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State v. Smith Respondent's Brief Dckt. 43092

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	No. 43092
Plaintiff-Respondent,)	
)	Ada Co. Case No.
vs.)	CR-MD-2013-17334
)	
ANTHONY KYLE BLAINE SMITH,)	
)	
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 GERALD F. SCHROEDER
District Judge

LAWRENCE G. WASDEN
Attorney General
State of Idaho

LANCE L. FUISTING
Deputy Ada County Public Defender
200 W. Front Street, Suite 1107
Boise, Idaho 83702

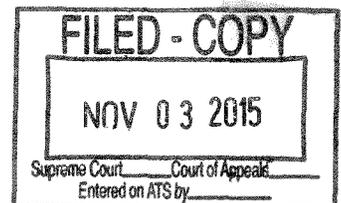
PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

RUSSELL J. SPENCER
Deputy Attorney General
Criminal Law Division
P. O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

ATTORNEYS FOR
PLAINTIFF-RESPONDENT

ATTORNEY FOR
DEFENDANT-APPELLANT

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STATEMENT OF THE CASE

Nature Of The Case

Anthony Kyle Blaine Smith appeals from the district court's order affirming the magistrate court's order denying his suppression motion.

Statement Of The Facts And Course Of The Proceedings

The district court adopted the following factual background, found by the magistrate court and largely undisputed, for this case:

On December 10, 2013, Boise City Police Officers responded to a report of a runaway at a shed located on the property of a Boise residence. The dispatch information regarding the report related that a 20 year old male (Smith) lived in the shed on the property and was harboring a 15 year old runaway with whom Smith had a valid No Contact Order. Officers contacted Smith at the residence/shed (hereinafter shed) and Smith allowed them access to the shed; however the Officers did not find the juvenile runaway.

Later that day, Officers received a second report from dispatch that a juvenile probation officer provided information that the female juvenile was at the shed and that Smith may have hidden her in a hole beneath the floorboards. Upon the officers['] return to the property, they heard a "commotion inside (the shed) as if furniture was being moved." The officers announced and, after a "minute" delay, Smith opened the door of the shed and exited. When confronted with the information regarding the juvenile's presence on the property, Smith stated to the officers "Yeah, she's here." After some discussion related to pulling up the floorboards of the shed that concealed the hole, officers entered the shed, secured the juvenile, and arrested Smith. Officers did not have a warrant permitting them to enter the shed. During a search of Smith incident to his arrest, officers located what was ultimately determined to be Marijuana, a Schedule I Controlled Substance.

(R., pp.146-47 (brackets original) (punctuation standardized).)

The state charged Smith with violation of a no-contact order, harboring a runaway, and possession of marijuana. (R., pp.7-9.) Smith filed a motion to suppress the evidence, arguing that the warrantless search of his shed was unlawful. (R., pp.36-37, 42-47, 60-66.) The magistrate court denied Smith's suppression motion. (R., pp.79-84.) Smith thereafter entered a conditional guilty plea to the charges, reserving the right to appeal from the magistrate court's order denying his suppression motion. (R., p.86.) The magistrate court entered judgment against Smith and placed him on probation for a period of two years. (R., p.87.)

Smith appealed to the district court (R., pp.92-94), and the district court affirmed the order of the magistrate court (R., pp.146-55). Smith filed a timely notice of appeal. (R., pp.165-66.)

ISSUE

Smith's statement of the issues on appeal is found at page 4 of his Appellant's brief and is lengthy. The state rephrases the issue as:

Has Smith failed to show error in the district court's intermediate appellate decision affirming the magistrate court's order denying his suppression motion?

ARGUMENT

Smith Has Failed To Show Error In The District Court's Appellate Decision Affirming The Magistrate Court's Order Denying His Suppression Motion

A. Introduction

While searching for a 15-year-old runaway girl, with information that she was being harbored by Smith, a 20-year-old male with a standing no contact order, and was hidden beneath the floorboards of Smith's shed, officers entered the shed without a warrant to recover the minor girl. (R., pp.146-47.) Smith challenged the warrantless entry in a suppression motion filed before the magistrate court. (R., pp.36-37, 42-47, 60-66.) Determining that the warrant exceptions of both exigency and consent justified the warrantless entry, the magistrate court denied Smith's suppression motion. (R., pp.79-83.) Smith appealed to the district court and the court upheld the magistrate's order. (R., pp.146-55.)

Arguing that the evidence found on Smith's person during a search incident to his arrest was fruit of an unlawful entry into his dwelling, Smith contends that the district court erred by upholding the magistrate court's order denying his suppression motion. (Appellant's brief, pp.5-8.) Application of the correct legal standards to the facts found below, however, shows no error in the district court's intermediate appellate decision. The district court's decision should be affirmed.

B. Standard Of Review

On review of a decision rendered by a district court in its intermediate appellate capacity, the reviewing court "directly review[s] the district court's decision." State v. DeWitt, 145 Idaho 709, 711, 184 P.3d 215, 217 (Ct. App. 2008). 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. Page, 140 Idaho 841, 843, 103 P.3d 454, 456 (2004).

C. The Officers' Warrantless Entry Into Smith's Shed Was Justified Under An Exception To The Warrant Requirement

The Fourth Amendment of the United States Constitution 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. An officer's warrantless entry into a residence is presumptively unreasonable unless it falls within a well-recognized exception to the warrant requirement. State v. Barrett, 138 Idaho 290, 293, 62 P.3d 214, 218 (Ct. App. 2003); State v. Pearson-Anderson, 136 Idaho 847, 849, 41 P.3d 275, 277 (Ct. App. 2001). The magistrate court correctly determined, and the district court correctly affirmed, that the warrant exceptions of both exigency and consent justified the warrantless entry under the totality of the circumstances of this case.

1. The Warrant Exception Of Exigency Justified The Officers' Warrantless Entry Into Smith's Shed

One exception to the warrant requirement occurs when the "exigencies of the situation" 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, 393-394 (1978). Under this exigent circumstances exception, "a warrantless intrusion may be justified by hot pursuit of a fleeing felon, or imminent destruction of

evidence, or the need to prevent a suspect's escape, or the risk of danger to the police or to other persons inside or outside the dwelling." Minnesota v. Olson, 495 U.S. 91, 100 (1990) (internal citation and quotation omitted). A court evaluating a claim that exigent circumstances justified a warrantless home entry should determine whether the facts known to the police, and the reasonable inferences drawn from those facts, would "warrant a man of reasonable caution in the belief" that the action taken was appropriate. Pearson-Anderson, 136 Idaho at 850, 41 P.3d at 278.

The reasonableness of the belief that an exigency exists is determined by the totality of the circumstances known to the police at the time of the entry. State v. Campbell, 104 Idaho 705, 711, 662 P.2d 1149, 1155 (Ct. App. 1983). While courts must scrutinize a claim of emergency to ensure that it is not a mere pretext for entries and searches that otherwise would require a warrant, courts should avoid second-guessing police decisions made in legitimate belief that life may very well be at stake. Pearson-Anderson, 136 Idaho at 850, 41 P.3d at 278. "The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving." Graham v. Connor, 490 U.S. 386, 396-97 (1989). Therefore, reasonableness "must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." Id.

The warrant exception of exigency clearly applies in this case: Smith had hidden a 15-year-old minor, who had run away from home and with whom Smith had a valid no contact order, underneath the floorboards of his shed. (R., p.150.) On appeal Smith disagrees with this assessment, contending that the minor child whom he had hidden

beneath his floorboards was in no immediate danger. (Appellant's brief, pp.5-7.) But as noted by the district court, "[n]o child who has run away from her parent's supervision and who has taken refuge with another juvenile in the latter's home can be considered 'safe;' that such action is fraught with danger is self-evident and requires no elaboration." (R., p.150 (quoting In the Interest of Moten, 242 So.2d 849, 856 (La. Ct. App. 1970))). The risk of danger to the child is objectively greater in such a case as this where officers had credible information that the runaway minor was at least hidden, if not trapped, in a hole beneath the floorboards of Smith's shed—especially where Smith was an adult male with a standing no contact order. (R., p.151, n.4.) The district court correctly upheld the magistrate's conclusion that the exigency exception to the warrant requirement applied under the facts of this case.

2. The Officers' Warrantless Entry Into Smith's Shed Was Also Justified By Smith's Voluntary Consent

Another clearly recognized exception to the warrant requirement is consent from an individual who has actual or apparent authority to submit to the search. Schneckloth v. Bustamonte, 412 U.S. 218, 219 (1973) (citations omitted); State v. Brauch, 133 Idaho 215, 219, 984 P.2d 703, 707 (1999). The voluntariness of an individual's consent is a question of fact to be determined based upon the totality of the circumstances. Schneckloth, 412 U.S. at 227.

The voluntary consent exception to the warrant requirement also applies to this case. On appeal Smith challenges the district court's upholding of the magistrate's "conclusion" that Smith voluntarily consented to the police's entry into his shed. (Appellant's brief, pp.7-8.) But the voluntariness of consent is not a question of law; it is

a question of fact to be determined by all the surrounding circumstances. State v. Hansen, 138 Idaho 791, 796, 69 P.3d 1052, 1057 (2003). Smith has failed to show that the magistrate's factual finding that he voluntarily consented is clearly erroneous.

Smith asserts that his consent was coerced by law enforcement making "a clear threat" that "somebody was going to be bitten by a dog" if they had to call one in. (Appellant's brief, p.8.) Even assuming, *arguendo*, that the officers' comments could be taken as "a clear threat," the district court recognized that this "comment was one of a number of factors the magistrate could consider on the question of voluntariness." (R., p.154.) But it was only one factor.

Additional circumstances properly considered by the magistrate court in this case included the following facts: Smith had granted consent for the officers to search his shed earlier in the day. (R., p.82.) The officers were unable to locate the runaway minor during that initial encounter. (Id.) However, when they returned, they were armed with reliable information that Smith was hiding the girl in a hole under the floorboards of his shed. (Id.) They confronted Smith with this information and he admitted that he was hiding the juvenile. (R., p.80.) The officers requested Smith's assistance, asking him to tell her to come out, and Smith said "okay." (R., p.82.) Smith then explained to the officers how to remove the floorboards to recover the young girl and helped the officers do it. (R., pp.82-83.) The totality of these circumstances supports the magistrate's finding that Smith voluntarily consented. The district court correctly upheld the magistrate's conclusion that the consent exception to the warrant requirement applied under the facts of this case.

3. There Is No Basis To Suppress The Evidence Discovered During The Search Incident To Smith's Arrest

Finally, Smith argues that the marijuana found during a search of his person incident to his arrest must be suppressed because, he asserts, the entry into his shed was unlawful. (Appellant's brief, p.8.) Smith's argument fails because, as shown above, the entry into Smith's shed was supported by both the exigency and consent exceptions to the warrant requirement. The district court correctly upheld the order of the magistrate court. The appellate decision of the district court should be affirmed.

CONCLUSION

The state respectfully requests that this Court affirm the district court's intermediate appellate decision, affirming the magistrate court's order denying Smith's motion to suppress.

DATED this 3rd day of November, 2015.



RUSSELL J. SPENCER
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 3rd day of November, 2015, served two true and correct copies of the attached RESPONDENT'S BRIEF by placing the copies in the United States mail, postage prepaid, addressed to:

LANCE L. FUISTING
DEPUTY ADA COUNTY PUBLIC DEFENDER
200 W. FRONT STREET, SUITE 1107
BOISE, ID 83702



RUSSELL J. SPENCER
Deputy Attorney General

RJS/dd