AELE Monthly Law Journal

ISSN 1935-0007
Cite as: 2011 (3) AELE Mo. L. J. 101
Civil Liability Law Section – March 2011

No-Knock Home Searches

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Introduction

Besides the requirement of a warrant based on probable cause for entry into a home to conduct a search, the Fourth Amendment, under most circumstances, also requires that police knock and announce themselves before attempting entry.

This article briefly examines the nature of this requirement, and then discusses the exceptions that courts have recognized for exigent circumstances which justify officers dispensing with this requirement in particular instances. It then discusses some of the caselaw in which courts have ruled on claims for civil liability for no-knock home searches. At the end of the article, there is a list of some relevant resources and references.

The Knock-and-Announce Requirement

In *Richards v. Wisconsin*, #96-5955, 520 U.S. 385 (1997), the U.S. Supreme Court noted that the knock-and-announce requirement mandates that police officers, before forcibly entering a residence, "must knock on the door and announce their identity and purpose."

This requirement serves important goals, including protecting the safety of both residence occupants and officers by reducing violence, preventing the destruction of property, and protecting the privacy of the occupants. See *Bonner v. Anderson*, 81 F.3d 472 (4th Cir. 1996).

A violation of this requirement may, in some instances, lead to civil liability. In *Hudson v. Michigan* #04-1360, 547 U. S. 586 (2006), however, the U.S. Supreme Court held that the violation of this requirement does not mandate the suppression of the evidence obtained in the search through the exclusionary rule.

This is because "knock-and-announce" is only intended to provide a brief moment of privacy to compose himself before an otherwise valid search begins, and to help prevent him from mistakenly believing that the entering officers are unauthorized intruders who he should defend against, as well as enable him to comply with the search by opening the door, rather than letting it be broken down.

Exigent Circumstances

Rejecting the attempts by some courts to carve out broad exceptions to the knock-and-announce requirement on the basis of the category of crime (such as drug cases), the U.S. Supreme Court in *Richards v. Wisconsin*, #96-5955, 520 U.S. 385 (1997) instead required a case-by-case review to determine when there is a reasonable suspicion that there are exigent circumstances present justifying a no-knock entry.

In some instances, courts issue warrants authorizing no-knock entries, while in other cases, officers encounter exigent circumstances which justify a no-knock entry (and indeed, sometimes exigent circumstances can justify an entry without any warrant at all).

While it is not possible to list all of the possible exigent circumstances, they includes cases in which officers encounter a threat of physical violence, there is reason to believe that knocking and announcing is likely to result in occupants destroying evidence, and when knocking and announcing would be either dangerous or futile.

Civil Liability for No-Knock Home Searches

A good number of lawsuits have been litigated by plaintiffs claiming that officers improperly failed to comply with the knock-and announce requirement. In *Bellotte v. Edwards*, #10-1115, 2011 U.S. App. Lexis 520 (4th Cir.), the court held that police officers were not entitled to qualified immunity for executing a search warrant on a residence for evidence of child pornography in a no-knock manner. There were no circumstances indicating danger to the officers in executing the warrant, and the fact that some residents

had permits to carry concealed weapons only showed that they were citizens in good standing who passed a background check.

In some cases, courts addressing such claims, however, have found that circumstances justified the no-knock entry. One such example is *Dickerson v. McClellan*, 101 F.3d 1151 (6th Cir. 1996), in which the court ruled that officers who had a reasonable belief that there was someone inside a house in immediate peril of bodily harm were entitled to qualified immunity from a federal civil rights claim based on a failure to knock and announce before entering.

Similarly, in *Whittier v. Kobayashi*, #08-12998, 2009 U.S. App. Lexis 19488 (11th Cir.), the leader of a SWAT team that participated in a raid during which a woman's son, sought for drug offenses, was shot and killed, was entitled to summary judgment on the claim that he should be liable for the death due to the allegedly no-knock way in which the search warrant was executed. Whether or not a knock-and-announce occurred, which was disputed, the team leader was entitled to qualified immunity because knowledge of the nature of the drug trafficking, combined with information that the son was armed, provided reasonable suspicion that there were exigent circumstances justifying a no-knock entry.

In another case, a court ruled that officers who had a valid warrant authorizing no-knock entry reasonably believed that the occupant of a residence was armed and dangerous, since he had a history of having a "significant" number of guns, storing some of them in the walls within trap doors, owning a lion, and had not been seen leaving the residence before the entry.

The officers also acted reasonably, under the circumstances, in the amount of force used in the process of entry, which included use of tear gas and flash grenades, breaking two windows, and ramming a side door and damaging its latches. Other destructive acts once inside, including tearing through the ceiling to get to the attic, and making a hole in the wall, were justified to make sure that no persons or weapons were concealed. *Cook v. Gibbons*, # 07-1754, 2009 U.S. App. Lexis 1095 (Unpub. 8th Cir.).

The possibility of physical danger was the basis for a federal appeals court overturning a $2 million jury verdict on a no-knock entry and search in *Doran v. Eckold*, # 03-1810, 409 F.3d 958 (8th Cir. 2005).

In that case, Kansas City police officers executed a search warrant to search a man's home for drugs and other contraband. In entering, they used a tactic called “dynamic entry,” in which one officer, serving as a “ram officer,” yelled, “Police, search warrant,” and immediately hit the front door with his ram, breaking in on the third hit.

Another officer, serving as “point man,” entered the house before the residents had time to answer the door. When he reached the kitchen doorway, he saw an occupant running toward him pointing a handgun, yelled, “Police, search warrant, get down,” and fired when the man did not lower his weapon, hitting him twice and causing serious injuries.

The injured resident filed a federal civil rights lawsuit claiming that the officer who shot him used excessive force, and that an illegal entry had been made into his home, as well as other claims. The complaint alleged that the Board of Police Commissioners failed to train its officers on the Fourth Amendment restrictions on no-knock entries and acted with deliberate indifference to a custom and practice of no-knock entries.

A jury found in favor of the officer who shot the plaintiff, rejecting the excessive force claim. The trial judge however, ruled as a matter of law that exigent circumstances did not justify the no-knock entry, and as a result of the jury instructions on the illegal entry and failure to train claims, the jury returned a verdict in excess of $2 million for the plaintiff.

A federal appeals court disagreed, by a 6-1 vote, and ruled that the no-knock entry into the home was justified by exigent circumstances.

The investigation began on the basis of an anonymous tip about criminal activity allegedly occurring at the home, including that the home was being used to manufacture methamphetamine, to sell crack cocaine and methamphetamine at the front door, and to store drugs. The tip also indicated that guns were kept in the bedroom and that the plaintiff's 26-year-old son lived in the house and had recently been arrested for possessing a sawed-off shotgun.

Further investigation found methamphetamine residue in the trash, along with sandwich bags with the corners cut out, a common way for narcotics to be packaged and distributed, along with information verifying who lived in the house, and this resulted in the obtaining of a search warrant. The officers executing the warrant determined that it would be a “high-risk” situation and decided to use the “dynamic entry.” While one ounce of marijuana was found in the home, no other drugs were found, nor was a methamphetamine lab discovered.

The appeals court majority stated that to justify a "no-knock" entry, officers 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 allowing the destruction of evidence.

The appeals court noted that nothing requires that warrants must specify the precise manner in which they are to be executed, but that this is generally left to the discretion of the executing officers to determine, subject to the general Fourth Amendment protection "against unreasonable searches and seizures." It rejected, therefore, the trial court's indication that it was a problem that the warrant itself did not call for a no-knock entry.

The appeals court noted that suspicion that a house was harboring a clandestine methamphetamine lab has justified no-knock entries in prior cases. There is danger, testimony in the case indicated, from the chemicals and the types of products used to manufacture the drug. These chemicals are "very volatile, combustible, and "have caused explosion" and fire in the past.

The officers also had been told that ongoing drug street sales had been reported from the house and that numerous weapons were kept there, as well as that the plaintiff's son, a resident, had recently been arrested on an illegal weapons charge. While this information turned out to be inaccurate, reasonable suspicion that an armed and potentially dangerous resident will be present has also frequently justified no-knock entries, the court pointed out.

The court's majority found that this information established a reasonable suspicion of exigent circumstances justifying the no-knock entry, and overturned the award to the plaintiff.

Similarly, in *Battiste v. Rojeski*, 257 F. Supp. 2d 957 (E.D. Mich. 2003), the officers had exigent circumstances justifying their unannounced entry into the home to serve the search warrant. At the time of the search, there were three armed suspects "on the loose," with a "good chance" that they were hiding in the house being entered.

The possibility of the destruction of physical evidence, rather than the threat of physical danger to the officers was the basis for the no-knock entry in *Taylor v. City of Detroit*, #05-CV-70489, 2007 U.S. Dist. Lexis 4587 (E.D. Mich.).

In that case, the court found that the affidavit for a search warrant for an apartment provided adequate probable cause to believe that evidence of drug-related crime would be found there, and made it reasonable for officers to believe that a risk of the destruction of evidence justified execution of the search warrant at night. The occupant could not assert

her claim that the officers who searched her apartment failed to "knock and announce" before they entered, when she conceded that she was asleep when the officers entered.

In *Eiland v. Jackson*, #01-3139, 34 Fed. Appx. 40 (3rd Cir. 2002), the court ruled that the resident of a home who was not its owner had a reasonable expectation of privacy, but his privacy was not violated by noncompliance with the "knock-and-announce rule" when he was not present during the execution of a search warrant. Further, as a non-owner, he lacked standing to assert a claim for damage to the property, such as the breaking of doors.

The possibility that there is a crime in progress can justify a no-knock home entry, even without a warrant. In *Leaf v. Shelnutt*, # 04-1318, 400 F.3d 1070 (7th Cir. 2005), for instance, officers did not act unreasonably by entering an apartment without knocking, searching the premises, and attempting to awaken a naked man found on a bed inside when there were signs of what appeared to be a possible burglary, including a broken window.

Municipal liability for a no-knock entry was at issue in *Whittier v. City of Sunrise*, #10-10032, 2010 U.S. App. Lexis 19140 (Unpub. 11th Cir.). In that case, officers in SWAT gear, with the word "POLICE" displayed on the officers' chests, entered a home to serve a search warrant. An occupant ran towards his bedroom. When the officers knocked down the door, and entered the bedroom, yelling "Police," the man raised and pointed a gun at them, and they shot and killed him.

An unreasonable search and seizure claim against the city failed, as the plaintiff could not establish that the city had a custom or policy of entering homes to execute search warrants without first knocking and announcing police presence. Ample testimony established that standard police procedure was to knock and announce, and the plaintiff's ability to point to a small handful of cases in which officers did not do so was insufficient to show an unconstitutional policy or custom.

Resources

The following are some useful resources related to the subject of this article. .

- Knock-and-announce. Wikipedia article.
- No-knock Warrant. Wikipedia article.
- Search and Seizure: Home/Business. Summaries of cases reported in AELE publications.
- Search and Seizure: Search Warrants. Summaries of cases reported in AELE publications.

Prior Relevant Monthly Law Journal Articles

- Civil Liability for Exceeding the Scope of a Search Warrant, 2010 (1) AELE Mo. L. J. 101.
- Civil Liability and Affidavits for Search Warrants -- Part One, 2010 (4) AELE Mo. L. J. 101.
- Civil Liability and Affidavits for Search Warrants -- Part Two, 2010 (5) AELE Mo. L. J. 101.
- Home Searches and the Community Caretaking Doctrine, 2011 (1) AELE Mo. L. J. 101

References:

- "Recent Developments: Don't Knock Them Until We Try Them: Civil Suits As A Remedy For Knock-And-Announce Violations After Hudson v, Michigan, 126 S, Ct, 2159 (2006)," by Jonathan Papik, 30 Harvard Journal of Law & Public Policy No. 1, p. 417.
- "Knock Before Entry," by Devallis Rutledge, Police Magazine (Feb. 1, 2004).
- "Knock and announce: a Fourth Amendment standard," by Michael J. Bulzomi, FBI Law Enforcement Bulletin, (May 1997).
- "Police tactics, drug trafficking, and gang violence: why the no-knock warrant is an idea whose time has come," by Donald B. Allegro, University of Notre Dame, 1989, 64 Notre Dame L. Rev. 552.

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