IN THE SUPREME COURT OF FLORIDA

NORRIS RIGGS,

Petitioner,

v.

FSC No. SC05-133
L.T. No.: 2D03-2961

STATE OF FLORIDA,

Respondent.

_____/

DISCRETIONARY REVIEW OF DECISION OF
THE SECOND DISTRICT COURT OF APPEAL
STATE OF FLORIDA

BRIEF OF RESPONDENT ON MERITS

CHARLES J. CRIST, Jr.
ATTORNEY GENERAL

ROBERT J. KRAUSS
Chief Assistant Attorney General
Bureau Chief, Tampa Criminal Appeals
Florida Bar No. 238538

RICHARD M. FISHKIN
Assistant Attorney General
Florida Bar No. 0069965
Concourse Center 4
3507 Frontage Road, Suite 200
Tampa, Florida 33607
(813)287-7900
Fax (813) 281-5500
COUNSEL FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF CITATIONS

Cases

PRELIMINARY STATEMENT

The record on appeal consists of one volume and one supplement. All pages are numbered consecutively. Reference to the record will be (R __) using the stamped numbers on the lower right of the page.

STATEMENT OF THE CASE AND FACTS

The Second District Court of Appeal, in their decision reversing the trial court's suppression order, stated the facts which were presented during the motion to suppress[1]:

> The facts giving rise to the seizure of the evidence against Riggs are not in dispute. At three o'clock in the morning on January 2, 2003, two Polk County sheriff's deputies were summoned to an apartment complex where a four-year-old girl had been seen walking around naked and alone. When the officers arrived, some residents of the complex had the child in their custody. The child did not know from which apartment she had come. In an attempt to find the child's caregiver, the officers searched the building. On the second floor of the three-story complex, all the apartment doors were closed except one, which was open a couple of centimeters and through which a light was visible.
>
> The officers pounded on the door of the apartment at least three dozen times and identified themselves as Polk County sheriff's officers. Although they received no response from within the apartment, some of the neighbors came out of adjoining apartments to see what was occurring. Concerned that something had happened to the child's caregiver, the officers entered the apartment. They continued to call to the occupants but received no response. They did, however, see a light coming from a closed door. They also saw seeds in a plastic cigar tube on a coffee table in the living room. Still receiving no response to their calls, they inspected a room where

[1] The trial court did not make findings of facts.

> the door was open and no light was on. Not finding anyone there, the officers opened the door to the lit room and found seven potted marijuana plants with a light suspended above them. They proceeded to another room in the apartment where they found Riggs and a woman who they later learned was the lost child's babysitter. Riggs was arrested and confessed that he had cultivated the marijuana.
>
> At the suppression hearing, the State claimed that the officers had properly entered the apartment under the exigent circumstances exception to the warrant requirement and that the officers were justified in seizing the items in plain view. The trial court disagreed and granted the motion to suppress. The trial court based its decision on Eason[2], a case in which a small child was also found wandering around unsupervised at an apartment complex. 546 So. 2d at 58. In that case, a child pointed to the front door of an apartment and told police officers that his mother was inside. The officers entered the apartment after having received no response to their knocks and calls and found marijuana and paraphernalia in plain view. The trial court in Eason denied the motion to suppress on the ground that the officers' entry was lawful. Id.

State v. Riggs, 890 So. 2d 465, 466-467 (Fla. 2d DCA 2004)

In suppressing the evidence, the trial court simply said:

> So, and it appears to me that the Court's holding in Eason, is based on the lack of exigent circumstances, that the child at that point was safe and there was no exigent circumstances to require them going in there. I'm going to find that Eason controls and I will grant the motion

[2] Eason v. State, 546 So. 2d 57 (Fla. 1st DCA 1989)

to suppress all of the evidence.

(R 41)

JURISDICTIONAL STATEMENT

The Florida Supreme Court has discretionary jurisdiction to review a decision of a district court of appeal that expressly and directly conflicts with a decision of the Supreme Court or another district court of appeal on the same point of law. Fla. R. App. P. 9.030(a)(2)(A)(iv).

SUMMARY OF THE ARGUMENT

The trial court erred in granting petitioner's motion to suppress. The analysis should have focused on the police perception of the potential emergency involving the caregiver, rather than the safety of the child after the police arrived on the scene.

ARGUMENT

THE TRIAL COURT ERRED IN GRANTING THE PETITIONER'S MOTION TO SUPPRESS. THE ANALYSIS SHOULD HAVE FOCUSED ON THE POLICE PERCEPTION OF THE POTENTIAL EMERGENCY INVOLVING THE CAREGIVER, RATHER THAN THE SAFETY OF THE CHILD AFTER THE POLICE ARRIVED ON THE SCENE. (RESTATED)

The trial court's ruling on a motion to suppress comes to the appellate court clothed with a presumption of correctness. Henry v. State, 613 So. 2d 429 (Fla. 1992); State v. Rizo, 463 So. 2d 1165 (Fla. 3d DCA 1984). The appellate court will interpret evidence and the reasonable inferences derived therefrom in the manner most favorable to the trial court. Freeman v. State, 559 So. 2d 295 (Fla. 1st DCA 1990); State v. Bravo, 565 So. 2d 857 (Fla. 2d DCA 1990).

> Review of a Florida motion to suppress is a mixed question of law and fact, yoked to federal law. Art. I, § 12, Fla. Const.; Perez v. State, 620 So. 2d 1256 (Fla.1993). The standard of review for the trial judge's factual findings is whether competent substantial evidence supports the judge's ruling. Caso v. State, 524 So. 2d 422 (Fla.1988). The standard of review for the trial judge's application of the law to the factual findings is de novo. Ornelas v. U.S., 517 U.S. 690, 116 S.Ct. 1657, 134 L.Ed.2d 911 (1996).
>
> Butler v. State, 706 So. 2d 100,101 (Fla. 1st DCA 1998)
>
> A ruling on a motion to suppress falls within the discretion of the trial court and is presumptively correct. Johnson v. State, 438 So. 2d 774, 776 (Fla. 1983). A

> reviewing court should interpret the evidence in a light most favorable to sustaining the trial court's ruling. Id.

B.T. v. State, 702 So. 2d 248, 250 (Fla. 4th DCA 1997).

In suppressing the evidence after the hearing, the trial court did not make detailed findings of fact, but rather simply said:

> So, and it appears to me that the Court's holding in Eason, is based on the lack of exigent circumstances, that the child at that point was safe and there was no exigent circumstances to require them going in there. I'm going to find that Eason controls and I will grant the motion to suppress all of the evidence.

(R 41)

The trial court, in decided to grant the motion to suppress, focused strictly on the fact once the police arrived at the scene and determined the child was no longer in danger, that was the end of the inquiry. This, as the Second District wrote, was error.

> We respectfully disagree with the result reached in Eason for the reasons articulated in Judge Smith's dissent. The dissent focused not on the welfare of the child, who was not in danger, but on the welfare of the child's mother. Id. at 61. The dissent states:
>
> [U]pon receiving no response to their knock and announcement of their presence, the officers justifiably entered the apartment for further investigation as to

> the condition of the child's mother. The need to act was therefore clear, and neither logic nor reason, in my opinion, support the majority's holding that under these circumstances the police should have simply walked away from the scene. Id. The same reasoning applies here. The officers believed it was their duty to see that the child's caregiver was not incapacitated and justifiably entered the residence

Riggs at 467

The issue facing the police officers at 3:00am, in the case at bar, was not whether a naked four year old girl was continuing to wander alone in the apartment complex parking lot, with no idea where she came from, but rather the events which caused the situation to occur in the first place. It was not unreasonable for them to believe an emergency situation existed from which the child either fled or wandered. In Eason, it was 8:00am, and their was no evidence that the child was not fully clothed, save for his tennis shoes.

The trial court, in focusing on the well being of the child after the police arrived misapplied the law, as did the majority in Eason.

Rather, the inquiry should have been what would a reasonable police office, confronted with a naked four year old wandering in a parking lot at 3:00am, have done. As the United States Supreme Court said regarding emergency

situations:

> We do not question the right of the police to respond to emergency situations. Numerous state and federal cases have recognized that the Fourth Amendment does not bar police officers from making warrantless entries and searches when they reasonably believe that a person within is in need of immediate aid.
>
> ...

> "The need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency." Wayne v. United States, 115 U.S.App.D.C. 234, 241, 318 F.2d 205, 212 (opinion of Burger, J.). And the police may seize any evidence that is in plain view during the course of their legitimate emergency activities. Michigan v. Tyler, supra, 436 U.S., at 509-510, 98 S.Ct., at 1950-1951; Coolidge v. New Hampshire, 403 U.S., at 465-466, 91 S.Ct., at 2037-2038.

Mincey v. Arizona, 437 U.S. 385, 392-393, 98 S.Ct. 2408 (1978)

During the hearing on the motion to suppress, Officer Strickland testified they were obviously concerned about the welfare of the parents and also about possible child abandonment. They chose to knock on Apartment 1424 because that one was standing slightly ajar. It was obvious someone had come out of there and or somebody had left it open. That was possibly where the child had come from. (R 32)

The Oregon Court of Appeals, in the 1980 decision in State v. Jones, 45 Or. App. 617, 608 P.2d 1220 (1980) said:

> The emergency doctrine is founded upon the actions of police officers which are considered reasonable under the circumstances that faced the officer at the time of entry. The element of reasonableness to enter premises is supplied by the compelling need to assist persons in need. The officer's basis for entering the residence is not based upon probable cause to believe that a crime has been or is being committed; Consequently, a probable cause analysis is irrelevant in determining if the entry was permissible.

> The inquiry is whether the facts available to the officer would lead a prudent and reasonable officer to see a need for immediate action to protect life or property. Wayne v. United States, 318 F2d 205 (DC Cir 1963). When faced with what he reasonable and in good faith believes to be an emergency, an officer's action should not be reviewed with severe judicial scrutiny in light of a hindsight analysis of the evidence. Even if the officer's conclusion that an emergency situation existed is ultimately determined to be erroneous, his actions should be upheld if the circumstances, as they appeared at the time of entry, would lead a prudent and reasonable officer to conclude that immediate action was necessary. An officer facing a perceived emergency must make a hasty decision. He is not afforded the luxury of calm detached deliberation as are the judges reviewing his conduct.

Jones at 460-461.

As the dissent in Eason pointed out, what the officers did in the case at bar is inherent in there responsibilities.

> In Zeigler v. State, 402 So. 2d 365 (Fla.1981), cert. denied, 455 U.S. 1035, 102 S.Ct. 1739, 72 L.Ed.2d 153 (1982), relied on in part by the trial court below, Mr. Justice Adkins summed up the right and duty of police officers acting in response to perceived emergencies (at 371):
>
> The reasonableness of an entry by the police upon private property is measured by the totality of existing circumstances. The right of police to enter and investigate an emergency, without an accompanying intent either to seize or arrest, is inherent in the very nature of their duties as peace officers and derives from the common law. See United States v. Herndon, 390 F.Supp, 1017 (S.D.Fla.1975); State v. Hetzko, 283

> So. 2d 49 (Fla. 4th DCA 1973); Webster v. State, 201 So. 2d 789 (Fla. 4th DCA 1967)....
>
> This court has recognized on at least one occasion the need for officers to enter for the protection of a small child and to conduct such further investigation within the premises as may be indicated by the circumstances. Wooten v. State, 398 So. 2d 963 (Fla. 1st DCA), pet. for rev. dism., 407 So.2d 1107 (Fla. 1981).
>
> It is clear that this episode developed substantially beyond a mere "lost child" incident when the officers were led by the child to the partially open apartment door and were told "Mommy's in there." The trial court found, I believe correctly, that upon receiving no response to their knock and announcement of their presence, the officers justifiably entered the apartment for further investigation as to the condition of the child's mother. The need to act was therefore clear, and neither logic nor reason, in my opinion, support the majority's holding that under these circumstances the police should have simply walked away from the scene. Neither does the Fourth Amendment, as cases from this and other jurisdictions have interpreted it.

Eason at 61

The question before the trial court below was whether, given the circumstances, the deputies were reasonable in concluding they were faced with exigent circumstances that allowed them to invade the sanctity of the home without a warrant, not whether the child, after their arrival, was safe.

> The courts have consistently held that a warrantless search of a home is presumed

illegal. M.J.R. v. State, 715 So. 2d 1103 (Fla. 5th DCA 1998); Anderson v. State, 665 So. 2d 281 (Fla. 5th DCA 1995); see also Espiet v. State, 797 So. 2d 598, 603 (Fla. 5th DCA 2001). This presumption may be overcome if the state demonstrates that exigent circumstances existed that allowed the police to invade the sanctity of the home without a warrant or that valid consent, which is not an issue in the instant case, was given for the search. Espiet; M.J.R.

The exigent circumstances exception to the warrant requirement is premised on the generally accepted notion that "[t]he right of police to enter and investigate an emergency, without an accompanying intent either to seize or arrest, is inherent in the very nature of their duties as peace officers and derives from the common law." Zeigler v. State, 402 So. 2d 365, 371 (Fla.1981) (citations omitted), cert. denied, 455 U.S. 1035, 102 S.Ct. 1739, 72 L.Ed.2d 153 (1982). The sine qua non of the exigent circumstances exception is "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); see also Rolling v. State, 695 So. 2d 278, 293 (Fla.1997) ("Of course, a key ingredient of the exigency requirement is that the police lack time to secure a search warrant.").

There is no catalog of all of the exigencies that may allow a warrantless search of a residence primarily because "[t]he reasonableness of an entry by the police upon private property is measured by the totality of existing circumstances." Zeigler, 402 So. 2d at 371. Nevertheless, precedent provides us the necessary guidance and we derive therefrom that exigencies or emergencies related to the safety of persons or property may support a warrantless entry into a home. See Rolling;

> Arango v. State, 411 So. 2d 172 (Fla.), cert. denied, 457 U.S. 1140, 102 S.Ct. 2973, 73 L.Ed.2d 1360 (1982); Richardson v. State, 247 So. 2d 296 (Fla. 1971); Walker v. State, 617 So. 2d 404 (Fla. 3rd DCA 1993); State v. Mann, 440 So. 2d 406 (Fla. 4th DCA 1983). Hence, the police may enter a home to investigate a suspected burglary or to check on the safety of its residents, as those situations are generally considered exigent circumstances. See State v. Craycraft, 704 So. 2d 593 (Fla. 4th DCA 1997); State v. Haines, 543 So. 2d 1278 (Fla. 5th DCA 1989); see also Anderson.
>
> An entry based on exigent circumstances must be limited in scope to its purpose. Rolling, 695 So. 2d at 293 (citing Anderson). Therefore, the police may not continue the search once it is determined that no exigency exists. Id. Accordingly, if the police enter a home under exigent circumstances and, prior to making a determination that the exigency no longer exists, find contraband in plain view, they may lawfully seize the illegal items. See Haines.

Davis v. State, 834 So. 2d 322, 326 -327 (Fla. 5th DCA 2003)

The trial court wrongly relied on Eason, which was wrongly decided, in suppressing the evidence in plain view while the officers, operating on what they perceived to an emergency situation, entered the residence after loudly and repeatedly knocking and announcing. The Second District correctly reversed.

CONCLUSION

In light of the foregoing facts, arguments, and authorities, Petitioner respectfully requests that this Honorable Court affirm the judgement of the Second District Court of Appeal.

Respectfully Submitted

CHARLES J. CRIST, JR.
ATTORNEY GENERAL

_____
ROBERT J. KRAUSS
Senior Assistant Attorney General
Chief of Criminal Law, Tampa
Florida Bar No. 238538

_____
RICHARD M. FISHKIN
Assistant Attorney General
Florida Bar No. 0069965
Concourse Center 4
3507 E. Frontage Road, Suite 200
Tampa, Florida 33607
(813) 287-7900

COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Bruce P. Taylor, Assistant Public Defender, P.O. Box 9000—Drawer PD, Bartow, Florida 33831-9000 this 16th Day of May 2005.

_____
COUNSEL FOR PETITIONER

CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 12-point Courier New, in compliance with Fla. R. App. P. 9.210(a)(2).

_____
COUNSEL FOR PETITIONER