APPENDIX

APPENDIX A

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

PEOPLE OF THE STATE OF CALIFORNIA,	[ENDORSED FILED OCT 30, 2019]
Plaintiffs and Respondent,	A157169
v.	(Sonoma County Super. Ct. No. SCR699391)
ARTHUR GREGORY LANGE,	
Defendant and Appellant.	

After Arthur Gregory Lange was charged with driving under the influence of alcohol (Veh. Code, § 23152), he moved to suppress evidence. The court denied Lange's motion and the appellate division affirmed. Lange subsequently pled no contest to a misdemeanor offense, and then appealed the denial of his suppression motion a second time. The appellate division affirmed Lange's judgment of conviction.

Lange petitioned for transfer to this court based on an order in a civil proceeding finding Lange's arrest was unlawful. We granted the unopposed petition. We conclude Lange's arrest was lawful and affirm Lange's judgment of conviction.

FACTUAL AND PROCEDURAL BACKGROUND

In January 2017, the prosecutor charged Lange with two misdemeanor violations of driving under the influence of alcohol (Veh. Code, § 23152, subds. (a), (b)), and with the infraction of operating a vehicle's sound system at excessive levels (*id.*, § 27007). Later the prosecutor added an allegation that Lange had a prior conviction for driving under the influence (*id.*, § 23540).

I. *The Suppression Hearing*

In March 2017, Lange moved to suppress evidence arguing a police officer's warrantless entry into his home violated the Fourth Amendment. At the hearing on the motion, California Highway Patrol Officer Aaron Weikert testified that on October 7, 2016, at around 10:20 p.m., he was parked perpendicular to State Route Highway 12 in Sonoma County. He observed a car "playing music very loudly." The officer was about 200 feet from the car. The driver—later identified as Lange—honked the car's horn four or five times. There were no other vehicles in front of Lange and the officer "wasn't sure what [Lange] was honking at."

The officer began following Lange intending to conduct a traffic stop. There were several cars between the officer's and Lange's. The officer observed Lange make a right turn. When the officer turned right, there were no vehicles between them, but Lange was about 500 feet ahead. Lange turned left and the officer followed.

According to the officer, Lange stopped for a few seconds. The officer stopped as well. When Lange

began to move forward, the officer activated his overhead lights. The officer did not do so earlier because he was not familiar with the street and was trying to get his "bearings." The officer's overhead lights consisted of "four red lights and there is a white bright light that switches between red and blue." Lange "failed to yield."

Lange turned into a driveway and the officer followed. Lange's car went into a garage and the garage door began to close. The officer exited his vehicle, approached the garage door, stuck his foot "in front of the sensor and the garage door started to go back up." The officer went into the garage to speak to Lange. The officer asked Lange if he noticed the officer. Lange said he did not.

The court admitted into evidence a video recording of the incident and reviewed it at the hearing. A private investigator testified that Lange never came to a complete stop when being followed by the officer and opined on the short length of time between when the officer activated his overhead lights and when Lange turned into his driveway.

At the hearing, defense counsel argued a reasonable person in Lange's position would not have thought he was being detained when the officer activated his overhead lights and the officer should not have entered Lange's garage because the officer was investigating possible traffic infractions, not serious felonies. The prosecutor argued that Lange committed a misdemeanor when he failed to stop after the officer activated his overhead lights. The officer had probable cause to arrest Lange for this

misdemeanor offense and exigent circumstances justified the warrantless entry into Lange's garage.

The trial court denied the suppression motion. The court stated: "Obviously, the vehicle code violations are not egregious, but they are violations of the vehicle code. The Officer did have in his discretion the right to turn on the lights when he felt he wanted to, and perhaps the officer—we can make all kinds of perhapses. Perhaps he wanted to follow him further. Perhaps he wanted to see if there was anything else that was happening. The fact that the Defendant turned into the driveway, I don't know that the officer had any way of knowing that. . . . [¶] I don't think that we can look at this as having the officer entering the garage saying didn't you see my lights as showing that there isn't probable cause. I mean certainly that would be an inquiry as to why didn't you stop earlier. You both had a lot of points on authority. They can be interpreted various ways. At this time, from the testimony I've heard, I'm going to find that this motion is not well taken and deny the motion."

II. *The Civil Proceeding*

Based on this incident, the Department of Motor Vehicles (DMV) suspended Lange's license for one year, and Lange filed a petition for administrative mandamus to overturn the suspension. (*Lange v. Shiomoto et al.*, Super Ct. Sonoma County, 2017, No. SCV-260489.)

In early January 2018, the court granted the petition determining Lange's arrest was unlawful. The court concluded the "hot pursuit" doctrine did not justify the warrantless entry because when the officer

entered Lange's garage, all the officer knew was that Lange had been playing his music too loudly and had honked his horn unnecessarily, which are infractions, not felonies. The court rejected the DMV's argument that Lange was attempting to flee into his garage to avoid a detention initiated in a public place. It concluded there was no evidence Lange knew the officer was following him, nor any evidence Lange was attempting to flee. As the court explained, Lange "was driving to his home. There is no evidence of any bad driving or that [Lange] otherwise operated his vehicle in an unsafe or unlawful manner. When [Lange] got to his residence, he turned into his driveway, drove into his garage, and attempted to close the automatic garage door. The door would have closed, had the officer not stopped it with his foot, causing it to reopen."

III. *The Appellate Division Proceedings*

In late January 2018, the appellate division of the Sonoma County Superior Court affirmed the denial of Lange's suppression motion. It determined the officer had probable cause to believe Lange "intended to evade a detention that was initiated in a public place" and, as a result, the entry into Lange's garage was lawful. As the appellate division explained, "the analysis is an *objective* analysis, and therefore the subjective beliefs and intents of both the officer and [Lange] are irrelevant. The Court finds that a reasonable person in [Lange]'s position would have known the officer intended to detain [Lange] when the officer activated his emergency lights from right behind [Lange]'s vehicle and continued following [Lange] up his driveway. The fact that the officer followed [Lange] up his driveway,

rather than continue to drive up the road, provided ample notice that [Lange] was the target of the investigation. Based upon [Lange]'s failure to submit to the officer's show of authority, and the closing of the garage door behind [Lange], there was probable cause to believe [Lange] was attempting to evade the detention in violation of [Penal Code section] 148[, subdivision] (a)."

After Lange pled no contest to the misdemeanor offense of driving under the influence of alcohol (Veh. Code, § 23152, subd. (b)), he appealed from his conviction, again challenging the denial of his suppression motion. The People moved to dismiss Lange's second appeal. In November 2018, the appellate division denied the motion to dismiss. In March 2019, the appellate division affirmed Lange's conviction finding there was probable cause to believe Lange intended to evade a detention initiated in a public place, and that the officer's entry into both Lange's driveway and his garage were lawful.

In April 2019, Lange requested the appellate division certify his case for transfer to this court (California Rules of Court, rule 8.1005). The appellate division denied the request. Lange then petitioned this court for transfer (*id.*, rule 8.1006). We granted the unopposed petition.

DISCUSSION

The People contend we should dismiss this appeal "as the second appellate judgment is either void or voidable." We are not persuaded we should dismiss this appeal or remand it for dismissal. On the merits, we affirm.

I. *The Appellate Division Had Jurisdiction to Review Lange's Second Appeal*

The People argue that Lange's second appeal to the appellate division, made after he entered his plea, is "either void for lack of statutory appellate jurisdiction under subdivisions (j) and (m) of Penal Code section 1538.5, or voidable because . . . [the appellate division's first decision] is law of the case."

We are not persuaded. The exclusionary rule generally prohibits the prosecution from introducing evidence obtained by way of a Fourth Amendment violation, and Penal Code section 1538.5[1] is "the Legislature's codification of the exclusionary rule." (*Barajas v. Appellate Division of Superior Court* (2019) 40 Cal.App.5th 944, 954.) Subdivision (j) of section 1538.5 provides in part that "[i]f the property or evidence seized relates solely to a misdemeanor complaint, and the defendant made a motion for . . . the suppression of evidence in the superior court prior to trial, both the people and defendant shall have the right to appeal any decision of that court relating to that motion to the appellate division . . . ." Subdivision (m) provides in part that "[a] defendant may seek *further review* of the validity of a search or seizure on appeal from a conviction in a criminal case notwithstanding the fact that the judgment of conviction is predicated upon a plea of guilty." (Italics added.)

" 'If the language of the statute is not ambiguous, the plain meaning controls . . . .' " (*In re Jennings* (2004) 34 Cal.4th 254, 263.) Here, the statute plainly

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[1] Undesignated statutory references are to the Penal Code.

provides that after entering a plea, a defendant can seek *further review* of the validity of a search or seizure. (§ 1538.5, subd. (m).) "Nothing in the statutory language expressly prohibits raising the same substantive issues through a different procedural mechanism. . . . [¶] . . . [¶] In adopting section 1538.5, the Legislature provided multiple procedural vehicles for both the defendant and the prosecution to litigate and relitigate search and seizure issues . . . ." (*People v. Kidd* (2019) 36 Cal.App.5th 12, 19–20.) Therefore we reject the People's argument that the appellate division lacked statutory jurisdiction to consider Lange's second appeal.

In arguing otherwise, the People claim a defendant's right to seek further review under section 1538.5, subdivision (m) renders "advisory" an appellate division's decision under subdivision (j). We disagree. A defendant's suppression motion filed pursuant to subdivision (j) presupposes a pending misdemeanor complaint against the defendant. As a result, there is nothing abstract or advisory about the appellate division's decision on the motion. (See *Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158, 170 [reviewing courts should not issue advisory opinions or resolve "abstract differences of legal opinion"].)

The People argue that Lange's plea "is a waiver of any claims of the inadmissibility of evidence to support the conviction, including search and seizure claims . . . ." Not so. "Subdivision (m) constitutes an exception to the rule that all errors arising prior to entry of a guilty plea are waived . . . ." (*People v. Lilienthal* (1978) 22 Cal.3d 891, 897.)

II. *Res Judicata and the Law of the Case Do Not Require Dismissal*

Next, the People argue that if statutory jurisdiction exists, then the appellate division's ruling on Lange's second appeal is "voidable" based on the law of the case doctrine or the doctrine of res judicata. The People claim we should either dismiss this appeal or remand for dismissal. We disagree.

A. *The Doctrines of Res Judicata and the Law of the Case*

The doctrines of res judicata and the law of the case are similar, but not identical. " 'The prerequisite elements for applying the doctrine [of res judicata] . . . are . . . : (1) A claim or issue raised in the present action is identical to a claim or issue litigated in a prior proceeding; (2) the prior proceeding resulted in a final judgment on the merits; and (3) the party against whom the doctrine is being asserted was a party or in privity with a party to the prior proceeding. [Citations.]' " (*People v. Barragan* (2004) 32 Cal.4th 236, 253.)

Under the doctrine of the law of the case, " '[W]here an appellate court states a rule of law necessary to its decision, such rule " 'must be adhered to' " in any " 'subsequent appeal' " in the same case, even where the former decision appears to be " 'erroneous' " ' [Citations.] Thus, the law-of-the-case doctrine 'prevents the parties from seeking appellate reconsideration of an already decided issue in the same case absent some significant change in circumstances.' [Citation.] The doctrine is one of procedure, not jurisdiction, and it will not be applied 'where its application will result in an unjust

decision, e.g., where there has been a "manifest misapplication of existing principles resulting in substantial injustice" [citation] . . . .' [Citation.]" (*People v. Boyer* (2006) 38 Cal.4th 412, 441.)

B. *The Doctrine of Res Judicata Does Not Apply*

Although the People's primary argument appears to be based on the law of the case doctrine, the People also contend Lange "was barred from further review . . . under the doctrine of res judicata." We are not persuaded.

Addressing a former version of section 1538.5, which required defendants seeking review of a denial of a pretrial suppression motion to file a writ, our Supreme Court held the doctrine of res judicata did not preclude further review of the same issue on appeal. (*People v. Medina* (1972) 6 Cal.3d 484, 492 (*Medina*), disapproved on other grounds by *Kowis v. Howard* (1992) 3 Cal.4th 888, 896–897.) Our high court reasoned that "[i]n view of the express language of [former] section 1538.5, application of the doctrine of res judicata to give conclusive effect on appeal from a judgment of conviction to an appellate court's earlier decision denying defendant's application for a pretrial writ would be inappropriate even when the denial of the writ is by an opinion demonstrating adjudication of the merits. The statute permits the defendant to seek further review of the validity of the challenged search on appeal from a judgment of conviction, a concept totally at variance with application of the doctrine of res judicata." (*Medina*, at p. 492.)

Medina involved a writ petition that had been summarily denied, but "the Supreme Court made

clear it was basing [its decision] on the broader ground that res judicata was inapplicable any time the denial of a defendant's section 1538.5 motion—summary or otherwise—was involved." (*People v. Hallman* (1989) 215 Cal.App.3d 1330, 1335 (*Hallman*), disagreed with on other grounds by *People v. Williams* (1999) 20 Cal.4th 119, 133.) While *Medina* involved "interlocutory writ relief," *Hallman*, like the case presently before us, concerned "an interlocutory appellate remedy." (*Hallman*, at p. 1336.) *Hallman* is directly on point because, like Lange, the defendant in *Hallman* filed two appeals in the appellate department of the superior court under section 1538.5, subdivisions (j) and (m). (*Hallman*, at pp. 1334–1335.)

As explained in *Hallman*, "[b]efore the adoption of section 1538.5, the Assembly Interim Committee Report on Search and Seizure anticipated the very situation before us and rejected the notion that interim appeals would have preclusive affect upon a defendant seeking postconviction review of his or her section 1538.5 motion. [Citation.] The committee, stating that '[c]onsideration should also be given to the question of whether a defendant should be bound by an adverse ruling on a preliminary appeal. . . .', noted that the various proposals before them specifically provided that a preliminary appeal would *not* be binding and that a defendant could raise an identical issue again following a judgment of conviction. [Citation.] The report explained, '. . . a second appeal would enable the appellate court to consider the search and seizure issue in the context of the entire case and ensure the defendant of maximum protection for his constitutional rights.'

. . . [¶] There is nothing in the language or history of section 1538.5 which suggests that the Legislature intended *any* pretrial determination of a motion to suppress evidence would be binding on a defendant following a conviction. Further, the Supreme Court in *Medina* concluded that an interim appeal will not preclude a defendant from seeking postconviction review of his section 1538.5 motion. Thus, we hold that the doctrine of res judicata does not apply here and Hallman is not barred from 'further review' of his section 1538.5 motion following his judgment of conviction." (*Hallman, supra*, 215 Cal.App.3d at pp. 1336–1337, fns. omitted.)

In claiming the doctrine of res judicata precluded the appellate division from entertaining a second appeal after Lange pled no contest to a misdemeanor offense, the People do not address *Hallman*'s analysis of section 1538.5's legislative history. Instead, the People simply disagree with *Hallman*'s analysis. We agree with *Hallman*'s analysis and adopt it as our own.

C. *The Doctrine of the Law of the Case Does Not Require Dismissal*

With regard to the law of the case doctrine, our high court stated: "Normally the doctrine of the law of the case requires adherence to an appellate court's statement *in its opinion on appeal* of a rule of law necessary to its decision." (*Medina, supra*, 6 Cal.3d at p. 491, fn. 7.) Our high court continued: "In determining whether the law of the case will control the decision on the subsequent appeal, however, the appellate court should keep in mind that 'the doctrine of the law of the case, which is merely a rule of

procedure and does not go to the power of the court, has been recognized as being harsh, and it will not be adhered to where its application will result in an unjust decision.' " (*Id.* at p. 492.)

In *Medina*, the Supreme Court did not apply the law of the case doctrine because the denial of the defendant's petition for a writ of prohibition was by minute order without an opinion. (*Medina*, *supra*, 6 Cal.3d at pp. 487, 491–493.) Similarly, in *Hallman*, *supra*, 215 Cal.App.3d at pages 1336 and 1337, footnote 6, the court stated that "inasmuch as no opinion was filed in [defendant's] original appeal, reliance on the law of the case doctrine to preclude . . . [post-conviction] review [under section 1538.5] is unfounded."

Here, unlike in *Medina* or *Hallman*, when Lange appealed the pretrial denial of his motion to suppress, the appellate division issued a written opinion. The People contend it "constituted law of the case." Even if the appellate division should have viewed this first decision as establishing the law of the case, this doctrine does not require dismissal or a remand for dismissal.

First, application of the doctrine would not have required dismissal; instead, it would have required the appellate division to adhere to any rule of law necessary to its first decision. (*People v. Boyer*, *supra*, 38 Cal.4th at p. 441.) Second, the error, if any, was harmless because in both opinions the appellate division applied the same legal principles. In its first opinion, it determined the officer's entry into Lange's garage was lawful because there was probable cause to believe Lange intended to evade a detention

initiated in a public place. In the second opinion, it applied the same legal principles to affirm the judgment of conviction, determining that both the officer's entry into Lange's garage and into Lange's driveway were lawful.[2]

Third, we reject the People's claim that the "transfer petition was improvidently granted and should be dismissed . . . ." "A Court of Appeal may order a case transferred to it for hearing and decision if it determines that transfer is necessary to secure uniformity of decision . . . ." (Cal. Rules of Court, rule 8.1002.) We granted Lange's transfer request because of conflicting decisions in Lange's civil writ proceeding and in his criminal case. The appellate division (twice) determined the officer's warrantless entry was lawful, but in Lange's civil case the court found it was unlawful. The law of the case doctrine does not apply here because one of these decisions misapplies the law of search and seizure. (*People v. Boyer*, *supra*, 38 Cal.4th at p. 441.)

III. *The Officer's Warrantless Entry Was Lawful*

On the merits, we conclude the denial of Lange's suppression motion was supported by substantial evidence and correct under the Fourth Amendment.

A. *Governing Law and Standard of Review*

Under the Fourth Amendment to the United States Constitution and article I, section 13 of the California Constitution, a warrantless entry by the

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[2] The People contend "the appellate division's judgment affirming the conviction was the correct result reached for the wrong reason . . . ." Therefore the People concede that the error, if any, was harmless.

police into a residence to seize a person is presumptively unreasonable and unlawful in the absence of exigent circumstances. (*Payton v. New York* (1980) 445 U.S. 573, 576–583.) "The burden is on the People to establish an exception applies." (*People v. Macabeo* (2016) 1 Cal.5th 1206, 1213.) "[T]he exigent circumstances exception applies to situations requiring prompt police action. These situations may arise when officers are responding to or investigating criminal activity . . . . Examples of exigent circumstances in prior cases include ' "hot pursuit" ' of a fleeing suspect . . . ." (*People v. Ovieda* (2019) 7 Cal.5th 1034, 1042.) "[A] suspect may not defeat an arrest which has been set in motion in a public place . . . by the expedient of escaping to a private place." (*United States v. Santana* (1976) 427 U.S. 38, 43.)

" ' " 'We defer to the trial court's factual findings, express or implied, where supported by substantial evidence. In determining whether, on the facts so found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment.' " ' " (*People v. Macabeo*, *supra*, 1 Cal.5th at p. 1212.)

B. *The Exigent Circumstances Exception Applies*

Lange contends "a detention within the meaning of the Fourth Amendment did not occur when [the officer] activated [his] . . . emergency lights." This contention misses the point. Instead, the focus should be whether "an arrest or detention based on probable cause is begun in a public place, but the suspect retreats into a private place in an attempt to thwart

the arrest." (*People v. Lloyd* (1989) 216 Cal.App.3d 1425, 1428 (*Lloyd*); *United States v. Santana*, *supra*, 427 U.S. at pp. 42–43.) We answer this question in the affirmative.

First, the officer testified he was in his patrol car adjacent to the highway when he observed Lange "playing music very loudly" and honking the horn unnecessarily. The Vehicle Code prohibits operating a "sound amplification system which can be heard outside the vehicle from 50 or more feet when the vehicle is being operated upon a highway" (Veh. Code, § 27007), and it restricts the use of a horn to occasions when it is necessary for safe operation or as a theft alarm (*id.*, § 27001). Thus, there was evidence Lange was violating the Vehicle Code, which justified the officer's attempt to stop Lange's vehicle. (See *People v. Hoyos* (2007) 41 Cal.4th 872, 892 [perceived Vehicle Code violation provided officer with probable cause to stop car], abrogated on other grounds in *People v. McKinnon* (2011) 52 Cal.4th 610, 641.)

Second, Lange claims he "had no reason to believe that the vehicle behind him was a police car until Officer Weikert forcibly entered his garage." We disagree. There were no other cars on the street when Lange's car slowed down and almost came to a complete stop and when the officer pulled up directly behind him. The officer's car was only about 15 feet behind Lange's. When Lange's car moved forward, the officer activated his overhead emergency lights. The lights consisted of "four red lights and there is a white bright light that switches between red and blue." It was very dark outside and the lights provided considerable illumination, lighting up the area behind, around, and in front of Lange's car.

Based on this evidence, including our review of the video of the incident, we conclude a reasonable person in Lange's position would have known the officer intended for him to pull over. (*People v. Brown* (2015) 61 Cal.4th 968, 978 ["The Supreme Court has long recognized that activating sirens or flashing lights can amount to a show of authority."]; *People v. Bailey* (1985) 176 Cal.App.3d 402, 405–406 ["A reasonable person to whom the . . . [lights were] directed would be expected to recognize the signal to stop . . . ."].)[3]

Third, after the officer activated his overhead lights, Lange drove for approximately four seconds before entering his driveway. Indeed, Lange acknowledges he continued driving his car for "approximately 100 feet before it turned into the driveway . . . ." It is a misdemeanor to willfully resist, delay or obstruct a peace officer in the discharge of his duties. (§ 148, subd. (a)(1).) The Vehicle Code also makes it "unlawful to willfully fail or refuse to comply with a lawful order, signal, or direction of a peace officer." (Veh. Code, § 2800.)[4] By failing to immediately pull over, Lange's conduct gave the officer probable cause to arrest him for these misdemeanor offenses. Thus, we reject Lange's claim that the "only legitimate purpose Office Weikert had for continuing to follow [Lange] at that point was to

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[3] By so concluding, we do not adopt a bright-line rule that an officer's use of overhead lights always constitutes a detention or an attempt to detain.

[4] A violation of Vehicle Code section 2800 is a misdemeanor. (Veh. Code, § 40000.7, subd. (a)(2).)

investigate . . . auditory traffic infractions . . . or issue . . . a citation for those offenses."

Lange claims he did not know the car behind him was a police vehicle and that the officer's initial questions upon entering the garage support this claim. But the relevant inquiry is whether, applying an objective standard, the officer had probable cause to arrest Lange. In other words, the proper inquiry is whether it was reasonable for the officer to believe Lange was fleeing from the officer. When Lange failed to stop his car, the officer's reasonable cause to detain Lange for traffic infractions ripened into probable cause to arrest him for misdemeanor offenses. (See *Lloyd*, *supra*, 216 Cal.App.3d at p. 1429 ["With no right to resist this lawful detention . . . [defendant's] conduct . . . provided the officer with probable cause to arrest him."]; see also *In re Lavoyne M.* (1990) 221 Cal.App.3d 154, 159 ["Minor's refusal to comply with the attempts to detain him provided probable cause for the officer to arrest him."].)

Fourth, we conclude "the officer's ' "hot pursuit" ' into the house to prevent the suspect from frustrating the arrest which had been set in motion in a public place constitutes a proper exception to the warrant requirement." (*Lloyd*, *supra*, 216 Cal.App.3d at p. 1429.) We assume without deciding that the curtilage of Lange's home included his driveway. We focus only on the time between when the officer activated his overhead lights and followed Lange onto his driveway. "The fact that the pursuit here ended almost as soon as it began did not render it any the less a 'hot pursuit' sufficient to justify the

warrantless entry . . . ." (*United States v. Santana*, *supra*, 427 U.S. at p. 43.)

C. *Lange's Remaining Arguments Fail*

Lange argues that *Lloyd* is factually distinguishable because Officer Weikert did not identify himself before attempting to arrest Lange. We disagree. As explained *ante*, when the officer activated his overhead lights, a reasonable person in Lange's position would have realized the need to pull over.

Next, Lange argues the holding in *Lloyd* has been "severely undercut by subsequent Ninth Circuit cases," and the exigent circumstance of "hot pursuit" should be limited to "true emergency situations," not the investigation of minor offenses. Again, we disagree.

Lange relies on the United States Supreme Court's decision in *Welsh v. Wisconsin* (1984) 466 U.S. 740 (*Welsh*). *Welsh* addressed "a warrantless night entry of a person's home in order to arrest him for a nonjailable traffic offense." (*Id.* at p. 742.) Based in part on the minor nature of the offense, the Supreme Court held the warrantless entry was unreasonable. (*Id.* at pp. 754–755.) "When the government's interest is only to arrest for a minor offense, . . . [the] presumption of unreasonableness is difficult to rebut, and the government usually should be allowed to make such arrests only with a warrant issued upon probable cause by a neutral and detached magistrate." (*Id.* at p. 750, fn. omitted.) The court noted "it is difficult to conceive of a warrantless home arrest that would not be unreasonable under

the Fourth Amendment when the underlying offense is extremely minor." (*Id.* at p. 753.)

However, in *Lloyd*, the Court of Appeal distinguished *Welsh* on the ground that it did "not involve pursuit into a home after the initiation of a detention or arrest in a public place." (*Lloyd*, *supra*, 216 Cal.App.3d at pp. 1429–1430.) "Where the pursuit into the home was based on an arrest set in motion in a public place, the fact that the offenses justifying the initial detention or arrest were misdemeanors is of no significance in determining the validity of the entry without a warrant." (*Id.* at p. 1430.) We find *Welsh* distinguishable for the same reason.[5]

Furthermore, in *Stanton v. Sims* (2013) 571 U.S. 3, 9 (*Stanton*), a *per curiam* opinion, the United States Supreme Court criticized the Ninth Circuit for its tendency to read *Welsh* too broadly. As explained by the court, *Welsh* "held not that warrantless entry to arrest a misdemeanant is never justified, but only that such entry should be rare." (*Stanton,* at p. 9.) *Welsh* did not "lay down a categorical rule for all cases involving minor offenses" (*Stanton,* at p. 8), and "nothing in the opinion establishes that the seriousness of the crime is equally important *in cases of hot pursuit*." (*Id.* at p. 9.) The court discussed *Lloyd*, noting it "refused to limit the hot pursuit exception to felony suspects." (*Stanton,* at p. 9.) The court criticized the Ninth Circuit for concluding a police officer was "plainly incompetent" for engaging

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[5] In addition, the Ninth Circuit and federal cases cited in Lange's opening brief and discussed in his reply brief are inapposite because they are not "hot pursuit" cases.

in conduct that was "lawful according to courts in the jurisdiction where he acted." (*Id.* at pp. 9–10.) Based on *Stanton*'s clarification of *Welsh*, we adhere to *Lloyd*'s determination that "a suspect may not defeat a detention or arrest which is set in motion in a public place by fleeing to a private place." (*Lloyd*, *supra*, 216 Cal.App.3d at p.1430.)

The parties discuss this court's decision in *People v. Hua* (2008) 158 Cal.App.4th 1027, in which we held that exigent circumstances did not justify the warrantless entry of appellant's home. (*Id.* at p. 1030.) Reliance on *Hua* is misplaced because it was not a hot pursuit case. (*Id.* at p. 1031.) In addition, in *Hua*, the offense could not support a warrantless entry because it was a "nonjailable" offense. (*Id.* at pp. 1035–1036.) Here, the misdemeanor offense of resisting a police officer is "jailable." (*In re Lavoyne M.*, *supra*, 221 Cal.App.3d at pp. 158–159; *People v. Thompson* (2006) 38 Cal.4th 811, 821 [upholding warrantless entry because the offense was jailable].) Because the officer was in hot pursuit of a suspect whom he had probable cause to arrest for violation of section 148, the officer's warrantless entry into Lange's driveway and garage were lawful.

DISPOSITION

We affirm the judgment of conviction.

Jones, P.J.

WE CONCUR:

_____
Simons, J.

_____
Burns, J.

APPENDIX B

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SONOMA
IN SESSION AS AN APPELLATE DIVISION

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff/Respondent, v. ARTHUR LANGE, Defendant/Appellant.	[FILED: MARCH 29, 2019] CASE NO. SCR-699391-AP **Ruling on Defendant's Second Appeal from Order Denying Suppression Motion**

The judgment of conviction is **AFFIRMED.**

This is appellant/defendant Arthur LANGE's second appeal from the trial court's order denying his P.C. Sec. 1538.5 suppression motion. The first appeal was a pretrial appeal of the suppression order. The Appellate Panel affirmed the trial court's order by way of a written decision. Appellant then pled to charges in the trial court, and filed an appeal from the resulting judgment pursuant to P.C. Sec. 1538.5(m), claiming the trial court erroneously denied the suppression motion.

The People filed a motion to dismiss the second appeal, and the motion was litigated. After a hearing on the motion, the Court ruled (and the People effectively conceded) that, pursuant to P.C. Sec. 1538.5(m), *People v. Medina* (1972) 6 Cal.3d 484, and *People v. Hallman* (1989) 215 Cal.App.3d 1330, appellant (who pled no contest after the ruling in the first appeal) was not precluded from post-conviction

review of the denial [of] his suppression motion by way of this second appeal.

This Court will apply the same "independent review" standard for this second appeal that would be applied if the first appeal had not occurred. That is, the Court defers to the trial court's express and implied factual findings where supported by the evidence, and exercises independent judgment in determining the legality of the search based upon the facts found. *People v. Arebalos-Cabrera* (2018) 27 Cal.App.5th 179, 185-186. The prior Appellate decision does not have any binding effect on this second appeal.

In the trial court, and in the first appeal, the claimed 4th Amendment violation was the officer's warrantless entry into appellant's garage.

In this second appeal, appellant again argues the officer's entry into the garage was unlawful, but now also argues that the 4th Amendment violation occurred even earlier, when the officer drove into/onto appellant's driveway. In light of the fact that this new theory is purely a legal issue based on undisputed facts, the Court rejects the People's argument that appellant forfeited the theory by not raising it in the trial court. Therefore the Court will consider the merits of the new theory. See *People v. American Surety Ins. Co.* (2009) 178 Cal.App.4th 1437, 1440-1441.

The Court finds that the officer had probable cause to believe appellant intended to evade a detention that was initiated in a public place, and therefore the officer's entry into appellant's driveway

and subsequent entry into the garage was lawful under *People v. Lloyd* (1989) 216 Cal.App.3d 1425.

Appellant's reliance on *Collins v. Virginia* (2018) 138 S.Ct. 1663 is misplaced, as the facts of that case did not involve a suspect retreating into his curtilage and home in response to an attempted detention that was initiated in a public place.

The judgment of conviction is affirmed.

DATED: 3-29-19

/s/	*/s/*	*/s/*
BRADFORD DEMEO	VIRGINIA MARCOIDA	PATRICK BRODERICK
Presiding Judge of the Superior Court, Appellate Division	Judge of the Superior Court, Appellate Division	Judge of the Superior Court, Appellate Division

APPENDIX C

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SONOMA
IN SESSION AS AN APPELLATE DIVISION

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff/Respondent, v. ARTHUR LANGE, Defendant/Appellant.	[ENDORSED FILED JAN 25, 2018] CASE NO. SCR-699391 **DECISION ON APPEAL**

The trial court's order denying the suppression motion is **AFFIRMED.**

The Court finds that the officer had probable cause to believe appellant intended to evade a detention that was initiated in a public place, and therefore the officer's entry into the garage was lawful under *People v. Lloyd* (1989) 216 Cal.App.3d 1425.

The Court believes that the analysis is an *objective* analysis, and therefore the subjective beliefs and intents of both the officer and appellant are irrelevant. The Court finds that a reasonable person in appellant's position would have known the officer intended to detain appellant when the officer activated his emergency lights from right behind appellant's vehicle and continued following appellant up his driveway. The fact that the officer followed appellant up his driveway, rather than continue to

drive up the road, provided ample notice that appellant was the target of the investigation. Based upon appellant's failure to submit to the officer's show of authority, and the closing of the garage door behind appellant, there was probable cause to believe appellant was attempting to evade the detention in violation of P.C. Sec. 148(a).

The trial court's order is AFFIRMED.

DATED: January 23, 2018

/s/	/s/	/s/
RENE A. CHOUTEAU	PATRICK BRODERICK	PETER OTTENWELLER
Presiding Judge of the Superior Court, Appellate Division	Judge of the Superior Court, Appellate Division	Judge of the Superior Court, Appellate Division

APPENDIX D

SUPREME COURT OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

PEOPLE v. ARTHUR GREGORY LANGE

S259560

February 11, 2020, Opinion Filed

No. A157169

Petition for review denied.