

IN THE UTAH COURT OF APPEALS

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Spanish Fork City,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20080775-CA
v.)	
)	F I L E D
Travis Taylor,)	(October 8, 2009)
)	
Defendant and Appellant.)	2009 UT App 288

Fourth District, Spanish Fork Department, 071300757
The Honorable Howard Maetani

Attorneys: Sheldon R. Carter, Provo, for Appellant
Kirk R. Nord, Spanish Fork, for Appellee

Before Judges Greenwood, Bench, and Davis.

BENCH, Judge:

Defendant Travis Taylor appeals the trial court's denial of his motion to suppress, arguing that the warrantless search of his home was unreasonable because the officers lacked probable cause and the circumstances were not exigent. "The issue of whether a warrantless search of a residence is reasonable under the Fourth Amendment is a question of law, which we review for correctness." State v. Duran, 2007 UT 23, ¶ 6, 156 P.3d 795.¹ "For 'the application of the law to the underlying factual findings in search and seizure cases,' we apply the standard of 'non-deferential review.'" State v. Vallasenor-Meza, 2005 UT App 65, ¶ 6, 108 P.3d 123 (quoting State v. Brake, 2004 UT 95 ¶ 15, 103 P.3d 699).

"[A] warrantless search of a residence is constitutionally permissible where probable cause and exigent circumstances are proven." Id. ¶ 9 (alteration in original) (internal quotation

1. Defendant makes a cursory reference to the Utah Constitution in his opening brief, but he does not conduct any sort of separate analysis of the potential protections afforded by it. We therefore decline to analyze Defendant's claims under the state constitution. See State v. Despain, 2007 UT App 367, ¶ 12, 173 P.3d 213 ("Utah appellate courts have repeatedly refrained from engaging in state constitutional law analysis unless an argument for different analyses under the state and federal constitutions is briefed." (internal quotation marks omitted)).

marks omitted). "Probable cause exists where the facts and circumstances within . . . [the officers'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a [person] of reasonable caution in the belief that an offense has been or is being committed." Id. ¶ 10 (omission and alterations in original) (internal quotation marks omitted). A probable cause determination requires "an examination of all the information available to the searching officer in light of the circumstances as they existed at the time the search was made," and it "is based on the totality of the circumstances." Id. (internal quotation marks omitted). "Exigent circumstances are those that would cause a reasonable person to believe that entry . . . was necessary to prevent physical harm to the officers or other persons, the destruction of relevant evidence, the escape of the suspect, or some other consequence improperly frustrating legitimate law enforcement efforts.'" State v. Duran, 2005 UT App 409, ¶ 19, 131 P.3d 246 (omission in original) (quoting State v. Beavers, 859 P.2d 9, 18 (Utah Ct. App. 1993)), aff'd 2007 UT 23, 156 P.3d 795.

Here, the officers had probable cause to believe that an offense had been or was being committed. The officers responded to a call regarding a physical altercation at a residence in Spanish Fork. The reporting party did not indicate how many persons were involved in the altercation, nor did he exclude the presence of weapons, but he did state that his brother was getting beat up. When the officers arrived at the residence, they heard distinct sounds of shouting coming from inside the basement area and what sounded like a person being thrown against the wall or window.

Additionally, exigent circumstances existed that justified the officers' entry into the residence to perform a protective sweep. After the officers knocked on the front door of the residence and waited a few moments, the door was opened and two large dogs emerged, causing a disturbance.² The person who opened the door refused to come out and was eventually removed by the officers. Subsequently, Defendant emerged from the basement, called the dogs back into the residence, secured them in the backyard, and came out to the front yard where the officers and first suspect were located. The officers asked Defendant and the first suspect if other individuals remained inside the residence. The trial court found that neither suspect would cooperate in answering and that Defendant said, "You should find out for yourselves."³ The officers were therefore justified in their belief that entry into the home was necessary to ensure that

2. At the motion to suppress hearing, Defendant stated that the dogs "would be threatening to anybody that comes to [his] home."

3. Defendant does not challenge the trial court's factual findings on appeal.

there was no further threat to their physical safety or the safety of others at the scene due to the uncertainty about whether other persons--perpetrators or victims--remained inside the house, as well as Defendant's lack of cooperation in resolving that uncertainty. See, e.g., Maryland v. Buie, 494 U.S. 325, 337 (1990) ("The Fourth Amendment permits a properly limited protective sweep in conjunction with an in-home arrest when the searching officer possesses a reasonable belief based on specific and articulable facts that the area to be swept harbors an individual posing a danger to those on the arrest scene.").

Defendant nonetheless argues that, despite these circumstances, the officers should have secured a warrant while he and the other suspect waited outside. "This argument, however, is misguided, as it . . . ignores the purpose of the exigent circumstances exception to the warrant requirement." See Vallasenor-Meza, 2005 UT App 65, ¶ 19. Where "[t]he officers reasonably believed that they did not have time to get a warrant" because of safety concerns, and "that their immediate intervention was necessary," the exigent circumstances obviated the usual requirement to procure a warrant. See id.

Accordingly, we affirm.⁴

Russell W. Bench, Judge

WE CONCUR:

Pamela T. Greenwood,
Presiding Judge

James Z. Davis, Judge

4. We note that Defendant does not separately challenge the trial court's conclusion that the officers were justified in seizing the evidence of illegal drugs lying in plain view during the protective sweep. See State v. Cayer, 814 P.2d 604, 610-11 (Utah Ct. App. 1991) (stating that a warrantless seizure is justified under the plain view doctrine if three requirements are met: "(1) lawful presence of the officer; (2) evidence in plain view; and (3) evidence that is clearly incriminating").