IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

STATE OF NEW MEXICO,

Plaintiff-Appellant,

v. **No. A-1-CA-40496**

BILLY JIMENEZ,

Defendant-Appellee.

APPEAL FROM THE DISTRICT COURT OF LEA COUNTY
Lee A. Kirksey, District Court Judge

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for Appellant

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for Appellee

MEMORANDUM OPINION

IVES, Judge.

{1} After a hearing on Defendant Billy Jimenez's motion to suppress, the district court granted the motion, concluding that the officers' warrantless entry into Defendant's home was unreasonable. On appeal, the State argues that the district court erred by granting Defendant's motion to suppress because (1) it failed to apply

the plain view exception to the warrant requirement and (2) the district court's factual findings about the emergency assistance doctrine were not supported by substantial evidence, which led to a misapplication of the law.

{2} We are not persuaded that the State preserved its plain view argument. However, we agree with the State that the court's findings of fact regarding the timing of law enforcement's entry of the home are not supported by substantial evidence. The district court's erroneous findings caused it to focus on whether the entry into the home was justified by an emergency related to the adult who was in the home. As a consequence, the district court failed to reach an issue that the State did preserve and that might justify the search under both the Fourth Amendment of the United States Constitution and Article II, Section 10 of the New Mexico Constitution: whether the emergency assistance doctrine applies to the children found in Defendant's home. We therefore reverse and remand for the district court to make factual findings and conclusions of law regarding that issue.

DISCUSSION

I. The State Did Not Preserve Its Plain View Argument

{3} Although the State never mentioned "plain view" in its response to Defendant's motion to suppress or at the suppression hearing, or otherwise argued to the district court that the plain view doctrine applied to the facts, the State argues on appeal that because it "elicited extensive testimony that the narcotics were visible

in plain view," it properly preserved its plain view argument, and the district court should have reached the merits of that argument. We are not persuaded.

{4} In order to preserve an argument for review, a ruling by the district court must be "fairly invoked." Rule 12-321 NMRA. Importantly, the party seeking to preserve an argument must present the argument to the district court with enough specificity for the judge to understand the connection between the facts that have been presented and the law on which the party is relying. *See State v. Bell*, 2015-NMCA-028, ¶ 2, 345 P.3d 342 (acknowledging that one of the primary purposes of preservation is "to specifically alert the trial court" (alteration, internal quotation marks, and citation omitted)). In applying this specificity requirement in the context of motions to suppress, this Court has made clear that "while the [s]tate may have a number of different theories as to why the evidence should not be suppressed, in order to preserve its arguments for appeal, the [s]tate must have alerted the district court as to *which theories* it was relying on in support of its argument in order to allow the district court to make a ruling thereon." *State v. Janzen*, 2007-NMCA-134, ¶ 11, 142 N.M. 638, 168 P.3d 768 (emphasis added). We conclude that the State failed to alert the district court that it was relying on a plain view theory.

{5} We acknowledge that the State used the phrases "clear view" and "visible from the door" in its response to Defendant's motion to suppress, and that Sergeant Michael Garcia testified that he "clearly observed" a subject inside the home and

that the drugs were "within view." But that did not fairly invoke a ruling on the legal theory on which the State relies on appeal—plain view—because the State did not tie the factual assertions in the motion, or the facts testified to by Sergeant Garcia, to a plain view argument so that the district court could make an informed ruling on that theory. *See id.* ¶ 11. The mere mention of facts that *could* justify the plain view exception to the warrant requirement is not enough. Trial courts are not required to guess about which legal theory or theories the parties might be trying to invoke.

{6} The State contends that the district court was aware that the plain view exception was at issue and implicitly ruled on it because the court found in its written order that Sergeant Garcia was able to see the evidence only "once inside the residence." Because the court noted Sergeant Garcia's vantage point, the State contends that "the court was aware of the front and center nature of the plain view exception." However, we believe that the district court was making factual findings related to the emergency assistance doctrine, attempting to differentiate what was known by Sergeant Garcia about the potential emergency situation prior to his entry into the home. Because the district court found that the information was gathered "once inside the residence," it held that the emergency assistance doctrine was inapplicable. We do not believe the use of this language in the court's order suggests that the district court was implicitly ruling on the plain view exception to the warrant requirement or that this language adequately preserved the issue. Because the State's

plain view argument was not properly preserved, we do not reach the merits of that argument. *See State v. Leon*, 2013-NMCA-011, ¶ 33, 292 P.3d 493.

II. The District Court's Erroneous Factual Findings Led to a Misapplication of the Emergency Assistance Doctrine

{7} The State argues that the district court's factual findings were not supported by substantial evidence and that these erroneous findings led to a misapplication of the law. We agree. Motions to suppress present a mixed question of fact and law. *See State v. Paananen*, 2015-NMSC-031, ¶ 10, 357 P.3d 958. We defer to the district court's factual findings if they are supported by substantial evidence and review the district court's application of law de novo. *See State v. Almanzar*, 2014-NMSC-001, ¶ 9, 316 P.3d 183.

A. The District Court's Factual Findings Related to Sergeant Garcia's Testimony About the Timing of His Entry Are Not Supported by Substantial Evidence

{8} The State argues that substantial evidence does not support the district court's findings about what Sergeant Garcia testified that he was able to observe prior to entering Defendant's residence. We agree.

{9} In its written order, the district court found that, after hearing a groan from behind the door at Defendant's home, "Sgt. Garcia testified that he . . . moved to a more 'tactically sound' position *just inside the door*." (Emphasis added.) The court then found that:

> 9. *Once inside the residence*, Sgt. Garcia testified that he could observe a subject whose arrest he knew to be authorized by warrant. . . .
>
> 10. *Once inside the residence*, Sgt. Garcia testified that he observed other evidence of illegal activity: a white crystalline substance consistent with methamphetamine; a glass smoking device consistent with the ingestion of illicit controlled substances; and other hazards such as exposed wiring which could pose a danger to the children which Sgt. Garcia likewise found inside.
>
> 11. Sgt. Garcia's testimony was consistent with the State's pleading that 'Sgt. Garcia entered the house' (the State's Response ¶ 14) before discovering any 'drugs and drug paraphernalia' (*id.* ¶¶ 21, 23).

{10} These findings about Sergeant Garcia's testimony are not supported by substantial evidence; the findings do not accurately describe his testimony. At the suppression hearing, Sergeant Garcia testified that he went "up to the door" of Defendant's trailer and after hearing an "audibl[e] groan[]," Sergeant Garcia "put [himself] in a more tactical position" by "cross[ing] the door." Sergeant Garcia repeated that he remained "outside of the residence," at which point he saw the subject with the arrest warrant "sitting directly in the opening of the door," as well as the glass pipe and bag on the table. On cross-examination by defense counsel, Sergeant Garcia confirmed that while he "could see inside the residence," he "didn't go inside." Sergeant Garcia testified that it was at this point—when he was still outside the residence—that he learned that the adult who was sitting in the doorway was taking care of Defendant's young children. From this vantage point, Sergeant Garcia was able to see what he believed to be methamphetamine on a low table, as

well as other conditions that caused him concern for the children's safety. There is no evidence in the record to support the district court's finding that Sergeant Garcia testified that he crossed the threshold of Defendant's residence prior to the subject's statements about the children in the house and before seeing the evidence that gave rise to a potentially exigent circumstance.

{11} Defendant argues that by finding there were not exigent circumstances, "the district court implicitly made a proper credibility determination" and rejected Sergeant Garcia's version of the facts. Although it is within the district court's purview to make credibility determinations, *see State v. Salas*, 1999-NMCA-099, ¶ 13, 127 N.M. 686, 986 P.2d 482, we do not understand the district court's order as making such a determination. Throughout the order, the district court simply purports to describe Sergeant Garcia's testimony, and, as we have explained, those descriptions are not accurate. Had the district court disagreed with Sergeant Garcia's recitation of the facts, the order would have contained language suggesting that its findings were contrary to Sergeant Garcia's testimony. Based on the language used by the district court, we believe that the court simply misunderstood Sergeant Garcia's testimony about the timing of his entry into Defendant's home.

B. The Emergency Assistance Doctrine Was Misapplied

{12} The State argues that the search of Defendant's home was reasonable because there were exigent circumstances—specifically, that the emergency assistance

doctrine was applicable to Defendant's children. Reviewing the district court's application of law de novo, *see Almanzar*, 2014-NMSC-001, ¶ 9, we believe that the court's confusion about the underlying facts led to a misapplication of the law and caused the district court to fail to address one of the theories that the State relied on to justify the warrantless entry: the emergency assistance doctrine as applied to the children in Defendant's home.

{13} The three-part test for the emergency assistance doctrine was set out by our Supreme Court in *State v. Ryon*, 2005-NMSC-005, 137 N.M. 174, 108 P.3d 1032. "First, 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." *Id.* ¶ 29 (text only). "Second, the search must not be primarily motivated by intent to arrest and seize evidence." *Id.* (text only) (citation omitted). "Third, there must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched." *Id.* (text only) (citation omitted). Essentially, the scope of the search must be reasonable.

{14} Our Supreme Court modified the *Ryon* test—as applied to the Fourth Amendment of the United States Constitution—in *State v. Yazzie*, 2019-NMSC-008, ¶ 23, 437 P.3d 182. The Court eliminated the second, subjective prong, requiring that the State only meet the other two elements of the *Ryon* test. However, the Court held that the "subjective motivation" of the officer remains relevant under Article II,

Section 10 of the New Mexico Constitution. *Yazzie*, 2019-NMSC-008, ¶ 2. Because Defendant properly preserved both federal and state constitutional claims, all three elements from *Ryon* apply here. *See State v. Leyva*, 2011-NMSC-009, ¶¶ 49-50, 149 N.M. 435, 250 P.3d 861 (holding that less stringent preservation requirement applies to Article II, Section 10 because a "plethora of precedent" interprets it more broadly; therefore, a defendant must simply raise the constitutional provision to the trial court). Thus, if Defendant's federal argument lacks merit, the court must reach the state constitutional argument and the subjective motivation prong of the test.

{15} Here, the district court's factual findings and legal conclusions are incomplete. The court only made factual findings related to the first *Ryon* factor: whether there was a reasonable belief that a person was in need of immediate aid. Further, the court only applied the first prong of the test to the condition of the adult found in the house by Sergeant Garcia. The court held that "Sgt. Garcia's observation of a 'grunt' or a 'groan' from behind the open door [did] not objectively support a reasonable belief that any person inside the residence was in need of immediate aid" and "[n]othing about Sgt. Garcia's testimony indicated that [the adult subject to the arrest warrant] was in need of any aid whatsoever, still less so that such aid was needed immediately." The court did not make any factual findings or conclusions of law related to the emergency assistance doctrine as it applied to the children. Even though the adult was not in need of immediate aid, based on the suppression hearing

testimony, we believe the district court needs to consider the emergency assistance doctrine in relation to the young children at the home. We therefore reverse and remand for the district court to apply *Ryon* and *Yazzie* in relation to the children in Defendant's home.

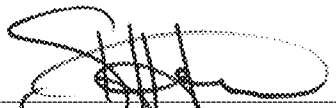
CONCLUSION

{16} We reverse and remand for further proceedings consistent with this opinion.

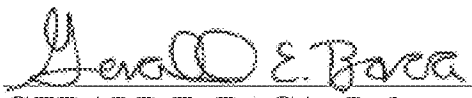
{17} **IT IS SO ORDERED.**

ZACHARY A. IVES, Judge

WE CONCUR:



SHAMMARA H. HENDERSON, Judge



GERALD E. BACA, Judge