

21-7114  
No.

FILED

JAN 31 2022

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SUPREME COURT OF FLORIDA

ORIGINAL

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IN THE  
SUPREME COURT OF THE UNITED STATES

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ROBERT NOEL SMITH – PETITIONER

VS.

STATE OF FLORIDA – RESPONDENT

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On Petition for a Writ of Certiorari to the  
State of Florida District Court of Appeal  
for the Second District

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**PETITION FOR WRIT OF CERTIORARI**

Robert Noel Smith, *pro se*  
F.D.O.C. Number: 117818  
Putnam Correctional Institution  
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## **I. Question Presented**

Can State courts lawfully hold evidence admissible obtained from a warrantless search, seizure, and arrest where an officer entered the residence of a fleeing misdemeanor, and the court finds the warrantless search and seizure to be lawful in that an exigency did exist due to categorical reasons that: a) the officer was in fresh pursuit, b) the court interjected that the fleeing misdemeanor was “in fact” committing a felony fleeing and eluding, or c) the suspect’s vehicle registration did not match his residence address; contrary to this Court’s rulings outlined in Lange v. California?

*In other words:* Can State courts hold that a warrantless home entry where an officer entered the residence of a fleeing misdemeanor is permissible because of the exigent circumstances created solely by the assumption that certain specific ‘conditions’ trigger a rule allowing the warrantless entry such as; 1) The officer was in fresh pursuit of the fleeing misdemeanor, 2) The fleeing misdemeanor could have been charged with a felony, so he was “in fact” committing one, or 3) The address on the vehicle’s registration the misdemeanor was driving did not match his residence address; Therefore, a warrantless entry is lawful even though a law enforcement emergency does not exist [e.g. imminent harms of violence, destruction of evidence, escape from the home, etc.] which is not in agreement with this Court’s holdings in their interpretation of 4<sup>th</sup> Amendment rights in Lange?

•All parties appear in the caption of the case on the cover page.

•There are no related cases to list.

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# IN THE SUPREME COURT OF THE UNITED STATES

## IV. Petition for Writ of Certiorari

Robert Noel Smith, *pro se*, an inmate currently incarcerated at Putnam Correctional Institution in East Palatka, Florida, respectfully petitions this court for a writ of certiorari to review the judgment of the Florida Second District Court of Appeals.

## V. Opinions Below

The decision by the Florida Second District Court of Appeal, the highest state court to review the merits appears at Appendix "A" to the petition and is reported as Smith v. State, Fla. App. LEXIS 14031 (October 15, 2021).

## VI. Jurisdiction

The date on which the Florida Second District Court of Appeal decided Mr. Smith's case was on October 15, 2021, and a copy of that decision appears at Appendix "A". A timely petition for rehearing was thereafter denied on November 12, 2021, and a copy of the order denying rehearing appears at Appendix "B". Mr. Smith invokes this Court's jurisdiction under 28 U.S.C. §1257(a), having timely filed this petition for a writ of certiorari within ninety days of the Florida Second District Court of Appeal's denial for a rehearing.

## VII Constitutional Provisions Involved

United States Constitution, Amendment IV:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

United States Constitution, Amendment XIV:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the

privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Constitution of the State of Florida; Article I, Section 12:

The right of the people to be secure in their persons, houses, papers, and effects against the unreasonable searches and seizures, and against the unreasonable interception of private communications by any means, shall not be violated. No warrant shall be issued except upon probable cause, supported by affidavit, particularly describing the place or places to be searched, the person or persons, thing or things to be seized, the communications to be intercepted, and the nature of the evidence to be obtained. This right shall be construed in conformity with the 4<sup>th</sup> Amendment of the United States Constitution, as interpreted by the United States Supreme Court. Articles or information obtained in violation of this right shall not be admissible in evidence if such articles or information would be inadmissible under decisions of the United States Supreme Court construing the 4<sup>th</sup> Amendment to the United States Constitution.

#### **VIII. Statement of the Case**

Over fifty five years ago, this Court started establishing legal parameters under the Fourth Amendment in which a warrantless home search, seizure, and arrest of a fleeing suspect could be upheld, and the admissibility of any evidence collected from such a seizure in Wong Sun v. United States (1963). Over numerous cases reviewed by this Court in the years following Wong Sun, to include Kentucky v. King in 2011, the Court's holdings fairly established an 'exigent circumstances rule' doctrine to apply to Warrantless home searches, seizures, and arrests. Under the doctrine, exigent circumstances most usually fall under three types of situations that could allow a warrantless entry; 1) to prevent imminent harms of violence, 2) to prevent destruction of evidence, and 3) to prevent escape of the suspect from the residence.

Then in Lange v. California (2021), this Court specifically addressed the warrantless entry into a home by police to arrest a fleeing misdemeanor. This Court held that, "... the need to pursue a misdemeanor does not trigger a categorical rule allowing home entry, even absent a law enforcement emergency. When the nature of the crime, the nature of the flight, and the surrounding facts present no such exigency, officers must respect the sanctity of the home- which means they must get a warrant." 210 L. Ed. 2d at 497-498.

This case presents the question of whether the 'exigent circumstances rule' as applied to a fleeing misdemeanor as outlined in Lange is satisfied to allow a warrantless home entry by law enforcement because the fleeing misdemeanor "could have been charged with a felony fleeing to elude" although no actual emergency situation existed.

### **1. Smith's arrest and motion to suppress**

On November 4, 2014, at approximately 9:00PM, Mr. Smith who was returning home driving his vehicle made a legal left hand turn at a 4-way where an officer K-9 unit was sitting at the other side of the intersection. The officer in the unit turned in behind Smith's van following him and activated his lights initiating a traffic stop for Smith failing to dim his headlights, a civil traffic infraction. Smith failed to yield, and observing the speed limit continued two blocks turning down his street then into the driveway of his residence, and ran to the side entry door at the attached garage.

The officer (Corporal Baltzer) exited his vehicle and yelled at the driver (Mr. Smith) to stop. Smith entered into the garage and tried to close the door. Officer Baltzer ran behind him and inserted his foot and shoulder into the garage, preventing the door from being closed while placing his flashlight between the door and frame to further prevent its closure. Baltzer threw his weight against the door as Smith tried to close it from the inside which enabled him to force the door open enough to deploy his OC spray into Smith's face. Smith, after being sprayed, stepped away from the door and headed towards the living room. Baltzer entered the attached garage, and grabbing Smith from behind, deployed his OC spray a second time which allowed him to take Smith to the floor and hold him until additional officers arrived. After the other officers arrived, Smith was positively identified as the driver of the van, and the house was Smith's residence. His driver's license status was checked, and he was investigated for intoxication.

Smith was taken into custody, written a traffic citation for the headlight violation, and subsequently charged with Count 1) 3<sup>rd</sup> degree felony resisting officer with violence; Count 2) 3<sup>rd</sup> degree felony driving while under the influence; and Count 3) a 1<sup>st</sup> degree misdemeanor driving while license suspended or revoked. Prior to trial, Smith challenged the admissibility of any and all evidence obtained after Deputy Baltzer entered into his residence without a warrant. He argued that an officer may not conduct a warrantless home entry and subsequent search, seizure, and arrest, during a hot pursuit where the underlying conduct being investigated is a non violent misdemeanor contrary to Florida State Law State v. Marcus, 211 So.3d 894 (Fla. 2017); and that he was seized and searched in contravention to the 4<sup>th</sup> Amendment to the United States Constitution and Article I, Section 12 of the Florida Constitution, and any evidence obtained because of the illegal seizure is fruit of the poisonous tree and should be suppressed Wong Sun v. United States, 371 U.S. 471. The Trial court conducted a hearing on Smith's motion to suppress and denied the motion in an oral ruling, reasoning that Smith's rights had not been violated, and that the warrantless entry was lawful because even though the the officer was in hot pursuit of a fleeing misdemeanant (Smith), he could have been charged with a felony fleeing to elude.

Smith continued to court proceedings where he entered into a 'best interest' plea to serve 41.85 months in state prison in exchange for adjudication of guilt in all counts, while reserving the right to appeal the trial court's ruling denying his dispositive motion to suppress.

## **2. Direct appeal**

On direct appeal, Smith renewed his argument that his 4<sup>th</sup> Amendment search, seizure, and arrest rights were violated, citing no less than thirteen Federal Cases to support his argument. The Florida District Court of Appeals *PER CURIAM* Affirmed the trial court's decision, without a written opinion or citation, upholding the trial court's denial of Smith's pre-trial motion to suppress. A motion for rehearing was filed and subsequently denied.



Smith was precluded from filing a petition for review to the Florida Supreme Court because the supreme court does not have discretionary jurisdiction under Article V, Section 3(b)(3) to review a per curiam affirmed decision that is not supported by an opinion. See The Florida Star v. B.J.F., 530 So. 2d 286 (Fla. 1988).

#### **IX. Reasons for Granting the Writ**

**To avoid erroneous deprivations of the search, seizure, and arrest rights contained in the Fourth Amendment of the United States Constitution, this Court should clarify that there are no exclusive or specific conditions, singularly used or amassed, that categorical qualify as an exigent circumstance that triggers a rule allowing home entry without a warrant.**

“Any warrantless entry based on exigent circumstances must, of course, be supported by a genuine exigency.” L.Ed. Digest, Search and Seizure, 25.2. The ‘exigent circumstances rule’ was addressed by this Court in Kentucky v. King, 563 U.S. 452, 131 S. Ct. 1849, 179 L. Ed.2d 865 (2011), in more regards to the importunate need for officer’s to gain immediate entry to avoid the destruction of evidence. Thus, the Kentucky Court’s holding that:

(a) The Fourth Amendment expressly imposes two requirements: All search and seizures must be reasonable; and a warrant may not be issued unless probable cause is properly established and the scope of the authorized search is set out in particularity. Although “ ‘searches and seizures inside a home without a warrant are presumptively unreasonable,’ ” (citation omitted), this presumption may be overcome when “ ‘the exigencies of the situation’ make the needs of the law enforcement so compelling that [a] warrantless search is objectively reasonable under the Fourth Amendment,” (citation omitted). One such exigency is the need “to prevent the imminent destruction of evidence,” (citation omitted).

Kentucky, 179 L. ED. 2d at 874-875.

The proper test follows from the principle that permits warrantless searches: warrantless searches are allowed when the circumstances make it reasonable, within the meaning of the Fourth Amendment, to dispense with the warrant requirement. Thus, a warrantless entry based on exigent circumstances is reasonable when police did not create the exigency by engaging or threatening to engage in conduct violating the Fourth Amendment.

Kentucky, 179 L. ED. 2d at 876-877.

Ten years later in Lange v. California, 594 U.S. \_\_\_, 141 S. Ct. 2011, 210 L. Ed. 2d 486 (2021), this Court again addressed the 'exigent circumstances rule' in particularity to officers in pursuit of misdemeanor suspects making a warrantless entry. The question presented in Lange was whether the pursuit of a fleeing misdemeanor suspect always, or more legally put, categorically qualifies as an exigent circumstance? This Court has held that when a minor offense alone is involved, police officers do not usually face the kind of emergency that can justify a warrantless home entry:

"In misdemeanor cases, flight does not always supply the exigency that this Court has demanded for a warrantless home entry. [6] Our Fourth Amendment precedents thus point toward assessing case by case the exigencies arising from misdemeanants' flight. That approach will in many, if not most, cases allow a home entry. When the totality of circumstances shows an emergency-such as imminent harm to others, a threat to the officer himself, destruction of evidence, or escape from the home-the police may act without waiting. And those circumstances, as described just above, include the flight itself. But the need to pursue a misdemeanant does not trigger a categorical rule allowing home entry, even absent a law enforcement emergency. When the nature of the crime, the nature of the flight, and the surrounding facts present no such exigency, officers must respect the sanctity of the home-which means they must get a warrant".

Lange, 210 L. Ed. 2d at 497-498.

The Lange Court was unanimous in their decision that 1] the need to pursue a misdemeanant did not trigger a categorical rule allowing a home entry without a warrant, and 2] that the exigencies arising from a misdemeanant's flight had to be assessed by evaluating the totality of the circumstances to determine if there was an emergency, and when the nature of the crime, the nature of the flight, and the surrounding facts did not present an exigency, officers had to respect the sanctity of the home and obtain a warrant; 210 L. Ed. 2d at 486.

Here, in Smith's case the Florida District Court of Appeals *PER CURIAM* Affirmed the trial court's findings, without an opinion or citation, upholding the trial court's denial of Smith's pre-trial motion to suppress evidence because of an illegal warrantless entry. The trial court's finding that the officer's warrantless entry in this case was lawful is incorrect, and in violation of the Fourth Amendment as interpreted by this Court's current holdings in Lange pertaining to the

'exigent circumstances rule' as applied to a fleeing misdemeanor. This Court has continually held that there is no designated list or set of circumstances that automatically, or 'categorical' qualify as an exigent circumstance that triggers a rule allowing a home entry by officers without a warrant.

The present case is an example of trial courts, being urged by zealous prosecutors, leaning towards the use of such practices that certain 'situations' categorically allow warrantless entry where no actual emergency exists. In Smith's case the trial court found that the officer's entry into his house to apprehend him because Smith did not pull-over for the officer after committing a civil misdemeanor was a lawful cause for a warrantless entry even though no actual emergency existed due to the circumstances that: a) The officer was in fresh pursuit of Smith; b) Smith had *de facto* committed a felony by fleeing (which he "could" have been charged with, but wasn't); and c) The tag on Smith's van was not registered to his home address. "An officer may not conduct a warrantless home entry and subsequent search, seizure, and arrest during hot pursuit where the underlying conduct being investigated is a nonviolent misdemeanor", which has occurred in Smith's case; see State v. Marcus, 211 So.3d 894, 897 (Fla. 2017). It is contrary to both Florida State law, and Federal law for trial courts to stack or group categorical reasons in order to create an exigent circumstance when no actual emergency situation exists for an officer to make a warrantless entry.

Although, Smith did not have this Court's holdings in Lange to support his argument in his appeal to the Florida Appellate Courts (Smith filed his brief on April 7, 2021, and Lange was not decided until June 23, 2021), there was ample Supreme Court ruling in place upholding the "exigent circumstances rule" doctrine, as well as the Florida Supreme Court's rulings in Marcus, *supra*; that "the exigent circumstance of hot pursuit here on these facts does not justify a warrantless home search and arrest when underlying conduct for which there is probable cause here- a nonviolent misdemeanor." The silent *PER CURIAM* Affirmance of the trial court's ruling in Smith's case by the Florida Second District Court of Appeals sends a message that law

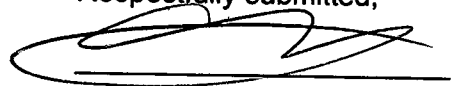
enforcement agencies in Florida are allowed to make a warrantless entry into the home to apprehend a fleeing nonviolent misdemeanor where no exigent circumstance exists aside from the analyses that the misdemeanor has "in fact" committed a felony by the fleeing itself, or that the tag on the fleeing misdemeanor's vehicle did not match his residence; and that trial courts will uphold those warrantless entries. Such a message works to undermine the carefully crafted procedural safeguards that this Court has been developing for the past fifty eight years since its holdings in Wong Sun v. United States, 371 U.S. 471, 9 L. Ed. 2d 441, 83 S. Ct. 407 (1963).

#### **X. Conclusion**

For the foregoing reasons, Mr. Smith respectfully requests that this Court issue a writ of certiorari to review the judgment of the Florida courts.

DATED this 27<sup>th</sup> day of January, 2022.

Respectfully submitted;



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