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IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,
Petitioner,

v.

CHRISTOPHER MARKUS,
Respondent.

CASE NO. SC15-801

RECEIVED, 05/08/2015 04:43:29 PM, Clerk, Supreme Court

ON DISCRETIONARY REVIEW FROM
THE FIRST DISTRICT COURT OF APPEAL

JURISDICTIONAL BRIEF OF PETITIONER

PAMELA JO BONDI
ATTORNEY GENERAL

TRISHA MEGGS PATE
TALLAHASSEE BUREAU CHIEF
FLORIDA BAR NO. 45489

JUSTIN D. CHAPMAN
ASSISTANT ATTORNEY GENERAL
FLORIDA BAR NO. 85778

OFFICE OF THE ATTORNEY GENERAL
PL-01, THE CAPITOL
TALLAHASSEE, FL 32399-1050
(850) 414-3300
(850) 922-6674 (FAX)

COUNSEL FOR PETITIONER

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PRELIMINARY STATEMENT

Petitioner, the State of Florida, was the Appellee in the First District Court of Appeal, and will be referenced in this brief as "the State." Respondent, Christopher Markus, was the Appellant in the First District Court of Appeal and the defendant in the trial court, and will be referenced as "Respondent." The decision of the lower tribunal is attached as an appendix, and will be referenced as "Appx." followed by the page number(s).

STATEMENT OF THE CASE AND FACTS

An officer on foot patrol observed Respondent and three other men standing in a public street near a parked truck. (Appx. 3). One of the men was drinking what appeared to be an alcoholic beverage. (Appx. 3). The officer, who was in full uniform, began approaching the men and identified himself as a police officer. (Appx. 3). As the officer approached, Respondent, who was smoking what appeared to be a cigarette, turned around and flicked the cigarette under the truck while exhaling smoke. (Appx. 3). The officer immediately smelled the odor of cannabis. (Appx. 3).

The officer then asked Respondent to speak with him. (Appx. 3). Respondent started backing away into a driveway, and the officer repeated his request that Respondent stop. (Appx. 3). When Respondent was told a third time to stop, he turned around and ran toward the open garage. (Appx. 3-4). The officer gave chase and caught Respondent once he entered the open garage. (Appx. 4). A struggle ensued, Respondent was arrested, and a firearm was found in his waistband. (Appx. 4). Respondent then filed a motion to suppress based on the warrantless entry of the garage. (Appx. 3-4).

In denying the motion to suppress, the trial court found the entry into the garage was valid based on the hot pursuit doctrine. (Appx. 4). Respondent then appealed the denial of his motion to suppress. (Appx. 3-4).

The First District acknowledged the United States Supreme Court's longstanding rule that "a suspect may not defeat an arrest which has been set in motion in a public place . . . by the expedient of escaping to a private place." (Appx. 4) (citing *United States v. Santana*, 427 U.S. 38, 42 (1976)). However, the First District refused to apply this rule in the instant case because "all the offenses involved in *Santana* were felonies." (Appx. 4). Likewise, the First District declined to follow the long line of Third District cases[1] that apply this rule, because those cases involved "dangerous circumstances" that were not present here. (Appx. 5-6).

According to the First District, minor offenses can only justify the hot pursuit exception if they involve "a threat to the safety of the public, property, or police," or there is some indication that "critical evidence will be destroyed[.]" (Appx. 5-7). The First District held that once Respondent "crossed the threshold" of the open garage, the officers were required to cease their immediate and continuous pursuit at the threshold of the garage until they obtained a warrant. (Appx. 4, 7).

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[1] *State v. Dyer*, 680 So. 2d 612, 613-14 (Fla. 3d DCA 1996); *Gasset v. State*, 490 So. 2d 97 (Fla. 3d DCA 1986); *Ulysse v. State*, 899 So. 2d 1233, 1234 (Fla. 3d DCA 2005); *State v. Brown*, 36 So. 3d 770, 772 (Fla. 3d DCA 2010); and *State v. Williams*, 128 So. 3d 30, 34-35 (Fla. 3d DCA 2012).

SUMMARY OF ARGUMENT

This Court has two separate grounds to exercise jurisdiction. First, the decision below expressly and directly conflicts with a long line of Third District cases[2] that apply the well-established rule that the act of retreating into a home cannot thwart an otherwise proper arrest. Second, the decision expressly misconstrues the Fourth Amendment of the United States Constitution. The First decision below enables fleeing suspects to thwart a valid arrest in a public place by running into a home. Therefore, this Court should exercise jurisdiction.

[2] *State v. Dyer*, 680 So. 2d 612, 613-14 (Fla. 3d DCA 1996); *Gasset v. State*, 490 So. 2d 97 (Fla. 3d DCA 1986); *Ulysse v. State*, 899 So. 2d 1233, 1234 (Fla. 3d DCA 2005); *State v. Brown*, 36 So. 3d 770, 772 (Fla. 3d DCA 2010); and *State v. Williams*, 128 So. 3d 30, 34-35 (Fla. 3d DCA 2012).

ARGUMENT

I. THIS COURT HAS JURISDICTION TO REVIEW THIS CASE.

"The supreme court . . . [m]ay review any decision of a district court of appeal that expressly construes a provision of the state or federal constitution, or . . . that expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law." Article V, § 3(b)(3), Fla. Const.; *see also* Fla. R. App. P. 9.030(a)(2)(A)(ii), (iv).

A. The First District's decision expressly and directly conflicts with a long line of cases from the Third District Court of Appeal.

The First District acknowledged the longstanding rule that "a suspect may not defeat an arrest which has been set in motion in a public place . . . by the expedient of escaping to a private place." (Appx. 4) (citing *United States v. Santana*, 427 U.S. 38, 43 (1976)). However, the First District refused to apply this rule in the instant case because "all the offenses involved in *Santana* were felonies." (Appx. 4). Likewise, the First District declined to follow the long line of Third District cases[3] that apply this rule, because those cases involved "dangerous circumstances" that were not present here. (Appx. 5-6).

---

[3] *State v. Dyer*, 680 So. 2d 612, 613-14 (Fla. 3d DCA 1996); *Gasset v. State*, 490 So. 2d 97 (Fla. 3d DCA 1986); *Ulysse v. State*, 899 So. 2d 1233, 1234 (Fla. 3d DCA 2005); *State v. Brown*, 36 So. 3d 770, 772 (Fla. 3d DCA 2010); and *State v. Williams*, 128 So. 3d 30, 34-35 (Fla. 3d DCA 2012).

Instead, the First District's decision added a number of new requirements[4] to the hot pursuit exception. (Appx. 5-7). According to the First District, minor offenses can only justify the hot pursuit exception if they involve "a threat to the safety of the public, property, or police," or there is some indication that "critical evidence will be destroyed[.]" (Appx. 5-7). The First District held that once Respondent "crossed the threshold" of the open garage, the officers were required to cease their immediate and continuous pursuit at the threshold of the garage until they obtained a warrant. (Appx. 4, 7).

The First District's holdings above directly and expressly conflict with a long line of Third District cases. For example, in *Dyer v. State*, 680 So. 2d 612, 613-14 (Fla. 3d DCA 1996), the Third District found that the warrantless entry into the defendant's enclosed yard was justified based on a hot pursuit that was triggered by possession of cannabis and resisting without violence. *See id.* Just like the instant case, hot pursuit was justified based on the same exact non-violent, minor offenses. *See id.* Just like in *Dyer*, the officer had no idea that Respondent even lived at the home which he fled to. *See id.*

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[4] To support these new requirements to the hot pursuit exception, the First District quoted from *Riggs v. State*, 918 So. 2d 274 (Fla. 2005), a case about the medical emergency exigency which had nothing to do with hot pursuit. (Appx. 4-5). The First District also stated it was bound by *Welsh v. Wisconsin*, 466 U.S. 740, 753 (1984), but in that case "the claim of hot pursuit [was] unconvincing because there was no immediate or continuous pursuit . . ." 466 U.S. at 753.

In *Gasset v. State*, 490 So. 2d 97, 98-99 (Fla. 3d DCA 1986), although the case involved a dangerous high speed car chase, the Third District's decision did not turn on the nature of the offense. Instead, the Third District held:

> Gasset waived any expectation of privacy he may have had in his garage by . . . leading the officers directly to the place of his arrest.
>
> The enforcement of our criminal laws . . . is not a game where law enforcement officers are "it" and one is "safe" if one reaches "home" before being tagged. . . . "[A] suspect may not defeat an arrest which has been set in motion in a public place . . . by the expedient of escaping to a private place."

Id. at 98-99 (footnote and internal citations omitted). The same is true here. Respondent waived any expectation of privacy he may have had in the open garage by engaging the officers in a foot chase where he led them directly to the place of his arrest. (Appx. 3-4).

In *Ulysse v. State*, 899 So. 2d 1233, 1234 (Fla. 3d DCA 2005), the Third District explicitly held that hot pursuit applied to fleeing misdemeanants:

> Hot pursuit of a fleeing misdemeanant is permissible where the misdemeanor is punishable by a jail sentence. . . . The offense of trespass in a conveyance is a misdemeanor punishable by incarceration of sixty days or one year, depending on the circumstances. . . . In this case, whether the passenger is properly viewed as a fleeing felon or fleeing misdemeanant, hot pursuit was permissible. The motion to suppress was correctly denied.

Ulysse, 899 So. 2d at 1234. The First District neglects to mention any of these holdings from *Ulysee* in its passing attempt to distinguish the case. (App. 6).

In *State v. Brown*, 36 So. 3d 770, 772-73 (Fla. 3d DCA 2010), the Third District aptly pointed out that the Florida statute authorizing hot pursuit expressly applies to misdemeanors:

> A law enforcement officer may arrest a person without a warrant when: (1) The person has committed a . . . misdemeanor . . . in the presence of the officer. An arrest for the commission of a misdemeanor or the violation of a municipal or county ordinance shall be made immediately *or in fresh pursuit*.

Id. at 772 (emphasis in original) (quoting § 901.15, Fla. Stat. (2008)). Under *Brown*, the hot pursuit exception is not limited to the stringent requirements added by the First District's decision here.

Finally, in *State v. Williams*, 128 So. 3d 30, 32-35 (Fla. 3d DCA 2012), although the case involved reports of dangerous activity in the area and the offense of carrying a concealed firearm, the decision did not turn on the dangerousness of the offense or concerns about the destruction of evidence. Instead, the Third District broadly held:

> The officer, acting in hot pursuit, attempted to make a warrantless arrest upon probable cause before Williams entered the house. Williams could not thwart this effort, or convert a proper warrantless arrest into one requiring a warrant, simply by reaching his house before the officer reached him.

Williams, 128 So. 3d at 34-35. The same is true here. Respondent could not thwart a valid arrest or convert that "proper warrantless arrest into one requiring a warrant, simply by reaching his house before the officer reached him." *See id.*

The First District's decision expressly and directly conflicts in reasoning and result because it held a misdemeanor offense cannot justify hot pursuit into a home without "a threat to the safety of the public, property, or police," or there is some indication that "critical evidence will be destroyed[.]" (Appx. 5-7). This is directly contrary to the decisions of the Third District above. Accordingly, this Court has jurisdiction.

B. The First District's decision expressly misconstrues a provision of the State and Federal constitution.

The First District expressly misconstrued the Fourth Amendment by holding the application of hot pursuit to minor offenses "renders the Fourth Amendment, and article I, section 12 of the Florida Constitution, meaningless." (Appx. 6). Furthermore, the new requirements added to the hot pursuit exception by the First District have never been required by any appellate court in Florida or the United States Supreme Court.[5] *See United States v. Watson*, 423 U.S. 411, 418, 423-24 (1976); *Santana*, 427 U.S. at 43; *Welsh*, 466 U.S. at 750-53; *Kentucky v. King*, 131 S. Ct. 1849, 1856 (2011) ("Police officers may enter premises without a warrant when they are in hot pursuit of a fleeing suspect."); *Stanton v. Sims*, 134 S. Ct. 3, 6 (2013). Accordingly, this Court has jurisdiction.

[5] Florida courts are bound to follow the opinions of the United States Supreme Court on search and seizure issues. *State v. Butler*, 655 So. 2d 1123, 1125 (Fla. 1995); Art. I, § 12, Fla. Const.

C. This Court should accept jurisdiction of this case because the First District's decision enables fleeing suspects to facilitate their escape by running into the homes of innocent people.

The First District's decision adds new requirements to the hot pursuit exception that are extremely impractical in their application. There is no way for an officer to know whether a fleeing suspect lives in the home that he runs into during a chase. For example, in *Dyer*, the officer did not know that the fleeing suspect lived at the property he ran into and did not know if the defendant was intending to continue to flee to the next yard or run into the home without permission, "thereby endangering potential occupants and in so doing, be committing the felony offense of burglary." 680 So. 2d at 613.

Requiring an officer to stop at the threshold of a home until a warrant is obtained risks the safety of the *lawful* occupants inside the home. A suspect would have time to victimize any of the lawful occupants inside the home, barricade and/or arm himself inside, or simply run out the back to escape arrest. The First District's decision enables fleeing suspects to run into *any* home, regardless if they live there, to facilitate their escape. Therefore, this Court should accept jurisdiction in this case.

CONCLUSION

Based on the foregoing discussions, the State respectfully requests this Honorable Court accept jurisdiction in this case.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been furnished to Matthew R. Kachergus, counsel for Respondent, by email on May 8, 2015 at sheplaw@att.net.

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the requirements of Florida Rule of Appellate Procedure 9.210, as it was computer generated using Times New Roman 14-point font.

Respectfully submitted and certified,

PAMELA JO BONDI
ATTORNEY GENERAL

/s/ Trisha Meggs Pate
By: JUSTIN D. CHAPMAN
TALLAHASSEE BUREAU CHIEF
Florida Bar No. 45489

/s/ Justin D. Chapman
By: JUSTIN D. CHAPMAN
ASSISTANT ATTORNEY GENERAL
Florida Bar No. 85778

Office of the Attorney General
PL-01, The Capitol
Tallahassee, FL 32399-1050
(850) 414-3300
Justin.Chapman@myfloridalegal.com
L15-1-05342

Attorney for the State of Florida

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA, Petitioner, v. CHRISTOPHER MARKUS, Respondent.	CASE NO. SC15-801

INDEX TO APPENDIX

1. *Markus v. State*, 40 Fla. L. Weekly D548 (Fla. 1st DCA 2015)..……...1

H

District Court of Appeal of Florida,
First District.
Christopher MARKUS, Appellant,
v.
STATE of Florida, Appellee.

No. 1D13–6152.
Feb. 27, 2015.
Rehearing Denied April 10, 2015.

Background: After denial of his motion to suppress, defendant was convicted in the Circuit Court, Duval County, Virginia Norton, J., of possession of a firearm by a convicted felon. Defendant appealed.

Holding: The District Court of Appeal, Clark, J., held that pursuit of defendant who ran after officer saw him smoking marijuana was not an exigent circumstance justifying warrantless entry into defendant's home to arrest him.

Reversed.

West Headnotes

[1] Criminal Law 110 1139

110 Criminal Law
110XXIV Review
110XXIV(L) Scope of Review in General
110XXIV(L)13 Review De Novo
110k1139 k. In General. Most Cited Cases

Criminal Law 110 1158.12

110 Criminal Law
110XXIV Review
110XXIV(O) Questions of Fact and Findings
110k1158.8 Evidence
110k1158.12 k. Evidence Wrongfully Obtained. Most Cited Cases

When reviewing a denial of a motion to suppress evidence obtained from a warrantless search, the appellate court defers to the trial court's findings of fact but conducts de novo review of the trial court's application of the law to the facts.

[2] Searches and Seizures 349 192.1

349 Searches and Seizures
349VI Judicial Review or Determination
349k192 Presumptions and Burden of Proof
349k192.1 k. In General. Most Cited Cases

Before agents of the government may invade the sanctity of the home, the burden is on the government to demonstrate exigent circumstances that overcome the presumption of unreasonableness that attaches to all warrantless home entries. U.S.C.A. Const.Amend. 4.

[3] Criminal Law 110 1158.12

110 Criminal Law
110XXIV Review
110XXIV(O) Questions of Fact and Findings
110k1158.8 Evidence
110k1158.12 k. Evidence Wrongfully Obtained. Most Cited Cases

District Court of Appeal would defer to trial court's finding that townhome and its garage area, which defendant ran into during police pursuit, were

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defendant's residence, on review of trial court's denial of motion to suppress evidence obtained from warrantless search of defendant in his home; finding of fact was supported by competent, substantial evidence.

[4] Searches and Seizures 349 43

349 Searches and Seizures
349I In General
349k42 Emergencies and Exigent Circumstances; Opportunity to Obtain Warrant
349k43 k. Pursuit. Most Cited Cases

The exigent circumstance of hot pursuit, allowing a warrantless entry into a home, is ordinarily limited to the pursuit of fleeing felons, because the seriousness of the crime is more likely to support the emergency nature of exigent circumstances. U.S.C.A. Const.Amend. 4; West's F.S.A. Const.Art. 1, § 12.

[5] Searches and Seizures 349 43

349 Searches and Seizures
349I In General
349k42 Emergencies and Exigent Circumstances; Opportunity to Obtain Warrant
349k43 k. Pursuit. Most Cited Cases

Where the behavior observed in a public place is not a felony, the exigent circumstance of hot pursuit to support chasing the suspect into his or her home without a warrant is not easily shown by the state. U.S.C.A. Const.Amend. 4; West's F.S.A. Const.Art. 1, § 12.

[6] Searches and Seizures 349 43

349 Searches and Seizures
349I In General
349k42 Emergencies and Exigent Circumstances; Opportunity to Obtain Warrant
349k43 k. Pursuit. Most Cited Cases

The gravity of an observed offense, leading to police pursuit, is an important factor for determining whether hot pursuit exigent circumstance permits warrantless entry when the pursuit continues into a home. U.S.C.A. Const.Amend. 4; West's F.S.A. Const.Art. 1, § 12.

[7] Searches and Seizures 349 42.1

349 Searches and Seizures
349I In General
349k42 Emergencies and Exigent Circumstances; Opportunity to Obtain Warrant
349k42.1 k. In General. Most Cited Cases

To rebut the presumed illegality of warrantless entry into home by police officers, the exigent circumstance leading to the warrantless entry must involve a threat to the safety of the public, property, or police, which required immediate action by officers with no time to obtain a warrant. U.S.C.A. Const.Amend. 4; West's F.S.A. Const.Art. 1, § 12.

[8] Arrest 35 68.2(7)

35 Arrest
35II On Criminal Charges
35k68.2 Intrusion or Entry to Arrest
35k68.2(3) Arrest Without Arrest Warrant
35k68.2(7) k. Pursuit. Most Cited Cases

Arrest 35 68.2(8)

35 Arrest
35II On Criminal Charges
35k68.2 Intrusion or Entry to Arrest
35k68.2(3) Arrest Without Arrest Warrant
35k68.2(8) k. Controlled Substances.

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Most Cited Cases

Searches and Seizures 349 43

349 Searches and Seizures
349I In General
349k42 Emergencies and Exigent Circumstances; Opportunity to Obtain Warrant
349k43 k. Pursuit. Most Cited Cases

Police officer's pursuit of defendant who resisted arrest without violence after officer observed him smoking marijuana did not constitute exigent circumstances sufficient to overcome warrant requirement for officers to pursue defendant into his home to arrest him; defendant's observed crimes were misdemeanors, no evidence indicated any danger to public, police, or property, and there was not any indication that critical evidence would be destroyed while waiting for a warrant to arrest defendant. U.S.C.A. Const.Amend. 4; West's F.S.A. Const.Art. 1, § 12.

[9] Searches and Seizures 349 43

349 Searches and Seizures
349I In General
349k42 Emergencies and Exigent Circumstances; Opportunity to Obtain Warrant
349k43 k. Pursuit. Most Cited Cases

The exigent circumstances exception allowing warrantless pursuit of a suspect into the home cannot remove the constitutional protection for the right to security in one's home without a showing by the state of a danger to the public, police, or property requiring immediate entry by the officers leaving no time or opportunity to obtain a warrant. U.S.C.A. Const.Amend. 4; West's F.S.A. Const.Art. 1, § 12.

Wm. J. Sheppard, Elizabeth L. White, and Matthew R. Kachergus of Sheppard, White & Kachergus, P.A., Jacksonville, for Appellant.

Pamela Jo Bondi, Attorney General, and Justin D. Chapman, Assistant Attorney General, Tallahassee, for Appellee.

CLARK, J.

***1** Appellant Christopher Markus appeals his conviction for possession of a firearm by a convicted felon by asserting that the trial court's denial of his pre-trial motion to suppress the evidence found on his person was erroneous as a matter of law. We agree, reverse the denial of the motion to suppress, and reverse the conviction.

[1][2] When reviewing a denial of a motion to suppress evidence obtained from a warrantless search, the appellate court defers to the trial court's findings of fact but conducts de novo review of the trial court's application of the law to the facts. *Connor v. State,* 803 So.2d 598, 605 (Fla.2001); *Van Teamer v. State,* 108 So.3d 664, 666 (Fla. 1st DCA 2013). Both the trial court and this Court are bound to apply the rule reiterated in *Welsh v. Wisconsin,* 466 U.S. 740, 750, 104 S.Ct. 2091, 80 L.Ed.2d 732 (1984): "Before agents of the government may invade the sanctity of the home, the burden is on the government to demonstrate exigent circumstances that overcome the presumption of unreasonableness that attaches to all warrantless home entries."

[3] According to the facts found by the trial court, a uniformed police officer patrolling on foot observed two or three males drinking beer near a pick-up truck on a public street. The officer also observed Appellant smoking a cigarette of some sort. As he came closer to Appellant, he saw Appellant "flick the cigarette while he's exhaling the smoke." The officer immediately "smelled marijuana," and then asked Appellant to "step towards me so I could detain him at that time" to investigate the suspected criminal activity—i.e., Appellant's possession of marijuana. Appellant instead backed away, and the officer repeated his request that

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Appellant stop. At that point, Appellant ran from the officer and into the open garage of his nearby residence,[FN1] the officer and fellow officers gave chase, and after a physical struggle, Appellant was arrested and patted down. As officers patted Appellant's person, they found the firearm at issue in his waistband.

The trial court denied the motion to suppress because it found the pursuit and arrest of Appellant was valid due to the officers' observation of Appellant's criminal activity of possession of marijuana and refusal to obey commands to stop. The court relied on section 901.15, Florida Statutes, and case law pertaining to warrantless arrest in a public place, warrantless entry into a home in hot pursuit of fleeing felons, warrantless entry in hot pursuit after a dangerous high-speed vehicle chase, and warrantless arrest of a suspected felon on an unenclosed porch. Had Appellant been arrested while outside the home, we agree with the trial court that section 901.15 supported such warrantless arrest, even for a misdemeanor committed in the officer's presence. However, once Appellant crossed the threshold of the garage of his home, the Fourth Amendment to the United States Constitution prohibiting unreasonable searches is implicated. Section 901.15 does not specifically address the legality of a warrantless arrest occurring in the home at the culmination of a "fresh pursuit" by police officers to arrest a suspect for a non-felony offense. [FN2]

***2** When police chase a person who flees into his or her home to effect a warrantless arrest, the Fourth Amendment, and article I, section 12 of the Florida Constitution apply in concert and in addition to the relevant Florida statutes. As stated in *Riggs v. State,* 918 So.2d 274 (Fla.2005):

> The United States Supreme Court has repeatedly identified "physical entry of the home [as] the chief evil against which the wording of the Fourth Amendment is directed." *Payton v. New York,* 445 U.S. 573, 585, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980) ... Throughout the Supreme Court's case law, "the Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant." *Id.* at 590, 100 S.Ct. 1371.

This Court has recognized that "[w]arrantless searches or arrests conducted in a constitutionally protected area ... are per se unreasonable unless they fall within one of the five established exceptions to the search warrant requirement." *Lee v. State,* 856 So.2d 1133, 1136 (Fla. 1st DCA 2003). The exceptions are referred to as "exigent circumstances," and "hot pursuit" is one type of exigent circumstance. *Id.*

[4] The exigent circumstance of "hot pursuit" is ordinarily limited to the pursuit of fleeing felons, because the seriousness of the crime is more likely to support the emergency nature of "exigent circumstances." For instance, in *United States v. Santana,* 427 U.S. 38, 96 S.Ct. 2406, 49 L.Ed.2d 300 (1976), a woman committed a felony by selling heroin to undercover officers. She then told officers her mother had the money from the sale, so the officers returned to the residence and saw the mother "in the doorway of the house with a brown paper bag." The officers approached the residence, exited their vehicle, and shouted "police." The mother "retreated into the vestibule of her house." *Id.* at 40, 96 S.Ct. 2406. The officers followed her into the home, physically restrained her, and drugs fell to the floor from her person. The marked money from the drug purchase was also discovered on her person. The Court held "a suspect may not defeat an arrest which has been set in motion in a public place ... by the expedient of escaping to a private place." *Id.* at 42, 96 S.Ct. 2406. However, all the offenses involved in *Santana* were felonies.

[5][6] Where the behavior observed in a public place is not a felony, the exigent circumstance of "hot pursuit" to support chasing the suspect into his or her home is not so easily shown by the state. The gravity

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of the observed offense is an important factor when the pursuit continues into a home. In *Welsh v. Wisconsin,* 466 U.S. 740, 104 S.Ct. 2091, 80 L.Ed.2d 732 (1984), the Court explained:

> Our hesitation in finding exigent circumstances, especially when warrantless arrests in the home are at issue, is particularly appropriate when the underlying offense for which there is probable cause to arrest is relatively minor. Before agents of the government may invade the sanctity of the home, the burden is on the government to demonstrate exigent circumstances that overcome the presumption of unreasonableness that attaches to all warrantless home entries. *See Payton v. New York,* [445 U.S. 573, 586, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980)] ... When the government's interest is only to arrest for a minor offense, that presumption of unreasonableness is difficult to rebut, and the government usually should be allowed to make such arrests only with a warrant issued upon probable cause by a neutral and detached magistrate.

***3** *Welsh,* 466 U.S. at 750, 104 S.Ct. 2091 (citations abbreviated; footnote omitted); *see also Stanton v. Sims,* —— U.S. ——, 134 S.Ct. 3, 187 L.Ed.2d 341 (2013) (civil rights action for damages to plaintiff caused by officer during chase of suspect into plaintiff's yard; "in situations where the underlying offense is only a misdemeanor, law enforcement must yield to the Fourth Amendment in all but the rarest cases").

[7] To rebut the presumed illegality of warrantless entry by police officers, the exigent circumstance must involve a threat to the safety of the public, property, or police, which required immediate action by officers with no time to obtain a warrant. The exigent circumstance exception was described in *Riggs v. State,* 918 So.2d 274 (Fla.2005):

> When the government invokes this exception to support the warrantless entry of a home, it must rebut the presumption that such entries are unreasonable. *See Welsh v. Wisconsin,* 466 U.S. 740, 750, 104 S.Ct. 2091, 80 L.Ed.2d 732 (1984). To do so, it must demonstrate a "grave emergency" that "makes a warrantless search imperative to the safety of the police and of the community." *Illinois v. Rodriguez,* 497 U.S. 177, 191, 110 S.Ct. 2793, 111 L.Ed.2d 148 (1990). An entry is considered "imperative" when the government can show a "compelling need for official action and no time to secure a warrant." *Michigan v. Tyler,* 436 U.S. 499, 509, 98 S.Ct. 1942, 56 L.Ed.2d 486 (1978). As is often the case under the Fourth Amendment, "[t]he reasonableness of an entry by the police upon private property is measured by the totality of existing circumstances." *Zeigler v. State,* 402 So.2d 365, 371 (Fla.1981).

In *Gasset v. State,* 490 So.2d 97 (Fla. 3d DCA 1986), after Metro–Dade police officers observed the defendant's reckless driving, the defendant led officers on a high-speed chase through a residential area. The chase ended in the defendant's garage, where officers entered and arrested him. The offenses observed (reckless driving and attempting to elude a police officer) were non-felony offenses punishable by less than one year of imprisonment, but the trial court upheld the warrantless arrest of the defendant in his garage because "the propriety of the arrest does not turn on the charges upon which the arrest was effected." *Id.* at 98. Relying on the ruling in *United States v. Santana* that "a suspect may not defeat" a valid arrest beginning in a public place by fleeing to a private place, the Third District Court of Appeal ruled that "enforcement of our criminal laws, including serious traffic violations, is not a game where law enforcement officers are 'it' and one is 'safe' if one reaches 'home' before being tagged." *Id.* at 99. The court concluded that by committing a dangerous traffic violation and fleeing at high speed, Mr. Gasset "cast aside any fourth amendment shield which might have served to protect him." *Id.* Although the majority in *Gasset* did not use the phrase "exigent circumstance,"

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the high-speed chase on the public roadways clearly presented a danger to the public, the defendant, and police officers, thus qualifying for the exigent circumstance exception to the Fourth Amendment warrant requirement.

***4** Following *Gasset*, the suppression of evidence obtained in a warrantless arrest in the defendant's home was reversed in *State v. Williams*, 128 So.3d 30 (Fla. 3d DCA 2012). The circumstances prompting officers to pursue Williams into his home included audible gunshots in the area, recent threats of a plan to shoot and kill officers patrolling the area, observation of three males apparently trying to hide from officers patrolling the area, and observation of an individual removing an item from his waistband and concealing the item in a yard. Shortly thereafter, an officer saw Williams holding on to his waistband while walking away from him. When ordered to stop, the defendant fled, jumped over a set of bushes, "tossed a firearm into one of the bushes," and continued into the home. The officer remained outside but demanded that Williams come outside. Williams did so and was arrested. The trial court found that the officer "constructively" entered the home without a warrant and granted the motion to suppress. The Third District reversed, finding that the officers were in "hot pursuit" and attempting to make a valid warrantless arrest prior to Williams' entry into the home. "Williams could not thwart this effort, or convert a proper warrantless arrest into one requiring a warrant, simply by reaching his house before the officer reached him." *Id.* at 34. Similar to the dangerous high-speed chase in *Gasset*, the pursuit of Williams for a firearms offense could certainly present the exigent circumstance of a hot pursuit for an offense, not necessarily a felony, which under the circumstances endangered the public and police. *See also*, *Ulysse v. State*, 899 S.2d 1233 (Fla. 3d DCA 2005) (affirming denial of motion to suppress where fleeing defendant involved in vehicle chase prior to entry into home by officers).

[8] Unlike the dangerous circumstances in the Third District Court of Appeal cases above, the crimes observed in the public place in this case were possession of a marijuana cigarette and flight on foot from an order to stop. The State presented no evidence here to suggest the safety and time concerns required for the exigent circumstance of a "hot pursuit" sufficient to excuse the warrant requirement for entry into the home. The (suspected) marijuana cigarette was discarded by Appellant while he was still in the public place, making it available for collection by the police without risk of destruction of this evidence. There was no evidence that any danger would result if the officers had stopped at the threshold of the garage, stationed themselves there and observed Appellant from outside the garage while they waited to obtain a warrant. Other officers were already present on the scene and could have watched other entrances of the residence to detect any exit by Appellant during the time it would take to obtain a warrant.

While the law has developed over time regarding application of the Fourth Amendment to various scenarios, the "exigent circumstances" exception to the rule against warrantless entry into the home remains an exception to the constitutional rule. We cannot accept the State's position that officers may freely pursue every misdemeanor or traffic suspect into his or her home without a warrant so long as the offense is punishable by any jail time. Government officers' pursuit into a suspect's home without a warrant, under the exigent circumstance exception of "hot pursuit," must not be applied so as to negate entirely the constitutional rule requiring a warrant for entry. Such a broad reading of exigency in every situation where officers chase a suspect of any offense into the suspect's home renders the Fourth Amendment, and article I, section 12 of the Florida Constitution, meaningless.

***5** [9] We reject the proposition that a pursuit which continues into the suspect's home to effect an arrest for a minor offense or infraction with no evidence to indicate any danger to the public, police, or

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property and no indication that critical evidence will be destroyed, constitutes the exigent circumstance of a hot pursuit such that the warrant requirement for entry into the home is excused. The "exigent circumstances" exception allowing pursuit of a suspect into the home cannot remove the constitutional protection for the right to security in one's home without a showing by the State of a danger to the public, police, or property requiring immediate entry by the officers leaving no time or opportunity to obtain a warrant.

Under the facts of this case, the motion to suppress the firearm should have been granted because the hot pursuit to effect an arrest for possession of marijuana and resisting arrest without violence did not constitute an exigent circumstance sufficient to overcome the warrant requirement to cross the threshold of Appellant's home. The denial of the motion to suppress, and the subsequent conviction and sentence for possession of a firearm by a convicted felon, are reversed.

PADOVANO and MARSTILLER, JJ., concur.

FN1. The trial court found that the townhome, including the garage area, was Appellant's residence. Because the record contains competent, substantial evidence to support this finding of fact, we defer to the trial court's finding.

FN2. Likewise, section 901.19, Florida Statutes—the "knock and announce" statute—has no bearing on the issue on appeal because that statute does not contemplate a chase or pursuit, and the entry into the residence in this case did not involve any "necessary and reasonable force" to cross the threshold of the home.

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