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Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-002033-MR

HOLLIS KING — APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE JAMES D. ISHMAEL, JR., JUDGE
ACTION NO. 05-CR-01500

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: THOMPSON, JUDGE; BUCKINGHAM AND HENRY, SENIOR JUDGES.[1]

THOMPSON, JUDGE: Hollis King appeals from a judgment of the Fayette Circuit Court following his conditional guilty plea to trafficking in a controlled substance, first degree; possession of marijuana; and being a persistent felony offender in the second degree. Pursuant to his plea, King reserved the right to appeal the denial of his suppression motion. For the reasons set forth herein, we affirm.

[1] Senior Judges David C. Buckingham and Michael L. Henry sitting as special judges by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statute (KRS) 21.580.

On October 13, 2005, Officer Steve Cobb and other officers from the Lexington-Fayette County Police Department were conducting an undercover "buy-bust" operation at an apartment complex in the area of 1300 Centre Parkway.

To conduct the operation, an undercover informant parked his truck in a parking lot adjacent to an apartment building, and Officer Givens,[2] in an unmarked car, positioned himself so that he had visual contact with the informant's truck where potential drug transactions would take place. Additionally, Officers Cobb, Maynard, and Simmons were each positioned in nearby locations so that they could quickly respond if a drug transaction were to occur.

Shortly before 10:00 p.m., after receiving a signal from the informant, Givens radioed to the three officers that a drug transaction had been completed. The officers then hurriedly proceeded to the parking lot where the drug transaction had occurred. As he listened to his car radio while driving to the scene, Cobb heard Givens describe the suspect as a black male, wearing jeans, tennis shoes, and a red shirt.

Cobb further heard Givens state that the suspect had entered the breezeway of apartment building 1317. After Cobb reached the scene and exited his car in pursuit of the suspect, Givens radioed that the suspect was entering the right, rear apartment of building 1317. However, by the time of this transmission, Cobb testified that he was too far away from his car radio to hear the transmission.

When officers entered the apartment building's breezeway, they heard a door being slammed shut in the vicinity of the two rear apartments. As officers approached the midpoint of the breezeway, they smelled a strong odor of marijuana.

[2] While we are using the name referenced in the trial court's suppression order, the name Gibbons has also been used in other documents in the record.

After reaching the end of the breezeway, the officers realized that the strong odor of marijuana was emanating from the left, rear apartment.

Although they had not observed which door the suspect had entered, based on the source of the marijuana odor, they believed that the left door had recently been opened and shut. Thus, the officers believed that the fleeing suspect had entered the left apartment. After knocking on the door and announcing themselves as police, Cobb heard movement inside the apartment and feared that felony evidence might be destroyed if immediate action was not taken.

He then kicked in the door and performed a protective sweep of the apartment. In the apartment, Cobb observed narcotics on the coffee table and kitchen counter, and discovered a substantial amount of cash in the apartment. At this point, King and the two other occupants of the apartment were arrested. Shortly after these arrests, the original suspect was located in the apartment across the hall from King.

After being indicted, King and his two co-defendants moved to suppress the drug evidence found in his apartment on the basis that it was the fruit of an unlawful search. At the joint suppression hearing, King's counsel focused on the inconsistency between Cobb's written post-incident report and his suppression hearing testimony.

During the hearing, Cobb testified that he had not heard Givens' radio transmission that the suspect had entered the right, rear apartment. However, his post-incident report indicated that he had heard the transmission. According to Cobb, he included Givens' transmission in his report because Givens had informed him that he (Givens) had made the transmission during the pursuit of the suspect not because he himself had actually heard the transmission at the time of the incident.

At the conclusion of the hearing, the trial court asked Cobb the following:

> COURT: When you and the other officers went down the breezeway toward both 78 and 79, did you know which of those two apartments that the suspect had gone into?[3]
>
> COBB: When I entered that breezeway, no.
>
> COURT: So you just knew the suspect from the "buy-bust" had gone into that breezeway and went down that hallway.
>
> COBB: Yes, sir.

Following the hearing and the submission of briefs, the trial court denied King's motion to suppress as well as the motions of his co-defendants. In its order, the trial court wrote that:

> In the end analysis, the officers initially had probable cause to continue their investigation because of the unique odor of burnt marijuana coming from the apartment unit, and there being no response to their knock on the door coupled with the movement inside the apartment which the officers believed were persons in the act of destroying evidence, the requisite exigent circumstances existed which justified the warrantless entry.

After the entry of this order, King entered a conditional guilty plea and was sentenced to ten (10) years' imprisonment. This appeal followed.

On appeal, King contends that the trial court erred when it denied his motion to suppress the evidence obtained as a result of the warrantless entry and search of his apartment. Specifically, he contends that the search of his apartment was conducted in violation of the Fourth Amendment to the United States Constitution because it was unsupported by probable cause and an exigent circumstance.

On appellate review of a trial court's denial of a motion to suppress, we

[3] King's apartment was number 78; and the right, rear apartment was number 79.

apply a two-step process in determining whether the trial court's ruling was correct. *Welch v. Commonwealth*, 149 S.W.3d 407, 409 (Ky. 2004). First, we review the trial court's findings of fact under the substantial evidence standard. *Id*. Under this standard, an appellate court will not disturb a trial court's findings of fact if they are supported by substantial evidence. *Commonwealth v. Harrelson*, 14 S.W.3d 541, 549 (Ky. 2000).

"Substantial evidence is defined as 'evidence of substance and relative consequence having the fitness to induce conviction in the minds of reasonable [persons].'" *Kentucky Unemployment Ins. Com'n v. Landmark Community Newspapers of Kentucky, Inc*., 91 S.W.3d 575, 579 (Ky. 2002).

After completing the first step, we then conduct a *de novo* review of the trial court's application of the law to the established facts to determine whether its ruling was correct as a matter of law. *Adcock v. Commonwealth*, 967 S.W.2d 6, 8 (Ky. 1998). In conducting a *de novo* review, we afford no deference to the trial court's application of the law to the established facts. *Cinelli v. Ward*, 997 S.W.2d 474, 476 (Ky.App. 1998).

As to the trial court's findings of fact, although King points out an inconsistency between Cobb's written post-incident report and his suppression hearing testimony, the trial court's own questioning revealed that Cobb was not aware of which apartment the suspect had entered when the officers entered the breezeway of the apartment building. Further, Cobb's testimony was very detailed and clear.

Accordingly, after reviewing the entire record and because we cannot substitute our version of the facts for those of the trial court, even when there is conflicting evidence in the record, we conclude that the trial court's findings of fact were supported by substantial evidence. *R. C. R. v. Com. Cabinet for Human Resources*, 988

S.W.2d 36, 39 (Ky.App. 1998).

It is well-settled that searches and seizures inside a home without a warrant are presumptively unreasonable under the Fourth Amendment of the United States Constitution. *Payton v. New York,* 445 U.S. 573, 586, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980). However, this general rule may be overcome by the existence of any one of the several valid exceptions to the warrant requirement. *Cook v. Commonwealth,* 826 S.W.2d 329, 331 (Ky. 1992).

These exceptions, often called exigent circumstances, include situations in which an officer reasonably acts to prevent the possible destruction of evidence. *Taylor v. Commonwealth*, 577 S.W.2d 46, 48 (Ky.App. 1979). When police seek to justify a search upon an exigent circumstance, the Commonwealth bears the burden to demonstrate that the search came within an exception. *Gallman v. Commonwealth*, 578 S.W.2d 47, 48 (Ky. 1979).

Further, to support a warrantless search of a private residence, the exigent circumstance must be coupled with a finding of probable cause. *Southers v. Commonwealth*, 210 S.W.3d 173, 176 (Ky.App. 2006). "Probable cause for a search exists when the facts are sufficient to warrant a man of reasonable prudence in the belief that contraband or evidence of a crime will be found." *Baltimore v. Commonwealth*, 119 S.W.3d 532, 538 (Ky.App. 2003).

Here, police observed a drug transaction involving the felony trafficking of crack cocaine. As nearby-stationed officers rushed to the scene to arrest the suspect, they observed him run into the breezeway of an apartment building. As officers entered the breezeway, they heard a door being slammed shut in the vicinity of the two rear

apartments.

After reaching the rear apartments, they believed that the suspect had entered the left door because of the strong smell of marijuana surrounding it. After knocking, announcing themselves as police, and hearing movement inside the apartment consistent with the destruction of evidence, the officers kicked in the door. After entering, police found illegal drugs and the three occupants were arrested.

Based on these facts, we believe that their warrantless entry was valid under the destruction of evidence exception to the prohibition against the warrantless entry of a home. Although the trial court's ruling that the warrantless entry was valid was correct, we disagree with its legal analysis and now state the correct rule of law.

"Destruction of evidence is a recognized exigent circumstance creating an exception to the warrant requirement." *Posey v. Commonwealth*, 185 S.W.3d 170, 173 (Ky. 2006) (quoting *Commonwealth v. McManus,* 107 S.W.3d 175, 177 (Ky. 2003)). If officers have probable cause to believe that a crime has occurred and that evidence from that crime is in imminent danger of being destroyed, they may secure the place where the evidence is located in order to prevent its imminent destruction. *Id*.

The U.S. Supreme Court, in explaining when a situation becomes imminent, held that it is reasonable to permit police to secure the location without a warrant where police action literally must be "now or never" to preserve evidence of a crime. *Roaden v. Kentucky,* 413 U.S. 496, 505, 93 S.Ct. 2796, 2802, 37 L.Ed.2d 757 (1973).

In its written order, as previously noted, the trial court ruled that the smell of marijuana gave police officers "probable cause to continue their investigation." Further, the trial court ruled that this probable cause permitted the police to knock on King's door

and then execute a warrantless entry after hearing movement inside the apartment. This analysis is incorrect.

From our examination of the relevant case law, we conclude that the odor of burnt marijuana emanating from a residence standing alone does not justify the warrantless entry of that residence even when police knock and announce their presence and hear movement consistent with the destruction of evidence inside the apartment.

Police cannot create exigent circumstances even when they possess probable cause that a crime has been committed. *United States v. Williams*, 354 F.3d 497, 504-05 (6th Cir. 2003). In determining whether police have created exigent circumstances, courts have ascertained whether the police have willfully disregarded or recklessly ignored the warrant requirement.

From the case law, particularly *United States v. Chambers*, 395 F.3d 563, 566 (6th Cir. 2005) , *McDonald v. United States*, 335 U.S. 451, 455-56, 69 S.Ct. 191, 93 L.Ed. 153 (1948), and *Williams*, 354 F.3d at 504-05, courts have examined the unique circumstances of each case and decided if there was some point during the events culminating with the search that the government's failure to obtain a search warrant was solely due to their deliberate attempt to circumvent the warrant requirement. If such deliberate conduct is found, the search is invalidated due to law enforcement's creation of the exigent circumstance.

Specifically, in *Chambers* at 566, the court wrote that:

> [W]e reviewed a number of the "created-exigency" cases that apply the emergency and inadvertence principle which, we said, cannot be met "if the police controlled the timing of the encounter giving rise to the search." Our review concluded that "the created-exigency cases have typically required *some showing* of deliberate

> conduct on the part of the police evincing an effort intentionally to evade the warrant requirement." (Citation omitted).

Having set out the applicable law, the trial court's analysis that officers are legally permitted to approach a residence after smelling marijuana, knock on the door, and make a warrantless entry into the residence after hearing movement within the residence is incorrect. To the contrary, such conduct constitutes the impermissible creation of an exigent circumstance by police and, therefore, invalidates any search predicated on this ground. *Id*.

However, under the circumstances of this case, we conclude that the police did not engage in deliberate and intentional conduct to evade the warrant requirement. While it was possible that the suspect may have never been aware of the officers' presence, it cannot be concluded as a matter of law that it was unreasonable for the police to have believed that the suspect knew of their presence and that they had to take immediate action to prevent the destruction of evidence. *U.S. v. Knights*, 534 U.S. 112, 118-119, 122 S.Ct. 587, 151 L.Ed.2d 497 (2001) (reasonableness is the touchstone of Fourth Amendment analysis).

Moreover, while King places great significance in the fact that he was not the original suspect nor was he aware of the presence of police, the warrantless entry and search of his apartment was still valid. First, while we recognize that the police mistakenly believed that the suspect had entered the left, rear apartment when in fact he had entered the right apartment, their mistaken belief did not invalidate the constitutionality of the warrantless entry.

Under the "good-faith" exception, when police reasonably (though

erroneously) believe that they a pursuing a suspect, the legality of their warrantless entry into a residence is not invalidated solely because their belief that the suspect had entered the residence was erroneous. *Perkins v. Commonwealth*, 237 S.W.3d 215, 219 (Ky.App. 2007).

Second, in *Devenpeck v. Alford*, 543 U.S. 146, 152-155, 125 S.Ct. 588, 160 L.Ed.2d 537 (2004), the Court discussed the mind state of police in relation to analyzing the existence of probable cause. The Court stated that whether probable cause exists "depends upon the reasonable conclusion to be drawn from the *facts known to the arresting officer at the time* of...[his action]." *Id*. at 152.

This standard for analyzing the validity of a police officer's belief that he had probable cause to take a particular action is equally applicable to determining whether a police officer's belief as to the existence of an exigent circumstance is constitutionally valid. To conclude otherwise would render the constitutionality of a warrantless entry into a defendant's home on the infallibility of police (i.e., the validity of a search would hinge on whether or not the pursuing officer correctly identifies which apartment the fleeing suspect entered). This is an undesirable outcome.

The correct standard, when applied to the facts of this case, is whether or not the officers reached a reasonable conclusion (to enter the left apartment) based on the facts known to them at the time of the forced entry. *Id*. Although hindsight informs us that the officers chose the wrong door, this does not invalid the constitutionality of the search because the officers' actions were reasonable under the circumstances at the time of their entry.

Moreover, the United States Supreme Court has held “that an important

factor to be considered when determining whether any exigency exists is the gravity of the underlying offense for which the arrest is being made." *Welsh v. Wisconsin*, 466 U.S. 740, 753, 104 S.Ct. 2091, 80 L.Ed.2d 732 (1984). The application of the exigent-circumstances exception for the purpose of a warrantless entry into a home has a much greater application when there is probable cause to believe that a major offense has been committed than when only a minor offense has been committed. *Id.*

In *U.S. v. Anderson*, 154 F.3d 1225, 1233 (10th Cir. 1998), the court succinctly stated the exigency standard regarding the destruction of evidence as follows:

> An exception to the warrant requirement that allows police fearing the destruction of evidence to enter the home of an unknown suspect should be (1) pursuant to clear evidence of probable cause, (2) available only for serious crimes and in circumstances where the destruction of evidence is likely, (3) limited in scope to the minimum intrusion necessary to prevent the destruction of evidence, and (4) supported by clearly defined indications of exigency that are not subject to police manipulation or abuse.

Therefore, because the police were pursuing a suspected felony crack cocaine dealer following a "buy-bust" operation to a particular apartment building door and believing that the suspect was about to destroy evidence of a serious crime, we conclude that the warrantless entry into King's apartment was valid. For the foregoing reasons, the judgment of the Fayette Circuit Court is affirmed.

HENRY, SENIOR JUDGE, CONCURS.

BUCKINGHAM, SENIOR JUDGE, DISSENTS AND FILES SEPARATE OPINION.

BUCKINGHAM, SENIOR JUDGE, DISSENTING: I respectfully dissent. This case is the companion case to *Washington v. Commonwealth*, 231 S.W.3d 762 (Ky.App. 2007), and involves Washington's co-defendant, King.[4]

First, I agree with the majority that the basis of the trial court's ruling is erroneous. The trial court held that exigent circumstances arose when the officers, who had smelled the odor of marijuana coming from the apartment, knocked on the apartment door and identified themselves, and when those inside did not open the door but moved around in a manner causing the officers to fear that evidence (marijuana) was about to be destroyed. I agree with the majority that the odor of marijuana emanating from a residence, followed by a knock on the door by the officers and the announcement of their presence and the subsequent movement inside, on those facts alone, does not justify a warrantless entry into the residence because the exigent circumstance of fear of destruction of the evidence was created by the officers when they knocked and announced their presence.

Exigent circumstances generally do not exist if the person is unaware of the police presence. See *United States v. Santa*, 236 F.3d 662, 669-70 (11th Cir. 2000); *United States v. Coles*, 437 F.3d 361, 371 (3rd Cir. 2006); *Dunnuck v. State*, 786 A.2d 695 (Md.App. 2001). King and the inhabitants of the apartment were unaware of the presence of the officers until the officers knocked on the door and announced their presence. In other words, the exigency did not arise until the officers knocked on the door and announced their presence, causing those inside the apartment to become alarmed and

[4] These two cases should have been consolidated and sent to the same panel for disposition, but inadvertently they were not. The judges that are the majority in this case were on the panel that decided the *Washington* case; I was not.

perhaps to begin to destroy the marijuana. Absent the additional facts surrounding the officers' pursuit of the suspect, the warrantless search in this case was otherwise invalid.

In *United States v. Chambers*, 395 F.3d 563 (6th Cir. 2005), the Sixth Circuit held that "[w]arrantless searches are not permitted when the only exigency is one that is of the officer's creation." *Id*. at 566. The test has been stated by the Arkansas Supreme Court as "[w]hether, regardless of good faith, it was reasonably foreseeable that the investigative tactics employed by the police would create the exigent circumstances relied upon to justify a warrantless entry." *Mann v. State*, 161 S.W.3d 826, 834 (Ark. 2004). Therein, the court held that the evidence was seized as a result of an unlawful search because "[t]he only exigent circumstance offered by the State, that the officers feared that the evidence was about to be destroyed, was effectively created by the officers' chosen tactics in this case." *Id*. at 436.

Likewise, in *United States v. Munoz-Guerra*, 788 F.2d 295 (5th Cir. 1986), the Fifth Circuit held that the exigent circumstances relied upon by officers to justify a warrantless entry of a condominium were the result of the officers' decision to approach and announce their presence. *Id*. at 298-99. In *United States v. Richard*, 994 F.2d 244 (5th Cir. 1993), the Fifth Circuit held a warrantless search to be unlawful due to lack of exigent circumstances where the officers knocked on the door and announced their presence, heard a commotion inside, and then kicked the door down due to fear that evidence was being destroyed. *Id*. at 249-50.

As the aforementioned principles of law are applied to the facts of this case, the trial court erred in upholding the warrantless search based on the narrow grounds it stated. It is apparent that the officers had probable cause to believe a crime was being

committed (possession of marijuana) and the opportunity to seek a warrant after smelling the odor of marijuana. Instead, they knocked on the door and announced their presence. When the occupants of the apartment became aware of the presence of the officers, they began to move around rather than open the door. Exigent circumstances due to fear of destruction of evidence arose at that time. Absent the additional facts surrounding the officers' pursuit of the suspect, the exigent circumstance exception based on fear of destruction of evidence does not apply because the officers could have obtained a warrant before knocking, and the exigency was created by their own actions.

However, while the majority properly rejects the trial court's ruling as erroneous because the officers created the exigency, it continues to rely on the exigent circumstance of destruction of evidence. It does so on the basis of its conclusion that because the officers were pursuing a person suspected of committing a crime just minutes before, they were not deliberately and intentionally evading the warrant requirement. Referencing the good faith exception to the warrant requirement, the majority states that it cannot conclude as a matter of law that it was unreasonable for the officers to have believed that the suspect knew of their presence and that they had to take immediate action to prevent the destruction of evidence. I have several concerns with this analysis.

While the majority rejects the destruction of evidence exception in this case because the officers created the exigency, it nevertheless embraces the exception because the officers acted, in the opinion of the majority, in good faith.[5] The good faith exception does not apply to warrantless searches such as the one in this case. In *United States v.*

[5] The court in the *Washington* case also referenced the good faith exception under these same facts when it stated that "he [Officer Cobb] had a good-faith belief that the suspect had entered the apartment[.]" *Id*. at 767.

Whiting, 781 F.2d 692, 698 (9th Cir. 1986), the Ninth Circuit noted that the good faith exception "is clearly limited to warrants invalidated for lack of probable cause and does not create the broad 'good faith' exception the government suggests." *See also United States v. Warner*, 843 F.2d 401, 405 (9th Cir. 1988). Further, in *United States v. Herrara*, 444 F.3d 1238 (10th Cir. 2006), the Tenth Circuit explained as follows:

> The authority, from both the Supreme Court and this circuit, indicates that *Leon's* good-faith exception to the exclusionary rule generally applies only narrowly outside the context of a warrant. It has not been applied when the mistake resulting in the Fourth Amendment violation is that of the officer conducting the seizure and search, rather than a neutral third party not engaged in the "competitive endeavor of ferreting out crime."

Id. at 1251. To the extent the majority relies on the good faith exception, I believe its reliance is misplaced.[6] To rely on the good faith exception would be to extend that exception to cases where officers were not acting pursuant to a warrant and also to cases where the mistake was made by the officers and not by someone else such as a neutral magistrate. In my opinion, this court should not extend the principles of the good faith exception in this case.

In addition to referencing the good faith exception, the majority cites cases which hold that even where the officers created the exigency that led them to conduct a warrantless search, the search will not be held invalid unless there is some showing that the officers deliberately and intentionally evaded the warrant requirement. *See, i.e., Chambers*, 395 F.3d at 566. While some circuits follow this view, there are others that hold the test is "[w]hether, regardless of good faith, it was reasonably foreseeable that the

[6] In discussing the good faith exception, the majority cites *Perkins*, 237 S.W.3d 215. The *Perkins* court's gratuitous use of the phrase "good faith" in that opinion was not a basis for its holding therein.

investigative tactics employed by the police would create the exigent circumstances relied upon to justify a warrantless entry." *See Mann*, 161 S.W.3d at 172. *See also United States v. Duchi*, 906 F.2d 1278, 1284 (8th Cir. 1990) ("bad faith is not required to run afoul of the standard we adopt and apply here today"). Kentucky courts have not specifically addressed this issue. In my opinion, this court should not blindly follow the Sixth Circuit's view without at least considering the view of the other circuits on this issue.

Next, the majority appears to attempt to validate the warrantless entry in the wrong apartment by implying that the exigent circumstance of hot pursuit may be applicable. However, the majority never directly mentions hot pursuit in its opinion.[7] Again, I have several concerns with the use of this theory. First, the trial court made no determination that the hot pursuit exception applied. Also, hot pursuit typically involves the suspect's knowledge that the police are pursuing him. *See, e.g.*, Dale Joseph Gilsinger, When Is Warrantless Entry of House or Other Building Justified Under "Hot Pursuit" Doctrine, 17 A.L.R. 6th 327 (2006). It has been held that the key to hot pursuit is that the defendant is aware he is being pursued and is likely to disappear or destroy evidence before police can obtain a warrant. *See State v. Nichols*, 484 S.E.2d 507, 508 (Ga.Ct.App. 1997).

The majority acknowledges that the suspect may not have known that he was being pursued, but it states that it cannot conclude as a matter of law that it was unreasonable for the police to have believed that the suspect knew of their presence and

[7] As previously noted, the court in the *Washington* case mentioned that Officer Cobb had testified that he was in hot pursuit of a felony suspect.

that they had to take immediate action to prevent the destruction of evidence. I agree that we cannot conclude as a matter of law that the actions of the police were unreasonable. However, the majority has reversed the situation and, in essence, determined as a matter of law that it was reasonable for the police to believe that the suspect knew of their presence and that they had to take immediate action to prevent the destruction of evidence. While I believe there is no evidence whatsoever that the suspect in this case was aware that the officers were following him, there is at least a fact issue in this regard and I disagree that we should conclude to the contrary as a matter of law.

Also, I fail to see the connection between the smell of marijuana coming from a residence and the sale of crack cocaine. Simply because the suspect sold crack cocaine does not give rise to any inference that he must have fled into an apartment where there was the smell of marijuana smoke emanating therefrom. I see no probable cause in this regard.

Further, I fail to see why the police believed that they needed to kick down the door for fear that evidence was about to be destroyed. I agree with the majority that the odor of burnt marijuana emanating from a residence does not justify the warrantless entry of that residence even when police knock and announce their presence and hear movement consistent with the destruction of evidence inside the residence. However, there was no testimony that the officers believed that the suspect they were pursuing had more crack cocaine in his apartment that he was about to destroy or that the money he had received from the drug deal was marked or otherwise identifiable and was in danger of being destroyed. In my opinion, any justification for kicking down the door had to be

based on the hot pursuit exception and not the fear of the destruction of evidence exception.

In addition, assuming the hot pursuit exception does apply, there are remaining issues as to whether it applies when the officers don't pursue the suspect into the apartment he entered but rather they kick down the door of the wrong apartment and enter a residence that they otherwise had no right to enter without a warrant. The issue in this regard, as I see it, is not whether the officers acted in good faith, but whether they had an objectively reasonable belief that the suspect had entered the Washington/King apartment.[8] *See generally Maryland v. Garrison*, 480 U.S. 79, 107 S.Ct. 1013, 94 L.Ed.2d 72 (1987); *Illinois v. Rodriquez*, 497 U.S. 177, 110 S.Ct. 2793, 111 L.Ed.2d 148 (1990); *Hill v. California*, 401 U.S. 797, 91 S.Ct. 1106, 28 L.Ed.2d 484 (1971).

My concern in this case is that we uphold the constitutional rights of citizens to be safe and secure from governmental intrusion into their homes without a warrant unless there is a valid exception to the warrant requirement. This case disturbs me because not only did the police kick down the door and enter a home without a search warrant, but they mistakenly invaded the wrong home. The fact that King and Washington may have been violating the law within that residence did not allow such actions in the absence of a determination that the officers' actions were pursuant to a valid exception to the warrant requirement. Although the officers may have been in hot pursuit of another person and may have acted reasonably under the circumstances, I believe that there are fact issues in that regard that should be determined by the trial court and not by this court.

[8] The objective reasonableness standard is not the same as the good faith standard. For example, an officer may act in good faith, but his actions may be unreasonable.

I would vacate the ruling of the trial court and would remand for the entry of specific findings and conclusions as to whether the warrantless entry and search were lawful under the hot pursuit exception. Therefore, I must respectfully dissent.

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