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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
) No. 46229-2018
 Plaintiff-Appellant,)
) Elmore County Case No.
 v.) CR-2017-2274
)
 COLETON MYERS SESSIONS,)
)
 Defendant-Respondent.)
 _____)

REPLY BRIEF OF APPELLANT

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

HONORABLE NANCY A. BASKIN
District Judge

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ARGUMENT

The District Court Erred By Applying An Incorrect Legal Standard To The Question Of Whether The Exigent Circumstances Warrant Exception Applied

The district court held that, for the exigent circumstances exception to apply, officers had to have “more” than probable cause to believe tainted marijuana was being held, distributed and used by Sessions, such as “hearing a person moaning or in distress, observing ... a non-responsive person, being told that someone was complaining of a symptom of paralysis, seeing someone smoking marijuana believed to be tainted, etc.” (R., p. 77 (cited Appellant’s brief, p. 2).) The exigent circumstances exception “applies when ‘the exigencies of the situation’ make the needs of law enforcement so compelling that a warrantless search is objectively reasonable under the Fourth Amendment.” Kentucky v. King, 563 U.S. 452, 460 (2011) (internal quotations and brackets omitted). Making sure that the tainted marijuana paralyzing its users was not further distributed or used was a compelling need without evidence that there were more victims. (Appellant’s brief, pp., 4-7.)

On appeal Sessions mostly ignores or misrepresents the state’s arguments. First, he claims that because the district court cited and quoted exigent circumstances cases, the court necessarily applied a correct legal standard. (Respondent’s brief, pp. 8-10.) However, that would be true only if the cited cases supported the district court’s analysis. There is simply nothing in Brigham City v. Stuart, 547 U.S. 398 (2006), or State v. Smith, 159 Idaho 865, 367 P.3d 260 (Ct. App. 2016), that supports the district court’s requirement of evidence of persons currently in distress or currently consuming the tainted marijuana. Neither of those cases, for example, would prevent officers from acting to prevent harm, or limit exigent circumstances to addressing harm that is in progress. By requiring that the

harm be underway (at minimum the tainted marijuana is in fact being consumed at that moment), rather than allowing officers to prevent the *threat* of that harm (by entering and seizing the marijuana before it can be used or distributed), the district court applied an incorrect legal standard.

The district court is not inoculated against reversal by merely *articulating* the correct legal standard. “Constitutional issues are purely questions of law over which this Court exercises free review.” State v. Forbes, 152 Idaho 849, 851, 275 P.3d 864, 866 (2012). Thus, it is *this* Court’s application of the legal standards to the facts that is controlling of this appeal.

Second, Sessions addresses the state’s argument regarding the district court’s finding that there was sufficient exigency to justify securing the home while they sought a warrant only “[t]o the extent the State is attempting to reassert the inevitable discovery doctrine.” (Respondent’s brief, p. 11.¹) The state did not make an inevitable discovery argument to any extent, so Sessions’ countering of the nonexistent argument is irrelevant. (Appellant’s brief, p. 6.) The district court concluded that the *threat* of harm could be addressed by securing the premises and then securing a search warrant. However, if the *threat* of injury justified securing the premises, that is the epitome of exigent circumstances. Indeed, once exigent circumstances justify securing the premises, as the district court here found they did, the evidence thus found is properly seized in plain view

¹ Sessions also argues that the district court’s finding that exigent circumstances justified the police entering and securing the residence, but not searching for marijuana therein until a warrant had been obtained, was erroneous and *dicta*. (Respondent’s brief, p. 9, n.2.) What is telling is that Sessions tacitly admits the district court’s finding that exigent circumstances justified entry to secure the residence is incompatible with its finding that there were no exigent circumstances.

and is not suppressible. King, 563 U.S. at 462-63 (evidence properly seized after home entry justified by exigent circumstances of preventing destruction of evidence). The district court’s “seize the premises then secure a warrant” standard is incompatible with this precedent allowing seizure of evidence once exigent circumstances justified the home entry.

Third, Sessions argues that the state is advocating an exigency standard whereby “warrantless entries would be justified whenever officers had probable cause to believe that an individual possessed any drug (or any thing) merely *capable* of causing harm, without any reason to believe the harm was imminent.” (Respondent’s brief, p. 10.) The state is not advocating any such a standard. Although the use of illegal drugs causes harm, especially the prolonged use, there is nothing exigent about the potential harms of addiction, cognition loss, or other general deleterious effects of abusing untainted drugs. Ordinarily a single use of marijuana does not cause imminent and serious injury. However, a single use of the tainted marijuana in this case would cause imminent and serious injury—paralysis. Thus, the only way to prevent imminent serious injury was to seize the marijuana before it could be distributed or used. Sessions’ arguments, aimed at strawmen, do not show a lack of error by the district court.

Sessions does make one legitimate argument: “Even assuming the marijuana was actually tainted so that anyone who used it might suffer adverse effects, it could only cause harm if actually ingested.” (Appellant’s brief, p. 10.) This is the crux of the application of the exigent circumstances exception in this case. According to the district court, circumstances were exigent only if the marijuana had been actually ingested or was in the current process of being actually ingested. No threat of *future* ingestion or distribution

taking the tainted marijuana beyond the police's ability to prevent harm would qualify as an exigency.

The exigent circumstances exception is not so limited, however. Requiring the injury to have already happened or to be in the process of happening was contrary to the applicable standard, which allows police to act on the *threat* of imminent injury. See Brigham City, 547 U.S. at 403 (“One exigency obviating the requirement of a warrant is the need to assist persons who are seriously injured *or threatened with* such injury.” (emphasis added)); Mincey v. Arizona, 437 U.S. 385, 392 (1978) (“The need to protect or preserve life or *avoid serious injury* is justification for what would be otherwise illegal absent an exigency or emergency.” (emphasis added, internal quotations omitted)); State v. Araiza, 147 Idaho 371, 375, 209 P.3d 668, 672 (Ct. App. 2009) (“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*” (emphasis added)).

An example of the application of this concept is found in State v. Smith, 144 Idaho 482, 163 P.3d 1194 (2007). In that case the fire department was dispatched to an old house. Id. at 484, 163 P.3d at 1196. At the scene they found people who had just extinguished a flaming couch in the driveway. Id. Although “there were no visible flames or smoke coming from the house,” a soot trail and other signs indicated the couch fire had started in an apartment in the house. Id. Firefighters and police officers entered the apartment to ascertain if there was an ongoing risk of fire. Id. They found no fire, but did find a marijuana-grow operation. Id. at 484-85, 163 P.3d at 1196-97.

This Court rejected the argument that entry into the apartment was not justified by the exigent circumstances exception. The Court noted that entry into a burning building is

justified by exigency. Id. at 486, 163 P.3d at 1198. “The exigency in this case was *a threat of fire* rather than an actual fire, but the principle is the same.” Id. (emphasis added). A fire can smolder “in walls or floors or under carpets for hours or days after something else has been on fire in an apartment,” which created the exigency of determining if there was such a risk. Id.

In Smith a threat of fire that could break out soon or maybe not for days was an exigency justifying immediate entry. The mere possibility that something bad would not happen in the time to secure a warrant did not disprove the exigency. Likewise in this case, the absence of evidence there were paralysis victims in the house did not disprove the exigency. The exigency of preventing distribution or use of the tainted marijuana made the needs of law enforcement so compelling that a warrantless search was objectively reasonable under the Fourth Amendment.

CONCLUSION

The state respectfully requests this Court to reverse or to vacate, and to remand.

DATED this 18th day of April, 2019.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 18th day of April, 2019, served a true and correct copy of the foregoing REPLY BRIEF OF APPELLANT to the attorney listed below by means of iCourt File and Serve:

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KKJ/dd