

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARCO ANTONIO TORRES

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

Docket No. 83216

Appeal From A Judgment of Conviction (Guilty Plea)
Fifth Judicial District Court
The Honorable Kimberly Wanker, District Judge
District Court No. CR20-0092

APPELLANT'S REPLY BRIEF

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Electronically Filed
Dec 27 2021 02:42 p.m.
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I. INTRODUCTION

Marco Torres pleaded guilty to, and was convicted of, one count of second degree murder and sentenced to life in prison with the possibility of parole after ten years has been served. Under the terms of the guilty plea agreement, Marco preserved his right to appeal the denial of his motion to suppress pursuant to NRS 174.035(3). The District Court abused its discretion when it denied the motion to suppress and made clearly erroneous findings of fact. Each of those issues was set forth in detail in the Opening Brief. The State argues in response that no constitutional violations occurred, and even if they did the exclusionary rule would not apply because the evidence would have been inevitably discovered. The State is wrong. Given the blatant errors that were made in the district court proceedings, reversal is warranted.

II. REPLY TO THE STATE'S STATEMENT OF THE FACTS

The facts are adequately set forth in the Opening Brief and Answering Brief and are not repeated here.

III. REPLY TO THE STATE'S ARGUMENT

A. Exigent Circumstances Were Not Present When Deputies Arrived at the House

The State argued that this case is analogous to *Michigan v. Fisher*, 558 U.S. 45, 130 S. Ct. 546 (2009). However, in *Fisher*, police observed an injury on the defendant and, even though the injury was minor, that was enough to form an objectively reasonable basis to believe that medical assistance was necessary, and an exigent circumstance existed. *Id.* at 49. That is not the case here. In fact, the opposite is true: deputies searched for any evidence of injury, including blood on the ground, but did not find any. 3 App. 1064. They had no reason to believe anyone was injured inside the house.

The State also argues that if there is a reasonable chance of a person needing assistance inside a residence and police are unable to establish contact, there is a sufficient objectively reasonable basis to believe that that person needs immediate help, and they cite to *Hannon v. State*, 125 Nev. 148, 207 P.3d 344 (2009) as their authority. *Hannon* makes no such holding. In that case the Court reviewed the totality of the circumstances and concluded that exigent circumstances here not present. *Id.* The Court did not address any hypotheticals that would have created an exigent circumstance if there was an unidentified third party that police could not make contact with.

There were no exigent circumstances present when deputies entered the house. That entry was a violation of Marco's constitutional rights, and the District Court abused its discretion when it erroneously denied Marco's motion to suppress.

B. Inevitable Discovery Does Not Apply Because No Lawfully Obtained Information was Used to Obtain the Search Warrant

In their Answering Brief, the State argues that deputies would have inevitably discovered Jonathan Piper because a search warrant for the residence was obtained. They cite to *Murray v. United States*, 487 U.S. 533, 108 S. Ct. 2529 (1988) and *Segura v. United States*, 468 U.S. 796, 104 S. Ct. 3380 (1984) for support. However, neither of those cases is applicable here.

In *Murray*, federal agents were conducting surveillance on Murray and other petitioners suspected of illegal drug activities. *Murray* at 535-536. Agents observed vehicles driving into and out of a warehouse. *Id.* Some of the vehicles were stopped, searched, and found to contain marijuana. *Id.* After receiving this information, some agents forced unlawful entry into the warehouse where they observed numerous burlap-wrapped bales. *Id.* When they applied for a search warrant, the unlawful entry was omitted. *Id.* The Court held that if the information in the search warrant was wholly independent of the unlawful entry than the pretrial motion to suppress was properly denied. *Id.* at 543.

In *Segura*, police obtained information that Segura and other petitioners were trafficking cocaine from their apartment. *Segura* at 799-801. Through surveillance, detentions, searches, and interrogations, police were authorized to obtain a search warrant for the apartment. *Id.* However, they were informed that the warrant could not be obtained until the following day and instructed to secure the apartment to prevent the destruction of evidence. *Id.* Segura was detained in the lobby of the apartment building, and police then knocked on the door of the apartment and made entry without permission. *Id.* They conducted a limited security check and observed evidence of narcotics trafficking in plain view. The warrant was finally issued about 19 hours later, and a subsequent search revealed more evidence of the drug trafficking. *Id.* The exclusionary rule did not apply because the information in the search warrant came from sources wholly unconnected to the unlawful entry. *Id.* at 815.

The State's arguments pursuant to *Murray* and *Segura* hold no weight because *all* the evidence and probable cause used for the search warrant was illegally obtained due to the flagrant Fourth Amendment Violation. *Murray* and *Segura* have one essential element in common: law enforcement had enough *legally* obtained evidence to get a warrant, from other, independent sources, so the contraband found during their warrantless search would have been inevitably discovered. That is not the case here. All the evidence and information used for the warrant was obtained

through the unlawful entry into the house. There were no independent sources. Without the illegal entry, there would not have been sufficient evidence or probable cause for the issuance of a search warrant.

The State also argues that Jonathan Piper would have been discovered regardless of the warrantless entry because the police would have eventually gained entry to the residence no matter what. There is no rule, there is no law, that allows law enforcement to remain on private property until they gain entry to a house, especially when there is no exigent circumstance, no warrant, no probable cause, and no consent, as was the case here. Inevitable discovery is not applicable to this case.

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IV. CONCLUSION

Marco Torres respectfully requests for the reasons stated herein, and in his Opening Brief, that his Court enter a finding that the District Court wrongfully denied his motion to suppress, and remand this matter back to District Court where his plea of guilty shall be withdrawn pursuant to NRS 174.035(3).

DATED this 27th day of December, 2021.




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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief does comply with the formatting requirements of NRAP 32(a)(4).
2. I hereby certify that this brief does comply with the typeface requirements of NRAP 32 (a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point font of the Times New Roman style.

3. I hereby certify that this brief does comply with the word limitation requirement of NRAP 21(a)(7)(A)(ii). The relevant portions of the brief are 1028 words.
4. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complied with all applicable Nevada Rules of Appellate Procedure, in particular, NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by reference to the page of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanction in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 27th day of December, 2021.



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CERTIFICATE OF SERVICE

The undersigned does hereby certify that on the 27th day of December, 2021,
a copy of the foregoing Reply Brief was served as follows:

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