

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

State of North Dakota,)	
)	
Plaintiff-Appellee,)	
)	
-vs-)	
)	
Dakota Bee,)	Supreme Ct. No. 20200261
)	
Defendant-Appellant.)	Dist. Ct. No. 08-2020-CR-476

**BRIEF OF PLAINTIFF-APPELLEE
STATE OF NORTH DAKOTA**

Appeal from Order on Motion to Suppress Entered on September 1, 2020

South Central Judicial District, Burleigh County
The Honorable David Reich, Presiding

ORAL ARGUMENT NOT REQUESTED

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STATEMENT OF THE ISSUES

1. Whether law enforcement violated the Defendant's Fourth Amendment rights by entering her residence without a warrant.

STATEMENT OF THE CASE

[¶1] This is an appeal from the Criminal Judgment entered on September 4, 2020.

[¶2] On August 24, 2020, an Amended Information was filed charging Dakota Bee (“Bee”) with Child Neglect; Possession of Methamphetamine; Possession of Drug Paraphernalia; and Refusal to Halt [Appellant’s Appendix. 7]¹.

[¶3] On June 19, 2020, a Motion to Suppress was conducted to determine the admissibility of evidence in the case. [A.A. 9-15]. On September 1, 2020, the Court issued an Order on the Motion to Suppress. [A.A. 16].

[¶4] On September 4, 2020, Bee entered a Rule 11(a)(2) Conditional Plea reserving her right to appeal. [A.A. 20]. A Criminal Judgment was entered on September 4, 2020. [A.A. 22].

[¶5] A Notice of Appeal was filed on October 1, 2020 by Bee. [A.A. 27].

STATEMENT OF FACTS

[¶6] On February 2, 2020, law enforcement was contacted by Burleigh County Social Services (BCSS) to assist in removing a child from the care of the Defendant, Dakota Bee. [A. 1]². BCSS had information that the Defendant, Dakota Bee, had been smoking methamphetamine while having her child in her care [A. 1-2].

¹ Appellant’s Appendix, hereinafter cited as [A.A. (Page Nos.)]

² Appellee’s Appendix, hereinafter cited as [A. (Page Nos.)]

[¶7] BCSS had concerns about the Defendant's ability to adequately care for the child due to her use of methamphetamine and alerted law enforcement to such prior to arriving at the Defendant's residence. [A. 1]. Law enforcement was also advised by BCSS that there was an order for no contact between the Defendant and her child. [A. 21]. It was, however, later determined that that information was incorrect. [A. 16]. BCSS indicated further that the Defendant was ordered to cooperate with BCSS pursuant to a criminal judgment and judicial order in Burleigh County case number 08-2019-CR-03863. [A. 2-10]; N.D.C.C. § 12.1-10-05.

[¶8] Law enforcement accompanied BCSS when arriving at Defendant's residence. [A. 11]. Upon initiating contact with the Defendant at her residence and informing her that BCSS would be removing the child from her care, it became immediately apparent that the Defendant would not cooperate with BCSS in direct disobedience of the judicial order in Burleigh County case number 08-2019-CR-03863. [A. 2-10]; N.D.C.C. § 12.1-10-05. Upon being informed of the impending removal, the Defendant stated "no," picked up the 14-month old child and began to flee toward the back door of the residence, all while reportedly under the influence of methamphetamine. [A. 1, 16].

[¶9] Law enforcement entered the residence shortly after the Defendant began her attempt to flee to avoid removal of the child. [A. 22]. Once outside the residence, the Defendant (with the 14-month old child in her arms)

slipped on the sidewalk but was kept from falling by law enforcement. [A. 1]. A struggle ensued where multiple officers became involved to remove the child from the Defendant's grasp due to concerns that the child's breathing would be obstructed due to the positioning of the Defendant's arm near the child's head/neck region. [A. 1]. Due to the odor of marijuana emanating from the Defendant's person and her appearance of being under the influence of methamphetamine, law enforcement asked for Defendant's consent to search her residence, which she denied. [A. 1].

[¶10] BCSS subsequently entered the residence to retrieve necessary items for the removed child. [A. 23]. BCSS was accompanied by law enforcement officer Parsons during the second entry pursuant to standard law enforcement procedure. [A. 12]. Law enforcement accompanied BCSS into the residence to negate any potential danger, as the residence had not been cleared. [A. 12]. While in the residence to ensure the safety of BCSS, the BCSS worker noticed a glass smoking pipe on a shelf and subsequently pointed out the paraphernalia to law enforcement. [A. 12]. Law enforcement subsequently applied for and obtained a search warrant for the residence, resulting in the discovery and seizure of methamphetamine in addition to the glass smoking device. [A. 2, 12].

[¶11] The Defendant was subsequently charged with Child Neglect (Felony C), Possession of Methamphetamine – 2nd/Subsequent Offense

(Felony C), Possession of Methamphetamine Paraphernalia – 2nd/Subsequent Offense (Felony C) and Refusal to Halt (Misdemeanor A).

ARGUMENT

[¶12] Bee argues that law enforcement illegally entered the residence in which she was staying to detain her based upon false information provided by Burleigh County Social Services (BCSS) in an event she asserts violated her rights under the Fourth Amendment.

[¶13] The following argument was not presented at the district court. “The Fourth Amendment to the United States Constitution and Article I, Section 8 of the North Dakota Constitution protect individuals from unreasonable searches and seizures in their homes.” *State v. DeCoteau*, 592 N.W.2d 579, 582 (1999). “The Fourth Amendment [thus] provides protection from unreasonable searches and seizures, and warrantless searches inside a person’s home are presumptively unreasonable” in the absence of a valid exception. *Payton v. New York*, 445 U.S. 573, 586 (1980).

[¶14] The exclusionary rule requires the suppression of evidence derived as a result of a Fourth Amendment violation. *Mapp v. Ohio*, 367 U.S. 643 (1961); however, “the exclusionary rule is only ‘designed to safeguard...rights generally through its deterrent effect, [and is not] a personal constitutional right of the party aggrieved.’” *State v. Bachmeier*, 2007 ND 42, ¶ 9, 792 N.W.2d 141. “Whether the exclusionary sanction is appropriately imposed in a particular case...is an issue separate from the

question [of] whether the Fourth Amendment rights of the party seeking to invoke the rule were violated by police conduct.” *United States v. Leon*, 468 U.S. 897, 905 (1984).

[¶15] “The standard for reviewing a district court’s decision on a motion to suppress is well-established.” *State v. Stewart*, 851 N.W.2d 153, 157 (N.D. 2014). “In reviewing a district court decision on a motion to suppress, we give deference to the district court’s findings of fact and we resolve conflicts in testimony in favor of affirmance.” *State v. Tognotti*, 2003 ND 99, ¶ 5, 663 N.W.2d 642. “We ‘will not reverse a district court decision on a motion to suppress...if there is sufficient competent evidence capable of supporting the court’s findings, and if the decision is not contrary to the manifest weight of the evidence.’” *State v. Gefroh*, 2011 ND 153, ¶ 7, 801 N.W.2d 429. “Questions of law are fully reviewable on appeal, and whether a finding of fact meets a legal standard is a question of law.” *Id.*

I. Giving deference to the district court’s findings of fact, the Defendant’s fourth amendment rights were not violated because officers lawfully entered the premises initially to assist in the removal of a minor child pursuant to the emergency exception to the warrant requirement.

[¶16] Bee’s assertion that her Fourth Amendment rights were violated in this instance should fail because law enforcement’s initial entry into her residence in response to an emergency was lawful.

[¶17] The following argument was not presented at the district court. “The Fourth Amendment prohibits ‘unreasonable searches and seizures.’”

Payton, 445 U.S., at 586. “Subject to a few well-delineated exceptions, searches and seizures without a warrant are unreasonable under the Fourth Amendment. *State v. DeCoteau*, 592 N.W.2d 579, 582 (N.D. 1999). “The United States Supreme Court has defined a search, within the meaning of the Fourth Amendment, as an intrusion into a person’s reasonable expectation of privacy.” *State v. Gregg*, 615 N.W.2d 515, 520 (N.D. 2000), citing *Katz v. United States*, 389 U.S. 347 (1967).

[¶18] “Although searches and seizures inside a home without a warrant are presumptively unreasonable, [the] presumption may be overcome because the ultimate touchstone of the Fourth Amendment is reasonableness.” *Kentucky v. King*, 563 U.S. 452, 459 (2011). Accordingly, the warrant requirement is subject to certain reasonable exceptions. *Id.* at 460.

[¶19] The emergency exception is one such exception to the warrant requirement. “The emergency exception does not involve officers investigating a crime; rather, the officers are assisting citizens or protecting property as part of their general caretaking responsibilities to the public.” *State v. Huber*, 793 N.W.2d 781, 785 (N.D. 2011). There are “three requirements for applying the emergency exception: (1) the police must have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property; (2) the search must not be primarily motivated by intent to arrest and seize evidence; and (3) there must be some reasonable basis, approximating

probable cause, to associate the emergency with the area or place to be searched.” *Id.* An objective standard [is used] in evaluating an officer’s reasonable belief that an emergency existed. *Id.* “Whether an objective officer would believe an emergency existed is a question of fact.” *Id.*

[¶20] Although law enforcement’s initial entry into the Defendant’s residence constituted a warrantless search under the Fourth Amendment, it did not violate her Fourth Amendment rights because the circumstances show the existence of an emergency that required the officers’ immediate assistance. The need to address the ongoing emergency rendered their warrantless entry into the residence “reasonable” under the circumstances and in accordance with the “ultimate touchstone” of the Fourth Amendment. *King*, 563 U.S. at 459.

[¶21] Prior to initiating contact with the Defendant at her door, law enforcement was advised by BCSS that the Defendant had been smoking methamphetamine while having the child in her care [A. 1]. BCSS had decided that removal of the child was appropriate under such circumstances. [A. 1]. Although the belief of BCSS that there was an order for no contact between the Defendant and her child turned out to be incorrect, the Defendant was still ordered to “cooperate with Burleigh County Social Services” pursuant to a criminal judgment/judicial order in Burleigh County case number 08-2019-CR-03863. [A. 2-10]; N.D.C.C. § 12.1-10-05.

[¶22] Upon initiating contact with the Defendant just outside her door, it became quickly apparent from initial interactions with her that she would not be cooperative with BCSS in disobedience of a judicial order. [A. 2-10]; N.D.C.C. § 12.1-10-05. When informed by law enforcement and BCSS that the child would be removed, the Defendant responded “no” and picked up the 14-month old child and began to flee toward the back of the residence, while reportedly under the influence of methamphetamine. [A. 1, 16]. Law enforcement instructed the Defendant to stop as she was fleeing without any success. [A. 1].

[¶23] Law enforcement entered the residence shortly thereafter in pursuit of the Defendant as she fled out a back door, with the primary objective at the time of entry being the protection of the child in the Defendant’s arms, as opposed to any intent to search for or seize evidence of a criminal act. [A. 1, 22]. Law enforcement at that time had objectively reasonable grounds to believe that there was an emergency at hand that required their immediate assistance because the Defendant was fleeing officers with a 14-month old child while reportedly under the influence of methamphetamine. Law enforcement also had a reasonable basis, approximating probable cause, to associate the ongoing emergency with the interior of the residence because the Defendant’s actions that gave officers reasonable grounds to believe there was an ongoing emergency occurred within the residence. [A. 1, 22].

II. Giving deference to the district court's findings of fact, the evidence obtained following officers' second entry into the Defendant's residence should not be suppressed pursuant to the exclusionary rule.

[¶24] The State concedes that officers' second entry into the residence of the Defendant also constituted a warrantless search under the Fourth Amendment. The State further concedes that the plain view exception to the warrant requirement cannot be applied in this instance because "it is an essential predicate to any valid warrantless seizure of incriminating evidence that the officer did not violate the Fourth Amendment in arriving at the place from which the evidence could be plainly viewed." *King*, 563 U.S. at 463. Still, the State urges that the evidence obtained not be suppressed pursuant to the exclusionary rule enunciated by the U.S. Supreme Court in *Mapp v. Ohio*, 367 U.S. 643 (1961) because law enforcement was in the residence in a good faith effort only to ensure the safety of BCSS, as opposed to actively looking for evidence. [A. 12] In light of such, suppression would not serve the purpose of the rule; specifically, suppression in this instance would not yield appreciable deterrence of future Fourth Amendment violations.

[¶25] "Language in opinions of [the United States Supreme Court have] sometimes implied that the exclusionary rule is a necessary corollary of the Fourth Amendment." *Mapp*, 367 U.S. at 651. However, "the Fourth Amendment 'has never been interpreted to proscribe the introduction of illegally seized evidence in all proceedings or against all persons.'" *Leon*, 468

U.S. at 906. “The exclusionary rule is neither intended nor able to ‘cure the invasion of the defendant’s rights which he has already suffered.’” *Id.* The exclusionary rule’s sole purpose is to deter future Fourth Amendment violations. *Davis v. U.S.* 564 U.S. 229, 236 (2011). “Our cases have thus limited the rule’s operation to situations in which this purpose is ‘thought most efficaciously served.’” *Id.* at 237. “Where suppression fails to yield ‘appreciable deterrence,’ exclusion is ‘clearly unwarranted.’” *Id.*

[¶26] Suppression in this instance would not deter deliberate unlawful conduct of the police because law enforcement in this instance entered the residence not intending to search for or acquire evidence without a warrant. Rather, law enforcement’s second entry into the residence was merely to accompany BCSS and assist as needed, a finding of fact made by the district court, which is entitled to deference under *State v. Tognotti*, 2003 ND 99, ¶ 5, 663 N.W.2d 642; [A. 16]. Buttreassing the fact that law enforcement’s presence in the residence was not to look for or seize evidence was the fact that Officer Parsons was not the one who saw the drug paraphernalia in plain view. The paraphernalia was pointed out to him by the BCSS worker. [A. 23]. Further, upon being alerted to the paraphernalia, officers took steps to apply for and obtain a search warrant for the home. [A. 16].

[¶27] Due to the foregoing, the State submits that the evidence obtained in this instance should not be suppressed because suppression would not adequately serve the purpose of the exclusionary rule. Specifically, it would

not deter future violations of the Fourth Amendment given that law enforcement's second entry was merely a good faith presence to ensure the safety of BCSS and retrieve clothing for the child, as opposed to an active effort to circumvent the warrant requirement of the Fourth Amendment.

CONCLUSION

[¶28] Conceding that two warrantless searches occurred due to law enforcement's entries into the residence of the Defendant, the evidence should still, nonetheless, not be suppressed. The first entry was pursuant to the emergency exception to the warrant requirement, rendering it reasonable and not violative of the Defendant's Fourth Amendment rights. Further, suppression of evidence in this instance due to the second warrantless entry would not serve the purpose of the exclusionary rule; namely, it would not function to deter future Fourth Amendment violations.

Dated this 21st day of January 2021.

/s/ Nickolas Baker

Nickolas Baker

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State of North Dakota

CERTIFICATE OF COMPLIANCE

The undersigned, as attorney for the Appellee in the above matter, and as the author of this brief, hereby certifies that this brief complies with the page limitation in N.D.R.App.P. 32(a)(8).

Dated this 21st day of January, 2021.

/s/ Nickolas Baker

Nickolas Baker

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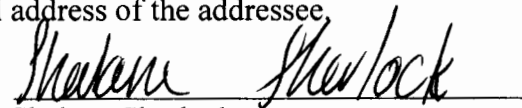
[¶1] I, Shalane L. Sherlock, declare that I am a United States citizen over 21 years of age, and on the 21st day of January, 2021, I served the following:

1. Brief of Plaintiff-Appellee
2. Certificate of Compliance
3. Affidavit of Service

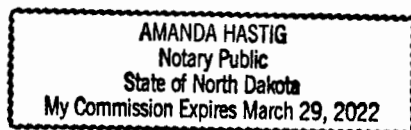
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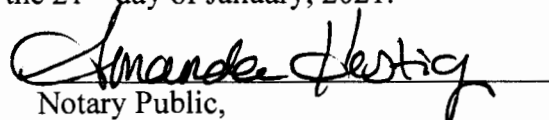
Thomas Glass
Attorney at Law
tjglaw@midconetwork.com

which address is the last known email address of the addressee.


Shalane Sherlock

Subscribed and sworn to before me the 21st day of January, 2021.




Amanda Hastig
Notary Public,
Burleigh County, North Dakota

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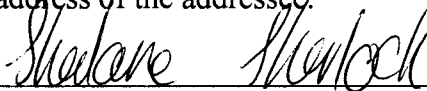
[¶1] I, Shalane L. Sherlock, declare that I am a United States citizen over 21 years of age, and on the 27th day of January, 2021, I served the following:

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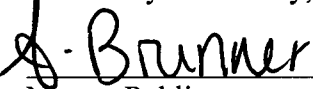
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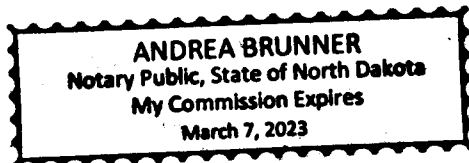
Thomas Glass
 Attorney at Law
 tjglaw@midconetwork.com

which address is the last known email address of the addressee.


 Shalane Sherlock

Subscribed and sworn to before me the 27th day of January, 2021.


 Notary Public,
 Burleigh County, North Dakota



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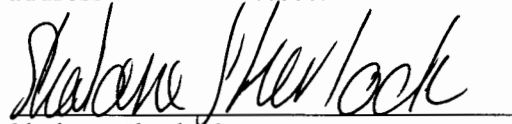
[¶1] I, Shalane L. Sherlock, declare that I am a United States citizen over 21 years of age, and on the 28th day of January, 2021, I served the following:

1. Brief of Plaintiff-Appellee
2. Certificate of Compliance
3. Affidavit of Service

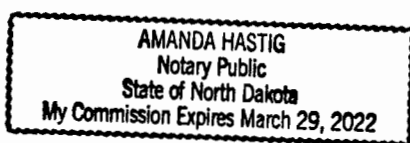
on the following electronic transmission to the listed email address of:


Thomas Glass
Attorney at Law
tjglaw@midconetwork.com

which address is the last known email address of the addressee.


Shalane Sherlock

Subscribed and sworn to before me the 28th day of January, 2021.




Notary Public,
Burleigh County, North Dakota