

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 OPENING BRIEF

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I. JURISDICTIONAL STATEMENT

This is an appeal from a judgment of conviction, based on a guilty plea, of one count of second degree murder. 4 App. 1180. The judgment of conviction was filed on June 25, 2021. Id. A timely notice of appeal was filed on July 6, 2021. 4 App. 1235. This Court has jurisdiction under NRS 177.015.

II. ROUTING STATEMENT

This is an appeal from a judgment of conviction based on a guilty plea for second degree murder with a sentence of life in prison with the possibility of parole. This matter should presumptively be assigned to the Court of Appeals under NRAP 17(b)(1), “Appeals from a judgment of conviction based on a plea of guilty, guilty but mentally ill, or nolo contendere (Alford).”

III. STATEMENT OF THE ISSUES

Whether the District Court committed error when it denied the Appellant’s motion to suppress.

IV. STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On April 8, 2020, the State charged Marco Antonio Torres by way of criminal complaint with First Degree Murder of a Vulnerable Person; Open Murder; Invasion of the Home (Room); Battery by Strangulation; Abuse of a Vulnerable Person; Interception, Interruption or Delay of Message Sent Over Telephone Line; Injury to Other Property; and Habitual Criminal. 1 App. 1-3. A preliminary hearing was held on August 6, 2020, during which the State moved to amend the complaint and add a count of Possession of Dangerous Weapon. 1 App. 294. Marco was bound over to Department 1 of the Fifth Judicial District Court on all charges, and the State filed a second amended criminal complaint the same day. 1 App. 305. 1 App. 310.

After arraignment in the district court, Marco filed a writ of habeas of corpus and a motion to dismiss, which was treated by the Court as a motion to suppress. 1 App. 320, 1 App. 330. Arguments on these were heard on January 27, 2021. 2 App. 681. The Court asked for supplemental briefing on the motion to dismiss. 2 App. 711. Argument on the supplemental briefing and a motion to suppress statements was heard on March 25, 2021. 4 App. 1069. Issues related to those motions are discussed below. Marco changed his plea to guilty to one count of second degree murder on April 29, 2021, but preserved his right to appeal the denial of his motion to suppress pursuant to NRS 174.035(3). 4 App. 1133. The district court sentenced

Marco to life in prison with parole eligibility beginning after ten years have been served. 4 App. 1180

V. STATEMENT OF FACTS

Just after 3:00am on April 4, 2020, the Nye County Sheriff's Office (hereinafter "NCSO") received a 911 call. 1 App. 100. The Operator, Stephanie Rucker, could tell that there were two male voices, and one stated that they needed help. 1 App. 101. There was a lot of static and distortion in the call, making it hard to understand the caller. 1 App. 101. Soon, no one answered Ms. Rucker's questions, and the line was disconnected. 1 App. 101. Ms. Rucker followed protocols and was able to ascertain the address of the call. 1 App. 105. NSCO deputies responded to 835 South Linda Street in Pahrump, Nevada. 1 App. 105-106. They did not know the name of any of the individuals on the phone call, nor did they know how many people were present at the address. 1 App. 126.

Deputy Gideon and Deputy Williams arrived on scene first, at approximately 3:15am, with Deputy Stone right behind them. 1 App. 121. The deputies observed two manufactured homes, one in front of the other. 1 App. 111. They contacted the occupant of the front residence, who directed them to the rear residence. 1 App. 111. Deputy Gideon observed the rear residence to be trashed. 1 App. 111. The front wooden patio was broken, and there was trash littered all around the property that

did not seem to belong there, including a white lounge chair. 1 App. 127-128. Deputy Gideon positioned himself at the southeast corner of the residence. 1 App. 121. From there, he could hear footsteps from someone walking inside the house for about two seconds but could not see who it was. 1 App. 122-123.

After assessing the scene and the situation, all three Deputies confer about what to do, and the following conversation takes place:

Deputy Williams: “We don’t have enough to go inside.”

Deputy Stone: “Maybe, if there was an altercation.”

Deputy Williams: “But we can’t prove that, though.”

3 App. 1064. Two minutes later Deputy Gideon reiterates, “I don’t think we have exigent circumstances to go in there. Definitely don’t have exigent circumstances now. It’s quiet.” 3 App. 1064. The Deputies’ superior, Sgt. Fernandes, arrives on scene and confirms “I don’t think we do” when asked if there are exigent circumstances to enter the house. 3 App. 1064. Over the course of the next fifteen minutes, Sgt. Fernandes changes her mind back and forth about whether exigent circumstances exist. 3 App. 1064. At one point, she asks if there is any blood on the ground. 3 App. 1064. Deputy Stone confirms that he was looking for blood but did not find any. 3 App. 1065. Sgt. Fernandes then makes a phone call, and when she returns the decision has been made to call a locksmith. 3 App. 1065.

During these conversations, deputies knocked on the door and announced themselves as law enforcement, with no response. 1 App. 112. They tried to make entry, but the doors were locked. There was no arguing, no commotion, nothing being smashed or broken. 1 App. 122. The brief sound of footsteps was the only thing heard coming from the house until about 4:15am. 1 App. 123. At that point, Marco Torres appeared in a window and told deputies everyone in the house was fine and they did not need any help. 1 App. 125. He said they were trying to sleep, but deputies were keeping them awake and he told them to leave. 1 App. 125.

The locksmith unlocked the door, and, despite Marco's resistance, deputies made entry into the house. 1 App. 113-114. They found Marco's roommate, Jonathan Piper, unresponsive, and pronounced him deceased at the scene. 1 App. 117. Marco was arrested, and later described the altercation that led to Piper's death. 1 App. 178-195.

After his arraignment in the Fifth Judicial District Court, Marco filed a Motion to Dismiss. 1 App. 320. During the first argument on that motion, the District Court concluded that the motion was actually a motion to suppress. 2 App. 691. The Court asked for supplemental briefing, and when argument resumed on March 25, 2021, denied Marco's motion to suppress. 4 App. 1093. Marco subsequently entered a guilty plea to one amended count of Second Degree Murder but preserved his right to appeal the denial of his motion to suppress pursuant to NRS 174.035(3). 4 App.

1133. He was sentenced to the Nevada Department of Corrections for life with the possibility of parole after ten years has been served. 4 App. 1180.

VI. SUMMARY OF THE ARGUMENT

Marco's constitutional rights were violated when deputies with the Nye County Sheriff's Office entered his home without a warrant and without exigent circumstances. The district court abused its discretion and committed error when it denied Marco's motion to suppress, and that error warrants reversal.

VII. ARGUMENT

A. The District Court Abused Its Discretion and Committed Error When It Denied Marco's Motion to Suppress

Marco's state and federal constitutional rights to due process of law, equal protection, and right to fair trial were violated by the District Court's erroneous decision to deny his motion to suppress. U.S. Const. Amend. V, VI, VIII, XIX; Nevada Const. Art. I, Sec. 3, 6 and 8; Art. IV, Sec. 21, 27.

When reviewing a district court's resolution of a motion to suppress, we review its factual findings for clear error and its legal conclusions de novo. *State v. Lisenbee*, 116 Nev. 1124, 1127, 13 P.3d 947, 949 (2000). This Court will uphold the district court's decision regarding suppression unless this Court is left with the

definite and firm conviction that a mistake has been committed. *State v. McKellips*, 118 Nev. 465, 469, 49 P.3d 655, 658-659 (2002). Findings of fact in a suppression hearing will not be disturbed on appeal if supported by substantial evidence. *Id.* Substantial evidence is that evidence which a reasonable mind might accept as adequate to support a conclusion. *Id.*

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

The Fourth Amendment protects individuals "against unreasonable searches and seizures." *United States v. Struckman*, 603 F.3d 731, 737-38 (9th Cir. 2010) (quoting U.S. Const. amend. IV). "Searches and seizures inside a home without a warrant are presumptively unreasonable." *Sheehan v. City & Cty. of San Francisco*, 743 F.3d 1211, 1221 (9th Cir. 2014), rev'd in part on other grounds, cert. dismissed in part, 135 S. Ct. 1765, 191 L. Ed. 2d 856 (2015). However, 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. *Brigham City v. Stuart*, 547 U.S. 398, 403, 126 S. Ct. 1943 (2006). The emergency exception to the warrant requirement is applicable where an officer "had an objectively reasonable basis to believe that there was an immediate need to protect the lives or safety of themselves or others." *Hannon v. State*, 125 Nev. 142, 207 P.3d

344, 347 (2009). A law enforcement officer's subjective motivation is irrelevant. *Id.*

The emergency aid exception allows law enforcement officers to enter and search a home without a warrant when two conditions are satisfied: (1) considering the totality of the circumstances, law enforcement had an objectively reasonable basis for concluding that there was an immediate need to protect others or themselves from serious harm, and (2) the search and scope and manner were reasonable to meet the need. *United States v. Snipe*, 515 F.3d 947, 952 (9th Cir. 2008). An exigent circumstance is one that necessarily requires immediate, swift action. *United States v. Wren*, 517 U.S. 806, 813, 116 S. Ct. 1769 (1996). In determining whether law enforcement satisfied these conditions, we assess officers' actions from the perspective of a reasonable officer on the scene, rather than the 20/20 vision of hindsight. *Sandoval v. Las Vegas Metro. Police Dep't*, 756 F.3d 1154, 1163 (9th Cir. 2014).

In *Hannon*, approximately 45 minutes after the call for service, officers knocked on the suspect door and contacted a female that was red-faced, crying, and breathing hard. *Hannon* at 125 Nev. 144, 207 P.3d 345. Police also observed the Defendant in the background, and he appeared to be flushed and angry. *Id.* The female stated she was not injured, that they had an argument earlier in the day, and that no one else was in the apartment. *Id.* Police insisted on making entry into the

house, but they were denied permission by both the female and the Defendant. *Id.* Officers then pushed the door open and entered, eventually arresting the Defendant for marijuana related offenses. *Id.*

The Court held that officers did not have an objectively reasonable basis to believe that there was an immediate need to protect the occupants of the apartment. *Id.* at 125 Nev. 148, 207 P.3d 348. Officers arrived at a quiet apartment in response to a 911 call regarding a possible domestic disturbance. *Id.* They did not witness, let alone overhear, sounds of an altercation when they arrived. *Id.* at 125 Nev. 147, 207 P.3d 347. Because there was no apparent need for swift action, Officers casually knocked on the front door. *Id.* Neither the female nor the defendant exhibited observable signs of injury, and both denied being injured. *Id.*

This case is very analogous to *Hannon*. Here, just as in *Hannon*, Deputies arrived at a quiet house in response to a 911 call. The only sound they heard was the brief sound of footsteps from inside the house. Deputies never witnessed nor overheard any sounds, or other evidence, of an altercation. It was all quiet for more than an hour, until Marco contacted Deputies. He had no observable injuries and told them that everyone was fine, and they did not need help. Law enforcement had absolutely no evidence that anyone inside in the house was injured or in imminent threat of being injured.

Furthermore, the deputies did not take immediate, swift action. They assessed the scene, waited for their superior, then called and waited for a locksmith. It was close to an hour and a half from the time deputies arrived until they made entry into the house. They certainly did not operate as they would have if exigent circumstances were present.

Sandoval instructs that the Court must assess deputies' actions from the perspective of a reasonable police officer at the scene, and we are fortunate enough in this case to know exactly the assessment that multiple deputies, and their superior, made: there were no exigent circumstances. It is abundantly clear that deputies assessed the scene for exigent circumstances, specifically for the emergency aid exception to the warrant requirement. Deputy Gideon testified to the same at the preliminary hearing. 1 App. 127. They noted that they could not prove there was an altercation, and that it was all quiet at the house. They searched for blood on and around the exterior of the house and the property but could not find any. These deputies were looking for any evidence that someone was injured inside the house so they could make entry. They could not find any because none existed.

The deputies are trained law enforcement officers, and as such, they are trained on the exceptions to the warrant requirement to enter a home. They are trained that they need some evidence that there is an injured person in need of assistance before they can invoke the emergency aid exception and make entry into

the house. They are also trained to be objective in their assessment of a scene, gathering evidence, and interviewing witnesses. In this case, they correctly followed all their training and concluded, as reasonable law enforcement officers, that exigent circumstances did not exist to enter the house.

Because there were no exigent circumstances, deputies violated Marco's constitutional rights when they entered the house, and the District Court abused its discretion when it erroneously denied Marco's motion to suppress.

2. Exigent Circumstances Expired Due to the Deputies' Inaction

No law enforcement interactions can last longer than is necessary under the circumstances. A traffic stop can violate the Fourth Amendment if it is prolonged beyond the time "reasonably required to complete the mission of issuing a warning ticket." *Rodriguez v. United States*, 575 U.S. 348, 354 (2015). An arrest warrant does not justify law enforcement's prolonged occupation of a suspect's home. *Chimel v. California*, 395 US. 752, 762-763 (1969). By itself, an arrest warrant does not authorize law enforcement officers to carry out a broader search of the arrestee's dwelling for evidence; nor does it authorize them to remain inside the dwelling, or enter it, after they have removed the arrestee from it. *Id.* A search or seizure based on exigent circumstances ends when the emergency passes. *People v. Duncan*, 42 Cal. 3d. 91, 720 P.2d 2 (Cal. 1986).

If, arguendo, exigent circumstances did exist when deputies first arrived on scene, they certainly expired by the time entry was made into the house. Deputies arrived at the house on Linda Street within fifteen minutes of the 911 call. The only noise they heard was very brief sounds of footsteps, and then the house was completely silent until Marco made contact sometime later. When deputies did not make immediate and swift entry into the house, any possible emergency concluded. There was no evidence at all that there was an ongoing altercation or dispute, nor was there any evidence that anyone inside the house was injured and in need of assistance. Any emergency has a time window during which law enforcement must act. By not acting quickly, the Nye County Sheriff's Office missed their window, and the exigent circumstance expired.

3. The District Court Made Clearly Erroneous Findings of Fact

When reviewing a district court's resolution of a motion to suppress, we review its factual findings for clear error. *State v. Lisenbee*, 116 Nev. 1124, 1127, 13 P.3d 947, 949 (2000). In conducting plain error review, this Court must examine whether there was "error," whether the error was "plain" or clear, and whether the error affected the defendant's substantial rights. *Green v. State*, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003). Additionally, the burden is on the defendant to show actual prejudice or a miscarriage of justice. *Id.* An error is plain if the error is so

unmistakable that it reveals itself by a casual inspection of the record. *Saletta v. State*, 127 Nev. 416, 421, 254 P.3d 111, 114 (2011).

When denying Marco's motion to suppress, the District Court did not cite to any specific articulable facts that would show there was an objectively reasonable basis to believe someone had been injured inside the house and needed assistance. It did discuss the contents of the 911 call as a reason to believe someone was injured inside the house, but the deputies on scene were unaware of those details at the time. 4 App. 1090-1091. Instead, the District Court erroneously concluded that the deputies performed a probable cause assessment and spent the significant portion of its decision second guessing how law enforcement officers performed their duties.

In denying the motion to suppress, the District Court incorrectly stated that members of the Nye County Sheriff's Office on scene discussed needing probable cause to enter the house. 4 App. 1083. Even after being corrected by counsel, the court continued to interpret the deputies' statements and assessment as ones relating to probable cause. 4 App. 1087. The District Court again misstated these facts and claimed they were the reason for the denial of the motion to suppress at the change of plea and sentencing hearings. 4 App. 1152 and 4 App. 1228. It seems clear that the District Court believed the deputies said one thing but meant another. If that is the case, there should have, at a minimum, been an evidentiary hearing to solve any

disputed issues of material fact. *See United States v. Curlin*, 638 F.3d 562, 564 (7th Cir. 2011).

The distinction of the deputies performing an exigent circumstances analysis and not a probable cause analysis is important because, as noted above, the deputies' actions are assessed from the perspective of a reasonable officer at the scene. A reasonable officer would have been trained on the difference in situations necessitating probable cause and those where exigent circumstances are sufficient. That is precisely what the members of the Nye County Sheriff's Office did in this case. And it was not just a single deputy; it was multiple deputies and their sergeant that all reached the same conclusion. Had the District Court not misinterpreted the deputies' analysis and misstated their conversations, it would have had no choice but to conclude that a reasonable officer on scene would not have found exigent circumstances, because that is exactly what happened in this case.

The erroneous finding of facts clearly prejudiced Marco and resulted in a miscarriage of justice. The clearly incorrect findings of fact led the district court to abuse its discretion and wrongfully deny Marco's motion to suppress.

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VIII. CONCLUSION

Marco Torres respectfully requests for the reasons stated herein, that this 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 14th day of October, 2021.

Respectfully Submitted,



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CERTIFICATE OF COMPLIANCE

1. I hereby certify that his 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 3328 words.

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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 14th day of October, 2021.



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CERTIFICATE OF SERVICE

The undersigned does hereby certify that on the 14th day of October, 2021, a copy of the foregoing Opening Brief (and Appendix) was served as follows:

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A handwritten signature in black ink, appearing to read 'Daniel E. Martinez', is written over a horizontal line.

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