis and testicles. Rangel either personally "scrubbed" or forced E.R. to scrub the wounds with an exfoliating glove after pouring alcohol and peroxide on them. Lang denied striking E.R. during the most recent beating, but admitted she had struck him in the past. She corroborated much of Rangel's admissions.

constituted an investigation requiring a warrant. The district court concluded that there were no exigent circumstances to permit the officers' warrantless intrusion into the home and that the officers' actions were consistent with an investigation for evidence rather than exigent circumstances based on a fear of imminent danger to the child. It granted Appellees' motion to quash the bind-over order submitting the case for trial and suppressed evidence obtained during the warrantless entry, including the statements later obtained from E.R. and the appellees during their police interviews.

DISCUSSION

Under 10A O.S.2011, § 1-4-201(A), a police officer may take a child into emergency custody prior to the filing of a petition and without a court order if the officer has reasonable suspicion that the child is in need of immediate protection because of an imminent safety threat or if the child's continuation in the care or custody of the parent would present an imminent safety threat to the child. The district court concluded there was no imminent safety threat to the child sufficient to excuse the officers' failure to obtain a court order. We disagree.

This Court conducts independent review of rulings on motions to suppress and ultimate determinations of reasonable suspicion. See *Ornelas v. United States*, 517 U.S. 690, 697-698, 116 S.Ct. 1657, 1662, 134 L.Ed.2d 911 (1996); *Coffia v. State*, 2008 OK CR 24, ¶ 5, 191 P.3d 594, 596. The Supreme Court discussed "reasonable suspicion" in *Ornelas* stating:

Articulating precisely what "reasonable suspicion" and "probable cause" mean is not possible. They are commonsense, nontechnical conceptions that deal with "the factual and practical considerations of everyday life on which reasonable and prudent men, not legal

technicians, act.’” *Illinois v. Gates*, 462 U.S. 213, 231, 103 S.Ct. 2317, 2328, 76 L.Ed.2d 527 (1983) (quoting *Brinegar v. United States*, 338 U.S. 160, 175, 69 S.Ct. 1302, 1311, 93 L.Ed. 1879 (1949)); see *United States v. Sokolow*, 490 U.S. 1, 7–8, 109 S.Ct. 1581, 1585–1586, 104 L.Ed.2d 1 (1989). As such, the standards are “not readily, or even usefully, reduced to a neat set of legal rules.” *Gates, supra*, at 232, 103 S.Ct., at 2329. . . . [These standards] are instead fluid concepts that take their substantive content from the particular contexts in which the standards are being assessed. *Gates, supra*, at 232, 103 S.Ct., at 2329; *Brinegar, supra*, at 175, 69 S.Ct., at 1310 (“The standard of proof [for probable cause] is ... correlative to what must be proved”); *Ker v. California*, 374 U.S. 23, 33, 83 S.Ct. 1623, 1630, 10 L.Ed.2d 726 (1963) (“This Cour[t] [has a] long-established recognition that standards of reasonableness under the Fourth Amendment are not susceptible of Procrustean application”; “[e]ach case is to be decided on its own facts and circumstances” (internal quotation marks omitted)); *Terry v. Ohio*, 392 U.S., at 29, 88 S.Ct., at 1884 (the limitations imposed by the Fourth Amendment “will have to be developed in the concrete factual circumstances of individual cases”).

The principal components of a determination of reasonable suspicion or probable cause will be the events which occurred leading up to the stop or search, and then the decision whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to reasonable suspicion or to probable cause.

517 U.S. at 695-696, 116 S.Ct. at 1661-1662.

The yardstick of the Fourth Amendment is reasonableness. See *Michigan v. Fisher*, 558 U.S. 45, 47, 130 S.Ct. 546, 548, 175 L.Ed.2d 410 (2009)(*per curiam*). While searches and seizures inside a home without a warrant are presumptively unreasonable, there are well delineated exceptions to the warrant rule that are based on necessity. *Burton v. State*, 2009 OK CR 10, ¶ 10, 204 P.3d 772, 775. The existence of an emergency, otherwise known as exigent circumstances, permits a law enforcement officer to substitute his judgment for that of a neutral and detached magistrate and act without a warrant. *Id.* One such exigency is the emergency aid exception in which there is an immediate need to assist

someone who is seriously injured or threatened with such injury. *Fisher*, 558 U.S. at 47, 130 S.Ct. at 548. In that instance, law enforcement officers may, without a warrant, enter a home to render emergency assistance to an injured occupant or to protect an occupant from imminent injury. *Id.* Application of this exception requires only an objectively reasonable basis for believing that a person within the house is in need of immediate aid. *Id.*

The reasoning behind the emergency aid exception is the same reasoning behind statutes such as 10A O.S.2011, § 1-4-201(A) aimed at protecting children believed to be at imminent risk of abuse. Police need only reasonable suspicion to believe a child is in imminent danger of abuse to take a child into emergency custody.

Tulsa police knocked on the door of appellees' apartment after observing the appellees enter. Since E.R. could not be located elsewhere, there was reason to believe that E.R. was in the home with Appellees and injured based on a relative's report that the child had been beaten by Rangel and Lang. There was also reason to fear the child was in danger of further injury based on Appellees' refusal to produce the child for viewing by police and family the night before and the fact that the prior evening's contact might anger Appellees resulting in further violence toward the child. Because Appellees kept the child out of school, the officers' concern for the child's welfare was especially heightened.

Given the uncertainty and potentially volatile nature of the situation, the officers sought to gain peaceful access to the child and remove him from the home without incident. When Appellee Lang opened the door and confirmed

E.R.'s presence, the detectives immediately confirmed the injury to the child and took the child into protective custody. The fact the officers did not force their way in, seize the child and leave does not lessen the emergency nature of the situation. These officers had reasonable suspicion the child was in imminent danger of being abused and their entry was objectively reasonable under the Fourth Amendment.

DECISION

The April 17, 2014 Order of the District Court sustaining Appellees' motion to quash and suppress is **REVERSED** and the matter **REMANDED** for further proceedings. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2015), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY
THE HONORABLE JAMES M. CAPUTO, DISTRICT JUDGE

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**OPINION BY: JOHNSON, J.
SMITH, P.J.: Concur
LUMPKIN, V.P.J.: Concur
LEWIS, P.J.: Concur**