NO KNOCK SEARCHES AND ARREST ENTRIES

Judge Robert C. Ervin

Superior Court Judges Conference
June 16, 2021

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Two FBI Agents Dead, Three Hurt Serving Warrant in South Florida

A suspect was also killed in shooting; officials were aiming to seize evidence in child-pornography investigation

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THERE ARE AN ESTIMATED 60,000-70,000 NO KNOCK RAIDS IN AMERICA EACH YEAR.

Peter Kraska, criminologist at Eastern Kentucky University.

FROM 2010 through 2016, at least 81 civilians and 13 officers died during SWAT raids. 31 civilians and 8 officers were killed during the execution of no-knock warrants.

New York Times, March 21, 2017.

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N. C. GEN. STAT. 15A-249 provides that:

The officer executing a search warrant must, before entering the premises, give appropriate notice of his identity and purpose to the person to be searched, or the person in apparent control of the premises to be searched.

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N. C. Gen. Stat. 15A-251 provides that:

An officer may break and enter any premises or vehicle when necessary to the execution of the warrant if:

(1)The officer has previously announced his identity and purpose as required by G. S. 15A-249 and reasonably believes either that admittance is being denied or unreasonably delayed or that the premises or vehicle is unoccupied; or

(2)The officer has probable cause to believe that the giving of notice would endanger the life or safety of any person.

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N. C. Gen. Stat. 15A-401(e)(1) provides that:

A law enforcement officer may enter private premises or a vehicle to effect an arrest when:

a. The officer has in his possession a warrant or order or a copy of the warrant or order for the arrest of a person…or the officer is authorized to arrest a person without a warrant or order having been issued,
b. The officer has reasonable cause to believe the person to be arrested is present, and
c. The officer has given, or made reasonable effort to give, notice of his authority and purpose to the occupant thereof, unless there is reasonable cause to believe that the giving of such notice would present a clear danger to human life.

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N. C. Gen. Stat. 15A-401(e)(2) provides that:

The law enforcement officer may use force to enter the premises or vehicle if he reasonably believes that admittance is being denied or unreasonably delayed, or if he is authorized under subsection (e)(1)c to enter without giving notice of his authority and purpose.

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THESE PRINCIPLES DERIVE FROM COMMON LAW

The common law principle that law enforcement officers must announce their presence and provide residents an opportunity to open the door is an ancient one.

Hudson v. Michigan, 547 U. S. 586, 126 S. Ct. 2159, 165 L. Ed. 2d 56 (2006).

The constant practice at common law was that the officer may break open the door, if he be sure the offender is there, if after acquainting them of the business, and demanding the prisoner, he refuses to open the door.

The common law knock and announce principle was woven quickly into the fabric of early American law.

Wilson v. Arkansas, 514 U. S. 927, 115 S. Ct. 1914, 131 L. Ed 2d 976 (1995).

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REQUIRED BY THE FOURTH AMENDMENT

WE GRANTED CERTIORARI TO RESOLVE THE CONFLICT AMONG THE LOWER COURTS AS TO WHETHER THE COMMON LAW KNOCK AND ANNOUNCE PRINCIPLE FORMS A PART OF THE FOURTH AMENDMENT REASONABLENESS INQUIRY. WE HOLD THAT IT DOES.

Wilson v. Arkansas, 514 U. S. 927 (1995).

WE HAVE NEVER SQUARELY HELD THAT THIS PRINCIPLE IS AN ELEMENT OF THE REASONABLENESS INQUIRY UNDER THE FOURTH AMENDMENT. WE NOW SO HOLD.

Wilson v. Arkansas, 514 U. S. at 934.

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THE FOURTH AMENDMENT INCORPORATES THE COMMON LAW REQUIREMENT THAT POLICE ENTERING A DWELLING MUST KNOCK ON THE DOOR AND ANNOUNCE THEIR IDENTITY AND PURPOSE BEFORE ATTEMPTING FORCIBLE ENTRY.

Richards v. Wisconsin, 520 U. S. 385, 117 S. Ct. 1416, 137 L. Ed 2d 615 (1997).

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ALSO APPLIES TO ARRESTS

WE HOLD THAT THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION …PROHIBITS THE POLICE FROM MAKING A WARRANTLESS AND NONCONSENSUAL ENTRY INTO A SUSPECT'S HOME IN ORDER TO MAKE A ROUTINE FELONY ARREST.

Payton v. New York, 445 U. S. 573, 100 S. Ct. 1371, 63 L. Ed 2d 639 (1980).

FOR FOURTH AMENDMENT PURPOSES, AN ARREST WARRANT FOUNDED ON PROBABLE CAUSE IMPLICITLY CARRIES WITH IT THE LIMITED AUTHORITY TO ENTER A DWELLING IN WHICH THE SUSPECT LIVES WHEN THERE IS REASON TO BELIEVE THE SUSPECT IS WITHIN.

Payton, 445 U. S. at 603.

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WHAT INTERESTS ARE PROTECTED BY THE KNOCK AND ANNOUNCE RULE?

PROTECTION OF HUMAN LIFE AND LIMB

ONE OF THE INTERESTS IS THE PROTECTION OF HUMAN LIFE AND LIMB, BECAUSE AN UNANNOUNCED ENTRY MAY PROVOKE VIOLENCE IN SUPPOSED SELF-DEFENSE BY THE SURPRISED RESIDENT.

Hudson v. Michigan, 547 U. S. 586 (2006).

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PROTECTION OF PROPERTY

THE KNOCK AND ANNOUNCE RULE GIVES INDIVIDUALS THE OPPORTUNITY TO COMPLY WITH THE LAW AND TO AVOID THE DESTRUCTION OF PROPERTY OCCASIONED BY FORCIBLE ENTRY.

Hudson v. Michigan, 547 U. S. 586.

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PROTECTION OF PRIVACY AND DIGNITY

THE KNOCK AND ANNOUNCE RULE PROTECTS THOSE ELEMENTS OF PRIVACY AND DIGNITY THAT CAN BE DESTROYED BY A SUDDEN ENTRANCE.

THE BRIEF INTERLUDE BETWEEN ANNOUNCEMENT AND ENTRY WITH A WARANT MAY BE THE OPPORTUNITY THAT AN INDIVIDUAL HAS TO PULL ON CLOTHES OR GET OUT OF BED.

Hudson v. Michigan, 547 U. S. at 594.

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NORTH CAROLINA HAS RECOGNIZED THESE SAME JUSTIFICATIONS.

The knock and announce rule has three purposes: (1) to protect law enforcement officers and household occupants from potential violence; (2) to prevent the unnecessary destruction of private property; and (3) to protect people from unnecessary intrusion into their private activities.

State v. Sumpter, 150 N. C. App. 431, 563 S. E. 2d 60 (2002): State v. Harris, 145 N. C. App. 570, 551 S. E. 2d 499 (2001).

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THE PHYSICAL ENTRY OF THE HOME IS THE CHIEF EVIL AGAINST WHICH THE WORDING OF THE FOURTH AMENDMENT IS DIRECTED.

Welsh v. Wisconsin, 466 U. S. 740, 104 S. Ct. 2091, 80 L. Ed. 2d 732 (1984).

AT COMMON LAW, THE KNOCK AND ANNOUNCE RULE WAS TRADITIONALLY JUSTIFIED IN PART BY THE BELIEF THAT ANNOUNCEMENT GENERALLY WOULD AVOID THE DESTRUCTION OR BREAKING OF ANY HOUSE…BY WHICH GREAT DAMAGE AND INCONVENIENCE MIGHT ENSUE.

United States v. Banks, 540 U. S. 31, 124 S. Ct. 521, 157 L. Ed. 2d 343 (2003).

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WHAT IS A SUFFICIENT ANNOUNCEMENT?

Officer yelled “SHERIFF’S OFFICE, SEARCH WARRANT” three times before entering after receiving no response.

State v. Winchester, 260 N. C. App. 418, 818 S. E. 2d 306 (2018) (held sufficient).

“Chapel Hill Police, search warrant” was a sufficient announcement.

State v. Johnson, 143 N. C. App. 307, 547 S. E. 2d 445 (2001).

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HOW LONG MUST OFFICERS WAIT AFTER ANNOUNCING?

WHEN THE KNOCK AND ANNOUNCE RULE DOES APPLY, IT IS NOT EASY TO DETERMINE WHAT OFFICERS MUST DO. HOW MANY SECONDS WAIT ARE TOO FEW?

Hudson v. Michigan, 547 U. S. 586 (2006).

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15-20 SECOND WAIT WAS HELD SUFFICIENT

United States v. Banks, 540 U. S. 31 (2003).

10-15 SECONDS HAS BEEN DEEMED REASONABLE

State v. Vick, 130 N. C. App. 207, 502 S. E. 2d 871 (1998).

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8-10 seconds of waiting was sufficient.

State v. Johnson, 143 N. C. App. 307 (2001).

A 6-8 second wait was sufficient in a drug case

State v. Reid, 151 N. C. App. 420, 556 S. E. 2d 186 (2002).

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However, a simultaneous entry and announcement violates the rule.

State v. Sumpter, 150 N. C. App. 431, 563 S. E. 2d 186 (2002).

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THE STANDARD IS REASONABLENESS.

What is a reasonable time between notice and entry depends on the particular circumstances of each case.

State v. Terry, 207 N. C. App. 311, 699 S. E. 2d 671 (2010); State v. White, 184 N. C. App. 519, 646 S. E. 2d 609 (2007).

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DELAY AFFECTED BY THE CIRCUMSTANCES

Since this search was for a drug that could be easily and quickly disposed of, we hold that the brief delay between notice and entry was reasonable in this case.

State v. Terry, 207 N. C. App. 311 (2002).

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WHEN IS A BREAKING TO EFFECT ENTRY AUTHORIZED?

N. C. Gen. Stat. 15A-251 lists the circumstances under which an officer after announcing his identity and purpose, may break and enter the premises to execute a warrant. The officer must believe that admittance is being denied or unreasonably delayed or that the premises is unoccupied.

State v. White, 184 N. C. App. 519 (2007).

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MAGISTRATE MAY AUTHORIZE A NO-KNOCK ENTRY.

WHEN A WARRANT GIVES REASONABLE GROUNDS TO EXPECT FUTILITY OR TO SUSPECT THAT ONE OR ANOTHER SUCH EXIGENCY ALREADY EXISTS OR WILL ARISE INSTANTLY UPON KNOCKING, A MAGISTRATE JUDGE IS ACTING WITHIN THE CONSTITUTION TO AUTHORIZE A NO-KNOCK ENTRY.

United States v. Banks, 540 U. S. 31 (2003).

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OFFICERS MAY ACT ON THEIR OWN.

EVEN WHEN EXECUTING A WARRANT THAT IS SILENT ABOUT THAT, IF CIRCUMSTANCES SUPPORT A REASONABLE SUSPICION OF EXIGENCY WHEN THE OFFICERS ARRIVE AT THE DOOR, THEY MAY GO STRAIGHT IN.

United States v. Banks, 540 U. S. 31 (2003).

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WHAT HAPPENS IF THE MAGISTRATE OR JUDGE DENIES A NO KNOCK WARRANT?

CAN THE OFFICER DISPENSE WITH THE KNOCK AND ANNOUNCE REQUIREMENT?

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THAT SITUATION WAS ADDRESSED IN RICHARDS v. WISCONSIN, 520 U. S. 385, 117 S. Ct. 1416, 137 L. Ed. 2d 615 (1997).

IN RICHARDS, THE DEFENDANT PLACED GREAT EMPHASIS THAT THE MAGISTRATE DELETED THE NO KNOCK ENTRY PROVISIONS IN THE SEARCH WARRANT.

THE SUPREME COURT OPINED THAT:

> THIS FACT DOES NOT ALTER THE REASONABLENESS OF THE OFFICERS' DECISION WHICH MUST BE EVALUATED AS OF THE TIME THEY ENTERED THE HOTEL ROOM.

520 U. S. at 395.

> THESE ACTUAL CIRCUMSTANCES…JUSTIFIED THE OFFICERS' ULTIMATE DECISION TO ENTER WITHOUT FIRST ANNOUNCING THEIR PRESENCE AND AUTHORITY.

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IN A FOOTNOTE, THE SUPREME COURT FURTHER COMMENTED:

> A MAGISTRATE'S DECISION NOT TO AUTHORIZE A NO-KNOCK ENTRY SHOULD NOT BE INTERPRETED TO REMOVE THE OFFICERS' AUTHORITY TO EXERCISE INDEPENDENT JUDGMENT CONCERNING THE WISDOM OF A NO-KNOCK ENTRY AT THE TIME THE WARRANT IS BEING EXECUTED.

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THERE IS A DIFFERENCE BETWEEN ARRESTS AND SEARCH WARRANTS

WHILE AN ARREST WARRANT AND A SEARCH WARRANT BOTH SERVE TO SUBJECT THE PROBABLE CAUSE DETERMINATION OF THE POLICE TO JUDICIAL REVIEW, THE INTERESTS PROTECTED BY THE TWO WARRANTS DIFFER. AN ARREST WARRANT ISSUED BY A MAGISTRATE UPON A SHOWING OF PROBABLE CAUSE EXISTS TO BELIEVE THAT THE SUBJECT OF THE WARRANT COMMITTED AN OFFENSE AND THUS THE WARRANT PRIMARILY SERVES TO PROTECT THE INDIVIDUAL FROM AN UNREASONABLE SEIZURE.

A SEARCH WARRANT, IN CONTRAST, IS ISSUED UPON A SHOWING OF PROBABLE CAUSE TO BELIEVE THAT THE LEGITIMATE OBJECT OF THE SEARCH IS LOCATED IN A PARTICULAR PLACE, AND THEREFORE SAFEGUARDS AN INDIVIDUAL'S INTEREST IN THE PRIVACY OF HIS HOME AND POSSESSIONS.

Steagald v. United States, 451 U. S. 204, 101 S. Ct. 1642, 68 L. Ed. 2d 38 (1981). (Search warrant required for officer to search for the subject of an arrest warrant in the home of a third party.)

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THE FOURTH AMENDMENT'S FLEXIBLE REQUIREMENT OF REASONABLENESS SHOULD NOT BE READ TO MANDATE A RIGID RULE OF ANNOUNCEMENT THAT IGNORES COUNTERVAILING LAW ENFORCEMENT INTERESTS.

Wilson v. Arkansas, 514 U. S. 927 (1995).

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EXCEPTIONS TO KNOCK AND ANNOUNCE REQUIREMENT

THREAT OF PHYSICAL VIOLENCE

It is not necessary to knock and announce when the circumstances present a threat of physical violence.

Hudson v. Michigan, 547 U. S. 586 (2006).

PRISONER ESCAPES AND RETREATS TO HIS DWELLING

Courts have held that an officer may dispense with announcement in cases where a prisoner escapes from him and retreats to his dwelling.

Wilson v. Arkansas, 514 U. S. 927 (1995)

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REASON TO BELIEVE THAT EVIDENCE WOULD BE DESTROYED

It is not necessary to knock and announce if there is reason to believe that evidence would likely be destroyed if advance notice were given.

Hudson v. Michigan, 547 U. S. 586 (2006).

FUTILITY

Hudson v. Michigan, 547 U. S. 586 (2006).

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WHAT IS THE STANDARD OF PROOF FOR THESE EXCEPTIONS?

REASONABLE SUSPICION

WE REQUIRE ONLY THAT POLICE HAVE A REASONABLE SUSPICION UNDER THE PARTICULAR CIRCUMSTANCES THAT ONE OF THESE GROUNDS FOR FAILING TO KNOCK AND ANNOUNCE EXISTS, AND WE HAVE ACKNOWLEDGED THAT THIS SHOWING IS NOT HIGH.

Hudson v. Michigan, 547 U. S. 586 (2006).

THE POLICE MUST HAVE A REASONABLE SUSPICION THAT KNOCKING AND ANNOUNCING THEIR PRESENCE, UNDER THE PARTICULAR CIRCUMSTANCES, WOULD BE DANGEROUS OR FUTILE, OR THAT IT WOULD INHIBIT THE EFFECTIVE INVESTIGATION OF THE CRIME BY, FOR EXAMPLE, ALLOWING THE DESTRUCTION OF EVIDENCE.

United States v. Ramirez, 523 U. S. 65, 118 S. Ct. 992, 140 L. Ed. 2d 191(1998).

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WARRANTLESS SEARCH BASED ON EXIGENT CIRCUMSTANCES

In the presence of an emergency or dangerous situation described as an exigent circumstance, officials may lawfully make a warrantless entry into a home to effect an arrest.

State v. Guevara, 349 N. C. 243, 506 S. E. 2d 711 (1998).

A warrantless search may be conducted based on exigent circumstances.

State v. Nowell, 144 N. C. App. 636, 550 S. E. 2d 807 (2001).

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THERE IS NO BLANKET RULE THAT SAYS THIS APPLIES IN EVERY SEARCH FOR CONTROLLED SUBSTANCES

WE DISAGREE WITH THE WISCONSIN COURT'S CONCLUSION THAT THE FOURTH AMENDMENT PERMITS A BLANKET EXCEPTION TO THE KNOCK-AND-ANNOUNCE REQUIREMENT FOR THIS ENTIRE CATEGORY OF CRIMINAL ACTIVITY.

Richards v. Wisconsin, 520 U. S. 385 (1997).

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DOES THE EXIGENT CIRCUMSTANCES EXCEPTION APPLY TO ALL OFFENSES?

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IN WELSH v. WISCONSIN, 466 U. S. 740, 104 S. Ct. 2091, 80 L. Ed 2d 732 (1984), SUPREME COURT CONSIDERED THE FOLLOWING SITUATION:

- The defendant drove his car off the road at 9:00 p.m. one rainy night;
- A witness saw the defendant changing speeds, swerving from side to side and run off the road into an open field;
- There was no damage to any property or person;
- The defendant approached the witness and asked for a ride home;
- The witness suggested waiting for assistance and the defendant walked away;
- The defendant lived within short walking distance of the scene;
- The responding officer determined the defendant's address and when to his house;
- When the defendant's daughter answered the door, the police entered and found the defendant lying naked in bed; and
- The defendant was arrested for DWI which was a noncriminal violation for the first offense.

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IN WELSH, THE SUPREME COURT OPINED:

> IT IS DIFFICULT TO CONCEIVE OF A WARRANTLESS HOME ARREST THAT WOULD NOT BE UNREASONABLE WHEN THE UNDERLYING OFFENSE IS EXTREMELY MINOR.
>
> AN IMPORTANT FACTOR TO BE CONSIDERED WHEN DETERMINING WHETHER ANY EXIGENCY EXISTS IS THE GRAVITY OF THE UNDERLYING OFFENSE FOR WHICH THE ARREST IS BEING MADE.
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> APPLICATION OF THE EXIGENT-CIRCUMSTANCES EXCEPTION IN THE CONTEXT OF A HOME ENTRY SHOULD RARELY BE SANCTIONED WHEN THERE IS PROBABLE CAUSE TO BELIEVE THAT ONLY A MINOR OFFENSE HAS BEEN COMMITTED.
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> 466 U. S. at 753.

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IN MINNESOTA v. OLSON, 495 U. S. 91, 110 S. Ct. 1684, 109 L. Ed. 2d 85 (1990), THE SUPREME COURT CONSIDERED THE EXIGENT CIRCUMSTANCES EXCEPTION IN THE CONTEXT OF AN ENTRY TO EFFECT A WARRANTLESS ARREST.

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IN OLSON, THE FACTS REVEALED:

- The suspect was an overnight guest in the house of another person;
- The suspect was wanted in connection with a robbery and murder;
- The suspect was believed to be the driver of the getaway car;
- The other suspect had been arrested and the murder weapon had been recovered;
- The officers got a tip concerning the suspect's wheareabouts;
- The officers surrounded the duplex where the defendant was reported to be;
- Three or four "police squads" surrounded the house;
- There were other persons present in the residence although there was no suggestion that they were in danger;
- This event occurred at 3:00 p.m. on a Sunday afternoon; and
- After surrounding the house, officers called and instructed the suspect to come out. Officers heard a male say "tell them, I'm not here" and the person on the phone said that;
- THE OFFICERS MADE A WARRANTLESS ENTRY WITHOUT SEEKING PERMISSION AND WITH WEAPONS DRAWN.

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IN OLSON, THE SUPREME COURT CONCLUDED THERE WERE NO EXIGENT CIRCUMSTANCES:

- NO HOT PURSUIT—two days after the crime;
- NO EVIDENCE AT RISK;
- NO CHANCE OF ESCAPE; and
- NO INDICATION OF DANGER TO OTHERS.

WHY COULDN'T THE OFFICERS GET A WARRANT FOR HIS ARREST AND A SEARCH WARRANT FOR THE RESIDENCE?

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WHAT IS THE REMEDY?

DOES THE EXCLUSIONARY RULE APPLY?

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NO SAYS THE UNITED STATES SUPREME COURT.

Hudson v. Michigan, 547 U. S. 586 (2006).

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Application of the exclusionary rule to exclude evidence of crimes directed against the person of trespassing officers would in effect give the victims of illegal searches a license to assault and murder the officers involved—a result manifestly unacceptable.

State v. Guevara, 349 N. C. 243 (1998).

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N. C. Gen. Stat 15A-974(a)(2) provides that UPON TIMELY MOTION, EVIDENCE MUST BE SUPPRESSED IF:

IT IS OBTAINED AS A RESULT OF A SUBSTANTIAL VIOLATION OF THE PROVISIONS OF THIS CHAPTER (15A). IN DETERMINING WHETHER A VIOLATION IS SUBSTANTIAL, THE COURT MUST CONSIDER ALL THE CIRCUMSTANCES, INCLUDING:

a. THE IMPORTANCE OF THE PARTICULAR INTEREST VIOLATED;
b. THE EXTENT OF THE DEVIATION FROM LAWFUL CONDUCT;
c. THE EXTENT TO WHICH THE VIOLATION WAS WILLFUL;
d. THE EXTENT TO WHICH EXCLUSION WILL TEND TO DETER FUTURE VIOLATIONS OF THIS CHAPTER.

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A 2011 AMENDMENT TO N.C. GENERAL STATUTE 15A-974 ADDED THE FOLLOWING:

EVIDENCE SHALL NOT BE SUPPRESSED UNDER THIS SUBDIVISION IF THE PERSON COMMITTING THE VIOLATION OF THE PROVISION OR PROVISIONS UNDER THIS CHAPTER ACTED UNDER THE OBJECTIVELY REASONABLE, GOOD FAITH BELIEF THAT THE ACTIONS WERE LAWFUL.

THIS IS A GOOD FAITH EXCEPTION.

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State v. White, 184 N. C. App. 519, 646 S. E. 2d 609 (2007)

Officers who were executing a search warrant in a drug case:

- Knocked on the door;
- Waited five seconds: and
- Used a battering ram or breaching tool to forcibly enter the trailer.

During the search, the officers found cocaine, pistols, scales and money.

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THE DEFENDANT ARGUED THAT THE ENTRY VIOLATED N. C. GEN. STAT. 15A-251 BECAUSE THE STATE FAILED TO OFFER EVIDENCE TO SHOW THAT A COMMAND WAS GIVEN TO EXECUTE A FORCED ENTRY.

THE STATE CONCEDED THE ILLEGALITY OF THE ENTRY AND THE ISSUE WAS WHETHER A SUBSTANTIAL VIOLATION OF N. C. GEN. STAT. 15A-251 REQUIRED SUPPRESSION UNDER 15A-974.

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UNDER N. C. GEN. STAT. 15A-974:

> EVIDENCE WILL NOT BE SUPPRESSED UNLESS IT HAS BEEN OBTAINED AS A CONSEQUENCE OF THE OFFICER'S UNLAWFUL CONDUCT….THE EVIDENCE MUST BE SUCH THAT IT WOULD NOT HAVE BEEN OBTAINED BUT FOR THE UNLAWFUL CONDUCT OF THE INVESTIGATING OFFICER.

State v. White, 184 N. C. App. 519.

THE COCAINE WOULD HAVE LIKELY BEEN LOCATED EVEN IN THE ABSENCE OF THE FORCED ENTRY.

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State v. Willis, 58 N. C. App. 617, 294 S. E. 2d 330 (1982) affirmed per curiam, 307 N. C. 461, 298 S. E. 2d 388 (1983).

In Willis, the officers' simultaneous announcement and entry violated N. C. Gen. Stat. 15A-249 and 15A-251.

THE ISSUE WAS WHETHER TO SUPPRESS UNDER N. C. GEN. STAT. 15A-974.

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IN THIS INSTANCE, THE OFFICERS OBSERVED THREE PEOPLE NEAR A CAR OUTSIDE THE RESIDENCE WHEN THEY ARRIVED AND WERE CONCERNED THAT THEY MIGHT WARN THE OCCUPANTS TO DESTROY THE DRUGS IN THE HOUSE.

THE COURT OF APPEALS CONCLUDED IN WILLIS THAT:

> --THE DEVIATION WAS NOT EXTENSIVE NOR WILLFUL, AND THAT
> --EXCLUSION WOULD DO LITTLE TO DETER FUTURE VIOLATIONS.

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SUPRRESSION HAS BEEN ORDERED IN A KNOCK AND ANNOUNCE VIOLATION CASE.

In State v. Brown, 35 N. C. App. 634, 242 S. E. 2d 184 (1978), the facts showed:

--A search warrant was issued to search a residence for marijuana;
--The officers devised a plan to search the residence;
--The officers decided to stage a chase in which a sheriff's office vehicle would pursue an unmarked police car;
--The mock chase would stop at the defendant's house;
--Another plain clothes officer would be positioned at the defendant's house;
--When the defendant opened the door to investigate, that officer would enter and begin searching.

THE PLAN WENT OFF AND THE OFFICER PUSHED HIS WAY INSIDE TO SEARCH.

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THE COURT OF APPEALS HELD IN BROWN:

The protection of the public from unreasonable searches and the right to privacy were violated.
The officer did not knock or announce his purpose before entering.
This was a planned and deliberate violation of the statutes.
The exclusion would deter future violations.

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JUDICIAL ROLE IN APPLYING/ENFORCING THE KNOCK AND ANNOUNCE RULE IS LIMITED:

TIME FOR WAITING BEFORE ENTRY IS NOT LONG

A NUMBER OF EXCEPTIONS OR EXIGENCIES EXIST

OFFICERS CAN DETERMINE THAT AN EXIGENCY EXISTS AT THE SCENE

ONLY REASONABLE SUSPICION IS REQUIRED TO SHOW THAT AN EXIGENCY EXISTS

THE FEDERAL EXCLUSIONARY RULE DOES NOT APPLY

THE STATE STATUTORY EXCLUSIONARY RULE HAS A "BUT FOR" REQUIREMENT AND A GOOD FAITH EXCEPTION

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