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State v. Clark Appellant's Brief Dckt. 45750

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Idaho Supreme Court
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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**NO. 45750**
Plaintiff-Respondent,	)	
	)	**CANYON COUNTY NO. CR-2017-6890**
v.	)	
	)	
DANIEL ALLEN CLARK,	)	**APPELLANT'S BRIEF**
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

HONORABLE THOMAS J. RYAN
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Daniel Clark appeals the district court's denial of his motion to suppress evidence discovered after a police officer, without a warrant and without consent, opened the door to his home's garage. The district court held the officer's intrusion was justified under the emergency aid exception to the warrant requirement. The officer had intended to conduct a "welfare check" after a neighbor reported hearing "loud crying from a female and baby" the night before and seeing property items strewn in the driveway that morning. At noon, when the officer arrived, the house was silent and there was no response when he knocked on the front door. The officer walked over to the attached garage and just opened it.

On appeal, Mr. Clark argues that these facts do not support a reasonable belief there was a person inside the home who needed emergency medical aid or was in imminent danger of harm, and that the officer's warrantless intrusion into his home violated the Fourth Amendment. The district court's conclusions to the contrary are erroneous and the denial of Mr. Clark's motion to suppress should be reversed.

Statement of the Facts and Course of Proceedings

The evidence presented at the suppression hearing establishes the following undisputed facts.[1]

At about noon on May 4, 2017, Officer Scott Crupper responded to a call from police dispatch to conduct a "welfare check" at an address on Willow Street in Caldwell. Officer Crupper testified that,

[1] The State called Officer Crupper as its only witness and offered two exhibits: Mr. Clark's parole agreement (Ex.1) and Officer Hemmert's bodycam video (Ex.2.). The police reports were not offered or admitted, nor was any other evidence offered or admitted. (*See generally*, Tr.)

> [T]he call comments were – what I had prior to arrival were quote:
>
> "Last night there was loud noises and crying from female and baby coming from next door. Today [reporting party] came out to find property in front of residence. Unknown names of the subjects. Friend said male just got out of jail. Female pregnant."

(Tr., p.39, Ls.9-15.)[2]

Officer Crupper arrived at the residence alone. (Tr., p.5, Ls.4-5.) He knocked on the front door, loudly, for almost a minute and a half, but heard nobody stirring inside. (Tr., p.5, Ls.12-15; p.25, L.11.) He then walked along the side of the house to the attached garage, where he noticed the reported property – items of personal clothing, two small boxes and some jewelry – strewn in the driveway, parallel to a parked car. (Tr., p.23, L.24 – p.24, L.2; *see also* Ex.2, 00:21-45.) He then stood in front of the garage doors, which were solid French doors, and because he wanted to contact someone inside "to find out what happened the night before," Officer Crupper opened the door and looked inside. (Tr., p.5, L.18 – p.6, L.20.)

While standing at the doorway, Officer Crupper saw a woman asleep on a sofa and woke her; he asked the woman whether there were other occupants in the home, and when she said there were, he asked her to go "and get them." (Tr., p.7, Ls.11-12.) The woman agreed and went through the interior connecting door into the main part of the residence; when she came back she told Office Crupper the occupants were asleep and did not want to get up. (Tr., p.7, L.4

[2] The district court's finding that the Officer Crupper was responding to a report of "screaming" is not supported by the record, as clarified by Officer Crupper, and is clearly erroneous. Although Officer Crupper had variously described the call as reporting "a bunch of screaming from a woman" (Tr., p.4, Ls.19-20), "fighting and crying and screaming in the middle of the night" (Tr., p.19, Ls.3-4), and later "some kind of verbal disturbance overnight" (Tr., p.23, Ls.8-9), he repeatedly testified he had the "call comments verbatim" in his report and sought permission to refer to and read those comments to the court (Tr., p.23, Ls.4-5, p.39, Ls.9-15). When he did, towards the end of his testimony, Officer Crupper made clear that, "the call comments were – *what I had prior to arrival* were quote: 'Last night there was loud noises and crying from female and baby coming from next door….'" (Tr., p.39, Ls.9-15.)

- p.8, L.13.) Officer Crupper told the woman he was going to go inside and contact them. (Tr., p.8, L.22-24.) Then a second officer, Officer Larry Hemmert, arrived at the house and they entered the garage together. (Ex.2, 00:45.) About the same time, and a small diapered child appeared at the far doorway connecting the garage to the main residence. (Tr., p.9, Ls.3-16; R., p.94; Ex.2 00:45.) Officer Crupper asked the child to show him his mother's bedroom, and the child toddled down the hall and opened the bedroom door where Mr. Clark and his girlfriend, Katarina Arambula, were sleeping. (Tr., p.12, Ls.1-11.) Officer Crupper announced the police presence and instructed the couple to get dressed and come into the living room to talk with them. (Tr., p.12, Ls.6-13; R., p.95.)

Mr. Clark and Ms. Arambula came out and were questioned by the police about their identities and their drug use. (Ex.2, 5:15-6:10.) In response to the officer's questions, Mr. Clark advised he was on parole but had not yet informed his parole officer of his new address (Ex.2, 06:25-45), and Mr. Clark's parole officer, Officer Oscar Arguello, was summoned to the scene. (Ex.2, 08:15; R., p.99.)[3] When Officer Arguello arrived, Officer Hemmert relayed his observations and his suspicions of Mr. Clark of recent drug use. (Ex.2, 24:25.) Officer Hemmert and the parole officer together searched Mr. Clark's bedroom and drug evidence was found and seized. (Ex.2, 34:05 – 41:20; R., p.99.)

Based on that evidence, Mr. Clark was arrested and charged with possession of heroin, possession of paraphernalia, and being a persistent narcotics violator. (R., pp.15, 25-27.) Mr. Clark filed a motion to suppress the evidence on the ground that the police officer's initial intrusion into his home by way of opening the door to his attached garage, and the police ensuing

[3] Mr. Clark refused Officer Hemmert's request to consent to search the bedroom, and the officer detained him (Ex.2, 0:7:05); when Mr. Clark advised Ms. Arambula she could require the police to obtain a search warrant, Officer Hemmert arrested him for obstruction (Ex.2, 11:45, 30:15).

search of his home and bedroom, violated his rights against unreasonable searches and seizures under the Fourth Amendment to the United States Constitution and Article 1, Section 17 of the Idaho Constitution. (R., pp.51, 53, 68.)

The State conceded Mr. Clark had standing to challenge the search. (Tr., p.1, Ls.23-25.) The State argued the officer's initial warrantless intrusion into Mr. Clark's home was justified under the "emergency aid exception" to the warrant requirement; the State alternatively argued that suppression was not required because the discovery of Mr. Clark's identity and parole status, and the ensuing search of the bedroom were inevitable once the police had been called to conduct the welfare check. (R., pp.70-81.)

The district court denied Mr. Clark's motion to suppress concluding that the officer's warrantless intrusion was reasonable under the "emergency aid exception." (R., p.98.) The district court explained that the officers had two reasons that justified their actions. The first reason was "to investigate whether any of the occupants needed emergency medical assistance." (R., p.98.) The district court acknowledged that Officer Crupper had observed no injury or fight (R., p.98.) The court conclude it was nonetheless "reasonable for Officer Crupper to believe there was an injured person inside the residence" based on the following circumstances: (1) Officer Crupper's "concern for the well-being of the occupants of the home based on his training and experience with domestic violence reports"; combined with (2) "the fact that there was a report of loud screaming and crying from a pregnant female and toddler"; (3) "no one was responding to knocks on the door at noon"; and (4) "there were clothes and jewelry scattered about the driveway as if [they] had been thrown." (R., pp.98-99.)

The second reason cited by the district court was "to prevent any occupants of the home from imminent injury." (R., p.99.) The district court refered to the police's receipt of two

domestic reports in the past two days,[4] and the officers' observation of the unsupervised toddler, *after* they entered the home, with a full diaper and an empty milk cup. (R., p.97.) After ruling that the initial intrusion into the home was justified under the emergency aid exception, the district court went on to conclude that the subsequent search of the bedroom was reasonable pursuant to the consent terms of Mr. Clark's parole agreement, and denied Mr. Clark's motion to suppress. (R., pp.100-01.)

Pursuant to an agreement with the State, Mr. Clark entered a conditional plea of guilty to possession of heroin, reserving his right to appeal the district court's decision. (Tr., p.51, L.4 – p.59, L.5; R., p.114.) Mr. Clark notes that, while the plea colloquy contains no reference to Mr. Clark' appellate rights, the Guilty Plea Advisory Form does. (*See generally*, Tr., p.51, L.4 – p.59, L.5; R., p.114, para.21.) At the plea hearing, the district court judge[5] asked Mr. Clark to complete a Guilty Plea Advisory Form; the district court specified that it would "*conditionally* find Mr. Clark's plea is knowingly, voluntarily, and intelligently made and accept the defendant's guilty plea *conditioned* on the later review of the Guilty Plea Advisory Form." (Tr., p.55, LS.8-12; P.58, Ls.4-10 (emphasis added).) Mr. Clark completed and signed that form on December 8, 2017, answering "yes" to the question, "is this a conditional guilty plea in which you are reserving your right to appeal any pre-trial issues." (R., p.114, para.21.) The form was filed on December 14, 2017, the same day as sentencing. (R., p.109.) There is no record of any objection by the State to that filing. (*See generally* R.; Tr., p.60 L.4 – p.70, L.2.)

[4] Officer Crupper's testimony does not mention a second domestic report, and no such report was admitted at the suppression hearing. (*See generally*, Tr.) Although Officer Hemmert mentioned multiple reports during his questioning Mr. Clark and Ms. Arambula, (*see* Ex.2, 5:15), Officer Hemmert's knowledge is irrelevant because he was not at the scene at the time Officer Crupper opened the garage door.

[5] The plea hearing was conducted by the Hon. George D. Carey, whereas the Hon. Thomas J. Ryan handled both the suppression matter and sentencing. (*See generally*, Tr.)

Mr. Clark was sentenced to a term of seven years, with two fixed, with retained jurisdiction. (R., p.136.) He filed a timely Notice of Appeal identifying the district court's denial of suppression as the issue on appeal. (R., pp.138-39.)

ISSUE

Did the district court err when it denied Mr. Clark's motion to suppress?

ARGUMENT

The District Court Erred When It Denied Mr. Clark's Motion To Suppress

A. Introduction

Daniel Clark appeals the district court's decision denying his motion to suppress evidence found in his home after a Caldwell City police officer, without a warrant or consent, opened the door to the garage attached to Mr. Clark's home. The district court held that the officer's conduct was justified under the "emergency aid exception" to the Fourth Amendment's warrant requirement. Mr. Clark asserts that, contrary holding of the district court, the facts known to the officer at the time he opened the door do fail to support a reasonable belief that there was a person in the house in need of emergency medical assistance or in imminent danger of harm. As discussed below, the officer's act of opening the garage door, exposing that protected space to the officer's view, was an unreasonable intrusion and violated Mr. Clark's constitutional rights. The district court's order denying suppression should be reversed.

B. Standard Of Review

When reviewing a trial court's order granting or denying a defendant's motion to suppress, the appellate court defers to the trial court's findings of fact unless they are clearly erroneous. *State v. Bishop*, 146 Idaho 804, 810 (2009). Factual findings supported by substantial and competent evidence are not clearly erroneous. *State v. Henage*, 143 Idaho 655, 659 (2007). "Decisions regarding the credibility of witnesses, weight to be given to conflicting evidence, and factual inferences to be drawn are also within the discretion of the trial court." *Bishop*, 146 Idaho at 804. However, the appellate court maintains free review over whether the facts surrounding a search and seizure satisfy constitutional requirements. *Henage*, 143 Idaho at 658.

C. The State Failed To Carry Its Burden Of Demonstrating That The Warrantless Search Of Mr. Clark's Residence Was Constitutionally Reasonable

As the United States Supreme Court stated in *Payton v. New York*, 445 U.S. 573, 589–90 (1980) (citation omitted):

> The Fourth Amendment protects the individual's privacy in a variety of settings. In none is the zone of privacy more clearly defined than when bounded by the unambiguous physical dimensions of an individual's home—a zone that finds its roots in clear and specific constitutional terms: 'The right of the people to be secure in their ... houses ... shall not be violated.' That language unequivocally establishes the proposition that '[a]t the very core of the Fourth Amendment stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion.' In terms that apply equally to seizures of property and to seizures of persons, the Fourth Amendment *has drawn a firm line at the entrance to the house*. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant.

State v. Maland, 140 Idaho 817, 822 (2004) (quoting *Payton*, 445 U.S. 573, 589 (1980) (citations and internal brackets omitted).)

Evidence obtained in violation of Fourth Amendment protections is subject to the exclusionary rule, which requires the suppression of both primary evidence obtained as a direct result of an illegal search or seizure, and evidence later discovered and found to be derivative of an illegality, that is, "fruit of the poisonous tree." *See Wong Sun v. United States*, 371 U.S. 471, 484–85 (1963); *State v. Guzman*, 122 Idaho 981, 988-98 (1992).

Warrantless searches are presumed to be unreasonable and therefore violative of the Fourth Amendment. *See State v. Lee*, 162 Idaho 642, 647 (2017). The State may overcome this presumption by demonstrating that a warrantless search fell within one of the specifically designated and well-recognized exceptions to the warrant requirement. *Id.*

In this case, the only justification offered by the State and addressed by the district court was the "emergency aid exception." (R., p.70-77, 96-100; Tr., p.42, L.17 – p.43, L.25.) As formulated by the United States Supreme Court in *Michigan v. Fisher*, 558 U.S. 45, 47 (2009),

and *Brigham City v. Stuart*, 457 U.S. 398, 403 (2006), that exception authorizes an officer to enter a home without a warrant (1) to render emergency assistance to an injured occupant or (2) to protect an occupant from imminent injury. As with warrantless entries based upon exigent circumstances, the test for the emergency aid exception is whether the facts known to the officer at the time of entry provide "an objectively reasonable bases for believing that medical assistance was needed, or persons were in danger." *Fisher*, 558 U.S. at 49 (internal citations omitted). The U.S. Supreme Court has explained that the emergency aid exception applied in both *Fisher* and *Brigham City* because the police officers (1) were responding to a report of a disturbance, and (2) encountered a tumultuous situation in the house when they arrived, and (3) could see violent behavior inside. *Fisher*, 558 U.S. at 49, citing *Brigham City*, 457 U.S. at 403.

The burden is on the State to show that the police officer's actions fall within the exception, and an objective standard as to the reasonableness of the officer's belief must be applied. *Fisher*, 558 U.S. at 47. The objective standard means that the circumstances, viewed objectively, must justify the police officer's actions. The officer's subjective belief is irrelevant. *Id*., at 49; *Brigham City*, at 406.

As discussed below, at the time Officer Crupper opened Mr. Clark's garage door – which was *before* he observed the sleeping woman or the diapered toddler, and *before* he had confirmation there were *any* occupants even inside the home – Officer Crupper lacked an objectively reasonable basis for believing that there was some person within the house who was injured, or in imminent danger, and in need of emergency aid. The district court's findings and conclusions to the contrary are erroneous and should be reversed.

1. Mr. Clark Had A Reasonable Expectation Of Privacy Inside The Attached Garage That Was Subject To Fourth Amendment Protection; Officer Crupper's Action In Opening The Door Intruded On That Privacy

The Idaho Supreme Court has recognized that an attached garage is "part and parcel" of the structure constituting the home, and that if the door is closed at the time the police arrive, the space is entitled to Fourth Amendment protections. *State v. Jenkins*, 143 Idaho 918, 921 (2007). Thus, Mr. Clark had a privacy interest in the garage attached to his home, and that space was protected by the Fourth Amendment. (R., p.60; *see also State v. Jenkins*, 143 Idaho 918, 921 (2007). Officer Crupper testified that the entry doors to the garage were French doors, "like for a living space" (Tr., p.5, Ls.18-21), and that the doors were solid, not glass, and he could *not* see through them. (Tr., p.5, Ls.23-24.) Officer Crupper testified that he found the door unlocked, and he just opened it. (Tr., p.6, Ls.11-12.)

Although Officer Crupper did not physically enter the garage at that time, his act of opening its closed door and exposing that private space to his view (*see* Tr., p.6, L.11 – p.6, L.20) amounted to a warrantless intrusion into Mr. Clark's protected rights against unreasonable searches and requires the State to justify the intrusion.

2. The State Failed To Carry Its Burden Of Demonstrating That Officer Crupper's Intrusion Into The Garage Was Justified Under The Emergency Aid Exception

The State failed to carry its burden of demonstrating a factual basis that justified Officer Crupper's act of opening the French door to the garage under the "emergency aid exception." When the State contends that a warrantless intrusion is justified by this exception, the State bears the burden to demonstrate that the facts known to the officer at the time of entry, together with reasonable inferences, provide an objectively reasonable basis for believing that a person within the house was in need of immediate aid. *State v. Araiza*, 147 Idaho 371, 374-75 (Ct. App. 2009).

Although the Idaho Supreme Court has not yet addressed or applied the U.S. Supreme Court's emergency aid exception as articulated in *Fisher* and *Brigham City*,[6] the Idaho Court of Appeals has. In each of the cases decided by the Court of Appeals, as discussed below, there was a contemporaneous observation by the police of a person who is injured or in need of aid, and the police intruded into the dwelling to give aid to that person or to another person believed to be in need of aid.

In *State v. Heard*, 158 Idaho 667 (Ct. App. 2015), the Court of Appeals found the exception to apply where a police officer had information that a couple had been arguing loudly throughout the day, first in a store, then in a parking lot, and then in their hotel room just five minutes earlier. *Id.*, at 769. The officer "could see into the room through an uncovered window and a partially opened door" and *observed* there was a woman lying motionless and unresponsive, and the officer had knowledge she had been arguing loudly *just five minutes before*. *Id*. The Court concluded that these facts gave rise to a reasonable belief that the woman the officer observed might be in serious danger, and that the officer's warrantless entry into the room to ensure her safety. *Id*.

In *State v. Ward*, 155 Idaho 332, 334 (Ct. App. 2013), the Court of Appeals found the warrantless entry into a home justified where the police received a report that the occupant had attempted to commit suicide by slitting her wrists. The officers approached a doorway to

[6] Decades earlier, however, the Idaho Supreme Court decided *State v. Monroe*, recognizing that the need to "protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency." 101 Idaho 151, 255 (1980), *vacated and remanded*, 451 U.S. 1014 (1981). In *Monroe*, the Court applied the "exigent circumstances exception" to justify a warrantless entry to look for potential victims or potential fires, where the police came to a house with a mattress smoldering in the back yard, bloodstains near the back entryway, and had the knowledge that a car containing an apparent murder victim had been set on fire recently in a nearby parking lot, and the car was registered to the same person who was renting the house. *Id*.

determine if paramedics were necessary and to ensure the occupant's safety, and also observed a spent shotgun shell in the front yard. *Id.* Paramedics were already parked down the street at the ready, waiting for the officer to notify them it was safe to enter. *Id.* The occupant answered door, appeared upset, emotionally erratic, and then retreated deeper into the residence. *Id.* The officer made several requests for her to return to the door, but she did not respond; "fearing for [the occupant's] safety, the officers entered the residence and guided [the occupant] back to the living room." *Ward*, at 324. The Court of Appeals concluded that the exigency arose, justifying the police officers' warrantless entry into the home, when the occupant retreated further into the residence and continued to ignore the officers' requests to return to the door. *Id.*, at 327.

In *State v. Bower*, the Court of Appeals held the warrantless intrusion into a motel room was justified, where a little girl was found crying in the parking lot and said something was wrong with her father. 135 Idaho 554, 556-57 (Ct. App. 2001). Paramedics and fire officials arrived to find the father, Bower, unconscious and barely breathing, and after being called by a fireman, police entered Bower's room. The Court of Appeals held that the police were justified in entering Bower's motel room because the police entered the premises at the time the exigency existed and within the scope of that exigency. *Id.*

In *State v. Barrett*, 138 Idaho 290 (Ct. App. 2003), police officers responded to a 911 call that identified a medical emergency with a man down. The man, Barrett, apparently left his home and struggled to reach his neighbor's house in a desperate search for emergency medical assistance. *Id.*, at 295. When the police encountered Barrett he was in obvious distress, unable to stand, incoherent, unable to hear, and was non-communicative. *Id.* Despite their inquiries to the unhearing and non-communicative Barrett, the police could not determine the nature and cause of the medical condition that had driven Barrett from his house to seek help from the

neighbor. *Id*. The neighbor informed the police that Barrett was married and lived with his wife and two daughters, and perhaps other persons. Concerned that Barrett's wife or children or other persons inside the house may have been in need of emergency medical assistance, the officers entered Barrett's house. *Id.* The Court of Appeals concluded that, under the facts and circumstances as known to the police at the time that they entered Barrett's house, and reasonable inferences drawn thereupon, there existed a compelling need for the police to enter. *Id*., at 295.

In the context of domestic violence reports, the Court of Appeals decided two significant cases. In *State v. Sailas*, the police responded to a report of an ongoing domestic disturbance and, at the time they arrived at the home, they could hear "arguing angrily in loud voices." 129 Idaho 432, 435 (Ct. App. 1996). The police also saw that the woman who answered the door was already bloodied and the officer also saw a small child. *Id*. The Court of Appeals concluded that these facts justified the warrantless entry, notwithstanding the woman's assurances that no help was needed, based on the violent fight in progress and the child at risk of becoming the victim of a violent outburst if the charged atmosphere were not diffused. *Id*.

In *State v. Wiedenheft*, 136 Idaho 14 (Ct. App. 2001), police were dispatched to a residence based on 911 call reporting possible domestic violence. When the officers arrived the house was dark and quiet; when they knocked, a light inside went on then off, then a woman answered displaying a red swollen area in the middle of her forehead, indicative of a recent injury. *Id*., at 16. The woman appeared to be shaking slightly, had an unsteady voice, and was visibly upset. *Id*. The Court of Appeals held that under these circumstances, the warrantless entry by police was justified to ensure the safety of the woman. *Id*.

Consistent with the U.S. Supreme Court's holdings in *Fisher* and *Brigham City*, in each case above, the police contemporaneously observed a person who was injured or in needed of aid when they arrived, and the police entered the home or room to give aid to that person or to another believed to be in need of aid. By contrast, and as discussed below, Officer Crupper observed *no one* prior to opening the garage door, much less someone who needed emergency aid. Even the neighbor's report of a woman and baby loudly crying was from twelve hours earlier. (Tr., p.22, Ls.22-25.) There was nothing in that report to suggest that anyone was injured or in danger. Even if the report may have been worthy of police investigation as to what had happened the night before, it was not a sufficient basis for breaching the home to effect an immediate rescue.

a. <u>The Objective Facts Known To Officer Crupper Do Not Support A Reasonable Belief There Was An Injured Occupant Who Needed Emergency Medical Care</u>

It is undisputed that Officer Crupper arrived alone at the scene and that he opened the garage door and looked inside before Officer Hemmert or any other officer arrived. (Tr., p.5, Ls.4-5.) Thus, only the facts known to Officer Crupper are relevant here; the information he obtained later, *after* he opened the door – *i.e.*, that there was a woman asleep in the garage, a couple sleeping in the main part of the residence who did not want to get up, and a diapered toddler walking about inside – are not circumstances that can be considered as part of the factual basis for Officer Crupper's decision to open the door.

The slim facts known to Officer Crupper when he arrived at the scene were not sufficient to support his action. He received little information from dispatch. According to his testimony,

> the call comments were – what I had prior to arrival were quote:
>
> "Last night there was *loud noises and crying from female and baby* coming from next door. Today [reporting party] came out to find property in front of residence.

> Unknown names of the subjects. Friend said male just got out of jail. Female pregnant."

(Tr., p.39, Ls.9-15 (emphasis added).)[7] To the extent the district court's finding states that Officer Crupper received a report that "detailed loud screams" (R., p.98), that finding is not is supported by the record as clarified by Officer Crupper and is therefore clearly erroneous. Additionally, there was no evidence admitted at the suppression hearing that *Officer Crupper* had received *two* domestic disturbance reports for the same address. (*See generally*, Tr.) The video show that *Officer Hemmert* was aware of a previous, May 2, 2017 report, which he discussed with Mr. Clark and his girlfriend (*see* Ex.2, 05:15); however, the State presented *no* evidence that *Officer Crupper* possessed that information before he opened the French door. Thus, contrary to the conclusion of the district court (R., p.98), the fact of the earlier report cannot be used to support Officer Crupper's belief that he needed to open the door of the garage. Likewise, the knowledge that was gained by Officer Crupper *after* he opened the door – that there was a woman on the couch, a couple sleeping inside, and a toddler walking about – cannot provide the factual basis for his decision.

Contrary to the district court's conclusion (R., pp.98-99), the few facts known to the Officer Crupper as he stood before the French door are not indicative of physical injury or a need for emergency medical aid. Officer Crupper had observed personal property strewn in the driveway in a manner suggesting the items had been thrown; the next-door neighbor heard loud crying the night before; and at noon, some twelve hours after the crying was heard, the house was quiet and no one responded to his knocking. (R., p.99); Tr., p.3, L.11 – p.50, L.3.) These facts do not suggest there had been any act of violence or that anyone had been injured. The facts reported to Officer Crupper did not indicate an argument, fight, or even angry voices; there

was no report of a physical altercation or any type of event causing an injury. (Tr., p.3, L.11 – p.50, L.3.) Nor had Officer Crupper heard or seen *anyone* inside the house. On the contrary, when Officer Crupper arrived the house was quiet and no one was stirring. That his repeated, loud knocking received no response is indicative of an empty house, not a house harboring persons who needed immediate aid.[8]

b. Officer Crupper's After-The-Fact Observation Of The Diapered Toddler Did Not Justify The Officer's Act Of Opening The Garage Door

The second reason given by the district court to justify the entry – the officers' observations of the diapered toddler holding a cup – cannot support Officer Crupper's initial intrusion into the garage. It is undisputed that Officer Crupper and Officer Hemmer did not observe the toddler and his full diaper and empty milk cup until *after* Officer Crupper opened the French door to the garage. (Tr., p.9, Ls.3-6.) Thus, contrary to the district court's conclusion (R., p.99), Officer Crupper's intrusion into the garage cannot be justified based on perceived need to protect the "unsupervised toddler" from harm. Thus, just as Officer Crupper lacked a sufficient factual basis to believe there was an injured person in the house who needed emergency medical care at the time he opened the French door to garage, Officer Crupper lacked

[7] *See* footnote 2

[8] While his subjective belief is irrelevant, it is telling that Officer Crupper did not testify that he *believed* there was a person inside who was injured or otherwise in need of emergency aid; his testimony was that he wanted "to find out what had happened the night before." (Tr., p.8, Ls.6.) Indeed, given the absence of any factual basis for expecting the residents would be inside the home at noon, such as whether they worked or went to school, or knowledge of their daily routine, the most reasonable inference to be drawn from the fact that Officer Crupper's knocks were met with silence is there no one was inside the home. On the facts possessed by Officer Crupper, the "need for emergency aid" was no more than speculation.

a sufficient factual basis to believe there was anyone inside who in imminent danger of harm.

The State bears a heavy burden whenever it seeks to justify a warrantless search of a home, and the State has failed to meet that burden in this case. At the time he opened the garage door Officer Crupper lacked facts to support an objectively reasonable basis for believing there was a person inside who needed immediate medical aid, or who was in imminent danger of harm. The district court's conclusions to the contrary are erroneous. Officer Crupper's warrantless intrusion violated Mr. Clark's Fourth Amendment rights, and the evidence discovered and seized as a result of the ensuing search should have been suppressed as fruit of the poisonous tree. The district court's denial of Mr. Clark's motion to suppress should be reversed.

CONCLUSION

Mr. Clark respectfully askes this Court to reverse the district court's denial of his suppression motion, vacate his judgment of conviction, and remand the case to the district court for further proceedings.

DATED this 12th day of October, 2018.

/s/ Kimberly A. Coster
KIMBERLY A. COSTER
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of October, 2018, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

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