7-17-2013

State v. Foote Appellant's Brief Dckt. 40500

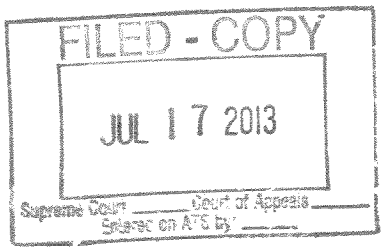
IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, Respondent, vs. CHRISTOPHER MICHAEL FOOTE, Appellant.	)	S.Ct. No. 40500 Bingham Case No. CR-2012-1474

OPENING BRIEF OF APPELLANT

Appeal from the District Court of the Seventh
Judicial District of the State of Idaho
In and For the County of Bingham

HONORABLE DARREN B. SIMPSON
District Judge



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II. STATEMENT OF THE CASE

A. Nature of the Case

This is an appeal from Mr. Christopher Foote's judgment of conviction and sentence for possession of a controlled substance.

B. Factual Summary and General Course of Proceedings

On February 14, 2012, Mr. Foote was charged with possessing methamphetamine, a felony, in violation of Idaho Code § 37-2732(c)(1). R. 9-10. The State alleged that on the day prior, February 13, 2012, Mr. Foote "unlawfully possessed a controlled substance classified in Scheduled II of the Uniform Controlled Substances Act, to wit, the defendant possessed Methamphetamine, as defined by Idaho Code section 37-2707(d)." *Id.* Mr. Foote waived his preliminary hearing and was bound over to the district court for an entry of plea. R. 52. An Information was then filed mirroring the charge previously set forth in the Complaint. R. 57-58. Mr. Foote entered a plea of not guilty before the district court. R. 73-75.

On April 4, 2012, Mr. Foote filed a Motion to Suppress arguing that "the officers entered the residence of the defendant without consent, probable cause, or a warrant, in violation of the 4th amendment to the United States Constitution and similar provisions of the Idaho Constitution." R. 78-79. Prior to the hearing on Mr. Foote's Motion to Suppress, a Substitution of Counsel was filed as well as a Stipulation to Continue. R. 94-97. With new defense counsel in place, the hearing on Mr. Foote's Motion to Suppress was subsequently held on May 16, 2012. Motion to Suppress Transcript, p. 2.

At the conclusion of the hearing the district court pronounced its findings of fact. Motion to Suppress Transcript, pp. 67-71 and R. 109-10.

- "On February 13th of 2012, in Bingham County, Idaho, dispatch was advised by a landlord . . . that he was concerned with a tenant [Mr. Foote] and a disturbance going on in the apartment, and he was concerned, apparently, about something happening to the apartment." Motion to Suppress Transcript, p. 68, lns. 6-11.

- "Dispatch contacts [three law enforcement officers who] make contact with the landlord, Mr. Ely." Motion to Suppress Transcript, p. 68, lns. 12-15.

- "[The landlord] takes them into his home and directs them to where the defendant's apartment is. And in doing so, he takes them through his house, the landlord's house, through the kitchen, which has a door that adjoins the stairwell and the garage, described in Exhibit A submitted here today." Motion to Suppress Transcript, p. 68, lns. 16-21.

- "In looking at Exhibit A, looking at that document, the defendant has outlined a rectangular home, outlined his apartment which is upstairs, has drawn on there what appears to be a sidewalk to a door on the right side of that diagram and towards the bottom of that diagram in the right-hand corner. He indicates that that's a door that people come to when they come to visit him and that it remains locked." Motion to Suppress Transcript, pp. 68-69, lns. 22-4.

- "[T]he garage is [the landlord's], which connects to the stairwell, which connects to his kitchen, which [Mr. Foote] explained was to the left of that stairwell . . . ." Motion to Suppress Transcript, p. 69, lns. 5-8.

- "This Court finds that that area is basically a common area. At least it belongs to [the landlord], and he has the authority to allow people into that area." Motion to Suppress Transcript, p. 69, lns. 9-11.

- "When you go up stairs, then there's a makeshift door." Motion to Suppress Transcript, p. 69, lns. 12-13.

- "[T]he officers did, after being shown where the apartment was, go up those stairs and knock on the door, and [Mr. Foote] opened the door at that point." Motion to Suppress Transcript, p. 69, lns. 14-17.

- "The officers, in getting there, were checking and investigating the disturbance . . . they were doing a welfare check." Motion to Suppress Transcript, p. 69, lns. 18-20.

- "[W]hen [the officers] knocked on the door, that contact – initial contact was very short. They asked [Mr. Foote] to come downstairs." Motion to Suppress Transcript, p. 69, lns. 21-23.

- "During that short period of time, the officer did note [Mr. Foote] looked a little disheveled, was disorientated, and was sweating." Motion to Suppress Transcript, pp. 69-70, lns. 23-1.

- "When they asked him to come downstairs, rather than coming downstairs, he put his hand in his pocket and turned back into the apartment." Motion to Suppress Transcript, p. 70, lns. 2-4.

- "The officer, being concerned for his safety based upon that movement of putting his hand in his pocket, follows him in." Motion to Suppress Transcript, p. 70, lns. 17-19.

- "[W]ithin a short distance, [Mr. Foote] removes a pipe and puts it into the drawer. The officer observes that pipe and knows, from his training and experience, that it is a marijuana pipe and sees a lightbulb within the dresser as well consistent with one used for smoking methamphetamine." Motion to Suppress Transcript, p. 70, lns. 19-25.

- "[Mr. Foote] closes the drawer, at which time the officer promptly opens the drawer and places those on top of the dresser. They then place Mr. Foote in a chair and then begin to question him. After a certain point in time, he gives them consent to search the rest of the apartment." Motion to Suppress Transcript, p. 71, lns. 4-7.

The district court refrained however from ruling on Mr. Foote's motion and took the matter under advisement for a couple of days. At a status conference held two days later, the district court articulated its rationale and conclusions of law, ultimately dening Mr. Foote's Motion to Suppress. Status Conference Transcript, pp. 3-13 and R. 112-13. The district court concluded that law enforcement's concern for safety justified the warrantless entry into Mr. Foote's apartment. Status Conference Transcript, p. 12, lns. 19-25.

A change of plea hearing was subsequently scheduled for May 24, 2012. At the change of plea hearing Mr. Foote apparently expressed a number of concerns regarding the proposed

plea agreement so the matter was continued and then eventually rescheduled for a pretrial conference and jury trial. R. 114-117. Thereafter Mr. Foote's counsel attempted to withdraw on a number of occasions and eventually did withdraw, with the district court's permission, thus leaving Mr. Foote *pro se* for the upcoming jury trial. R. 119-41.

On the day the jury trial was scheduled to commence Mr. Foote, acting *pro se*, entered a conditional guilty plea pursuant to plea negotiations with the State. R. 183-84 and Transcript of July 24, 2012 Hearing. The district court sentenced Mr. Foote to a unified term of 6 years with 2 years determinate, and suspended the imposition of the sentence and placed Mr. Foote on probation for a period of 5 years. R. 228-34. This timely appeal follows.

III. ISSUE PRESENTED ON APPEAL

1. Did the district court err in denying Mr. Foote's motion to suppress and finding that law enforcement's warrantless intrusion into Mr. Foote's apartment was justified?

IV. ARGUMENT

A. The District Court Erred in Denying Mr. Foote's Motion to Suppress

1. Introduction

The district court denied Mr. Foote's motion to suppress citing two specific cases; *Ryburn v. Huff*, 132 S.Ct. 987 (2012), and *State v. Bishop*, 146 Idaho 804 (2009). The district court's reliance on these two cases was misplaced. As a result, the district court's ruling was in error because a correct application of law to the facts of this case supports the granting of Mr. Foote's motion to suppress and finding that the intrusion into his apartment violated his rights to be free from unreasonable searches and seizures.

2. Standard of review

When reviewing a district court's ruling on a motion to suppress, Idaho appellate courts

apply a bifurcated standard of review. *State v. Ray*, 153 Idaho 564, 286 P.3d 1114, 1117 (2012). The appellate court will accept the district court's findings of fact so long as they are supported by substantial evidence but it will freely review any constitutional principles implicated by the facts. *Id.* This includes the exercise of free review as to whether a search is reasonable, and therefore complies with the Fourth Amendment. *State v. Reynolds*, 146 Idaho 466 (Ct. App. 2008).

3. The warrantless entry into Mr. Foote's apartment was illegal because the circumstances did not support a reasonable belief that immediate entry into the home was necessary

As stated by the Supreme Court recently most recently:

> The Fourth Amendment provides in relevant part that the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." The Amendment establishes a simple baseline, one that for much of our history formed the exclusive basis for its protections: When "the Government obtains information by physically intruding" on persons, houses, papers, or effects, "a 'search' within the original meaning of the Fourth Amendment" has "undoubtedly occurred."

Florida v. Jardines, 133 S.Ct. 1409, 1414, 185 L.Ed. 2d 495 (2013) (internal citations omitted). "The Fourth Amendment 'indicates with some precision the places and things encompassed by its protections': persons, houses, papers, and effects." *Id.* (quoting *Oliver v. United States*, 466 U.S. 170, 176, 104 S.Ct. 1735, 80 L.Ed.2d 214 (1984)). The protections of the Fourth Amendment are not absolute, "[b]ut when it comes to the Fourth Amendment, the home is first among equals. At the Amendment's 'very core' stands 'the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion.'" *Id.* (quoting *Silverman v. United States*, 365 U.S. 505, 511, 81 S.Ct. 679, 5 L.Ed.2d 734 (1961)). Law enforcement's entry into a home without a warrant are presumed to be unreasonable. *Payton v. New York*, 445

U.S. 573, 586, 100 S.Ct. 1371, 1380, 63 L.Ed.2d 639, 650 (1980).

Here, the district court held that the officer's warrantless entry into Mr. Foote's apartment was justified under the circumstances. "When the warrantless search is to a home or curtilage, we recognize two exceptions to the warrant requirement: exigency and emergency." *Sims v. Stanton*, 706 F.3d 954, 960 (9th Cir. 2012) (citing *Hopkins v. Bonvicino*, 573 F.3d 752, 763 (9th Cir. 2009). In determining whether exigent circumstances justifies a warrantless entry into a home the Court of Appeals has provided the following guidance:

> The test for application of this warrant exception is whether the facts known to the agent at the time of entry, together with reasonable inferences would warrant a reasonable belief that an exigency justified the intrusion. *Reynolds,* 146 Idaho at 470, 197 P.3d at 331; *State v. Barrett,* 138 Idaho 290, 293, 62 P.3d 214, 217 (Ct. App. 2003). A law enforcement officer's reasonable belief of danger to the police or to other persons inside or outside the dwelling is one type of exigency that may justify a warrantless entry. *Minnesota v. Olson,* 495 U.S. 91, 100, 110 S.Ct. 1684, 1689, 109 L.Ed.2d 85, 95 (1990); *Reynolds,* 146 Idaho at 470, 197 P.3d at 331. Thus, the necessity to protect or preserve life or avoid serious injury will legitimize an otherwise illegal intrusion. *Brigham City, Utah v. Stuart,* 547 U.S. 398, 403, 126 S.Ct. 1943, 1947, 164 L.Ed.2d 650, 657 (2006). Accordingly, 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. *Id.*

State v. Araiza, 147 Idaho 371, 374-75, 209 P.3d 668, 671-72 (Ct. App. 2009).

In that case law enforcement observed an unidentified male attempting to enter a residence through a window late at night. *Araiza*, 147 Idaho at 373, 209 P.3d at 670. Having lost sight of the man, law enforcement knocked on the door of the residence which was answered by an elderly woman. *Id.* Responding to law enforcement's concern, the woman stated the man in question was Mr. Araiza and that everything was fine. *Id.* Law enforcement nonetheless asked to speak with the man so the woman beckoned Mr. Araiza, who came to the door and identified himself. *Id.* Law enforcement then returned to his patrol vehicle to check Mr.

Araiza's name, date of birth, and social security number. *Id.* Meanwhile, Mr. Araiza asked another law enforcement officer who had arrived, if he could go put on some additional clothes as he had come to the door in only a pair of unzipped pants. *Id.* With law enforcement's permission, Mr. Araiza reentered the residence and shut the door. *Id.* Unable to confirm Mr. Araiza's identity, law enforcement again knocked on the door. *Id.* No one answered the now locked door. *Id.*

Another woman who apparently lived nearby approached law enforcement and identified herself as the elderly woman's daughter. *Id.* She informed law enforcement that she did not know Mr. Araiza and that the only people who should be in the elderly woman's house were the elderly woman herself and the daughter's two young sons. *Id.* Law enforcement and the daughter continued their attempts to contact the elderly woman by knocking on the door and calling on the phone. *Id.* Another grandson of the elderly woman arrived and advised law enforcement that he did not know Mr. Araiza and that no other adult should be in the house. *Id.*

After unsuccessfully contacting the elderly woman, and seeing that she and Mr. Araiza were in fact still inside, law enforcement broke down the door and entered the house. *Id.* The Court of Appeals held "there existed exigent circumstances that validated the warrantless entry into the residence, given the officers' reasonable concern for the safety of [the elderly woman] and her two grandchildren." *Id.* at 375, 209 P.3d at 672. The *Araiza* Court further explained that "where Araiza's identity remained a mystery and the officers attempted to repeatedly to contact the occupants of the residence without success, and several family members expressed concern that an unauthorized individual was in the residence, we conclude that there existed exigent circumstances to justify the officer's warrantless entry into the residence." *Id.* at 376, 209 P.3d

at 673.

Similarly, in *State v. Barrett*, 138 Idaho 290, 62 P.3d 214 (Ct. App. 2003) the Court of Appeals held exigent circumstances justified law enforcement's warrantless entry into another residence. *Id.* at 294-95, 62 P.3d at 218-19. In that case the resident was suffering an unexplained and serious medical emergency, and law enforcement was unable to contact any of the other known residents of the home. *Id.* Mr. Barrett, the resident, told his neighbor that he may be having a heart attack, and was incoherent and in the fetal position on the neighbor's front porch when law enforcement arrived. *Id.* at 292, 62 P.3d at 216. Upon learning Mr. Barrett's wife and two children had not been seen all day, law enforcement approached Mr. Barrett's front door which had been left open. *Id.* After loudly identifying themselves and asking anyone inside to come to the front door, law enforcement entered Mr. Barrett's home in order to determine whether others were also in need of medical assistance. *Id.* The Court of Appeals concluded that "[u]nder the totality of the facts and circumstances as known to the police at the time that they entered Barrett's house, and reasonable inferences drawn thereupon, we conclude that there existed a compelling need for the police to enter." *Id.* at 294, 62 P.3d at 218.

In contrast to *Araiza* and *Barrett*, the Court of Appeals has found that exigent circumstances did not justify the warrantless entry into a residence in cases such as *State v. Rusho*, 110 Idaho 556, 716 P.2d 1328 (Ct. App. 1986) and *State v. Reynolds*, 146 Idaho 466 (Ct. App. 2008). In *Rusho* law enforcement entered the residence even though prior to entry they had been informed that the "exigent circumstance" – a concern an intruder was in the residence – had been dispelled because the homeowner as well as a neighbor had checked the house and confirmed no intruder actually existed. *Rusho*, 110 Idaho at 559, 716 P.2d at 1331. Similarly, in

Reynolds, the Court of Appeals held the circumstances "did not support a reasonable belief that immediate entry into the home was necessary." *Reynolds*, 146 Idaho at 471, 197 P.3d at 332. There law enforcement, responding to a call that a wife was being held in a house against her will, arrived to find the husband standing outside. The *Reynolds* Court concluded that there was no immediate risk of harm so long as the husband was outside being questioned about the circumstances. *Id.*

The circumstances in this case stand in stark contrast to the facts in *Araiza* and *Barrett*. Unlike *Araiza*, here there was no concern anyone was present in the apartment who should not be. There was also no concern that anyone was being held against their will. Nor was there any obvious and ongoing medical emergency as existed in *Barrett*. Instead Mr. Foote appropriately responded to the knock on his door and appeared "a little disheveled, was disorientated, and was sweating." Motion to Suppress Transcript, pp. 69-70, lns. 24-1. There is nothing highly unusual about Mr. Foote's appearance – arguably a large number of people would similarly appear when answering their door late at night and finding three uniformed officers awaiting. He was not aggressive or combative with law enforcement. He simply put his hand in his pocket and turned and walked deeper into his apartment.

The district court's reliance upon *Ryburn v. Huff*, 132 S.Ct. 987, 181 L.Ed. 966 (2012), and *State v. Bishop*, 146 Idaho 804, 203 P.3d 1203 (2009) was also misplaced. In *Ryburn*, law enforcement was investigating whether a juvenile, who had a history of being bullied and had been absent for consecutive days, was intending to shoot up his school. *Ryburn*, 132 S.Ct. at 988. Law enforcement responded to the juvenile's residence and knocked on the door and called the home telephone. *Id.* Neither were answered. *Id.* Law enforcement were then able to reach

the juvenile's mother on her cell phone and she advised that both she and the juvenile were in fact inside the house. *Id.* The juvenile and his mother then came outside to speak with police and the juvenile acknowledged the rumor about the threats on his school. *Id.* When law enforcement inquired about any guns being present in the home the mother immediately turned around and ran into the home. *Id.* at 989. Out of a concern for their safety, law enforcement entered the residence behind the mother. *Id.* In the context of a civil rights complaint under 42 U.S.C. § 1983, the Supreme Court held:

> Reasonable police officers in [law enforcement's position in this case] could have come to the conclusion that the Fourth Amendment permitted them to enter the [juvenile's] residence if there was an objectively reasonable basis for fearing that violence was imminent. And a reasonable officer could have come to such a conclusion based on the fact as found by the District Court.

Id. at 992.

Unlike *Ryburn*, there were absolutely no facts supporting the proposition that violence was imminent with Mr. Foote. The call to dispatch was about a disturbance – not that Mr. Foote was threatening to harm anyone. The officers in *Ryburn* were presented with a situation concerning a *very* serious concern about the safety of a large number of people in conjunction with the mother's unusual response to the inquiry regarding guns in the home. There was no grave concern about Mr. Foote or his desire to harm anyone, including himself. Moreover, his response to law enforcement's request to exit his apartment and come downstairs to answer their questions was not highly unusual.

The district court also cited *Bishop* in denying Mr. Foote's motion to suppress. Frankly it is unclear why the district court found *Bishop* as precedent in this case. The crux of the analysis in *Bishop* is whether or not law enforcement was justified in frisking Mr. Bishop, or put

differently, whether law enforcement had reason to believe Mr. Bishop was armed and presently dangerous to the officer or to others. *Bishop*, 146 Idaho at 818-21, 203 P.3d at 1217-20. The issue presented to the district court in this case was not whether or not law enforement could have frisked Mr. Foote had they so desired. Nevertheless, Mr. Foote acknowledges the determination of whether or not a frisk is lawful and whether or not exigent circumstances permit law enforcement to enter a residence are both objective tests based upon the totality of the circumstances.

Perhaps the district court found the factors in determining whether someone could reasonably conclude a suspect is armed and dangerous as persuasive when determining whether Mr. Foote was armed and dangerous. But as in *Bishop*, there were no objective facts to support a conclusion that Mr. Foote was dangerous. There were no bulges in Mr. Foote's clothing resembling a weapon, the encounter did not occur in a high crime area, Mr. Foote did not make any aggressive movements, and he did not have a reputation for being dangerous. Yes, it was late at night and Mr. Foote appeared disheveled. He also placed his hand in his pocket and walked further into his apartment. The totality of the circumstances of this case do not support a finding that a reasonable person would conclude Mr. Foote to be an imminent threat to law enforcement's safety – especially one justifying a warrantless entry into a residence.

Simply put, immediate entry into Mr. Foote's apartment was not necessary. Law enforcement had only generalized, nonspecific information about Mr. Foote. What was known by law enforcement at the time they entered into Mr. Foote's apartment was that the landlord had heard a disturbance, the landlord was concerned about his rental property, and that Mr. Foote appeared a little disheveled, disorientated, and was sweating. Law enforcement did not observe

Mr. Foote commit any criminal act. Law enforcement did not have probable cause to arrest Mr. Foote. There was no evidence to suggest that he was armed or about to harm himself, nor any evidence that he had history of violence. Instead law enforcement manufactured their own emergency and used it as a pretext for an otherwise warrantless and unlawful entry and search inside Mr. Foote's apartment. A Fourth Amendment analysis inherently entails the balancing of the defendant's privacy interest against the governmental need for the action that was taken. *State v. Henderson*, 114 Idaho 293, 304-05, 756 P.2d 1057, 1068-69 (1988); *State v. Reed*, 129 Idaho 503, 505, 927 P.2d 893, 895 (Ct. App. 1996); *State v. Rusho*, 110 Idaho 556, 558, 716 P.2d 1328, 1330 (Ct. App. 1986). Under the circumstances known to law enforcement at the time of their warrantless entry into Mr. Foote's apartment, Mr. Foote's privacy interest far outweighs any need for immediate governmental action.

Mr. Foote had the right to remain in his apartment and walk away from law enforcement on February 13, 2012. He had the right to disregard law enforcement's request to speak with him and be left alone. As the Idaho Supreme Court has recognized, "[p]erhaps the most important attribute of our way of life in Idaho is individual liberty. A citizen is free to stroll the streets, hike the mountains, and float the rivers of this state without interference from the government." *State v. Henderson*, 114 Idaho 293, 298, 756 P.2d 1057, 1062 (1988).

Accordingly, based on the foregoing argument and authority, the district court erred in denying Mr. Foote's motion to suppress, and any and all evidence recovered by law enforcement from inside his apartment should have been suppressed. *Wong Sun v. United States*, 371 U.S. 471 (1963); *see also State v. Arregui*, 44 Idaho 43, 254 P.788 (1927) (adopting an exclusionary rule under the Idaho Constitution).

V. CONCLUSION

For all the reasons set forth above, this Court should reverse the district court's decision denying Mr. Foote's Motion to Suppress and grant the motion thus vacating his judgment of conviction and sentence.

Respectfully submitted this 17 day of July, 2013.

Jeffrey Brownson
Attorney for Christopher Foote

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17 day of July 2013, I caused two true and correct copies of the foregoing to be mailed to:

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Jeffrey Brownson