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Knock, Announce, and the Fourth Amendment: Lessons from *Penate v. Sullivan* on SWAT Protocols and Constitutional Rights

By **Daigle Law Group**

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DAIGLE LAW GROUP

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The First Circuit Court of Appeals' decision in *Penate v. Sullivan*, offers a detailed examination of SWAT team entries and the significance of the knock-and-announce principle for upholding individuals' constitutional rights as guided by the Fourth Amendment.¹ This case originated out of Worcester, Massachusetts, where police were called to respond to a distraught woman's report of sexual assault. With the victim's assistance, the police pinpointed the crime scene at an apartment on Preston Street. Due to the specific mention of a handgun by the sexual assault victim, a SWAT team was assembled and tasked with executing a search warrant at the identified apartment. The execution of the warrant led to an unexpected and tense confrontation with Ms. Penate, the Plaintiff, who was a 19-year-old pregnant woman completely unconnected to the criminal incident.

Penate subsequently initiated a § 1983 claim, forcefully alleging that several of the officers violated her constitutional rights. Specifically, she contended that her rights to be free from excessive force, unreasonable searches and seizures, and unlawful entry into her home were infringed upon by the actions of the officers involved in the execution of the warrant.

Summary – Facts of the Case

In the early hours of April 12, 2016, Worcester police were called to a rooming house where they found a victim of sexual assault. Sharing her traumatic experience with one of the Detectives, she recounted leaving a club with two men who claimed they knew her brother. After being brought to her brother's apartment, she was convinced to accompany them to a party in a silver SUV. Shortly after arriving, she was sexually assaulted, noticing a gun in the waistband of one of her assailants. Fearing for her life, she escaped, leaving behind her belongings. Guided by her description, they identified the crime scene and a parked gray SUV that corroborated her account and obtained a search warrant for Apartment 3 at 22 Preston Street. The SWAT team breached the apartment's door, expecting to find a dangerous rapist, but instead encountered Penate, 38 weeks pregnant and not fluent in English.

Although officers claimed to have announced their presence, the Court accepted Penate's account and determined the entry occurred without sufficient announcement. Clad in full tactical gear, the officers confronted Penate with weapons drawn, with one aiming a gun at her and commanding her to raise her

hands. Penate complied, and she was removed from the apartment. After continued investigation, the officers soon realized that the apartment differed from the assault victim's original description.

Amid the chaos, Penate began having contractions, and a subsequent medical evaluation diagnosed her with post-traumatic stress disorder. She later filed a § 1983 suit, challenging the officers' actions.

Analysis and Implications

The district court granted summary judgment for the Defendant officers, concluding that the officers did not violate Penate's constitutional rights and that, even if they did, they were entitled to qualified immunity.

Penate appealed to the First Circuit, and after careful review, the First Circuit affirmed the lower court's decision favoring the defendant officers.

The court's reasoning dealt with Penate's §1983 claim, where she made three arguments. First, she claimed that the officers violated her right to be free from unreasonable searches by failing to knock and announce their presence. The court noted that the officers had credible information suggesting the presence of an armed suspect, and their approach prioritized immediate safety. Second, she argued that officers violated her right to be free from excessive force. The court emphasized that the law in 2016 did not clearly establish that an officer raising their weapon briefly constituted an excessive use of force. Third, Penate alleged the overall conduct of the officers, including failure to investigate further and the SWAT team's no-knock entry, rendered the entry and seizure unreasonable. Yet, the court stated that it would not have been clear to a reasonable officer that this violated established law. The officers were, thus, entitled to qualified immunity.

Conclusion

Penate v. Sullivan serves as an important reminder of the intricate balance officers must strike between conducting searches, seizures, and entries, and respecting individual rights. The First Circuit's decision illustrates the importance of meticulously evaluating both the level of force and the specific protocols employed in executing search warrants. It brings to the fore the necessary balance that must be maintained between immediate safety needs, such as the potential threat of an armed suspect, and the stringent adherence to constitutional standard, like the "knock and announce" rule, even when faced with high-stakes situations.

Training Takeaways for Police Officers

This case serves as a valuable training tool for law enforcement officers. It underscores the significance of following established protocols, such as the “knock and announce” rule, even when faced with high-stakes situations. The need for continuous assessment of the level of force used during an operation is evident, as it should not be excessive or unreasonable. A thorough investigation before executing a warrant is vital to prevent potential legal challenges, and regular training on constitutional rights can help officers confidently and lawfully navigate complex situations.

¹Penate v. Sullivan, No. 22-1427

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