**NO KNOCK SEARCH WARRANTS - EPISODE NOTES**

Hello everyone and welcome back to the Good Judge-Ment Podcast. I am Wade Padgett

*And I am Tain Kell.*

Occasionally, we have an issue that is either suggested by a loyal listener or which is addressed in a recent appellate case that encourages us to discuss the topic. Today, our topic is based one of those “recent cases” examples.

*“No knock” search warrants. This topic has been the focus of proposed legislation at the state level and the federal level for years.*

There are some misconceptions surrounding the difference between a search warrant that does not include a "no knock” provision and those that do.

*So we decided to delve into this topic for our listeners interested in search and seizure law. This topic reminds me of that old Tony Orlando and Dawn song, “Knock Three Times…”*

Wow. If we could take a poll, I would love to know how many of our listeners actually were alive in 1970 when that song was released….

Before we jump into this topic, shout out to my awesome Staff Attorney, John “JB” Bryant for research on this topic.

As a judge, there are a couple of different ways in which the topic of No Knock search warrants might become relevant.

* You might be asked to sign a search warrant
* You might be considering a motion to suppress dealing with search warrants

We have had very different experiences with being asked to sign search warrants. Tain was never/rarely asked to sign a search warrant. Wade used to serve as a Magistrate judge. I considered search warrants all the time in that position. But even as a Superior Court judge, I am asked to issue search warrants with some regularity.

To understand what a No Knock provision actually means, it is best if we start with the requirements or limitations on law enforcement officers when there is no “No Knock” provision.

We start all search and seizure cases with an understanding of the “Warrant Requirement” established under the US Constitution.

The 4th Amendment says that the government is not allowed to search or seize anything or anyone without a warrant (“Warrant Requirement”). Search warrants authorize searches and/or seizures of “stuff” compared to an arrest warrant which authorizes seizures of people.

Obviously, there are important, well-defined exceptions to the Warrant Requirement that we will not be addressing today. Instead, in this episode we are addressing situations where a search warrant was sought by a law enforcement officer.

So the officer seeks a search warrant and provides an affidavit setting forth the probable cause allegations as to why a warrant is justified. The officer leaves the judge’s office with written permission to conduct a search. How does the officer now conduct the entry into the premises to be searched?

O.C.G.A. § 17-5-27 provides that

“All necessary and reasonable force may be used to effect an entry into any building or property or part thereof to execute a search warrant if, after verbal notice or an attempt in good faith to give verbal notice by the officer directed to execute the same of his authority and purpose:

(1) He is refused admittance;

(2) The person or persons within the building or property or part thereof refuse to acknowledge and answer the verbal notice or the presence of the person or persons therein is unknown to the officer; or

(3) The building or property or part thereof is not then occupied by any person.”

Without any special no knock provisions, the officer armed with the search warrant must “knock and announce” before using force to enter to premises to be searched.

Contrary to popular opinion, officers have the authority to forcefully enter the property to be searched if, after knocking and announcing, the officer is refused admittance, etc.

I think that some people believe that without having no knock capability, the officer is required to politely knock and determine if the resident feels like opening the door. That is simply not the case. It would be ludicrous if that were the rule. The target could gather up all of the stash or contraband, hide it or flush it and then casually appear at the door. Or simply refuse the acknowledge that the officer is at the door. Either way, the resident could thwart the whole purpose of the warrant by not answering the door.

That is NOT the law. Even without having no knock permission, the officer has the authority to enter the premises with force.

Having established the standing authority of law enforcement officers who are armed with a search warrant to enter the premises to be searched with force after knocking and announcing, we now turn to an explanation of what a no knock provision would allow.

Probably time to turn to the case law.

“The notice requirement of [OCGA § 17-5-27] may be dispensed with, however, by a no-knock provision in the warrant or by the presence of exigent circumstances.”[[1]](#endnote-1)

So if the judge who issued the search warrant also authorizes a no knock provision, the requirement that the officer “knock and announce” is dispensed with.

In order for the judge who issued the search warrant to authorize a no knock provision,

A search warrant with a no-knock provision may be issued where the facts set out in the affidavit demonstrate exigent circumstances, which exist where the police have reasonable grounds to believe that forewarning would either greatly increase their peril or lead to the immediate destruction of the evidence.[[2]](#endnote-2)

The case law says that the standard required for establishing the reasonable suspicion necessary to justify a no knock provision as opposed to the standard for establishing probable cause in general, is not very high.[[3]](#endnote-3)

However, the affidavit provided to the issuing judge must demonstrate exigent circumstances where police show that “forewarning would either greatly increase their peril or lead to the immediate destruction of evidence.”[[4]](#endnote-4)

In a more lengthy quote, the Georgia Court of Appeals held:

a warrant can authorize a “no-knock” entry where police seeking the warrant demonstrate a reasonable suspicion that knocking and announcing their presence, under the particular circumstances, would be dangerous or futile, or that it would inhibit the effective investigation of the crime by, for example, allowing the destruction of evidence. But a no-knock provision is permissible only when based on a neutral evaluation of each case's particular facts and circumstances, not on blanket provisions based on generalized experience. The fact that the warrant is issued in a felony drug investigation, standing alone, is insufficient to support a “no-knock” provision. And an affidavit based on the general ease of destruction of drug evidence and an officer's prior experience is insufficient to support a no-knock provision.

Having discussed the no knock provisions in the abstract, let’s look at a recent case dealing with these issues (and which spurred us to discuss this topic in the first place). Warning, there is an incredibly important factor at the very end of this appellate opinion.

***Hughes v. State,* A22A1428 (1/4/2023)**

* Facts: Bonnie Hughes was charged with possession of methamphetamine with intent to distribute following the execution of a “no-knock” search warrant. Officers in Spalding County, using confidential informants, arranged for two controlled purchases of methamphetamine from Hughes at her residence. Following these purchases, a narcotics investigator applied for a search warrant for the residence. In the warrant application and affidavit, the investigator stated the two controlled purchases and citizen complaints of meth use and sales occurring at the Hughes residence, further, the investigator attested that there were surveillance cameras on the corners of the residence. Further, the investigator attested that officers had attempted a “knock and talk” at the residence and no one answered. The investigator stated that controlled substances could be sold in various quantities which could be small in size and therefore easily hidden. The investigator requested a “no-knock” search warrant, stating that there were reasonable grounds to believe that giving verbal notice would greatly increase the peril to officers executing the warrant and lead to the immediate destruction of the evidence sought. In support of this request, the investigator averred:
	+ Surveillance camera[s] are set up on the corners of the residence and Bonnie Hughes has been known to move the illegal narcotics on a daily basis. All of which said circumstances leads to a high risk of the contraband suspected of being located within the premises being destroyed or secreted away prior to apprehension if officers are required to knock and announce prior to entry.

The magistrate court granted the investigator request for a “no-knock” search warrant on the reasoning that verbal notice could increase peril to the officers executing the warrant.

Ms. Hughes’ lawyer then filed a motion to suppress, arguing that the search warrant was invalid because it contained an invalid no knock provision. (Obviously, if the trial court found the search warrant to be invalid, the resulting search would be inadmissible)

After reciting some of the general principles surrounding no knock provisions we have discussed above, the Court of Appeals compared this case with some other cases.

* In *Poole v. State*,[[5]](#endnote-5)this Court held that a person peeking through a window did not support police entry without a verbal notice. In *Smith v. State*,[[6]](#endnote-6) officers requested a no knock provision because the target property named in the search warrant regularly had people standing around outside who could warn others of the approaching officers. The existence of surveillance cameras here has the same effect as peeking through the window or standing outside, in that an individual may be able to see the officers approach. Moreover, there is no evidence that Hughes had a history of violence or had packaged or located the drugs in her residence for quick disposal. An alleged drug dealer inside a location with surveillance cameras, without more, does not show that the defendant is likely to harm police or destroy evidence.

The Court concluded by finding that in the *Hughes* case, as in *Poole,* the notice requirement was not excused by the mere fact that someone in the residence may have discovered the presence of officers approaching to execute the search warrant. Thus, the no-knock provision in the search warrant was invalid, and the superior court erred in denying the motion to suppress.

Admittedly, there are cases in Georgia where it can be difficult to determine which facts support the issuance of a no knock provision and which can lead to a successful motion to suppress.

*Cash v. State*, 316 Ga. App. 324, 327-328 (2012) – warrant affidavit merely indicated that the defendant was dangerous and had drugs arranged for rapid disposal – motion to suppress granted by trial court and upheld on appeal.

*Braun v. State*, 324 Ga. App. 242, 244 – warrant affidavit alleged defendant had prior battery and possession of a firearm convictions and that provided a sufficient basis for the trial court’s decision to deny the motion to suppress

[Let’s take a moment to consider a larger issue that we have discussed in prior episodes and which bears repeating here. When looking at the facts of precedent, it is important to note whether the trial court granted a motion to suppress or denied the motion to suppress. Appellate courts are looking to determine if there are facts in the record which support the trial judge’s decision.]

The *Hughes* court cited a federal case, *U.S. v. Segura-Baltazar[[7]](#endnote-7)* where a no knock provision was deemed to be valid because the warrant affidavit included specific evidence of multiple firearms in the residence to be searched, along with evidence of recently installed surveillance camera which had the capacity to work in low light.

Frankly, we could go on for a while citing cases where the issuance of a no knock provision was deemed proper and others where the no knock provision was deemed improper with few if any factual differences between the two being shown.

We are not sure that continuing down that path would be helpful because if you have a case dealing with a no knock provision, it will obviously be very fact-dependent.

Instead, we think that a lengthy quote that is from the decision in *Poole* but which is contained in the *Hughes* opinion may be more instructive:

the only information received by the officers in immediate proximity to the time the warrant was being executed was that, before they could make an announcement, a person inside the residence had looked out of and then left a window. But there is no evidence that [the officer executing the warrant], who had placed [the defendant] under surveillance, believed that the person who peered through the window was [the defendant] and not some person unconnected with the suspected drug activity. There is no evidence that [the defendant] or the individual who peered through the window had a history of violence or that either had threatened violence if law enforcement officers entered. There is no evidence that [the defendant] had packaged or located the drugs in the apartment for quick disposal. The only reference in the record of harm to the officers or destruction of the evidence is [the officer's] testimony regarding a “possibility” of such based only on the fact that someone looked out a window and then left the window. While the reasonableness standard for a forceful entry is not high, that testimony is simply inadequate to establish reasonable grounds to believe that, *in this case*, forewarning would have either greatly increased the officers’ peril or led to the immediate destruction of the evidence.[[8]](#endnote-8)

[Discuss the importance of what was not in the record in *Poole* per the 6 arrows]

There is one additional discussion in the *Hughes* decision that bears discussion. Near the end of the opinion, (remember, we promised an important issue appeared at the end of the decision) the Court discussed the State’s argument that it is actually irrelevant whether the no knock provision was valid because Ms. Hughes was outside in the yard of the home when the warrant was executed. Therefore, the officers did not even use the no knock authorization, according to the prosecutor.

Only problem – that evidence of where Ms. Hughes was at the time the warrant was executed was *not a part of the record*. Actually, it appears that no live witness testified at the motion to suppress. To quote the Court, “the sole evidence provided at the hearing on the suppression motion was the search warrant.”[[9]](#endnote-9)

We are concerned that there was a memo or strategy session among prosecutors a few years ago where it was determined that prosecutors should provide as little information as possible in a pretrial motion to prevent “discovery” by the defense. I cannot imagine the situation where a motion to suppress is heard without a live witness testifying about the circumstances of the case.

While we appreciate the desire of prosecutors to avoid fishing expeditions during pretrial motions, at some point the evidence of what happened has to be made a part of the record. Judges cannot make proper determinations in these cases without sufficient evidence being made a part of the record.

One last thought about no knock provisions. They are disfavored and there are tragic examples where no knock provisions have gotten people hurt or killed.

Every so often, proposed legislation is introduced that attempt to eliminate or seriously curtail no knock search warrants.[[10]](#endnote-10)

Some of the best and most experienced law enforcement officers I have ever met seem to be in consensus that no knock provisions are dangerous in that the residents have no way of knowing whether they are the victims of a home invasion by a rival or whether this is a search warrant by law enforcement officers.

In Wade’s home circuit, the officers generally do not even ask for a no knock provision for the very reasons we just discussed. Their commanding officers do not authorize them because of the relatively low requirements associated with using force to enter premises generally.

There is significant US Supreme Court precedent on the issue of no knock warrants which, by US Supreme Court standards, are relatively recent.[[11]](#endnote-11) There are a bunch of Georgia appellate cases on the topic and there really is no “bright line” rule on when no knock provisions are always allowed or never allowed.

It is clear that the case law all suggests that the record made to the judge issuing the warrant - and established during a subsequent motion to suppress hearing - must include particularized evidence relating to this situation and not merely conclusory statements based upon an officer’s experience or how these sorts of cases are handled in general.

So, that’s all for our episode dealing with no knock search warrants.

This issue is clearly in the public consciousness and on the mind of appellate courts.

The record must be clear and apparent that a no knock was necessary and that the particularized facts of *this* case support the issuance of the no knock provision.

The outline is full of statutory and case citations and that outline can be found at **goodjudgepod.com**.

Reach out to us on goodjudgepod@gmail.com with all of your podcast topic ideas

**I’m Wade Padgett**

*And I’m Tain Kell…do you know that Jimi Hendrix, Janis Joplin, Kurt Cobain, Amy Winehouse and Jim Morrison all died at the same age? They were all 27 years old when they died. Hard to believe how young they all were, given their lasting impact on music.*

1. *Hughes v. State*, 2023 WL 31017, A22A1428 (Ga.App. 1/4/2023), citing *Poole v. State*, 266 Ga. App. 113- 113-114 (2004). [↑](#endnote-ref-1)
2. *Hughes*, supra, citing *Poole*, supra. [↑](#endnote-ref-2)
3. *Hughes,* supra, citing . *State v. Lopez-Chavez*, 330 Ga. App. 644, 647 (2015). [↑](#endnote-ref-3)
4. *Hughes,* supra, citing *Poole*, supra. [↑](#endnote-ref-4)
5. *Poole v. State*, 266 Ga. App. 113- 113-114 (2004). [↑](#endnote-ref-5)
6. *Smith v. State*, 219 Ga. App. 905 (1996). [↑](#endnote-ref-6)
7. *United States v. Segura-Baltazar*, 448 F.3d 1281, 1290-1291 (III) (11th Cir. 2006). [↑](#endnote-ref-7)
8. *Hughes*, supra, citing *Poole*, at 117-118. [↑](#endnote-ref-8)
9. *Hughes*, at 4 of slip opinion. [↑](#endnote-ref-9)
10. 2015 SB 159 did not pass but would have required that law enforcement agencies to adopt written policies for even requesting no knock warrants and required that the warrant affidavit establish that knocking and announcing would be dangerous to human life or which allow for the destruction of evidence. A substitute was submitted (again, this did not pass the Senate) to require a supervisor in the law enforcement agency to be present, to approve the request for a no knock provision, that the officers executing the warrant have training on executing a no knock warrant. The issue reappeared in proposed legislation in 2020 SB 513 (which did not pass) which contained many of the same provisions. [↑](#endnote-ref-10)
11. *Wilson v. Arkansas*, 514 U.S. 927 (1995); *Richards v. Wisconsin*, 520 U.S. 385 (1997), *United States v. Banks*, 540 U.S. 31, 36 (2003); *Hudson v. Michigan*, 547 U.S. 586 (2006). [↑](#endnote-ref-11)