Las Vegas Police Protective Association Metro, Inc.

To: LVPPA Members
From: David Roger, General Counsel
Re: Warrantless Entry into Residences- Hot Pursuit
Date: September 12, 2014

The Fourth Amendment requires that officers either obtain consent from an occupant of the home or secure a search warrant before searching a residence. Over the years, the courts have established exceptions to the warrant requirement: Hot Pursuit; Destruction of Evidence; and the protection of individuals.

This memo is part one of a series of research documents discussing exceptions to the warrant requirement.

Hot Pursuit- Felony Arrests

In *U.S. v. Santana*[1], detectives conducted a controlled narcotics purchase, through an informant, from "Mom Santana". When the informant returned with the drugs, detectives went to the residence to arrest Santana. As they approached the house and announced themselves, Santana, who was standing in the doorway, retreated into the home. Detectives followed the suspect into the home and placed her in handcuffs. During a brief struggle, Santana dropped a bag containing more narcotics.

The U.S. Supreme Court recognized that officers are always justified in making probable cause arrests in a public place.[2] Although Santana was standing in her yard, the Court reasoned she was in a public place and did not have, "...any expectation of privacy."

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[1] *U.S. v. Santana,* 427 U.S. 38, 96 S.Ct. 2406 (1976).
[2] *United States v. Watson,* 423 U.S. 411, 96 S.Ct. 820 (1976).

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While detectives were able to arrest Santana quickly, the Court explained, "'[H]ot pursuit' means some sort of chase, but it need not be an extended hue and cry in and about the public streets. 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 into Santana's house."

The court concluded, "[A] suspect may not defeat an arrest which has been set in motion in a public place, and is therefore proper under *Watson*, by the expedient of escaping to a private place."

Minor Offenses

Years later, the U.S. Supreme Court declined to extend the hot pursuit doctrine to all minor offenses. In *Welsh v. Wisconsin*[3], police responded to the scene of a single car accident. An eyewitness stated the driver was operating the vehicle erratically and believed the driver was either intoxicated or very sick. Upon checking the vehicle registration, officers learned the owner lived nearby. Upon arriving at the owners' nearby home, a female opened the door. The officers entered the residence, without consent or a warrant, and arrested the owner for misdemeanor charges.

The Court rejected the notion that exigent circumstances exist when officers have probable cause to arrest a person for a minor offense and warned, "...application of the exigent-circumstances exception in the context of a home entry should rarely be sanctioned when there is probable cause to believe that only a minor offense, such as the kind at issue in this case, has been committed."[4]

State and Federal courts have been inconsistent in applying the hot pursuit exception to misdemeanor offenses. Recently, the U.S. Supreme Court passed on the opportunity to address the issue in *Stanton V. Sims.*[5] Therefore, until we receive guidance from the court, officers should not rely on the hot pursuit exception to enter a residence to arrest a person on misdemeanor charges.

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[3] *Welsh v. Wisconsin,* 466 U.S. 740, 104 S.Ct. 2091 (1984).
[4] Id. 466 U.S. at 753, 104 S.Ct. at 2099.
[5] *Stanton v. Sims,* 571 U.S. , 134 S.Ct. 3 (2013).