

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC15-1925

RAFAEL YEE,

Petitioner,

-vs-

THE STATE OF FLORIDA,

Respondent.

BRIEF OF PETITIONER ON JURISDICTION

*ON PETITION FOR DISCRETIONARY REVIEW
FROM THE DISTRICT COURT OF APPEAL OF
FLORIDA, THIRD DISTRICT*

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TABLE OF CONTENTS

	PAGE
STATEMENT OF THE CASE AND FACTS	1
SUMMARY OF ARGUMENT	5
ARGUMENT.....	6
THE THIRD DISTRICT’S HOLDING IN <i>YEE</i> CONFLICTS WITH THIS COURT’S HOLDINGS IN <i>RIGGS, ROLLING, AND SEIBERT</i> AS TO HOW POLICE MAY SATISFY THE EXIGENT CIRCUMSTANCES EXCEPTION TO THE FOURTH AMENDMENT WARRANT REQUIREMENT.....	6
CONCLUSION.....	10
CERTIFICATE OF SERVICE	11
CERTIFICATE OF FONT	12

TABLE OF CITATIONS

CASES	PAGE(S)
<i>Davis v. State</i> , 834 So. 2d 322 (Fla. 5th DCA 2003)	9
<i>Guin v. City of Rivera Beach</i> , 388 So. 2d 604 (Fla. 4th DCA 1980)	8-9
<i>Hornblower v. State</i> , 351 So. 2d 716 (Fla. 1977)	8
<i>Riggs v. State</i> , 918 So. 2d 274 (Fla. 2005)	8
<i>Rolling v. State</i> , 695 So. 2d 278 (Fla. 1997)	8
<i>Seibert v. State</i> , 923 So. 2d 460 (Fla. 2006)	8
<i>State v. Haines</i> , 543 So. 2d 1278 (Fla. 5th DCA 1989)	9
<i>State v. Mann</i> , 440 So. 2d 406 (Fla. 4th DCA 1983)	9

STATEMENT OF CASE AND FACTS¹

In *State v. Yee*, 3D14-369 (Fla. 3d DCA Oct. 14, 2015), the trial court suppressed marijuana plants that police seized from Mr. Yee's home because no exigent circumstances justified the officers' warrantless entry. (A. 4). The case began when police received a call from a concerned neighbor, who reported only that a window to the residence was broken and had not been broken the night before. (A. 2-3). When police arrived at about 7:00 a.m., Officer James noted that a bar to the broken window was bent, but there was no evidence as to how or when it happened. (A. 2, 13).

Officer James testified that "nothing about the scene indicated imminent danger or emergency circumstances." (A. 2). The occupant of the residence, Mr. Yee, was not home, and there was no indication that he, or anyone else, was inside. But rather than apply for a warrant, the officer requested several backup units, as well as a police dog, all of whom later searched the residence. (A. 2-3).² A second officer, Collazo, made the same observations as James and testified that she had an "assumption" that there could "possibly be someone inside" the home. (A. 3). Finding that these facts established neither exigency, nor another exception to the

¹ The Appendix ("A") to this Jurisdictional Brief includes the Third District's opinion, *State v. Yee*, 3D14-369 (Fla. 3d DCA Oct. 14, 2015) (A. 1-31).

² It is unknown exactly how long each step of the police investigation lasted before the search.

warrant requirement, the trial judge granted suppression of the contraband. (A. 4).

On review, the Third District Court of Appeal reversed the trial court's order. The Third District held that because there was a broken window, a pried window frame, and glass on the ground, it was reasonable for officers to have "an assumption that there could possibly be someone inside" the house. (A. 2-3). The court declared that the warrantless entry was justified because physical indications of forced entry led officers to reasonably believe that a burglary was in progress or had recently occurred. (A. 8).

In footnote 1 of the majority opinion, the court also held that the *absence* of evidence could establish exigency: "That no movement or activity appeared to be occurring inside the house did not necessarily relieve the situation of portentousness. To the investigating officer, silence and stillness can have meaning and a suspiciously broken window can give a view to the need for action." (A. 1). Exigent circumstances could therefore be established when police have "an impression that there had been a recent burglary," even though it could have taken place as many as 12 hours ago, and there was no reason to think it was still in progress. (A. 2).

The Third District analogized the case before it to the facts in *Guin v. City of Rivera Beach*, 388 So. 2d 604 (Fla. 4th DCA 1980); *Davis v. State*, 834 So. 2d 322 (Fla. 5th DCA 2003); *State v. Haines*, 543 So. 2d 1278 (Fla. 5th DCA 1989); and *State v. Mann*, 440 So. 2d 406 (Fla. 4th DCA 1983). (A. 5-7). The courts found in

these cases that police had exigent circumstances to enter a home without a warrant because the officers had observed signs of forced entry and had received reports of recent burglaries.

In a thorough dissent, Judge Emas found that the *Yee* majority had departed from previous opinions by this Court as to the State's burden of establishing exigent circumstances. (A. 11-31). Notably, the dissent agreed with the majority as to the material facts of the case. It also pointed out what these facts did *not* establish.

Judge Emas emphasized that the police did not arrive to Mr. Yee's home in "emergency mode" or in response to an immediate danger; the neighbor's call was not a "911 call"; the police and the neighbor observed no criminal activity or any indication that an intruder was in the home; police took the time to wait for backup units and a police dog rather than apply for a warrant; and the State "presented no evidence at the hearing as to why the police could not obtain a warrant before entering the home." (A. 12-14, 25-26).

Based on those undisputed facts, and by applying this Court's interpretation of the rules for exigent circumstances, the *Yee* dissent concluded that suppression of the search's fruits was proper. The dissent relied on this Court's holding in *Rolling v. State*, 695 So. 2d 278, 293 (Fla. 1997), which held that, "[o]f course, a key ingredient of the exigency requirement is that the police lack time to secure a search warrant." (A. 28-29).

Further, the dissent cited *Riggs v. State*, 918 So. 2d 274 (Fla. 2005), which held that the State must prove a “grave emergency” that “makes a warrantless search imperative to the safety of the police and of the community . . . An entry is considered ‘imperative’ when the government can show a ‘compelling need for official action and no time to secure a warrant.’” (A. 21).

Finally, the dissent relied on *Seibert v. State*, 923 So. 2d 460, 468 (Fla. 2006), which held that the State must establish exigency by proving that “an objectively reasonable basis exists for the officer to believe that there is an immediate need for police assistance for the protection of life or substantial property interests.” (A. 24). The *Yee* dissent disapproved of the majority opinion because the facts showed neither “evidence of an exigency, a need for immediate action, [nor] a lack of time to secure a warrant.” (A. 30-31).

The dissent also stressed that the broken window could have only given police a concern that fell far short of the “grave emergency” required for exigent circumstances:

At best, the police had cause to believe that, at some time during the previous eight to twelve hours, someone may have entered the home through the broken window. That is the sum and substance of what an objectively reasonable officer could believe. There were no articulable facts upon which to base a belief that a burglary suspect (or anyone else) was inside the home. There was no basis to suggest, much less to establish, the existence of any exigent circumstances to permit a warrantless entry. How could the State demonstrate that there were exigent circumstances demanding the responding officer take “immediate action,” when the officer’s “immediate action” (after

speaking with the neighbor) was not entering into the home, but calling for a K-9 unit to come and conduct the entry and search?”

(A. 26).

The Petitioner now seeks review of the Third District’s opinion based on direct and express conflict with this Court as to whether, as a matter of law, the State must prove exigent circumstances with facts establishing an emergency situation, and the inability of police to apply for a warrant before searching a home.

SUMMARY OF ARGUMENT

The Third District’s majority opinion in *State v. Yee*, has eliminated two of the central elements of the “exigency” exception to the Fourth Amendment – an immediate threat to persons or property, and the inability to secure a warrant. The Third District now holds that police can enter a home based on a single broken window. The *Yee* majority reasoned that since the window had been broken sometime in the previous evening or early morning, it supported the “assumption” that a recent burglary had taken place and that persons or property were in danger. The Third District found that the State established exigency despite (1) the officers’ lack of emergency response, (2) the absence of any objective facts suggesting an immediate emergency, and (3) evidence that police had time to apply for a warrant.

As explained in the *Yee* dissent, the Third District is now in conflict with several of this Court’s opinions as to when exigency justifies police entry into a

home. The *Yee* dissent found that the majority's holding was contrary to this Court's opinions in *Seibert*, *Rolling*, and *Riggs*, which require the State to prove that (1) "exigent circumstances existed", (2) "immediate action was necessary to address the exigency", and (3) "There was no time to secure a warrant before taking immediate action and entering and searching the home to address the exigency." Thus, because the Third District has declined to follow this Court's rules for establishing exigency, this Court should exercise its jurisdiction to resolve the conflict.

ARGUMENT

THE THIRD DISTRICT'S HOLDING IN *YEE* CONFLICTS WITH THIS COURT'S HOLDINGS IN *RIGGS*, *ROLLING*, AND *SEIBERT* AS TO HOW POLICE MAY SATISFY THE EXIGENT CIRCUMSTANCES EXCEPTION TO THE FOURTH AMENDMENT WARRANT REQUIREMENT.

The Third District's holding in *Yee* is in conflict with several of this Court's opinions as to an important issue of constitutional law. As Judge Emas' dissent put it, the question presented by the case is:

Does the Fourth Amendment permit police officers to enter and search a home without a warrant, when the officers have reason to believe that a burglary may have occurred within the past eight to twelve hours, but have no reason to believe there is a burglary in progress, have no reason to believe that anyone is presently inside the home, and have no reason to believe there is any immediate threat to persons or property within the home?

(A. 11).

Applying this Court's precedent in *Riggs*, *Rolling*, and *Seibert*, the answer to

that question would be “no” because the State made no showing that there was an emergency, and no showing that police lacked the time to get a search warrant. According to those cases, the requirement of an imperative need for entry would not be met. Therefore, the *Yee* dissent correctly found that the majority had excused the lack of evidence supporting exigency, as well as the lack of evidence showing an inability for police to apply for a search warrant:

At best, the police had cause to believe that, at some time during the previous eight to twelve hours, someone may have entered the home through the broken window. That is the sum and substance of what an objectively reasonable officer could believe.

(A. 26).

Yet, based on those scant facts, the *Yee* majority held that a warrantless entry into a home was legal under the “exigent circumstances” exception to the Fourth Amendment. In so holding, the Third District excused the police’s admission that there was no emergency, (A. 2), as well as the lack of facts showing that the police ever behaved as if they were responding to an immediate danger to persons or property. Moreover, the Third District declined to require proof that the police lacked the time to secure a search warrant. All the police needed, rather, was an officer’s uncorroborated concern for the occupants of the home, based on a single broken window.

Accordingly, *Yee* opinion places the Third District in direct conflict with the opinions of this Court, which set too high of an evidentiary bar for the facts of *Yee*

to satisfy. In *Seibert*, for example, this Court held that the State must prove that “an objectively reasonable basis exists for the officer to believe that there is an immediate need for police assistance for the protection of life or substantial property interests.” *Seibert v. State*, 923 So. 2d 460, 468 (Fla. 2006) (citing *Rolling v. State*, 695 So. 2d 278, 293-94 (Fla. 1997)). This requirement of “immediate” action must be based on a showing that a warrantless entry is “imperative.” *Seibert*, 923 So. 2d at 468.

Again, in *Riggs v. State*, 918 So. 2d 274, 278-79 (Fla. 2005), this Court held that exigent circumstances must be established by proof of a “grave emergency” that “makes a warrantless search imperative to the safety of the police and of the community An entry is considered ‘imperative’ when the government can show a ‘compelling need for official action and no time to secure a warrant.’”

The necessity of immediate entry and inability to apply for a warrant is a discreet element of exigency: “Of course, a key ingredient of the exigency requirement is that the police lack time to secure a search warrant.” *Rolling*, 695 So. 2d at 293. This Court explained further in *Hornblower v. State*, 351 So. 2d 716, 718 (Fla. 1977), that “if time to get a warrant exists, the enforcement agency must use that time to obtain the warrant.”

The Third District analogized the facts of *Yee* to situations addressed by its sister courts in cases such as *Guin v. City of Rivera Beach*, 388 So. 2d 604 (Fla. 4th

DCA 1980); *State v. Haines*, 543 So. 2d 1278 (Fla. 5th DCA 1989); *State v. Mann*, 440 So. 2d 406 (Fla. 4th DCA 1983); and *Davis v. State*, 834 So. 2d 322 (Fla. 5th DCA 2003). (A. 5-7). In each of these cases, police were investigating reported burglaries in progress and entered a home without a warrant.³ But even if *Guin*, *Haines*, *Mann*, and *Davis* would support a finding of exigency under the facts in *Yee*, it is critical to note that they were all decided *before* the conflict cases discussed by the dissent. This Court decided *Seibert*, *Rolling*, and *Riggs* after the district courts found exigent circumstances in those earlier burglary cases.⁴ The clarification in *Riggs* and *Seibert* that a “grave emergency” is necessary for exigency impliedly overturns any prior opinion that applies a lower standard.

Under that governing standard, courts are prohibited from finding exigent

³ The reporting neighbor in *Davis* telephoned police about a “possible burglary.” 834 So. 2d at 325. The officers then saw that the front door was open, and the resident’s dog was seen walking on a nearby street, suggesting that it had only recently left the home. *Id.* Similarly, the neighbor in *Haines* called police to report a “possible burglary” because the neighbor knew the resident of the unit was out of town, and the door was standing open at 8:00 p.m. 543 So. 2d at 1279. In *Mann*, an officer was investigating a building in the midst of a robbery spree when he noticed signs of forced entry that matched the recent break-ins. 440 So. 2d at 407. Finally, in *Guin*, police were investigating a confirmed burglary of a home, at which point the victim directed them to a building across the street. 388 So. 2d at 605. Police saw that the door to the building was ajar (corroborating the possibility of a burglary) and police entered in belief that it too had been burglarized. *Id.*

⁴ *Davis* was decided after *Rolling*, but before *Riggs* and *Seibert*. Further, although the *Davis* court found that police legally entered a home, that finding is *dicta* because the trial court’s ruling was reversed on “the bigger question” of whether the seized items had an apparent “incriminating nature.” 834 So. 2d at 328. The court granted suppression because the seized items had no apparent nexus to a crime. *Id.*

circumstances in cases like this one, where no objective facts suggest a compelling need for immediate or imperative action, and where even the police admitted that there was no emergency and acted accordingly. Here, the officers who searched Mr. Yee's home relied on no objective facts suggesting that there was an ongoing emergency, and yet the prosecution claimed that police entered the home on that basis. Contrary to the Third District's ruling, the holdings of *Seibert*, *Riggs*, and *Rolling* barred the police entering Mr. Yee's home because the facts did not establish an imperative, compelling need for immediate entry into the house.

The Third District's holding has therefore diminished the scope of the Fourth Amendment in the area traditionally afforded the most heightened protection: the home. As a result, the Third District is now in conflict with this Court on an important constitutional issue, and discretionary jurisdiction should be exercised so that the conflict may be resolved.

CONCLUSION

Based on the foregoing facts, authorities and arguments, the Petitioner respectfully requests this Court to grant review of the Third District's decision on the basis of express and direct conflict with this Court's opinions in *Riggs*, *Rolling*, and *Seibert*.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered by email to the Office of the Attorney General, Criminal Division, 444 Brickell Avenue, Suite 650, Miami, Florida 33131 at CrimAppMIA@MyFloridaLegal.com and Assistant Attorney General Keri Joseph at Keri.Joseph@MyFloridaLegal.com on this 28th day of October, 2015.

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CERTIFICATE OF FONT

Undersigned counsel certifies that the type used in this brief is 14 point proportionately spaced Times Roman.

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