

Legal Sidebar

Officers May Be Liable for Assuming an Automatic Hot Pursuit No Knock Exception

10/15/2015

Police officers who ignore the Constitution's clear demands lose the benefit of their immunity from civil suit. The Fourth Amendment requires that officers, who seek to enter a house to conduct a search or make an arrest, first knock, identify themselves, and announce their purpose, unless it would be dangerous or futile for them to do so. The full complement of judges on the U.S. Court of Appeals for the [Fifth Circuit](#) recently declined to revisit the decision of one of its three-judge panels which had held that an officer in pursuit of a fleeing suspect is not automatically free to follow him into a house without knocking first.

The [case](#), *Trent v. Wade*, began when an officer noticed two all-terrain vehicles (ATVs) racing on a closed off portion of the highway at 2 a.m. He attempted to make a traffic stop. One of the vehicles took off across a pasture, and its driver entered a house. The officer, without first knocking or identifying himself, opened an unlocked door, entered, and shouted for the occupants to come down from the second floor bedrooms. Before they could comply, the officer went outside to confer with an arriving backup team. The officers then reentered with guns drawn, again without first knocking, identifying themselves, or announcing their purposes, and demanded to know the whereabouts of the "kid" who had committed the felony of fleeing from the traffic stop.

They arrested the kid and seized his ATV. The grand jury refused to indict him. The occupants of the house sued the officer in U.S. district court under federal [civil rights laws](#). The officer asked that the suit be thrown out on the basis of his [qualified immunity](#). Public officials are entitled to qualified immunity for conduct committed in the performance of their duties. The purpose of the immunity is to protect officials from the inconvenience, cost, and trauma of civil litigation. They lose that immunity for conduct that they should have known was clearly in violation of the law.

Since immunity is designed to spare officials the inconvenience of a trial, an official will usually ask the court before trial to throw the case out on the basis of his qualified immunity – i.e., grant the officer's motion for summary judgment. The court will grant the motion unless the plaintiff can show there is some dispute over whether the official is entitled to qualified immunity. To overcome an official's claim of immunity, a plaintiff must show "(1) that the official violated a statutory or constitutional right, and (2) that the right was 'clearly established' at the time of" the officer's alleged violation. The [district court](#) refused to grant summary judgment based on the officer's qualified immunity without an examination of the specific circumstances surrounding the officer's entry. The Fifth Circuit [panel](#) agreed that the officer could not claim a per se hot pursuit exception to the Fourth Amendment's no knock rule.

The [Fourth Amendment](#) condemns unreasonable searches and seizures. The condemnation applies when a search is unreasonably conducted or a seizure unreasonably accomplished. More to the point here, it [requires](#) that officers who seek to enter a house in order to conduct a search or seizure must first knock and announce their purpose, absent certain exigent circumstances. From the [panel](#)'s perspective the exceptions come into play when compliance would be either dangerous or futile. Moreover, the exceptions are fact specific. "In each case, it is the duty of a court confronted with the question to determine whether the facts and circumstances of a particular entry justify dispensing with the knock-and-announce requirement."

By a vote of 10-5, the judges of the [Fifth Circuit](#) let stand the panel's decision that "[i]n light of the materiality of the

genuine issues of fact regarding whether [Officer] Wade violated clearly established Fourth Amendment rights when he entered the Trents' home without knocking or announcing his presence, the district court was correct to deny qualified immunity.” The dissenters voted to rehear the case out of concern for officer safety.

Posted at 10/15/2015 10:17 AM