IN THE SUPREME COURT OF THE STATE OF OREGON

STATE OF OREGON,	)
	) Circuit Court Case No.
Plaintiff-Appellant,	) 99CR0872
Respondent on Review,	)
	)
vs.	) Appellate Court No.
	) A110840
COY RANDELL SNOW,	)
	) Supreme Court No. S49504
Defendant-Respondent,	)
Petitioner on Review.	)

PETITIONER'S BRIEF ON THE MERITS

Petition to Review the Decision of the Court of Appeals
On an appeal from judgment of the Circuit Court for Josephine County
Honorable GERALD C. NEUFELD, Judge

Opinion Filed: January 30, 2002
Author of Opinion: Haselton, P.J..
Linder, Judge, Wollheim, Dissenting Judge

Petition for Review
Filed: May 23, 2002
Robert D. Durham, P.J.

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SUBJECT INDEX

TABLE OF AUTHORITIES

CASES

BRIEF ON THE MERITS

Statement of the Case

The trial court ordered suppression of evidence recovered in a warrantless search of the car defendant drove. The state appealed and the Court of Appeals reversed the order of suppression. *State v. Snow*, 179 Or App 222, 39 P3d 909 (2002). Defendant petitioned from that decision, and this court allowed review. *State v. Snow*, 334 Or 491, __ P3d __ (2002).

Questions Presented

Was the warrantless search of a parked, immobile and unoccupied car within the warrant requirement's automobile exception, as articulated in *State v. Brown*, 301 Or 268, 721 P2d 1357 (l986)?

Is there an exception to the *Brown* rule for cars that are "constructively" stopped by the police, yet still unoccupied and immobile at the time of a warrantless search?

Were there exigent circumstances excusing the failure to obtain a warrant?

Proposed Rule

Under *State v. Brown*, *supra*, an exception to the warrant requirement of Article I, section 9 exists when an automobile is mobile at the time it is stopped by police or other governmental authority. Under *Brown*, it is the "mobility of the vehicle at the time of the stop" that creates an exigency excusing the lack of a warrant. Any deviation from the bright-line rule of *Brown*, should be consistent with the rationale of *Brown*. A car that is parked, unoccupied and immobile at the time of a police search does not present an exigency of the type contemplated by *Brown*. This is even when a car is parked,

unoccupied and immobile only following police pursuit of the vehicle. A warrantless search in such circumstances is not authorized.

Summary of Argument

Because defendant's car was parked, immobile and unoccupied at the time police approached the car, and because more than one officer was at the scene of the search, and because defendant fled the area of the search, there was not an exigency sufficient to invoke the automobile exception or the exigent circumstances exception to Oregon's Article I, section 9 warrant requirement.

Summary of Facts

Just before noon on Monday, September 20, 1999, Josephine County Sheriff's Deputy Lucas was on patrol in a marked police car when he saw a 1981 black Mercury sedan "laying rubber" on a turn. Tr 7. Only one person was in the car and Lucas "got a pretty good look" at him, but did not recognize him. Tr 8. The Mercury and the patrol car passed "with just a couple of feet between" them. Tr 8. Lucas slowed, waited for traffic to clear, radioed dispatch, made a U-turn, then "g[a]ve chase" from about a quarter of a mile away, with his overhead lights activated. Tr 10. Before beginning his pursuit, Lucas did not see defendant look in his (Lucas') direction. Tr 9.

Lucas saw the Mercury turn left at the first intersection. Tr 10. "[A]s soon as it turned left, it went down and out of sight." Tr 10. Lucas made the same left, and was still unable to see the car, but an onlooker pointed in a particular direction, so Lucas turned as directed. Tr 11. He still did not see the Mercury, so drove "a long city block"

to the next intersection, where another citizen pointed west. Tr 11. Lucas drove west, and still did not see the Mercury. Tr 12. Yet another citizen, though, told Lucas the car was in a particular parking lot. Tr 13. The citizen also told Lucas he saw the Mercury go through an intersection at 30 to 40 miles per hour without stopping. Tr 13. Prior to receiving this information, Lucas said he did not believe he had probable cause to stop the car for reckless driving, because he never saw the car after it turned left at the first intersection. Tr 10, 12. After receiving the citizen's information, Lucas believed he had probable cause to believe defendant was driving recklessly, and also "attempting and fleeing a police officer." Tr 14.

Lucas pulled into the parking lot identified by the citizen, and saw the Mercury he'd noted earlier. Tr 14. He believed "1 to 2 minutes" elapsed between the time he first saw the car and the time he saw it parked. Tr 22. Lucas parked his patrol car "kind of back by the street," then approached the Mercury and saw it was parked and unoccupied. Tr 14. The hood was "still hot." Lucas "had some assistance from other officers in the area trying to locate where the driver was," and another officer, Anderson, "radioed in some information about a suspect running through a yard." Tr 15. Anderson was on site with Lucas. Tr 15.

Anderson and Lucas then searched the area for the Mercury's driver. Tr 16-17. While searching, an area resident, West, approached Lucas and told him the car entered the parking lot at 25 or 30 miles an hour, endangering children in the area. Tr 16. West was upset also "because this is the third time the man had been chased by the cops." Tr 17. Close in time to the conversation with West, Lucas received a radio

message that an area resident saw a person running over a fence and through a house. Tr 17.

Lucas then returned to the Mercury and decided to search it "to try and identify the person driving it." Tr 18. The car was unlocked. Tr 18. The license plate had already been "run," revealing the car's owner as Debra K. Tr 18. Inside the car Lucas observed "a cluttered mess." Tr 19. Underneath some clothing on the rear seat floorboard was a shotgun. Tr 19. Also on the floor was a purple backpack containing a black nylon case and a checkbook. Tr 19-20. From the checkbook Lucas retrieved an Oregon identification card and a California identification card, both bearing the name Coy Randall Snow, Sr. and also bearing the photographic likeness of the driver of the Mercury, who was identified in court as defendant. Tr 20. With the identification, Lucas hoped to obtain an address with which to then find defendant. Tr 21.

After the search of the car, Lucas was directed to the keys to the car, on the ground nearby, which a bystander said the driver dropped as he ran. Tr 23.

Lucas did not discuss getting a warrant with another officer. Despite possessing information about the driver's identity, police did not locate him that day. Tr 33.

ARGUMENT

In the trial court the prosecutor argued the warrantless search of the Mercury was justified by the automobile exception to Article I, section 9's[1] warrant requirement,

[1] Article I, section 9, of the Oregon Constitution, provides, in pertinent part:
"No law shall violate the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search, or seizure[.]"

and alternatively by exigent circumstances excusing the failure to obtain a warrant. Defendant argued the automobile exception did not apply because there was no probable cause for the search, and because the car was not mobile when it was searched. Defendant also argued the warrantless search was not justified by exigent circumstances.

The trial court agreed with defendant both that the automobile exception failed to justify the warrantless search and that there were not exigent circumstances excusing the failure to obtain a warrant. Regarding the automobile exception, the trial court found there was probable cause for the search, but the exception did not apply because the car was not mobile:

> "In the case at bar, [defendant's] vehicle was parked, unoccupied, the engine was off and defendant had been observed running from the scene. While the vehicle was mobile when * * * Lucas first saw it, it was not at the time of the search. Accordingly, the [c]ourt would hold that the automobile exception does not apply in the case at bar." *See App Br at Appendix 14.*

Regarding the exigent circumstances exception, the court found no "practical necessity" justified the lack of a warrant:

> "In the case at bar, Deputy Lucas testified he got a 'pretty good look at [defendant] from the bottom of the neck up.' Prior to the commencement of the search, Deputy Lucas had run the license plate of the vehicle and determined Debra K. was the registered owner. There was no evidence Deputy Lucas tried to contact the registered owner to determine who she may have loaned the car to despite the fact she had a local address. Further, two witnesses had seen [d]efendant along the chase and after [d]efendant bailed from vehicle including one witness who had stated this was the third time this [d]efendant had evaded the police. Deputy Lucas had a sufficient description or information that could have led to a positive identification prior to the search that a 'practical necessity' was not present. Additionally, the 'manhunt' in this case lasted a very short time and there were three other officers in the area available to watch the vehicle while a warrant could be obtained. Deputy Lucas testified that once he returned to [d]efendant's vehicle there was no opportunity for anyone to do anything with the vehicle. There were no unusual problems in the evidence that made

> getting a warrant more difficult nor were there any life threatening circumstances. The exigency justifying a warrantless search of [d]efendant's vehicle simply did not exist." *See App Br at Appendix 14-15.*

In the Court of Appeals the state renewed both trial court claims, i.e. that both the automobile and the exigent circumstances exceptions applied to the facts confronting Officers Lucas and Anderson. Regarding the automobile exception the state argued:

> "According to the trial court's factual findings, defendant's car was not only mobile but was speeding down the street when the police first focused their attention on it. (App 12). Because defendant's car was mobile then—and because no prolonged or reasonable delay occurred before the police ultimately reached it—the police were authorized under the automobile exception to search the vehicle for crime evidence without first obtaining a warrant." *App Br at 9.*

The state's alternative exigent circumstances argument was summarized as follows:

> "[Defendant's] repeated incidents of eluding police and recklessly driving through residential areas made him a safety threat to the residents. The best way to avoid becoming engaged in yet another high-speed chase through neighborhood streets endangering the general public was for the police to locate defendant quickly. The reasonable way to do that was to look inside the vehicle to try to locate some identification that might indicate where he lived or where he might flee to escape capture by the police. That limited and reasonable conduct was what the police here did." *App Br at 12.*

The Court of Appeals agreed with the state that the automobile exception did apply in this case, and did not rule on the alternative exigent circumstances argument. The basis for the Court of Appeals decision (majority) was a view that defendant was constructively stopped during the officer's pursuit.

> "Because the Mercury was mobile at the time of that stop, and because, at the time of the search, which was proximate to the stop, the police had probable cause to believe the car contained evidence of a crime, the search was lawful under the automobile exception." *State v. Snow,* 179 Or App at 235.

On review, defendant contests the decision of the Court of Appeals, and also renews his claim that the exigent circumstances rule did not authorize the warrantless search in this case.[2]

An automobile exception to the warrant requirement under Article I, section 9 of our state constitution was first articulated in *State v. Brown*, 301 Or 268, 721 1357 (1986). There the court asserted such an exception exists when "the automobile is mobile at the time it is stopped by police or other governmental authority," and when probable cause exists for a search of the vehicle. *Id.* at 274. Under *Brown*, it is the "mobility of the vehicle at the time of the stop" that alone creates an exigency. *Id.* at 276. The rule is a "per se" exigency rule, intended to provide "the clearest guidelines for police in conducting automobile searches." *Id.* at 277. Explained the court:

> "Exigencies should not be determined on a case-by-case basis. Police need clear guidelines by which they can gauge and regulate their conduct rather than trying to follow a complex set of rules dependent upon particular facts regarding the time, location and manner of highway stops." *Id.* at 277.

In *Brown* police stopped a car to arrest the driver for assault and theft charges. They had probable cause to believe the driver carried a gun, and also to believe the gun was in the trunk. Police searched the trunk without a warrant. Review was ultimately allowed, and an Oregon automobile exception was declared on the rationale that

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[2] *See ORAP 9.20(2)*:
"(2) If the Supreme Court allows a petition for review, the court may limit the questions on review. If review is not so limited, the questions before the Supreme Court include all questions properly before the Court of Appeals that the petition or the response claims were erroneously decided by that court. The Supreme Court's opinion need not address each such question. The court may consider other isssues that were before the Court of Appeals."

See also State v. Castrejon, 317 Or 202, 212, 856 P2d 616 (1993), interpreting ORAP 9.20(2) as permitting this court's review of "subsidiary appellate issues (properly raised and preserved) that may require resolution once the principle issue on review is resolved, whether or not the Court of Appeals actually decided the subsidiary issue."

> "if police have probable cause to believe that a person's automobile, which is mobile when stopped by police, contains contraband or crime evidence, the privacy rights of our citizens are subjected to no greater governmental intrusion if the police are authorized to conduct an immediate on-the-scene search of the vehicle than to seize the vehicle and hold it until a warrant is obtained." *Id.* at 276.

In adopting the automobile exception, the court was emphatic that "the key to the automobile exception is that the automobile need be mobile at the time it is lawfully stopped." *Id.* at 276. The court then applied *Brown* in *State v. Bennett*, 301 Or 299, 721 P2d 1375 (I986). There a search of a trunk of a car just lawfully stopped by the police was upheld as within the automobile exception. Soon after *Bennett*, in *State v. Kock*, 302 Or 29, 725 P2d 1286 (I986), this court had an opportunity to expand the *Brown* rule to automobiles "capable of mobility," but declined to do so.

In *Kock* police saw the defendant remove a box from his place of employment, place a package from the box inside his car, then return to work. Police suspected the package was stolen merchandise. Independent of an arrest or a warrant, police then searched the car and seized the package. The state tried to justify the warrantless intrusion with the automobile exception. This court refused to extend *Brown* to cars parked, immobile and unoccupied when encountered by police in connnection with the investigation of a crime.

> "Although logically it can be argued that the rationale of the seminal case of *Carroll v. United States*, 267 US 132, 45 S Ct 280, 69 L Ed 543 (I925), and its progeny, including *United States v. Ross*, 456 US 798, 102 S Ct 2157, 72 L Ed 2d 572 (I982), would justify extending the automobile exception to automobiles that are capable of mobility, we elect to draw the so-called bright line of *Brown* just where we left it in that case: Searches of automobiles that have just been lawfully stopped by police may be searched without a warrant and without a demonstration of exigent circumstances when police have probable cause to believe that the automobile contains contraband or crime evidence. In this case, we assume for the sake of argument that there was probable cause for the

> search of the automobile. We nevertheless hold that any search of an automobile that was parked, immobile and unoccupied at the time the police first encountered it in connection with the investigation of a crime must be authorized by a warrant issued by a magistrate or, alternatively, the prosecution must demonstrate that exigent circumstances other than the potential mobility of the automobile exist." *State v. Kock, 302 Or at 32-33.*

Thus, in Oregon, *Brown* is the "outer limit" for warrantless searches of cars when there are no other exigent circumstances. *Id.* at 33.

Defendant submits the search in this case was not within the rule of *Brown* where the searched car was parked, immobile and unoccupied when under investigation by the police. Unlike in *Brown*, in this case, when police approached defendant's car, the car was already parked in a parking lot, the engine was not running, and defendant was nowhere to be seen. Police had information defendant had fled the area, and the state on appeal acknowledged it was unlikely defendant would return. *App Br* at 12. On these facts, for *Brown* purposes, the car was not mobile. Therefore, the underlying justification for the automobile exception—the automobile's mobility—did not exist. Therefore the automobile exception could not be invoked against the failure to obtain a warrant.

The Court of Appeals has considered several applications of the *Brown* rule. In *State v. Crook*, 93 Or App 509, 762 P2d 1062 (l988) and *State v. Nicholson*, 89 Or App 306, 748 P2d 1028 (l988), for example, *Kock* was applied to hold improper searches of cars parked, immobile and unoccupied at the time of the police investigation of the cars. In *State v. Walker*, 113 Or App 199, 830 P2d 633 (l992) and *State v. Vaughn*, 92 Or App 73, 757 P2d 441 (l988), police followed cars before their searches of automobiles parked, immobile and unoccupied when physically contacted by police. In both cases

the warrantless searches were held outside the *Brown* exception where, by the time police performed their search, the cars were empty and going nowhere. In other words, it was not factually significant in *Walker* and *Vaughn* that the cars were mobile when the police first focused their attention on the cars. The automobile exigency was evaluated from the point in the encounter when police physically contacted the cars.

Other Court of Appeals cases applying *Brown* have sanctioned warrantless automobile searches in cases of cars' "constructive" mobility. In *State v. Cromwell*, 109 Or App 654, 820 P2d 888 (1991), for example, police encountered a truck parked in the middle of a roadway with its engine off but its parking lights on. The defendant and another individual were sitting in the truck. Because the defendant could have actually driven away at any time under the circumstances, the court held the truck "mobile" for *Brown* purposes. *See also State v. Burr*, 136 Or App 140, 901 P2d 873, *rev den* 322 Or 360 (1995) (police encountered pickup on shoulder with lights off; where four individuals were near enough to pickup to get in and drive away, pickup was occupied and operable for *Brown* purposes). *Contrast State v. Warner*, 117 Or App 420, 844 P2d 272 (1992) (police encountered pickup on shoulder occupied but unable to start; no mobility under *Brown* where vehicle not operable); *State v. Kruchek*, 156 Or App 617, 969 P2d 386 (1998) (no mobility and hence no exigency for application of automobile exception when car impounded at time of search).

The Court of Appeals application of *Brown* has thus consistently applied the requirement that automobiles be mobile, if only constructively mobile, at the time of an officer's physical encounter with a car before the automobile exception can justify a warrantless search. In *State v. Snow*, though, the court departed from its *Brown* line of

cases and decided that a car that is "constructively" stopped while mobile comes within the *Brown* rule. In other words, in addition to a constructive mobility rule, the Court of Appeals articulated a constructive stop rule to broaden *Brown's* application. Explained the court in *Snow*:

> "After activating his patrol car's overhead lights, Officer Lucas pursued defendant at a high rate of speed through a residential neighborhood. In response, defendant attempted to elude Lucas by driving at unlawful speeds, making at least three turns in rapid succession, running at least one stop sign, and then fleeing his car, all manifesting his subjective belief that Lucas's show of official authority not only was intended to –but had in fact—interfered with defendant's freedom of movement. In short, Lucas's pursuit of defendant effected a 'stop' for purposes of Article I, section 9, of the Oregon Constitution, including the automobile exception as recognized under section 9. Because the Mercury was mobile at the time of that stop, and because, at the time of the search, which was proximate to the stop, the police had probable cause to believe the car contained evidence of a crime, the search was lawful under the automobile exception." *Snow*, 179 Or App at 234-35. (Footnotes omitted.)

There are several problems with adopting a "constructive stop" rule in order to invoke the *Brown* exception in this case. The first two problems are factual. In the Court of Appeals view, defendant's conduct in speeding through a residential neighborhood was an attempt to elude Lucas. The attempt to elude was in turn a "manifest[ation] of [defendant's] subjective belief that Lucas's show of official authority not only was intended to—but had in fact—interfered with defendant's freedom of movement." *Id.* at 235. There is no evidence, though, that defendant saw the officer trying to follow him. Rather, defendant was already "laying rubber" and accelerating rapidly when the officer noticed him. After defendant sped by, Lucas waited for traffic to clear, radioed dispatch, then initiated pursuit from about a quarter of a mile away. Though Lucas activated his overhead lights, there is no evidence he activated his siren. Lucas saw the Mercury turn at the first intersection, but did not see it again until

observing it parked in a lot. Lucas himself said he did not have probable cause to stop the car for reckless driving or eluding because he didn't see the car. It was only after receiving citizen information, said Lucas, that he believed he had probable cause to believe defendant was driving recklessly and "attempting and fleeing a police officer." Tr 14.

Factually, then, the underpinnings of the Court of Appeals "constructive stop" argument are lacking. In other words, the Court of Appeals asserted defendant's driving conduct was eluding conduct, and that eluding conduct demonstrated an interference with defendant's freedom of movement. There was no evidence, though, that defendant ever saw the officer, and there *was* evidence the officer *could not* see defendant. Defendant was speeding before the officer pursued him; it is not at all clear that defendant continued speeding *because* the officer pursued him. There was here no constructive detention as a factual matter. *Compare State v. Puffenbarger*, 166 Or App 426, 998 P2d 788 (2000) (constructive detention of a pedestrian where police closely followed him in their patrol car for 12 blocks and on foot, called to him, and chased him).

There is a second factual problem with adopting a constructive stop rule in this case. As already outlined, *Brown* authorizes an exception to the warrant requirement when there is "probable cause to believe that a lawfully stopped automobile which was mobile at the time of the stop contains contraband or crime evidence." *Brown*, 301 Or at 277. At the time of this case's "constructive" lawful stop, there was not probable cause to search for contraband or crime evidence. This is because during the officer's pursuit of defendant, there was a basis to stop the car only for possible traffic infractions. According to the officer, he did not develop probable cause for the crimes of

reckless driving or eluding an officer until speaking with a citizen. Therefore, to the extent there was probable cause to search in this case, it was developed only after the car was already parked.[3] In addition, the object of the later search was evidence of identity. But, at the time of the pursuit, or, the constructive detention, defendant was in the car, so there would have been no basis to search the car for evidence of his identity. *Cf. State v. Nelson*, 102 P2d 106, 792 P2d 486 (1990) (warrantless search for evidence of identity was not authorized after traffic stop of car, when driver in car, even when defendant could not produce a license). In short, at the time of Lucas's "stop" there was not probable cause to search the car for evidence of a crime, including and especially evidence of identity. The Court of Appeals constructive stop rule therefore cannot be applied in this case to invoke Oregon's automobile exception to the warrant requirement.

Yet another problem with the Court of Appeals decision in *Snow* is that it ignores facts that the car in this case was parked, immobile and unoccupied when the police approached it. Because the car then was not capable of mobility, the exigency underlying the basis for the warrant exception did not exist.

This was the view of the dissent in *Snow*. Wrote the dissent:

> "The exigency that allows police to circumvent the warrant requirement is the mobility of the vehicle at the time of the stop. *Brown*, 301 Or at 276. The mobility principle has justified warrantless searches subsequent to routine traffic stops, as was the case in *Brown*, as well as in cases where, although the vehicle is never seen moving, the car is constructively mobile when encountered by police. *See State v. Cromwell*, 109 Or App 654, 659, 820 P2d 888 (1991) (car was sufficiently mobile to

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[3] The trial court found:
"As Deputy Lucas got close to Dimmick Street another citizen, Dennis Schmidke, pointed out the parking lot where the Defendant's vehicle was and stated that the vehicle had gone through the stop sign at A and Kinney Streets at about 30-40 m.p.h. or faster. At this point Deputy Lucas felt he had probable cause for the offenses of reckless driving and fleeing or eluding a police officer." App Br at Appendix 12-13.

> justify a warrantless search where the defendant was in his truck and the 'fact that defendant had not yet turned the key was merely fortuitous.'); *Burr*, 136 Or App at 149 (in light of rationale for the rule, a vehicle is 'occupied and operable' where defendants are standing immediately outside truck parked along a public highway when police encounter it)."
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> "In the present case, even though the officer may have initiated a 'stop' in a constitutional sense when he activated his overhead lights, neither defendant nor anyone else capable of operating the car was anywhere to be seen when the officer searched the vehicle." *Snow*, 179 Or App at 236-37.

Defendant agrees with the dissenting opinion. Because there was no exigency relating to the car's mobility in this case, the automobile exception did not excuse the failure to obtain a warrant. The trial court's order of suppression should be reinstated based on the inapplicability of the *Brown* rule.

The trial court's alternative basis for suppression was not reached by the Court of Appeals but is renewed on review. In addition to ruling the automobile exception did not fit the facts, the court ruled the exigent circumstances exception could not be invoked either. That exception "is a recognition that practical necessity may require a search and seizure to take place before a warrant can be obtained." *State v. Walker*, 113 Or App at 202. An exigent circumstance "is a situation that requires the police to act swiftly to prevent danger to life or serious damage to property, or to forestall a suspect's escape or the destruction of evidence." *State v. Stevens*, 311 Or 119, 126, 806 P2d 92 (1991). The state bears the burden of proving that an exception to the warrant requirement applies. *Id.* at 126.

There was here no exigency requiring a search without a warrant. At the time of the search, defendant had already fled the area and was not likely to return, even in the

state's view. App Br at 12. Defendant was the sole occupant of the car, and there did not appear to be anyone in the area with a motive to interfere. A total of at least four police officers responded to the scene,[4] any one of whom could have secured the area while a warrant was obtained. In addition, Lucas parked his car behind defendant's car, near the entrance to the parking lot, further impeding any attempted flight. *Compare Walker, supra* (no exigency where the defendant was alone in his car and no one appeared interested in interfering, where there were a number of officers in the immediate area, and where police car was parked behind the defendant's car); *Vaughn, supra* (no exigency where searched car was parked in front of another car, and where no indication that anyone would attempt to move vehicle or evidence).

The state claims there was an exigency in this case where defendant's "repeated incidents of eluding police and recklessly driving through residential areas made him a safety threat to the residents. The best way to avoid becoming engaged in yet another high-speed chase through neighborhood streets endangering the general public was for the police to locate defendant quickly." *App Br* at 12. The state concedes, though, as already noted, that it was unlikely defendant "would return to the car." *Id.* The state also had no evidence the car was stolen, or that defendant in the past drove different cars recklessly, or that in his attempt to elude the police he was armed or actually caused any physical injury. The police lacked information about the dates of defendant's prior bad driving, and the only "evidence" they hoped to obtain in the search was evidence of identity.

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[4] The trial court found "there were three other officers [in addition to Lucas] in the area available to watch the vehicle while a warrant could be obtained." *See App Br at Appendix 14.*

There was also no evidence that possessing evidence of defendant's identity would have made more successful the search for defendant. The record is silent on how and when police actually found and arrested defendant. Police did quickly search the area for defendant, did not find him, and it is unlikely that having an identification card would have aided an emergency capture of defendant, when the police did in fact find two identification cards, neither of which apparently led to an emergency apprehension.

The trial court rejected the state's exigent circumstances argument. It reasoned: (1) Lucas did see defendant, (2) Lucas did not attempt to contact the car's registered owner, (3) two other witnesses could identify defendant, (4) other officers were available to watch the car while a warrant was obtained, (5) Lucas testified that once he returned to the car, no one could have interfered with the car, (6) there was nothing in the evidence that made getting a warrant more difficult, and (7) there were no like threatening circumstances. See App Br at App-14-15. Based on the trial court's findings, it is clear the trial court believed the state had alternate means to identify defendant, that finding evidence of an address might not necessarily aid finding defendant, there was not an emergency need to locate defendant, and the scene could be sufficiently secured while a warrant was obtained. The trial court's findings are supported by the record, and show the state's failure to prove an exigent circumstances exception to the warrant requirement. On this additional basis for suppression, the trial court should be affirmed.

CONCLUSION

For the foregoing reasons, defendant respectfully prays that this court reverse the decision of the Court of Appeals and reinstate the trial court's order of suppression.

Respectfully submitted,

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