

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

v.

**HYSON FREDERICKS,
Defendant**

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**CR: 1445-2012
CRIMINAL DIVISION**

OPINION AND ORDER

The Defendant filed a Motion to Suppress Evidence on October 18, 2012. A hearing on the motion was held November 1, 2012.

Background

Previously, this Court addressed a Motion to Suppress Evidence raised in docket number 355-2012, which involved the Defendant and had the same exact facts. After an evidentiary hearing, on an issue different than the one raised to this docket number, this Court rendered an Opinion which stated the facts based on the testimony.¹

On January 19, 2012, Lycoming Sheriff Deputy Eric Spiegel and Lycoming County Detective Laudenslager arrived at 338 High Street to serve an arrest warrant on Miranda Welsh. Hyson Fredericks (Defendant) is a resident of the address with Welsh, as evidenced by their joint names on the mailbox of the residence. Spiegel and Laudenslager knocked on the back door of the residence several times but there was no answer. Laudenslager believed he could hear someone in the residence. Spiegel and Laudenslager then went to the main or common entrance of the building and knocked on the front door several times and there still was no answer. Spiegel and Laudenslager then returned to the back entrance that was directly attached to Welsh's residence and began to knock again.

Spiegel tried the door knob and noticed the door was locked but that he could push the door open. Upon pushing open the door Spiegel could tell that a television was on. Both Spiegel and Laudenslager announced themselves before entering. Hearing no response, they then began "clearing" or searching the residence room-by-room for Welsh. They got to a rear bedroom with its door slightly open, which they could tell had occupants in it. They announced themselves once again and there was no response.

¹ The issue raised in Docket number 335-2012 was whether the search of the Defendant's residence was constitutional. This Court found that the search was in fact lawful.

Speigel and Laudenslager entered the apartment and saw Welsh and two (2) small children on a bed. While waiting for the Defendant to arrive at the residence, Speigel opened a closet door in the bedroom to see if anyone was hiding in it. Speigel observed a sawed off shotgun leaning against a pile of clothes.

Williamsport Bureau of Police were notified and arrived at the residence. Defendant was charged with Persons Not to Possess and Prohibited Offensive Weapon. On May 25, 2012, the Defendant filed a timely Motion to Suppress.

Following this Court's decision, different counsel representing Defendant at this docket number filed a Motion to Suppress arguing a breach of the "knock and announce" rule regarding the same facts. This Court presided over a second evidentiary hearing. Within this hearing, additional facts were given and Laudenslager's testimony was slightly different.

On the morning of January 19, 2012, Laudenslager had paper work to serve on the Defendant dealing with child support. While outside the location of the Defendant's residence, Laudenslager (in plain clothes) came into contact with Speigel, who happened to be in the area and was in full uniform. Laudenslager informed Speigel that the Defendant lived in an apartment with Miranda Welsh (Welsh) and that Lycoming County had an arrest warrant for her. Laudenslager asked Speigel if he would like to assist him in going to 338 High Street, Apartment 3, which was the residence of the Defendant and Welsh.

According to Speigel, Laudenslager and he first knocked on the back door of the apartment. Both of them testified that individuals in the apartment would have been able to hear the knocking. While knocking, Laudenslager told Speigel that he could hear someone in the apartment. During this second hearing, Laudenslager stated that he could hear someone locking the back door, a fact not presented at the first hearing. After no one responded to the door, Speigel and Laudenslager went around to the front door of the building. Neither Speigel nor Laudenslager announced their presence while standing at the back door. At the front door to the apartment building, Speigel and Laudenslager knocked on the door and Speigel observed that the Defendant and Welsh had their names on the mailbox for apartment 3 of the building.

Speigel and Laudenslager returned to the back door of apartment 3. While there, Speigel realized that the door was locked but could be pushed open and proceeded to open the door to the extent that he could enter the apartment. Before entering the apartment, Speigel announced at least twice that it was the Sheriffs or Police and that they had a warrant. With the door open, Speigel could see that a TV was on but he could not hear it. Speigel and Laudenslager then began to search the apartment room by room until they got to a back bedroom. Before entering the bedroom they announced their presence again and received no response. Speigel opened the door and observed Welsh and young children laying fully clothed on a bed.

Whether there was a violation of the Knock and Announce rule

The Defendant contends that Speigel and Laudenslager violated the Fourth Amendment requirement that officers must announce their presence and purpose before seeking entry. The Pennsylvania Rules of Criminal Procedure state that “a law enforcement officer executing a search warrant shall, before entry, give, or make reasonable effort to give, notice of the officer’s identity, authority, and purpose to any occupant of the premises specified in the warrant, unless exigent circumstances require the officer’s immediate forcible entry.” Pa.R.Crim.P. 207. The purpose of the rule is to “prevent violence and physical injury to the police and occupants, to protect an occupant’s privacy expectation against unauthorized entry of persons unknown to him or her, and to prevent property damage resulting from forced entry.” Commonwealth v. Davis, 595 A.2d 1216, 1222 (Pa. Super. 1991).

The Defendant, in support of his claim, cites to Golden, which is a factually similar case. Commonwealth v. Golden, 419 A.2d 721 (Pa. Super. 1980). In Golden, police obtained a search warrant and then knocked several times on the door of the apartment. Id. at 722. After no response, the police opened the door, which was unlocked, and only then announced that they

were police and were coming into the apartment. Id. The police went to the second floor and announced again before they found the defendant and began conducting the search. Id. The Superior Court found that “[t]he fact that the officers in the present case did not have to break down the door . . . but only had to turn the knob to open the unlocked door makes no difference . . .” id. at 723. The Superior Court did not find any exigent circumstances and suppressed the evidence based on Pa.R.Crim.P. 2007.

Preceding cases, however, have not taken the bright-line approach that every violation of the Knock and Announce rule is grounds for suppression, as done in Golden.² In Davis, two officers knocked several times on the front door of a residence while executing a search warrant. Davis, 595 A.2d at 1218. After no response, one of the officers looked through a window and observed people in the living room. Id. After knocking again, an officer tried the doorknob of the door and the door opened. Id. While the officer was entering the residence he stated that he had a search warrant for a resident in the apartment. Id. The officers went to the second floor of the residence and found the defendant sleeping. Id.

The Superior Court of Pennsylvania determined that the officers did not technically comply with the notice requirement set forth in the Pennsylvania Rules of Criminal Procedure, however, such a violation does not “*ipso facto* necessitate a finding that the evidence seized *must* be suppressed.” Id. at 1223 (emphasis in original). “It is only where the violation also implicates fundamental, constitutional concerns, is conducted in bad faith or has substantially prejudiced the defendant that exclusion *may* be an appropriate remedy.” Id. (emphasis in original). The Superior Court stated that the police had a valid search warrant and that no person or property was injured. Id. In addition, they noted that “given the repeated knocking on

² “[W]e reject the automatic application of the exclusionary rule to suppress evidence seized pursuant to a search which in some way violates the Pennsylvania Rules of Criminal Procedure relating to the issuance and execution of search warrants.” Commonwealth v. Balliet, 542 A.2d 1000 (Pa. Super. 1988) (citing Commonwealth v. Mason, 490 A.2d 421 (Pa. 1985)).

the front door to the defendant's premises, the proximity to the occupants (in the living room adjacent) to the entry during the repeated notification efforts ("knocking") and the passage of *more than* 15 seconds, we find the police's identification of themselves and their purpose would have been a futile gesture." Id. (emphasis in original). After the Superior Court weighed the benefits of deterring police misconduct against the cost of excluding reliable evidence, they determined that the evidence was admissible.³ Id. at 1223.

Besides a Knock and Announce violation being found futile, Courts have also allowed evidence in such violations if they were found to be merely technical non-compliance. In Kane, police properly secured a three story apartment building by shouting that they were police in possession of a warrant as they entered each room. Commonwealth v. Kane, 940 A.2d 483, 492 (Pa. Super. 2007). As the police entered a warehouse from the apartment they did not knock or announce before removing the door. Id. An officer did announce prior to crossing the threshold into the warehouse. Id. The Superior Court stated that "[t]he [knock and announce] rule is designed to promote peaceable entry by affording fair warning, and to safeguard legitimate privacy expectations to the degree possible." If anyone had been located in the warehouse, it was virtually certain they would have been fully alerted to the police presence and purpose and would have had ample opportunity to peacefully surrender by the time police crossed the threshold into the warehouse." Id. (citations omitted). The Superior Court found that the police did not act unreasonably and that suppression was not justified in the case. Id.

Here, Spiegel and Laudenslager did not comply with the notice requirements set forth in the Pennsylvania Rules of Criminal Procedure. Spiegel opened the door prior to announcing identity and purpose. As a violation of the Knock and Announce Rule does not automatically

³ In Sanchez, the police failed to knock and announce prior to entering the room in which the defendant was located. Commonwealth v. Sanchez, 907 A.2d 477 (Pa. 2006). The police found that the door was already partially open and that police announced as they approached the door and therefore knocking and announcing would be futile.

suppress evidence, this Court must determine whether the evidence seized after entry into the residence is admissible.

When courts have found that notice is futile they have determined that the occupants inside the residence had notification by knocking and did not respond after a sufficient amount of time. In Davis, officers knocked on the door repeatedly and after observing occupants in a nearby living room, opened the door and announced their presence while they entered. In this case, Spiegel and Laudenslager knocked on the door repeatedly and heard someone inside the apartment. Even discounting the fact that Laudenslager testified he heard someone locking the back door, the fact that movement could be heard inside the apartment indicates that the occupants of the apartment would have been able to hear Spiegel and Laudenslager outside of the apartment and their knocking.

After Spiegel and Laudenslager knocked on the back door, which directly leads into the apartment, they went to the front door of the building to knock. Being unsuccessful at the front door, they returned to the back door and knocked again on the door several times. The Court finds that this would have given the occupants of the apartment sufficient time to be notified of the knocking. After Spiegel pushed the door open, he announced his identity and purpose at least twice before entering the apartment. The occupants of the apartment still did not respond to the announcement. After entering the apartment and announcing themselves numerous times in front of the bedroom that Welsh was inside, there was still no response.

Despite the technical violation of Knock and Announce by Spiegel and Laudenslager, the Court finds it does not trigger exclusion as an appropriate remedy. The entry does not appear to raise fundamental constitutional concerns such as expectation of privacy and was not done in bad faith. Spiegel announced identity and purpose prior to entering the threshold of the apartment and also entering the bedroom. Moreover, in regards to the purpose of the Knock and Announce

rule, the entry did not result in injury to an individual or property. Thus, the Court finds that even if Spiegel and Laudenslager notified the occupants of their identity and purpose before pushing the door open it would have been futile.

Furthermore, the Court finds that the violation of the Knock and Announce rule was merely a technical non-compliance. Spiegel and Laudenslager knocked repeatedly on the backdoor and announced their presence prior to crossing the threshold of the apartment. As in Kane, the occupants of the apartment had ample opportunity to peacefully surrender before Spiegel and Laudenslager entered the apartment. Spiegel tried to open the door, which was locked, and was successful in pushing it open. As it was unexpected that the locked door would open, it was not unreasonable for Spiegel to then announce his presence. As the Court finds that the Knock and Announce rule violation was a technical non-compliance, the Court will not suppress.

ORDER

AND NOW, this _____ day of December, 2012, based upon the foregoing Opinion, the Court finds that the violation of the notice requirement of the Knock and Announce rule was futile and merely a technical non-compliance. Therefore, the Defendant's Motion to Suppress is hereby DENIED.

By the Court,

Nancy

L. Butts, President Judge

xc: DA (KO)
Julian Allatt, Esq.
Eileen Dgien, Dep. CA
Gary Weber