

10-05: The Hot Pursuit Exception to the Search Warrant Requirement

Case: State v. Brown, 35 FLW D1072b (Fla. 3d DCA 5/12/10)

Date: May 12, 2010

Subject: The "Hot Pursuit" exception to the warrant requirement permitted officers to pursue the defendant through the open door of his home to effect an arrest inside, even though the crimes witnessed by the officers were only misdemeanors.

FACTS: Around midnight, police officers observed two men outside a Miami apartment complex. One of them, later identified as the defendant, appeared to be carrying an "assault-type" rifle by his side, and was walking up to a vehicle with the engine running and the lights turned off. After officers commanded the men to stop, the men ran into an apartment which turned out to be Brown's. The officers followed, and entered through the still-open front door where they recovered the rifle and over 20 grams of marijuana, which Brown admitted were his. The defendant was arrested. The trial court granted a defense motion to suppress, concluding that Brown's actions as observed by the officers "would have been a misdemeanor, and the officer cannot follow him into the home for that purpose." (The defense also argued that the officers' actions constituted a violation of the "Knock and Announce" statute.) The state appealed.

RULING: The Third District Court of Appeal reversed the trial court, concluding that no constitutional violation occurred, and that the "Knock and Announce" ("K & A") statute was not violated.

DISCUSSION: The appellate court began its analysis by reaffirming the principle that warrantless searches or arrests in constitutionally protected areas are per se unreasonable, unless they fall in to one of the exceptions to the warrant requirement. In this case, the court held that the facts fell into the "exigent circumstance" exception, which includes situations where police are engaged in a lawful "hot pursuit." The court acknowledged that the offenses which Brown was suspected of violating (described by the court as "possession of an assault-type rifle" and "fleeing from an officer") were only misdemeanors. However, relying on their own precedent decided in *Ulysse v. State*, 899 So. 2d 1233 (Fla. 3d DCA 2005), and its interpretation of Section 901.15, Florida Statutes, the court held that the "hot pursuit" exception is nonetheless fully applicable (holding that the hot pursuit of a fleeing misdemeanor is permissible where the misdemeanor is punishable by a jail sentence.) The court reasoned that "(t)he 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" (citing *Gasset v. State*, 490 So. 2d 97 (Fla. 3d DCA 1986).) The court further opined that a defendant waives any expectation of privacy by engaging in criminal conduct, and then leading officers directly to the place of his arrest. *Gasset*.

On a separate issue, the court also firmly rejected the defendant's assertion that the officers violated the "Knock and Announce" statute (Section 901.19(1), Florida Statutes) by following him into his home to effect the arrest. The court stated that as a matter of law and logic, the "K & A" requirement cannot apply in the same situation where the "hot pursuit" exception applies, as it would be "no less than ridiculous to put such a requirement on officers in such situations." The court noted that in this case, it would be both "purposeless and dangerous" to require an officer to stop his hot pursuit in order to announce his presence to an armed defendant who, "being freshly pursued,...had already specifically disobeyed commands to stop.

John E. Kemner
Regional Legal Advisor
Florida Department of Law Enforcement
Jacksonville Regional Operations Center

Officers should consult with their agency legal advisors to confirm the interpretation provided in this Update and to determine to what extent the case discussed will affect their activities.