ELEVENTH CIRCUIT HOLDS HOME ENTRY UNREASONABLE

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On September 2nd,2016, the Eleventh Circuit Court of Appeals decided *Bratt v. Genovese et al.*[i], which serves as an excellent review of the law pertaining to home entry based on exigent circumstances and warrantless arrests under the Fourth Amendment. The relevant facts of *Bratt*, viewed in light most favorable to the plaintiff as the court is required to do at this stage of civil suit, are as follows:

> Just after midnight on December 26, 2009, while on duty, George received a call regarding complaints of a shooting in the area of Snow Hill Road in Brooksville, Florida. George responded to the call and remained in the area for approximately half an hour but did not make contact with anyone at the time. Soon after George left the area, Plaintiffs' neighbors Eugenia and Joseph Simpson called the police department, complaining that they heard explosions coming from Plaintiffs' residence at 22315 Snow Hill Road. George was again dispatched to the call, but this time he spoke with Eugenia Simpson, who told him that she heard multiple loud explosions coming from Plaintiffs' residence. Simpson reported that she heard the explosions following a verbal argument between her husband and Bratt.
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> After speaking with the Simpsons, George decided to contact Plaintiffs to discuss the complaint their neighbors made. George walked directly to the front door of Plaintiffs' residence. Once there, he knocked and then heard Bratt ask, "Who is there?" In response, George identified himself as a deputy with the Hernando County Sheriff's Office and said that he needed to speak with Bratt. Bratt requested to see George's badge. So George illuminated his police badge with his flashlight and again identified himself as a deputy. At the time, George wore a standard green uniform issued by the Hernando County Sheriff's Office.
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> Bratt opened the front door approximately one foot, turned on the lights inside his house, and asked, "What's the problem?" Again, George identified himself as an officer of the Hernando County Sheriff's office. In response, Bratt opened the door a little wider.

> By this point, Bratt's wife, Marjorie Youmans, had come to the front door. Bratt and Youmans both began yelling at George to "get off of their property." As Youmans yelled at George, she began to move toward George. But Bratt put his arm across her chest to prevent her from approaching George. Immediately, George yelled "domestic violence" and began pushing on the door. Bratt attempted to shut the door in George's face, but he was unable to do so. Then George reached in through the crack of the open doorway and deployed his Taser on Bratt's leg.
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> According to Plaintiffs, the front door then burst open, and George came "flying in." But as he did so, George slipped on the wood floor, fell, and hit his face against the living-room floor. George sustained a broken nose, a laceration to the left side of his nose, and two other cuts to his face. As a result of these injuries, George began to bleed heavily while lying on the floor of Plaintiffs' living room.
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> Eventually, George got to his knees. Bratt picked up George's Taser, which was lying on the floor of the living room, and handed it to George, asking him to please not tase him again. But as Bratt began to hand George the Taser, George tried to tase Bratt again. So Bratt ripped the Taser out of George's hand and threw the Taser to the ground.
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> A physical struggle ensued, with George attempting to handcuff Bratt and Bratt resisting George's attempts. After a 20 to 25-minute struggle, George prevailed and handcuffed Bratt in his living room. A backup officer arrived, entered the residence, and escorted Bratt outside. Although Bratt was charged criminally for his actions on December 29, 2009, he was acquitted of all charges arising out of the incident.[ii]

Bratt and his wife sued the deputies for, among other things, violating their Fourth Amendment rights by entering their residence and arresting Bratt without a warrant. The district court denied Deputy George's motion for summary judgment and qualified immunity and held that there were no exigent circumstances and no hot pursuit to justify warrantless entry into Bratt's residence to arrest him. The deputies appealed to the Eleventh Circuit Court of Appeals.

At the outset, one must understand the qualified immunity defense for government officials, such as law enforcement officers. When a law enforcement officer is sued for performance of his duties in federal court, if the officer was exercising a discretionary function, the officer may raise the defense of qualified immunity. A discretionary function is one that involves the officer making a choice between options, such as enter a home without a warrant, use of force, driving emergency mode, as a few for example. Once it is established the officer was acting in a discretionary manner, then the burden shifts back to the plaintiff to show that (1) the officer violated a federally protected right and (2) the law was sufficiently clearly established such as to put a reasonable officer on notice that his conduct was unlawful. As such, the court must first decide, viewing the facts in a light most favorable to the plaintiff (because this is before a jury gets to decide what facts are most credible), first whether the officer violated a federally protected right. If the court decides the officer did not violate a federally protected right, such as the Fourth Amendment, then the suit is dismissed in favor of the officer based on a "summary judgment." However, if the court determines there is sufficient evidence, if viewed in a light most favorable to the plaintiff, to prove a violation of the plaintiff's rights, then they must look at the second aspect of the immunity analysis. This second analysis is whether the law was clearly established, by factually similar case law, to put a reasonable officer on notice that his conduct was

unlawful. If the law was not clearly established, then the court will grant the officer "qualified immunity" and the suit will be dismissed in favor of the officer. If the law is clearly established, then the court will deny qualified immunity and the case can go to trial where a jury can decide which version of facts to believe and render a verdict.

In Bratt's case, there were two issues before the court. The first issue was whether the "exigent circumstance doctrine" existed to justify warrantless entry into Bratt's residence to arrest him. The second issue was whether the "hot pursuit doctrine" authorized warrantless entry into Bratt's residence to arrest him.

Regarding exigent circumstances the court stated

> The Fourth Amendment protects citizens against unwarranted intrusions into the home by police and other government officials. *See*, *e.g.*, *Johnson v*. *United States*, 333 U.S. 10, 14 (1948); *McDonald v*. *United States*, 335 U.S. 451, 455 (1948). This protection is not unlimited, as the Supreme Court has long recognized an exception to the warrant requirement under exigent circumstances. *See id*.
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> **Exigent circumstances exist where "the inevitable delay incident to obtaining a warrant must give way to an urgent need for immediate action**." *Id*. at 1240. **A law-enforcement officer may enter a private residence without a warrant to "break up a violent fight," "prevent the destruction of evidence," "put out a fire in a burning building," "pursue a fleeing suspect," "rescue a kidnapped infant," or "attend to a stabbing victim," for example**. *Id*. at 1240-41 (citations omitted). **But where probable cause exists to believe that only a minor offense has been committed, "application of the exigent-circumstances exception in the context of a home entry should rarely be sanctioned**." *Welsh v*. *Wisconsin*, 466 U.S. 740, 753 (1984).[iii]

The court of appeals then stated that, under the facts of Bratt's case, no reasonable officer could believe that Bratt posed an imminent risk of serious injury to his wife or the officers. As such, they held that the exigent circumstance exception to the warrant requirement did not apply, even though the officer may have had arguable probable cause to believe that Bratt committed a crime.

The court next examined the issue of whether the hot pursuit doctrine authorized warrantless entry into Bratt's residence. The court of appeals stated

> **Under the "hot pursuit" doctrine, a law-enforcement officer may make a warrantless entry into private property to arrest a suspect who is attempting to avoid arrest by fleeing into the private property.** *See United States v*. *Santana*, 427 U.S. 38, 42-43 (1976). **In order for this exception to apply, however, the arrest must have been "set in motion in a public place**." *Id*. at 42; *McClish*, 483 F.3d at 1245. **Furthermore, "some sort of chase" must have occurred, *Santana*, 427 U.S. at 43, which involves the "immediate or continuous pursuit of the suspect from the scene of a crime,"** *Welsh*, 466 U.S. at 753.[iv]

The court noted that, in Bratt's case, the arrest was not set in motion in a public place. Rather, Bratt was wholly behind the threshold of his doorway when the arrest was set in motion. It should be noted

that, in *Santana*, the U.S. Supreme Court held that Santana was in a public place when she stood in the threshold of her door, as the court described that one step forward would put her wholly outside the house and one step back would put her wholly inside the house. But that was not the case with Bratt, who was wholly inside his house when the deputy initiated the arrest.

The court then determined that the deputies violated the Fourth Amendment by entering Bratt's residence without a warrant to arrest him.

Lastly, the court had to determine whether the law was clearly established to put a reasonable officer on notice that this conduct was unlawful. Clearly established law is typically factually similar (but not identical) case law from the U.S. Supreme Court, the Eleventh Circuit Court of Appeals or the highest court in the state (in this case Florida). The court of appeals looked to their case of *McClish v*. *Nugent.*[v] In *McClish*, deputies went to McClish's trailer and entered without a warrant to arrest him for making threats. The court, finding no exigent circumstances or hot pursuit held

> **that arresting someone inside his or her home without a warrant violates the Fourth Amendment even if probable cause exists, when exigent circumstances do not also exist**. *Id*. at 1248.[vi]

Thus, because McClish was decided in 2007, and because it was factually similar to Bratt's case, the court held that the law was clearly established such that a reasonable officer should have know that a warrant was required to enter Bratt's residence to arrest him.

Practice Pointers

1. Law enforcement officers need Probable Cause and a warrant to enter a person's residence to arrest them.

2. If a law enforcement officers has probable cause but not warrant, then probable cause, plus (1) consent, (2) exigent circumstance or (3) hot pursuit can justify warrantless entry to make an arrest.

3. Officers can draw a line at the threshold door – if a person is behind that line, they are in the residence and warrant or probable cause and an exception to the warrant requirement is needed. If a person is outside the line or directly on top of the line so that one step forward puts them wholly outside or one step backwards puts them wholly inside, then this is considered a public place for the purpose of hot pursuit and initiating an arrest.

4. If an arrest is initiated in a public place, a person cannot defeat that arrest by retreating into a private place.

5. Keep in mind, that if an officer states that the person was in a public place and the arrest (later a plaintiff) states they were wholly inside the door threshold, unless there is indisputable evidence to support the officers (such as clear body cam footage), the court may be required to view the facts in light most favorable to the plaintiff for the purpose of summary judgment and qualified immunity for the officer.

[i] No. 15-15659 (11th Cir. Decided September 2, 2016 Unpublished)
[ii] Id. at 2-5
[iii] Id. at 9
[iv] Id. at 10
[v] 483 F.3d 1231 (11th Cir. 2007)
[vi] Bratt at 12 (citing McClish, 483 F.3d at 1248)