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## **TRAINING BULLETIN**

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### **Training Bulletin: Legal Update**

#### **911 Hang Ups - Exigency or Not?**

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"911, what is your emergency?" [Click!]

"911, what is your emergency?" [Static... Click!]

"911, what is your emergency?" ["Get the cops here now!" Click!]

People call 911 when they need immediate help. But sometimes 911 calls are cut short before a dispatcher can obtain information. Dispatchers call back, but if unsuccessful, we are left wondering if the person lost consciousness, dialed 911 on accident, or was prevented from completing the call by a perpetrator. Hence, officers are required to size up "exigent circumstances" in rapidly evolving situations, often with very limited information. However, what the courts deem "exigent circumstances" is constantly changing and expanding, making it even more difficult for officers to know when they should act. "Exigent Circumstance" first applied specifically to imminent threats to public safety. But now, it also applies to the destruction of evidence, apprehension of fleeing suspects, and the ever broad "community caretaking" situations.

To simplify the determination of "exigent circumstances," the courts now balance "privacy-related and law enforcement-related concerns to determine if the intrusion was reasonable." See *Illinois v. McArthur* (2001) 531 U.S. 326, 331. Reasonableness is judged by reviewing "the gravity of the public concerns served by the seizure [search], the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty." *Illinois v. Lidster* (2004) 540 U.S. 419, 426. Thus, "as the likelihood, urgency, and magnitude of threat increase, so does the justification for and scope of police preventative action." *Mora v. City of Gaithersburg* (4th Cir. 2008) 519 F.3d 216,224. If the intrusion is insignificant, then justification for search or seizure based on exigency may be less than probable cause so long as officers acted reasonably. Entry into a home is always considered a significant intrusion. 911

hang-ups will often come from homes, and because of the significant intrusion, the courts still hold that "when exigent circumstances exist, police officers must have probable cause to support a warrantless entry into a home." U.S. v. Alaimalo (9th Cir. 2002) 313 F.3d 1188, 1193.

What constitutes both exigent circumstances and probable cause in the eyes of the law when officers arrive at a home after a 911 hang up call?

***911 call hang up, unanswered return call, open front door with no response:***

In Johnson v. City of Memphis (6th Cir. 2010) 617 F.3d 864, a widow sued the police for the entry into her home in violation of the 4th amendment that resulted in the shooting death of her husband. Officers were dispatched to a 911 hang up and an unanswered return call. Officers found the front door wide open and announced police presence with no response. Officers entered the house with weapons drawn. Mr. Johnson, who was mentally ill and off his medications, appeared and attacked the officers. He was shot dead. The Court held "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" and 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." Id. at 869-70. The Court went on to say that "911 hang-up calls do convey information. They do not convey certainties, but certainties are not required." Id. at 871. They did not go so far as to say that all 911 hang ups with no return answer amount to exigent circumstances.

***911 hang up; return calls answered but disconnected without a word; occupant inside home would not respond to officers at the door.***

In U.S v. Najar (10th Cir. 2006) 451 F.3d 710, dispatch received a 911 call. The caller was silent, and then hung up. Dispatch returned the call four times, each time the call was answered, no words spoken, and then the person disconnected the call. Police arrived at the mobile home, knocked and announced their presence and purpose. Officers could see and hear movement inside the mobile home. Officers became more vigorous in their request for Mr. Najar to come to the door, and another officer went to the back of the mobile home and shined his flashlight in a window at Mr. Najar, and then on himself to illuminate that he was a police officer. Dispatch also made another return call and officers heard the phone ringing inside. Ultimately, Mr. Najar came to the door, denied making the 911 call, and claimed no other person was present in the home. He denied the officers entry, but they entered over his objections to determine if anyone else was present and needed assistance. They located a woman face down on the floor of the bedroom. She was uninjured. Officers saw a shot gun in plain view

and arrested Mr. Najar for being a felon in possession. Here, the court found that given the totality of the circumstance, including the 911 call and hang up, hang up of return calls, and Mr. Najar's dishonesty, and the confirmation that the calls came from this home, the officers had reasonable grounds to believe someone may need emergency aid. Their entry and the scope of their search was reasonable.

***911 hang up and return call unanswered:***

In *Hanson v. Dane County* (7th Cir. 2010) 608 F.3d 335, the caller hung up even before 911 dispatch could answer. 911 dispatch tried to call back, but the call went unanswered. Police arrived and entered the residence without permission and questioned the husband, wife and 2 daughters. (No opinion provided no detail as to what the officers saw or heard before entering). The Court held "that a 911 call provides probable cause for entry, if a call back goes unanswered. The 911 line is supposed to be used for emergencies only. A lack of an answer on the return of an incomplete emergency call implies that the caller is unable to pick up the phone-because of injury, illness (a heart attack, for example), or a threat of violence. See *United States v. Jenkins*, 329 F.3d 579, 581 (7th Cir.2003); *United States v. Richardson*, 208 F.3d 626, 629-30 (7th Cir.2000). *Id.* at 337. After entry, officers learned there was a heated argument between the husband and wife, and the husband 'bumped' the wife, who dialed 911. The wife asked the officers to leave, but the court found that the continued investigation once inside was reasonable because the wife appeared nervous and feigned that she could not remember what the argument was about or why she called 911. So here again, the court analyzed not only the entry, but the reasonableness of the "search" once inside.

***Static, unanswered return call, unlocked balcony door, messy house:***

In *U.S. v. Martinez*, the 911 dispatcher received a call, but heard only static. They disconnected and called back, but there was no answer and the dispatcher again heard static on the line. Officers responded in a non-emergent fashion (no lights and sirens) to Mr. Martinez's residence. The residence was in a rural area, surrounded by a gate. The gate was closed, but officers walked through an opening next to the gate. They knocked repeatedly on the front door, with no response. They walked the perimeter and looked in windows. The house appeared disheveled and there were electronic boxes just inside the door. They saw no signs of forced entry, no signs of struggle inside, and did not see signs someone was home. Officers found a sliding glass door closed but unlocked. The officers entered, announced themselves, and swept the house to ensure no one was injured and in need of assistance. While doing their search for individuals, they saw drugs and child pornography in plain view. After the sweep, they immediately exited the home. Mr. Martinez arrived home and based on his statements and the items they saw in plain view during their initial sweep, officers obtained a warrant for the home. The court held that a static 911 call is

insufficient to create an objectively reasonable belief that someone inside the home needs aid. The court found that a static 911 call was distinguishable from a 911 hang up because a hang up indicates someone physically dialed 911, and then the unanswered return call points to the probability that the caller may be incapacitated. A static call could result from electrical or weather interference that causes such calls (as can happen apparently in New Mexico). Further, the unlocked door, messy house and electronic boxes added nothing in this instance as an unlocked door in a rural area is not necessarily suspicious, nor is a messy house. Thus, the initial search was found to have violated the 4th amendment as no exigency was found and the evidence was suppressed.

***What does this mean for you?***

Some courts have found that a 911 hang-up and an unanswered return call constitutes exigency and probable cause to enter a home, but not all courts agree. If you can articulate why your actions were reasonable in addition to those two factors, your search should be deemed justified. Note that what you do once you enter must be reasonable, too. If you enter to look for persons in need of aid, you will not be justified looking in drawers.