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.
_____ /

APPELLEE'S ANSWER BRIEF
CROSS-APPELLANT'S INITIAL BRIEF

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

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STATEMENT OF THE CASE AND FACTS

The State appeals from an order granting Travis Archer's motion to suppress in part. Specifically, the State challenges the trial court's conclusion that the officers illegally searched Archer's home after the exigency ended. Archer cross-appeals challenging the trial court's denying the motion to suppress in part. Specifically, Archer challenges the trial court's conclusion that an exigent circumstance justified the officers' warrantless search of Archer's home. Archer generally accepts the State's Statement of the Case and Facts with the following additions:

I. Warrant Application Testimony

Officer Brandon Bines of the Ponce Inlet Police Department ("PIPD") testified about his experience related to search warrants. In Bines' ten-year career with law enforcement, Bines has been involved in serving over one hundred search warrants. (R. 16) Bines has worked for the PIPD for two and a half years. (R. 14) Bines has never obtained a search warrant for PIPD. (R. 16-17) Bines explained that "[t]here's not many that we do in Ponce Inlet as far as search warrants go, but I do know, obviously, the proper procedures . . ." (R. 17)

On the night of the incident, Bines testified he had probable cause to enter Archer's home to check on the well-being of the dog. (R. 35) At the very least, he

believed he was investigating a misdemeanor. (R. 35) Bines did not attempt to get a warrant. (R. 35) He did not believe it was feasible. (R. 36) He believed it would take several hours to get a warrant. (R. 36)

II. The Incident

A little after midnight, Bines and Rodriquez responded to an anonymous animal complaint call relayed through dispatch related to a dog barking and the unknown caller's concerns. (R. 20, 22, 45) The dispatcher's information did not send the officers to Archer's house, but rather to a vacant lot in a residential area with at least three houses. (R. 38, 41, 46). The officers realized the vacant lot could not be the "correct" address i.e. the address responsive to the anonymous complaint. (R. 23, 43) So, the officers wandered around the general area in an attempt to locate a house they could associate with the anonymous complaint. (R. 17, 43) Bines did not see anyone in the area. (R. 18) Bines did not hear any sounds of yelping or an animal in distress. (R. 43-44) Nothing confirmed the anonymous caller's information or otherwise pointed Bines towards Archer's home.

Through a fence, Bines saw someone moving around in a backyard. (R. 45, 47) Bines did not have a reason to connect the person behind the fence with the 911 call. (T. 45) But, he believed this – a person in their back yard - to be suspicious and determined he was at the correct house. (T. 20, 45)

Despite being a significant distance away, Bines then claims he heard a sound that sounded like something striking flesh (not fur) which clearly Bines wanted to connect to the call. (T. 46) Further, Bines had no idea what was being struck. (R. 898) Bines did not see an animal or person. (R. 28, 47) Bines did not hear an animal or person in distress respond to the strike. (R. 47) Bines heard the man in the backyard exclaim "fuck." (R 40)

After hearing this noise, Bines choose to do nothing to announce his presence, possibly deterring whatever he thought was happening or alerting an injured person to the presence of law enforcement on the scene. Nor did Bines shine his flashlight toward the noise. (R. 29, 51-52) Bines testified this was a tactical decision to not immediately intervene because of safety concerns. (R. 29, 52-53) Instead, the officers slowly sauntered, in plain view, towards the front door evincing none of the tactical considerations they had confronted moments early. (R. 29-30, 52)

Archer promptly answered the door after one knock and met the officers with a completely normal and unremarkable demeanor. (R. 32) (V. 2:20-2:22) Archer appeared normal and did not have not blood on his body. (R. 54) Bines confronted Archer stating the police received a complaint about a dog. Archer responded "Yeah, my dog bit me, and I hit him a couple times. And I got [sic] him out back right now. And my neighbor was yelling. And that's it." (V. 2:27)

Bines asked where the dog bit him. Archer showed the officers the injuries on his hands. (R. 33) Archer stated the dog made a mess in the house, he tried to discipline the dog, and it bit him. (V. 2:44-2:46) Archer told the officers they could not come into the house without a warrant. (V. 3:00-3:04)

At that point, Bines decided he was going into Archer's home. (R. 34) He believed the dog could have possibly been hurt or severely injured. (R. 34) Bines stated:

> We need to come in and make sure that, first of all, the dog's not dead in there. Okay. So we do have probable cause to come in. So we can go two routes. Okay. One you can let us in voluntarily. Okay. Or Two, we can go another route, which would not probably end up being good for you. We're here for a call for service. Okay. Somebody was obviously concerned about the dog's well-being, okay, and that's what we're here to investigate.

(R. 898)

The officers entered Archer's home without consent. (R. 898-904) The officers entered the home and followed Archer to the backyard. (899) Archer pointed to the dog in the corner. (R. 899) Bines stated, "Seriously?" and stated the dog looked like he was on his death bed. (R. 899) (V. 4:15) Bines put Archer in handcuffs. (V. 4:30-4:37)

After securing Archer in handcuffs, Bines shined the flashlight to the dog in the corner. (V. 5:22) Despite claiming to see the dog literally take its last breath,

Bines' video shows he asked, “Is this dog even alive?” (V. 5:26-27) Bines stated, “He doesn’t even look like he is breathing,” and again stated, “He doesn’t look like he’s breathing.” (V. 5:30, 5:44) Bines shook the dog twice and the dog did not move. (V. 5:50, 5:55-56).

So while Bines may have testified that he observed the dog take its final breath, the trial court, having previously found at least one portion of Bines’ testimony not credible, charitably noted “it is not clear at what point in the video this occurred.” (R. 899) The trial court found that Bines’ determination the dog was deceased was made when “Officer Bines twice shook the dog and was unable to rouse it.” (R. 904)

SUMMARY OF THE ARGUMENT

1. Assuming the police legally entered Archer's home, the trial court properly found that any exigency had clearly dissipated after the dog was dead. At that point, the officers were not entitled to search Archer's home without a warrant. The officer asked if the dog was breathing, asked if he was alive, and shook the dog's body twice to further investigate. Therefore, its incriminating character was not immediately apparent. The photographs and video were taken pursuant to routine criminal investigation and do not fall under a recognized exception to the warrant requirement. If this Court finds exigent circumstances authorized the initial entry into Archer's home, then this Court should affirm the trial court's decision to suppress the evidence seized after the exigency ended.

2. The trial court erred in denying the motion to suppress in part concluding exigent circumstances authorized the warrantless nonconsensual entry into Archer's home. 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 the homeowner telling them everything was okay and to leave. Rather, the officers improperly entered Archer's home in an effort to investigate a crime based on nothing more than a suspicious noise and single profanity. The officers' actions

disregarded Archer's Fourth Amendment right against unreasonable searches and seizures. This Court should reverse the trial court's order in part.

ARGUMENT

I. State's Appeal

The trial court properly granted the motion to suppress in part concluding the officers needed a warrant to search Archer's home after the exigency ended

A. Standard of Review

A trial court's ruling on a motion to suppress comes to the appellate court clothed with a presumption of correctness, and the court must interpret the evidence and reasonable inferences and deductions therefrom in a manner most favorable to sustaining the trial court's ruling. An appellate court is bound by the trial court's findings of historical fact if those findings are supported by competent substantial evidence. *Collins v. State*, 125 So. 3d 1046, 1048 (Fla. 4th DCA 2013); *Snead v. State*, 913 So. 2d 724, 727 (Fla. 5th DCA 2005). The application of the law to the established facts can be reviewed de novo. *State v. Kindle*, 782 So.2d 971 (Fla. 5th DCA 2001).

B. The trial court properly found the search and seizure of the canine remains, photographs, and bodycam footage exceeded the scope of the emergency and did not fall under an exception to the warrant requirement

In this case, the trial court granted the motion to suppress in part. Assuming the police legally entered Archer's home, the trial court properly found that once the exigency ended, the officers needed a warrant to search the house. Specifically,

the trial court explained "[a]fter determining that the dog was deceased and after placing the Defendant under arrest, the police officers had no justification to reenter or search the residence or yard without a warrant." (R. 904). The trial court properly found the canine remains, photographs, and bodycam footage exceeded the scope of the emergency and did not fall under an exception to the warrant requirement, including the plain view exception. (R. 904) The State conceded the exigency ended after the dog was determined dead. (R. 95) At issue in this case is whether the items seized were in plain view.

First, the State asserts the canine remains were properly seized under the plain view doctrine. Second, the State asserts the photographs and bodycam footage were part of the same continuous episode and thus it was lawful for the police to re-enter the home to take photos and video. These arguments are without merit and will be addressed separately below.

An entry based on exigent circumstances must be limited in scope to its purpose. *Rolling v. State*, 695 So. 2d 278, 293 (Fla. 1997). The police may not continue to search once it is determined that no exigency exists. *Id.* Accordingly, if the police enter a home under exigent circumstances and, prior to making a determination that the exigency no longer exists, find contraband in plain view, they may lawfully seize the illegal items. *Davis v. State*, 834 So. 2d 322 (Fla. 5th DCA 2003). However, if the police determine the exigency that initially allowed

their entry into the home no longer exists, any subsequent search is illegal and any contraband discovered pursuant to the illegal search is inadmissible. *Davis*, 834 So. 2d 322 (internal citations omitted).

An exception exists under the plain view doctrine. The plain view doctrine generally provides the police authority to seize illegal contraband under exigent circumstances. Under the plain view doctrine, an item may be seized without a warrant if: 1) the police are legitimately in a place where the item may be viewed; 2) the incriminating nature of the item is immediately apparent; and 3) the police have a lawful right of access to the item. *Davis*, 834 So. 2d 322 citing *Rimmer v. State*, 825 So. 2d 304, 313 (Fla. 2002).

i. Canine Remains

Applying the first and third factor, the trial court found the police were properly in the house based on exigent circumstances. Archer challenges this conclusion in the cross-appeal. As discussed in detail below, the circumstances did not present a compelling need for immediate action and the State did not establish that there was no time to secure a warrant. Thus, if this Honorable Court agrees, there is no reason to go further into the analysis.

However, assuming the police had a right to be in the home, the State cannot meet the second prong of the plain view doctrine – whether the incriminating character of the item is immediately apparent. In order to satisfy this requirement,

"the police must have probable cause to associate the item with criminal activity." *Davis*, 834 So. 2d at 327. In other words, if a closer examination of an item that is observed in plain view is necessary for an officer to confirm its incriminating nature, its nature is not considered immediately apparent, thus rendering the plain view exception to the warrant requirement inapplicable. *Minter-Smith v. State*, 864 So. 2d 1141, 1144 (Fla. 1st DCA 2003).

The incriminating character of the dog was not immediately apparent. As shown on the video, the backyard was very dark. Bines could not see the dog without shining the flashlight toward it. Upon seeing the dog, Bines twice asked if the dog was breathing, asked if it was alive, and shook the dog's body twice to further investigate the body.

The State argues the incriminating character was immediately apparent because the officers witnessed its death. (IB 18) The trial court acknowledged this testimony but noted it was not clear at what point in the video this occurred. (R. 899) Rather, the trial court found that determination was made when "[o]fficer Bines twice shook the dog and was unable to rouse it." (R. 904) Because it was necessary to further investigate whether the dog was dead, its incriminating nature was not immediately apparent to the officers.

Because the canine's remains do not satisfy the requirements of the plain view doctrine, the officers' actions were not objectively reasonable. *See Rolling v.*

State, 695 So. 2d 278, 293 (Fla. 1997) (holding that "an officer may not continue her search once she has determined that no exigency exists."). The trial court properly applied the plain view doctrine, and its order granting the suppression of the canine remains should be affirmed.

ii. Photographs and Bodycam Footage

Next the State argues the trial court erred in suppressing the photographs and bodycam footage. The officers collected this evidence after the officers arrested Archer and placed him in the patrol car. The officers re-entered Archer's home to take photographs, video, and to gather evidence. The State asserts the officers' re-entry into the home was a "continuation of the police presence." (IB 17)

Archer acknowledges *Allen v. State*, 638 So. 2d 577 (Fla. 1st DCA 1994), which appears to hold that police investigators taking photographs did not go beyond the accumulation of plain view evidence when conducting a warrantless search and seizure in defendant's home following discovery of a murder victim. However, it would be an unwarranted extension of the plain view doctrine and conflicts with current Florida law to hold that police may re-enter the home and seize evidence after the exigency ended. *Rolling v. State*, 695 So. 2d 278, 293 (Fla. 1997) (an officer may not continue her search once she has determined no exigency exists); *See also Anderson v. State*, 665 So. 2d 281 (Fla. 5th DCA 1995).

No valid exception to the warrant requirement authorized the search of Archer's home after the exigency ended to gather more evidence. As found by the trial court, after the exigency ended, so did the scope of the officers' search. There is no exception to the warrant requirement which allows the police to take video and photographs – i.e. conduct a general crime scene investigation - at the scene of a crime. *State v. Walker*, 729 So. 2d 463 (Fla. 2d DCA 1999) (once probable cause based on plain view exists, police must still obtain a warrant to search premises where contraband is found, unless exigent circumstances exist); *See also United States v. U.S. Dist. Court for E. Dist. of Mich., S. Div.*, 92 S. Ct. 2125 (1972) ("[P]hysical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.")

The trial court properly granted the portion of the motion to suppress that concluded the officers needed a warrant to search Archer's home after the exigency ended. That portion of the trial court's order must be affirmed unless this Court finds no exception to the warrant requirement justified the officers' initial entry. If the officers' initial entry was illegal, then all evidence must be suppressed, and the trial court's order must be reversed in part.

II. Archer's Cross-Appeal

The trial court erred in concluding that the officers had the authority to enter Archer's home based on exigent circumstances.

A. Standard of Review

A pure question of law is subject to *de novo* review. *State v. Markus*, 211 So. 3d 894, 900 (Fla. 2017), *reh'g denied,* SC15-801, 2017 WL 944231 (Fla. Mar. 10, 2017).

B. The State failed to show the existence of exigent circumstances

"Art. I, § 12, Fla. Const. and the Fourth Amendment to the United State States Constitution give the citizens of Florida the right to be secure in their homes against unreasonable searches and seizures." *Davis v. State*, 834 So. 2d 322, 326 (Fla. 5th DCA 2003); *See also, Coolidge v. New Hampshire*, 91 S. Ct. 2022 (1971). Generally, a warrant is necessary to enter a person's home. *Davis v. State*, 834 So. 2d 322, 326 (Fla. 5th DCA 2003). The United States Supreme Court has recognized that "physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed." *Payton v. New York*, 100 S. Ct. 1371 (1980). Therefore, searches and seizures inside a home without a warrant are presumptively unreasonable. *Payton v. New York*, 100 S. Ct. 1371 (1980)

In order to show that a warrantless search of a home is justifiable, the State carries the heavy burden of showing that the case falls within one of the judicially recognized exceptions to the warrant requirement, which the Court has noted "are

few in number and carefully delineated." *United States v. U.S. Dist. Court for E. Dist. of Mich., S. Div.*, 92 S. Ct. 2125 (1972); *See also Vanslyke v. State*, 936 So. 2d 1218 (Fla. 2d DCA 2006). There was no consent given in this case. Therefore, the State was required to show the existence of an exigent circumstance.

To carry that burden, the State must show probable cause and exigent circumstances to validate the warrantless entry. *State v. Markus*, 211 So. 3d 894, 906 (Fla. 2017), *reh'g denied,* SC15-801, 2017 WL 944231 (Fla. Mar. 10, 2017); *See also Groh v. Ramirez*, 124 S. Ct. 1284 (2004) (absent exigent circumstances, warrantless entry into home to search for weapons or contraband is unconstitutional, even when a felony has been committed and there is probable cause to believe that incriminating evidence will be found within). When evaluating whether an exigent circumstance justifies a warrantless entry into a private residence for a minor offense, the Court has held that the presumption of unreasonableness is particularly difficult to rebut. *Welsh v. Wisconsin*, 104 S. Ct. 2091 (1984). The State failed to carry this burden.

The Unites States Supreme Court has consistently recognized three major categories of exigent circumstances: (1) the emergency aid exception, whereby an officer enters a home to render emergency assistance to an occupant who is seriously injured or for whom serious injury is imminent; (2) to prevent the imminent destruction of evidence; and (3) the hot pursuit exception, which allows

officers to proceed into a residence without a warrant if they are in the process of the continuous hot pursuit of a fleeing suspect. *Markus*, 211 So. 3d at 907.

Exigent circumstances require that there be a grave emergency that makes a warrantless search imperative to the safety of the police and of the community. *Markus*, 211 So. 3d at 906–07. The Florida Supreme Court has defined an "imperative" warrantless entry as one where "the government can show a compelling need for official action and no time to secure a warrant." Moreover, the Florida Supreme Court has described the lack of time to secure a warrant as a "key ingredient" of exigency. *Markus*, 211 So. 3d at 907.

Reviewing courts measure the reasonableness of a warrantless entry by the totality of the circumstances. *Missouri v. McNeely*, 133 S. Ct. 1552, 1559 (2013). Without the justification of a warrant, the Court has reasoned, "the fact-specific nature of the reasonableness inquiry" demands that we evaluate each case of alleged exigency based "on its own facts and circumstances." *Markus*, 211 So. 3d at 907 (internal citations omitted).

In this case, the trial court found the entry into Archer's home was justified under the emergency doctrine. (R. 903) In finding the officers entered Archer's home, the trial court relied on *Riggs*, *Ortiz*, and *Brinkley*. The trial court misapplied these cases as they do validate the officers' entry.

Riggs involved the emergency exception. *Riggs v. State*, 918 So. 2d 274 (Fla. 2005). In *Riggs*, a child was found wandering naked at an apartment complex at 3 a.m. *Id.* at 276. The officers searched a nearby apartment complex because they were concerned about the welfare of the parents. The toddler could not identify her apartment, so the officers searched the apartment complex door by door to locate the child's caretaker. *Id.* Upon reaching the second floor of the apartment complex, deputies noticed that every apartment door was closed except for one. Deputies approached that apartment and knocked loudly at least three dozen times while identifying themselves as officers. Receiving no response, the officers were concerned that something happened to the child's caretakers and that there may be an ongoing medical emergency in the apartment. *Id.* Deputies entered the apartment again calling out and receiving no response. Deputies entered three rooms looking for the child's caretaker, finding nothing in the first room, a marijuana grow room in the second, and the child's babysitter and the defendant Riggs in the third room. *Id.*

The Florida Supreme Court applied two principles in determining the reasonableness of an emergency entry to render aid. The court first considered whether the officers had reasonable grounds to believe that there was an emergency situation. The court noted the girl was only four years old, naked, and alone in the middle of the night. These combined facts "seem to indicate either

grossly negligent supervision or an emergency involving the child's caretaker." *Id.* at 286. Second, the court considered whether the officers had reasonable grounds to connect the emergency to the property in question. *Id.* at 282. Again, the court answered affirmatively.

The court acknowledged the girl did not lead the officers in any particular direction. However, the court held that a search based on a feared medical emergency does not require certainty, and it found the police reasonably believed reasonably believed that an emergency exists. *Id.* The officers found the girl close to the apartment complex, through which she had been wondering. Logically, the officers commenced a door-to-door search. The officers were drawn to Riggs' apartment because it was 3am and the door was open. *Id.* at 282.

The court also noted the strong circumstantial evidence pointing to Riggs' apartment, explaining the circumstances were "precisely the cluster of clues that one would expect to find in the event a caretaker had become incapacitated and a young child had wondered off." *Id.* Thus, answering both questions in the affirmative, the Court held the officers suspicion of a medical emergency was "based on reasonable inferences drawn from available evidence." *Id.*

Ortiz fleshes out the parameters of the emergency exception. *Ortiz v. State*, 24 So. 3d 596 (Fla. 5th DCA 2009). As in *Riggs*, *Ortiz* involved a 911 call for a six-year-old child who had not been picked up from her after school program. The

parents could not be reached by telephone. The child advised the officer that his parents should be at home, so the officer took the child to the home to find the parents. After knocking at the door of the home with no response, the child escorted the officer into his home to look for his parents. They found the parent's bedroom door locked from the inside. The officer knocked again and received no response. He picked the lock, then entered the room and began looking for the parents. The officer walked into the adjoining bathroom and saw cocaine in plain view. Shortly after, the father entered the room. *Id.*

This Court applied the same two principles discussed in Riggs: 1) whether the officer had reasonable grounds to believe that the child's parents might be in need of medical attention; and 2) whether the officer had reasonable grounds to connect the feared emergency to the house that was entered. *Id.* at 602–03. This Court answered both questions affirmatively and upheld the trial court's denial of the motion to suppress. This Honorable Court noted that the officer was "fulfilling a laudable police function in attempting to reunite the child with his missing parents. He was not . . . acting to investigate and uncover a crime." *Id.* at 602.

Riggs and *Ortiz* do not support the officers' entry into Archer's home. 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. Each of those feared medical emergencies involved small children, which is distinguishable from a pet dog, as dogs and other animals are considered property under Florida law. *See, e.g.* *County of Pasco v. Riehl*, 635 So. 2d 17 (Fla. 1994).

A potential injury to a dog is not akin to injury to a human being or a child as was considered in *Rigg* and *Ortiz*. *See also* *Vanslyke v. State*, 936 So. 2d 1218, 1223 (Fla. 2d DCA 2006) (requiring "a specific threat of imminent harm to the children in the house" to justify warrantless entry into home). Perhaps animals deserve protection above that afforded other chattel, but our law does not reach that far. Changing this relationship and extending animals greater protection is for the legislature.

Brinkley is instructive as it involved animals. *Brinkley v. County of Flagler*, 769 So. 2d 468 (Fla. 5th DCA 2000). In *Brinkley*, this Court upheld the trial court's approval of the seizure of 358 abused and neglected animals following a warrantless search. *Id.* Initially, a deputy and animal cruelty investigator met at the Brinkley property to respond to a citizen's complaint. *Id.* at 469. The investigators were not seeking to arrest or search. *Id.* at 471. Upon arrival at the front gate, the officers' senses were immediately assailed by:

> the undeniable reality of the horrid existence of inhumanity. The first thing that assaulted their senses was the overpowering and unimaginable smell of animal feces. Then there was the noise. The barking was so loud that one had to shout just to speak to someone a few feet away; a clear indication that a large number of animals were on the property. Piles upon piles of feces and trash could be seen from the gate, dogs were observed running around uncontrolled, and several animal cages could be seen piled on the porch in the midst of the squalor. The distress of the animals was apparent to the deputy and the investigator, and any reasonable person would also have concluded that an urgent and immediate need for protective action was warranted.

Id. at 471–72; (internal citations omitted).

Based on these observations, the trial court found the entry on the Brinkleys' property was constitutionally permitted. *Id.*

Even if this Court were inclined to extend this exception to a dog, it does not satisfy the principles of *Riggs*, *Ortiz*, and *Brinkley*. First, the officers did not have a reasonable basis to believe that an emergency existed in Archer's home. The

"horrid existence of inhumanity" that was apparent upon immediately arriving at the *Brinkley* property did not exist in this case. There were no sounds from an injured animal, no signs of blood or a fight, in addition to the homeowner telling the officers everything was okay and to leave. Archer's desire to be left alone is not to be held against him.

> We also note the obvious erosion to Fourth Amendment protection that would occur if the courts were to sanction a procedure by which police could manufacture an exigency by threatening physical harm to a person in his or her home unless they exit. *Cf.* *Calloway v. State,* 118 So.3d 277, 280 (Fla. 5th DCA 2013) ("Allowing police to use a resident's reaction to their presence at the home and contemporaneous clear expression of unwillingness to engage with the officers as 'reasonable suspicion' to justify hauling the resident out of the home for a forced encounter would obviously render the consensual nature of the encounter illusory.")

Durham v. State, 174 So. 3d 1074, 1076–77 (Fla. 5th DCA 2015).

If the officers had smelled an alarming odor, in connection with other facts, that may have justified a warrantless police entry into a home. *See, e.g.* *State v. DeMarco*, 88 A.3d 491 (Conn. 2014) (warrantless entry justified by emergency doctrine when animal control officer smelled the strong "horrible odor," described as a "feces smell," and heard dogs barking inside). But, in this case these facts did not exist.

Instead, the officers arrived at the wrong location and could not figure out which home to connect to the 911 call. The officers did not see any blood or evidence of possible criminal activity, and they did not smell anything indicating

mistreatment of animals. Furthermore, the officers did not see a dog or other person in distress.

Bines testified that he heard a sound that resembled flesh being struck followed by silence. Distinct from the above caselaw, a sound, unlike a smell, is not on-going and pervasive. A single sound, which the officer had no idea what was struck, does not signify a grave emergency or that a dog needed immediate protection. (R. 898) There was no sound of a dog in distress, no whimper, no howl, no yapping, barking, or yelping. Under these circumstances, a reasonable officer could not attribute this information to an ongoing grave emergency.

As to the second factor, the officers did not have reasonable grounds to connect the emergency to Archer's home. The officers who entered Archer's home had no reason to question Archer's explanation that the dog was fine. Perhaps there would be reasonable grounds of an ongoing emergency had the officers heard cries, yelps, or other sounds of distress. However, they did not. There was nothing that could have led the officers to form an objectively reasonable belief that there was an ongoing medical emergency in Archer's home that required their immediate assistance. Particularly when faced with Archer, the homeowner, providing a reasonable explanation that he disciplined his dog. The "cluster of clues" found in *Riggs* is not present in this case. Indeed, it is debatable whether based on the facts presented the officers could have obtained a warrant. *See State v.*

Fultz, 189 So. 3d 155, 158 (Fla. 2d DCA 2016), *reh'g denied* (Mar. 22, 2016) ("The exigent circumstances exception is not a shortcut by which police may circumvent the requirement of a search warrant.")

Finally, this case is distinguishable from *Riggs*, *Ortiz*, and *Brinkley* because the officers in this case were seeking to arrest and search Archer's home. Bines testified at the very least, he believed he had probable cause of a misdemeanor. (R. 35) Furthermore, after the suspicious sound, the officers did not act as if there was an emergency afoot. They did not go to the fence to peer in or announce their presence to see if someone responds. Instead, they calmly walked to the front of the house. None of these reactions are consistent with emergent care. Everything they did was consistent with routine law enforcement investigation into a possible crime.

C. The State failed to establish there was insufficient time to seek a warrant

The trial court improperly found there was no time for the officers to secure a warrant. (R. 898) Notably, Bines has never obtained a search warrant for PIPD. (T. 16-17) On the night of the incident, likewise, he did not attempt to get a warrant. (R. 35) He did not believe it was feasible. (R. 36) He believed it would take several hours to get a warrant. (R. 36) There was not testimony whether PIPD has the ability to secure search warrants remotely.

The general testimony that it was not feasible and would take several hours to get a warrant does not establish there was insufficient time to seek a warrant. *See State v. Fultz*, 189 So. 3d 155, 158 (Fla. 2d DCA 2016), *reh'g denied* (Mar. 22, 2016) ("The exigent circumstances exception is not a shortcut by which police may circumvent the requirement of a search warrant.") Where police have time to seek out a neutral magistrate and obtain a written determination of probable cause, i.e. a warrant, they must do so.

Here, law enforcement did not even try to obtain a warrant, despite knowing better. By choosing to act without prior judicial approval and without the consent of the occupant, law enforcement jeopardized the admissibility of evidence in their case, regardless of any well-intentioned motives. Bines may have acted from a sincere desire to check on the dog's well-being, however, he and the other officer overstepped their legal authority and leave the Court no choice but to suppress the evidence stemming from their action.

> Because the exclusionary rule works to deter police misconduct by ensuring that the prosecution is not in a better position as a result of the misconduct, the rule cannot be expanded to allow application where there is only probable cause and no pursuit of a warrant. If the prosecution were allowed to benefit in this way, police misconduct would be encouraged instead of deterred, and the rationale behind the exclusionary rule would be eviscerated.

Rodriguez v. State, 187 So. 3d 841, 849 (Fla. 2015).

Under the facts presented here, the officers warrantless entry into Archer's home did not fall within the medical emergency exception to the warrant requirement. The State failed to present exigent circumstances.

To permit this expansion of the narrowly drawn exceptions to the warrant requirement, or create a chimera of exceptions, in order to allow armed police to enter into a home, in the middle of the night, for the possibility of an injured pet and not the limited tranche of "grave emergencies," absent a warrant and having been forbidden entry by the homeowner, brings us one step closer to the threatened consumption of our cherished Fourth Amendment protections as Judge Orfinger's Cassandra-like dissent in *Ortiz* warns. The trial court's order must be reversed.

CONCLUSION

When the Fourth Amendment was drafted, the tyranny and oppression of the British rule was fresh in the Framers' minds, so they inscribed a ward against government trespass to the home absent a warrant. Such a bulwark is not made of pliant and yielding reeds that bend to the storm of sentiment but rather matchless granite, hewn from the bedrock of fierce independence, and must stand unyielding and eternal, resisting not only the tsunami of mob vengeance, the slow decay of time but above all, that gentle yet pernicious erosion done by the well-meaning or in service of "the ends that justify..." To preserve this protection, exceptions to the warrant requirement are few and must be miserly drawn and jealously guarded lest the exceptions consume the rule. The trial court's order must be reversed because the Governmentally illegally entered Mr. Archer' home absent a warrant. Further, the Government failed to meet its burden to demonstrate exigency justified the warrantless entry. To diminish this fundamental protection of Mr. Archer's home is to not only veil in shadow the majesty of our Constitution but to diminish all our collective rights.

However, if this Court finds exigent circumstances authorized the initial entry, this Court should affirm the trial court's decision to suppress the evidence seized after the exigency ended.

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, February 28, 2018.

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CERTIFICATE OF COMPLIANCE

I hereby certify this Answer Brief/Cross-Appellant 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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