IN THE COURT OF CRIMINAL APPEALS FOR THE STATE OF OKLAHOMA

JOHN HENRY HARRIS,	)	
	)	
Appellant,	)	NOT FOR PUBLICATION
	)	
-vs-	)	No. F-2001-609
	)	
STATE OF OKLAHOMA,	)	
	)	
Appellee.	)	

SUMMARY OPINION

STRUBHAR, JUDGE:

Appellant, John Henry Harris, was convicted of Trafficking in Illegal Drugs, After Former Conviction of a Felony, in the District Court of Tulsa County, Case No. CF-00-3564.[1] The case was tried without a jury before the Honorable J. Michael Gassett. The trial court sentenced Appellant to fifteen years imprisonment and a $25,000.00 fine.

After thorough consideration of the entire record before us on appeal, including the original record, transcripts, and briefs of the parties, we reverse with instructions to dismiss. In reaching our decision, we considered the following proposition of error and determined this result to be required under the law and the evidence:

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[1] Appellant was also convicted of Speeding and Resisting Arrest but these convictions are not at issue in this appeal.

I. The entry into the residence where Appellant was arrested was in violation of the Fourth and Fourteenth Amendments to the United States Constitution, as well as corresponding constitutional and statutory provisions of Oklahoma.

DECISION

We first note that the record contains sufficient evidence from which it can be determined that Appellant has standing to raise a Fourth Amendment claim. *See Minnesota v. Olson*, 495 U.S. 91, 110 S.Ct. 1684, 109 L.Ed.2d 85 (1990)(an overnight guest in a house has the sort of expectation of privacy that the Fourth Amendment protects). We next address the merits of Appellant's claim.

It is a basic principle of Fourth Amendment law that searches and seizures inside a home without a warrant are presumptively unreasonable. *Payton v. New York*, 445 U.S. 573, 586, 100 S.Ct. 1371, 1380, 63 L.Ed.2d 639 (1980). The United States Supreme Court has made it clear that only in a few specifically established and well-delineated situations, may a warrantless search of a dwelling withstand constitutional scrutiny, even though the authorities have probable cause to conduct it. *Katz v. United States*, 389 U.S. 347, 357, 88 S.Ct. 507, 514, 19 L.Ed.2d 576 (1967). The burden rests on the State to show the existence of an exceptional situation. *Chimel v. California*, 395 U.S. 752, 762, 89 S.Ct. 2034, 2039, 23 L.Ed.2d 685 (1969). One of the exigent circumstances acknowledged by the Supreme Court is hot pursuit.

While many Supreme Court cases have involved hot pursuit of fleeing felons[2], the Court actually has not created a bright-line distinction between felonies and other crimes for purposes of this exigent circumstance. Rather, the Court has focused its attention on the severity of the underlying offense.

> Our hesitation in finding exigent circumstances, especially when warrantless arrests in the home are at issue, is particularly appropriate when the underlying offense for which there is probable cause to arrest is relatively minor. Before agents of the government may invade the sanctity of the home, the burden is on the government to demonstrate exigent circumstances that overcome the presumption of unreasonableness that attaches to all warrantless home entries. . . . When the government's interest is only to arrest for a minor offense, that presumption of unreasonableness is difficult to rebut, and the government usually should be allowed to make such arrests only with a warrant issued upon probable cause by a neutral and detached magistrate.

Welsh v. Wisconsin, 466 U.S. 740, 750, 104 S.Ct. 2091, 2098, 80 L.Ed.2d 732 (1984)(citations omitted). In addition, the Tenth Circuit Court of Appeals has noted that when there is hot pursuit, warrantless entry can be justified, in part, by the significant risk of destruction of evidence if the police wait to obtain a warrant. *United States v. Aquino*, 836 F.2d 1268, 1271 (10th Cir.1988).

In light of the foregoing discussion, we find that sufficient exigent circumstances did not exist for Officer Gatwood to make a warrantless entry into the home. The Officer's interest at that point was only to arrest Appellant

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[2] *See United States v. Santana*, 427 U.S. 38, 42-43, 96 S.Ct. 2406, 2409-2410, 49 L.Ed.2d 300 (1976); *Warden v. Hayden*, 387 U.S. 294, 298-299, 87 S.Ct.

for minor traffic violations and the misdemeanor crime of evading and he had no reason to fear that evidence would be destroyed. Thus, there existed no exigent circumstance which made it necessary for him to enter the house immediately rather than waiting to obtain an arrest warrant. To quote Justice Jackson's concurrence in *McDonald v. United States*, 335 U.S. 451, 459, 69 S.Ct. 191, 195, 93 L.Ed. 153 (1948), "[t]his method of law enforcement displays a shocking lack of all sense of proportion. Whether there is reasonable necessity for a search without waiting to obtain a warrant certainly depends somewhat upon the gravity of the offense thought to be in progress as well as the hazards of the method of attempting to reach it." Accordingly, we find that the trial court erred in failing to sustain Appellant's motion to suppress. Absent the illegally obtained evidence, there remains no evidence to support Appellant's conviction for Trafficking in Illegal Drugs. The Judgment and Sentence of the trial court is **REVERSED** with instructions to **DISMISS**.

1642, 1645-1646, 18 L.Ed.2d 782 (1967).

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OPINION BY: STRUBHAR, J.
LUMPKIN, P.J.: DISSENT
JOHNSON, V.P.J.: CONCUR
CHAPEL, J.: CONCUR
LILE, J.: DISSENT

LUMPKIN, PRESIDING JUDGE: DISSENTS

I dissent to the reversal of this case on the basis the trial court erred in failing to sustain the motion to suppress. The opinion fails to consider all of the facts in this case. The record shows Appellant committed a number of traffic violations, and instead of stopping for the officer, whose lights and siren were activated, Appellant drove on in an attempt to elude the officer. The officer pursued Appellant through the streets of Tulsa to the outskirts of town where he abandoned his vehicle. Appellant fled on foot, with the officer close behind directing Appellant to stop and submit to arrest. Appellant entered a house just as the officer came running up to the doorway where the officer met the homeowners. The homeowners were excited and screaming that Appellant did not live there. They directed the officer to "go after him" as Appellant was running down the hallway of their home. As the officer chased Appellant down the hallway, Appellant threw down a plastic bag of cocaine. Appellant was eventually arrested in a back room of the house where he had closed himself in. The homeowners again told the officer Appellant did not live there, and they gave their consent for a search of the home.

A police officer may make a warrantless arrest for a misdemeanor only if the misdemeanor offense is committed in the officer's presence. 21 O.S. 1991, § 196. *See also Tomlin v. State,* 869 P.2d 334, 338-339 (Okl.Cr.1994). While we have not specifically addressed the issue of "hot pursuit" in relation to a misdemeanor, this Court has upheld an officer's pursuit of a traffic offender in

order to affect his arrest. *See Jones v. State,* 723 P.2d 984, 985-986 (Okl.Cr.1986); *Parsons v. State,* 603 P.2d 1144, 1145-46 (Okl.Cr.1979); *Stevens v. State,* 274 P.2d 402 (Okl.Cr.1954). If a police officer is in hot pursuit of a person who has committed an unlawful act within his jurisdiction, then such police officer is, of necessity, permitted to go outside his jurisdiction to apprehend such person. *Graham v. State,* 560 P.2d 200, 203 (Okl.Cr.1977).

Further, under *Welsh* and *Aquino* cited in the opinion, sufficient exigent circumstances existed for the officer to enter the house. The officer observed Appellant run into a house in which he obviously did not live and in which the homeowners were requesting the officer follow Appellant into the home. The officer's interest at that point was not only to arrest Appellant for the traffic violations and the crime of evading, but also to arrest him for the trespass into the home and to prevent the commission of any additional crimes. The contraband in this case was subsequently discovered, after Appellant abandoned it by throwing it down in the house, as a result of the homeowner's consent to search. If the officer followed the dictates of the opinion, failed to act, and the homeowners were harmed or taken hostage, then there would be valid outrage at the officer's failure to perform his duties.

Accordingly, I find our case law implicitly allows the "hot pursuit" of a misdemeanor offender. Under the facts in this case, the officer properly entered the home and confiscated the contraband. Therefore, the evidence supported the trial court's decision to overrule the motion to suppress.

I am authorized to state that Judge Lile joins in this dissent.