

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARCO ANTONIO TORRES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83216-COA

FILED

APR 20 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Marco Antonio Torres appeals a judgment of conviction, pursuant to a guilty plea, of second-degree murder. Fifth Judicial District Court, Nye County; Kimberly A. Wanker, Judge.

One morning, at approximately 3:00, a Nye County Sheriff's Office (NCSO) dispatcher answered a 9-1-1 emergency call.¹ She heard two male voices, one stating that he needed help. There was static and distortion on the call, and neither individual responded to questions before the call disconnected. The dispatcher called back multiple times, received no response, and, as a result, followed protocol by pinpointing the call's location in Pahrump and dispatching deputies to that address. The deputies were aware that they had been dispatched for a 9-1-1 emergency call disconnect.

Deputy Gideon and Deputy Williams responded within minutes of the 9-1-1 call. Deputy Stone arrived shortly afterwards. There were two homes at the address—one in front and one in back. Deputies made contact with an occupant of the front residence who indicated that the 9-1-1 call did not come from him, but likely came from "the people behind [him]." Deputy Gideon observed that the outside of the rear residence appeared trashed

¹We recount the facts only as necessary for our disposition.

and the patio appeared to be broken with debris scattered around the property. The deputies positioned themselves at different corners of the rear house. Deputy Gideon heard footsteps inside the house for about two seconds but did not hear anything thereafter. The deputies could not see through any of the windows.

The deputies knocked and announced their presence at the front door multiple times, but received no response. During the ensuing 45-minute window, the deputies discussed what to do. Sergeant Fernandes, who was also on scene, consulted with a lieutenant who eventually made the decision to call a locksmith to open the door without damaging it. None of the deputies sought a search warrant for the house during this time. An occupant of the back home, Marco Torres, eventually opened a window and identified himself as Bozo the Clown. He then told officers that he did not need help, everybody was fine, and asked them to leave. He shut the window without further explanation.

The locksmith arrived around 4:15 a.m., approximately 30 minutes after he was called. The locksmith opened the door, but Torres was argumentative, refused to let deputies inside, and told them to leave. Believing they needed to check on the welfare of whomever called 9-1-1, deputies entered the residence. Deputy Gideon discovered a deceased male with bruising on his face and head, later identified as Jonathan Piper, Torres's roommate. Deputies arrested Torres. Subsequently, deputies obtained a search warrant for the back residence to search for evidence related to the death of Piper.²

²When Torres pleaded guilty, he said that he and Piper had argued over a ripped bag of marijuana. According to Torres, Piper ran to his room and locked the door, where he tried calling his brother and the neighbor for

Torres was charged with various felonies, including murder. After arraignment in district court, Torres filed a motion to dismiss based upon the initial warrantless entry, which the district court treated as a motion to suppress evidence. After requesting supplemental briefing on the motion to suppress, the court reviewed the testimony and exhibits from the preliminary hearing conducted in justice court. The district court then held a hearing and orally denied the motion to suppress, finding that exigent circumstances justified the warrantless entry because the deputies were attempting to provide emergency aid. Torres pleaded guilty to one count of second-degree murder but preserved his right to appeal the denial of his motion to suppress pursuant to NRS 174.035(3). The court sentenced Torres to life in prison with the possibility of parole after ten years. Torres now appeals the district court's denial of his motion to suppress.

Torres argues that his motion to suppress should have been granted because deputies violated his constitutional rights when they entered his home without a warrant. He argues that the denial of the motion to suppress was clear error warranting reversal. The State counters that exigent circumstances justified the warrantless entry, and that the motion to suppress was therefore properly denied.³

help (neither of which answered). Piper then called 9-1-1. While he was calling 9-1-1, Torres kicked the door in, put Piper in a chokehold, grabbed the phone out of Piper's hand, and smashed it on the ground. Torres proceeded to choke Piper until he went limp. Torres claims he tried to resuscitate Piper but could not.

³The State further argues that, even if the warrantless entry into the residence was improper, the evidence would have been inevitably discovered when a search warrant was later granted. However, based on our conclusion below that exigent circumstances justified the warrantless entry, we need not address this argument. *See Tabish v. State*, 119 Nev.

When reviewing a district court's denial of a motion to suppress, we review the district court's factual findings for clear error and the district court's legal conclusions de novo. *State v. Sample*, 134 Nev. 169, 171, 414 P.3d 814, 816 (2018). Both the United States and Nevada constitutions protect individuals from unreasonable searches and seizures. U.S. Const. amend. IV; Nev. Const. art. 1, §18. "[S]earches and seizures inside a home without a warrant are presumptively unreasonable." *Kentucky v. King*, 563 U.S. 452, 459 (2011) (quoting *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006)). Nevertheless, this presumption may be overcome in certain circumstances. *Id.* "[T]he ultimate touchstone of the Fourth Amendment is reasonableness." *Id.* (quoting *Brigham City*, 547 U.S. at 403).

We address whether exigent circumstances justified the warrantless entry. Warrantless entries may be "justified by a well-delineated exception, such as when exigent circumstances exist." *Hannon v. State*, 125 Nev. 143, 145, 207 P.3d 344, 346 (2009). "One exigency obviating the requirement of a warrant is the need to assist persons who are seriously injured or threatened with such injury." *Brigham City*, 547 U.S. at 403. "[W]arrantless entries for emergency reasons do not require probable cause." *Hannon*, 125 Nev. at 145, 207 P.3d at 346. Further, "[o]fficers do not need ironclad proof of a likely serious, life-threatening injury to invoke the emergency aid exception." *Michigan v. Fisher*, 558 U.S.

293, 297, 72 P.3d 584, 586-87 (2003) (declining to address issues not necessary in light of the court's disposition); see also *9352 Cranesbill Tr. v. Wells Fargo Bank*, 136 Nev. 76, 82, 495 P.3d 227, 232 (2020) (providing that "this court will not address issues that the district court did not directly resolve"); *Yellow Cab of Reno, Inc. v. Second Judicial Dist. Court*, 127 Nev. 583, 592 n.6, 262 P.3d 699, 704 n.6 (2001) (declining to address, in the first instance, a legal issue that the district court did not reach).

45, 49 (2009) (internal quotation marks omitted). When determining whether a warrantless entry due to emergency aid exigent circumstances is reasonable, we must determine whether the “circumstances, viewed objectively, justify [the] action.” *Brigham City*, 547 U.S. at 404 (quoting *Scott v. United States*, 436 U.S. 128, 138 (1978)). Whether exigent circumstances exist turns on the specific facts of each case. *Lange v. California*, 594 U.S. ___, ___, 141 S. Ct. 2011, 2018 (2021).

In *United States v. Najar*, 451 F.3d 710, 715 (10th Cir. 2006), there was a 9-1-1 call at 2:00 a.m. that was also prematurely disconnected. The return calls were answered and promptly hung up. *Id.* at 716. When law enforcement officers arrived, the residence was quiet, but lights were on. *Id.* Law enforcement officers knocked and announced “police” but no one inside the residence answered. *Id.* When they walked around the residence, they heard movement inside and saw a silhouette of a person inside the residence. *Id.* Eventually, the occupant of the residence opened the door, said he was the only one there, and denied calling 911. *Id.* Law enforcement officers went inside to make sure no one was hurt, even though they were denied access. *Id.* at 717. The Tenth Circuit concluded that the emergency aid warrant exception applied because “given the totality of the circumstances, the law enforcement officers had reasonable grounds to believe someone inside the trailer may have been in need of emergency aid and immediate action was required.” *Id.* at 720.


Here, there existed an objectively reasonable basis for believing that an unknown second person was inside the home and in need of emergency assistance. Someone inside of the home called NCSO’s emergency line at 3:00 a.m. requesting help, but the call was disconnected. The dispatcher’s multiple return calls went unanswered. Deputies were


then dispatched to the GPS coordinates of the 9-1-1 call. Upon arrival, deputies spoke to the resident of the front home who pointed them to “the people behind [him].” It was clear to the deputies that someone was inside the back home awake and moving around when they arrived because they briefly heard footsteps inside the home. Deputies made repeated attempts to contact the occupants inside, but no one answered the door.


Once Torres made contact with police by briefly opening a window, he acted in a bizarre manner by identifying himself as Bozo the Clown. He told deputies everybody was fine and asked them to leave. He did not open the front door or cooperate, even when a locksmith arrived, manipulated the lock for 30 minutes, and eventually opened the door. Torres was waiting inside and again told the deputies to leave. The deputies believed they needed to enter the residence to check on the welfare of the person who had called 9-1-1. The deputies entered the residence and immediately discovered the dead body of Piper.

Similar to *Najar*, here the totality of circumstances created an objectively reasonable basis for believing that someone inside the home may have needed assistance. The 9-1-1 call disconnected prematurely, return calls were not answered, the neighbor told officers it was the *people* behind him, deputies heard someone walking inside but no one answered the door, and Torres eventually told officers *everybody* was fine, while refusing to let them in. As such, we conclude that exigent circumstances justified the officers’ warrantless entry into the home for emergency aid. The district

court therefore did not err in denying Torres's motion to suppress.⁴ Accordingly, we ORDER the judgment of conviction AFFIRMED.⁵


_____, J.
Tao


_____, C.J.
Gibbons


_____, J.
Bulla

cc: Hon. Kimberly A. Wanker, District Judge
Special Public Defender
Boskovich Law Group, PLLC
Attorney General/Carson City
Nye County District Attorney
Nye County Clerk

⁴Torres also argues that any exigency that might have existed "expired" based on the deputies' delay in entering the home. In the one case Torres cites, *People v. Duncan*, the Supreme Court of California refused to allow officers to invoke the emergency aid doctrine to justify their warrantless entry into a home after another officer had already entered and discovered no emergency. 720 P.2d 2, 6 (Cal. 1986). *Duncan* is not analogous because the need for emergency aid was over, unlike here.

⁵Insofar as the parties raise any other arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.