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In an effort to better disseminate information on legal matters that affect law enforcement officers, we are pleased to present to you the LEGAL LOG.

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The "cooling" of Hot Pursuit--the effect of Welsh v. Wisconsin on South Carolina common law

On May 15, 1984, the U.S. Supreme Court handed down its decision in the case of Welsh v. Wisconsin (35 CrL 3080) and the effect of the ruling on South Carolina's "Hot Pursuit" law would appear to be dramatic.

Welsh, briefly described, concerned a factual situation as follows: On the night of April 24, 1978 a witness observed an automobile being driven erratically. Eventually the car ran off the road without causing either personal or property injury. The driver, Mr. Welsh, emerged from the car and appeared to the witness to be intoxicated or ill. Welsh refused the witness' suggestion that he wait for help to arrive and, instead, left the scene by foot. A short time later the police arrived and, after checking the car's registration, determined that it belonged to Welsh. They then proceeded to Welsh's house where he was arrested, without a warrant, as he lay in his bed. Welsh was subsequently convicted of Driving Under the Influence of intoxicants (DUI). The Wisconsin Supreme Court affirmed Welsh's conviction and the warrantless nighttime entry into Welsh's home to arrest him for the offense of DUI. The U. S. Supreme Court reversed and held that the warrantless entry to arrest Welsh was prohibited by the Fourth Amendment's protection against "unreasonable searches and seizures."

The State of Wisconsin, in arguing that Welsh's arrest and conviction should be upheld, relied upon, among other arguments, the need for "hot pursuit" of a suspect. The U. S. Supreme Court, in disposing of the arguments relied upon by the State, provided very specific guidance concerning the application of the "hot pursuit" doctrine. This guidance greatly affects South Carolina's "Hot Pursuit" law.

Briefly stated, the doctrine of "Hot Pursuit" in South Carolina until now has always been understood to allow a law enforcement officer to pursue a suspect who has just committed a criminal offense, either felony or misdemeanor, to the extent that the officer may enter a dwelling without a warrant to search for and arrest

the fleeing suspect. The limitations on the doctrine generally are that a) the pursuit must be "continous"; that is, the officer's pursuit must be closely tied in time to the commission of the offense or the viewing of the suspect and b) any search for the suspect must be limited to areas where the suspect could reasonably hide. As well, once the suspect has been located, the search must cease.

In South Carolina, authority for various law enforcement officers to engage in hot pursuit may be found in the South Carolina Code of Laws at sections 17-13-40 (Municipal Police Officers), 23-7-50 (Special Constables), 23-5-40 (S.C. Highway Patrol Troopers) and 23-13-60 (Deputy Sheriffs). These statutory provisions are subject to the common law limitations set out in the previous paragraph.

In the Welsh case the Supreme Court cast some doubt on the continuing validity of the S.C. doctrine with respect to misdemeanors or non-serious felonies. As most of us are aware, the distinction, at the present, between felony and misdemeanor in our state is one that is primarily in the discretion of the legislature. All serious crimes, for example, are not felonies (e.g. Assault and Battery of a High and Aggravated Nature) and some non-serious crimes are (e.g. Peeping Tom). This somewhat random distinction between felony and misdemeanor places the "Hot Pursuit" doctrine in a questionable stance after Welsh.

The court in Welsh first noted that "...the police bear a heavy burden when attempting to demonstrate an urgent need that might justify warrantless searches or arrests in the home." (Welsh at 3083). Citing U.S. v. Santana, 427 U.S. 38 (1976) the Court explains that only a few emergency conditions, such as "hot pursuit of a fleeing felon" (emphasis added) will justify warrantless entry into the home. The Welsh Court goes on further to note that when determining whether an emergency condition exists a foremost consideration is the seriousness of the underlying offense. The Court states specifically that "... application of the exigent circumstances exception in the context of a home entry should rarely be sanctioned where there is probable cause to believe only a minor offense...has been committed" (Welsh at 3084) and goes further to say that "...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". (Welsh, loc. cit.).

While the Welsh ruling is not decided directly on a "hot pursuit" basis, the language of the U.S. Supreme Court is clear. The Court will not allow warrantless entry into the home where an officer is in hot pursuit for a minor offense. The difficulty in interpreting the ruling lies only in determining what a "minor offense" is in S.C.. With our unclear distinction between felony and misdemeanor, the common sense approach would seem to be that hot pursuit in this state is now only allowed for serious felonies and, in very rare instances, extremely serious misdemeanors (e.g. ABHAN). Until the legislature clears up the hazy distinction which we now possess between felonies and misdemeanors, the only reliable approach would be to limit the doctrine of "Hot Pursuit" to serious felonies and the exception above noted. Common sense will indicate to the officer what felonies are serious, but some factors to consider in reaching the determination include whether violence accompanied the crime, whether a threat to human life or safety continues as a result of the offense and whether there is a need for immediate apprehension of the suspect.

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