

HUDSON V. MICHIGAN:

The exclusionary rule does not apply to evidence seized following a knock-notice violation

**Decided by the U.S. Supreme Court on June 15, 2006
5-4 Opinion**

Majority: Justice Scalia, Chief Justice Roberts, Justices Thomas and Alito

Concurrence: Justice Kennedy

Dissent: Justice Breyer, joined by Justices Stevens, Souter and Ginsberg

**Analysis by Kathryn Seligman,
Staff Attorney, First District Appellate Project**

Contrary to newspaper headlines, the Supreme Court did not decide that the police need not knock or announce their presence before entering a residence to execute a warrant. Nor did the Court overturn prior decisions holding that failure to comply with knock-notice constitutes a constitutional violation. However, the justices did deal a substantial, possibly fatal, blow to knock-notice compliance and ultimately to the continued viability of the exclusionary rule as a remedy for Fourth Amendment violations.

In an opinion authored by Justice Scalia and joined by four justices, the Court held that the exclusionary rule does not apply to knock-notice violations; evidence seized following this type of unconstitutional entry need not be suppressed in a criminal trial.

If the police – armed with a lawful search warrant -- violate knock-notice rules in entering Mr. Smith’s home, discover drugs, and then charge Mr. Smith with possession of drugs for sale, the drugs will be admitted at Mr. Smith’s criminal trial. If Mr. Smith or other occupants of his home wish to seek redress for the unlawful entry (e.g. damages for a broken door), they must file a civil lawsuit or a complaint with the police department. **One can no longer file a motion to suppress evidence alleging a knock notice violation.**

The Majority Opinion

The Court noted that a knock-notice violation is rarely the “but-for” cause of obtaining inculpatory evidence. Knock-notice rules apply when police officers seek to enter a residence to execute a search warrant or conduct a parole or probation search. Consequently, when the police violate knock-notice rules (e.g.

by not announcing their presence or waiting sufficient time before forcing their way in), it is only the “manner of entry” that is illegal; the subsequent search and the seizure of incriminating evidence are lawfully authorized. The knock notice violation is merely a “preliminary misstep” in the process of executing a lawful warrant and obtaining the evidence. The discovery of the evidence is sufficiently attenuated from the knock-notice violation to justify its admission.

According to the majority, knock-notice rules, unlike the warrant and probable cause requirements, do not exist to protect individuals’ rights to shield their persons, houses and effects from government scrutiny. They do not protect the sanctity of the home. Rather, the interests protected by knock-notice principles are: 1)to protect life and limb from the violence that may be provoked by an unannounced entry; 2)to avoid the destruction of property occasioned by a forcible entry; and 3)to protect elements of privacy and dignity that might be adversely affected by a sudden police entrance – e.g. “the right not to be intruded upon in one’s nightclothes”. The majority opinion implies that these interests, especially the last one, are not particularly significant or worth the cost of excluding incriminating evidence and hindering law enforcement.

Most importantly, the Court noted that the issue of “whether the exclusionary sanction is appropriately imposed in a particular case” is separate from the question of whether the police violated the defendant’s Fourth Amendment rights. In determining whether the exclusionary rule should apply, the key question is whether the “deterrence benefits” of suppressing the discovered evidence outweigh the social costs.

The Court concluded that there are “considerable” social costs when the criminal courts exclude evidence discovered following a knock-notice violation: 1)Excluding relevant incriminating evidence allows dangerous criminals to go free. 2)Providing this remedy to criminal defendants encourages “a constant flood” of suppression motions alleging police failure to comply with knock-notice rules. 3)Litigating knock-notice claims is difficult because the rules are purposely vague. 4)To avoid this litigation, police officers will wait too long before entering a residence, “producing preventable violence against officers in some cases, and the destruction of evidence in many others”.

Weighed against these major social costs, applying the exclusionary rule to the fruits of knock-notice violations has little deterrent effect: 1)Police officers armed with a lawful search warrant have little incentive to violate knock-notice so “massive deterrence is hardly required”. (Presumably, the police don’t want to endanger themselves or others by bursting in and provoking a violent response.)

- 2) There are other effective ways to deter this type of police misconduct. Victims of illegal no-knock entries can file civil suits for damages. And the prospect of internal discipline also discourages the police from violating knock-notice.
- 3) Deterrence is not really necessary as today's police officers are better trained and more professional.

Concurrence:

In his very short concurring opinion, Justice Kennedy emphasizes two points. First, the Court's opinion should not be read as suggesting that violations of constitutionally required knock-notice rules are "trivial or beyond the law's concern". If police officers persist in violating the sanctity of the home by ignoring the requisites of lawful entry, then the government should fortify procedures for training police officers and enhance disciplinary procedures. These efforts, along with the availability of civil remedies, should be sufficient to deter and punish knock-notice violations.

Second, according to Justice Kennedy, the Court's opinion, limiting application of the exclusionary rule, applies only to knock-notice violations. "[T]he continued operation of the exclusionary rule, as settled and defined by our precedents, is not in doubt." The exclusionary remedy should not apply when the officers fail to comply with knock-notice rules because "the causal link between a violation of the knock-and-announce requirement and a later search is too attenuated to allow suppression". The evidence is discovered not because of a failure to knock and announce, but because of a subsequent search conducted pursuant to a lawful warrant.

Dissent

In a lengthy opinion, authored by Justice Breyer, the minority offers a strong dissent. First, they note that the majority opinion "destroys the strongest legal incentive to comply with the Constitution's knock-notice requirements". As long recognized, the purpose of the exclusionary rule is to discourage the police from violating citizens' Fourth Amendment rights, and the only effective way to deter knock-notice violations is to suppress evidence seized during the search that follows the illegal entry. If the police know that they can enter a home illegally, without risking suppression of the evidence found inside, they will have no reason to comply with knock-notice when a surprise entry would be tactically advantageous. No-knock entries will undoubtedly increase, and residents will have no recourse but to suffer these invasions upon property and privacy.

The vague prospect of civil damage lawsuits is neither a reasonable disincentive to police misconduct nor a viable remedy for victimized home occupants. Justice Breyer notes that “[t]he cases reporting knock-and-announce violations are legion....sufficiently frequent and serious to indicate a widespread pattern”. Yet the majority failed to turn up a single reported case “in which a plaintiff has collected more than nominal damages” by claiming a knock-notice violation. Indeed, as the government conceded, in most cases damages may be virtually non-existent. Civil actions are expensive, time-consuming, not readily available, and rarely successful.

Second, the dissenting opinion notes that Justice Scalia minimizes the interests protected by knock-notice rules. These rules exist not only to protect homeowners from damaged doors and to protect occupants from surprise and the indignity of being “intruded upon in one’s nightclothes”. The rules protect core Fourth Amendment values – the sanctity of one’s home and the privacies of life.

Third, Justice Breyer states that the majority opinion is “doubly troubling as it represents a significant departure from the Court’s precedents in two areas. The majority breaks with a long line of precedent affirming the historical importance of knock-notice requirements – rules that date back to the 13th century and have been recognized as having constitutional import. As the Court affirmed just 11 years ago, in *Wilson v. Arkansas* (1995) 514 U.S. 927, 929, the “common law knock and announce principle forms part of the reasonableness inquiry under the Fourth Amendment”. Failure to comply with these rules renders the subsequent search and seizure constitutionally defective.

The majority ruling is also inconsistent with prior cases defining the purpose and scope of the exclusionary rule. In the past, the Court has declined to apply the exclusionary rule only when suppression of the evidence would not result in appreciable deterrence – e.g. when the police officer relies on a defective warrant in good faith; or when the prosecution proffers the evidence in proceedings other than criminal trials. Neither of these exceptions apply when an officer knowingly violates knock-notice requirements and the government introduces the subsequently seized evidence at the defendant’s criminal trial.

Finally, the dissenting opinion warns that Justice Scalia’s analysis will likely lead to denying the exclusionary remedy to defendants who have suffered other Fourth Amendment violations. Scalia found that considerable social costs of applying the exclusionary rule to knock-notice violations outweigh the deterrence benefits. But the considerable social costs cited by Scalia exist in every criminal case when illegally seized evidence is suppressed. In every case “where the

constable blunders, a guilty defendant may be set free”, and the litigation of Fourth Amendment claims often requires judicial interpretation of uncertain rules (e.g. the existence of exigent circumstances). Moreover, if the prospect of civil suits are adequate to deter police violations of knock-notice, wouldn't these potential suits also effectively discourage other types of police misconduct?

What are the short-term and long-term effects on this opinion?

The immediate impact of the *Hudson* opinion is obvious. A criminal defendant can no longer raise a knock-notice violation claim in a motion to suppress evidence. Moreover, the opinion surely takes the teeth out of knock-notice enforcement. As Justice Breyer states in the dissenting opinion: “Today’s opinion..... weakens, perhaps destroys, much of the practical value of the Constitution’s knock-and-announce protection”. If evidence discovered following an illegal entry will be admitted at a criminal trial, police officers will have little reason to knock, announce their presence and wait several seconds before bursting in. As the dissenting justices noted, the theoretical possibility of civil lawsuits or internal police discipline, sometime in the future, will not assure compliance. Knock-notice rules are effectively dead.

Again, as the dissent notes, this radical step was not really necessary. Over the years, the courts has already expanded exceptions to strict knock-notice compliance. “Substantial” compliance is sufficient and the police do not have to knock, give notice, or wait more than 15 to 20 seconds if they reasonably believe that it would be dangerous or futile or that evidence might be destroyed.

The most troubling aspect of the opinion is that it undoubtedly opens the door to further incursions on the reach of the exclusionary rule. Eight years ago, Justice Thomas bemoaned the exclusionary rule’s “costly toil upon truth-seeking and law enforcement objectives”. (*Pennsylvania Bd. of Probation and Parole v. Scott* (1998) 524 U.S. 357, 364-65.) The Court’s conservative majority have now decided that the cost is too high for a mere knock-notice violation. But the test that Justice Scalia applies – whether the deterrence benefits of the exclusionary rule outweighs its substantial social costs – could weigh against suppression of illegally seized evidence in other contexts. The number one social cost, cited by Scalia, is “the risk of releasing dangerous criminals into society”. As Scalia acknowledges, this risk exists in every case when incriminating evidence is excluded because of a police officer acted unlawfully. And the other “costs” cited by Scalia are equally pervasive. It’s hard to think of a case where suppressing evidence discovered following an illegal entry, search or seizure does not generate these potential “costs”.

Moreover, the majority clearly believes the exclusionary rule is no longer necessary to discourage police misconduct. In today's society, according to Justice Scalia, we have a well-trained, professional and disciplined police force who are unlikely to deviate from lawful procedures. We also have the ready availability of section 1983 civil rights lawsuits, offering the prospect of "meaningful relief" if the police abuse their power. If the exclusionary rule is not needed to discourage the police from no-knock entries, then it's similarly not needed to discourage officers from proceeding without a warrant or reasonable cause. I think it's fair to expect further limitations on the scope of the exclusionary rule in other Fourth Amendment contexts.

Of course, one must acknowledge a small ray of hope. In his concurring opinion, Justice Kennedy aimed to quiet the fears of those who believed the majority ruling was the first step down the proverbial slippery slope. He stated that the exclusionary rule is still alive and well and that "[t]oday's decisions determines only that in the specific context of a knock-and-announce requirement, a violation is not sufficiently related to the later discovery of evidence to justify suppression". So perhaps in the next case, when the government argues against applying the exclusionary rule to evidence seized following another type of Fourth Amendment violation (e.g. a warrantless search or a suspicionless detention), Justice Kennedy will join with the four dissenting justices (Justices Breyer, Stevens, Souter and Ginsberg) to hold the line.

Finally, this opinion clearly reflects both the divided nature of the court and the effects of Justice O'Connor's departure. *Hudson* was first argued in January 2006, after Justice O'Connor's announced retirement but before Justice Alito's confirmation. Initial reports, the day after the argument, inferred from O'Connor's questions that she seemed ready to rule against the government. But O'Connor left the Court before this case was decided. Because the justices were apparently divided four-four without O'Connor, the case was re-argued in May after Justice Alito had taken his seat. Alito signed onto the majority opinion, in the ultimate five-four result. Perhaps the outcome would have been different if Justice O'Connor were still on the Court.