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A VIOLATION OF THE “KNOCK AND ANNOUNCE” RULE DOES NOT REQUIRE SUPPRESSION OF THE EVIDENCE SEIZED IN A SEARCH

QUESTION: Does a violation of the “knock and announce” rule require suppression of evidence found in a search?

ANSWER: No.

CASE: *Hudson v. Michigan*, United States Supreme Court, No. 04-1360
Decided June 15, 2006

In *Hudson v. Michigan*, the Supreme Court was called upon to determine whether the “exclusionary rule” is appropriate for violation of the “knock-and-announce” requirement. The “exclusionary rule”, which prevents governments from using illegally obtained evidence in criminal trials, is often applied by courts to encourage police to comply with the requirements of the constitution. One such constitutional requirement is the “knock and announce” rule, which requires police officers who are serving a warrant to announce their presence before entering a residence. In *Hudson*, a sharply divided (5-4) Supreme Court held that violations of the knock-and announce requirement did not justify application of the exclusionary rule.

The facts in *Hudson* established that police had obtained a warrant authorizing a search for drugs and firearms at the home of Booker Hudson. When the police arrived to execute the warrant, they announced their presence, but waited only a short time, perhaps “three to five seconds”, before opening the unlocked front door and entering the residence. Once inside, officers discovered large quantities of drugs, including cocaine rocks in Hudson’s pocket, and a loaded gun lodged between the cushion and armrest of the chair in which Hudson was sitting. Hudson was arrested and taken into custody.

In advance of his criminal trial, Hudson moved to suppress all of the incriminating evidence, arguing that the officers’ rapid entry violated the Fourth Amendment by failing to comply with the “knock and announce” rule. The state conceded that there had been a knock-and-announce violation, and the trial court excluded the evidence obtained in the search. The state court of appeals reversed this decision, relying on state supreme court cases holding that the exclusionary rule is inappropriate when entry is made with a warrant but without a proper “knock and announce”. Hudson was subsequently convicted of drug possession, and the state appellate courts upheld his conviction. The United States Supreme Court then agreed to review the case.

In reaching its decision, the Supreme Court first observed that the common-law principle that law

enforcement officers must announce their presence and provide residents an opportunity to open the door was “an ancient one”, and that the principle had become a command of the Fourth Amendment. The Court also observed that the knock-and-announce rule is not easily applied and that there are many situations in which it is not necessary to “knock and announce”. However, since the state in *Hudson* conceded that the rule had been violated, that issue was not before the Court. What remained was the question of whether the exclusionary rule was appropriate for violation of the knock-and-announce requirement.

Concerning this issue, the Court observed that, until a valid warrant has issued, citizens are entitled to shield “their persons, houses, papers, and effects”, U.S. Const. amend. IV, from the government’s scrutiny. Exclusion of evidence obtained by an unlawful *warrantless* search vindicates that entitlement. The interests protected by the knock-and-announce rule, however, are much different and “do not include the shielding of potential evidence from the government’s eyes.” Instead, the interests protected by the knock-and-announce rule are the protection of human life and limb, because an unannounced entry may provoke violence in supposed self-defense by a surprised resident; the protection of property that could be damaged by a forcible entry; and the preservation of those elements of privacy and dignity that can be destroyed by a sudden entrance, or, in other words, “the opportunity to collect oneself before answering the door.” What the knock-and-announce rule has never protected “is one’s interest in preventing the government from seeing or taking evidence described in a warrant.” Thus, the Court concluded, “[s]ince the interests that were violated in this case have nothing to do with the seizure of the evidence, the exclusionary rule was inapplicable.”

The Court further recognized that imposing the extreme remedy of exclusion of evidence for knock-and-announce violations would “generate a constant flood of alleged failures to observe the rule, and claims that any asserted . . . justification for a no-knock entry . . . had inadequate support. The cost of entering this lottery would be small, but the jackpot enormous: suppression of all evidence, amounting in many cases to a get-out-of-jail-free card.” In rejecting the argument that, without suppression, there would be no deterrence of knock-and-announce violations at all, the Court pointed to the rise in civil suits against police officers for constitutional violations and the increasing professionalism of police forces, including a new emphasis on internal police discipline. Based on all of these factors, the Court concluded that the social costs of applying the exclusionary rule to knock-and-announce violations were so considerable that “[r]esort to the massive remedy of suppressing evidence of guilt is unjustified.”

NOTE: This case, while important, must not be read as an abandonment of the Fourth Amendment’s “knock and announce” requirement. The knock-and-announce rule is still embedded in the United States Constitution and, unless one or more of the recognized exceptions applies, must be followed. The Supreme Court was clear that although knock-and-announce violations would no longer lead to the exclusion of evidence in criminal trials, these violations can still provide grounds for civil lawsuits against the officers who commit them. Concerning the exceptions to the rule, the Supreme Court has held that it is not necessary to knock and announce *only* under the following circumstances: 1) the situation poses a threat of physical violence; 2) there is reason to believe that evidence would likely be destroyed if advance notice were given; or 3) if knocking and announcing would be futile. If one of these justifications is relied upon, the police must demonstrate that they possessed a reasonable suspicion that one of these grounds for failing to knock and announce existed.

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