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The San Diego County Law Enforcement Report contains information of interest to law enforcement agencies. Included in the Report are:

1. Feature Articles in Specific Areas of Law.
2. Summaries of Recent Cases with a Suggested Applications for Use in the Field.
3. Point of Law, a Direct Answer to Your Question.
4. Profiles in Law Enforcement.

The purpose of this report is to provide the patrol officer with assistance to understanding rapidly changing aspects of the criminal law. Comments directed at improving this bulletin or making it more relevant to your use are welcome as it is our intent to make this report as useful as possible. Please address your questions or suggestions to:

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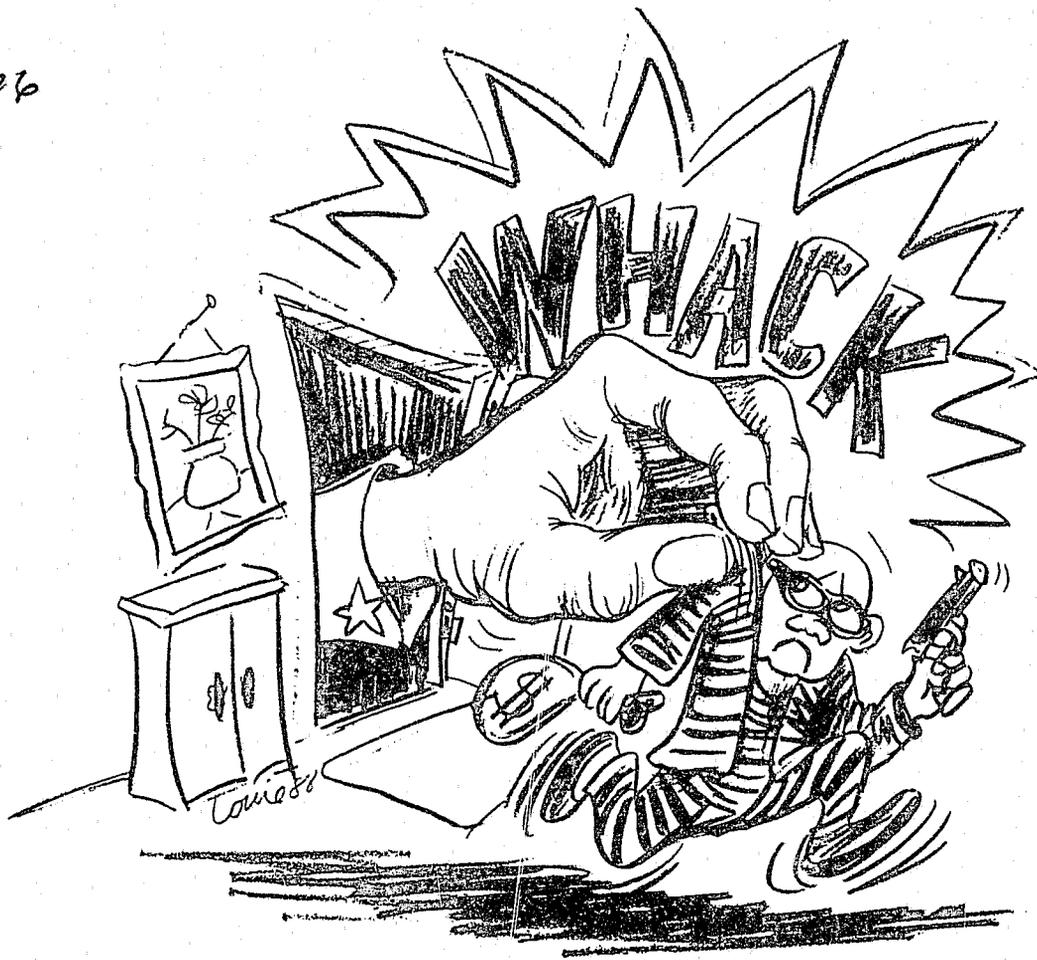
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“HOT PURSUIT” IS NOT TOO “HOT” TO HANDLE

By Kerry Wells Hamor

One of the first ironclad rules of Search and Seizure learned by all police officers is that you cannot enter a person's home to arrest him *without a warrant*. This rule is indeed based on one of the most firmly held tenets of our society: “Even a crook's home is his castle” (or something like that). As with rules, however, there are exceptions. One of the primary exceptions to the warrant requirement is what is known as the “hot pursuit” doctrine.

The basic scenario goes like this: You are on patrol one night when you receive a call of a robbery in progress at a jewelry store one block away. You zoom to the jewelry store and see a suspect running out of the store, gun in one hand and a bag of something in the other. You give chase. The suspect runs through several alleys, jumps a couple fences and then runs into a house, slamming the door behind him. Exhausted, though undaunted, you have been on his tail the whole way. You break into the house unannounced, find the suspect hiding in the closet and in his hot little hands are the stolen goods. You place him under arrest.

You have just hit the jackpot, not only as a fastfooted cop but in the eyes of the law. The entry into the house was good, the arrest was good, and the stolen jewels will be admissible in court because you were lawfully in “hot pursuit” of a fleeing felon.

The “hot pursuit” doctrine has been around for a long time in California. As the term suggests, this

exception dispenses with the warrant requirement when officers are chasing a suspect who is in *active flight*. The justification for this exception is that otherwise the suspect is likely to escape while the police sit around waiting for a warrant to be issued.

Unfortunately, few cases will be as factually straightforward as the example presented above. Real life is almost always more complicated. Our example unquestionably has all of the elements the courts have found to be important when analyzing whether an officer's entry into a home was justified under the “hot pursuit” doctrine. The crime was a serious one, the defendant was observed to be armed and thus dangerous, the officer was in active and continuous pursuit, and the officer specifically observed the suspect enter the home. (The fact that the officer was out of breath when he reached the house is almost a fail-safe indicator that he was indeed in “hot pursuit.”)

But it is also clear that not all of these elements need be simultaneously present before an officer may pursue a bad guy into his legal sanctuary. While the courts have emphasized there is no set test for determining when such circumstances exist, there are some rather firm guidelines that appear from a review of the relevant cases.

One issue that has caused a fair amount of legal discussion is just how serious must the crime committed be. (There is no question the officer must have probable cause to believe some crime was com-

mitted.) The early language of the courts spoke in words such as a "suspect who has committed a 'grave' offense."¹ Violent felonies unquestionably qualify, e.g., murder, attempted murder, kidnap, rape, assaults with weapons, etc.

More recent court decisions have indicated that the commission of the specific crime need not be violent in itself if there is present a "potential for exploding into violent confrontation."²

For example, in *People v. Escudero*,³ the California Supreme Court held that the commission of a residential burglary clearly qualified even though the burglar had used no violence in executing the crime. The court stated: "... the police were pursuing a man whom they suspected of having broken into an occupied private home in the middle of the night to commit a burglary; this is a serious crime, with an ever-present potential for exploding into violent confrontation. The need to prevent the imminent escape of such an offender is clearly an exigent circumstance within the [hot pursuit] doctrine . . ."

Other courts have expanded this to include commercial burglaries, stating: "A nighttime burglary of a retail store is also a serious matter, punishable by imprisonment in state prison for a term as long as 3 years. Although the chances of a violent confrontation in a store are not as great as in a residence, it is not uncommon to find security guards or night workers in commercial establishments. Although the risk of violence is one kind of exigency, the apprehension of a felon and the preservation of evidence are also objectives of great social importance."⁴

The doctrine has even been recently held to apply to a misdemeanor drunk driving suspect in *People v. Hampton*,⁵ though this particular application is probably limited to the specific facts of that case. In that case an officer had stopped the defendant for driving while under the influence of alcohol. Because she was only 2 blocks from home he offered to lock up her car and drive her home rather than arrest her. About 15 minutes later, however, he again saw her driving the car into her apartment complex. The officer followed her to her apartment and entered the apartment to arrest her when she refused to come outside voluntarily.

The court upheld this entry under the "hot pursuit" doctrine. In this instance the court believed prompt action on the part of the officer was necessary to "prevent imminent danger to life or serious damage to property." There was the very real danger that this suspect, if not arrested, would again get in her car and attempt to drive; she had not been previously deterred by contact with the officer. In addition, the court noted that driving under the influence is now considered by society to be an extremely grave offense given the possible consequences.

Thus, while there is no specific requirement that the crime be a "high grade" versus "low grade" felony or felony versus misdemeanor, it is clear the crime itself, or the circumstances under which it was committed, must be such that there is a real and articulable possibility of imminent danger if the suspect is not immediately arrested. Along these lines, while the fact that the suspect is known to be armed is obviously a factor of importance relating to his/her dangerousness, it is not an absolute prerequisite for a hot pursuit entry.⁶

Another question raised by the "hot pursuit" doc-

trine is just how "hot" must the pursuit be - i.e., must the officer literally be on the heels of the suspect at all times. The answer is clearly no. But it is also clear that the officer(s) must at least be close behind.

This issue was also discussed in *People v. Escudero*. In that case the suspect was surprised in the act of a burglary by a guest staying in the home. The suspect immediately fled and the rather brave witness gave chase on foot and then in his car. The suspect eventually got away. The witness immediately called the police. When they arrived they began searching the immediate area. During this time the police dispatcher was able to locate a probable address of the suspect based on information given by the witness. The dispatcher called the address and learned from a resident that the suspect was at home. Officers immediately drove to the address, entered the residence without a warrant or consent, and arrested the suspect. The entire incident lasted approximately one hour.

This warrantless entry was upheld. The court noted that although the hot pursuit of a fleeing felon must be substantially continuous and afford law enforcement no reasonable opportunity to obtain a warrant, *it is not necessary that the suspect be kept physically in view at all times.*

Indeed, in most cases it is likely that responding officers will never actually have the suspect in view. Commonly patrol officers arrive on the scene after the crime has occurred and receive their information from witnesses and victims. If the crime has just occurred, and information suggesting the whereabouts of the suspect is prompt, the officers may and should by all means pursue.

For example, in a well known California case⁷ two suspects committed a robbery-murder at 10:30 a.m. and escaped by car. Following the directions of eyewitnesses, a pursuing officer apprehended one of the suspects some blocks away in one of the getaway cars. This suspect was wounded. He was taken to the hospital where he subsequently told an investigating FBI agent the name and address of his accomplice. This information was broadcast over the police radio and at 1:00 p.m. other agents proceeded to the accomplice's address. They entered the residence without a warrant in search of the suspect. Although the suspect was not there, incriminating evidence was seized and later introduced at trial.

In this case even though the officers had not actually followed the defendant to his residence, the court held they had reason to believe he would return to his home before continuing his flight. The court put strong emphasis on the extremely serious nature of the offenses and the fact that the suspect was clearly in active flight, having been directly pursued by officers from the scene of the crimes.

Although it is clear the suspect need not actually be in the sights of pursuing officers, it is required that once the officers receive information which leads them on a chase, the chase must be expeditious, continuous, and direct.⁸ Speed must be essential.

If for example, the officers take the time to go back to the station, make up a photo lineup, and return to the victims to show them the lineup, the pursuit is no longer "hot."⁹ And if more than a couple hours have passed since the commission of the crime, the courts are likely to find that speed is no longer

essential. If the defendant was going to flee or destroy evidence, he has already had ample time to do so.¹⁰

Finally, it is important for officers to know that in order to make a "hot pursuit" entry into a suspect's residence they must have reason to believe the suspect is actually inside. In a recent case,¹¹ a defendant abducted a woman, took her to his residence in his car, forced her to enter the residence and raped her. Afterwards the woman was able to escape from the residence and call the police. When they arrived she gave them the address where the rape occurred, described the defendant and told them she had seen the defendant drive away in his car. The officers went to the residence, did not see the car, knocked on the door and were told by the two young men who answered the defendant was not there. Nevertheless the officers entered the house and recovered some blood stained sheets from the bedroom.

While this crime was certainly a serious one which had occurred very recently, the officers did not have reason to believe the suspect was inside the house they entered. In fact, all the information they had was to the contrary. Thus their entry was unlawful. What needs to be remembered is that you must be in hot pursuit of a *suspect* not of mere *evidence* of a crime.

CONCLUSION

The "hot pursuit" doctrine is not the only exception to the warrant requirement when entering a home but it is one of the most common ones. Thus it is important for officers to understand how the courts deal with the issues involved. Basically the courts have these concerns: (1) is the crime a serious one; (2) is the suspect a continuing threat to the officers or others; (3) did the crime occur very recently (within a couple hours); and (4) is there reason to believe the suspect is inside the residence that is being entered?

It goes without saying that when you are an officer in pursuit of a dangerous criminal, you do not have the time to thoughtfully analyze the legalities of the chase. In fact if you do have time to think about it, analyze it, discuss it among colleagues, etc., it's likely your pursuit is not too "hot" and you ought to go get a warrant.

While clearly entering a house in pursuit of a suspect without a warrant is a judgment call, it is not a call that should be too difficult to make if you are aware of the legal rationale behind the rule and how the courts have dealt with it in the past.

Footnotes:

1. *People v. Smith* (1966) 63 Cal.2d 779, 797
2. *People v. Escudero* (1979) 23 Cal.3d 800, 810-811
3. *Id.*
4. *People v. Superior Court [Dai-re]* (1980) 104 Cal.App.3d 86, 89-90
5. (1985) 164 Cal.App.3d 27
6. *People v. Escudero*, supra, at p. 810
7. *People v. Gilbert*, (1965) 63 Cal.2d 690
8. *People v. Johnson* (1981) 30 Cal.3d 444, 452
9. *James v. Superior Court* (1978) 87 Cal.App.3d 985
10. *People v. Edwards* (1981) 126 Cal.App.3d 447
11. *People v. White* (1986) 183 Cal.App.3d 1199

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