

FILED _____

AT _____ O'clock ____ M
CLERK, DISTRICT COURT

Deputy

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI**

STATE OF IDAHO,)

Plaintiff/Appellant,)

vs.)

**MOLLY L. FLETCHER, ROBERT
FLETCHER, JR.,**)

Defendants/Respondents.)

Case No. **CRM 2007 26182**
CRM 2007 26461

***Amended* MEMORANDUM DECISION
AND ORDER ON APPEALS**

I. INTRODUCTION AND PROCEDURAL BACKGROUND.

This is an appeal by the plaintiff State of Idaho (State) of the March 18, 2008, decision of the Honorable Scott M. Wayman granting the motion to suppress filed by defendant Molly Fletcher and defendant Robert Fletcher. Molly Fletcher and Robert Fletcher (respondents) are sister and brother, and their cases were joined for the preliminary hearing (Tr. p. 1, Ll. 1-3), for the hearing on the motion to suppress (Tr. p. 1, Ll. 17-22), and for purposes of these appeals. Order to Consolidate, filed August 29, 2008. There is another case, *State v. Harold Crow*, Kootenai Case No. CRM 2007 26458, which arises out of the same circumstances, but which has not been consolidated with Robert Fletcher's case CRM 2007 26461 and Molly Fletcher's case CRF 2007 261824.

The State claims the issues on appeal are the trial court erred in: 1) finding the officer's entry was non-consensual, 2) finding the officer's entry was unlawful, 3) finding the

community caretaking exception to the warrant requirement was inapplicable and 4) suppressing any evidence. Statement of Issues on Appeal, Filed April 15, 2008. In its briefing, the State seems to have abandoned all but the third issue, the community caretaking argument. The second and third issues merely reiterate the ultimate result and do not state an issue or the reason for that ultimate result. As to the first issue, Judge Wayman found as a factual matter that the officer's entry was without anyone's consent. Tr. p. 97, L. 5 – p. 101, L. 4. That factual finding was based upon extensive evidence discussed by Judge Wayman, which evidence finds complete support in the transcript of the hearing on the motion to suppress. *Id.* This Court must accept the trial court's findings of fact which are supported by substantial evidence. *State v. Atkinson*, 128 Idaho 559, 561, 916 P.2d 1284, 1286 (Ct.App. 1996). There is more than substantial evidence to support Judge Wayman's finding that no individual involved gave consent.

The matter was briefed by both parties on appeal, and was argued to this Court on September 24, 2008. Community caretaking is a legitimate issue, is discussed below, and is the focus of this appeal by the parties.

Staci White (White) is a child protection intake investigator for the State of Idaho Department of Health and Welfare, and she assesses risk for physical abuse, neglect, sexual abuse and unstable home environment. Tr p. 5, L. 22 – p. 6, L. 14. Following a Health and Welfare investigator's receipt of information regarding seven children and three adults living in a single-wide trailer near Post falls, the investigator advised Kootenai County Sheriff's deputies that she needed to conduct a welfare check on the children.

On October 18, 2007, White was told by School Resource Officer Farina that several of the school-aged children in the Fletcher home were attending school dirty, unkempt, with head lice, and had gone to school with moldy bread for breakfast. Tr. p. 10, L. 5 – p. 11, L. 14; p. 36 Ll. 7-22. According to Molly Fletcher's attorney, Molly and Robert are brother

and sister, and share a home. Tr. p. 1, Ll. 3-5; p. 3, Ll. 9-12. White checked a database for those families receiving benefits such as food stamps and medical benefits, and determined that there were seven children, ages two, three, four, five, six, seven and nine. Tr. p. 12, Ll. 9-22. White indicated there was no prior history of problems with this household, but Officer Farina said he had made a report in April 2007. Tr. p. 13, L. 21 – p. 14, L. 2. White later testified Farina had told her that he had been at the residence a week or so prior to October 18, 2007, where he was involved in a foot chase in which someone was chased into Fletchers' residence, a single-wide trailer, and Farina was able to see into the residence through the front door, and saw numerous animal feces in the front area of the residence, and a lot of piled-up clothing. Tr. p. 37, Ll. 5-20. Given the age of the children, White then designated the case a "priority one" situation, one where department officials believe a child is in immediate danger. Tr. p. 6, L. 20 – p. 8, L. 9; p. 14, Ll. 8-18.

On October 18, 2007, White and three officers went to the home to conduct a welfare check. Tr. p. 15, Ll. 9-18. One officer, Deputy Johnson, stepped forward placing one foot into the residence (Tr p. 67, Ll. 18-23), briefly spoke with a resident, Robert Fletcher, and then entered the home without asking for consent. Tr. p. 48, Ll. 5-22; p. 66, Ll. 18-23. He was followed by other officers, Staci White and two other Health and Welfare workers. Only two children were home at the time. The youngest of those two was three years old. Tr. p. 30, Ll. 8-23. The parties stipulated that the entry of the Fletcher home was without a warrant. Tr. p. 4, L. 2-16. Subsequently, all three adults were charged with counts of Injury to a Child. White stated that the children that she had received a call about (the school-aged children) were still at the Kinder Center when she and the officers went to the residence. Tr. p. 26, Ll. 5-17. All observations made by the deputies, photos of the interior of the home, and statements made by the occupants were suppressed by Judge Wayman on Mar. 18, 2008. The State Appeals the grant of the Motion to Suppress.

II. STANDARD OF REVIEW.

The scope of appellate review on an appeal to the district court from the magistrate's division shall be the same as review from the district court to the Supreme Court. I.R.C.P. 83(u). In an action originally heard in a magistrate's court, the district court should adhere to the well recognized rule that findings based on substantial and competent, though conflicting, evidence will not be set aside on appeal. *Hawkins v. Hawkins*, 99 Idaho 785, 589 P.2d 532 (1978).

The standard of review of a suppression motion is bifurcated; the Court of Appeals accepts a trial court's findings of fact supported by substantial evidence and freely reviews the court's application of constitutional principles applied to the facts found. *State v. Atkinson*, 128 Idaho 559, 561, 916 P.2d 1284, 1286 (Ct.App. 1996); *State v. Cruz*, 144 Idaho 906, ___, 174 P.3d 876, 878 (Ct. App. 2007).

III. ANALYSIS.

A. The "Community Caretaking" Exception to the Fourth Amendment Warrant Requirement is Not Applicable Under These Facts.

At the hearing on the Motion to Suppress, Magistrate Judge Wayman stated:

...the basic rationale for that community caretaking function to justify actions on the police officer is that they're helping citizens and they're not involved in any sort of criminal investigation when they're doing that type of activity. But here law enforcement was specifically sought to assist the Health and Welfare workers,... and to assist in their investigation..., and if necessary provide shelter care... for these children. And so while there is an element of community caretaking function here, it certainly is not the classic type of community caretaking function that the case law has recognized as being a valid exercise of law enforcement authority without a warrant because this resulted in a criminal investigation... it was not just simply a 'let's go help the citizens'... It was a child protection investigation... under the Child Protection Act, which frequently does result in these types of charges.

Tr. p. 101, Ll. 7-24. The State certainly could have increased its likelihood of success by briefing the issue before Judge Wayman. However, the State chose to file no brief, even

though on March 17, 2008, counsel for Robert Fletcher filed a detailed eleven-page brief for Judge Wayman to consider. Granted this was the day before hearing on the motion to suppress, but there is no evidence in the record or the transcript of a request by the State to allow additional time in which to file a brief. This Court would not be commenting on this were it not for the fact that the State, in its brief on appeal writes:

Nonwithstanding the foregoing statutory provisions, the evidence deduced at hearing, *and the absence of any case law to support his ruling*, the magistrate nevertheless found that officers are not performing a Community Caretaking function in cases where they are called upon to assist Health and Welfare agents in conducting a home visit where the department believes a child to be in “immediate danger.”

Appellant’s Opening Brief, p. 10. (italics added). This criticism by the State’s attorney of the magistrate for not providing “...any case law to support his ruling”, is odd, given the fact that the State’s attorney **failed to provide the magistrate with any case law in briefing or in oral argument**. Since the burden is on the State in this appeal, and since the burden is on the State to prove an exception to the warrant requirement, giving this Court the authority the State feels supports its argument would be of benefit. On appeal, the State has failed to do so. There is simply no case law provided by the State, and doubtful any exists in any jurisdiction, to support the claim made by the State that: “...there is no logical reason to deny application of the Community Caretaking function in situations where officers rely on the expertise of Health and Welfare agents in deciding there is an immediate need to make entry into a house to check on the welfare of children in a child protective situation.” *Id.* This proposition that the Fourth Amendment protections are subsumed by Idaho’s Child Protective Act is absolutely baseless.

On appeal before this Court, the State argues in response to Judge Wayman’s findings that searches pursuant to the community caretaking function in an effort to protect or to ensure the safety of the public can be constitutionally reasonable and that the intent of

the officers controls. Appellant’s Opening Brief, pp. 6-7. However, the State does not cite one case that supports its proposition that the “intent of law enforcement” controls the community caretaking analysis. The State’s quote that “Hence, whether or not officers are engaged in their Community Caretaking function hinges – not on the source of the information giving rise to the concern—but rather on the intent of law enforcement”, follows quoted portions of three cases, *none* of which say the “intent of law enforcement” controls.

The State argues that the officers’ primary concern was the children and their sole motive was to gain access to the home and assist Health and Welfare with checking on the children. *Id.* at p. 7. The State points to the language of the Child Protective Act in support of its position including that: “[i]n making the investigation the department shall use its own resources, and may enlist the cooperation of peace officers for phases of the investigation for which they are better equipped.” *Id.* at p. 8, quoting I.C. § 16-1631. The State argues that once White determined that this was a “priority one” situation, she was mandated to check on the children and, if removal of the children from the residence was necessary, this “could *only* be done by an officer.” *Id.*, p. 9, citing Tr. p. 9, L. 10 – p. 10, L. 4. (emphasis in original). This is partially true. When the Health and Welfare worker does not have a court order, then a peace officer must be the one who takes the child into shelter care. I.C. § 16-1612(1)(a). However, the department has discretion and “may” involve an officer in making its *investigation*. I.C. § 16-1631. A different statute explains “the Department may enlist the cooperation of peace officers for purposes of the *safety assessment*...” I.C. § 16-625, IDAPA 16.06.01.559.05. The words “investigation” and “safety assessment” are words that do not describe the type of activity to which the community caretaking exception would apply.

Respondents argue the community caretaking function does not apply where law enforcement is engaged in a criminal investigation. Brief of Respondent, pp. 7-8.

Respondents argue the community caretaking must be non-investigatory, such as where police impound a car on the shoulder of a busy highway or are dispatched to assist emergency medical personnel. *Id.* at 8. Respondents claim that in this case, because the police were acting in their traditional role investigating suspected criminal activity, they were not acting as community caretakers. *Id.*

The Fourth Amendment prohibits unreasonable searches and seizures; its purpose is to impose a standard of reasonableness on the discretion exercised by government agents. *Delaware v. Prouse*, 440 U.S. 648, 653-54, 99 S.Ct. 1391, 1396 (1979); *State v. Maddox*, 137 Idaho 821, 824, 54 P.3d 464, 467 (Ct.App. 2002). In community caretaking cases, “reasonableness” is determined by balancing public need in the police conduct against the degree and nature of the intrusion on citizens’ privacy. *State v. Page*, 140 Idaho 841, 844, 103 P.3d 454, 457 (2004). “Among the core community caretaking activities are the responsibilities of police to search for missing persons, mediate disputes, aid the injured or ill, and provide emergency services.” *State v. Cutler*, 143 Idaho 297, 302, 141 P.3d 1166, 1171 (Ct.App. 2006) (citing *State v. Diloreto*, 180 N.J. 264, 850 A.2d 1226, 1236 (2004)).

Here, though the evidence may be conflicting, Judge Wayman’s findings were based on substantial and competent evidence. Following his analysis on whether entry into the trailer was consented to and finding no consent, he stated law enforcement was specifically sought to assist in the Health and Welfare investigation. Tr. p. 101, LI. 11-14.

Respondents’ argument that the officers made contact because they believed respondents had violated a criminal statute is well taken. Brief of Respondent, p. 8. On direct examination by the State, Officer Johnson candidly stated his role in doing a welfare check is: “...we’re making sure that no crime is being committed...” Tr. p. 46, LI. 15-16. Further indicating that this was an investigation (and not a response to an emergency) is the fact

that on cross-examination White stated that the children that she had received a call about (the school-aged children) were still at the Kinder Center when she and the officers went to the residence. Tr. p. 26, Ll. 5-17. Thus, as to the children who were the subject of the inquiry, White knew they wouldn't be there when the home was investigated. The children who may have needed protection simply were not there.

The issue before this Court is, whether the officers were “helping citizens in need of assistance” and whether their actions were “totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute”? *Maddox*, 137 Idaho 821, 824, 54 P.3d 464, 467. The purpose of the officers' presence was to assist in the Health and Welfare investigation. Again, White knew that the children about whom she had received a call were not at the residence at the time of the welfare check. Therefore, it is more likely that the officers were detecting, investigating, or acquiring evidence relating to the violation of a criminal statute, as opposed to helping citizens in need of assistance.

B. The “Exigent Circumstances” Exception to the Fourth Amendment Warrant Requirement is Not Applicable Under These Facts.

Judge Wayman found that the facts and circumstances in the instant case, individually or combined, “did not rise to the level of imminent danger that would justify the entry of a police officer into the trailer...” Tr. p. 103, Ll. 4-6. Judge Wayman stated that based on the information presented to Health and Welfare and the police, “nothing in that information would lead this Court to find that there was an immediate threat of injury to the children that were involved in this case.” Tr. p. 102, Ll. 16-21. The information at issue amounted to hearsay statements from another police officer and a school principal and included: that the children reported to school hungry, that the children may have had head lice, that at least one of the children had moldy bread when they arrived at school, that the

children did not have proper coats, and that the seven children lived in a single-wide trailer with three adults. Tr. p. 10, L. 5 – p. 11, L. 14; p. 36 LI. 7-22. That does not amount to exigent circumstances. Judge Wayman took that information into consideration and made the correct decision. Tr. pp. 102, L. 2 – p. -103, L. 10.25, 1-3.

The State argues the information available to White and the officers did amount to exigent circumstances simply because the information was enough to determine the situation as one of “immediate danger” resulting in a classification of “Priority One.” Appellant’s Opening Brief, p. 12. The State goes on to ask the Court, “if the Exigent Circumstances exception doesn’t apply to a 2 year old believed to be in ‘immediate danger,’ where should it apply?” *Id.* These emotional arguments lead nowhere. First, if this Court were to buy the argument that a Health and Welfare employee’s determination of “Priority One” automatically results in exigent circumstances, then why would we ever need the analysis and discretion of a neutral and detached magistrate? Nothing in the Child Protective Act trumps the Fourth Amendment. Second, the only reason “immediate danger” is discussed in this case is because that is the Department of Health and Welfare definition of “Priority One”, and a Department of Health and Welfare employee, White, gave this situation that designation. However, White made that classification based only upon the suspicion of a problem with lice and nutrition, involving children it knew not to be present at the time of the investigation.

The arguments by the State confuse the statutory ability of the officers to accompany Health and Welfare to take children into shelter care on one hand, and the ability in a criminal action to use as evidence items found during such an operation on the other. If the purpose of the officers was to help Health and Welfare in a critical situation, where, in essence, you do not want to alert the occupants of law enforcement’s presence before the entry (a raid), the entry may be made, the children may be protected, but forget

about using any evidence. Since there was no critical situation, exigent circumstances or immediate danger in the present case, the purpose of the officers was to help Health and Welfare in their investigation and obtain any evidence. If that is the purpose and desired objective of the entry, law enforcement needs to either: a) get a search warrant; or b) get consent.

The State argues that *State v. Barrett*, 138 Idaho 290, 293, 62 P.3d 214, 217 (Ct.App. 2003), stands for the proposition that officers can disregard the Fourth Amendment and the warrant requirement if they have “an objectively reasonable basis to believe that an occupant is seriously injured or imminently threatened.” Appellant’s Opening Brief, p. 5. While that quote does not appear in *Barrett*, it is an accurate statement of the law. However, in this case, there is no evidence that any of the children were seriously injured or imminently threatened. Indeed, the children who were of concern, were known by White and the officers to not even be present in the residence.

Respondents point out the Ninth Circuit, on exigent circumstances in child welfare investigations, has stated:

[s]pecial exigency excuses a warrantless entry where the government officers have probable cause to believe that the child has been abused and that the child would be injured or could not be taken into custody if it were first necessary to obtain a court order.

White v. Pierce County, 797 F.2d 812, 815 (9th Cir. 1986). Respondents argue Judge Wayman properly found nothing in the reports to Health and Welfare or law enforcement that would lead the Court to find an immediate threat of injury to the children. Brief of Respondent, p. 11.

In *State v. Bower*, 135 Idaho 554, 21 P.3d 491 (Ct.App. 2001), the Court of Appeals upheld a denial of a suppression motion where police entered Bower’s motel room without a warrant. Bower’s four-year old daughter was found in the parking lot crying and stated

something was wrong with her father. The Idaho Court of Appeals ruled the police were justified in entering because exigent circumstances continued to exist at the time of their entry and because the police entered the premises within the scope of that exigency. *Bower*, 135 Idaho 554, 559-60, 21 P.3d 491, 496-97. Here, it is much harder for the State to claim that exigent circumstances existed at the time of their entry into the trailer. The potential problem was head lice and nutrition, *and* White knew that the children about whom Health and Welfare had received the troubling reports of lice and nutrition *were not even in the trailer* at the time of the entry by White and the officers.

Respondents are correct in noting that *Calabretta v. Floyd*, 189 F.3d 808, 813 (9th Cir. 1999), shows the State's argument that Child Protective Laws trump the Fourth Amendment, lacks merit. The Ninth Circuit in *Calabretta* noted that in *White v. Pierce County*, 797 F.2d 812, 815, "it was settled in constitutional law that, absent exigent circumstances, police could not enter a dwelling without a warrant even under statute authority where probable cause existed." Brief of Respondent, p. 9. The Ninth Circuit in *Calebretta* gutted the State's argument in this case, specifically holding: "Under *White*, appellants' claim, that 'a search warrant is not required for home investigatory visits by social workers,' *is simply not the law.*" 189 F.3d 808, 813 (emphasis added). While *Calebretta* and *White* discuss Fourth Amendment requirements in the context of qualified immunity from a tort action, the principles are the same. In those cases, if the actor abides by search and seizure law, he or she receives qualified immunity. In the present case, if the actor abided by search and seizure law, and the actor would be allowed to use the evidence found in the subsequent criminal case. In the present case they did not get a warrant, they did not even ask for consent, they were not operating as a community caretaker and there were no exigent circumstances. Since they did not abide by search and seizure law, the evidence discovered must be suppressed.

Near the end of its brief, the State argues:

Based on this information, the Department of Health and Welfare felt that the children were in “immediate danger” and, thereby, designated the case a “Priority One” situation—which requires the department agents see the children within 15 minutes. (Tr. p. 6, l. 20 – p. 8, l. 8, p. 9. l. 10 – p. 11, l. 4; p. 14, ll. 13-14; p. 9, ll. 15-19; p. 41, ll. 3-12)

Appellant’s Opening Brief, p. 12. The State admits all the Department of Health and Welfare is required to do is “see” the children. Again, this indicates an “investigation”. It does not indicate as the State is arguing, that “Priority One” means it is preordained that you seize all the children present in the residence. All “Priority One” does is place a directive that the department *investigate* promptly. To argue that the “immediate danger” found by the Department of Health and Welfare in its “Priority One” designation automatically equates to a finding of exigent circumstances is absurd. That is especially true in the present case where, as the State in the above-quoted portion of its brief acknowledges, the basis of the “Priority One” designation was suspected problems with nutrition and lice. There is nothing so dire about suspected problems of lice and nutrition, which would not allow time to get a search warrant. This is especially true, when, as the State fails to acknowledge, those children suspected of having problems with lice and nutrition, were at school and the Department knew they were at school.

IV. CONCLUSION AND ORDER.

IT IS HEREBY ORDERED the March 18, 2008, decision of the Honorable Scott M. Wayman granting defendants’ motions to suppress is **AFFIRMED**. This matter is remanded to Magistrate Division for any further action.

DATED this 14th day of October, 2008

JOHN T. MITCHELL District Judge

CERTIFICATE OF MAILING

I hereby certify that on the _____ day of October, 2008 copies of the foregoing Order were mailed, postage prepaid, or sent by facsimile or interoffice mail to:

Defense Attorney - Staci Anderson, Sean Walsh
Prosecuting Attorney - Shane Greenbank

Honorable Scott Wayman

**CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY**

BY: _____
Deputy