

Recent Case Report

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Hunsberger v. Wood

(4th Cir. 2009) __ F.3d __ [2009 WL 1845225]

Issue

Did exigent circumstance justify an entry by officers into the Hunsbergers' home?

Facts

At 10:17 P.M., a woman phoned 911 in Roanoke, Virginia and said she thought some teenagers might be burglarizing or vandalizing the home of her neighbors, the Hunsbergers. The woman said that several teenagers had driven up to the house and had been "getting in and out" of their cars," but that the lights in the house were off. She added that she thought the Hunsbergers might be on vacation because she hadn't seen them in a couple of days.

When sheriff's deputies arrived and talked with the woman, they saw nothing suspicious so they left. At about 12:10 A.M., the woman called 911 again and said the unusual activities outside the house were continuing. The deputies returned and noticed that some lights inside were now on, and that an additional car was parked in front. They also saw a man walk from the house to the garage and back.

At this point, the deputies drove up to the house and parked in the driveway. Suddenly, all of the lights in the house were turned off. The deputies rang the doorbell 25-30 times but no one responded. As they were walking back to their cars, they noticed that one of the garage doors that had been closed was now open, causing them to suspect that someone had just fled.

Using a cell phone, Sgt. Wood phoned the registered owners of the cars parked in front, one of whom was William Blessard. Mr. Blessard immediately drove to the scene and told Wood that his 16-year old stepdaughter had been driving the car, that he didn't know the Hunsbergers, and that his stepdaughter was supposed to be spending the night at the home of a girlfriend. Blessard called his stepdaughter's cell phone several times but no one answered. He said he was worried.

Just then, they heard something fall in the garage. Sgt. Wood entered the garage just as someone shut and locked the door leading to the house. He and Blessard then entered the house through an unlocked door in the garage. Sgt. Wood announced "loudly" that he was a sheriff's deputy and that "anyone in the home who was hiding should reveal himself." Again, there was no response, so he and Blessard walked down to the basement. No one was there, but the TV was on and some beer cans were scattered around.

Continuing their inspection, they walked up to the second floor and looked inside a closet where they found the Hunsbergers' 16-year old son sitting on the floor. Sgt. Wood asked if there was anyone else in the house, and he said no. In another bedroom, Wood found the Hunsbergers' 10-year old daughter in bed. At this point, Mark and Cheryl Hunsberger awakened and confronted Sgt. Wood and Blessard, ordering them to leave. They then phoned the sheriff's office to complain about the intrusion. A lieutenant responded.

One of the Hunsbergers' children, 18-year old Zack, told the lieutenant that some of his friends, including Blessard's stepdaughter, were currently hiding in the basement. After Mrs. Hunsberger drove the girl home, it was revealed that the Hunsberger boys and five friends had been in the basement playing cards, and some of them were drinking beer and vodka. As for the activity out front, it was mainly some of the boys smoking cigarettes and retrieving things from their cars, and Zack driving off to buy more beer.

Mark and Cheryl Hunsberger filed a federal civil rights action against Sgt. Wood and Mr. Blessard, claiming their warrantless entry into the home violated their Fourth Amendment rights. When the district court denied Sgt. Wood's motion for summary judgment on grounds of qualified immunity, he appealed to the Fourth Circuit.

Discussion

The issue on appeal was whether the situation constituted an emergency so as to trigger the exigent circumstances exception to the warrant requirement.¹ The court concluded that it did—in fact, it found there were two emergencies.

First, it reasonably appeared that the home was being burglarized or vandalized. Among other things, the court noted that someone had turned off the lights when the deputies arrived, and it appeared that someone had immediately fled through the garage. In addition, no one answered the door when Sgt. Wood rang 25-30 times, and there were three cars parked in front, none of which belonged to the Hunsbergers. Said the court, these circumstance indicated a “strong possibility of an unauthorized intruder in the home.”

Second, the court ruled that Sgt. Wood reasonably believed that Mr. Blessard's missing stepdaughter was somewhere inside the house, and that she might be in danger because she wasn't answering her cell phone. “When a child goes missing,” said the court, “time is of the essence. It turned out that [the girl] was not in immediate danger, but we cannot judge Wood's search based on what we know in hindsight. At the time of the search, there was reason to think she needed help.” The court concluded, “While it is tempting to second-guess an officer's actions, it is also true that real harm to persons and property could result if police tried to act with the calm deliberation associated with the judicial process.”

Consequently, the court ruled that Sgt. Wood's search of the house was reasonable, and that he was entitled to qualified immunity.

Comment

Here we have Mark and Cheryl Hunsberger, sleeping blissfully while their underage children and five friends are downstairs drinking beer and vodka, smoking cigarettes, driving into town to buy more alcohol, and hiding from the police. Not even Sgt. Wood's ringing the doorbell 25-30 times, nor his loud announcement as he entered the house, could awaken the oblivious Hunsbergers. The only responsible people on the premises were Sgt. Wood and Mr. Blessard—so naturally the Hunsbergers decided to sue them. Although the legal system eventually regurgitated this reeking case, it is pathetic that parents would try to make some easy money by exploiting their own cluelessness and the misbehavior of their children. POV

¹ See *Michigan v. Tyler* (1978) 436 US 499, 509 [“Our decisions have recognized that a warrantless entry by criminal law enforcement officials may be legal when there is compelling need for official action and no time to secure a warrant.”].