IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

STATE OF FLORIDA,

Appellant/Cross-Appellee,

v. CASE NO. 5D17-2423

TRAVIS A. ARCHER,

Appellee/Cross-Appellant.
_____ /

CROSS-APPELLANT'S REPLY BRIEF

ON APPEAL FROM THE SEVENTH JUDICIAL CIRCUIT
IN AND FOR VOLUSIA COUNTY, FLORIDA

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I. Archer's Cross-Appeal

Reply: The Trial Court Properly Concluded That The State Demonstrated Exigent Circumstances Justifying The Officers' Entry Into The Defendant's House.

The State suggeststhe trial court properly found the officers were justified in entering Archer's house for a variety of reasons. Archer disagrees and relies on all issues raised in the Initial Brief. Those arguments will not be repeated here. Archer will specifically address the following arguments by the State:

The State relies on numerous out of jurisdiction cases to urge this Court to create an extension of the exigent circumstances exception to cover circumstances when the life or health of an animal is at stake. In its analysis, the State glosses over the level of government intrusion at issue, forced entry into a man's home, which is asignificant factor in weighing whether the police acted reasonably.

In evaluating this type of warrantless intrusion, the Court has held the presumption of unreasonableness is particularly difficult to rebut.*Welsh v. Wisconsin,* 104 S. Ct. 2091, 2098 (1984);*see also**Conner v. State*, 641 So. 2d 143, 144 (Fla. 4th DCA 1994) ("Applying *Welsh*, we do not believe that the misdemeanor of resisting arrest without violence or even the 'battery' [that defendant committed in pushing and slapping another person] constituted serious enough offenses to uphold the warrantless entry into defendant's home for what

were then two misdemeanors."). Applying that difficult standard here, the State cannot overcome thepresumption as the officers did not have a reasonable basis to believe that an emergency existed in Archer's home. There were no sounds from an injured animal, no signs of blood or a fight, and no foul smells, in addition to Archer telling them everything was okay and to leave. Rather, the officers improperly entered Archer's home to investigate a crime based on nothing more than a suspicious noise and a single profanity. The officers' actions disregarded Archer's Fourth Amendment right against unreasonable searches and seizures.An officer's entry into a person's home, such as in this case, is not to be taken lightly and is the "chief evil" against which our forefathers warned. *State v. Markus*, 211 So. 3d 894, 905 (Fla. 2017)("[T]he United States has consistently hailed the sanctity of one's home as a right to be fervently guarded, and has notably used strong language in doing so.").

Next, the State suggests the officers had a duty to check on the dog. In support, the State emphasizes the fact that the dog did not respond to the officers knocking on the front door. (Answer Brief pg. 11) This emphasis is misplaced. The fact that the dog did not respond to the knock on the door is equally susceptible to the interpretation that the dog was well-trained. Indeed, many dog owners and dog trainers devote a significant amount of time to training their pets to remain silent when someone is at the door.

Next the State disputes that the officers' own behavior showed there was no emergency and they had plenty of time to get a warrant. In support, the State asserts "an exigency does not require law enforcement officers to act recklessly." (Answer Brief pg. 16) Archer agrees with the State;the Fourth Amendment requires law enforcement to always act reasonably and avoid any reckless intrusions. The Fourth Amendment is intended to safeguard and protect citizens from the very conduct displayed by the officers in this case.

Exigent circumstances remain limited to those extraordinary circumstances where immediate police action is needed to save human life; there is no exception to the requirement that police obtain a warrant when there is concern that an animal may require medical attention, particularly on the scant observations in this case where there was no indication to show the dog was in danger.Indeed, the officers arrived at the wrong location and had no knowledge that anything happened at Archer's house. A problem with a case such as this is thatthe factors justifying the search are susceptible to the "distortion of hindsight."*United States v. Martinez-Fuerte*, 96 S. Ct. 3074, 3086 (1976) (explaining the purpose of the warrant requirement); *see also Majors v. State*, 70 So. 3d 655, 659–60 (Fla. 1st DCA 2011)(facts learned in hindsight cannot enter into the evaluation).

Finally, the State asserts "the trial court found as a matter of fact that the officers were acting appropriately in addressing this emergency (R. 897–99), and

that finding is supported by the record." (Answer Brief pg. 17) This is an improper characterization of what the trial court found. The record on pages 897 through 899 shows the factual findings made by the trial court. However, whether the officers acted appropriately is not a fact. It is always a matter of law to be reviewed de novo.

The trial court's order finding exigency must be reversed.

CONCLUSION

Based on the arguments and authorities presented above, Archer respectfully requests this Honorable Court reverse the portion of the trial court's order denying the motion to suppress.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been emailed to Kristen L. Davenport, Assistant Attorney General, Office of the Attorney General, 444 Seabreeze Blvd. 5th Floor; Daytona Beach, FL 32118 at crimappdab@myfloridalegal.com; on this date, June 14, 2018.

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CERTIFICATE OF COMPLIANCE

I hereby certify this Reply Brief is submitted in Times New Roman 14-font and thereby complies with the font requirements of Fla. R. App. 9.210(a)(2).

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