

No. 33289 – *State of West Virginia v. Kenneth Bookheimer*, and
No. 33290 – *State of West Virginia v. Jessica Marie Tingler*

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Albright, Justice, concurring:

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I fully agree with the majority opinion and write separately only to briefly address the unfounded criticism raised in the dissenting opinion.

First of all, the majority opinion is based on the facts set forth in the record and not what the dissent characterizes as unwarranted assumptions. Secondly, the bald facts in this case simply do not support invoking any of the narrow exceptions to the constitutional right of all citizens to be protected from unreasonable searches of “their persons, houses, papers, and effects” by the police. U.S. Const. amend. IV; W. Va. Const. art. III, § 6.

Contrary to the dissent’s position, the police had no “right” to enter the mobile home residence without first obtaining a warrant. They were acting on an *anonymous* phone call alleging that a domestic dispute was occurring at the mobile home and there was a gunshot. Upon arriving at the scene, the officers did not observe any physical injuries or evidence of guns or a shooting which would have corroborated the allegations of the anonymous caller. As the majority clearly relates, Ms. Tingler’s agitated state was directly related to the officers’ presence at her home. It is hard to believe that the officers felt the

need to enter the residence in order to protect Mr. Bookheimer, Ms. Tingler or themselves. The residence was very small and the officers were able to speak with Mr. Bookheimer from the front door without entering the residence. It was also clear from the record that neither occupant consented that the officers' entering the residence. From what the officers saw and heard, no domestic dispute had occurred on the premises and no gun shots had been fired. No exigent or emergency circumstances existed to abridge the constitutional right of Ms. Tingler and Mr. Bookheimer to be secure from a search by the police absent a search warrant. Nor was there any impediment to the officers acquiring a search warrant had they probable cause to seek and obtain one. The fact here is that the record does not demonstrate that there was any such probable cause to obtain a warrant.

At its heart, this case has little if anything to do with domestic violence or drugs. While the fruit of the warrantless search gave rise to a drug-related prosecution, the legal issue at stake is according the proper respect to a fundamental principle guaranteed citizens through our federal and state constitutions to be free of an unreasonable search of one's home. The significance of this case is that the fundamental ideals of democracy, memorialized by our founding fathers in our constitutions, should always have real meaning and effect and not merely be words on paper of no concrete significance.

By virtue of the majority opinion, this Court again gives real, concrete meaning to those words by faithfully enforcing the rights of citizens to be safe from unwarranted intrusion by the government in their homes. Accordingly, I respectfully concur.