IN THE SUPREME COURT OF
THE STATE OF FLORIDA

NORRIS RIGGS, :

Petitioner, :

vs.

STATE OF FLORIDA, : Case No. SC05-133
L.T. No. 2D03-2961

Respondent. :

_____

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

REPLY BRIEF OF PETITIONER ON MERITS

JAMES MARION MOORMAN
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

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ATTORNEYS FOR PETITIONER

TABLE OF CONTENTS

TABLE OF CITATIONS

ISSUE ON REVIEW

Whether the Trial Court Erred in Granting the Motion To Suppress?

ARGUMENT

Respondent begins by making inconsistent arguments. First, it is argued, the facts of Easom v. State, 546 So. 2nd 57 (Fla. 1st DCA 1989) are distinguishable from the case at bar because in the instant case the child was naked, while in Easom there is no indication the child was naked. Respondent also points out the facts of the case at bar occurred at about 3:00 A.M., while those in Easom occurred at about 8:00 A.M. Of course, the attempt to factually distinguish this case from Easom so as to justify a different result overlooks the court's below own acknowledgement there is a conflict in the results. Also, those distinctions would only have significance if the welfare of the child were the exigent circumstance purporting to justify the warrantless entry into Petitioner's home. However, Respondent then attempts to argue the exigent circumstance was not the welfare of the

child, whom was safely in custody at the time of the entry, but the safety of the "caregivers".

As has been said before, the burden of proof is on the prosecution to present facts that would justify the entry under any exception to the warrant requirement, including "exigent circumstances", Easom, supra. The trial court found that proof to be lacking in the instant case. Respondent points to the testimony of Officer Strickland about the door to Petitioner's apartment being slightly ajar, and his conclusion that the child had possibly come out of that door. Respondent relies on State v. Jones, 45 Or. App. 617, 608 P.2d 1220 (1980) to support its argument the entrance into Petitioner's home was justified if the officer believed an emergency to exist. That reliance is misplaced. First, the facts are clearly distinguishable. The officer received a report of children unattended in the home. He could see into the home, and saw young children in apparent need of attention. The court in that case found the officer's belief of an emergency to be reasonable. That is the second flaw in Respondent's reliance on Jones. Respondent seems to take the position that an officer's belief an exigent circumstance exists is

sufficient to justify a warrantless entry into a home, whether or not that belief is reasonable. Neither Jones nor any other authority so holds. Indeed, the belief in the existence of exigent circumstances must be "objectively reasonable", State v. Boyd, 615 So. 2nd 786 (Fla. 2nd DCA 1993). Officers' suspicions are not sufficient to justify a search, seizure or entry, in the absence of such objective reasonable beliefs, Cross v. State, 469 So. 2nd 226 (Fla. 2nd DCA 1985), approved, 487 So. 2nd 1056 (Fla. 1986).

Respondent has already stated the reasons why the belief, if it existed, by the officers that an exigency existed was, at the very least not objectively reasonable. Respondent continues to rely on those arguments. Respondent also points out the words of Officer Strickland himself, there was only a possibility the slightly ajar door was the one through from the child had emerged. It is submitted such a possibility is not a substitute for an objectively reasonable belief in the actual existence of exigent circumstances.

CONCLUSION

There is ample evidence in the record to support the trial court's order excluding the evidence in question. The District Court's decision should be reversed.

Respectfully Submitted:

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on the Office of the Attorney General at 3507 East Frontage Rd. Ste. 200., Tampa, Fl. 33607, on this the ____ Day of June, 2005.

THIS BRIEF IS PRINTED IN "COURIER NEW" 12 POINT TYPE

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