



ROLL CALL REPORTER

November 2013

“Knock and Announce,” Warrantless Entries, and Civil Liability

QUESTION: Are there circumstances when officers are not required to “knock and announce” their presence prior to a forced entry?

ANSWER: Yes. A no-knock entry is justified where exigency already exists or will arise instantly upon knocking.

CASE: *Ryburn v. Huff*, Supreme Court of the United States
Decided January 23, 2012

In this case from 2012, the Supreme Court considered the “knock and announce” requirement that is implicit in the Fourth Amendment. The facts of the case showed that four officers of the Burbank (California) Police Department responded to a call from Bellarmine-Jefferson High School. When the officers arrived, the principal informed the officers that a student, Vincent Huff, was rumored to have written a letter threatening to “shoot up” the school. The principal said that many parents were aware of the rumor and had kept their children home. The principal asked the officers to investigate the threat. The officers interviewed the principal and two of Vincent Huff’s classmates and learned that Huff had been absent from school for two days and that he was frequently subjected to bullying. Another classmate told the officers that he believed Huff was capable of carrying out the alleged threat. The officers, all of whom had received training on targeted school violence, were aware that these characteristics were common among perpetrators of school shootings.

The officers next decided to interview Vincent Huff. When they arrived at his house, Officer Edmundo Zepeda knocked on the door and announced several times that the officers were with the Burbank Police Department. No one answered the door or otherwise responded to Officer Zepeda’s knocks. Sergeant Darin Ryburn, who was on the scene, then called the home telephone. The officers could hear a phone ringing, but no one answered. Sergeant Ryburn next tried calling the cell phone of Huff’s mother. When she answered, the Sergeant identified himself and asked about her location. She said that she was inside the house. When Sergeant Ryburn asked about her son’s location, Mrs. Huff said that he was inside the house with her. Sergeant Ryburn then asked Mrs. Huff and her son to come out and speak with the officers but Mrs. Huff hung up the phone. One or two minutes later, Mrs. Huff and Vincent Huff walked out of the house and stood on the front steps. The officers explained their mission and Vincent Huff said, “I can’t believe you’re here for that.” The officers asked Mrs. Huff if they could continue the discussion inside the house, but she refused. Based on his experience with juveniles, Sergeant Ryburn found Mrs. Huff’s refusal to be very unusual. He also found it odd that Mrs. Huff never asked why they were there.

As the discussion continued, Sergeant Ryburn asked if there were any guns inside of the house. Mrs. Huff responded by immediately turning around, and running into the house. Sergeant Ryburn ran into the house behind her. He did so because he did not know if there were guns inside and because, in his words, he had seen “too many officers killed.” Vincent Huff ran inside just behind Sergeant Ryburn and Officer Zepeda followed Vincent Huff. Officer Zepeda was concerned about “officer

safety” and did not want Sergeant Ryburn in the house alone. The two other officers on the scene were the last to enter the house. They thought that Sergeant Ryburn had been given permission to enter.

All of the officers gathered in the living room where Mrs. Huff was with her son. Vincent Huff’s father then entered the room and challenged the officers’ authority to be in the house. The officers remained for about 5 to 10 minutes. They continued to discuss the alleged threat but conducted no searches of persons or property. The officers ultimately concluded that the alleged rumor was false and they reported their conclusion to the school.

The Huffs sued the officers for violating their rights under the Fourth Amendment. They complained that the officers had entered their home without a warrant. A two day bench trial resulted in favor of the officers. The trial judge ruled that, based upon the uncertain danger(s) they faced, the officers did not violate the Fourth Amendment by entering the house without a warrant. The Huffs appealed.

The appellate court reversed as to the first two officers but affirmed as to the last two (who entered believing that consent had been given). As to Sergeant Ryburn and Officer Zepeda, the appellate court ruled that their warrantless entry violated the Fourth Amendment. The Supreme Court took up the case.

The Supreme Court decided that none of the officers had violated the Fourth Amendment. The Supreme Court reiterated that officers may enter a residence without a warrant *when they have an objectively reasonable basis for believing that an occupant is imminently threatened with serious injury*. The need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency. Here, based on the facts stated above, the Court found that any reasonable police officer could objectively have concluded that the officers and other occupants faced an imminent threat of violence. As such, no warrant was necessary.

NOTE: Warrantless entry was the central theme in this case, with “knock and announce” being a distant secondary issue. Officers need to be reminded, however, that the Fourth Amendment incorporates the common-law principle that *officers must knock and announce their identity and purpose before attempting forcible entry of a dwelling*. The general knock-and-announce requirement is not a rigid rule of announcement that ignores countervailing law enforcement interests. Countervailing circumstances may include a reasonable suspicion that knocking and announcing the police 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. In short, a no-knock entry is justified only where exigency already exists or will arise instantly upon knocking. Finally, as to the length of time police must wait between knocking-and-announcing and forcibly entering a residence, the Supreme Court has held that a 15–20 second wait was reasonable when executing a warrant for the seizure of disposable narcotics. The Court's reasoning made clear that when police are afraid that announcing their presence and purpose will prompt the destruction of evidence, the appropriate constitutional inquiry is how long they must wait to enter after they have announced, not whether they should announce at all.

By John F. Breads, Jr., Director of Legal Services, Local Government Insurance Trust

This publication is designed to provide general information on the topic presented. It is distributed with the understanding that the publisher is not engaged in rendering legal or professional services. Although this publication is prepared by professionals, it should not be used as a substitute for professional services. If legal or other professional advice is required, the services of a professional should be sought.