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IN THE SUPREME COURT OF THE STATE OF IDAHO

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

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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STATEMENT OF THE CASE

Nature Of The Case

The state appeals from the district court's order suppressing evidence.

Statement Of The Facts And Course Of The Proceedings

The state charged Coleton Myers Sessions with manufacturing marijuana, delivery of marijuana, and possession of drug paraphernalia. (R., pp. 17-18.) He moved to suppress evidence based on a "police officer's warrantless entry" into his home. (R., pp. 23-31.) The state responded, acknowledging the warrantless entry, but asserting the warrantless entry was justified by exigent circumstances. (R., pp. 33-40.) The district court found the following facts relevant to the motion:

Sgt. Smith was called to a scene where a man, Stephen Miller, was "on a lawn unable to move and requesting medical assistance." (R., p. 68.) Miller was able to move only his head, the rest of his body was "paralyzed." (Id.) Miller stated that "he had consumed alcohol and marijuana prior to the paralysis." (Id.) An ambulance took Miller to the hospital. (Id.)

At the hospital officers spoke further with Miller, who told them he had purchased the marijuana from Sessions and gave them directions to the house. (Id.) Suspecting that the marijuana may have been laced or contaminated and was the cause of the paralysis, Sgt. Smith inquired of other officers if they were aware of other incidents of paralysis. "Sgt. Smith testified he was advised a couple of people had ended up in the hospital." (Id.¹)

¹ Sgt. Smith testified that "a credible law enforcement source" had informed him that in the week to two-weeks prior to Mr. Miller's incident there had been other incidents of paralysis following consumption of marijuana associated with Sessions' house. (Tr., p. 47, Ls. 6-23.)

Sgt. Smith and other officers went to Sessions' house. (Id.) They knocked and a woman answered the door. (R., p. 69.) Officers could detect "a strong odor of fresh marijuana." (Id.²) Concerned that the marijuana Sessions was selling was tainted or adulterated and that such tainting or adulteration could endanger people, the officers entered. (R., pp. 69-70.) The court noted that the officers did not have any direct evidence that anyone was currently in distress at the house at the time officers entered. (R., p. 70.)

In concluding that the entry was not justified by exigent circumstances, the district court noted that officers had "some information" that "a couple of individuals" had been treated for paralysis officers believed was the result of "tainted marijuana being used or sold by Mr. Sessions." (R., pp. 74-75.) The court also concluded that officers had probable cause to believe there was marijuana in the house. (R., p. 75.) The district court concluded that there were no exigent circumstances because officers lacked "a report of someone in distress," did not "observ[e] a person in medical distress," were not "told there was a person in medical distress" and did not "hear[] anyone in distress." (R., p. 76.) "The officers needed something more: hearing a person moaning or in distress, observing from the window or the open door 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.) The district court granted the motion to suppress. (R., p. 80.)

The state filed a timely notice of appeal. (R., pp. 82-84.)

² One officer testified that the odor was "overwhelmingly fresh marijuana," while the other testified he smelled fresh, burnt and burning marijuana. (Tr., p. 19, Ls. 9-19; p. 20, Ls. 18-22; p. 31, Ls. 11-20.) The district court determined this testimony was "conflicting." (R., p. 75.)

ISSUE

Did the district court err by applying an incorrect legal standard to the question of whether the exigent circumstances warrant exception applied?

ARGUMENT

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

A. Introduction

The state argued that the threat of immediate injury may create exigent circumstances, and that persons “were in potential danger of immediate harm” from using tainted marijuana. (R., p. 35 (underlining omitted).) The district court, however, limited its exigency analysis to whether officers had reason to believe that there was someone in the residence who had already been injured by the tainted marijuana. (R., pp. 72-80.) The district court erred by considering only the exigency of *mitigating* harm already caused and failing to consider the exigency of *preventing* potential future harm. That Sessions or someone in his home could distribute or use the tainted marijuana in the time it would take to get a search warrant created an exigency from the threat of imminent injury, and therefore merited the immediate action of law enforcement. Because exigent circumstances existed, the district court erred in granting suppression. By applying an incorrect exigent circumstances standard that addressed only past harm, without considering the possibility of preventing harm, the district court erred.

B. Standard Of Review

The standard of review of a district court order granting or denying a suppression motion is bifurcated: factual findings are accepted unless clearly erroneous, but the Court freely reviews the application of constitutional principles to the facts found. State v. Purdum, 147 Idaho 206, 207, 207 P.3d 182, 183 (2009). “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).

C. The District Court Applied An Incorrect Standard Where Exigency Exists Only To Address Harm That Has Already Happened Where The Correct Standard Includes Preventing Possible Future Harms

It is well settled that home entries necessitated by “exigent circumstances” do not offend the warrant requirement. Michigan v. Tyler, 436 U.S. 499, 509 (1978); State v. Curl, 125 Idaho 224, 225, 869 P.2d 224, 225 (1993); State v. Sailas, 129 Idaho 432, 434, 925 P.2d 1131, 1133 (Ct. App. 1996). “The test for application of this warrant exception is whether the facts as known to the [officer] at the time of the entry, together with reasonable inferences, would warrant a reasonable belief that an exigency justified the intrusion.” State v. Bunting, 142 Idaho 908, 912, 136 P.3d 379, 383 (Ct. App. 2006) (citing State v. Barrett, 138 Idaho 290, 293, 62 P.3d 214, 217 (Ct. App. 2003)); accord State v. Araiza, 147 Idaho 371, 374-75, 209 P.3d 668, 671-72 (Ct. App. 2009); State v. Reynolds, 146 Idaho 466, 470, 197 P.3d 327, 331 (Ct. App. 2008). “Such exigencies” include “assist[ing] persons who are seriously injured *or are threatened with imminent injury*.” Riley v. California, ___ U.S. ___, ___, 134 S. Ct. 2473, 2494 (2014) (emphasis added). Such a threat of imminent injury can arise from inherently dangerous substances, such as explosives. Id. (citing United States v. Chadwick, 433 U.S. 1, 15 n.9 (1977)).

In this case the officers had probable cause to believe that Sessions had marijuana in his home and reason to believe the marijuana was tainted, deliberately or inadvertently, with another substance that was causing at least temporary paralysis in its users. Thus, the marijuana was an inherently dangerous substance that threatened its potential users with

imminent injury. The officers' entry to seize the dangerous substance and prevent that injury was therefore justified by exigent circumstances.

The district court apparently believed that if officers had reason to believe that someone was already under the paralytic effects of the tainted marijuana the entry would have been justified by exigent circumstances. This applies only part of the test, however (assisting the injured), without recognizing that preventing the injury in the first place is also an exigent circumstance. This is a little like reasoning that the officers would not face exigent circumstances from explosives until the explosives detonate and injure people. Because the tainted marijuana was inherently dangerous to health, the officers faced an exigency that justified immediate action.

The district court implicitly found such an exigency. The district court endorsed the practice under these circumstances of securing the residence and then seeking a warrant. (R., p. 79.) Such would still have involved a warrantless entry in order to address the exigency. The district court's determination that officers were constitutionally justified in a warrantless entry to secure the premises to prevent harm should have led to denial of the motion to suppress.

The district court applied an incorrect legal theory when it failed to recognize that preventing future injury, as opposed to merely addressing injury that has already occurred, is within the scope of the exigent circumstances exception. The district court's decision should be reversed. Alternatively, the district court's decision should be vacated and this matter remanded for application of the correct legal standard.

CONCLUSION

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

DATED this 17th day of December, 2018.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 17th day of December, 2018, served a true and correct copy of the foregoing BRIEF OF APPELLANT to the attorney listed below by means of iCourt File and Serve:

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KKJ/dd