NOVEMBER 2001 VOL. 6 ISSUE 9

LEGAL UPDATE

MICHIGAN STATE POLICE
TRAINING DIVISION
Legal Training Section
(517) 322-6704

The "knock and talk" tactic is held to be constitutional.

Officers received information that defendant may have controlled substances on his property. Since there was not sufficient evidence to obtain a search warrant, the officers decided to do a "knock and talk." Officer described the procedure as going to the suspect house, engaging in conversation and attempting to gain consent to search.

In this case, officers located the subject in an open area between his house and barn. They identified themselves and informed him that they believed he had controlled substances on the premises and asked for consent to search. Consent was given and one officer entered the pole barn and located marijuana in a freezer. They then asked to enter a trailer that was locked. The subject retrieved the key and opened the door where they found scales and he admitted to using the scales to weigh marijuana. At that point, the subject stated, "wait, wait, just a minute." The officers then obtained a search warrant and found additional evidence.

The Court of Appeals upheld the "knock and talk" procedure. "We conclude that in the context of 'knock and talk' the mere fact that the officers initiated contact with a citizen does not implicate constitutional protections. It is unreasonable to think that simply because one is at home that they are free from having the police come to their house and initiate a conversation. The fact that the motive for the contact is an attempt to secure permission to conduct a search does not change that reasoning. We find nothing within a constitutional framework that would preclude the police from setting the process in motion by initiating contact and, consequently, we hold that the 'knock and talk' tactic employed by the police in this case is not unconstitutional."

The Court continued by holding, "That is not to say, however, that the 'knock and talk' procedure is without constitutional implications. Anytime the police initiate a procedure, whether by search warrant or otherwise, the particular circumstances are subject to judicial review to ensure compliance with general constitutional protections. Accordingly, what happens within the context of a 'knock and talk' contact and any resulting search is certainly subject to judicial review. For example, a person's Fourth Amendment right to be free of unreasonable searches and seizures may be implicated where a person, under particular circumstances, does not feel free to leave or where consent to search is coerced."

In analyzing the facts of this case, the Court held that the Fourth Amendment had not been violated. "Here, the 'knock and talk' procedure that the police utilized involved police officers initiating an ordinary citizen contact. The police action, i.e., approaching defendant as he was standing in his yard, did not amount to a seizure of defendant. The police simply identified themselves, told defendant they had been informed that he had controlled substances on his property, and asked defendant's permission to 'look around.' There is no indication that defendant was not free to end the encounter. Indeed, the testimony at the suppression hearing does not support the notion that defendant felt threatened or coerced. Thus, the initial contact with defendant did not have any constitutional implications on the basis of a seizure because there is no indication that any seizure of defendant occurred. Although we can envision a scenario where the police conduct when executing the 'knock and talk' procedure evidences an unreasonable seizure or results in an unreasonable search, the facts in the present record do not suggest such a situation." People v Frohriep, C/A No. 223755 (October 12, 2001)

The scope of consent is based on the officer's request to search and what the subject agrees to.

In the knock and talk case, the officers asked to search the defendant's property for controlled substances. The defendant agreed but argued that he did not give consent to search the pole barn where the initial drugs were located. The Court held there was nothing on the record to indicate that the officers were coercive or demanding in any way and that the suspect had not placed any limitation on the scope of the search. "A reasonable person would understand that the police intended to search for controlled substances on the premises in any place where controlled substances could be located including the pole barn." People v Frohriep, C/A No. 223755 (October 12, 2001)

A "No-Knock Warrant" was proper where the officers specifically articulated facts that evidence was likely to be destroyed.

Officers had information that drug dealers from Detroit, who were in the process of selling drugs, occupied a residence. Included in an affidavit for a search warrant was the following request: "A no-knock search warrant is requested because the informant states that deals inside the house are usually done near the bathroom in case the police should come in the house. Also, it has been the experience of Narcotics detectives that most of the dealers from Detroit have been armed when apprehended. Within the past 48 hours the affiant made a controlled purchase of narcotics at 163 Rand Ave. through a confidential informant. This informant has made 9 prior controlled purchases and provided numerous pieces of information that has been independently corroborated."

Based on this information the court issued a "no-knock" warrant due to exigent circumstances. The Sixth Circuit upheld the no-knock warrant and entry. "Had the affidavit merely contained generalized allegations of drug dealing within the residence, the government would not have demonstrated the kind of exigency required to justify a no-knock warrant. Likewise, boilerplate language concerning the possible destruction of evidence would not be sufficient. Where, as here, however, the affidavit in support of the warrant application includes recent, reliable information that drug transactions are occurring in the bathroom 'in case the police should come in the house,' it is reasonable to infer that this precaution is taken to facilitate the destruction of evidence and thus a no-knock warrant is within the range of alternatives available to the issuing judge or magistrate." United States v Johnson, 267 F.3d 498 (2001).

Euthanasia is not justifiable homicide.

The Court of Appeals did not reverse Dr. Kervorkian's second-degree murder conviction on constitutional grounds because it refused to hold that euthanasia was legal and found no principled basis for legalizing it. The court failed to find any precedent that could uphold such an act and refused to enter arenas reserved for public debate and legislative action. "The role of the courts is to serve neither as physicians nor as theologians." People v Kevorkian, C/A No. 221758 (November 20, 2001)

New Terrorism Legislation

False threats of harmful substances. P.A. 135 of 2001 (effective 10-23-01)

MCL 750.200l creates a five-year felony to "Commit an act with the intent to cause an individual to falsely believe that the individual has been exposed to a harmful biological substance, harmful biological device, harmful chemical substance, harmful chemical device, harmful radioactive material or harmful radioactive device." Subject may also be responsible for costs of response.

Increased penalties for other violations. P.A. 136 of 2001 (effective 10-24-01)

This act increased penalties under MCL 750.200j from a misdemeanor to felony for manufacturing, delivering, possessing, transporting, placing, using, or releasing for an unlawful purpose a:

- Chemical irritant.
- A smoke device.
- An imitation harmful substance or device.