

1-8-2009

## State v. Reynolds Appellant's Brief Dckt. 35382

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/idaho\\_supreme\\_court\\_record\\_briefs](https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs)

---

### Recommended Citation

"State v. Reynolds Appellant's Brief Dckt. 35382" (2009). *Idaho Supreme Court Records & Briefs*. 2134.  
[https://digitalcommons.law.uidaho.edu/idaho\\_supreme\\_court\\_record\\_briefs/2134](https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/2134)

This Court Document is brought to you for free and open access by Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact [annablaine@uidaho.edu](mailto:annablaine@uidaho.edu).

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, )  
 )  
 Plaintiff-Respondent, )  
 )  
 v. )  
 )  
 MICHAEL STEVEN REYNOLDS, )  
 )  
 Defendant-Appellant. )

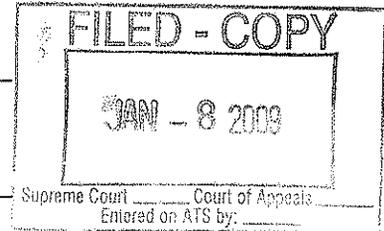
NO. 35382

APPELLANT'S BRIEF

---

BRIEF OF APPELLANT

---



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

---

HONORABLE MICHAEL E. WETHERELL  
 District Judge

---

MOLLY J. HUSKEY  
 State Appellate Public Defender  
 State of Idaho  
 I.S.B. # 4843

KENNETH K. JORGENSEN  
 Deputy Attorney General  
 Criminal Law Division  
 P.O. Box 83720  
 Boise, Idaho 83720-0010  
 (208) 334-4534

SARA B. THOMAS  
 Chief, Appellate Unit  
 I.S.B. # 5867

HEATHER M. CARLSON  
 Deputy State Appellate Public Defender  
 I.S.B. # 7148  
 3647 Lake Harbor Lane  
 Boise, Idaho 83703  
 (208) 334-2712

ATTORNEYS FOR  
 DEFENDANT-APPELLANT

ATTORNEY FOR  
 PLAINTIFF-RESPONDENT

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 35382
	)	
v.	)	
	)	
MICHAEL STEVEN REYNOLDS,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
<hr/>		

BRIEF OF APPELLANT

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

HONORABLE MICHAEL E. WETHERELL  
District Judge

**MOLLY J. HUSKEY**  
State Appellate Public Defender  
State of Idaho  
I.S.B. # 4843

**SARA B. THOMAS**  
Chief, Appellate Unit  
I.S.B. # 5867

**HEATHER M. CARLSON**  
Deputy State Appellate Public Defender  
I.S.B. # 7148  
3647 Lake Harbor Lane  
Boise, Idaho 83703  
(208) 334-2712

**ATTORNEYS FOR  
DEFENDANT-APPELLANT**

**KENNETH K. JORGENSEN**  
Deputy Attorney General  
Criminal Law Division  
P.O. Box 83720  
Boise, Idaho 83720-0010  
(208) 334-4534

**ATTORNEY FOR  
PLAINTIFF-RESPONDENT**

CONCLUSION .....15  
CERTIFICATE OF MAILING.....16

Other Authorities

La Fave, SEARCH AND SEIZURE Vol. 2, § 4.5(b) at 530 .....8

Wayne R. La Fave, SEARCH AND SEIZURE Vol. 2, § 4.5(b) at 526 (3<sup>rd</sup> ed. 1996) ....7

Statutes

I.C. § 19-4403 .....6

Constitutional Provisions

Idaho Const. Art. I, § 17 .....6

U.S. Const. amend. IV .....6

well. (Tr. 9/14/07, p.67, Ls.18-25.) Each unit was rented separately under separate rental agreements. (Tr. 9/14/07, p.54, L.5 – p.55, L.22.)

On March 3, 2007, Mr. Graf's and Ms. Warrell's infant child passed away and emergency services were called. (R., pp.40-44.) Officers subsequently obtained a search warrant to search the entire residence. (R., pp.40-41.) The Affidavit for Search Warrant explained that after Mr. Graf and Ms. Warrell reported that their two month old baby appeared deceased, responding officers saw three visible spoons with what appeared to be methamphetamine on the bed. (R., pp.43-44.) These spoons ultimately tested positive for methamphetamine. (R., pp.43-44.) The affidavit represented that officers believed the child's death may have been related to the presence of controlled substances. (R., p.44.) Additionally, the affidavit stated that Officer Stiles, the affiant, could smell the "odor of growing marijuana in the residence, apparently coming from an upstairs bedroom that is locked." (R., p.44.) The affidavit described the home as a single family residence and did not mention Mr. Reynolds or the fact the odor was coming from the room that belonged to him and not Mr. Graf or Ms. Warrell. (R., pp.43-45.) Pursuant to the search warrant officers searched the entire home. (Tr. 9/14/07, p.22, L.8 – p.23, L.15.) The search ultimately revealed marijuana plants and paraphernalia in Mr. Reynolds' room. (Tr. 9/14/07, p.23, L.19 – p.24, L.7.)

Mr. Reynolds was charged by Information with manufacturing of a controlled substance and possession of drug paraphernalia. (R., pp.20-21.) He subsequently filed a Motion to Suppress and Memorandum in Support Thereof arguing that the evidence found in Mr. Reynolds bedroom should be suppressed because the search of his room violated his right to be free from unlawful searches. (R., pp.31-45.) The State filed a

ISSUE

Did the district court err when it denied Mr. Reynolds' motion to suppress because the warrant lacked particularity regarding the search of Mr. Reynolds' apartment?

over which the Appellate Court exercises free review. *State v. Hawkins*, 131 Idaho 396, 400, 958 P.2d 22, 26 (Ct. App. 1998); *State v. McIntee*, 124 Idaho 803, 804, 864 P.2d 641, 642 (Ct. App. 1993).

C. The District Court Erred When It Denied Mr. Reynolds' Motion To Suppress Because The Warrant Lacked Particularity Regarding The Search Of Mr. Reynolds' Bedroom Apartment

The Fourth Amendment protects “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. Const. amend. IV; Idaho Const. Art. I, § 17. *The “physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed....” State v. Johnson*, 110 Idaho 516, 523, 716 P.2d 1288, 1295 (1986) (quoting *United States v. United States District Court*, 407 U.S. 297, 313 (1972)) (emphasis original). Both the Fourth Amendment and Article 1, section 17 of the Idaho Constitution require that a warrant must “particularly describe the place to be searched and the person or thing to be seized.” *State v. Teal*, 145 Idaho 985, 989, 188 P.3d 927, 931 (2008). Neither make a distinction between owned and rented living quarters; therefore, if a tenant has not abandoned the premises, the protection of the Fourth Amendment and Art. 1, § 17 is not lost. *Johnson*, 110 Idaho at 523, 716 P.2d at 1295; *Abel v. United States*, 362 U.S. 217, 241 (1960). Furthermore, Idaho Code § 19-4403 states “A search warrant cannot be issued but upon probable cause, supported by affidavit, naming or describing the person, and *particularly describing the property and the place to be searched.*” I.C. § 19-4403 (emphasis added.)

Here, Mr. Reynolds contends that the warrant in this case did not describe the place to be searched with particularity because the residence was not a single family

*Id.* at 529. In *United States v. Santore*, 290 F.2d 51 (2d Cir. 1959) the Second Circuit Court of Appeals held that officers did not know and did not have reason to know that what appeared as a single family home was actually two separate residences. *Santore*, 290 F.2d at 67. See also *Maryland v. Garrison*, 480 U.S. 79, 83 (1987) (finding it was not unconstitutional to search respondents third floor apartment where officers did not know the third floor contained two apartments and officers ceased searching once they realized two apartments were present and the respondent was not the owner described in the warrant); La Fave, SEARCH AND SEIZURE Vol. 2, § 4.5(b) at 530 (noting *United States v. Santore* is the leading case regarding subunits within what appears to be a single occupancy structure). The court noted that “[t]he agents were not warned of a possible dual occupancy of the house until after they had shown the copy of the warrant to [the resident] and had entered inside. At that moment it was too late for them, consistent with the success of their mission, to have retreated and obtained a new warrant.” *Santore*, 290 F.2d at 67.

Similarly the Ninth Circuit Court of Appeals has recognized exceptions to the general voiding of a warrant for an undisclosed multiunit structure only if “the defendant was in control of the whole premises or they were occupied in common, if the entire premises were suspect, or if the multi-unit character of the premises was not known to the officers.” *United States v. Gilman*, 684 F.2d 616, 618 (9th Cir. 1982). The court noted that the testimony and affidavits of the officers demonstrated that there was not misconduct. *Id.* The officers had conducted surveillance of the premises, the premises was a single building, and the officers were not aware that separate living quarters were contained in the building or that it housed unrelated persons. *Id.* Additionally, the

rarely saw them unless they were in the kitchen making dinner. (Tr. 9/14/07, p.59, Ls.20-25.) He also again told Sargeant Birch that the room next to him belonged to Justin Higby and that Mr. Higby was at work. (Tr. 9/14/07, p.60, Ls.9-13.) Finally, when questioned by Detective Stiles, Mr. Reynolds again informed the officer that "Justin rented the room next to mine, he asked me what did I mean. And I said the parents rent the basement. The whole basement's theirs. I rent my room. That room's mine. Justin rents that room." (Tr. 9/14/07, p.61, L.22 – p.62, L.2.) He also explained that all the residents were on different contracts and that they all pay rent at different times. (Tr. 9/14/07, p.62, Ls.2-3.)

Although, Mr. Reynolds did testify that he did not see a distinction between the words roommate's and renters and that he may have used the word roommates to describe his co-residents instead of renters; Mr. Reynolds explicitly testified that he informed the officers about the separate residential agreements and that only he had access to his room, none of the other tenants did. (Tr. 9/14/07, p.71, Ls.11-23, p.73, Ls.1-18.) Therefore, the officers knew that Mr. Reynolds was the only one with access to his room, and that it was unrelated adults living in the residence and sharing only the common areas. The officers should have known based on this information that the house was a multi-unit or multi-residence building rather than a single family home.

Furthermore, despite these representations by Mr. Reynolds and Detective Stile's awareness that it was unrelated adults living in the home and that Mr. Reynolds was the only one with access to his bedroom, no mention of Mr. Reynolds or these arrangements was mentioned in the affidavit to get the warrant. The portion of the affidavit referring to the suspected marijuana stated only,

action. *Id.* “There can be no question that the exception does not swallow the rule—exceptions to the warrant requirement for home entries are ‘few in number and carefully delineated.’” *Id.* (quoting *Welsh v. Wisconsin*, 446 U.S. 740, 749 (1984)). The State bears the burden of demonstrating the existence of “the existence of such an exceptional situation.” *Mincey v. Arizona*, 437 U.S. 385, 390-91 (1978) (quoting *Vale v. Louisiana*, 399 U.S. 30, 34 (1970)).

Here, when ruling on Mr. Reynolds’ motion to suppress, the district court first ruled that a warrant was not necessary to search Mr. Reynolds’ bedroom because the officers could have conducted a warrantless search of his room based on the smell of marijuana emanating from it alone. (R., pp.71-72.) This ruling is incorrect because the smell of marijuana alone did not create an exigent circumstance, and the search of Mr. Reynolds’ room would have exceeded the scope of the exigency the officer’s were responding to.

1. The Smell Of Marijuana Alone Did Not Create An Exigent Circumstance Justifying A Warrantless Search Of Mr. Reynolds’ Bedroom Apartment

Although the plain smell of marijuana emanating from somewhere else in the building can provide probable cause for a warrant to search that room or unit, the smell along does not provide an exigent circumstance justifying a warrantless search. *State v. Rigoulot*, 123 Idaho 267, 846 P.2d 918 (1992) (holding that the smell of marijuana coming from the home could be used as probable cause to obtain a warrant because the officers were located where they had a legal right to be when they smelled the marijuana); *State v. Tietsort*, 145 Idaho 112, 175 P.3d 801 (Ct. App. 2007) (“What is lawfully seen in open view may furnish probable cause for a warrant.”). Furthermore,

Here the exigency which allowed the officers to enter the home was the death of the infant child in the basement apartment; therefore, officers were limited to responding to this exigency. Therefore, the district court's finding that the smell of marijuana itself would have justified a warrantless entry into Mr. Reynolds' room was erroneous and if this Court finds that the warrant lacked particularity as argued in section I(C) above this evidence should be suppressed.

E. The Evidence Seized As A Result Of The Unlawful Search Should Have Been Suppressed

The exclusionary rule prohibits the use of evidence, obtained either directly or indirectly from an unlawful search or seizure, against the defendant. *Wong Sun v. United States*, 371 U.S. 471, 484-485 (1963); *State v. Schrecengost*, 134 Idaho 547, 549, 6 P.3d 403, 405 (Ct. App. 2000). However, evidence will not be excluded if the causal connection between the police action and the acquisition of the evidence has been broken, and therefore, the evidence was not obtained through the exploitation of the initial illegality. *Schrecengost*, 134 Idaho at 549, 6 P.3d at 406. Because the evidence obtained against Mr. Reynolds was obtained directly from the unlawful search in this case, Mr. Reynolds asserts that all other evidence obtained as a result of the illegal search of his room must be suppressed.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 8<sup>th</sup> day of January, 2009, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

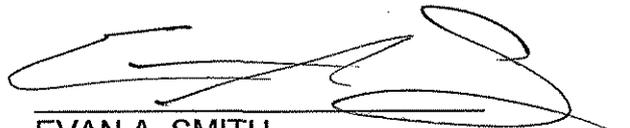
MICHAEL STEVEN REYNOLDS  
2714 TAMARACK DRIVE  
BOISE ID 83703

MICHAEL E WETHERELL  
DISTRICT COURT JUDGE  
E-MAILED COPY OF BRIEF

ADA COUNTY PUBLIC DEFENDER'S OFFICE  
200 W FRONT ST DEPARTMENT 17  
BOISE ID 83702

STATEHOUSE MAIL

KENNETH K. JORGENSEN  
DEPUTY ATTORNEY GENERAL  
CRIMINAL DIVISION  
PO BOX 83720  
BOISE ID 83720-0010  
Hand deliver to Attorney General's mailbox at Supreme Court



EVAN A. SMITH  
Administrative Assistant

HMC/eas