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Police Law Bulletin

City Attorneys' Office Toni M. Russ, Senior Assistant City Attorney

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FOURTH CIRCUIT COURT OF APPEALS

Arrest Warrant Did Not Authorize Entry Into A Third-Party's Residence

U.S. v. Brinkley, 980 F.3d 377 (Nov. 13, 2020).

A federal-state task force in Charlotte sought to serve an arrest warrant on the defendant, Kendrick Brinkley. Agents obtained several potential addresses for the defendant, including a residence where the water account for the property was in the defendant's name and another residence belonging to a woman who they suspected was the defendant's girlfriend. Agents were not sure which residence belonged to the defendant, but went to the girlfriend's apartment to perform a knock and talk. Five police officers arrived and knocked on the door at 8:30 a.m. The woman opened the door and denied that the defendant was present in the home. The officers heard movement in the back of the apartment and believed that the woman was acting nervously. She refused consent to allow the officers inside. The officers nonetheless entered the apartment and found the defendant in a back bedroom. Cocaine and firearms were also found, and the defendant was charged with various offenses.

He moved to suppress, arguing that officers had no reason to believe he resided in the apartment or that he would be present there when they entered to execute the arrest warrant. The district court denied the motion and the defendant pled guilty, reserving his right to appeal. The defendant then appealed to the Fourth Circuit Court of Appeals who reversed the district court's denial of his motion.

When police officers seek to enter a home based upon an arrest warrant, the Fourth Amendment imposes specific and different requirements for entry based on whether the home is the suspect's own residence or someone else's. A valid arrest warrants gives officers authority to enter a dwelling in which the suspect lives when there is probable cause to believe the suspect is within. However, an arrest warrant alone does not authorize police to enter a third party's residence. Absent exigent circumstances or consent, police must obtain a search warrant to enter a

residence not belonging to the subject of the arrest warrant, and must have probable cause to believe that the defendant will be present inside.

Applying that standard, the Court concluded that officers here lacked probable cause to believe that the apartment was the defendant's residence. The information known to officers showed the defendant likely resided at multiple locations, including one where he had a utility account in his name. That location, and multiple other potential residences, were not investigated. "Had the officers ruled out any of these alternatives, it could have bolstered their theory that [the defendant] resided in the [woman's] . . . apartment." While there was evidence to assume the defendant might be staying at the apartment, it failed to establish the defendant was residing there.

Even assuming officers had probable cause to believe that the apartment was the defendant's residence, they lacked probable cause to believe that the defendant would be present at the time. The government argued that the early morning hour, the two-minute delay in the door being answered, the woman's nervousness, her glances towards the back of the apartment, and sounds heard inside by officers during the encounter with the woman all supported a reasonable belief that the defendant was present.

The Court rejected these factors, finding that the officers' uncertainty as to Brinkley's residence undermined the evidentiary strength of any possible signs of his presence. It is not unusual to find multiple individuals at home at 8:30 in the morning. As to the purported delay in answering the door, the court believed that two minutes was not an unusual amount of time for a woman, in her pajamas, to respond to an unanticipated knock. While the noises in the apartment and the girlfriend's reaction to them indicated someone was present, nothing was particularized to the suspect. The noises could have been made by anyone and the girlfriend's look towards the back of the apartment was a typical reaction to any source of noise. The Court found that the only evidence that someone was present that was even arguably particularized to defendant was the girlfriend's nervousness. But, the court went on to note that it would be common for people to exhibit signs of nervousness when confronted by five armed police officers crowding the door to their apartment. The court observed:

"Police here conducted no independent investigation or observation of the . . . apartment to determine whether [the defendant] was within. They stacked a hunch about [the girlfriend's] nervousness atop a hunch about [the defendant's] residence." The district court's denial of the motion to suppress was therefore reversed, the convictions vacated, and the matter sent back for further proceedings.

NORTH CAROLINA COURT OF APPEALS

Law Enforcement Officers Exceeded The Scope Of The Implied License To Conduct A Knock and Talk

State v. Fall, ___ N.C. App. ___ (Dec. 15, 2020).

Gastonia Police received an anonymous complaint that defendant, Michael Falls, was selling and growing marijuana out of his home, and that he possessed a revolver despite being a convicted felon. The next day, law enforcement decided to conduct a knock and talk to further investigate the complaint. Around 9:30 p.m., three officers went to defendant's house to conduct their investigation despite the fact that "they usually do the knock and talks . . . during the daylight hours." The officers parked in a church parking lot next to defendant's house. They then walked where "the road met the defendant's property line." They saw an individual, who they believed was their suspect, get inside of a vehicle. Wanting to make contact with him before he left, the officers made a beeline for defendant's car. In so doing, they cut into defendant's front yard and between the trees, "which gave them concealment," past a No Trespassing sign, and straight to the vehicle. The car was running and starting to reverse out of the driveway. As the officers approached, they turned on their flashlights and shined them at defendant's vehicle. Two officers went to the driver side window while the third officer went around to the passenger side. They immediately noticed a revolver lying in the passenger seat and smelled the odor of marijuana coming from the vehicle. After asking defendant his name and whether he lived at the house, the officers asked defendant to step out of the vehicle, conducted a frisk and recovered the gun from the vehicle. Afterwards, officers went to the front door of the residence and knocked several times. When defendant's fiancée opened the door, the officer could smell the odor of marijuana coming out of the residence. Officers applied for and received a search warrant. Marijuana, paraphernalia, methamphetamine, and counterfeit $100 bills were found in the home.

Defendant was charged with various drug offenses, possession of counterfeit instruments, and possession of a firearm by a felon. Defendant moved to suppress. During that hearing, one of the officers testified as follows regarding how people might access defendant's front door: "The sidewalk would be what anybody that was going door-to-door selling anything would take, they would go down—up the little sidewalk that jets off the driveway." Ultimately however, the trial court denied defendant's motion. Defendant pled guilty to all charges reserving the right to appeal. Defendant then appealed to the Court of Appeals arguing that officers exceeded the scope of any implied license to enter his premises to conduct a knock and talk.

When conducting a knock and talk, law enforcement may not act outside the scope of the homeowner's "implicit license" to enter his/her curtilage, which typically permits a visitor to approach the home by the front path, knock promptly, wait briefly to be received, and then (absent invitation to linger longer) leave. This implied license to enter the curtilage extends only

to the entrance of the home that a 'reasonably respectful citizen' unfamiliar with the home would believe is the appropriate door at which to knock. The Supreme Court has noted that making such a determination does not require expert legal knowledge; it is generally managed without incident by Girl Scouts and trick-or-treaters.

The scope of the implied license to conduct a knock and talk is governed by societal expectations, and when law enforcement approach a home in a manner that is not "customary, usual, reasonable, respectful, ordinary, typical, nonalarming," the Fourth Amendment is implicated. Thus, a court will look at how law enforcement approached the home, the hour at which they did so, and whether there were any indications that the occupant of the home welcomed uninvited guests on his or her property. In short, the Court asks whether the behavior of law enforcement is in line with something a "reasonably respectful citizen" (or a Girl Scout) would do.

After considering the factors mentioned above, the Court held that the officers in this case did not act like reasonable, respectful citizens. The officers here carried out the knock and talk at night, a time when members of society do not expect to be called upon at their homes unexpectedly and a practice not customary for the officers. Additionally, the officers parked their vehicles in an adjacent lot, approached the defendant's home in the dark, dressed in dark clothing, and cut through trees, rather than parking in the driveway or street and proceeding towards the home along the paved path. The officers also passed directly by a plainly visible no trespassing sign which indicated the defendant's yard was not open to public visitors. Based on these factors, the Court of Appeals determined that the conduct of the officers implicated the Fourth Amendment because they "strayed beyond the bounds of a knock and talk; therefore, the seizure of evidence based on their trespassory invasion cannot be justified under the plain view doctrine." The motion to suppress therefore should have been granted.