

2016

**State of Utah, Plaintiff/Appellee v. Timothy Joseph Adams,  
Defendant/Appellant**

Utah Court of Appeals

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Case No. 20150565-CA

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IN THE  
UTAH COURT OF APPEALS

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STATE OF UTAH,  
*Plaintiff/Appellee,*

*v.*

TIMOTHY JOSEPH ADAMS,  
*Defendant/Appellant.*

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Brief of Appellee

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Appeal from convictions for production of a controlled substance and possession of a controlled substance with intent to distribute, both second degree felonies, in the Sixth Judicial District, Kane County, the Honorable Marvin D. Bagley presiding

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LINDSEY WHEELER (14519)  
Assistant Attorney General  
SEAN D. REYES (7969)  
Utah Attorney General  
160 East 300 South, 6<sup>th</sup> Floor  
P.O. Box 140854  
Salt Lake City, UT 84114-0854  
Telephone: (801) 366-0180

DALE W. SESSIONS  
1177 N. Northfield Rd. #4  
Cedar City, UT 84721

ROBERT C. VAN DYKE  
Kane County Attorney's Office

Counsel for Appellant

Counsel for Appellee

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Telephone: (801) 366-0180

DALE W. SESSIONS  
1177 N. Northfield Rd. #4  
Cedar City, UT 84721

ROBERT C. VAN DYKE  
Kane County Attorney's Office

Counsel for Appellant

Counsel for Appellee

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Brief of Appellee

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**STATEMENT OF JURISDICTION**

Defendant appeals from convictions for production of a controlled substance and possession of a controlled substance with intent to distribute. This Court has jurisdiction under Utah Code Ann. § 78A-4-103(2)(e) (West Supp. 2012).

**INTRODUCTION**

Defendant is a 65-year-old man in poor health, who lives alone in rural Big Water, Utah, and calls his mother almost daily. When Defendant's mother had not heard from Defendant in several days and could not reach him, she became worried and called police to do a welfare check. Defendant's mother explained to the police that her son may need medical assistance.

At Defendant's house, the responding officer saw a light on, suggesting that someone was home, but no one answered the officer's knocks, and neighbors reported not seeing Defendant for several days. The officer believed that Defendant was inside the home and needed help.

The officer entered Defendant's home under the emergency aid doctrine—an exception to the Fourth Amendment—that allows warrantless entry if an officer has an objectively reasonable basis to believe that a person within the home is in need of medical aid. The officer walked through the home looking for Defendant but instead of finding Defendant, found his marijuana plants. Police subsequently obtained a search warrant for Defendant's property and seized the drugs and other drug-related evidence.

Defendant moved to suppress the drug evidence, arguing that the officer's warrantless entry into his home violated his Fourth Amendment rights. When the trial court denied his motion, Defendant entered a conditional plea, preserving his right to appeal the trial court's ruling.

### STATEMENT OF THE ISSUE

Did the trial court correctly rule that the warrantless search of Defendant's house was lawful under the emergency aid doctrine?

*Standard of Review.* A trial court's ruling on a motion to suppress is a mixed question of fact and law. The factual findings underlying a trial



court's ruling are reviewed for clear error. *State v. Krukowski*, 2004 UT 94, ¶11, 100 P.3d 1222. The trial court's legal conclusions, including its application of the legal standard to the facts, are reviewed non-deferentially for correctness. *State v. Brake*, 2004 UT 95, ¶15, 103 P.3d 699.

## CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

U.S. Const. amend. IV:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

### STATEMENT OF THE CASE<sup>1</sup>

#### A. Summary of facts.

Defendant's mother was worried. R356:34, 36. Defendant, a 65-year-old-man in poor health living alone in rural Big Water, Utah, called her "on an almost daily basis." R356:34-35. But she had not heard from him in four days and could not reach him. R357:15-17. So, she called police to do a welfare check. R357:15-17; R356:24-25.

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<sup>1</sup> The pleadings section of the record is in reverse order. However, citations are given in linear order, for ease of reading. The facts are primarily taken from the trial court's memorandum decision, R313-318, the testimony from the suppression hearing, R357, and evidence presented at the preliminary hearing, R356.

Big Water's marshal assigned Deputy Robert M. Johnson, who had experience responding to similar welfare check calls, to respond. R356:25, 34-35. Deputy Johnson learned from dispatch that Defendant's mother requested the welfare check because Defendant was in poor health and she had not heard from him in several days. R356:34-35. In the past when Deputy Johnson responded to similar calls, he found individuals in their home either incapacitated or dead. R356:47. Given the information provided by Defendant's mother and his experience with welfare checks, Deputy Johnson's only concern was that Defendant may be inside his home unconscious or dead. R356:47; R357:16, 20-21.

It was already dark outside when Deputy Johnson arrived at Defendant's home—a single wide trailer without a driveway or garage surrounded by a chain link fence. R356:35; R64. Deputy Johnson had only “vague” information about what type of car Defendant drove. R356:42-43. The marshal had told Deputy Johnson that he thought Defendant drove a pick-up truck and a motorcycle, but “he wasn't real sure.” R356:42-43. Regardless, Deputy Johnson did not remember any vehicles at Defendant's house that night. R356:39, 42-43; R357:13-14.

Deputy Johnson noticed a light on in the living room. R357:12. He also noticed a window in the living room slightly open with an electrical

cord coming out of it. R356:36-37. And he noticed a light on in the crawl space under the trailer. R357:12-13.

Deputy Johnson “knocked on the door” and “hollered for” Defendant. R356:35. When Defendant did not answer, Deputy Johnson yelled for Defendant through the open window and “ma[de] a racket on the side of the trailer.” R356:36-37. Deputy Johnson also tried to look into the house, but he could not see much. R356:36; R357:12. From the little he could see, he did not see any problems—no sign of forced entry into the home, no sign of a struggle—but given the medical nature of Defendant’s mother’s concern, Deputy Johnson did not expect to see those things either. R356:42, 47; R357:12-13.

Deputy Johnson continued his search for Defendant around the property. R356:35. Deputy Johnson found a ladder leaning against the house and used it to look on the roof, but he only found some rusty tools next to the air conditioner. R356:36; R357:13. He also looked in the crawl space, where a light was on, and found tools and evidence of repair work, but did not find Defendant. R356:35, 38, 45. Deputy Johnson spoke to the neighbors, who reported that they had not seen Defendant for “two to three days.” R356:36.



Deputy Johnson then called Defendant's mother to let her know that he had not found Defendant. R356:36. Deputy Johnson asked Defendant's mother if she wanted him to look inside the house. R356:36. Defendant's mother said, "yes, please, whatever means possible. I just need to know he's okay." R356:36; R357:20.

Deputy Johnson entered Defendant's home through the open window, which led him into the living room—the one room in the house with a light on. R356:36, R147. Almost immediately, in plain view, Deputy Johnson saw a grow light and several marijuana plants in different stages of cultivation. R356:46, Exhibits 3-5, R64, 128, 147. Deputy Johnson took photos of the marijuana plants, and then searched the rest of the house in places where Defendant might be. R356:46-47, R317, Exhibits 3-5. When Deputy Johnson did not find Defendant, he left. R317, R147.

Both Deputy Johnson and the marshal were then out of town for a few days for training. R357:26. When the marshal returned, he went to Defendant's house "as soon as [he] could" to check on Defendant. R357:26. The marshal saw Defendant in his yard and "could tell that he was okay." R357:26.

The marshal then shifted his priorities from Defendant's welfare to Defendant's crimes. R357:26. Later that day, the marshal obtained a search

warrant for the marijuana plants inside of Defendant's house. R357:26-27, R64.

When Deputy Johnson and the marshal arrived to execute the warrant, they found Defendant loading marijuana plants in his pickup truck and texting on his cellphone. R357:8; R316. The officers asked Defendant if he still had plants inside his house, and Defendant replied "[t]here might be one. I've got rid of most of them." R356:48.

Officers found six marijuana plants inside of Defendant's trailer. R356:14-16. They also found industrial grow lights, potting soil, planting implements, two baggies of marijuana, a plastic baggie with buds, a platter of chopped marijuana, a joint, rolling papers, a grinder with marijuana residue, a rifle, and a bong. R356:14. Based on the evidence, the officers obtained a second search warrant for Defendant's rifle and cellphone. R61-62.

When asked why he was growing marijuana, Defendant responded "I just wan[t] to retire and smoke dope." R356:18.

#### **B. Summary of proceedings.**

Defendant was charged with two second degree felonies, production of a controlled substance and possession of a controlled substance with intent to distribute; two third degree felonies, obstruction of justice, and

possession of a dangerous weapon by a restricted person; and one class A misdemeanor, possession of drug paraphernalia in a drug free zone. R4-6. After a preliminary hearing, Defendant was bound over as charged. R53-56.

*Motion to Suppress.* Defendant moved to suppress the fruits of the officers' search of his trailer and to quash the search warrants, arguing that no exigent circumstances allowed Deputy Johnson to make his initial warrantless entry into Defendant's home. R70-77, 96-132.

*Trial Court's Ruling.* After extensive briefing, and both a preliminary hearing and an evidentiary hearing, the trial court denied Defendant's motion and entered its findings of facts and conclusions of law in a Memorandum Decision. R70-77, 96-132, 137-149, 159-268, 313-318, 356, 357.

The court ruled that Deputy Johnson's initial warrantless entry into Defendant's home was reasonable under the emergency aid exception to the Fourth Amendment. R313-314. In support, the court found that Defendant's mother had informed Deputy Johnson that Defendant suffered "from health issues," and that she normally has "regular, even daily contact with Defendant," but that she "had not been able to reach Defendant for days." R314. The court found that "Defendant's neighbors [had] informed Deputy Johnson they had not see[n] [D]efendant for a few days." R314.



The court also found that Deputy Johnson had conducted welfare checks previously “under the same types of circumstances,” and “[o]n those occasions he had discovered people in their homes that were deceased or incapacitated.” R314. And, the court found that here, Deputy Johnson “observed signs suggesting that someone was home; but no one responded to his knock or calls into the home.” R314. Finally, the court found that Deputy Johnson “relayed this information to Defendant’s mother who was adamant that her son may be in need of medical help.” R314.

The court concluded that “[v]iewing these circumstances objectively, and as a whole, it was reasonable for Deputy Johnson to conclude there was an emergency and that [D]efendant was in immediate need of life-saving assistance.” R314. Finally, the court found that once Deputy Johnson entered the home, he looked only “in places where an incapacitated person could be found.” R314. Thus, both “the search entry”—through the open window—and the “search were reasonable and lawful under the circumstances.” R314. Consequently, “Deputy Johnson’s observations of [the marijuana plants] was lawful,” and there was a valid basis “to conclude that probable cause existed for authorization of a search warrant.” R314.

*Conviction, Sentence, and Appeal.* Defendant entered conditional guilty pleas to production of a controlled substance and possession of a

controlled substance with intent to distribute, both second degree felonies, reserving his right to appeal the trial court's suppression ruling. R335-340. As part of a plea agreement, the State dismissed the remaining three charges. R336. The trial court then sentenced Defendant to two suspended prison terms of 1-15 years and placed Defendant on Intense Bench Probation for 36 months. R350.

Defendant timely appealed. R352-353.

### **SUMMARY OF ARGUMENT**

Defendant argues that Deputy Johnson's warrantless entry into his home violated his Fourth Amendment rights, and that the trial court thus erred when it denied his motion to suppress the fruit of that entry. Specifically, Defendant contends that the trial court erred in ruling that the emergency aid doctrine applied, asserting that Deputy Johnson did not have an objectively reasonable basis to believe that an emergency existed. Defendant's claim lacks merit.

The Fourth Amendment protects an individual's right to be secure in his home against unreasonable searches and seizures. Under the Fourth Amendment, warrantless entries into private homes are presumed unreasonable. But that presumption is rebutted if exigent circumstances reasonably support the entry.

One such exigent circumstance is defined by the emergency aid doctrine. In *Salt Lake City v. Davidson*, 2000 UT App 12, 994 P.2d 1283, this Court articulated a three-part test which conditioned emergency aid entries on the presence of life-threatening injuries and the absence of improper police motive. But in *Brigham City v. Stuart*, 547 U.S. 398 (2006), the United States Supreme Court rejected that test, holding that an officer can make a warrantless entry into a person's home so long as he has an objectively reasonable basis to believe that a person within the house is in need of immediate aid.

Here, the record supports the trial court's ruling that Deputy Johnson's entry into Defendant's home was justified under the emergency aid doctrine. Defendant's mother requested a welfare check on her 65-year-old son because she had not heard from him in several days and he was in poor health. When Deputy Johnson arrived at Defendant's home to conduct the check, he saw signs that someone was home, but no one answered the door. And the neighbors had not seen Defendant for days. These circumstances provided Deputy Johnson with an objectively reasonable basis to believe that Defendant was in need of aid. Thus, the trial court correctly ruled that Deputy Johnson's warrantless entry was lawful under the emergency aid doctrine.



## ARGUMENT

### I.

#### **DEPUTY JOHNSON'S WARRANTLESS ENTRY INTO DEFENDANT'S HOME WAS JUSTIFIED UNDER THE EMERGENCY AID DOCTRINE**

Defendant argues that the trial court erred when it relied on the emergency aid exception to the Fourth Amendment warrant requirement to uphold Deputy Johnson's warrantless entry into his house. Br. Aplt. 15. Defendant argues that the emergency aid exception does not apply because Deputy Johnson did not have an "objectively reasonable basis to believe that an emergency existed or that there was an immediate need for assistance for the protection of life." Br. Aplt. 13. Thus, Defendant argues, Deputy Johnson's entry violated the Fourth Amendment, and the trial court erred in denying his motion to suppress the fruits of that entry. Br. Aplt. 19. Defendant's claim lacks merit.

#### **A. Emergency aid entries are governed by the test articulated in *Brigham City v. Stuart*, which abrogated the test adopted in *Salt Lake City v. Davidson*.**

The "touchstone of . . . the Fourth Amendment" is reasonableness. *Pennsylvania v. Mimms*, 434 U.S. 106, 108-109 (1977). Under the Fourth Amendment, a warrantless search inside a home is presumptively unreasonable. *Groh v. Ramirez*, 540 U.S. 551, 559 (2004) (quoting *Payton v. New York*, 445 U.S. 573, 586 (1980)). But that presumption is not absolute. In some cases, "the exigencies of the situations [may] make the needs of law

enforcement so compelling that the warrantless search is objectively reasonable." *Mincey v. Arizona*, 437 U.S. 385, 393-394 (1978)(quotations omitted). The United States Supreme Court has identified several circumstances that justify warrantless searches or entries under the "exigent circumstances" exception. Such circumstances include when police enter a home while in "hot pursuit" of a fleeing suspect, *United States v. Santana*, 427 U.S. 38, 42-43 (1976); when police enter a home to prevent the imminent destruction of evidence, *Ker v. California*, 374 U.S. 23, 39-40 (1963); or when police search the home of an arrestee for persons "posing a danger to those on the arrest scene." *Maryland v. Buie*, 494 U.S. 325, 334 (1990) (protective sweep).

The United States Supreme Court has recognized the need to render emergency aid as another exigent circumstance justifying a warrantless entry or search. *Brigham City v. Stuart*, 547 U.S. 398, 403 (2009). The emergency aid doctrine allows police officers warrantless entry into a home to render "emergency assistance to an injured occupant or to protect an occupant from imminent injury." *Id.* This exception recognizes that an officer's role extends beyond that of a crime fighter into one of a community caretaker—conducting "preventative patrols," aiding "individuals who are in danger of physical harm," "creat[ing] and maintain[ing] a feeling of

security in the community,” and “provid[ing] other services on an emergency basis.” 3 Wayne R. Lafave, *Search and Seizure: A Treatise on the Fourth Amendment* §6.6 (5th ed.) (citation omitted); *see also United States v. Coccia*, 446 F.3d 233 (1st Cir. 2006) (recognizing officers “are expected to aid those in distress, combat actual hazards, prevent potential hazards from materializing and provide an infinite variety of services to preserve and protect public safety” (quotation and citation omitted)); *United States v. King*, 990 F.2d 1552 (10th Cir. 1993) (recognizing officers may legitimately seize an individual “to ensure the safety of the public and/or the individual, regardless of any suspected criminal activity”). The exception recognizes that when responding as a community caretaker, “the business of policemen. . . is to act” quickly and “not to speculate” because “[p]eople could well die in emergencies if police tried to act with the calm deliberation associated with the judicial process.” *Wayne v. United States*, 318 F.2d 205, 212 (D.C. Cir. 1963).

In asserting that the trial court erred in applying the emergency aid doctrine here, Defendant cites *Salt Lake City v. Davidson*, 2000 UT App 12, 994 P.2d 1283, for the applicable test. Br. Appt. 10-11. In *Davidson*, this Court held that a warrantless search is “lawful under the emergency aid doctrine” if the following three-part test is met: “(1) police have an objectively



reasonable basis to believe that an emergency exists and believe there is an immediate need for their assistance for the protection of life”; “(2) [t]he search is not primarily motivated by intent to arrest and seize evidence”; and “(3) [t]here is some reasonable basis to associate the emergency with the area or place to be searched.” 2000 UT App 12, ¶¶12-13. Defendant’s reliance on *Davidson* is misplaced.

The Utah Supreme Court adopted the three-part *Davidson* test in *Brigham City v. Stuart*, 2005 UT 13, ¶ 23, 122 P.3d 506 (“*Stuart*”). But the United States Supreme Court rejected that test on certiorari. *Brigham City*, 547 U.S. 398. The high Court held that a warrantless entry “to render emergency assistance” is justified so long as officers have “an objectively reasonable basis” to believe that a person is “seriously injured or threatened with such injury” inside the house. 547 U.S. at 403, 406; *accord Fisher*, 558 U.S. at 47. In so holding, the United States Supreme Court expressly rejected Utah’s motivation and “protection of life” requirements.

The Supreme Court noted that it has “repeatedly rejected” a test that examines officer motivation. *Brigham City*, 547 U.S. at 404; *see also United States v. Najjar*, 451 F.3d 710, 718 (2006) (recognizing *Brigham City*’s rejection of the motivation requirement). It explained that an “action is ‘reasonable’ under the Fourth Amendment, regardless of the individual officer’s state of

mind, 'as long as the circumstances, viewed *objectively*, justify [the] action.'" *Id.* at 404-405 (quoting *Scott v. United States*, 436 U.S. 128, 138 (1978) (brackets in original)). Simply put, an "officer's subjective motivation is irrelevant." *Id.* at 404.

The Supreme Court also rejected Utah's strict "protection of life" requirement, holding that "[n]othing in the Fourth Amendment" requires police officers to wait until someone is "'unconscious' or 'semi-conscious' or worse before entering." *Id.* at 406. As explained in *Michigan v. Fisher*, "[o]fficers do not need ironclad proof of 'a likely serious, life-threatening' injury to invoke the emergency aid exception." 558 U.S. 45, 49 (2009). Indeed, "[t]he only injury police could confirm in *Brigham City* was the bloody lip they saw the juvenile inflict upon the adult." *Id.* Indeed, the "role of a peace officer includes preventing violence and restoring order, not simply rendering first aid to casualties; an officer is not like a boxing (or hockey) referee, poised to stop a bout only if it becomes too one-sided." *Brigham City*, 547 U.S. at 406; accord *State v. Anderson*, 2015 UT 90, ¶¶22, 24, 362 P.3d 1232 (recognizing that previous "life or limb" standard abrogated by *Brigham City* and *Fisher*).

This Court in *Davidson* held that an officer's belief that emergency assistance is needed "must approximate probable cause." 2000 UT App 12,

¶15. But that holding too is incorrect. *Brigham City* did not require belief akin to probable cause for officers to enter a house under the emergency aid doctrine. *Id.* at 406. As noted, all that the Court required is “an *objectively reasonable basis* for believing that an occupant is seriously injured or imminently threatened with such injury.” *Id.* at 400 (emphasis added). This proximates the reasonable suspicion standard applied by the United States Supreme Court in other cases involving safety concerns. *See, e.g., Terry v. Ohio*, 392 U.S. 1, 27 (1968) (holding that “the issue is whether a reasonably prudent [person] in the circumstances would be warranted in the belief that his safety or that of others was in danger”); *Michigan v. Long*, 463 U.S. 1032, 1050 (1983) (same); *Maryland v. Buie*, 494 U.S. 325, 336 (1990) (holding that protective sweep must be “justified by a reasonable, articulable suspicion that the house is harboring a person posing a danger to those on the arrest scene”). The Tenth Circuit Court of Appeals agrees. *See United States v. Gordon*, 741 F.3d 64, 70 (10th Cir. 2014) (recognizing that “[o]fficers do not need probable cause if they face exigent circumstances in an emergency” aid situation); *United States v. Gambino-Zavala*, 539 F.3d 1221, 1225 (10th Cir. 2008) (holding that emergency aid doctrine’s reasonable belief standard “is more lenient than . . . probable cause.”); *Najar*, 451 F.3d at 718 (observing that

*Brigham City* did not require “probable cause in this type of exigent circumstances”).

- B. Given the totality of the circumstances, Deputy Johnson had an objectively reasonable basis for believing that Defendant was in need of emergency assistance.**

As with reasonableness in any other search case, whether an officer’s belief was objectively reasonable is based on the totality of the circumstances known at the time—“guided by the realities of the situation presented by the record from the viewpoint of prudent, cautious and trained officers.” *Najar*, 451 F.3d at 718 (quotation and citation omitted); *see Brigham City*, 547 U.S. at 406 (holding that officer’s emergency aid entry depends on “the circumstances, viewed objectively”) (quoting *Scott v. United States*, 436 U.S. 128, 138 (1978); *City of Orem v. Henrie*, 868 P.2d 1384, 1388 (Utah Ct. App. 1994) (determination of exigency based on totality of the circumstances”); The reasonableness of the officer’s belief should not be viewed in “hindsight.” *Fisher*, 558 U.S. at 49. All that is required is that the officer has “‘an objectively reasonable basis for believing that medical assistance was needed, or persons were in danger.’” *Fisher*, 558 U.S. at 49 (quoting *Brigham City*, 547 U.S. at 406, *Mincey*, 437 U.S. at 394). Thus, even though a non-exigent reason may exist, that alone is insufficient to render an officer’s belief unreasonable. *See Fisher*, 558 U.S. at 49 (“Only when an

apparent threat has become an actual harm can officers rule out innocuous explanations for ominous circumstances.”).

Deputy Johnson’s concern here that Defendant needed immediate assistance was objectively reasonable. Deputy Johnson, “guided by the realities of the situation,” acted as any prudent, cautious, trained officer would in these circumstances. *Najar*, 451 F.3d at 718. Deputy Johnson knew that Defendant was in his mid-sixties and in poor health. R357:15-17. He also knew that no one had seen or heard from him in three days—which was unusual because Defendant spoke to his mother “almost daily.” R356:34-35, 37; R357:15-17. Deputy Johnson observed signs that someone was home, yet no one responded to his knocks or calls into the house, and Defendant’s mother was adamant that Defendant might need medical assistance. R356:35-37; R314. In Deputy Johnson’s experience, similar situations led to finding individuals who were unconscious or dead. R356:47.

With this perspective and these facts, Deputy Johnson’s belief was objectively reasonable that Defendant was inside his home in need of medical assistance. *Cf. Anderson*, 2015 UT 90, ¶¶28-29 (officer’s belief reasonable that motorist may need assistance where motorist pulled over with emergency hazard lights on, on a very cold night in late December)



*Fisher*, 558 U.S. at 49 (officer responding to 911 call saw blood drops on truck in driveway and reasonably believed emergency occurring); *United States v. Black*, 482 F.3d 1035, 1039-1040 (9th Cir. 2006) (entry into apartment reasonable where 911 call described domestic violence but no person responded at home); *State v. Vallasenor-Meza*, 2005 UT App 65, ¶19, 108 P.3d 123 (officers reasonably believed, based on 911 call from victim's brother, that victim was potentially injured and that immediate intervention was necessary).

Defendant contends, however, that Deputy Johnson had no reasonable basis to enter because he "did not observe Defendant lying on the floor inside" the house, "nor was there any indication" of "distress or foul play." Br. Aplt. 14. But "[r]easonable belief does not require absolute certainty." *Gambino-Zavala*, 539 F.3d at 1225. And for good reason. Limiting the exception to only when an officer actually sees an injury, distress, or foul play would hamstring law enforcement's ability to protect and serve—as persons who need help are often not in a place where they can be seen. *See e.g., State v. Yoder*, 935 P.2d 534, 539 (Utah Ct. App. 1997) (little girl hidden in defendant's balcony closet, naked and bound with tape); *People v. Mitchell*, 39 N.Y.2d 173, 383 N.Y.S.2d 246 (N.Y. App. 1976) (abrogated by

Brigham City, 547 U.S. at 402) (missing hotel maid found dead, hidden in laundry basket inside defendant's hotel room closet).

Furthermore, Deputy Johnson was not required to exhaust all possibilities before looking for Defendant inside the home, as "ironclad proof" of "a likely serious, life-threatening" injury is not necessary to invoke the emergency aid exception. *Fisher*, 558 U.S. at 49 (quotation omitted); *Anderson*, 2015 U.T. 90 at ¶29 (even though motorist may have had a mundane reason for pulling over, officer "would have reason to be concerned and to at least stop to determine whether assistance is needed."); see also *Wayne*, 318 F.2d at 212 (police must act swiftly in emergency aid situations, as "people could well die in emergencies" if officers act too deliberately). As stated, all that is required is "'an objectively reasonable basis for believing' that medical assistance was needed, or persons were in danger." *Fisher*, 558 U.S. at 49 (quoting *Brigham City*, 547 U.S. at 406). And here the circumstances indicated that Defendant was potentially in need of medical assistance and that immediate intervention was necessary. See *Najar*, 451 F.3d at 716-17, 720 (warrantless entry reasonable where someone at Najar's address called 911, hung-up, and dispatch was then unable to reconnect); *Anderson*, 2015 UT 90, ¶28 (officer's belief reasonable given the seriousness of the perceived emergency).

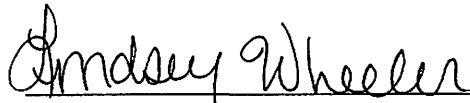
In sum, Officer Johnson's entry into the home to check on Defendant's welfare was objectively reasonable. The trial court therefore correctly ruled that the officer's entry into Defendant's home and his subsequent search was reasonable under the emergency aid doctrine.

### CONCLUSION

For the foregoing reasons, the Court should affirm.

Respectfully submitted on March 11, 2016.

SEAN D. REYES  
Utah Attorney General

  
\_\_\_\_\_  
LINDSEY WHEELER  
Assistant Attorney General  
Counsel for Appellee

## CERTIFICATE OF SERVICE

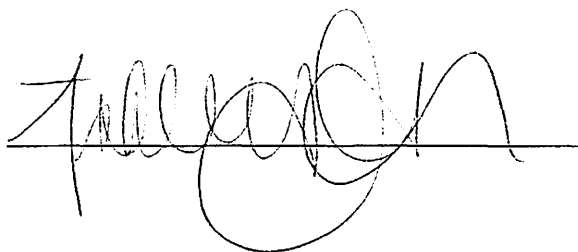
I certify that on March 11, 2016, two copies of the Brief of Appellee were ☒ mailed ☐ hand-delivered to:

Dale W. Sessions  
1177 N. Northfield Rd. #4  
Cedar City, UT 84721

Also, in accordance with Utah Supreme Court Standing Order No. 8, a courtesy brief on CD in searchable portable document format (pdf):

☒ was filed with the Court and served on appellant.

☐ will be filed and served within 14 days.

A handwritten signature in black ink, appearing to read "Dale W. Sessions", is written over a horizontal line.

# Addendum



12-11-14

FILED  
KANE COUNTY  
DEC 11 2014  
Clerk  
SIX DISTRICT COURT

SIXTH DISTRICT COURT, STATE OF UTAH  
COUNTY OF KANE  
76 North Main Street, Kanab, Utah 84741  
Telephone (435) 644-4923 Facsimile (435) 644-2052

STATE OF UTAH,

Plaintiff,

v.

TIMOTHY JOSHEPH ADAMS,

Defendant.

MEMORANDUM DECISION

Case No. 131600036

Judge Marvin D. Bagley

Submitted for decision are an Amended Motion to Suppress and a Motion to Quash Search Warrants Issued March 12, 2013 and March 13, 2013. The Motions were filed by defendant Timothy Joseph Adams and have been fully briefed.

**FACTUAL BACKGROUND**

On March 2, 2013, defendant's mother, Lynn Clark called Kane County Dispatch requesting that an officer check on her son at his home in Big Water, Utah. Ms. Clark reported she had not heard from her son in three days, that he has ongoing health issues, and that she was very worried. In response, Kane County Dispatch contacted Marshall Russell Johnson of the Big Water Marshall's Office and informed him of the request for a welfare check. Because Marshall Johnson was leaving town at the time, he asked Dispatch to contact Deputy Rob Johnson of the Kane County Sheriff's Office and ask him to perform the welfare check.

Kane County Dispatch then contacted Deputy Rob Johnson and informed him of the request; and the reasons for the request. Deputy Johnson had previously regularly performed

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welfare checks of the same nature and circumstances. Under such circumstances Deputy Johnson had in the past found individuals in their home either dead or incapacitated.

Deputy Johnson proceeded to Defendant's home to perform the welfare check. He knocked on the door but no one answered. He found evidence around the home suggesting someone had recently been repairing leaky pipes under the home and working on top of the house. There was an extension cord that powered a light running from an open window to a crawl space under the home. There were tools on top of the roof near an air conditioning unit and the area near the crawl space was moist. Deputy Johnson yelled into the home but no one answered. Defendant's neighbors told Deputy Johnson they had not seen the defendant for two or three days. Deputy Johnson observed there was a light on in the living room but he could not see anything in the home from outside. Deputy Johnson called defendant's mother to discuss the situation with her. Defendant's mother relayed her previous concerns about her son to Deputy Johnson and asked him to "use whatever means necessary" to enter the home to ascertain if her son was okay.

Deputy Johnson entered the home using the open living room window. Upon entering, Deputy Johnson immediately saw what he described as a "grow plant, a light plant to grow vegetation of sorts." There were several small plants of that he recognized to be marijuana. He took a picture of the plants on his cell phone. Deputy Johnson looked around the home in places defendant might have been; but could not locate him and left.

Approximately a week later, defendant was seen in his front yard. On March 12, 2013, Marshall Russell Johnson filed an affidavit and obtained a search warrant to search defendant's

home for the marijuana plants. On March 12, 2013 Marshall Johnson, Deputy Johnson and others executed the search warrant. Upon arriving at defendant's home, Deputy Johnson observed defendant standing by his Red Ford truck parked in front of the home on the side of the road. Defendant was texting on his phone. The driver side door of the truck was open. As Deputy Johnson approached the truck he could see several potted plants that appeared to be marijuana on the passenger floor of the truck.

Deputy Johnson handed the issued search warrant to defendant and said, "I guess you know what this is about." Defendant responded with, "Yeah, I do." Deputy Johnson then asked, "Is there still any left in the house?" Defendant responded to the effect that there might be one or two plants.

Officers then searched the home. Inside, they found several individually potted plants that appeared to be marijuana, several items of drug paraphernalia, heat lamps, and industrial lights. Officers also found a loaded .22 caliber rifle. The search ceased. The next day on March 13, 2013, Marshall Johnson obtained a second search warrant for Defendant's vehicle; and to seize the gun and defendant's cell phone.

### ANALYSIS

A search is unreasonable, and therefore, unconstitutional, when there is a warrantless government intrusion into a reasonable expectation of privacy; unless there is an exception to the warrant requirement. The Utah Court of Appeals recognized one such exception in *Salt Lake City v. Davidson*, 2000 UT App 12, ¶12-13, 994 P.2d 1283. The exception is known as the "emergency aid doctrine." The test for applying the emergency aid doctrine is satisfied when:

- (1) Police have an objectively reasonable basis to believe that an emergency exists and believe there is an immediate need for their assistance for the protection of life.
- (2) The search is not primarily motivated by intent to arrest and seize evidence.
- (3) There is some reasonable basis to associate the emergency with the area or place to be searched. That is, there must be a connection with the area to be searched and the emergency.

*Id.* at ¶12. Another such exception is the “plain view” doctrine. “A seizure is valid under the plain view doctrine if (1) the officer is lawfully present, (2) the item is in plain view, and (3) the item is clearly incriminating.” *State v. McArthur*, 2000 UT App 23, ¶22, 996 P.2d 555 (quoting *State v. Shepard*, 955 P.2d 352, 357 (Utah Ct.App.1998)).

Defendant claims Deputy Johnson never had the constitutional right to go inside his home. As such defendant asserts in his motions that the probable cause information relied upon for issuance of the first warrant was obtained illegally. Defendant also asserts the improperly obtained information not only invalidates the first warrant, but the second search warrant as well. He claims the information used to support the issuance of the second warrant was fruits of the improperly obtained first warrant. Defendant claims all evidence obtained as a result of Deputy Johnson’s initial entry into defendant’s home should be suppressed; and that the searches made pursuant to the first and second warrants should be quashed.

In response, the State argues that the emergency aid exception to the warrant requirement supports a finding that Deputy Johnson’s entry into defendant’s home was lawful. The State also asserts that the plain view doctrine supports upholding the second search warrant.

This Court is persuaded the facts surrounding Deputy Johnson’s initial entry into defendant’s home satisfies the legal requirements to invoke the emergency aid exception to the

requirement that a warrant be obtained. Deputy Johnson spoke with defendant's mother who had regular, even daily contact with Defendant. Defendant's mother communicated she had not been able to reach defendant for days. She informed he was suffering with health issues. Defendant's mother was very concerned and relayed this information to Deputy Johnson. Defendant's neighbors informed Deputy Johnson they had not seen defendant for a few days. Deputy Johnson had previously regularly conducted welfare checks under the same types of circumstances. On those occasions he had discovered people in their homes that were deceased or incapacitated. Deputy Johnson observed signs suggesting that someone was home; but no one responded to his knock or calls into the home. Deputy Johnson relayed this information to Defendant's mother who was adamant that her son may be in need of medical help.

Viewing these circumstances objectively, and as a whole, it was reasonable for Deputy Johnson to conclude there was an emergency and that defendant was in immediate need of life-saving assistance. None of the circumstances indicate Deputy Johnson was motivated by intent to arrest or seize evidence. Deputy Johnson entered into the home through the living room window, where a light could be seen, and where an incapacitated person might have been. Once inside, Deputy Johnson observed what appeared to be marijuana growing in plain view. Deputy Johnson only looked for Defendant in places where an incapacitated person could be found. The entry and search were reasonable and lawful under the circumstances. Consequently, Deputy Johnson's observation of the alleged grow was a lawful and valid basis on which to conclude that probable cause existed for authorization of a search warrant.

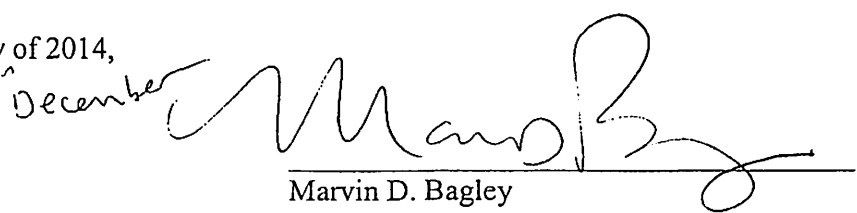


Based on the above analysis, the second search warrant was not issued using fruit obtained from a poisonous tree. The second warrant was issued based on Deputy Johnson's observations while conducting the first search. Because of the first search warrant, Deputy Johnson was lawfully at and inside defendant's home. The gun, cell phone, and alleged marijuana in Defendant's truck were in plain view at that time. The items were incriminating given that defendant was apparently in possession of a firearm while possessing a certain amount of suspected controlled substances. In addition there were facts suggesting defendant was about to transport what appeared to be marijuana; and was using his cell phone. The Court is convinced the plain view exception applies to Deputy Johnson's observations while he was executing the first search warrant. As a result the second search warrant should not be quashed.

### CONCLUSION

For the foregoing reasons, defendant's Amended Motion to Suppress Evidence and defendant's Motion to Quash Search Warrants Issued March 12, 2013 and March 13, 2013 are DENIED.

Dated this 10<sup>th</sup> day of 2014,  
December

  
Marvin D. Bagley  
District Court Judge