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Hudson v. Michigan: The Exclusionary Rule's Applicability to "Knock-and-Announce" Violations

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Summary

Since the 1980s, the United States Supreme Court has issued a series of decisions narrowing the applicability of the exclusionary rule. As such, the exclusionary rule is inapplicable in civil cases, grand jury proceedings, and parole revocation hearings. Other exceptions to the exclusionary rule include inevitable or independent discovery, attenuation, and the good-faith exception. In *Hudson v. Michigan*,126 S.Ct. 2159 (2006), the Court further narrowed the applicability of the exclusionary rule by finding that the rule was not an appropriate remedy when police officers fail to wait a few seconds after they knock and announce their presence while executing a valid search warrant. This report summarizes the Court's decision in *Hudson* and will not be updated.

Legal Background. Beginning with the U.S. Supreme Court's decisions in *Weeks v. United States*[1] and *Mapp v. Ohio*,[2] the mandates of the Fourth Amendment have been enforced through the application of an exclusionary rule which generally states that evidence illegally seized may not be used against the defendant. In *Weeks*, a federal agent had conducted an illegal warrantless search for evidence of gambling in Mr. Weeks's home. The evidence seized in the search was used at trial, and Weeks was convicted. On appeal, the Supreme Court held that the Fourth Amendment barred the use of evidence secured through a warrantless search. Weeks's conviction was reversed, and thus the federal exclusionary rule was developed. In *Mapp*, the Court held that the exclusionary rule should and did apply to the states. It was "logically and constitutionally necessary," wrote Justice Clark for the majority, "that the exclusion doctrine — an essential part of the right to privacy — be also insisted upon as an essential ingredient of the right" to be secure from unreasonable searches and seizures. "To hold otherwise is to grant the right

[1] 232 U.S. 383 (1914).

[2] 367 U.S. 643 (1961).

but in reality to withhold its privilege and enjoyment."[3] Further, the Court held that because illegally seized evidence was to be excluded from federal and state courts, the standards by which the question of legality was to be determined should be the same, regardless of whether the court in which the evidence was offered was state or federal.[4]

The application of the exclusionary rule became a matter of uncertainty in the latter part of the 20th century. Courts found themselves constantly weighing the costs versus the benefits of applying the rule. How far should a court go in protecting the rights of defendants against illegal searches and seizures, when they have allegedly broken the law? Should the exclusionary rule be invoked to protect these rights when the police have acted in error, as opposed to intentionally overstepping constitutional bounds? The Court revisited the issue of the rule's applicability most recently in *Hudson v. Michigan*.

Facts and Procedural History. In *Hudson*, the defendant was arrested in 1998 when police entered his Detroit home with a search warrant. The door was unlocked, and police admitted they violated the "knock-and-announce" requirement[5] of waiting a few seconds before entering.[6] Officers found crack cocaine in Hudson's pocket, as well as other drugs and a gun elsewhere in the home. He was charged with possession of cocaine with intent to deliver and illegal firearm possession. Hudson's attorney moved to suppress the evidence found in the home, arguing that the police had violated Hudson's Fourth Amendment rights by ignoring the "knock-and-announce" requirement upon entering his home.

While Hudson's case was in the trial court, the Michigan Supreme Court ruled in *People v. Stevens*[7] that suppression is inappropriate when entry is made pursuant to warrant but without following proper "knock-and-announce" procedure. In spite of *Stevens*, the trial court judge ruled the evidence found in Hudson's home should be suppressed and dismissed the charges. However, the Michigan Court of Appeals reversed the suppression order relying on *Stevens*.[8] Hudson was ultimately convicted and sentenced to18 months probation for the cocaine found in his pocket. Hudson appealed, arguing that the conviction was unconstitutional because the drugs in Hudson's pocket should have been suppressed as evidence after the "knock-and-announce" violation. The Michigan Court of Appeals affirmed the conviction, and the Michigan Supreme Court

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[3] *Id.* at 655-56. Justice Black concurred, doubting that the Fourth Amendment compelled adoption of an exclusionary rule, but relying on the Fifth Amendment for authority. *Id.*

[4] *Ker v. California*, 374 U.S. 23 (1963).

[5] The "knock-and-announce" rule requires that officers wait a few seconds after knocking and announcing their presence before they enter a residence with a warrant. *See Wilson v. Arkansas*, 514 U.S. 927 (1995).

[6] *See United States v. Banks*, 540 U.S. 31 (2003)(holding that 15-20 seconds was a reasonable time for officers to wait before entering a residence).

[7] 597 N.W. 2d 53 (1999).

[8] App. To Pet. For Cert. 4 (citing *People v. Vasquez*, 602 N.W. 2d 376 (1999)(per curiam); *People v. Stevens*, 597 N.W. 2d 53 (1999)).

denied Hudson's leave to appeal.[9] On June 27, 2005, the U.S. Supreme Court accepted review in the case.[10]

United States Supreme Court Decision. In a 5-4 decision, the Court ruled that a violation by the police of the "knock-and-announce" rule, when entering a home with a warrant, does not bar the use of evidence gathered in the search. The opinion, written by Justice Scalia,[11] relied on two fundamental theories. First, in employing a cost-benefit analysis, the majority concluded that suppressing the evidence was simply too high a penalty to pay for violating one's Fourth Amendment rights to a knock on the door. "Whether that preliminary misstep had occurred or not," Scalia wrote, "the police would have executed the warrant they had obtained, and would have discovered the gun and drugs inside the house."[12] Suppressing the evidence, he further noted, would be tantamount "to a get-out-of-jail-free card." While a violation of the warrant requirement would have led to suppression, the majority contended that there is very little deterrent effect or value to the suppression of evidence seized after a violation of the "knock-and-announce" requirements.[13]

Moreover, the Court stated that the purpose of the "knock-and-announce" rule was to protect life, property, and dignity by giving the homeowner time to respond to the door, thus eliminating the need for police officers to break down the door. According to the Court, the rule has never protected "one's interest in preventing the government from seeing or taking evidence described in a warrant."[14]

Second, the majority concluded that the need for deterrence is minimized inasmuch as the legal landscape has changed. The Court reasoned that other means of deterrence were available and effective. Civil remedies are now available, including attorney's fees for civil-rights plaintiffs. The Court noted that lower courts are allowing colorable knock-and-announce suits to proceed, "unimpeded by assertions of qualified immunity."[15] In addition, the Court reasoned that the "increasing professionalism of police forces, including a new emphasis on internal police discipline" reduces the need for deterrence. The Court concluded that police officers, as a result of training, recognize and respect constitutional guarantees.[16]

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[9] 692 N.W. 2d 385 (2005).

[10] 545 U.S. _____ (2005). The case was initially argued in the Court on January 9, 2006, when Justice Sandra Day O'Connor was still on the Court. The Justices on April 19 ordered it re-argued, by which time Justice O'Connor had been replaced by Justice Alito.

[11] Joined by Chief Justice Roberts and Justices Kennedy, Thomas, and Alito.

[12] Slip op at 5.

[13] Id. at 9 (stating that "ignoring knock-and-announce can realistically be expected to achieve absolutely nothing except the prevention of destruction of evidence and the avoidance of life-threatening resistance by occupants of the premises-dangers which, if there is even 'reasonable suspicion' of their existence, suspend the knock-and-announce requirement anyway").

[14] Id.

[15] Id. at 11.

[16] Id. at 12.

Justice Kennedy wrote a separate opinion to concur in the majority's conclusion, apparently attempting to minimize the decision's impact on the viability of the exclusionary rule. He iterated that the knock-and-announce rule is not something that should be taken lightly. He further noted that, while suppression of evidence is not necessary when such violations occur, civil lawsuits can still be brought against the police and that legislatures have a duty to ensure police officers "act competently and lawfully."[17]

The dissent, written by Justice Breyer and joined by Justices Stevens, Ginsburg, and Souter, argued that the exclusionary rule should apply to knock-and-announce violations. Justice Breyer wrote that not only is the "knock-and-announce" rule historically important, but that there are only a very small number of exceptions to the exclusionary rule, none of which the "knock-and-announce" rule fits within. According to the dissent, the majority's decision "weakens, perhaps destroys, much of the practical value of the Constitution's knock-and-announce protection."[18]

Implications of *Hudson v. Michigan*. *Hudson* continues a trend by the Court toward narrowing the applicability of the exclusionary rule as a remedy for unreasonable searches and seizures. Beginning in the late 1970s, court decisions have limited the rule's application. Defendants who themselves were not subjected to illegal searches and seizures were found unable to object to the introduction against themselves of evidence illegally obtained from co-conspirators or codefendants,[19] and defendants whose rights had been infringed could find the evidence admitted for impeachment purposes.[20] The exclusionary rule also was found to be inapplicable in civil cases,[21] grand jury proceedings,[22] and parole revocation hearings.[23] Other exceptions to the exclusionary rule include the (1) inevitable discovery doctrine,[24] (2) attenuation exception,[25] (3) independent

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[17] Concurrence at 2.

[18] Dissent at 1.

[19] *See, e.g, Rakas v. Illinois*, 439 U.S. 128 (1978); *United States v. Salvucci*, 448 U.S. 83 (1980); *Rawlings v. Kentucky*, 448 U.S. 98 (1980).

[20] *United States v. Havens*, 446 U.S. 620 (1980). The impeachment exception applies only to the defendant's own testimony, and may not be extended to use illegally obtained evidence to impeach the testimony of other defense witness. *James v. Illinois*, 492 U.S. 307 (1990).

[21] *United States v. Janis*, 428 U.S. 433 (1976). Similarly, the rule is inapplicable in civil proceedings for deportation of aliens. *INS v. Lopez-Mendoza*, 468 U.S. 1032 (1984).

[22] *United States v. Calandra*, 414 U.S. 338 (1974)(weighing the costs of the exclusionary rule against the incremental deterrent benefits of invoking it in grand jury proceedings).

[23] *Pennsylvania Board of Parole v. Scott*, 524 U.S. 357 (1998).

[24] *Nix v. Williams*, 467 U.S. 431 (1984)(holding that evidence obtained through an unlawful search or seizure is admissible in court if it can be established, to a very high degree of probability, that normal police investigation would have inevitably led to the discovery of the evidence).

[25] The attenuation exception to the exclusionary rule states that evidence may be suppressed only if there is a clear causal connection between the illegal police action and the evidence. *Wong Sun v. United States*, 371 U.S. 471 (1963).

source exception,[26] and (4) good-faith exception.[27] *Hudson* further narrows the applicability of the exclusionary rule by eliminating a criminal defendant's primary remedy for "knock-and-announce" violations by police officers. Although limited to "knock-and-announce" violations, the majority opinion in *Hudson* calls into question the continued viability of the exclusionary rule as a remedy for other Fourth Amendment violations.

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[26] Allows evidence to be admitted in court if knowledge of the evidence is gained from a separate, or independent, source that is completely unrelated to the illegality at hand. *Segura v. United States*, 468 U.S. 796 (1984)(holding that police officers' illegal entry upon private premised did not require suppression of evidence subsequently discovered at those premises when executing a search warrant obtained on the basis of information wholly unconnected with the initial entry).

[27] The good-faith exception may allow some evidence gathered in violation of the Constitution if the violation results in only a minor or technical error. If a magistrate is erroneous in granting a police officer a warrant, and the officer acts on the warrant in good faith, then the evidence resulting in the execution of the warrant is not suppressible. However, there are a number of situations in which the good-faith exception will not apply: (1) No reasonable officer would have relied on the affidavit underlying the warrant; (2) the warrant is defective on its face for failing to state the place to be searched or things to be seized; (3) the warrant was obtained by fraud on the part of a government official; or (4) the magistrate "wholly abandoned his judicial role." *See U.S. v. Leon*, 468 U.S. 897 (1984); *Massachusetts v. Sheppard*, 468 U.S. 981 (1984); *Illinois v. Krull*, 480 U.S. 340 (1987).