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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 45750
)	
v.)	CANYON COUNTY NO. CR-2017-6890
)	
DANIEL ALLEN CLARK,)	REPLY BRIEF
)	
Defendant-Appellant.)	
_____)	

REPLY 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.

Mr. Clark claims 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.

In its Respondent's Brief, the State asserts that Mr. Clark waived his right to appeal the denial of his suppression motion because his guilty plea was not a conditional plea entered in compliance with I.C.R. 11(a)(2). This Reply Brief is necessary to address the State's waiver argument and to demonstrate that Mr. Clark entered a conditional guilty plea that complies with Criminal Rule 11(a)(2).

Mr. Clark additionally addresses the States incorrect assertion that the police reports not offered or admitted into evidence can be considered by this Court as "substantial evidence" in support of the district court's findings.

Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Mr. Clark's Appellant's Brief. They need not be repeated in this Reply Brief, but are incorporated herein by reference thereto.

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. Mr. Clark Entered A Conditional Guilty Plea That Complies With Criminal Rule 11(a)(2)

Mr. Clark entered a conditional guilty plea reserving his right to appeal the district court's denial of his motion to suppress. Contrary to the assertion by the State (Respondent's Brief, pp.6-11), Mr. Clark's guilty plea was conditionally entered in compliance with Criminal Rule 11(a)(2). That Rule provides:

With the [1] approval of the court and [2] consent of the prosecuting attorney, a defendant may enter a conditional plea of guilty, [3] reserving in writing the right, on appeal from the judgment, to review [4] any specified adverse ruling. If the defendant prevails on appeal, the defendant must be allowed to withdraw defendant's plea.

I.C.R. 11(a)(2).

Additionally, when considering the terms of a plea agreement, the appellate courts consider contractual terms that are implied by the plea agreement as well as those expressly provided. *State v. Jefek*, 141 Idaho 71, 73 (2003). "[W]here the language of that plea agreement is ambiguous, those ambiguities shall be resolved in favor of the defendant." *State v. Gomez*, 153 Idaho 253, 258 (2012).

1. Mr. Clark's Conditional Plea Was Entered With The Approval Of The Court

As the State acknowledges (Resp.Br., p.8), the district court initially accepted Mr. Clark's guilty plea conditionally, pending the completion and review of the Guilty Plea Advisory Form, stating:

At this point, I will *conditionally* find that the defendant'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 that I assume will be prepared for review by the sentencing judge.

(11/16/17 Tr., p.58, Ls.5-10) (emphasis added).¹

Mr. Clark prepared and filed a Guilty Plea Advisory Form indicating that his guilty plea was “a conditional guilty plea” in which he was “reserving [his] right to appeal any pre-trial issues.” (R., p.114, para.21.) The sentencing court imposed the judgment of conviction based on Mr. Clark’s guilty plea without first making explicit findings or rulings regarding the validity of Mr. Clark’s guilty plea. (*See generally* 12/14/17 Tr., p.60, L.4 – p.70, L.2.) However, there is a “presumption of regularity” that attaches to the actions of the district court. *See State v. Wolfe*, 158 Idaho 55, 61 (2015).² Because the district court’s finding of a valid guilty plea was explicitly conditioned on the subsequent review of the Guilty Plea Advisory Form, there is a presumption that the sentencing court reviewed the form and approved of entry of the conditional guilty plea indicated therein, before it imposed judgment. To hold otherwise, as urged by the State (Resp.Br., p.10), would be to hold that the district court imposed the judgment of conviction based on an *unknowing*, and therefore invalid guilty plea, and is incompatible with the presumption of regularity.

¹ Although the judge who took Mr. Clark’s guilty plea (Hon. Judge Carey) was not the same judge who later sentenced Mr. Clark, the Court Minutes – which would have been available to the sentencing judge (Hon. Judge Ryan) – detailed the fact that that guilty plea was accepted *conditionally*, pending the sentencing judge’s review of the forthcoming Guilty Plea Advisory Form. (R., p.104.)

² In *Wolfe*, the question was whether the district court had considered the defendant’s Rule 35 motion. 158 Idaho at 61. The Idaho Supreme Court held that “the issue was before the district court and this Court applies a presumption of regularity and validity to judgments.” *See Burge v. State*, 90 Idaho 473, 478 (1966); *State v. Mason*, 102 Idaho 866, 869 (1982) (holding a presumption of regularity attaches to the trial court’s actions); *State v. Mundell*, 66 Idaho 297, 304, 316 (1945) (stating that in the absence of any positive showing as to what actually occurred, a presumption must be indulged in favor of the trial court’s action, and that “[a]s a general rule the appellate court, in the absence of a showing in the record to the contrary, will indulge all reasonable presumptions in favor of the correctness of the judgment or rulings of the trial court, and will presume that the proceedings had in the progress of the cause were regular and free from error.”); *see also Parke v. Raley*, 506 U.S. 20, 29 (1992) (recognizing that there is a presumption of regularity that attaches to final judgments from state court proceedings).

2. Mr. Clark's Conditional Plea Was Entered With The Consent Of The Prosecutor

Mr. Clark also entered his conditional guilty plea with the consent of the prosecuting attorney. The same prosecutor, Canyon County Deputy Prosecuting Attorney Doug Robertson, was present at both the plea hearing (*see R.*, p.102; 11/16/17 Tr., p.58, L.20) and the sentencing hearings (*see R.*, p.106; 12/14/17 Tr., p.60, L.20). Thus, the prosecuting attorney was plainly on notice that the district court's finding of a knowing, intelligent, and voluntary guilty plea, and its acceptance of that plea, was made *expressly conditional* on the forthcoming Guilty Plea Advisory Form. (*See generally* 11/16/16Tr., p.58, Ls.4-7.) Given the significance of the Guilty Plea Advisory Form in this case, if the prosecutor believed Mr. Clark's guilty plea was *not* conditional as represented, the prosecutor had an affirmative duty to dispute or clarify the statement at that time; the prosecutor was not entitled to remain silent. *See State Peterson*, 148 Idaho 593, 597 (2009). In *Peterson*, defense counsel made a clarifying statement to the district court regarding the parties' plea agreement, and the prosecutor stood silent. *Id.* The Court explained:

Based upon the facts of this case, where both the prosecution and defense have assented to entry of the plea agreement, and where, immediately following the court's acceptance of the plea agreement, defense counsel proffers a description of the scope of the plea agreement, said description differing from what the prosecutor understands the agreement to encompass, the prosecutor has an affirmative duty to dispute the defendant's representation of the scope of the plea agreement, or to ask for further time to clarify the agreement. Otherwise silence shall be interpreted as acceptance of the stated terms.

148 Idaho at 597, 226 P.3d at 539. *See also State v. Nienburg*, 153 Idaho 491, 498 (Ct. App. 2012).

As in *Peterson*, if the prosecutor here believed that Mr. Clark's representation that he was entering a conditional guilty plea did not reflect the parties' agreement, then the prosecutor was obliged to dispute Mr. Clark's representation. As in *Peterson*, the prosecutor's silence in the

face of Mr. Clark's representation that his plea was being conditionally entered should be interpreted as acceptance, *i.e.*, as consent.

3. Mr. Clark's Reservation Of His Right To Appeal Was In Writing

Mr. Clark's reservation of his right to appeal is set forth in writing in his Guilty Plea Advisory Form. As discussed above, the district court conditioned its acceptance of Mr. Clark's guilty plea on the completion and review of his Guilty Plea Advisory Form. (11/16/17 Tr., p.58, Ls.4-16.) That form, filed in accordance with the district court's instructions, indicates in writing that Mr. Clark's plea "is a conditional guilty plea" and that he is "reserving [his] right to appeal any pre-trial issues." (R., p.114, para.21.)

4. This Court Can Determine From The Record That The Denial Of Mr. Clark's Suppression Motion Is The Adverse Ruling Reserved For Appeal

Regarding Rule 11(a)(2)'s provision for reserving any "specified adverse ruling, the Idaho Supreme Court has stated that a conditional plea agreement *should* explicitly set forth the adverse ruling(s) below which is being reserved for appeal." *State v. Manzanares*, 152 Idaho 410, 423 (2012) (emphasis added). The Court went on to state,

That said, where a conditional plea agreement itself lacks such specificity, Idaho appellate courts will review the record in an attempt to determine what the conditional plea agreement reserves for appeal.

Id. See also *State v. Anderson*, 129 Idaho 763 Idaho 764 (1997) ("This Court will sustain an appeal under Rule 11(a)(2) if we can determine the nature of the appeal and the right reserved for the appeal with specificity from the record.")

Mr. Clark acknowledges that his conditional plea did not specify that he was reserving his right to appeal the denial of his motion to suppress. (*See generally* R., p.114, para.21.) However, this Court can determine from its review of the record that the denial of the

suppression motion is the adverse ruling reserved. The suppression issue was *the* pre-trial issue litigated in this case. (*See generally*, R.) It was the motion briefed by both parties, and the only motion for which the district court issued a formal, written order containing findings, conclusions, and an analysis. (R., pp.93-100.) Most importantly, it was the only potentially dispositive motion Mr. Clark made in this case, and the district court's ruling on that motion is the only adverse ruling which, if overturned on appeal, would entitle Mr. Clark to withdraw his guilty plea. (*See generally*, R.) Moreover, to the extent it reflects the parties' understanding of the issue reserved, the Notice of Appeal designates the Fourth Amendment violation as the issue to be raised on appeal. (R., pp.138-40.)

Certainly, it would have been preferable for Mr. Clark to have followed this Court's "best practice" by explicitly stating the suppression ruling as the ruling reserved. *See id.* However, this Court can and should determine from the record that the adverse ruling Mr. Clark reserved is the denial of his motion to suppress.

B. Because The Police Reports Were Not Offered Or Admitted As Evidence At The Suppression Hearing They Cannot Provide "Substantial Evidence" In Support Of The District Court's Findings

The State and Mr. Clark disagree over whether Officer Crupper's police report can be considered as "evidence" in support of the district court's decision. (Appellant's Brief, p.16; Resp. Br., pp.16-17.) The report was never offered or admitted as evidence at the evidentiary hearing held on the suppression motion. (*See generally*, 8/14/17 Tr., p.1, L.3 – p.50, L.3.) The State submits that because the report was filed in connection with Mr. Clark's suppression motion, the district court could rely on it as evidence in support its factual findings. (Resp.Br., pp.16-17.) Mr. Clark submits that the State's position is incorrect.

Because this was a warrantless search of a residence, the State bore the heavy burden to demonstrate that the facts known to the officer at the time of that search justified entry into the residence. *See State v. Araiza*, 147 Idaho 371, 374-75 (Ct. App. 2009). In order for this Court to uphold the district court's conclusion that the State met that burden, the district court's underlying factual findings must be supported by "substantial evidence." *State v. Henage*, 143 Idaho 655, 659 (2007).

By filing the police reports along with his motion to suppress, Mr. Clark was complying with his duty under Criminal Rule 12(c), to "describe the evidence sought to be suppressed and the legal basis for its suppression sufficiently to give the opposing party reasonable notice of the issues." However, neither he nor the State offered the reports as "evidence" at the suppression hearing, and neither of the police reports was admitted as evidence by the district court. (*See generally*, 8/14/17 Tr., p.1, L.3 – p.50, L.3.)

Because the police reports were not offered or admitted as evidence, they cannot provide "substantial evidence" to support the district court's findings. *See Loveland v. State*, 141 Idaho 933, 936 (Ct. App. 2005) ("Unless introduced into evidence, pleadings [including sworn affidavits attached thereto] are not evidence"); *Singh v. INS*, 213 F.3d 1050, 1054 n.8 (9th Cir. 2000) ("[S]tatements in motions are not evidence and are therefore not entitled to evidentiary weight.")

In any event, even if the reports had been admitted by the district court, and Officer Crupper was aware of a prior contact with the residence on May 2, the facts in this case are still insufficient, as a matter of law, to support a reasonable belief that a person inside the home was in need of emergency medical assistance or in imminent danger of harm. For the reasons set forth in the Appellant's Brief, Officer Crupper's act of opening Mr. Clark's garage door, and

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.

CONCLUSION

For the reasons set forth above and in his Appellant's Brief, Mr. Clark respectfully asks this Court to reverse the district court's denial of his suppression motion, to vacate his judgment of conviction, and to remand the case to the district court for further proceedings.

DATED this 25th day of February, 2019.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of February, 2019, I caused a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, to be served as follows:

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DEPUTY ATTORNEY GENERAL
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/s/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

KAC/eas