Knock and Talk: Limited to Just the Front Door?

Description

The United States Supreme Court held, in *Carroll v. Carman*,[1] that a police officer was entitled to qualified immunity because the law was not clearly established as to whether officers may utilize an entryway, other than the front door, when entering a property and conducting an inquiry under the "knock and talk" exception to the warrant requirement.

On July 3, 2009, the Pennsylvania State Police Department received a report that Michael Zita, who reportedly stole a vehicle and two loaded handguns, had fled to the house of Andrew and Karen Carman. Two officers, Jeremy Carroll and Brian Roberts, responded to the Carman's home to investigate. As there was limited parking available in the area, the officers parked in a spot at the far rear of the property.

When the officers exited their patrol vehicles, and looked toward the house, they noticed a small structure with its door open and a light on. Officer Carroll believed an individual may have been inside the structure, and so he walked over and stuck his head inside and announced his presence. There was no one inside the structure, however, so both officers proceeded to walk toward the house. Upon approach, the officers noted a sliding glass door that opened onto a ground-level deck. Officer Carroll believed that the door "looked like a customary entryway" and decided to knock on it.

As the officers stepped onto the deck, a man came out of the house and approached them in a belligerent and angry manner. Both officer identified themselves, stated that they were looking for Michal Zita, and asked the man for his name. Rather than respond, the man turned away from the officers and appeared to reach for his waist. Fearing the man was reaching for a weapon, Carroll grabbed the man's right arm. As the man twisted away from Carroll he lost his balance and fell to the ground.

At that point a woman exited the residence and asked what was happening. The officers explained the purpose of their presence. The woman identified herself as Karen Carman, and identified the man as her husband, Andrew Carman, and told them Michael Zita was not at the residence. The officers asked for permission to search the house, to which Mrs. Carman consented, and after not finding Zita, left the residence. The Carmans were not charged with any crimes.

The Carmans filed an action against Officer Carroll under 42 U.S.C. §1983, alleging that Carroll violated their Fourth Amendment rights when he unlawfully entered their property by going into their backyard and onto their deck without a warrant. Carroll argued that his entry was lawful under the "knock and talk" exception to the warrant requirement, which allows officers to knock on someone's door, so long as they stay "on those portions of [the] property that the general public is allowed to go on."[2] In response, the Carmans argued that visitors would have gone to their front door, rather into their backyard and onto their deck, and therefore, the "knock and talk" exception did not apply.

At trial, the district court instructed the jury that the "knock and talk" exception "allows officers without a warrant to knock on a resident's door or otherwise approach the residence seeking to speak to the

inhabitants, just as any private citizen might," but that "officers should restrict their movements to walkways, driveways, porches and places where visitors could be expected to go."[3] The jury returned a verdict for Carroll.

The Carmans appealed the case to the Third Circuit Court of Appeals, who reversed the district court's decision and held that the Carmans were entitled to judgment as a matter of law. The Third Circuit Court held that Carroll violated the Fourth Amendment law because the "'knock and talk' exception "requires that police officers begin their encounter at the front door, where they have an implied invitation to go.'" The Court also held that Carroll was not entitled to qualified immunity as his actions violated clearly established law.[4] Carroll appealed and the United States granted certiorari, reversing the Third Circuit's finding that Carroll was not entitled to qualified immunity.

In reaching its decision, the Supreme Court first discussed the theory of qualified immunity, which provided that "a government official sued under § 1983 is entitled to qualified immunity unless the official violated a statutory or constitutional right that was clearly established at the time of the challenged conduct."[5] The Supreme Court noted that the Third Circuit Court of Appeals relied on a single case, *Estate of Smith v. Marasco*,[6] to reach its conclusion that Carroll was not entitled to qualified immunity.

The Third Circuit focused on the *Marasco* court's statement that an officer's "entry into the curtilage after not receiving an answer at the front door might be reasonable." Based on this statement, the Third Circuit found that the law was "clearly established" that, under the "knock and talk" exception, officers must begin their inquiry at the front door.

The Supreme Court stated that the *Marasco* decision did not hold that officers are required to knock on the front door before going onto other parts of the property that are open to visitors. The Supreme Court found that "*Marasco* simply did not answer the question whether a "knock and talk" must begin at the front door when visitors may also go to the back door."[7]

The Supreme Court found the Third Circuit's stand on the issue perplexing as other state and federal jurisdictions had leaned in the other direction, rejecting the "front door" rule set forth by the Third Circuit.[8] The decisions from these various jurisdictions found that it was reasonable for officers to utilize entrances other than the front door under certain circumstances, including whether the entry was visible to, and used by the public. The Supreme Court reversed the holding of the Third Circuit Court of Appeals, and remanded for further proceedings consistent with its opinion.

Law enforcement personnel should be mindful, however, that this case does not settle the issue as to whether the "knock and talk" exception to the warrant requirement allows officers to utilize any entryway to a residence. Rather, the case does find that officers are not required to start their inquiry at the front door. Based on the Supreme Court's reasoning in this decision, and its review of other court holdings, it does appear that the court will consider several factors when deciding whether an officer's actions in deciding to utilize an entryway other than the front door are reasonable, including: the path taken by the officer, the layout of the house, whether the entrance was visible to and used by the public, whether it was a route visitors would be expected to take, etc.

Given the possible ramifications to law enforcement, this case is one that law enforcement should keep an eye on, particularly since any further decisions on this issue may have a wide-spread impact on law enforcement practices.

1. 135 S.Ct. 348 ?

2. *Id.* at 349 ?

3. *Id.* at 350 ?

4. *Id.* ?

5. *Id.* (quoting *Ashcroft v. al-Kidd*, 131 S.Ct. 2074, 2080 (2011) ?

6. 318 F.3d 497 (C.A.3 2003) (two police officers knocked on Smith's front door and, upon receiving no response, went into the backyard, with one entering the garage. The court stated that the officers' "entry into the curtilage after not receiving an answer at the front door might be reasonable." The case was remanded for further proceedings as the district court had not discussed the layout of the subject property and the position of the officers; and did not discuss whether the officers followed an open path to the backyard, which may have suggested reasonableness. The case was remanded for further proceedings.) ?

7. *Carroll*, 135 S.Ct. at 351 ?

8. See *United States v. Titemore*, 437 F.3d 251 (C.A.2 2006) (officers approached two doors, one a traditional door opening to the driveway, the other a sliding glass door that opened onto a small porch. The officer chose to knock on the slider door. The court rejected the argument that the officer entered the property without a warrant in violation of the 4th Amendment, explaining that the sliding glass door "was a primary entrance visible to and used by the public); *United States v. James*, 40 F.3d 850 (1994) (officers approached a duplex with multiple entrances, bypassing the front door, and used a paved walkway along the side of the duplex leading to the rear side door. The court found that the officers did not violate the 4th Amendment, explaining that the rear side door "was accessible to the general public and was commonly used for entering the duplex from the nearby alley"); *United States v. Garcia*, 997 F.2d 1273, 1279-1280 (C.A.9 1993) ("If the front and back door of a residence are readily accessible from a public place, like the driveway and parking area here, the Fourth Amendment is not implicated when officers go to the back door reasonably believing iti s used as a principal entrance to the dwelling"); *State v. Domicz*, 188 N.J. 285, 302 (2005) ("when a law enforcement officer walks to a front or back door for the purpose of making contact with a resident and reasonably believes that the door is used by visitors, he is not

unconstitutionally trespassing on the property") ?

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