

To: Celia Fitts

2/01 Q. #11

From: Attorney

Subject: Support of Motion to Suppress Physical Evidence
in the case of State v Palm.

Statement of Facts:

In the case of State v Palms (AKA Springs) the police suspected Mr. Palms of dealing in drugs from his residence at 1174 Pickford. To obtain further particulars about the selling of drugs by Mr Palms, they sent a police informant, "John Doe" to Mr Palm's residence to make a purchase. John Doe reported after the purchase that Palms took him passed his bedroom to the back of

the house to the kitchen to sell the cocaine and marijuana. He observed a small caliber pistol and heard a dog ~~bark~~ barking during the daytime sell, ~~which Palao~~. Based largely on this informant sale and the detectives prior experience, the magistrate issued a ~~search~~ search warrant for drug and other paraphernalia during the daytime (6am-8pm) with "no-knock" authorization because of the danger of imminent destruction and safety to the officers.

There is no adequate constitutional basis to support a no-knock warrant in this case.

~~Section~~ 14 FCCP § 2 B(4) ~~of the~~ Subpart 14 indicates that defendant may move for return of property or to suppress evidence if the method of execution of the warrant violated constitutional standards.

These standards have been interpreted by the Franklin Court of Appeals in State of

Franklin v Emerald (1998). I have summarized

below the application of this rule to the

grounds for suppression that you have

asserted in your draft motion.

1. The officers did not have reasonable suspicion
that evidence would be destroyed because
the search took place in the early morning ~~and~~ ^{when}
Mr Palms was not in a location to destroy the
drugs.

In Meskill, cited in Emerald, the S.C. established
a four part test to determine when a "no knock"
entry is appropriate:

(1) The police must inform the magistrate of
the circumstances to justify unannounced entry.

(2) The police must make a strong showing
that an ~~un~~announced entry will result
in destruction of evidence of danger to officers.

The court further cited Richards to hold that

blanket rule for no-knock searches ~~at~~ of

suspected drug outlets are unconstitutional

because not every case poses a safety threat.

~~of~~ or threat of drug destruction.

~~The~~ The court explicitly stated that this strong showing involves more than merely showing that drugs are involved.

(3) The police must make a threshold reappraisal of the need to execute the warrant in this manner, even after obtaining a warrant, and

(4) The police may make entry without a warrant, if ~~threshold~~ facts arising at threshold indicate a necessity.

~~The~~ Officer ~~Crawford~~ Crawford's affidavit does not make a sufficiently strong showing to justify a no knock search because the conditions under which Informant Doe made the purchase are not comparable to

the conditions when the ~~search~~ no knock search was conducted.

Mr Doe's purchase occurred during daylight hours. The ~~search~~ "no knock" search occurred in the early morning (6am) when Mr. Doe was still in bed.

As Mr. Doe indicated, the ~~discovery~~ alleged drugs were in the kitchen area of the house, behind the bedroom where Palms slept. Doe further stated that Palms kept a bulldog and scanner to alert him to police. In ~~Richard~~ Emerald, the court ~~said~~ ~~indicated~~ stated that individual privacy interests are superior to the government interest in preserving evidence when the drugs

Indeed, the officer shouted "Get up" when they broke his door down, according to the Nung interview, so they clearly expected Palm to be asleep. Furthermore, the marijuana was not easily destructible, being kept in a trash bag (according to Doe) and freezer (according to Palm's interview).

being searched for one of the type or location

to make them impossible to destroy quickly.

Obviously, Mr. Palm, while sleeping in his ~~bed~~

bedroom far from the kitchen where the drugs

~~was~~ ^{alleged} contained or cocaine or in ~~it~~ ^{it} were ~~contained~~ ^{is} ~~in~~ ^{the} ~~trash~~ ^{bag}.

a trash bag was neither in a location, nor

were the drugs of the type, to enable their quick

destruction.

2. The Police did not have a reasonable

suspicion ~~to~~ that they would be endangered

because ~~the~~ Mr. Palm's revolver was not

in a location to threaten them.

The Emerald court stated that blanket →

"no knock" rules for drug searches are an
overgeneralization.

Further, the police were in "like football →

helmets and flak jackets" according to witness

Nonez, so they were amply protected.

Mr. Doe

Officer Crawford stated in his affidavit that

"drug dealers keep firearms." As the Emerald court

stated, this overgeneralization is insufficient

to warrant a "no knock" search. He indicated

that the ~~fire~~ Palm's firearm was kept in

the kitchen drawer, well away from the

bedroom that Palm was sleeping in. Thus,

the affidavit does not satisfy the Emerald courts

requirement for a "strong showing" of

reasonable suspicion of endangerment.

(3) No facts arose at the time of the search

that would create a reasonable suspicion

of destruction/ endangment, because

Palms had no reason to ~~be~~ ~~warned~~ of

a police search.

As noted above under part (+) of the Emerald

four part test, the police may perform a

"~~no~~knock" search in spite of the lack of

warrant, if a threshold finding indicate

such a necessity. Here, no such necessity

~~existed~~ existed. ~~As~~ There was nothing

to tip Mr. Palm of ~~that~~ of a police presence.

The search occurred early in the morning when

Palm was still in bed. Although the affidavit

indicated he kept a police scanner, it is

unlikely that Palm would be alerted by the

scanner at 6:00 am. Further, the police were

on notice that Palm had such a scanner, so

they could have ~~so~~ easily avoided making

references to the search that could have

been heard by eavesdroppers. Further,

Doc's affidavit asserted that Palm kept a pit

bulldog to alert him, as was asserted by the

officer as a reason for the no-knock.

The interview with Nunez questions this

~~asserting~~ assertion, # as she indicated Palm did not have a dog. At any rate, there was no dog barking at the time of the search, according to Lunez, so there was no reason for a "no-knock" search according to the facts available to the police at threshold.

In summary, the search warrant is not based on a "strong showing" of destruction / endangerment and is therefore unconstitutional.

Furthermore, no facts arose at threshold to warrant a "no-knock" search. The evidence should therefore be suppressed, according to your draft motion.