IN THE SUPREME COURT OF FLORIDA

NORRIS RIGGS, JR.

Petitioner,

v.

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

STATE OF FLORIDA,

Respondent.

_____/

RESPONSE TO PETITION FOR REVIEW FROM
THE SECOND DISTRICT COURT OF APPEAL
STATE OF FLORIDA

JURISDICTIONAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF CITATIONS

Cases

Other Authorities

STATEMENT OF THE CASE AND FACTS

The Respondent, State of Florida, appealed the granting of a motion to suppress in the trial court.

The Second District, in its opinion reversing the trial court, found the following facts:

> Norris Riggs Jr., was charged with the manufacture of cannabis and possession of drug paraphernalia. He entered a plea of not guilty and moved to suppress evidence and statements obtained by the police after a warrantless entry into his apartment. Relying on Eason v. State, 546 So. 2d 57 (Fla. 1st DCA 1989), the trial court rejected the State's contention that the entry was lawful based on exigent circumstances and granted Riggs' motion. The State now appeals from that order. We reverse.
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> 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.
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> 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 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.

State v. Riggs, 30 Fla. L. Weekly D89 (Fla. 2nd DCA December, 29, 2004)

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

Petitioner, Norris Riggs, alleges conflict between the holding in the instant case and this Court's decision expressly conflicts with a decision of another district, specifically Eason v. State, 546 So. 2d 57 (Fla. 1st DCA 1989).

ARGUMENT

DOES THE SECOND DISTRICT'S OPINION IN STATE V. RIGGS, CASE NO. 2D03-2961 (FLA. 2ND DCA DECEMBER 29, 2004) EXPRESSLY CONFLICT WITH A DECISION OF ANOTHER DISTRICT?

The Second District in explaining their rational for reversing the trial court's order granting the motion to suppress, said:

> 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, 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.
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> The First District reversed, finding that there was no emergency because the child was in the custody of a responsible adult, and because the officers did not see any evidence that the child had been abused, that medical intervention for the caregiver was necessary, or that there had been a robbery or a murder. Because there were no exigent circumstances to enter the apartment without a warrant, the court held that entry was illegal and all evidence found as a result should have been suppressed. Id. at 59.
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> 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.

As the State argues, police entry into a home to check on the safety of its residents constitutes exigent circumstances for purposes of the exception to the search warrant requirement for entry into a home. Davis v. State, 834 So. 2d 322 (Fla. 5th DCA 2003). This exception to the warrant requirement is premised on the generally accepted notion that "[t]he right of police to enter and investigate in 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." Webster v. State, 201 So. 2d 789, 792 (Fla. 4th DCA 1967). The reasonableness of the belief of the police as to the existence of an emergency is measured by the totality of existing circumstances. Lee v. State, 856 So. 2d 1133 (Fla. 1st DCA 2003). In this case the officers were summoned to the apartment complex because a naked child was found wandering alone at three o'clock in the morning. During their investigation, the officers noticed that an apartment door was ajar and logically surmised that the child had wandered out of that apartment. No one came to the door when the officers knocked and announced their presence. Out of concern for the well-being of the residents they entered the apartment. Therein

> they found marijuana and paraphernalia in plain view before concluding that no emergency existed.
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> "[I]f 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." Davis, 834 So. 2d at 327. Because the officers justifiably felt that exigent circumstances required their investigation, their entry into the apartment and seizure of the contraband was lawful. Accordingly, we reverse the trial court's order granting the motion to suppress and remand for further proceedings.

State v. Riggs, 30 Fla. L. Weekly D89 (Fla. 2nd DCA December, 29, 2004)

Though the Second District disagreed with the holding in Eason, the cases are distinguishable. The facts in Eason are materially different from the situation here.

> At the hearing on the motion to suppress, police officer Robert Harding testified that on November 1, 1987, at approximately 8:00 a.m., he and his partner responded to a call alerting them that a small child was wandering in the parking lot of an apartment complex. Upon arriving at the complex, the caller led the officers to the child, whom she had taken into her home. The child was male, appeared to be about 2 or 3 years old, and showed no signs of having been abused. Upon being asked his name and whether he knew where he lived, the child said he had to get his tennis shoes, and ran off. With the officers in pursuit, he stopped in front of an apartment, pointed to the front door and said, "Mama is in there." Officer Harding stated that he and his partner did not know whether the child was pointing to the correct apartment, whether the apartment was being burglarized, or whether someone inside the apartment might need help, so they drew their service revolvers. Harding then knocked on the door, which opened while he was

> knocking on it, and announced that he was a police officer. Upon hearing no reply, the officers entered the apartment. Still holding his gun in his right hand, Officer Harding opened the bedroom door and saw Eason and a woman lying in the bed. Harding determined that the child belonged to the woman and that there was no emergency. While standing in the room, however, Harding noticed a large marijuana plant, dried marijuana leaves, a pipe, a bong, and a set of scales. Harding asked Eason if he could search the rest of the apartment and Eason refused, stating that he needed to see his attorney. The police subsequently obtained a search warrant, thoroughly searched the apartment, and seized 500 grams of marijuana, $2,415 in cash, and assorted items of drug paraphernalia.
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> ...
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> In this case, Officer Harding admitted that prior to entering Eason's apartment he saw no evidence that the child had been, or was going to be, physically or mentally abused, saw no evidence that medical intervention was necessary, and saw no evidence of a murder or robbery. Officer Harding also testified that, upon his arrival at the apartment complex, the child appeared to be in the care of a responsible adult. We must conclude, therefore, that the state did not satisfy its burden of proving that the officers had reasonable grounds to believe exigent circumstances existed, and the presumption that the warrantless search and seizure was unconstitutional remained unrebutted. See Earmann v. State, 265 So.2d 695 (Fla.1972).

Eason v. State, 546 So.2d 57, 58-59 (Fla. 1st DCA 1989)

In the instant case, the police stopped their search as soon as the caregiver was found and was safe. Up to that point, it was reasonable to conclude a four-year old child, wandering around naked, at three a.m. could well be abandoned. It was while looking for a

caregiver that the contraband was encountered in plain view.

Unlike Eason, where the child was found at eight a.m., knew which apartment was his, and where his mother was, the child in the instant case, was found wondering naked outside at 3:00AM, and had no idea where she had wandered out from. The investigation showed she had awakened in a strange livingroom. She didn't know where she was. (R 30) The only door in the complex which was ajar was the one where ultimately the caregiver was found. Prior to entering, the police knocked and announced. While looking through the apartment, looking into the well being of the caregiver, they continued to announce.

It was not until after the contraband was found, that the caregiver was finally located, asleep, in a back bedroom.

The conduct of the police was proper. The circumstances they were faced with were exigent, and therefore entering the apartment the way the officers did, and their conduct therein, in looking for the caregiver, was reasonable under the circumstances.

Because the case below and Eason are distinguishable on their facts, there is no true conflict in the two holdings as a matter of law.

CONCLUSION

In light of the foregoing facts, arguments, and authorities, Petitioner respectfully requests this Honorable Court decline to exercise its discretionary jurisdiction under Art. V, Section 3(b)(3), Fla. Const.

Respectfully Submitted

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the foregoing Jurisdictional Brief of Respondent 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 9th day of February 2005.

_____
COUNSEL FOR RESPONDENT

CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY 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).

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COUNSEL FOR RESPONDENT