



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**State v. Anthony Lito Hernandez, CR-17-0325-PR**

**PARTIES:**

*Petitioner:* Anthony Lito Hernandez

*Respondent:* State of Arizona

**FACTS:**

In September 2014, two Willcox sheriff’s deputies saw Hernandez’s car driving in a “random zigzag pattern.” *State v. Hernandez*, 242 Ariz. 568, 570 ¶ 2 (App. 2017). The deputies followed the car and checked the license plate, discovering that the car’s insurance policy had been cancelled the previous month. Not having insurance on a car is a civil traffic violation. The deputies decided to stop the car for not having valid car insurance.

The deputies sped up to catch the car and activated their cruiser’s emergency lights and siren. Hernandez’s car then made a “lengthy swooping turn,” *id.* at 576 ¶ 29 (Staring, J., dissenting), into the driveway of a private home; it drove down the driveway, pulled around to the back of the house, and stopped in the back yard. The deputies followed, not knowing if Hernandez had any connection to the home. The deputies later gave somewhat conflicting accounts regarding whether they thought there was any immediate danger to themselves or anyone else at that point.

After stopping his car, Hernandez opened his door and began to step out. A deputy began to approach the car and ordered Hernandez to get back in. Hernandez complied. The deputy then smelled burned marijuana; he had Hernandez get out of the car and placed him in handcuffs. The deputies searched Hernandez and his car. Hernandez had over \$2,400 on him; the car contained marijuana, methamphetamine, and a spoon with burned residue on it. When questioned, Hernandez denied knowing who owned the house; it was later determined that the house belonged to Hernandez’s girlfriend.

The grand jury indicted Hernandez for possession of marijuana, methamphetamine, and drug paraphernalia. Pre-trial, Hernandez moved to suppress the evidence seized from him and his car. The trial court found: (1) that Hernandez was an invitee within the “curtilage” (defined below) of his girlfriend’s home at the time he was detained; (2) that he was detained for a civil traffic offense, not a felony criminal violation; (3) that prior to Hernandez’s detention, there was no probable cause or reasonable suspicion that he was engaged in criminal activity; and (4) that, under the totality of the circumstances it was reasonable for the deputies to follow Hernandez into the back yard and search him. Based on these findings, the trial court found no Fourth Amendment violation and denied the motion to suppress. Hernandez was found guilty of possession of methamphetamine and marijuana, and found not guilty of possession of drug paraphernalia; he appealed the denial of his motion to suppress.

In a divided decision, the court of appeals affirmed the denial of Hernandez’s motion to suppress. The court stated that the general rule is that officers may not enter a home or its curtilage without an arrest warrant. This general rule, however, is subject to an exception for “exigent circumstances,” which include the “hot pursuit of a fleeing felon.” *Id.* at 572 ¶ 11.

The majority held that Hernandez’s failure to pull over when the deputies activated the cruiser’s lights and sirens constituted flight under A.R.S. § 28-622.01 or failure to stop under A.R.S. § 28-1595(A). Because Hernandez did not stop, the deputies were in “hot pursuit” and permitted to follow Hernandez and to search him on private property without a warrant under the exigent circumstances exception to the warrant requirement.

The court held that the seriousness of the underlying offense the defendant is suspected of committing is an important factor in determining whether exigent circumstances exist. However, it also held that there is no categorical rule preventing officers from conducting a search pursuant to the exigent circumstances exception when the defendant is suspected of only a minor civil infraction. Under the totality of the circumstances here, the majority held that the search was reasonable and the trial court correctly denied Hernandez’s motion to suppress.

The dissent stated that the majority’s conclusion “diminishes the constitutional protection afforded to curtilage” because “Hernandez possessed a reasonable expectation of privacy in the backyard.” *Id.* at 577 ¶ 32 (Staring, J., dissenting). In the dissent’s view, neither flight under A.R.S. § 28-622.01 or failure to stop under § 28-1595(A), applies because Hernandez pulled over not long after the deputies turned on their cruiser’s lights and siren. The dissent also would have held that the exigent circumstances exception could not apply here because the deputies suspected Hernandez of committing only a civil traffic violation (lack of car insurance), not a felony crime. The dissent would have held that the search was unreasonable and suppressed the evidence seized.

**ISSUE:**

Whether the pursuit which began with an attempt to conduct a traffic stop for a nonjailable, civil traffic violation in a public place and concluded on private property, violated Hernandez’s rights under the U.S. Constitution, 4th and 14th Amendments, and Arizona Constitution, Article 2, Section 8?

**DEFINITION:**

*Curtilage:* The land or yard adjoining a house, usually within an enclosure. Under the Fourth Amendment, the curtilage is an area usually protected from warrantless searches.

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