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TRAINING BULLETIN

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Freezing Residence

Officers receive information that a homicide has occurred and identify the suspect and that he lives with his parents. When they get to the residence they get information that the suspect has come and gone from the residence. Officers can see inside the residence and can see that it is empty. They send somebody back to the office to start writing a search warrant. The parents come home while the officers are present. What should they do? What can they do?

REVIEW

There are four legal justifications for entering a residence that will provide protection from civil lawsuits and lead to legal seizure of evidence: 1. Valid consent; 2. Entry with either a search or arrest warrant, a Steagald warrant if it is not the suspect's residence; 3. Valid/confirmed probation or parole search; and 4. Exigent circumstance where there is the risk of death or great bodily injury to a potential victim, other members of the public or officers, destruction of evidence, rescue of a potential victim and escape prevention of suspect.

The problem of course is the delay in seeking a search warrant may alert the suspects, confederates or others that officers are seeking a warrant. Confederates/suspects or others may wish to enter the location to be searched prior to officers which could lead to the destruction of evidence or assistance in escape. Courts have acknowledged this problem and have allowed the limited entry and or "freezing" of a residence to secure the residence pending the issuance of a warrant.

CASE LAW

In one U.S. Supreme Court case, officers arrested a suspect outside of a residence and developed probable cause to get a warrant. While obtaining the warrant, officers arrested the resident returning to his home and took him inside where four other people were inside. Everyone was arrested and officers secured the residence until the warrant was issued. The court found the entry with the resident was illegal but since no evidence was found in that entry the warrant was valid. The court held, importantly, that securing a residence to prevent

destruction/removal of evidence is not an unreasonable seizure. *Segura v. U.S.* 468 U.S. 796 (1984)

In another case the USSC gave officers a gold star for 4th Amendment knowledge when they prohibited a resident from entering his home while awaiting a search warrant. Officers went to a home on a civil standby. When the wife left the residence she told officers suspect had dope inside. The suspect was present. The officers kept the suspect outside for two hours while they obtained a warrant. Dope was found. The court again said that when officers have probable cause to believe that occupants may remove or destroy potential evidence before a warrant can be obtained, officers may either enter and secure the residence or prevent entry until the warrant is issued. *Illinois v. McArthur* 531 U.S. 326 (2001).