



LGIT'S ROLL CALL REPORTER MARCH 2008

POLICE OFFICERS ON LEGITIMATE BUSINESS DO NOT COMMIT AN UNLAWFUL SEARCH OR SEIZURE BY APPROACHING A DWELLING MARKED WITH A "NO TRESPASSING" SIGN AND QUESTIONING THE OCCUPANTS ("KNOCK AND TALK")

QUESTION: Does the presence of a "No Trespassing" sign prevent an officer from approaching a dwelling, knocking on the door, identifying himself as a police officer, and asking questions of the occupants?

ANSWER: No. The presence of a "No Trespassing" sign does not automatically prevent an officer from engaging in "knock and talk" with the occupants of a dwelling.

CASE: *James Desmond Jones v. State*, Court of Special Appeals of Maryland
Decided February 28, 2008

In *Jones v. State*, the Court of Special Appeals revisited the process known as "knock and talk", in which a police officer approaches a dwelling, knocks on the door, identifies himself as a police officer, and asks questions of the occupants. The facts in the *Jones* case established that Darnell Brown, a known drug dealer, was murdered on January 13, 2006. His body had been driven to and dumped on the grounds of St. John's College in Annapolis. He had been shot multiple times in the chest. A cell phone case was found near the body but the phone was missing. Detective John Lee of the Annapolis City Police Department obtained Brown's cell phone records, which revealed a series of calls made to Brown in the moments just prior to his death. The calls were traced to someone named "Jones" who lived on Station Road in Kent County. Detective Lee, in the company of four other officers, including a Kent County Deputy Sheriff, traveled to 11299 Station Road in Kent County, the home of James Desmond Jones and his wife, Tammy Jones.

A long driveway that split to the left and right led to the residence. The officers did not observe any "No Trespassing" signs on the property. The officers approached the house and knocked on the door. The door was answered by the Webbs, an older couple, who said they were Tammy Jones' parents. Mrs. Webb, who was friendly and helpful, said that Tammy lived in the building next door and that she was concerned that her daughter "was into drugs". Detective Lee asked Mrs. Webb if she knew her daughter's telephone number. Mrs. Webb gave the number, which was the same one recorded in Brown's cell phone records. After speaking with the Webbs, the officers walked to the other side of the property, which included three other structures, a residence and two outbuildings.

One of the officers knocked on the door of the residence for several minutes without any answer. The door was finally opened by Tammy Jones, who came out and shut the door behind her. The officers asked if there was some place they could speak with her, and she suggested the adjacent outbuilding. She opened the door to the building and invited the officers in. The officers asked her about the other outbuilding, and she agreed to retrieve the key that opened it. She returned and opened the door. Inside was a tan Chevy Malibu. Ms. Jones said that her mother had rented the car for her use and that she was the only one who drove it. She also said that she had allowed her husband to drive the car one time. The officers asked if they could look inside the car, and Ms. Jones retrieved the car keys from her residence. She gave the keys to one of the officers who then opened the car door. When they looked inside, the officers observed what appeared to be a blood stain on the back seat and a bullet hole in the seat. The car was photographed and towed to the Annapolis police station. The officers then obtained a warrant to search it.

Based on all of the evidence, including DNA analysis and ballistics evidence, Jones was charged with second degree murder and the use of a handgun in the commission of a crime of violence. Prior to trial, he moved to suppress the evidence. His motion was denied and he was convicted and sentenced to a twenty-five year term of imprisonment. He appealed.

On appeal, Jones primarily contended that there was a “No Trespassing” sign on his property and that, as a result, the officers were unlawfully there. The court disagreed and affirmed his conviction. In doing so, the court rejected the notion that a “No Trespassing” sign automatically bars police entry onto property. Instead, the presence of a “No Trespassing” sign is considered only as part of the totality of the circumstances in the Fourth Amendment analysis. Here, the front of Jones’ house and the door were exposed to the public, and, as a result, Jones lacked any reasonable expectation of privacy with respect to entry into his yard and a knock on the door by investigating police officers. Consequently, the court reaffirmed that police officers on legitimate business who approach a dwelling to ask questions, including a request to search, do not commit an unlawful search or seizure of property. Similarly, they do not commit an unlawful seizure of the person. Instead, they are engaged in nothing more than another example of an “accosting”, in which no seizure has occurred because the person being questioned has the ability to terminate the questioning at any time and walk away.

NOTE: To engage in “knock and talk”, officers do not need to have in advance a particular level of incriminating information. Instead, they must only be engaged in legitimate official business. The police business may be administrative as well as investigative, and it may be action based on a suspicion that turns out to be without substantial basis, provided the suspicion is held in good faith rather than as a pretext for an arbitrary search. What some courts have found troubling are encounters of this kind that occur at a person’s residence, temporary or permanent, late at night. None have found a “seizure” based solely on that circumstance, but a number of courts have given weight to it, in conjunction with other factors, in determining that a “seizure” has occurred or that a resulting consent was not voluntary.

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