

# Recent Case Report

## U.S. v. Coles

(3<sup>rd</sup> Cir. 2006) \_\_ F.3d \_\_ [2006 WL 302243]

### ISSUE

Did officers deliberately create an exigent circumstance so as to gain entry into the defendant's hotel room?

### FACTS

Coles rented a room in a Philadelphia hotel but was delinquent in paying the tab. The hotel manager had been trying to “discuss payment arrangements” with Coles but he would not answer his door. The manager eventually became fed up and opened the door with a passkey. Although he didn’t see Coles anywhere, he *did* see Coles’ stash—“a plastic bag and small vials containing a white substance.” The manager phoned the FBI.

When an FBI agent and Philadelphia narcotics officers arrived, the manager unlocked the door to Coles’ room and showed them the white substance, which they confirmed was cocaine.<sup>1</sup> Having decided to wait for Coles to return, the officers obtained the manager’s permission to watch his door through a peephole in the room across the hall.

A few minutes after Coles arrived and entered the room, an officer attempted to get him to open his door by knocking and announcing “room service.” Coles refused to open his door, saying he hadn’t ordered anything. Then, in a maneuver reminiscent of an old “Saturday Night Live” skit, the officer announced that he was actually the maintenance man and that he needed to come inside to fix a leak. Coles still refused to open the door.

The officer then decided to take the direct approach, yelling, “Open the door. This is the police.” It appears that Coles believed him this time because the only sounds the officers heard from inside the room were those of “running footsteps” and the ubiquitous flushing toilet. For some reason, however, Coles opened the door before he had disposed of everything. So, when he eventually opened the door, the officers walked inside and saw it in plain view. They then secured the room and obtained a warrant.

Coles was charged with, among other things, possession with intent to distribute. He filed a motion to suppress, claiming the officers’ entry was unlawful. The District Court disagreed, ruling there were exigent circumstances; specifically, that the officers reasonably believed that the cocaine in the room would be destroyed if they waited for a warrant. Coles appealed to the Third Circuit.

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<sup>1</sup> **NOTE:** The officers’ entry was unlawful because hotel managers, like other property managers, ordinarily lack authority to consent to a police entry or search of leased premises. See *Stoner v. California* (1964) 376 U.S. 483, 488; *People v. Burke* (1962) 208 Cal.App.2d 149, 160 [“The mere fact that a person is a hotel manager does not import an authority to permit the police to enter and search the rooms of her guests.”].

## DISCUSSION

The so-called “exigent circumstances” rule is one of the better known exceptions to the warrant requirement. Simply put, officers may enter a residence without a warrant if there is a “compelling need for official action and no time to secure a warrant.”<sup>2</sup> One circumstance that falls into this category is the “destruction of evidence” exception which applies if officers have probable cause to believe, (1) there is evidence of a crime inside, and (2) the evidence would be destroyed if they waited for a warrant.<sup>3</sup>

This exception does not, however, apply if the threat to the evidence was deliberately created by the officers themselves for the purpose of avoiding the warrant requirement.<sup>4</sup> Such a fabricated exigent circumstance is commonly known as a “do-it-yourself exigency.”

Although it is often difficult for the courts to determine the officers’ intent, they usually rule that the exigency was created deliberately if, (1) the occupants would have had no motive to destroy the evidence had the officers not made their presence known, and (2) the officers did not need to make their presence known when they did.<sup>5</sup>

In applying these principles to the facts in the case, the court ruled there was an exigency, but that it was fabricated by the officers. Said the court:

[T]he record reveals no urgency or need for the officers to take immediate action, prior to the officers’ decision to knock on Coles’s hotel room door and demand entry. It is, of course, true that once the officers knocked on the door and announced “open the door, this is the police,” they heard sounds indicating that evidence was being destroyed. But that exigency did not arise naturally or from reasonable police investigative tactics. Quite to the contrary, the officers, after their pretextual announcements had failed to gain

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<sup>2</sup> *Michigan v. Tyler* (1978) 436 U.S. 499, 509. ALSO SEE *Illinois v. McArthur* (2001) 531 U.S. 326, 331 [“[The situation] involves a plausible claim of specially pressing or urgent law enforcement need, i.e., “exigent circumstances.”].

<sup>3</sup> See *Illinois v. McArthur* (2001) 531 U.S. 326, 332; *Vale v. Louisiana* (1970) 399 U.S. 30, 34; *Richards v. Wisconsin* (1997) 520 U.S. 385, 391; *People v. Bennett* (1998) 17 Cal.4<sup>th</sup> 373, 384.

<sup>4</sup> See *People v. Mendoza* (1986) 176 Cal.App.3d 1127, 1131; *People v. Daughhetee* (1985) 165 Cal.App.3d 574, 578-9; *People v. Bellizzi* (1995) 34 Cal.App.4<sup>th</sup> 1849; *People v. Freeny* (1974) 37 Cal.App.3d 20, 32; *People v. Superior Court (Hulbert)* (1977) 74 Cal.App.3d 407, 418-9; *People v. Robinson* (1986) 185 Cal.App.3d 528; *Ferdin v. Superior Court* (1974) 36 Cal.App.3d 774, 781; *People v. Kizzee* (1979) 94 Cal.App.3d 927, 935-6; *U.S. v. Socey* (D.C. Cir. 1988) 846 F.2d 1439, 1448 [“It is true that police officers cannot deliberately create exigent circumstances to justify a warrantless entry into a private dwelling.”].

<sup>5</sup> **NOTE:** An exigency is not deemed “fabricated” if the threat to the evidence resulted from circumstances over which officers had no control. See *U.S. v. Richard* (5<sup>th</sup> Cir. 1993) 994 F.2d 244, 248 [“In considering claims of manufactured exigency, we distinguish between cases where exigent circumstances arise naturally.”]; *U.S. v. Chambers* (6<sup>th</sup> Cir. 2005) 395 F.3d 563, 566 [“[L]aw enforcement officers must be responding to an unanticipated exigency rather than simply creating the exigency for themselves.”]; *Ewolski v. City of Brunswick* (6<sup>th</sup> Cir. 2002) 287 F.3d 492, 504 [created-exigency may result “if the police controlled the timing of the encounter giving rise to the search.”]. Nor is an exigency fabricated merely because the officers might have been able to accomplish their objective without alerting the occupants. See *U.S. v. Socey* (D.C. Cir. 1988) 846 F.2d 1439, 1449 [“As long as police measures are not deliberately designed to invent exigent circumstances, we will not second-guess their effectiveness.”].

entry into [Coles's room], deliberately created the exigency by knocking on the door and demanding entry.

Consequently, the court ruled the evidence discovered inside Coles' hotel room should have been suppressed because the affidavit for the search warrant was based on information obtained as the result of the officers' unlawful entry.

#### COMMENT

Officers do not fabricate an exigency when, in the course of an investigation, they knock on a suspect's door in hopes of talking with him; e.g., "knock and talks." Problems will result, however, if the officers had probable cause to believe there was destructible evidence on the premises and, in addition to knocking on the door, they said or did something that was reasonably likely to provide the suspect with a motive to immediately destroy the evidence. As the court in *Coles* explained:

[T]his case does not present the situation where the police reasonably attempted to utilize the "knock and talk" investigative tactic. Having knowledge of criminal activity inside [Coles' room] the police had no legitimate reason to utilize the "knock and talk" procedure. . . . At the very least, the actions of the officers at this time demonstrated that the police had no intention of merely investigating matters further or perhaps obtaining consent to search.

POV