



## DPS TRAINING BULLETIN



LEGAL BULLETIN NO. 354

May 27, 2011

### WARRANTLESS EMERGENCY ENTRY INTO PRIVATE RESIDENCE TO PREVENT DESTRUCTION OF EVIDENCE

**Reference:**

Kentucky  
v.  
Hollis Deshaun King

United States Supreme Court  
No. 09-1272  
U.S. \_\_\_\_\_  
May 16, 2011

**FACTS:**

Police set up a controlled buy of crack cocaine outside an apartment complex. An undercover officer watched the deal go down from a parked car and radioed to two uniformed police officers to move in on the suspect who was moving quickly toward the breezeway of an apartment building. He urged the officers to "hurry up and get there" before the suspect entered an apartment. In response to the radio alert, the officers immediately drove into the nearby parking lot. Just as they entered the breezeway they heard a door shut and detected a very strong odor of burnt marijuana. At the end of the breezeway, the officers saw two apartments, one on the left and one on the right, and they did not know which apartment the suspect had entered. The undercover officer in the car radioed the officers that the suspect was running into the apartment on the right but the officers did not hear this statement because they had already left their vehicles. Because they smelled marijuana smoke emanating from the apartment on the left, they approached the door of that apartment. The officers banged on the left apartment door as loud as they could and announced "this is the police" or "police, police, police." As soon as they banged on the door the officers could hear people inside moving, and it sounded as though things were being moved inside the apartment. The officers later testified they believed that drug-related evidence was about to be destroyed.

At the point the officer announced that they were going to make entry, one of the officers kicked in the door and found three people in the room. Hollis King, his girlfriend, and a guest who were smoking marijuana. The officers performed a protective sweep of the apartment during which they saw marijuana and powder cocaine in their plain view. In a subsequent search, they also discovered crack cocaine, cash, and drug paraphernalia.

KING entered a conditional guilty plea (similar to AK Cooksey v. State) reserving his right to appeal his suppression motion which he based on illegal entry by the police. Ruling on the Fourth Amendment, the

Kentucky Supreme Court agreed with KING. The State of Kentucky appealed to the U.S. Supreme Court.

It should also be noted the police eventually entered the apartment on the right. Inside, they found the suspected drug dealer who was the initial target of their investigation.

**ISSUE:**

Did an exigency exist that would justify the warrantless entry into the apartment to prevent the destruction of evidence?

**Held.** Yes. The police did not create the exigency by engaging or threatening to engage in conduct that violates the Fourth Amendment, warrantless entry to prevent the destruction of evidence is reasonable and therefore allowed.

**REASONING:**

1. It is well established that "exigent circumstances" including the need to prevent the destruction of evidence, permit police officers to conduct an otherwise permissible search without first obtaining a warrant.
2. Faulting the police for failing to apply for a search warrant at the earliest possible time after obtaining probable cause imposes a duty that is nowhere to be found in the (U.S.) Constitution.
3. The exigent circumstances rule applies when the police do not gain entry to premises by means of an actual or threatened violation of the Fourth Amendment. This holding provides ample protection for the privacy right that the amendment protects.
4. When law enforcement officers who are not armed with a warrant knock on a door, they do no more than any private citizen might do. The occupant has no obligation to open the door or speak.
5. 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.

**NOTES:**

Keep in mind that this case was decided by the U.S. Supreme Court based on the Fourth Amendment. Although this was an 8-1 majority, very rare in criminal cases, the Alaska Court of Appeals could take the opposite opinion based on Alaska's Constitution. Alaska Courts will view this issue based on Article 1, Section 14 (search and seizure) and Article 1, Section 22 (right to privacy). If the Alaska Courts have occasion to hear a case with this issue it is unclear how they will rule based on our Constitution. In the past, our courts have taken the opposite view of the U.S. Supreme Court in several cases. A couple of examples are: State v. Siftsoff, Legal Bulletin 349, involving hot pursuit and Brown v. State, Bulletin 328, involving a consent issue where our Court of Appeals

criticizes the U.S. Supreme Court's interpretation of the Fourth Amendment for failing to adequately protect citizens from unwarranted intrusion.

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