

# **DPS TRAINING BULLETIN**



**LEGAL BULLETIN NO. 330** May 14, 2008

## VIOLATION OF "KNOCK-AND-ANNOUNCE" REQUIRES SUPPRESSION OF EVIDENCE

Reference: Craig Nicholas Berumen II Alaska Court of Appeals
v. Opinion No. 2164
State of Alaska \_\_\_\_\_P.3d\_\_\_\_
May 2, 2008

#### FACTS:

Anchorage Police had a warrant to arrest Berumen. They went to Berumen's hotel room, knocked on the door, but did not announce who they were. One officer later testified that they were hoping that they could gain entry by having someone simply come to the door. The officers knocked for about twenty seconds but no one responded. The officers then used a hotel pass key and entered the room. They announced that they were Anchorage Police officers but they still made no announcement for entering the room (service of the arrest warrant), and they never asked permission to enter.

The officers found four persons in the room, including Berumen. The officers found marijuana and cocaine in plain sight, which led to Berumen's arrest for the drug charges as well as two counts of second-degree contributing to the delinquency of a minor (because there were two minors in the room with Berumen and the drugs.)

Berumen argues that the police violated Alaska's "knock and announce" statute, AS 12.25.100, and that the evidence should be suppressed. AS 12.25.100 declares that a law enforcement officer is authorized to break into a building to effect an arrest, but only "if the officer is refused admittance after the officer has announced the authority and purpose of the entry."

The entry of a hotel room with a pass key is a "breaking" for purpose of knock and announce statutes.

## ISSUE:

Did the police violate AS 12.25.100 when they entered Berumen's hotel room?

<u>HELD</u>: Yes - - the fact that police officer's knock on the door of a dwelling and identify themselves as police officers does not, standing alone, satisfy the knock and announce requirement.

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#### **REASONING:**

1. Although the U.S. Supreme Court concluded (see <u>Hudson v. Michigan</u> Legal Bulletin No. 309) that a violation of the federal "knock and announce" law does not require suppression of evidence; the issue before us is one of state law. The United States Supreme Court decision in Hudson does not bind us.

- 2. Alaska's "knock and announce" statute (AS 12.25.100) reads: "Breaking into building or vessel to effect arrest. A peace officer may break into a building or vessel in which the person to be arrested is, or is believed to be, if the officer is refused admittance after the officer has announced the authority and purpose of the entry." (Emphasis added)
- 3. Although the police officers here identified themselves as police officers, they never announced the authority for, and the purpose of, their entry into Berumen's hotel room.
- 4. The mere fact that law enforcement officers come to the door of a dwelling and knock on the door does not, by itself, serve to notify the occupants that the officers have the authority and purpose to force their way in, regardless of the wishes of the occupants and this remains true even if the officers, while knocking, identify themselves as law enforcement officers. In Berumen's case, the police never announced their authority or purpose for entering the hotel room, nor was there any other circumstance (exigent or other) that would have made the officers' purpose clear to the occupants.
- 5. The police officers in this case violated a longstanding requirement of Alaska law that is designed to protect the privacy and dignity of this state's citizens. The evidence found in the hotel room was "secured through such a flagrant disregard" of the procedure specified by the Alaska legislature that it "cannot be allowed to stand without making the courts themselves accomplices in willful disobedience of the law." The evidence is suppressed.

### NOTE:

The court points out in this opinion that police officers may not be paying sufficient attention to AS 12.25.100. During the evidentiary hearing in this case, one of the officers could not remember that one of the reasons for the "knock and announce" statue is to protect citizens' privacy. A second officer testified he had no idea why the officers failed to abide by the requirement.

Section 2397 of the 1913 Compiled Laws of the Territory of Alaska codified essentially the same "knock and announce" requirement that is found in our current statute.

Nothing has changed when executing a warrant. You must KNOCK AND ANNOUNCE -- POLICE WITH A WARRANT! Talking in normal voice or a whisper will not work.

### NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEF MANUAL:

File Legal Bulletin No. 330 numerically under Section R of the manual.