

## U.S. Supreme Court Upholds Warrantless Police Search

In a decision on the case *Kentucky v. King*, No. 09-1272 issued just last month, the U.S. Supreme Court addressed the question of under what circumstances police officers may make a warrantless probable cause entry into a home to prevent the destruction of evidence.

The Fourth Amendment to the U.S. Constitution provides, “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, support by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” From this text comes the basic principle of Fourth Amendment law that warrantless searches and seizures of homes are presumptively unreasonable. This presumption, however, may be overcome when “‘the exigencies of the situation’ make the needs of law enforcement so compelling that [a] warrantless search is objectively reasonable under the Fourth Amendment.” The U.S. Supreme Court has recognized several of these “exigent circumstances” justifying a warrantless search of a home. They include the “emergency aid” exception (rendering emergency assistance to an injured person or preventing an imminent injury); pursuing a fleeing suspect; and preventing the imminent destruction of evidence. In applying this rule over the years, many lower courts have devised their own exception to the exception called the “police-created exigency” doctrine. Under this rule – of which there are five different iterations – police officers are prohibited from justifying warrantless searches on the basis of these exigencies when the circumstances supporting them are impermissibly created by the police.

The facts of this case originate in Lexington, Kentucky, where police officers set up a drug deal. An undercover police officer who observed the deal take place radioed uniformed officers that the suspect was heading towards the breezeway of a nearby apartment complex. The officers arrived on the scene in time to hear one of the two doors at the end of the breezeway close. The question was which one? The officers smelled marijuana smoke coming from the apartment on the left, knocked “as loud as they could,” and announced their presence. Sounds emanating from inside led them to suspect that evidence was being destroyed. The officers announced that they were entering, which they did by kicking in the door. Inside, the officers found Hollis King, his girlfriend, and a guest who was smoking marijuana. They also found powder and crack cocaine, cash, and drug paraphernalia. But the officers did *not* find the suspected drug dealer who was the target of their investigation. (He was in the apartment on the right.)

The Kentucky Supreme Court held that the police in this case created the exigency because it was reasonably foreseeable that the occupants of the apartment would destroy evidence when the police knocked and announced their presence.

Justice Alito, writing for the 8-1 Court majority, disagreed with the Kentucky Supreme Court, reasoning instead that a warrantless entry to prevent the destruction of evidence is allowed so long as the police do not gain entry by means of violating or threatening to violate the Fourth Amendment by, for example, threatening to break down the door if it wasn’t opened. In this respect, Justice Alito noted, police officers without warrants stand on the same footing as any private citizen. It doesn’t matter if the person knocking on the door is a police officer or private citizen – the occupant has no obligation to open the door or to speak to either. On the other hand,

“Occupants who choose not to stand on their constitutional rights but instead elect to attempt to destroy evidence have only themselves to blame for the warrantless exigent-circumstances search that may ensue.”

The decision is a favorable one for the law enforcement community as courts will continue to look to whether police officers have an objectively reasonable basis for believing that evidence is going to be destroyed rather than their subjective intent to determine whether a warrantless entry is reasonable. It is worth noting that in conducting this analysis, the Court recognizes the “fact that police officers are often forced to make split-second judgments in circumstances that are tense, uncertain, and rapidly evolving,” resulting in sometimes the wrong door being chosen.

***VLCT Newsletter, July, 2011***

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