



## **LGIT'S ROLL CALL REPORTER JULY 2009**

### **Exigent Circumstances Justified the Warrantless Search of an Occupied Residence and Precluded Liability From Being Imposed Against the Officer**

**QUESTION:** Was it reasonable for an officer to search a home without a warrant where the objective circumstances led him to conclude that the home was being vandalized and that a missing teenage girl was inside and perhaps needed assistance?

**ANSWER:** Yes. Despite the fact that his conclusions turned out to be erroneous, the reasonableness of the officer's actions established that he did not violate the Fourth Amendment.

**CASE:** *Hunsberger v. Deputy Sheriff J.A. Wood, et al.*  
U.S.C.A. (Fourth Circuit), Decided June 29, 2009

In a recent case, the United States Court of Appeals for the Fourth Circuit again had occasion to examine the exigent circumstances exception to the warrant requirement. The facts in this case established that at 10:17 p.m., on February 2, 2007, Charlene Klik called 911 to report suspicious activity near her home in Roanoke, Virginia. She had noticed a number of cars coming and going from the home of her neighbors, Mark and Cheryl Hunsberger. Because the lights in the house were off and she had not seen her neighbors in a couple of days, Klik thought that the Hunsbergers might be on vacation. She saw teenagers getting in and out of the cars in front of the home and became concerned that vandalism or burglary might be taking place. In response to the call, Sergeant J.A. Wood and Deputy Sheriff Jody Edwards of the Botetourt County Sheriff's Office were sent to the scene. Deputy Edwards spoke briefly with Klik and then the deputies observed the home for several minutes. They saw that some of the lights were on and two cars were parked in front. Seeing and hearing nothing suspicious, however, the deputies left the scene at 10:37 p.m. At 12:10 a.m., Klik again called 911 and, again, Deputies Wood and Edwards were dispatched to investigate. While sitting in his vehicle, Sergeant Wood saw a young man enter the garage from the house, turn the lights on and off, and then reenter the house. Sergeant Wood also noticed that a third car was now parked in front of the house. Since all three of the parked cars partially blocked the road, the deputies decided to ask the persons inside of the house to move them. As the deputies pulled into the driveway, they saw the lights inside the house turn off. They exited their vehicles, approached the house, and rang the doorbell twenty-five or thirty times. No one answered. As they walked back to their vehicles, the deputies noticed that a side door

leading out of the garage was now open. Sergeant Wood walked into the garage and knocked on another door leading into the house. Again, no one answered.

The deputies returned to their vehicles and requested communications to help identify the owners of the parked cars. The deputies learned that the vehicles were owned by parents who had allowed teenage family members to use them that night. Each agreed to pick up his or her vehicle. The first parent who arrived said that he did not know the Hunsbergers and that his stepdaughter was supposed to be sleeping over at a friend's house. He had no idea why the car was parked in front of the Hunsbergers' house, and, when he couldn't reach his stepdaughter on her cell phone, he became concerned for her safety. The deputies decided to try ringing the front doorbell again. As they passed the garage, they heard something being knocked over. Sergeant Wood entered the garage and, as he did so, he heard the door that connected the garage to the basement shut and lock. The deputies allowed the parent to walk down the steps to this door, and to knock repeatedly while calling his stepdaughter's name. No one answered. Sergeant Wood then walked back into the garage and tried the door that led into the house. The door was unlocked and Sergeant Wood walked inside. Sergeant Wood loudly announced his presence and told anyone who might be hiding to come out. Since the lights were off, Sergeant Wood used his flashlight to search the first floor, then the basement. Finding no one, he moved to the second floor and began to look in the bedrooms. The first was empty, but in the second he saw a dog walk out from behind a partially open closet door. He found a teenager clad only in his boxer shorts sitting on the closet floor. When the deputy asked where the others were, the teen replied, "They're not here." In the next bedroom, Sergeant Wood found a female teenager hiding under the bedcovers. When Sergeant Wood walked back into the hallway, he encountered one of the homeowners, Mark Hunsberger, who had just woken up. Hunsberger demanded to know why the deputy was in his house. Sergeant Wood answered that he was looking for a missing teenager. At that point, Hunsberger suggested that they all go downstairs and they went to the kitchen. There, they were joined by Hunsberger's wife, who also had just woken up. They said the teenagers found by Sergeant Wood were their children and Hunsberger again demanded to know why the officer was in his house. He then told the officer to leave. Sergeant Wood left. The search itself had lasted for 10-15 minutes. After the officers left, the Hunsbergers' teenage son informed his parents that several of his friends who had come to the house earlier were still hiding in the basement. One of them was the "missing" stepdaughter of the parent who had come to the house to retrieve his car. The Hunsbergers drove her home.

As a result of the search of their home, the Hunsbergers sued the deputies for violations of their Fourth Amendment rights, specifically Sergeant Wood's entry into the home. Sergeant Wood's attorney moved for summary judgment arguing that the deputy had not violated the Fourth Amendment and that, as a result, he was entitled to qualified immunity. The United States District Court denied the motion and the deputy appealed.

The United States Court of Appeals for the Fourth Circuit reversed, finding that Sergeant Wood had not violated the Constitution. In doing so, the court first reflected that the defense of qualified immunity in police misconduct suits is designed to protect officers

whose conduct does not violate “clearly established” constitutional rights or constitutional rights of which a reasonable person would have known. Sergeant Wood had not violated the Fourth Amendment because the exigent circumstance exception to the warrant requirement applied. This exception allows warrantless entry into a residence if there is a compelling law enforcement need for official action and no time to secure a warrant. Here, the strong evidence of unauthorized intruders and all of the suspicious activity in and around the house, combined with evidence that a minor, and potentially “missing,” teenage girl might also have been in the house, would have given any reasonable officer in Sergeant Wood’s place reason to conclude that prompt, warrantless entry was necessary to protect not only the home but also to locate the missing teenager.

**NOTE:** The Hunsbergers argued that the deputies should merely have asked the dispatcher for their home telephone number and attempted to call them before entering their home without a warrant. The court rejected this argument, commenting that the fact that the protection of the public might have been accomplished by other, less intrusive means does not necessarily render the police action in this or in any other case “unreasonable.” Importantly, the court said that when faced with exigent circumstances, such as those encountered by the deputies here, the business of the police is to act, not to speculate or meditate on whether all of the information they have is correct.

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