



Supreme Court wrestles with when police may conduct warrantless searches after a chase

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The Supreme Court grappled Wednesday with whether an officer pursuing a misdemeanor suspect can follow that person into their home without a warrant in a case civil liberty groups say could vastly expand police powers.

Several of the justices were skeptical of the argument that the high court could draw a clear line between felonies – in which such warrantless searches are often permitted – and misdemeanors, given the difference between the two classes of crime are usually difficult for a police officer to determine in the heat of a chase.

"The line between felonies and misdemeanors is very hard to draw," said Chief Justice John Roberts. "How does an officer know whether it's the first offense or the third?"

The suit emerged from the case of a California man who pulled into his garage and closed the door rather than stopping when an officer activated his police lights about 100 feet from the man's driveway. As the garage door closed, the police officer tripped a sensor, causing it to reopen, and ultimately charged the man with DUI.

The question is whether the warrantless entry was constitutional.

Police are usually required to have a warrant to enter someone's home under the Fourth Amendment's prohibition on "unreasonable searches." Courts have allowed exceptions, such as when an officer is in "hot pursuit" of a suspected felon. But in the California case, police could point only to the driver's failure to stop, a misdemeanor.

Attorneys defending the idea of allowing such searches argued if police decide to give chase at all that may justify a subsequent search, regardless of the underlying crime.

Associate Justice Sonia Sotomayor and others repeatedly questioned why – or how – the court could draw a firm rule for police based on the category of the suspected crime.

"Why isn't the better reading just that hot pursuit can but does not always justify" the searches, she asked.

Civil liberty groups such as the American Civil Liberties Union as well as libertarian groups such as the Cato Institute say expanding the exceptions for warrantless searches to include misdemeanors would significantly expand police powers because there are so many crimes that

are classified that way. Some misdemeanor crimes can be serious, but the category also includes littering, jaywalking and defacing dollar bills.

Associate Justice Stephen Breyer picked up on that argument, noting California bans residents from giving away rabbits – and other animals – as lottery prizes. Could a police officer give chase and conduct a warrantless search for violating that law, he asked.

"If we take your view then it seems like the home isn't the castle at all for the most trivial of things," Breyer pressed Amanda Rice, a court-appointed lawyer defending the notion of a categorical rule allowing searches of misdemeanor suspects. Rice responded in part by relying on an idea raised earlier in the argument by Roberts: That a suspect's decision to flee an approaching officer itself could justify a search. A suspect, she noted, could avoid the search by not fleeing into a home in the first place.

Associate Justice Amy Coney Barrett drilled into a line of questioning about the difference between a suspect who flees *after* an arrest and suspect who flees beforehand. In the first situation, the officer could pursue a suspect into a home with a warrant. Lawyers opposing the searches acknowledged that in most cases the motivation is the same but that sometimes a flight before an arrest could be a misunderstanding.

Courts have reached different answers to the question about whether misdemeanor pursuits can justify a warrantless search. Five state supreme courts have held a misdemeanor pursuit justifies a warrantless home entry and three state courts and two federal appeals courts said the issue must be reviewed on a case-by-case basis.

Fourth Amendment questions have at times divided the Supreme Court in unusual ways, with liberal justices joining conservatives and vice versa. The most prominent example in recent history was the late Associate Justice Antonin Scalia, a conservative who often sided with liberals in questions on privacy rights, particularly in one's home.

The case came to the U.S. Supreme Court after the California Supreme Court declined to hear it, allowing a lower court's ruling that sided with police to stand. The suspect in the case, Arthur Lange, appealed that decision directly to the U.S. Supreme Court.

A decision in the case is expected before the summer.

Associate Justice Samuel Alito returned several times to a question about the underlying facts of the case and whether Lange knew the officer was trying to chase him. Alito referred to a police video of the exchange – and the fact that Lange was later charged with DUI – to question whether California police were ever actually involved in a "hot pursuit."

"Hot pursuit has to be hot and it has to be a pursuit," Alito said, adding that he thought it was "dubious" Lange knew police were trying to stop him. "Mr. Lange didn't really flee."