Fresh pursuit, entry into residence

Number: INFORMAL

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Chief Douglas E. Baker
Fort Myers Police Department
2210 Widman Way
Fort Myers, Florida 33901

Dear Chief Baker:

You have requested this office's assistance in considering substantially the following questions:

1. If an officer is in fresh foot pursuit of a suspect for a misdemeanor charge and the suspect runs into a residence, can the officer enter the residence to place the suspect under arrest without forcing entry? (For example: suspect runs into residence and door/window is left open behind him, no forced entry is needed to enter residence.)

2. Can the officer force entry into the residence while in fresh pursuit for a misdemeanor?

Because your questions are general in nature, I cannot address every possible factual situation which could arise involving entry into a residence under circumstances which could lead to a misdemeanor arrest. I will, however, provide general guidance and I am enclosing a copy of some general legal source material that may be helpful as well.

It is the general rule that it violates the Fourth Amendment to the U.S. Constitution for an officer to enter a private home without consent or a warrant.[1] As the U.S. Supreme Court has stated, the "physical entry of the home is the chief evil against which the working of the Fourth Amendment is directed."[2] The exception to this rule relates to the existence of exigent circumstances.[3] Among the exigent circumstances identified by Florida courts are: (1) officers in hot pursuant of a fleeing felon; (2) imminent destruction of evidence; (3) need to prevent a suspect's escape; and (4) risk of danger to the police or others inside or outside the dwelling.[4] Florida courts have not recognized an exigent-circumstances exception to the rule under Florida decisional law which would allow warrantless misdemeanor arrests inside private residences.[5]

An officer is limited in making a warrantless arrest for a misdemeanor committed within his lawful presence by section 901.19(1), Florida Statutes, which provides:

"Right of officer to break into building. —
(1) If a peace officer fails to gain admittance after she or he has announced her or his authority and purpose in order to make an arrest either by a warrant or when authorized to make an arrest for a felony without a warrant, the officer may use all necessary and reasonable force to enter any building or property where the person to be arrested is or is reasonably believed to be."

As the Second District Court of Appeal stated in *Johnson v. State*, 395 So. 2d 594 (Fla. 2d DCA

1981),

"By the clear wording of the statute, the right of an officer to enter a building to make an arrest is limited to two situations: (1) where he holds an arrest warrant, regardless of the classification of the offense, and (2) where he has the power under section 901.15, Florida Statutes (1979) to make a warrantless arrest for a felony. Under state law, there is simply no authority given to a police officer to enter a building to effect a warrantless arrest for a misdemeanor. *Rucker v. State* , 302 So.2d 490 (Fla. 2d DCA 1974); *Prather v. State*, 182 So.2d 273 (Fla. 2d DCA 1966); *see Benefield v. State*, 160 So.2d 706 (Fla.1964). Furthermore, Benefield made it crystal clear that the limitations on an officer's authority contained in section 901.19 are to be very strictly adhered to where the building to be entered is a person's home."

Thus, absent valid consent or exigent circumstances, law enforcement may not cross the threshold of a residence without a warrant[6] and Florida decisional law does not recognize an exigent-circumstances exception to the prohibition against warrantless misdemeanor arrests inside private residences.

I would note that a 2010 Third District Court of Appeal case, *State v. Brown*,[7] recognized an exigent-circumstances exception to the search warrant requirement for hot pursuit of a fleeing misdemeanant when the misdemeanor is punishable by a jail sentence. In the Brown case, the offenses observed by officers were possession of an assault-type rifle and fleeing from an officer. The appellate court noted that these were "only" misdemeanors. However, the Third District has held that the hot pursuit exception to the warrant requirement is applicable to certain misdemeanors: "hot pursuit of a fleeing misdemeanant is permissible where the misdemeanor is punishable by a jail sentence."[8] The Florida Supreme Court subsequently disapproved the Third District's holding in *Brown* relating to section 901.19(1), Florida Statutes, and the "knock-and-announce" rule.[9]

Again, the facts of a particular case are of paramount significance in providing legal direction on these issues. The comments herein are intended to provide you with a general overview of the law in this area.

I trust that these informal comments will be helpful to you and your department. I see from the information you have submitted that the City Attorney has indicated his willingness to address more specific questions on this topic and assist you with analysis of specific factual situations. Thank you for contacting the Florida Attorney General's Office for assistance, we look forward to working with you in the future.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

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Enclosure

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[1] *See Minnesota v. Olson*, 495 U.S. 91, 110 S.Ct. 1684, 109 L.Ed.2d 85 (1990).

[2] *United States v. United States District Court*, 407 U.S. 297, 313, 92 S.Ct. 2125, 2134, 32 L.Ed.2d 752 (1972); *Payton v. New York*, 445 U.S. 573, 586, 100 S.Ct. 1371, 1380, 63 L.Ed.2d 639 (1980) (it is a basic principle of 4th Amendment law that searches and seizures inside the home without a warrant are presumptively unreasonable, and that a search or seizure carried out on a suspect's premises without a warrant is *per se* unreasonable unless police can show that it falls within one of a carefully designed set of exceptions based on the presence of "exigent circumstances.").

[3] *Olson, supra* n.1. *See also Kentucky v. King*, 131 S.Ct. 1849, 179 L.Ed.2d 865 (2011); *Brigham City, Utah v. Stuart*, 547 U.S. 398, 126 S.Ct. 1943, 164 L.Ed.2d 650 (2006); *Vitale v. State*, 946 So. 2d 1220 (Fla. 4th DCA 2007); *Vanslyke v. State*, 936 So. 2d 1218 (Fla. 2d DCA 2006).

[4] *See Moody v. City of Key West*, 805 So. 2d 1018 (Fla. 3d DCA 2001).

[5] *See Rodriguez v. State*, 964 So. 2d 833 (Fla. 2d DCA 2007) (officer had no authority to enter home to make a misdemeanor arrest for obstructing without violence or leaving the scene of an accident involving property damage even if the offenses occurred in officer's presence); *Connor v. State*, 641 So. 2d 143 (Fla. 4th DCA 1994) (entry into home to make an arrest for the first degree misdemeanors or resisting arrest without violence or battery violated 4th Amendment); *Johnson v. State*, 395 So. 2d 594 (Fla. 2d DCA 1981) (entry into home without consent to make an arrest for a liquor violation, a second degree misdemeanor, witnessed by the officer was unlawful).

[6] *Espiet v. State*, 797 So. 2d 598 (Fla. 5th DCA 2001) citing *Payton v. New York*, 445 U.S. 573, 576, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980); *Saavedra v. State*, 622 So. 2d 952 (Fla. 1993), *cert. denied*, 510 U.S. 1080, 114 S.Ct. 901, 127 L.Ed.2d 93 (1994).

[7] 36 So. 3d 770 (Fla. 3d DCA 2010).

[8] *See Brown, id* at 772; *and see Ulysse v. State*, 899 So. 2d 1233, 1234 (Fla. 3d DCA 2005); *Gasset v. State*, 490 So. 2d 97 (Fla. 3d DCA 1986). *But see State v. Eastman*, 553 So. 2d 349 (Fla. 4th DCA 1989) (police officer's warrantless arrest of person in private residence after officer clocked person's vehicle traveling at excessive speeds and followed him to residence violated 4th Amendment; offenses with which defendant was charged were DUI, resisting arrest, and fleeing from a police officer); *Ortiz v. State*, 600 So. 2d 530 (Fla. 3d DCA 1992) (officer has no authority to forcibly enter a private home without a warrant to make an arrest for a misdemeanor, even though the officer saw the offense and was in hot pursuit); *Espiet v. State*, 797 So. 2d 598 (Fla. 5th DCA 2001) (forcible entry into home to make an arrest on domestic violence charge impermissible).

[9] *And see State v. Cable*, 51 So. 3d 434 (Fla. 2010).