

11-8-2013

## State v. Tracy Respondent's Brief Dckt. 40739

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/not\\_reported](https://digitalcommons.law.uidaho.edu/not_reported)

---

### Recommended Citation

"State v. Tracy Respondent's Brief Dckt. 40739" (2013). *Not Reported*. 1292.  
[https://digitalcommons.law.uidaho.edu/not\\_reported/1292](https://digitalcommons.law.uidaho.edu/not_reported/1292)

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ UIdaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ UIdaho Law. For more information, please contact [annablaine@uidaho.edu](mailto:annablaine@uidaho.edu).

IN THE SUPREME COURT OF THE STATE OF IDAHO

**COPY**

STATE OF IDAHO,	)	
	)	No. 40739
Plaintiff-Respondent,	)	
	)	Ada Co. Case No.
vs.	)	CR-2012-2900
	)	
DESIRAE AMANDA TRACY,	)	
	)	
Defendant-Appellant.	)	

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HONORABLE PATRICK H. OWEN  
District Judge

LAWRENCE G. WASDEN  
Attorney General  
State of Idaho

DEBORAH WHIPPLE  
Nevin, Benjamin, McKay & Bartlett  
303 W. Bannock  
Boise, Idaho 83701  
(208) 343-1000

PAUL R. PANTHER  
Deputy Attorney General  
Chief, Criminal Law Division

JOHN C. McKINNEY  
Deputy Attorney General  
Criminal Law Division  
P.O. Box 83720  
Boise, Idaho 83720-0010  
(208) 334-4534

FILED - COPY

NOV - 8 2013

Supreme Court \_\_\_\_\_ Court of Appeals \_\_\_\_\_  
Entered on ATS by \_\_\_\_\_

ATTORNEYS FOR  
PLAINTIFF-RESPONDENT

ATTORNEY FOR  
DEFENDANT-APPELLANT

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES .....	ii
STATEMENT OF THE CASE .....	1
Nature of the Case .....	1
Statement of the Facts and Course of the Proceedings .....	1
ISSUE .....	4
ARGUMENT .....	5
Tracy Has Failed To Show Error In The District Court's Denial Of Her Motion To Suppress .....	5
A.    Introduction .....	5
B.    Standard Of Review .....	5
C.    Legal Standards Applicable To The Exigent Circumstances Exception To Warrant Requirement .....	6
D.    Tracy Has Failed To Demonstrate Error In The Denial Of Her Suppression Motion .....	7
CONCLUSION .....	12
CERTIFICATE OF MAILING .....	12
APPENDIX A	

## TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<u>Brigham City, Utah v. Stuart</u> , 547 U.S. 398 (2006).....	6
<u>Kentucky v. King</u> , ___ U.S. ___, 131 S.Ct. 1849 (2011).....	6
<u>Michigan v. Fisher</u> , 558 U.S. 45 (2009).....	6
<u>Mincey v. Arizona</u> , 437 U.S. 385 (1978).....	6
<u>Minnesota v. Olson</u> , 495 U.S. 91 (1990) .....	6
<u>State v. Araiza</u> , 147 Idaho 371, 209 P.3d 668 (Ct. App. 2009).....	6
<u>State v. Barrett</u> , 138 Idaho 290, 62 P.3d 214 (2003).....	7, 8
<u>State v. Klingler</u> , 143 Idaho 494, 148 P.3d 1240 (2006).....	5
<u>State v. Pearson–Anderson</u> , 136 Idaho 847, 41 P.3d 275 (Ct. App. 2001) .....	6
<u>State v. Sailas</u> , 129 Idaho 432, 925 P.2d 1131 (Ct. App. 1996).....	7
<u>State v. Smith</u> , 144 Idaho 482, 163 P.3d 1194 (2007) .....	6
<u>State v. Ward</u> , Docket No. 40069 (Idaho App. Oct. 22, 2013).....	6
<u>State v. Wiedenheft</u> , 136 Idaho 14, 27 P.3d 873 (Ct. App. 2001).....	7
 <u>CONSTITUTIONAL PROVISIONS</u>	
Article 1, § 17 of the Idaho Constitution.....	11
U.S. CONST. amend. IV. ....	6, 11

## STATEMENT OF THE CASE

### Nature of the Case

Desirae Amanda Tracy appeals from the district court's order denying her motion to suppress evidence obtained as a result of law enforcement officers' warrantless entry into her apartment.

### Statement of the Facts and Course of the Proceedings

The facts underlying Tracy's motion to suppress, based on the testimony of officers during the preliminary hearing and suppression motion hearing, were determined by the district court as follows (with references to the record in brackets):

On February 25, 2012, at approximately 9:45 a.m., Boise City Police Officer Billie Cox was dispatched to 2834 S. Robert Lane, Boise for a domestic disturbance call. [Tr., p.12, L.17 – p.13, L.1.]<sup>1</sup> According to the dispatcher, the calling party reported there was a female being thrown in the apartment, there was lots of noise and sounds of banging from the apartment. [Tr., p.13, Ls.1-6.] According to the caller, there had been prior disturbances and the caller was concerned for the children. [Tr., p.13, Ls.7-12.] According to the dispatcher, the male had left the residence. [Tr., p.13, Ls.13-18.] Officer Cox arrived with another officer, Boise Police Officer Kirk Rush. [Tr., p.31, L.24 – p.32, L.3.]

Officer Cox knocked on the front door. [Tr., p.33, Ls.20-22.] Desirae answered the door. [Tr., p.14, Ls.2-5; p.33, Ls.23-25.] Desirae told Officer Cox there had been an argument, but that everything was fine. [Tr., p.14, Ls.6-8; Prelim. Tr., p.5, L.24 – p.6,

---

<sup>1</sup> The transcript of the suppression motion hearing will be referred to as "Tr.", and the transcript of the preliminary hearing will be referred to as "Prelim. Tr." The state requested the district court to consider the preliminary hearing testimony in deciding Tracy's suppression motion, and after defense counsel stated he had no objection, the court considered the preliminary hearing testimony in making its suppression determination. (Tr., p.39, Ls.4-14; see R., p.95 ("The preliminary hearing transcript is in the Court file, and the Court has reviewed the testimony.").)

L.2; p.29, L.21 – p.30, L.1.] Desirae told Officer Cox that her husband had left the residence, and that she was there with her two children. [Tr., p.14, Ls.6-8; Prelim. Tr., p.5, Ls.2-7.] Officer Cox could see one child from the doorway. [Tr., p.15, Ls.4-13.] Officer Cox asked for permission to come in and make sure everyone was okay. [Tr., p.15, Ls.14-15.] Desirae declined, but volunteered to bring the other child for Officer Cox to observe. [Tr., p.15, Ls.16-18.] Desirae brought the other child, an eight (8) or nine (9) months old infant, to the front door. [Tr., p.17, Ls.13-19.] Officer Cox could see red marks on the child's face, stomach, and arms. [Tr., p.17, L. 21 – p.18, L.8.] Officer Rush saw the same red marks. [Prelim. Tr., p.6, Ls.8-11.] Officer Cox questioned Desirae about the marks and Desirae said the marks were from sleeping and would disappear. [Tr., p.18, Ls.10-14.]

Officer Cox made a decision to enter the residence to make sure there were no other injuries or persons in the residence, and to make sure the husband was not there. [Tr., p.19, Ls.7-12.] There was a back door, and Officer Cox was concerned that the husband could have returned. [Tr., p.16, L.20 – p.17, L.12; p.19, Ls.9-12; p.20, L.25 – p.21, L.10.] Both Officer Cox and Officer Rush entered the residence. [Tr., p.19, Ls.14-18.] They did not have a warrant. [Tr., p.25, L.25 – p.26, L.2; Prelim. Tr., p.32, Ls.14-17; p.73, Ls.19-21.] Both saw a marijuana grow operation in the upstairs in plain view. [Tr., p.20, Ls.9-20; Prelim Tr., p.8, L.8 – p.9, L.1; p.32, Ls.18-21.] The officers did not find other persons or any other signs of injury. [Prelim. Tr., p.54, Ls.2-3.]

Police took photographs of the infant some time later. [Tr., p.23, Ls.22-24.] The photographs do not clearly show the marks observed by the officers. [Tr., p.25, Ls.6-16.]

(R., pp.94-95.)

Tracy was charged with manufacturing a controlled substance (marijuana), possession of over 3 ounces of marijuana, and possession of drug paraphernalia. (R., pp.50-51.) Tracy's husband, Michael Tracy, was also charged with similar crimes, and after the two cases were consolidated (R.,

p.13), he filed a motion to suppress, which Tracy joined.<sup>2</sup> After a hearing, the district court entered an order denying Tracy's motion to suppress, finding "there were exigent circumstances, specifically concerns of injuries to persons within the residence, that justified the warrantless entry into the residence." (R., p.98.)

Pursuant to a plea agreement, Tracy entered a conditional guilty plea to (felony) possession of marijuana in excess of 3 ounces, and the remaining counts were dismissed. (R., pp.111-118; see generally 12/12/12 Tr.) The district court ordered that judgment be withheld for one year and placed Tracy on unsupervised probation for that period. (R., pp.113-118.) Tracy filed a timely notice of appeal from the district court's order. (R., pp.120-124.)

---

<sup>2</sup> Michael Tracy's motion to suppress was augmented into the record on appeal by this Court's order dated August 7, 2013. At the outset of the suppression hearing, Tracy's counsel advised the court that he "would be joining in the motion filed by Michael Tracy, [and] that he would not otherwise be filing any briefing." (Tr., p.5, Ls.16-20.) Tracy does not appear to have filed her own motion to suppress.

## ISSUE

Tracy states the issue on appeal as:

Did the district court err in concluding that exigent circumstances justified a warrantless entry into Ms. Tracy's home?

(Appellant's Brief, p.5.)

The state rephrases the issue on appeal as:

Has Tracy failed to show error in the district court's denial of her motion to suppress?



## ARGUMENT

### Tracy Has Failed To Show Error In The District Court's Denial Of Her Motion To Suppress

#### A. Introduction

Tracy asserts the district court erred in denying her motion to suppress, contending there were no exigent circumstances in regard to the officers' perceived injuries to the baby because: (1) there "was no yelling, no sounds or other evidence of arguments or fighting" when officers arrived at the apartment; (2) there was "no suspicion that the older child had any injuries[;]" and (3) Tracy "gave them a perfectly reasonable and ultimately true explanation" for the red marks on the baby. (Appellant's Brief, p.10.)

Tracy's arguments fail. Application of the law to the facts shows the district court correctly concluded that the officers' actions in this case were constitutionally reasonable for purposes of both the federal and state constitutions.<sup>3</sup>

#### B. Standard Of Review

The standard of review of a suppression motion is bifurcated. When a decision on a motion to suppress is challenged, the appellate court accepts the trial court's findings of fact that are supported by substantial evidence, but freely reviews the application of constitutional principles to those facts. State v. Klingler, 143 Idaho 494, 496, 148 P.3d 1240, 1242 (2006).

---

<sup>3</sup> The district court's Order Denying Motion to Suppress is attached to this Respondent's Brief as Appendix A.

C. Legal Standards Applicable To The Exigent Circumstances Exception To Warrant Requirement

The Idaho Court of Appeals recently succinctly set forth the applicable law in regard to the exigent circumstances exception to the warrant requirement as follows:

The Fourth Amendment protects the “right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. CONST. amend. IV. Without a warrant, searches and seizures within a home are presumptively unreasonable. *Kentucky v. King*, \_\_\_ U.S. \_\_\_, 131 S.Ct. 1849, 1856 (2011); *State v. Smith*, 144 Idaho 482, 485, 163 P.3d 1194, 1197 (2007). The State can overcome this presumption by showing the government conduct fell within one of the exceptions to the warrant requirement. *King*, \_\_\_ U.S. at \_\_\_, 131 S.Ct. at 1856. One such exception exists where exigent circumstances “make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment.” *Mincey v. Arizona*, 437 U.S. 385, 394 (1978). A law enforcement officer’s reasonable belief of danger to the police or to other persons, inside or outside the dwelling, is one type of exigency that may justify a warrantless entry. *Minnesota v. Olson*, 495 U.S. 91, 100 (1990); *State v. Araiza*, 147 Idaho 371, 375, 209 P.3d 668, 672 (Ct. App. 2009). Accordingly, law enforcement officers may enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury. *Araiza*, 147 Idaho at 375, 209 P.3d at 672 (citing *Brigham City, Utah v. Stuart*, 547 U.S. 398, 403 (2006)). The officer’s subjective intent is irrelevant; instead, the State has the burden to show an officer has an objectively reasonable basis for believing a person within the house needs immediate aid. *Michigan v. Fisher*, 558 U.S. 45, 47 (2009).

State v. Ward, Docket No. 40069 (Idaho App. Oct. 22, 2013) (non-final decision).

The Idaho Court of Appeals also noted in Araiza that, “in several cases, we have held that officers are not required to accept the assurances of someone who insists that things are fine within a residence when other circumstances indicate otherwise.” Araiza, 147 Idaho at 376, 209 P.3d at 673; see State v.

Pearson–Anderson, 136 Idaho 847, 850–51, 41 P.3d 275, 278–79 (Ct. App. 2001); State v. Wiedenheft, 136 Idaho 14, 17, 27 P.3d 873, 876 (Ct. App. 2001); State v. Sailas, 129 Idaho 432, 433, 925 P.2d 1131, 1132 (Ct. App. 1996) (warrantless entry justified although domestic battery victim told police “that everything was now fine, that she had asked Sailas to leave, and that she did not need the assistance of the police”).

D. Tracy Has Failed To Demonstrate Error In The Denial Of Her Suppression Motion

Tracy asserts, “[h]aving seen all the occupants of the home, the police did not have any reasonable basis to enter the home because they were concerned that the occupants were injured. Even if the police had actually believed that the baby was injured . . . there was no exigency that would not have allowed them to keep the baby with them in the doorway for a few minutes to see if Ms. Tracy’s explanation of the red marks would prove accurate.” (Appellant’s Brief, p.11.) Contrary to Tracy’s argument, based on the information objectively known by the officers at the time, their entry into Tracy’s apartment was justified.

In State v. Barrett, 138 Idaho 290, 292, 295, 62 P.3d 214, 216, 219 (2003) 138 Idaho 290, 62 P.3d 214, law enforcement responded to a report of a man who was collapsed on his front porch and unresponsive. Id. at 292, 62 P.3d at 216. A neighbor advised the officer that Barrett lived with his wife and two children but that he had not seen them that day. Id. Because Barrett did not respond to questions about whether there was anyone else in the house, the officers on scene “proceeded to Barrett’s house and identified themselves loudly

several times, asking any persons inside to come to the front door.” Id. “[G]etting no response and hearing nothing from inside,” and concerned that Barrett’s wife and children could be inside and in need of medical assistance, the officers entered the residence. Id. Once inside, the officers did not find any other occupants, but they did find paraphernalia and heroin in plain view. Id.

On appeal, Barrett challenged the denial of his suppression motion. Barrett, 138 Idaho at 293, 62 P.3d at 217. The Court of Appeals upheld the district court’s order denying Barrett’s motion, concluding:

Under the totality of the facts and circumstances as known to the police at the time that they entered Barrett’s house, and reasonable inferences drawn thereupon, we conclude that there existed a compelling need for the police to enter. The state has satisfied its burden to show that *the risk of danger to persons inside the dwelling, as then reasonably perceived by police, constituted an exigency justifying that warrantless entry.* Here, the state’s claim of exigency is not a mere pretext for an unlawful entry and search, but the police officers legitimately believed, particularly in view of their inability to discern the cause of the medical condition affecting Barrett, that the life of any occupants of Barrett’s house may very well have been at stake. Because the police officers were still in the process of searching downstairs for persons in need of assistance, the exigent circumstances had not ceased to exist when [an officer] observed the drug evidence in plain view in the kitchen.

Barrett, 138 Idaho at 294-95, 62 P.3d at 218-19.

As in Barrett, there was a “compelling need for the police to enter” Tracy’s residence. Officer Cox testified at the suppression motion hearing about her observations of Tracy’s baby when Tracy brought the baby downstairs for the officer to see:

And he was – he looked red, like his entire body. He had – his arms, his stomach, his face, his legs, he had red marks, like lines on his body. And, like I said, he had kind of an indentation. I

couldn't really tell what was wrong with the baby. But he had several marks on his body, and he was very red.

Q. And what did you think when you saw the child?

A. It caught me off guard because I hadn't seen – you know, it was really from his face down to his leg area where he had red marks and lines on him. So I was very concerned as to what happened to the baby.

So then I started asking her, you know, "What's wrong with your child?"

And she said, well, he was sleeping, and, you know, eventually those will all disappear.

(Tr. p.17, L.21 – p.18, L.14.) When asked what she thought when she saw the baby, Officer Cox testified:

I had thought that somehow, you know, if there was a physical altercation between two people, being her and Michael, that somehow maybe the baby was involved in the middle of that, or maybe this was just directed towards the baby. Maybe this was – had nothing to do with her. Maybe it was just the baby and the male.

So I – you know, I really – I was just concerned based on what I was seeing. I did not feel that a baby would look that way after just waking up from a nap.

Q. Did you think the baby was injured?

A. Yes.

(Tr., p.18, L.18 – p.19, L.5.)

Additionally, Officer Rush testified at the preliminary hearing to seeing the same type of apparent injuries on Tracy's baby as Officer Cox, as the following colloquy shows:

Q. And what did you notice about that child?

A. He appeared to have several abrasions on his body.

Q. Was that immediately apparent to you?

A. Yes, sir.

Q. And when you say abrasions, what do you mean?

A. Red marks. Body appeared to have several red marks, right side of his head appeared to have what appeared to be injuries to them, causing us to be concerned about the welfare of the child and anybody else who may be in the residence.

(Prelim. Tr., p.51, L.16 – p.52, L.1.) When asked why he entered the residence,

Officer Rush testified:

Due to the (inaudible) of the situation, when we receive a call stating that there's possibly some type of domestic disturbance going on they believe that was physical, the person who answers the door appears to be upset, somewhat nervous and reluctant to let us inside of the residence, there's a child that appears to have some types of injuries to it, it would be negligent on our part not to enter that residence to check on the welfare of anybody else who may be in it and also the possible apprehension of a suspect who may be inside as well.

Q. And so, in essence, it was for the safety of the individuals in the home that you had entered the residence?

A. Correct, yes.

(Prelim. Tr., p.53, L.13 – p.54, L.1.)

Based on the testimony presented at both the preliminary hearing and the suppression motion hearing, the district court determined it was reasonable for the officers to enter Tracy's home in order to find out if any other persons were injured or in need of medical attention, explaining:

[T]he Court concludes that exigent circumstances existed such that the warrant requirement was excused. Looking at the totality of the circumstances known to the officers at the time of entry, and the reasonable inferences drawn from those circumstances, the court

finds that there was a compelling need for the police to enter the residence immediately.

A neighbor reported a physical altercation to a 911 operator, stating that a female was being thrown and reporting loud sounds. The neighbor reported past incidents of the same sort involving the same couple. One of the police officers spoke to the reporting party over the phone before arriving at the residence. While Desirae attempted to assure the officer that there was no need for police concern, other circumstances indicated there were reasons for concern. While Desirae certainly had the right to decline to let the police enter, her refusal to allow the officer into the residence increased the concern that there may have been others needing help inside, or that she did not want the police to know that her husband had returned. The officers both observed what appeared to be recent injuries on an infant. And while these marks were not reflected in the later photographs, the court must evaluate the facts known or concerns that existed at the time the officers decided to enter the residence. Based upon the foregoing, the court concludes that there were exigent circumstances, specifically concerns of injuries to persons within the residence, that justified the warrantless entry into the residence. Accordingly, the motion to suppress is denied.

(R., p.98.)

Based on the totality of the circumstances, the district court correctly found that the officers had a legitimate basis for concern that other people inside Tracy's apartment could have been injured and in need of medical assistance.

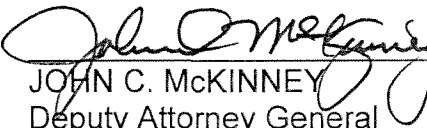
Tracy has failed to demonstrate that law enforcement acted unreasonably in violation of the Fourth Amendment and Article 1, § 17 of the Idaho Constitution by entering her home to ensure the safety of whoever might have been injured. Because the officers were lawfully in the process of ascertaining the well-being of any persons inside the apartment when they noticed the marijuana plants and drug paraphernalia, there was no federal or state constitutional violation requiring

suppression of any evidence. Tracy has therefore failed to demonstrate error in the district court's denial of her motion to suppress.

CONCLUSION

The state respectfully requests this Court to affirm the district court's order denying Tracy's motion to suppress.

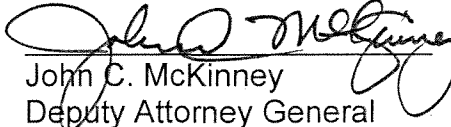
DATED this 8<sup>th</sup> day of November, 2013.

  
JOHN C. McKINNEY  
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 8<sup>th</sup> day of November, 2013, I caused two true and correct copies of the foregoing BRIEF OF RESPONDENT to be placed in the United States mail, postage prepaid, addressed to:

DEBORAH WHIPPLE  
Nevin, Benjamin, McKay & Bartlett  
303 W. Bannock  
Boise, Idaho 83701

  
John C. McKinney  
Deputy Attorney General

JCM/pm



## APPENDIX A

NOV 27 2012

CHRISTOPHER D. RICH, Clerk  
By MERSIHA TAYLOR  
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,

Plaintiff,

Case No. CR-FE-2012-0002900

Case No. CR-FE-2012-0002901

vs.

ORDER DENYING MOTION TO  
SUPPRESS

Desirae Tracy and Michael Tracy,

Defendant.

Before the Court is the motion to suppress filed by Defendants Desirae Tracy (“Desirae”) and Michael Tracy (“Michael”) (collectively the “Tracys”). For the reasons set forth below, the motion will be denied.

**Background and Prior Proceedings**

On February 25, 2012, at approximately 9:45 a.m., Boise City Police Officer Billie Cox was dispatched to 2834 S. Robert Lane, Boise for a domestic disturbance call. According to the dispatcher, the calling party reported there was a female being thrown in the apartment, there was lots of noise and sounds of banging from the apartment. According to the caller, there had been prior disturbances and the caller was concerned for the children. According to the dispatcher, the male had left the residence. Officer Cox arrived with another officer, Boise Police Officer Kirk Rush.

Officer Cox knocked on the front door. Desirae answered the door. Desirae told Officer Cox there had been an argument, but that everything was fine. Desirae told Officer Cox that her

1 husband had left the residence, and that she was there with her two children. Officer Cox could  
2 see one child from the doorway. Officer Cox asked for permission to come in and make sure  
3 everyone was okay. Desirae declined, but volunteered to bring the other child for Officer Cox to  
4 observe. Desirae brought the other child, an eight (8) or nine (9) months old infant, to the front  
5 door. Officer Cox could see red marks on the child's face, stomach, and arms. Officer Rush saw  
6 the same red marks. Officer Cox questioned Desirae about the marks and Desirae said the marks  
7 were from sleeping and would disappear.

8           Officer Cox made a decision to enter the residence to make sure there were no other  
9 injuries or persons in the residence, and to make sure the husband was not there. There was a  
10 back door, and Officer Cox was concerned that the husband could have returned. Both Officer  
11 Cox and Officer Rush entered the residence. They did not have a warrant. Both saw a marijuana  
12 grow operation in the upstairs in plain view. The officers did not find other persons or any other  
13 signs of injury.  
14

15           Police took photographs of the infant some time later. The photographs do not clearly  
16 show the marks observed by the officers.

17           Desirae and Michael have been charged with manufacturing marijuana, a felony,  
18 possession of marijuana, a misdemeanor, and possession of drug paraphernalia, a misdemeanor.  
19 There was a preliminary hearing on April 18 and 20, 2012. The preliminary hearing transcript is  
20 in the Court file, and the Court has reviewed the testimony.  
21

22           On July 16, 2012, Tracy filed a motion to suppress. Michael has joined in the motion.  
23 The state filed an opposition on September 13, 2012. Tracy filed a brief in support of the motion  
24 to suppress on September 7, 2012. The Court conducted a hearing into the motion to suppress on  
25 October 31, 2012. The state was represented by Brent A. Ferguson, Deputy Ada County  
26

1 Prosecuting Attorney. Tracy was represented by Deputy Ada County Public Defender Ransom  
2 J. Bailey. Michael was represented by Randall S. Barnum. Officer Cox testified at the hearing.  
3 The Court took the matter under advisement.

#### 4 Discussion

5 It is settled that “[t]he Fourth Amendment, as well as Article I, § 17 of the Idaho  
6 Constitution, protect the right of people to be secure in their persons, houses, papers, and effects,  
7 against unreasonable searches and seizures.” *State v. Araiza*, 147 Idaho 371, 374, 209 P.3d 668,  
8 671 (Ct. App. 2009). The entry into a home by police acting without a search warrant is  
9 presumed to be unreasonable. *Id.* (citing *Payton v. New York*, 445 U.S. 573, 586, 100 S.Ct.  
10 1371, 1380, 63 L.Ed.2d 639, 650 (1980) and *State v. Martinez*, 129 Idaho 426, 431, 925 P.2d  
11 1125, 1130 (Ct.App.1996)).

12  
13 However, there are a few recognized exceptions to this presumption. *Id.* (citing *Coolidge*  
14 *v. New Hampshire*, 403 U.S. 443, 474–75, 91 S.Ct. 2022, 2042–43, 29 L.Ed.2d 564, 587–88  
15 (1971) and *State v. Brauch*, 133 Idaho 215, 218, 984 P.2d 703, 706 (1999)). The state bears the  
16 burden to show that a warrantless search fits within one of these exceptions. *Id.* (citing *State v.*  
17 *Reynolds*, 146 Idaho 466, 470, 197 P.3d 327, 331 (Ct.App.2008)).

18 One of the exceptions to the warrant requirement is the existence of “exigent  
19 circumstances.” *State v. Wiedenheft*, 136 Idaho 14, 16, 27 P.3d 873, 875 (Ct. App. 2001) (citing  
20 *Payton v. New York*, 445 U.S. 573, 589–90, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980) and *State v.*  
21 *Curl*, 125 Idaho 224, 225, 869 P.2d 224, 225 (1993)). The risk of danger to other persons inside a  
22 residence can constitute such an exigency justifying a warrantless entry. *State v. Barrett*, 138  
23 Idaho 290, 294, 62 P.3d 214, 218 (Ct. App. 2003) (citing *State v. Pearson-Anderson*, 136 Idaho  
24 847, 849-50, 41 P.3d 275, 278-79 (Ct.App.2001)).  
25  
26

general law  
374-5  
671-2

376 673  
Araiza - quote is all is OK.

1 The standard for the existence of exigent circumstances is “when the facts known to the  
2 police at the time of the entry, along with reasonable inferences drawn thereupon, demonstrate a  
3 ‘compelling need for official action and no time to secure a warrant.’” *State v. Araiza*, 147 Idaho  
4 371, 374, 209 P.3d 668, 671 (Ct. App. 2009) (quoting *Pearson-Anderson*, 136 Idaho at 849, 41  
5 P.3d at 277); *State v. Sailas*, 129 Idaho 432, 434, 925 P.2d 1121, 1133 (Ct.App.1996). While it  
6 is appropriate for a court to scrutinize any claim of exigency to ensure against pretext searches,  
7 the court must also strive to avoid “second-guessing police decisions made in legitimate belief  
8 that life may very well be at stake.” *Pearson-Anderson*, above at 849, 41 P.3d at 279  
9 (Ct.App.2001).

10 When evaluating the existence of exigent circumstances, a police officer is not required  
11 to “accept the assurances of someone who insists that things are fine within a residence when  
12 other circumstances indicate otherwise.” *Araiza* above, at 376, 209 P.3d at 673 (citing *State v.*  
13 *Pearson-Anderson*, 136 Idaho 847, 850-51, 41 P.3d 275, 278-79 (Ct.App.2001); *State v.*  
14 *Wiedenheft*, 136 Idaho 14, 17, 27 P.3d 873, 876 (Ct.App.2001); *State v. Sailas*, 129 Idaho at 435,  
15 925 P.2d at 1134.  
16

17 Finally, if police are otherwise conducting a lawful activity, they may seize evidence in  
18 plain view. *State v. Barrett*, 138 Idaho 290, 293-94, 62 P.3d 214, 217-18 (Ct. App. 2003).

19 Applying these considerations to the facts of this case, the Court concludes that exigent  
20 circumstances existed such that the warrant requirement was excused. Looking at the totality of  
21 the circumstances known to the officers at the time of entry, and the reasonable inferences drawn  
22 from those circumstances, the court finds that there was a compelling need for the police to enter  
23 the residence immediately.  
24

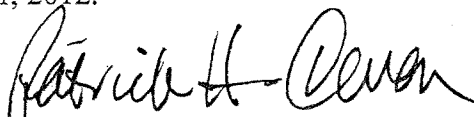
1 A neighbor reported a physical altercation to a 911 operator, stating that a female was  
2 being thrown and reporting loud sounds. The neighbor reported past incidents of the same sort  
3 involving the same couple. One of the police officers spoke to the reporting party over the phone  
4 before arriving at the residence. While Desirae attempted to assure the officer that there was no  
5 need for police concern, other circumstances indicated there were reasons for concern. While  
6 Desirae certainly had the right to decline to let the police enter, her refusal to allow the officer  
7 into the residence increased the concern that there may have been others needing help inside, or  
8 that she did not want the police to know that her husband had returned. The officers both  
9 observed what appeared to be recent injuries on an infant. And while these marks were not  
10 reflected in the later photographs, the court must evaluate the facts known or concerns that  
11 existed at the time the officers decided to enter the residence. Based upon the foregoing, the  
12 court concludes that there were exigent circumstances, specifically concerns of injuries to  
13 persons within the residence, that justified the warrantless entry into the residence. Accordingly,  
14 the motion to suppress is denied.  
15

16 **Conclusion**

17 The Motion to Suppress is hereby **DENIED**.

18 IT IS SO ORDERED.

19 Dated this 27 day of November, 2012.

20 

21 \_\_\_\_\_  
22 Patrick H. Owen  
23 District Judge  
24  
25  
26

CERTIFICATE OF MAILING

I HEREBY CERTIFY, that on this 27th day of November, 2012, I mailed (served) a true

and correct copy of the within instrument to:

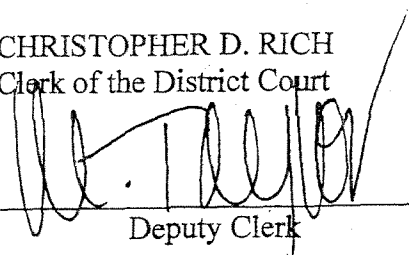
ADA COUNTY PUBLIC DEFENDER  
BY INTERDEPARTMENTAL MAIL

RANDALL S. BARNUM  
ATTORNEY AT LAW  
380 S 4TH ST, STE 101  
PO BOX 2616  
BOISE, ID 83701-2616

ADA COUNTY PROSECUTING ATTORNEY  
BY INTERDEPARTMENTAL MAIL

CHRISTOPHER D. RICH  
Clerk of the District Court

By

  
Deputy Clerk