WHEN IMMINENT DESTRUCTION OF EVIDENCE AUTHORIZES WARRANTLESS HOME ENTRY

By Brian Batterton

The Fourth Amendment of the United States Constitution requires that the police have a warrant to enter a suspect’s home to seize evidence. It follows that one of the principles of the Fourth Amendment is that searches and seizures inside a home without a warrant are presumed unreasonable. However, the United States Supreme Court has carved out certain exceptions to the above rule. For example, generally, police may enter a home without a warrant based on consent, when in hot pursuit, in order to prevent the imminent destruction of evidence, to prevent escape, and to protect someone in the residence from imminent physical danger. Each of these exceptions is dependant upon the specific facts of the case and each is worthy of an article. However, the focus of this article is when the imminent destruction of evidence authorizes the police to enter a suspect’s residence without a warrant.

Recently, a California Court of Appeal addressed the issue of when the police may make a warrantless home entry to prevent the imminent destruction of evidence. In the People v. Hua, officers responded to a noise complaint at an apartment. When they arrived, they observed from a common area, through an open window blind, people smoking marijuana. They knocked on the door and when it was opened by Hua, they smelled the distinct odor of burning marijuana. The officers asked for consent to enter and Hua refused. However, the officers told him that they needed to enter and Hua relented and stepped aside so officers could enter. [Note: Acquiescence or giving into an officer’s command is not valid consent; consent must be free and voluntary.] The officers entered and found forty-six marijuana plants and two “blunts.” Additionally, other items used to grow marijuana and a large sword were found and seized. Hua filed a motion to suppress which the trial court denied.

Hua appealed and focused on the fact that, although the officers had probable cause to believe contraband was inside the apartment, they entered without consent or warrant and there were not sufficient exigent circumstances present to justify the warrantless entry.
First, it should be noted that, based on the officer’s observation of marijuana being smoked plus the odor of burning marijuana, the police did have probable cause to believe that marijuana was illegally being possessed inside the apartment. However, in order for a crime to justify warrantless entry to preserve evidence, there is a requirement that the crime must not be “minor.”

The explanation of whether a crime is minor is first found in the United States Supreme Court case of Welsh v. Wisconsin. In Welsh, police entered the suspect’s home without a warrant to arrest him for DUI, citing the prevention of the destruction of evidence as the exigency. They reasoned that the exigency was the dissipation of the suspect’s blood/alcohol concentration. In finding that the warrantless entry was not justified, the high court noted that, in Wisconsin, DUI was a civil, nonjailable offense, punishable only by a fine. The United States Supreme Court stated:

We therefore conclude that the common-sense approach utilized by most lower courts is required by the Fourth Amendment prohibition on "unreasonable searches and seizures," and hold that an important factor to be considered when determining whether any exigency exists is the gravity of the underlying offense for which the arrest is being made.

Thus, it is clear that when the offense is “nonjailable” it is certainly not serious enough to justify a warrantless home entry when exigent circumstances are present.

Another United States Supreme Court case that is instructive is Illinois v. McArthur. In this case, police had probable cause to believe that marijuana was present inside McArthur’s trailer home. They encountered McArthur outside his trailer and asked for consent to enter and search. He refused and the police prevented him from entering his trailer for two hours while a search warrant was secured. Upon execution of the warrant, only a small, misdemeanor amount of marijuana was found. The Supreme Court held that it was reasonable for the police to prevent McArthur from entering his trailer while they secured the warrant. McArthur argued that the offense was “minor,” as it was in Welsh. But the court noted that, in this case, the offense was “jailable” rather than “nonjailable,” as it was in Welsh. However, the high court did not address the issue of whether the offense in McArthur would have authorized warrantless entry, but rather limited it’s holding to the facts of the case, which merely involved restricting the suspect from entering his trailer unaccompanied.

Additionally, the California Supreme Court decided a case where they permitted the police to make a warrantless home entry to arrest a DUI suspect. The court noted that California classifies DUI as a criminal offense which is punishable by a jail term, as opposed to Welsh, where it was only a civil, nonjailable offense.

In light of the above two United States Supreme Court cases, the California court, in Hua, looked at the seriousness of the crime of possession of marijuana. The court noted that, in California, possession of less than 28.5 grams of marijuana was only punishable by a $100 fine.
The offense was nonjailable for punishment, as well as “non-arrestable,” meaning officers were required to only issue a citation for the offense.\(^{viii}\) Thus, the court held that the offense of possession of less than 28.5 grams of marijuana, in California, was not a serious enough crime to justify the “exigent circumstances/prevention of imminent destruction of evidence” exception to the warrant requirement.

It is important to note that, while the constitutional principles of *Welsh* and *McArthur* must be followed in all states, the *Hua* decision is only binding in California. However, other states may likely agree with this decision, certainly for any offense that is nonjailable. For application in a specific state, officers should contact their legal advisor or prosecutor. General questions may be addressed at patc.com.

**CITATIONS:**


\(^{iii}\) A116578, Cal. App. 1st (2008)

\(^{iv}\) *Id.* at 6 (citing *Welsh*, 466 U.S. at 750)

\(^{v}\) *Welsh*, 466 U.S. at 753

\(^{vi}\) 531 U.S. 326 (2001)

\(^{vii}\) *People v. Thompson*, (2006) 38 Cal.4th 811

\(^{viii}\) *Hua* at 8