



CMPD POLICE LAW BULLETIN

A Police Legal Newsletter

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Forward: In this issue, we review three recent United States Supreme Court Cases. In *Brigham City*, the Court clarified when we can enter a residence without a warrant to administer emergency aid. The Court relying on common sense (and a little precedent) noted that police do not need to sit back and wait until someone is half dead or unconscious before making a warrantless entry into a residence. Rather, a drunken fracas inside a house that involved a juvenile exchanging a punch with one of the several adults who were trying to "restrain" him was of sufficient severity for police to enter and prevent further violence under the emergency aid doctrine. In addition, the United States Supreme Court slammed the door shut on whether the exclusionary rule is the appropriate remedy under the Fourth Amendment against officers who fail to comply with the knock and announce rule. In *Hudson*, the Court found the societal harm caused by excluding evidence at trial outweighed the individual interests protected by the knock and announce rule. In addition, the Court noted that the threat of a federal civil rights suit provides sufficient deterrence to ensure that officers comply with the knock and announce rule. Finally, we examine *Sanchez-Llamas v. Oregon* wherein the Court refuses to extend the exclusionary rule as a remedy for an officer's failure to contact a foreign national's consular office pursuant to Article 36 of the Vienna Convention.

Also, we have included a short article on "Excited Delirium" which provides some suggestions to officers when they come into contact with someone who is highly agitated. The Police Attorneys Office would like to thank the Institute for the Prevention of In-Custody Deaths, Inc. and its CEO John Peters, M.B.A. and Ph.D. for allowing us access to his materials found within the Instructor Workbook.

Finally, we respond to some recent questions we have received concerning the operation of golf carts on public roads

BRIEFS:

UNITED STATES SUPREME COURT:

**Fourth Amendment/Search and Seizure/Warrantless Entry/
Emergency Aid:** *Brigham City V. Stuart*, 126 S.Ct. 1943, 164 L.Ed. 2d 650, 2006 LEXIS 4155 (2006)

Facts: In the early hours of July 23, 2000, officers responded to a call concerning a loud commotion inside a residence. Upon arrival, the officers heard shouts of "stop, stop" and "get off of me" coming from inside and the



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rear of the residence. The officers looked in a front window, saw nothing and then walked down the driveway towards the residence where they observed two juveniles drinking beer in the back yard. The officers entered the backyard and looked through a screen door and window and saw a fight between several adults and a juvenile in the kitchen. Suddenly, the juvenile broke free and punched one of the adults in the mouth drawing blood. The fracas continued and at this point, one officer opened the back door and yelled "police". As the melee continued, the officer stepped into the kitchen and once again announced his presence; this time the fighting ceased. Ultimately several individuals were arrested for various charges including contributing to the delinquency of a minor, intoxication and disorderly conduct.

At trial, the defendants filed a motion to suppress all evidence on the grounds that the officers' warrantless entry into the residence was in violation of the Fourth Amendment. The case was reviewed by the Utah Supreme Court which held that the incident was not sufficiently dangerous to permit officers to enter the residence without a warrant under the "emergency aid doctrine". (Officers can enter a home without a warrant if they have reason to believe that someone is unconscious, semi-conscious or feared injured or dead.) In addition, the Utah Supreme Court reasoned that the emergency aid doctrine was inappropriate if the officers' subjective motivations were to arrest individuals rather than render aid. The United States Supreme Court agreed to hear the case and Chief Justice Roberts delivered a unanimous opinion overturning the Utah Supreme Court and upholding the officers' actions.

Issue: When can police enter a residence without a warrant to render emergency assistance?

Rule: Police may enter a residence without a warrant to render emergency assistance when they have an objectively reasonable basis to believe that a person is seriously injured or imminently threatened with such injury.

Discussion: Here, the officers heard and saw an on-going struggle. "In these circumstances, the officers had an objectively reasonable basis for believing both that the injured adult might need help and that the violence in the kitchen was just beginning. Nothing in the Fourth Amendment required them to wait until another blow rendered someone 'unconscious' or 'semi-conscious' or worse before entering. The role of the peace officer includes preventing violence and restoring order, not simply rendering first aid to casualties; an officer is not like a boxing (or hockey) referee, poised to stop a bout only if it becomes too one-sided." The Court went on to emphasize that the manner in which the officer entered (the officer did not knock but yelled police) was reasonable. The officer's announcement was at least the equivalent of a knock on the screen door and because of the commotion inside, his announcement was a reasonable alternative to the general rule that officers must knock and announce. Finally, the Court rejected the argument that the emergency aid exception to the warrant requirement does not apply where the officer's decision to enter was in part based on a subjective motive to arrest rather than one of aiding one or more of the occupants. "An action is 'reasonable' under the Fourth Amendment, regardless of the individual officer's state of mind as long as the circumstances, viewed objectively, justify the action."



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Note: This case addresses the emergency aid doctrine in the context of whether the entry violated the Fourth Amendment. CMPD officers are reminded that state law places constraints on when officers may enter a residence to render emergency assistance. N.C. Gen. Stat. §15A-285 provides:

“When an officer reasonable believes that doing so is **urgently necessary to save life, prevent serious bodily harm**, or avert or control public catastrophe, the officer may take one or more of the following actions:

- (1) Enter buildings, vehicles, and other premises.
- (2) Limit or restrict the presence of persons in premises or areas.
- (3) Exercise control over the property of others.

An action taken to enforce the law or to seize a person or evidence cannot be justified by authority of this section.”

Under this statute it is abundantly clear that the entry cannot be used “as a cover for searching for criminal evidence or suspects . . .” However, if officers in good faith discover contraband in plain view or develop probable cause to arrest someone after immediately entering the residence, then officers could seize the contraband and/or make an arrest.

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Fourth Amendment/Search and Seizure/Knock and Announce: *Hudson v. Michigan*, 126 S.Ct. 2159, 2006 U.S. LEXIS 4677 (2006)

Facts: Police developed probable cause that Hudson was selling drugs from his residence and in possession of a firearm. They applied for and received a search warrant for Hudson’s residence. Upon entering Hudson’s residence, officers found large quantities of drugs and a loaded firearm. At trial, the prosecuting attorney conceded that officers failed to follow the “knock and announce” rule by not waiting a sufficient time after announcing their presence. Hudson then moved to exclude the evidence because it was obtained in violation of the “knock and announce” rule. The trial court sustained Hudson’s motion to suppress; however, it was overturned on appeal. Subsequently, Hudson sought review by the United States Supreme Court.

Issue: Is the exclusionary rule an appropriate remedy for a violation of the “knock and announce” rule?

Rule: No, the exclusionary rule is not an appropriate remedy for a violation of the “knock and announce” rule.

Discussion: The “knock and announce” rule has its underpinning in both common law and within the Fourth Amendment. The interests protected by the “knock and announce” rule are: preventing violence from a surprised resident who mistakenly believes that self defense is appropriate; protection of the homeowner’s property by giving the owner the opportunity to comply with the order by opening



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the door; and protection of the homeowner's privacy (lack of proper clothing etc) by providing an opportunity to prepare for the entry. On balance, the Supreme Court found that protection of these interests is important but did not outweigh the "substantial social costs" generated by excluding the evidence. In addition, the Court recognized that excluding evidence does in fact deter police misconduct; however, exclusion of evidence has never been mandated in every situation where police have violated a constitutional protection. In circumstances where officers violate the "knock and announce" rule, officers are still subject to civil suits which may expose them to both compensatory and possibly punitive damages. According to the Court, the potential of being sued acts as a sufficient deterrent to officers thereby removing the need to exclude the evidence.

It is important to note that unlike the accounts that were generated in the media, the Supreme Court ruling in *Hudson* did not ring the death knell of the knock and announce rule. Rather, the Court refused to apply the exclusionary rule in the event an officer fails to meet the requirements of the "knock and announce" rule. In addition, North Carolina State law has a specific and separate additional statutory requirement mandating that an officer must announce his or her identity and purpose. A substantial deviation from the following statutory requirements may result in evidence being excluded:

An "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." N.C. Gen. Stat. §15A-249.

An exception to this general rule is when "the officer has probable cause to believe that the giving of notice would endanger the life or safety of any person." N.C. Gen. Stat. §15A-251. It is important to note that this statute requires probable cause to believe that giving notice would endanger someone's safety. Even though federal law only requires reasonable suspicion, officers should continue to rely on the higher standard required by N.C. Stat. §15A-251.

The amount of time an officer must wait before entering depends on the circumstances of each case: there is simply no magic formula establishing how long (or short) that time period should be. For example "announcement and entry which were almost spontaneous held reasonable where officers were searching for heroin [and] a male had hurriedly left the residence as the officers approached". *State v. Gaines* 33 N.C.App. 66,69, 234 S.E. 2d 42 (1977). On the other hand, it was reasonable for officers to wait one minute after knocking and announcing because officers could hear people talking and a television blaring inside a residence. (A reasonable officer would assume that the delay in coming to the door was not because evidence was being destroyed, but because the occupants did not hear the announcement.) *State v. Marshall* 94 N.C. App. 20 29-30, 380 S.E. 2d 360 (1989). In any event, whenever officers rapidly enter a residence they must be able to articulate the reasons why it was necessary to do so. The Court will look to the type of contraband, whether it can be easily destroyed, and whether the occupants might be armed or pose a danger to the officers.

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Arrest / Foreign National / Consular Notification: *Sanchez-Llamas v. Oregon*, 2006 U.S. LEXIS 5177

Facts: Article 36 of the Vienna Convention provides a mechanism for foreign nationals who are arrested or substantially detained in another country to contact their consular officer. If both countries (the arresting country and the foreign national's home country) have signed the treaty, then the foreign national has a "right" to contact his consular office. In some circumstances, the arresting agency is required to notify the consular office. For example, Mexico by virtue of the treaty is designated a mandatory contact country. For this reason, the arresting agency must notify the nearest Mexican Consulate. Here, three foreign nationals were arrested, tried and convicted but, they were not afforded the opportunity to contact their consular officer, in violation of Article 36. The United States Supreme Court agreed to review the convictions of the foreign nationals to answer three questions: (1) does Article 36 of the Vienna Convention grant rights that may be invoked by individuals in a judicial proceeding; (2) is suppression of evidence a proper remedy for a violation of Article 36; (3) whether a right under Article 36 is deemed forfeited if the defendant does not raise the issue at trial. As to the first question, the United States Supreme Court assumed without deciding that Article 36 does in fact grant foreign nationals individual rights that may be raised in a judicial proceeding.

Issue: Is suppression of evidence a proper remedy for a violation of Article 36 of the Vienna Convention?

Rule: No, suppression of evidence is not a proper remedy for a violation of Article 36.

Discussion: First, the Court looked to the text of the treaty and held the language within the treaty does not mandate suppression. In fact, the treaty leaves implementation to be exercised in accordance with the laws of the arresting state. The Court then reviewed state and federal law and emphasized that the exclusionary rule is "not a remedy we apply lightly. Our cases have repeatedly emphasized that the rule's 'costly toll' upon truth-seeking and law enforcement objectives presents a high obstacle for those urging application of the rule." In addition, the Court noted that the reasons for suppression for Fourth and Fifth Amendment violations were simply not present when an agency failed to advise a foreign national of their right to contact their consular officer. Based on the above, the Court concluded that suppression of evidence is not an appropriate remedy for a violation of Article 36. However, the Court noted that a violation of Article 36 could be part of a broader challenge "to the voluntariness of statements made to the police."

CMPD officers should review Directive 600-023 to ensure compliance with Article 36 of the Vienna Convention. "Consular notification applies to any person who is not a United States citizen. This includes permanent resident aliens and non-citizens who may or may not be in the country legally. Any person may decline the offer of consular notification; however, the notification must be made if he/she is from one of the 'mandatory notification' countries. A list of mandatory notification countries will be maintained in the 'Procedures and Consulate Directory' located in each division office and the Intake Center." CMPD Directive 600-023 V. B.

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In-Custody Death and “Excited Delirium”

Every officer who has worked the street has come into contact with someone who is highly agitated, extremely irrational, perhaps excessively sweating, and exceptionally difficult to control through standard applications of force. Traditionally, officers would forcibly take the person into custody under circumstances that required significant and/or sustained force. In most circumstances the person would be placed into a police car and transported to booking or to mental health in the event there was no evident violation of the law. Occasionally, a person taken into custody dies for no apparent reason. When this happens, whatever actions or techniques used by the officer will be reviewed by both the medical examiner and the decedents family as a possible direct or contributing cause of death. Some, particularly plaintiff’s attorneys, will argue that it was the tactics used by the officer that caused the death rather than a pre-existing condition or on going medical crisis. (e.g. cocaine overdose)

Recently, the cause of death in some cases where someone has died while in police custody has been linked to what has been referred to as “Excited Delirium” (ED). Although not an official medical or psychiatric diagnosis ED has been described as “a state of extreme mental and/or physiological excitement characterized by exceptional agitation and hyperactivity, overheating, excessive tearing of the eyes, hostility, superhuman strength, aggression, acute paranoia, and endurance without apparent fatigue.”¹ One study estimates that ED may be a contributing factor in 50 -125 in-custody deaths a year in the United States alone.² As a consequence of the recent research into this phenomenon, “there’s a need to distinguish between the people who are just choosing to act in a violent criminal way and those who are doing so because of an underlying medical condition that is affecting them mentally and physically.”³

The following conditions have been identified as placing a person into an at risk category for ED:⁴

- Obesity.
- Under the influence of drugs (illegal or prescribed) and/or alcohol.
- Failure to take prescribed medications especially for mental illness.
- Suffering from mental or psychiatric illness.
- Hyperthyroidism.
- Low blood sugar.
- Head injury.
- Various cardiac conditions.

Unfortunately, it is difficult for an officer to know precisely when someone has one or more of the above conditions so we must rely on physical manifestations or observable conditions as a cue. The following are some of the physical characteristics an officer may observe from someone who is suffering from ED.⁵



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- Dilated pupils
- High body temperature
- Profuse sweating
- Skin discoloration

In addition, case studies have identified the following behavioral cues that have been associated with ED:⁶

- Intense paranoia
- Extreme agitation
- Violent and bizarre behavior
- Violence towards inanimate things particularly glass and shiny objects
- Running wildly
- Screaming
- Pressured loud and incoherent speech
- Naked or stripping off clothing
- Psychotic in appearance
- Rapid mood fluctuation
- Disoriented to time, place, purpose
- "Superhuman" strength and unlimited endurance
- Muscle rigidity
- Diminished sensitivity or insensitive to pain
- Delusional and/or hallucinatory (hearing voices, talking to someone when no one is present)
- Aggression towards objects
- Violently resists control and restraint even after he/she is in custody.

For those individuals thought to have died in custody as a result of ED there appears to be four stages. The chart¹ below correlates one of the clinical symptoms of ED with a corresponding behavioral cue.

| Phase | Clinical | Behavioral Cue |
|-------|--------------------|--|
| I. | Hypothermia | Strips clothing off |
| II. | Delirium | Unexplained strength; yelling, violent, etc. |
| III. | Respiratory Arrest | Goes limp or strength loss. Breathing difficulties |
| IV. | Death | Heart stops |

Remember, these steps are merely guidelines on how to handle someone who exhibits bizarre behavior that is not normally associated with criminal behavior. They are not intended to set a legal



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standard or place an additional duty on officers when dealing with a violent individual. Further suggestions and training will be forthcoming as we continue to review issues related to ED. It is crucial to note is that at some point, usually after a violent struggle with police or another individual, the subject may go limp or become “calm”. At that point the individual may already be in respiratory arrest even though he/she may be breathing. If the person is in fact in respiratory arrest, but does not receive immediate medical attention, they will in all likelihood die.

The Institute For the Prevention of In-Custody Deaths recommends the following steps be taken, if feasible, when dealing with someone who is exhibiting one or more of the above behavioral cues:

- When a dispatcher receives a call in which a person is exhibiting the above cue(s), medic should be dispatched at the same time officers are dispatched. Likewise, if an officer observes bizarre behavior, he/she should ask that medic respond.
- If possible, officers should wait until Medic and sufficient backup arrives.
- If it is necessary to take the person into custody, use the tactics and procedures one normally would use in confronting resistance or an imminent threat. However, if a tactic or device does not work then look to another option if possible.
- When restraining an individual, use transient compression. Do not force or permit the subject to lie in a prone position for an unreasonable period of time. Once the person is under control place the person on his side or have him sit upright.
- Constantly monitor the subject. If he suddenly becomes calm, goes limp or states he cannot breath immediately provide medical personnel with that information. Do not leave the subject alone in a police vehicle.
- Do not directly transport the person to booking, but ask that Medic transport to the nearest hospital. If that is not possible, transport the subject to the nearest medical facility. The subject should be transported in an upright position whenever possible.

NOTE: These steps are merely guidelines on how to handle someone who exhibits bizarre behavior that is not normally associated with criminal behavior. They are not intended to set a legal standard or place an additional duty on officers when dealing with a violent individual. Further suggestions and training will be forthcoming as we continue to review issues related to ED.

¹ Force Science News #29, October 7, 2005 a publication of the Force Science Research Center, Minnesota State University at Mankato.

² William Everett, as cited in Force Science News #29 October 7, 2005.

³ Id.

⁴ Identification, Prevention, Management, and Investigation of Sudden and In-Custody Deaths, Institute for the Prevention of In-Custody Deaths, Inc. (c) 2005.

⁵ Id.

⁶ Id.

⁷ Id.

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OPERATION OF GOLF CARTS ON STREETS AND HIGHWAYS

Questions have been raised concerning the operation of golf carts on the public streets and highways, particularly with regard to registration, drivers license, insurance, and inspection requirements. The Attorney General's Office has addressed this subject previously in advisory opinion letters, and its position is summarized here.

G.S. 20-4.01(12a) defines "golf cart" as a vehicle designed and manufactured for operation on a golf course for sporting or recreational purposes and that is not capable of exceeding speeds of 20 miles per hour. In addition, "motor vehicle" is defined in G.S. 20-4.01(23) as, "every vehicle which is self-propelled and every vehicle designed to run upon the highways which is pulled by a self-propelled vehicle." This definition would include a golf cart, as well.

G.S. 20-50(a) requires that a vehicle intended to be operated upon any highway of this State must be registered with the Division of Motor Vehicles ("DMV"). In addition, G.S. 20-154(8) provides that DMV shall refuse registration or issuance of a certificate of title for a golf cart.

G.S. 20-51 exempts certain vehicles from the registration requirement. The only exemption that might apply to a golf cart is G.S. 20-51(2), which exempts a "vehicle which is driven or moved upon a highway only for the purpose of crossing such highway from one property to another." If a golf cart is used to cross the highway from one property to another (as may be the case in a country club community), it would not have to be registered. However, if it is traveling along a street or highway, it would have to be registered.

G.S. 20-7(a) requires that every person driving a motor vehicle on a highway must be licensed by the DMV. Under G.S. 20-313, the owner of a motor vehicle who operates or permits the operation of the vehicle without the required financial responsibility in effect is guilty of a misdemeanor. Finally, G.S. 20-183.2(a) states that a motor vehicle that is required to be registered is subject to a safety inspection. Failure to display a current inspection sticker is an infraction under G.S. 20-183.8.

In situations in which a golf cart is being operated on a public street or highway (except when it is merely crossing the street or highway), the golf cart must be registered, insured, and inspected, and the operator must possess a valid driver's license. Although, technically, the inspection statute applies to vehicles being operated on public vehicular areas as well as on streets and highways, officers should not issue citations for uninspected golf carts that are being operated only on public vehicular areas.

In addition to the above regulations, a golf cart that is being operated on a public street or highway must meet certain equipment requirements that are set forth in various statutes, including but not limited to, brakes, brake lights, directional signals, headlights, horn, mirrors, seat belts, speedometer, tag lights, tail lights, and windshield wipers.

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