9-1-1 HANG-UP CALLS:

Exigent Circumstances and The 4th Amendment

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Johnson v. the City of Memphis 617 F.3d 864 (6th Cir. 2010)

Law enforcement officers often receive "9-1-1 hang-up" dispatches. These are, as the name of the dispatch infers, calls to a 9-1-1 center where the caller hangs up the phone prior to providing any details to the dispatcher. When police arrive on these calls, often the question arises as to whether they are able to enter the call location without a warrant. While the answer to that question is very fact-specific, we will look to *Johnson v. the City of Memphis*[i], et al., a recent case decided by the Sixth Circuit Court of Appeals for guidance.

The facts of Johnson are as follows:

> [O]n April 22, 2004, … police officers Kenneth Adams ("Adams") and Melvin Rice ("Rice") were both on duty, driving separate vehicles. At 9:11 P.M., they each received separate radio calls from their dispatcher to respond to a "911 hang call" from 619 Knightsbridge. Rice was first on the scene and notified dispatch. He approached the front of the house and found the front door wide open. He advised dispatch of the open door, and then announced that the police were present. Receiving no response, he entered with his weapon drawn. Adams arrived and saw Rice inside the doorway with his weapon drawn, so he drew his own weapon and followed Rice inside. At some point after the officers entered, a second call came in to dispatch with sufficient information to classify the call as a "mental consumer."
>
> The parties contest the following sequence of events, though the dispute does not affect this appeal. According to the Defendants, Rice, who is now deceased, told Adams he saw someone moving down the corridor ahead of them. The officers agreed they should

sweep the building to make sure that no one was hurt or in need of assistance. As they rounded the corner near the stairs, Johnson appeared. Rice inquired as to why Johnson did not respond to the officers' calls. Johnson did not answer, but instead jumped on Rice and a fight ensued. Rice pushed Johnson back into a wall, but Johnson lunged forward and grabbed Rice's gun hand. Rice yelled to Adams that Johnson was going for his gun. Adams shouted repeatedly at Johnson to get down, and then fired twice at Johnson. After Adams fired, Johnson threw Rice into a wall and charged Adams. Adams retreated, yelled at Johnson to get down, and continued to fire, but Johnson reached him and hit him with enough force to throw Adams against a wall and knock him out briefly. When Adams came to his senses, Johnson was dead at his feet.

The officers later learned that Johnson was not ordinarily dangerous, but was bipolar and off his medication. Plaintiff had dialed 911 and then hung up in order to leave the house. She called again a few minutes later and informed the dispatcher of the medical situation. Sadly, this information did not reach the officers on the scene until it was too late.[ii]

While the plaintiff filed suit based on numerous constitutional and state claims, we will only examine the *Fourth Amendment* claim which was in reference to the officer's warrantless entry into Johnson's home. The district court granted the defendants' (city and officers) motion for summary judgment, and the plaintiff appealed to the Sixth Circuit Court of Appeals.

The issue before the court was *whether the 9-1-1 hang-up call along with the open door at Johnson's residence provided the police officers with sufficient exigent circumstances to make their warrantless entry into Johnson's home reasonable under the Fourth Amendment.*

The Sixth Circuit then noted the following rules that apply in this case:

- **As "the ultimate touchstone of the *Fourth Amendment* is 'reasonableness,'" there are several exceptions to the warrant requirement that are ultimately grounded in that standard. "Exigent circumstances" are one such exception**.[iii]
- **Exigent circumstances arise when an emergency situation demands immediate police action that excuses the need for a warrant**.[iv]
- **We have repeatedly recognized four situations that may rise to the level of exigency: "'(1) hot pursuit of a fleeing felon, (2) imminent destruction of evidence, (3) the need to prevent a suspect's escape, and (4) a risk of danger to the police or others**.'"[v]
- **The Supreme Court has also recognized that another "exigency obviating the requirement of a warrant is the need to assist persons who are seriously injured or threatened with such injury."[vi]…"[L]aw enforcement officers 'may enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury**.'" [vii]

As the Sixth Circuit examined the above rules, they also stated that officers do not need to have absolute certainty that there is a person inside a residence in need of help for a warrantless entry to be reasonable based on the exigent circumstance exception. Particularly, the court of appeals stated

> **Officers do not need ironclad proof of 'a likely serious, life-threatening' injury to invoke the emergency aid exception. Nor do officers need to wait for a potentially dangerous situation to escalate into public violence in order to intervene. [T]he role of a peace officer includes preventing violence and restoring order, not simply rendering first aid to casualties. The police's entry must be based on an objectively reasonable belief, given the information available at the time of entry, that a person within the house was in need of immediate aid.**[viii] [internal citations and quotations omitted]

The Sixth Circuit, in consideration of the above rules, then affirmed the judgment of the district court awarding summary judgment to the defendant city and officers. The court of appeals stated

> **We hold that the combination of a 911 hang call, an unanswered return call, and an open door with no response from within the residence is sufficient to satisfy the exigency requirement.** The district court was correct in finding that the police were justified in entering the home to sweep for a person in need of immediate assistance under the emergency aid exception. The whole point of the 911 system is to provide people in need of emergency assistance an expeditious way to request it.[ix] [emphasis added]

It is important to note that the plaintiff in this case argued that the 9-1-1 hang-up call did not provide enough information to justify warrantless entry. However, the Sixth Circuit responded to this argument by stating

> 9-1-1 hang-up calls do convey information. They do not convey certainties, but certainties are not required. 9-1-1 hang-ups inform the police that someone physically dialed 9-1-1, the dedicated emergency number, and either hung up or was disconnected before he or she could speak to the operator. An unanswered return call gives further information pointing to a probability, perhaps a high probability, that after the initial call was placed the caller or the phone has somehow been incapacitated. In some percentage of cases involving this set of facts, a person is in need of emergency assistance. Because the "ultimate touchstone" of the *Fourth Amendment* is reasonableness, certainty is not required.[x]

However, *it is important to note that the Sixth Circuit did not establish a per se rule authorizing warrantless entry on all 9-1-1 hang-up calls, but rather limited their decision the facts of this case.*[xi]

NOTE: Court holdings can vary significantly between jurisdictions. As such, it is advisable to seek the advice of a local prosecutor or legal advisor regarding questions on specific cases. This article is not intended to constitute legal advice on a specific case.

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[i] 617 F.3d 864 (6th Cir. 2010)
[ii] *Id.* at 866-867
[iii] See *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006); see also *Mincey v. Arizona*, 437 U.S. 385, 390, 98 S. Ct. 2408, 57 L. Ed. 2d 290 (1978)
[iv] *United States v. Radka*, 904 F.2d 357, 361 (6th Cir. 1990) (citing *Welsh v. Wisconsin*, 466 U.S. 740, 750, 104 S. Ct. 2091, 80 L. Ed. 2d 732 (1984))
[v] *Thacker v. City of Columbus*, 328 F.3d 244, 253 (6th Cir. 2003) (quoting *United States v. Johnson*, 22 F.3d 674, 680 (6th Cir. 1994)).
[vi] *Brigham City v. Stuart*, 547 U.S. 398, 403(2006)
[vii] *Michigan v. Fisher*, 558 U.S. , 130 S. Ct. 546, 548, 175 L. Ed. 2d 410 (2009) (per curiam) (quoting *Brigham City*, 547 U.S. at 403)
[viii] *Johnson*, 617 F.3d at 868
[ix] *Id. a*t 869-870
[x] *Id.* at 871 (See *Hill v. California*, 401 U.S. 797, 804, 91 S. Ct. 1106, 28 L. Ed. 2d 484 (1971) ("[S]ufficient probability, not certainty, is the touchstone of reasonableness under the Fourth Amendment . . . .")
[xi] *Id.*

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