



A T T O R N E Y S

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## Recent Supreme Court Case: KNOCK AND ANNOUNCE RULE

By Kevin Smith

**HUDSON V. MICHIGAN:** No. 04-1360 Decided June 15, 2006

The Supreme Court recently handed down a ruling that is generating a fair amount of news coverage and commentary. The case is indeed important for law enforcement.

### Facts:

Michigan Officers serving a search warrant violated the “knock-and-announce” rule upon entering the premises. Drugs and weapons were found as a result of the search.

### Issue for the Supreme Court:

Should the evidence found pursuant to the warrant be excluded? In other words, should the “exclusionary rule” be invoked where officers merely violate the knock-and-announce rule, but otherwise conduct a proper search pursuant to a valid warrant?

### Ruling:

No. The Court ruled that the Exclusionary Doctrine will no longer be used to suppress evidence merely for knock-and-announce violations.

### Reasoning:

Justice Scalia noted that the exclusionary rule was no longer necessary to deter police from violating the knock-and-announce rule, because officers already face sufficient deterrence in the form of possible civil suits and internal police discipline (deterrents that weren't necessarily effective at the time of *Mapp v. Ohio* in 1961—a historical period Scalia termed the “heydays of exclusionary-rule jurisprudence.”).

Significantly, Scalia spoke of the “increasing professionalism of police forces,” and “wide-ranging reforms in the education, training, and supervision of police officers.” Scalia also pointed to “increasing evidence that police forces across the United States take the constitutional rights of citizens seriously.” In view of these factors and many others, Scalia believed the social costs (“releasing dangerous criminals into society”)

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would be too high for exclusion of evidence based upon knock-and-announce violations alone.

### **CAUTION - WHAT THIS CASE MEANS FOR NORTH CAROLINA OFFICERS:**

This case may be easily misinterpreted by officers who learn of this ruling from “talking heads” commentators widely featured on TV news this morning (as I have often said, “*never get your legal update from CNN or Dan Rather*”). **Police commanders should ensure that officers understand that the knock-and-announce requirement is still in force, and has not been eliminated by the Hudson ruling.**

Here is the bottom line: Officers must observe the “knock-and-announce” rule as always. Officers should also be reminded that our North Carolina knock-and-announce statutes, G.S. § 15A-249 and -251, are unaffected by this ruling. Here they are for review:

#### **§ 15A-249 Officer to give notice of identity and purpose.**

The officer executing a search warrant must, before entering the premises, give appropriate notice of his identity and purpose to the person to be searched, or the person in apparent control of the premises to be searched. If it is unclear whether anyone is present at the premises to be searched, he must give the notice in a manner likely to be heard by anyone who is present.

#### **§ 15A-251 Entry by force.**

An officer may break and enter any premises or vehicle when necessary to the execution of the warrant if:

- (1) The officer has previously announced his identity and purpose as required by G.S. 15A-249 and reasonably believes either that admittance is being denied or unreasonably delayed or that the premises or vehicle is unoccupied; or
- (2) The officer has probable cause to believe that the giving of notice would endanger the life or safety of any person.

What *has* changed is whether the court will automatically exclude evidence on federal constitutional grounds where the knock-and-announce rule has been violated. No longer will this occur. As a final note, we should remember that North Carolina has its own exclusionary rule created by statute (G.S. § 15A-974), apart from the federal exclusionary rule dating to *Mapp v. Ohio*. It is my hope that the *Hudson* ruling will be helpful to law enforcement interests by providing fair guidance to North Carolina courts in their determination of whether a “substantial violation” has occurred on knock-and-announce cases.

#### **QUICK REVIEW OF AN IMPORTANT CASE:**

*United States v. Banks*, 540 U.S. 31 (2003) - The proper measure of “how long officers must reasonably wait before forcing entry after knocking and announcing” is not how long it would take the resident to reach the door, but how long it would take for the occupants to dispose of the suspected drugs.

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