One Minute Brief
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TOPIC: Hot Pursuit

ISSUE: When may police enter a home without a warrant to pursue a fleeing suspect?

(Note: OMB 2020-37 recently discussed this subject, but at the time, a significant case—*Lange v. California* (2021) 594 U.S. 295—was still pending. This update discusses the law after *Lange*.)

One exception to the warrant requirement is an exigency or an emergency, essentially a "now or never situation" where there is "no time to secure a warrant." (*Riley v. California* (2014) 573 U.S. 373, 391 [134 S.Ct. 2473, 189 L.Ed.2d 430]; *Missouri v. McNeely* (2013) 569 U.S. 141, 149 [133 S.Ct. 1552, 185 L.Ed.2d 696].) Whether an exigency or emergency exists must be judged on a case-by-case basis under a totality of the circumstances. (*Missouri v. McNeely*, *supra*, at p. 149.)

One possible exigency is entering premises in "hot pursuit"—sometimes called "fresh pursuit"—of a fleeing suspect. (*Kentucky v. King* (2011) 563 U.S. 452, 460; *People v. Smith* (1966) 63 Cal.2d 779, 797.) In general, "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.) But not all pursuits justify warrantless entry.

If the suspect is a fleeing *felon*, the longstanding rule is that police may pursue the suspect, even into a private home. (See *United States v. Santana*, *supra*, 427 U.S. at pp. 42–43.) This appears to still be good law. (See *Lange v. California*, *supra*, 594 U.S. at p. 315 (conc. opn. of Kavanaugh, J.) [noting the rule is still viable]; *People v. Lange* (2021) 72 Cal.App.5th 1114, 1123 [citing *Santana*'s rule for felonies].)

But what about misdemeanors? Prior California cases suggested that the severity of the offense did not matter, and officers could enter premises in hot pursuit of misdemeanants as well as felons. (See *People v. Lloyd* (1989) 216 Cal.App.3d 1425, 1430; *In re Lavoyne M.* (1990) 221 Cal.App.3d 154, 159.) But the United States Supreme Court held otherwise in *Lange v. California*; hot pursuit of a misdemeanant always requires additional facts.

In *Lange*, the defendant was driving while obnoxious: playing loud music with his windows down and repeatedly honking his horn. A CHP officer began tailing Lange and soon attempted to pull him over. Lange, as it turned out, was almost home, so instead of stopping, he just pulled into his driveway and entered his attached garage. The officer nevertheless followed Lange, questioned him, and after seeing signs of intoxication, arrested him. Lange moved to suppress all evidence because of the warrantless

entry into his garage. The trial court denied the motion and all California appellate courts agreed that the search and detention were lawful because the officer was in hot pursuit.

But the U.S. Supreme Court disagreed and rejected California's categorical rule:

> The flight of a suspected misdemeanant does not always justify a warrantless entry into a home. An officer must consider all the circumstances in a pursuit case to determine whether there is a law enforcement emergency. On many occasions, the officer will have good reason to enter—to prevent imminent harms of violence, destruction of evidence, or escape from the home. But when the officer has time to get a warrant, he must do so—even though the misdemeanant fled.

(*Lange v. California*, *supra*, 594 U.S. at p. 313.) Thus, Lange essentially held that pursuing a fleeing misdemeanant must be treated like any other exigency: Judged on a case-by-case basis under a totality of the circumstances.

Several factors could justify a warrantless entry in hot pursuit:

- to prevent imminent harm or violence;
- to prevent destruction of evidence;
- to prevent the suspect's further escape from the home and flight;
- a reasonable belief that the suspect now poses a threat to the officer (for example, by obtaining a gun and attacking).

(*Lange v. California*, *supra*, at pp. 308, 313.) Indeed, if a misdemeanant is worth pursuing in the first place, chances are one of these factors will be present.

Caution: As noted, *Lange* did not overrule prior authority allowing hot pursuit of a fleeing felon. But do not take this for granted—a future court might limit this exception further, such as where a suspected felony is nonviolent and there is no solid reason why a warrant is impractical. Thus, even when pursuing a felon, it is good practice to cite *all* factors showing that immediate detention was necessary.
Prosecutors: Even if the fleeing-felon exception applies, at a suppression hearing you should still develop *all* exigent circumstances showing why the pursuit was reasonable under the circumstances.

BOTTOM LINE: If possible, get a warrant before entering a home in pursuit of a suspect. If a warrant is not practical, be prepared to explain why immediate entry was necessary under the circumstances. While it is probably permissible to chase a fleeing felon, pursuing a fleeing misdemeanant always requires additional facts.

This information was current as of publication date. It is not intended as legal advice. It is recommended that readers check for subsequent developments and consult legal advisors to ensure currency after publication. Local policies and procedures regarding application should be observed.