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Constitutional Law - The Knock and Announce Rule Becomes Obsolete - Hudson v. Michigan, 126 S. Ct. 2159 (2006)

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CONSTITUTIONAL LAW – THE "KNOCK AND ANNOUNCE" RULE BECOMES OBSOLETE – *HUDSON V. MICHIGAN*, 126 S. CT. 2159 (2006)

The Fourth Amendment prohibits law enforcement officers from conducting unreasonable searches and seizures of private citizens and their homes.[1] Fourth Amendment jurisprudence has long recognized the "knock and announce" rule, which requires that before entering a home with a warrant, police must first announce their presence and wait a reasonable time for residents to open the door.[2] Traditionally, courts have used the federal exclusionary rule as a tool to discourage Fourth Amendment violations by police officers.[3] In *Hudson v. United States*,[4] the Supreme Court considered whether the exclusionary rule could be applied to violations of the knock and announce rule.[5] The Court held that the exclusionary rule was inapplicable and that violations of the knock and announce rule did not warrant suppression of evidence subsequently recovered.[6]

On August 27, 1998, Detroit police officers arrived at Booker Hudson's home with a warrant permitting them to search for both firearms

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[1] U.S. CONST. amend. IV; Terry v. Ohio, 392 U.S. 1, 9 (1968) (holding that the Fourth Amendment protects against unreasonable searches and seizures).

[2] Wilson v. Arkansas, 514 U.S. 927, 929 (1995) (holding that the knock and announce rule forms part of the Fourth Amendment reasonableness inquiry).

[3] Weeks v. United States, 232 U.S. 383, 398 (1914) (adopting the Fourth Amendment exclusionary rule); Clifford S. Fishman, *Electronic Tracking Devices and the Fourth Amendment*, 34 CATH. U. L. REV. 277, 284 (1985) (noting purpose of the exclusionary rule is to deter law enforcement officials from conducting unlawful searches and seizures in violation of the Fourth Amendment). *See also* Mapp v. Ohio, 367 U.S. 643, 660 (1961) (holding the exclusionary rule also applies to state courts via the Fourteenth Amendment).

[4] 126 S. Ct. 2159 (2006).

[5] *Hudson*, 126 S. Ct. at 2162 (identifying issue Court considered in *Hudson*).

[6] *Hudson*, 126 S. Ct. at 2168 (holding suppression is an unwarranted remedy for knock and announce violations); *see infra* notes 38-46 and accompanying text (discussing Court's reasoning for holding exclusionary rule inapplicable to knock and announce violations).

and drugs.[7] The police announced their presence and waited less than five seconds before entering through an unlocked door.[8] Upon searching the home, the police recovered a loaded gun and large amounts of cocaine.[9] Hudson was charged with unlawful drug and firearm possession in violation of Michigan law.[10] In a pretrial motion to suppress the incriminating evidence, Hudson argued that by not waiting a reasonable amount of time before entering his residence, the Detroit police violated his Fourth Amendment rights because they failed to observe the knock and announce rule.[11]

The Michigan trial court granted Hudson's motion to suppress.[12] On interlocutory review, however, the Michigan Court of Appeals reversed the trial court's ruling.[13] After the Michigan Supreme Court denied leave to appeal, Hudson was convicted of drug possession.[14] Hudson appealed a second time, arguing that the drugs recovered in violation of the Fourth Amendment should have been excluded, but the Michigan Court of Appeals rejected his appeal and affirmed his conviction.[15] In June 2005, the United States Supreme Court granted certiorari to address the question of whether the exclusionary rule applies to violations of the

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[7] *Hudson*, 126 S. Ct. at 2162 (reviewing facts presented at trial); Respondent's Brief on the Merits at 1, Hudson v. Michigan, 126 S. Ct. 618 (2005) (No. 04-1360) [hereinafter *Respondent's Brief*].

[8] *Hudson*, 126 S. Ct. at 2162. After announcing their presence, the police waited approximately three to five seconds before entering Hudson's house. *Id.* The police officers did not wait for someone inside to open the door. Neither did they hear any noise from inside the house. *Respondent's Brief*, *supra* note 7, at 1. The entering police officer had on a prior occasion been shot while executing a search warrant. *Id.*

[9] *Hudson*, 126 S. Ct. at 2162. When the police entered Hudson's home, he was sitting in a chair. *Id.* Wedged underneath the chair's cushion the police discovered a loaded gun. *Id.* The police officers also discovered cocaine rocks inside Hudson's pockets. *Respondent's Brief*, *supra* note 7, at 1.

[10] *Hudson*, 126 S. Ct. at 2162.

[11] *Hudson*, 126 S. Ct. at 2162 (outlining Hudson's argument on appeal). Hudson argued that because the police entered his home a mere three to five seconds after knocking and announcing their presence, the knock and announce rule was violated. *Id.* Hudson further argued that this knock and announce violation transgressed his Fourth Amendment rights and as a remedy for this violation, the evidence subsequently recovered during the search of his home should be inadmissible in court. *Id.*

[12] *Hudson*, 126 S. Ct. at 2162 (laying out procedural history of case).

[13] *Hudson*, 126 S. Ct. at 2162. The Michigan Court of Appeals relied on recent Michigan Supreme Court precedent holding that suppression of evidence is an inappropriate remedy for knock and announce violations. *Id.*

[14] *Id.* (laying out procedural history of case).

[15] *Id.* The Michigan Court of Appeals reiterated for a second time that it is bound by the Michigan Supreme Court cases holding that the exclusionary rule should not be invoked for knock and announce violations. People v. Hudson, No. 246403, 2004 Mich. App. LEXIS 1681, at *2 (Mich. Ct. App. June 17, 2004). The Michigan Supreme Court declined to review the case. People v. Hudson, 692 N.W.2d 385 (Mich. 2005).

knock and announce rule.[16] After considering the alternative remedies available for knock and announce violations and examining the relationship between the exclusionary rule and the interests protected by the knock and announce rule, the Supreme Court held that the exclusionary rule was an inappropriate remedy for knock and announce violations.[17]

The Founding Fathers drafted the Fourth Amendment to protect individuals and their homes from unreasonable searches and seizures because they recognized the need to preserve the personal privacy and sanctity of one's body and home.[18] In doing so, however, they provided no mechanism by which the Fourth Amendment's provisions should be implemented or enforced.[19] Nearly a century ago in *Weeks v. Unites States*,[20] the United States Supreme Court adopted the exclusionary rule as an appropriate remedy for such violations.[21] While not the only redress available, the exclusionary rule appears to be the one truly effective tool for preventing law enforcement officials from infringing upon individuals' Fourth Amendment rights.[22] The exclusionary rule functions as an incen-

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[16] 126 S. Ct. at 2162; Hudson v. Michigan, 125 S. Ct. 2964 (2005).

[17] 126 S. Ct. at 2162.

[18] *See* Harris v. United States, 331 U.S. 145, 198 (1947) (suggesting that the Founders viewed right to privacy as "indispensable to individual dignity and self-respect"); Nathan Vaughan, Note, *Overgeneralization of the Hot Pursuit Doctrine Provides Another Blow to the Fourth Amendment in* Middletown v. Flinchum, 37 AKRON L. REV. 509, 513 (2004) (examining purpose of the Fourth Amendment). Vaughan concludes that the longstanding history of respect for personal privacy in the home implies that the creation of the Fourth Amendment was an attempt to preserve and secure citizens' rights to privacy in their homes. *Id.*

[19] Segura v. United States, 468 U.S. 796, 828 n.22 (1984) (Stevens, J., dissenting) (acknowledging that the exclusionary rule is not constitutionally mandated). *See* United States v. Calandra, 414 U.S. 338, 348 (1974) (noting the Fourth Amendment does not require the court to adopt all means necessary to deter police misconduct).

[20] 232 U.S. 383 (1914).

[21] Weeks v. United States, 232 U.S. 383, 398 (1914) (establishing the exclusionary rule). The *Weeks* Court held that evidence seized from the defendant's home without a search warrant in violation of the Fourth Amendment should be suppressed. *Id.* The Court noted that the Fourth Amendment protects the highly valued sanctity of every citizen's home by limiting the government's power. *Id.* at 390-92. It reasoned that if evidence seized in violation of the Fourth Amendment could be used against a citizen accused of a crime, the Fourth Amendment would be rendered meaningless. *Id.* at 393. *See also* Colorado v. Connelly, 479 U.S. 157, 166 (1986) (recognizing that the purpose of the exclusionary rule is to deter future violations of the Constitution).

[22] *See* 42 U.S.C. § 1983 (2000) (granting private citizens whose Fourth Amendment rights have been violated standing to sue government officials); Nix v. Williams, 467 U.S. 431, 446 (1984) (acknowledging the existence of "significant disincentives" discouraging police from illegally seizing evidence other than the exclusionary rule). The court listed some possible disincentives other than the exclusionary rule, such as departmental discipline and civil liability. *Nix*, 467 U.S. at 446 (citing Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388, 397 (1971)). *But see, e.g.*, Terry v. Ohio, 392 U.S. 1, 12 (1968) (defining deterrent purpose of exclusionary rule). The *Terry* Court held that "the rule excluding evidence seized in violation of the Fourth Amendment has been recognized

tive for police officers to comply with the Fourth Amendment.[23]

While the Court has invoked the exclusionary rule in a broad range of cases, it has not been blind to the rule's costs, and occasionally the Court finds that these costs outweigh the benefits.[24] As a result, the Supreme Court has subsequently narrowed the scope of the exclusionary rule originally set forth in *Weeks*.[25] Evidence recovered in violation of the Fourth Amendment is traditionally referred to as "the fruit of the poison-

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as a principal mode of discouraging lawless police conduct." *Id.* (citing *Weeks*, 232 U.S. at 391-93); Mapp v. Ohio, 367 U.S. 643, 652 (1961) (noting alternative mechanisms to exclusionary rule for enforcing Fourth Amendment rights have proven "worthless and futile"); *Weeks*, 232 U.S. at 393 (reasoning that if evidence seized in violation of the Fourth Amendment could be used against an individual accused of a crime, the Fourth Amendment would be rendered meaningless); Vaughan, *supra* note 18, at 543 n.214 (suggesting local police departments are unable to control levels of police brutality and corruption themselves); Robin L. Gentry, Note, *Why Knock? The Door Will Inevitably Open*, 46 WAYNE L. REV. 1659, 1686-87 (2000) (concluding it would be futile to rely on a statute imposing criminal liability for knock and announce rule violations as an effective deterrent).

[23] *See* Elkins v. United States, 364 U.S. 205, 217 (1960) (noting that the purpose of the exclusionary rule is "to deter—to compel respect for the constitutional guarantee...by removing the incentive to disregard it"). *See generally* Myron W. Orfield, Jr., Comment, *The Exclusionary Rule and Deterrence, An Empirical Study of Chicago Narcotics Officers*, 54 CHI. L. REV. 1016 (1987) (emphasizing the important role the exclusionary rule plays in ensuring police officers comply with the Fourth Amendment). After interviewing Chicago detectives, Orfield concluded that the exclusionary rule "had significant deterrent effects... [it] changed police, prosecutorial, and judicial procedures...it educated police officers in the requirements of the Fourth Amendment and punished them when they violated those requirements." *Id.* at 1017.

[24] *See* United States v. Wong Sun, 371 U.S. 471 (1963) (applying the exclusionary rule when the evidence is both a direct and indirect product of the constitutional violation). *But see* Colorado v. Connelly, 479 U.S. 157, 166 (1986) (cautioning against expanding the scope of the exclusionary rule). The *Connelly* Court recognized the significant costs the exclusionary rule has on both society's interest and law enforcement interests. *Id.*; United States v. Ceccolini, 435 U.S. 268, 278 (1977) (acknowledging the Court must "balance the interests involved" before applying the exclusionary rule). The *Ceccolini* Court noted society's strong interest in seeking the truth and the importance of making available all relevant evidence to the trier of fact. *Ceccolini*, 435 U.S. at 278 (quoting Michigan v. Tucker, 417 U.S. 433, 450-51 (1974)); United States v. Calandra, 414 U.S. 338, 348 (1974) (noting a balancing process must occur when determining where the exclusionary rule may be appropriately applied). The *Calandra* Court weighed the potential costs of extending the scope of the exclusionary rule against the police misconduct deterrent effect that arises from the rule. *Calandra*, 414 U.S. at 349; *Mapp*, 367 U.S. at 659 (noting use of the exclusionary rule may lead to criminals going free); Nardone v. United States, 308 U.S. 338, 340 (1939) (stating that any claim for the exclusion of evidence must be justified by an overriding public policy in "the Constitution or law of the land"). *See also* Wesley MacNeil Oliver, *Toward a Better Categorical Balance of the Costs and Benefits of the Exclusionary Rule*, 9 BUFF. CRIM. L. REV. 201, 229 (2005) (suggesting the truth seeking process always trumps the deterrent interest in suppressing evidence).

[25] 232 U.S. at 398 (1914). *See* Oliver, *supra* note 24, at 234 (acknowledging the significant limitations placed on the application of the exclusionary rule, even when a constitutional violation has occurred).

ous tree" and is inadmissible.[26] However, if the evidence recovered is far enough removed from the original Fourth Amendment violation so as to "purge itself from the original taint," it may still be admissible.[27] The Court has given some guidance as to what circumstances allow evidence to be "purged from the original taint," but has avoided the question of whether evidence recovered subsequent to a violation of the knock and announce rule is one of those circumstances.[28]

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[26] *Nardone*, 308 U.S. at 341 (setting forth the term "fruit of the poisonous tree" to denote evidence obtained as a result of illegal conduct by law enforcement). The *Nardone* Court stated that if the accused can prove the evidence in the case against him is "the fruit of the poisonous tree," that evidence will be inadmissible unless the government can demonstrate that the evidence, instead, came from an origin independent from the illegal conduct. *Id.* at 341. *See also* New York v. Harris, 495 U.S. 14, 20 (1990) (concluding evidence came from an origin independent of illegal conduct). In this case, law enforcement, after knocking and announcing their presence, entered the defendant's home without a warrant. *Harris*, 495 U.S. at 15. The officers proceeded to ask the defendant questions regarding a murder, and the defendant reportedly admitted to the crime. *Id.* At that point, the defendant was arrested and brought to the police station, where he gave an incriminating statement. *Id.* The Court held that although the defendant's warrantless arrest in his home was a violation of the Fourth Amendment, the defendant's incriminating statement made later at the police station was admissible. *Harris*, 495 U.S. at 17. The Court reasoned that because the police had probable cause to arrest the defendant, the defendant was not unlawfully in custody when he was brought to the police station and therefore his statement was "the product of an arrest and being in custody," and not "the fruit of the fact that the arrest was made in the house rather than someplace else." *Id.* at 20.

[27] *See Nardone*, 308 U.S. at 341 (setting forth method to determine when evidence seized subsequent to illegal behavior may be admissible). The Court held that evidence may be admissible regardless of illegal behavior by law enforcement when the connection between the illegal behavior and the subsequent seizure of evidence has become "so attenuated as to dissipate the taint." *Id. See also* Segura v. United States, 468 U.S. 796, 814 (1983) (applying analysis set forth in *Nardone*). In this case, police illegally entered a residence without a warrant because after continued surveillance they suspected illegal drug activity. *Segura*, 468 U.S. at 801. Because of the hour, the police were unable to immediately obtain a search warrant; therefore, the police secured the premises and waited for a valid search warrant before searching the residence and seizing incriminating evidence. *Id.* at 800. The Court held that although the police officers' initial entry into the residence was illegal, the valid search warrant would have been obtained regardless of the illegal entry, and therefore the warrant was a means "sufficiently distinguishable to purge the evidence of any such 'taint' arising from the entry." *Id.* at 814.

[28] *See Nardone*, 308 U.S. at 341 (setting forth a causation limitation to exclusionary rule). The Court noted that the exclusionary rule may not apply when the connection between the constitutional violation and the subsequent seizure of evidence is "so attenuated as to dissipate the taint." *Id. See also* United States v. Wong Sun, 371 U.S. 471 (1963) (clarifying the causation limitation to the exclusionary rule). Police recovered incriminating evidence as a result of illegally obtained statements. *Wong Sun*, 371 U.S. at 479. The Court held that the test for exclusion is not whether the evidence sought to be excluded would have come to light "but for" the illegal police activity, but rather whether "granting establishment of the primary illegality, the evidence to which the instant objection is made has come at by exploitation of that illegality...." *Id.* at 488. *See also* Arizona v. Evans, 514 U.S. 1, 10-11 (1995) (holding the exclusionary rule inapplicable). The Court noted that the exclusionary rule should not be applied in situations where it would not result in appreciable deterrence of future constitutional violations by police. *Evans*, 514 U.S. at 10-11; United

The common law principle reflected in the knock and announce rule can be traced as far back as the seventeenth century.[29] Historically, the knock and announce rule has been deemed important for several reasons, such as avoiding the destruction of property, protecting police officers from physical violence, and safeguarding individual privacy and personal dignity.[30] In *Wilson v. Arkansas*,[31] the Court recognized this longstanding

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States v. Leon, 468 U.S. 897, 926 (1984) (setting forth the good faith exception). In *Leon*, police officers recovered evidence pursuant to what they believed to be a valid search warrant, but later was found to be unsupported by probable cause. *Leon*, 468 U.S. at 902-03. The Court held, however, that the evidence recovered by the police officers was still admissible because the officers acted in reasonable good faith reliance on the search warrant. *Id.* at 926; Nix v. Williams, 467 U.S. 431, 434 (1984) (setting forth the "inevitable discovery" doctrine). The defendant in *Nix*, who was accused of murder, led police to the victim's body during an illegal interrogation. *Nix*, 467 U.S. at 434-35. The Court held that because police were already searching for the victim's body in a nearby location, the evidence of the body's location was admissible on the theory that it would have been found absent the defendant's incriminating statements. *Id.* at 448. The Court reasoned that the exclusionary rule should not hurt the prosecution, but only ensure that the prosecution does not benefit from constitutional violations. *Id.* at 443; Silverthorne Lumber Co. v. United States, 251 U.S. 385, 392 (1919) (creating the "independent source doctrine"). The Court noted that if knowledge of incriminating evidence could be obtained from an "independent source" unrelated to illegal conduct by the government, it may be admissible. *Silverthorne Lumber Co.*, 251 U.S. at 392.

[29] *See* Semayne's Case, 77 Eng. Rep. 194, 195-96 (K.B. 1603). *See also* Miller v. United States, 357 U.S. 301, 313 (1958) (noting that rule requiring prior notice of authority and purpose before forcefully entering a home is "a tradition embedded in Anglo-American law"); Randall S. Bethune, Note and Comment, *The Exclusionary Rule and the Knock-and-Announce Violation: Unreasonable Remedy for Otherwise Reasonable Search Warrant Execution*, 22 WHITTIER L. REV. 879, 881 (2001) (recognizing the knock and announce principle as "part of early American common law").

[30] *See* Wilson v. Arkansas, 514 U.S. 927, 935-36 (1995) (examining the history of the knock and announce rule). The Court recognized that the knock and announce rule has traditionally been justified as a means to prevent the destruction of property resulting from police forcefully entering a residence. *Id. See also* Richards v. Wisconsin, 520 U.S. at 393 n.5 (1997) (noting that compliance with the knock and announce rule gives residents the "opportunity to comply with the law and avoid the destruction of property"); Sabbath v. United States, 391 U.S. 585, 589 (1968) (examining reasons for knock and announce requirement). The Court noted that the reason police were generally required to announce themselves was to safeguard police officers from any physical violence that might result upon their surprise entry into a residence. *Sabbath*, 391 U.S. at 589; McDonald v. United States, 335 U.S. 451, 460-61 (1948) (Jackson, J., concurring). Residents surprised by the unannounced entry of police officers may lash out with physical violence in self defense. *McDonald*, 335 U.S. at 460-61. Lastly, residents should be given the opportunity to prepare themselves for the entry of police officers. *Richards*, 520 U.S. at 393. Because of the high expectations residents have for privacy and safety inside their homes, "innocent citizens should not suffer the shock, fright, and embarrassment attendant upon an unannounced police intrusion." Ker v. California, 374 U.S. 23, 57 (1963); *Miller*, 357 U.S. at 313 (noting that every individual has a privacy interest within the home). The Court recognized that "every householder, the good and the bad, the guilty and the innocent, is entitled to the protection designed to secure the common interest against unlawful invasion of the home." *Miller*, 357 U.S. at 313.

[31] 514 U.S. 927 (1995).

rule and held that the Framers of the Constitution undoubtedly intended for the common law knock and announce principles to form part of a reasonableness inquiry under the Fourth Amendment.[32] The Court acknowledged that there may be certain exigent circumstances where it would be unreasonable for police officers to knock and announce their presence before entering one's home, but nevertheless left the responsibility of determining such circumstances to the discretion of lower courts.[33] Such broad discretion has not only left an inconsistency among lower courts as to when law enforcement officials have acted reasonably in disregarding the knock and announce rule, but has also created an inconsistency among lower courts regarding the question of the appropriate remedy when such a violation has occurred.[34] While some lower courts have found the answer to the lat-

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[32] *Wilson*, 514 U.S. at 934 (setting forth holding). In *Wilson*, police officers obtained a warrant to arrest the defendant and search her house. *Id.* at 929. When police arrived at the defendant's residence to execute the warrant, they entered through an unlocked screen door while simultaneously stating their identity and their purpose. *Id.* Inside the residence, police found both illegal narcotics and firearms. *Id.* The defendant filed a pretrial motion to suppress evidence seized during the search, arguing that the officers violated the knock and announce rule when they entered her house. *Id.* The *Wilson* Court held that the long recognized common law knock and announce principle formed a part of the Fourth Amendment reasonableness inquiry and therefore, police officers' failure to knock and announce their presence before entering a residence may, in some circumstances, amount to a constitutional violation. *Id.* at 930, 936.

[33] *See Wilson*, 514 U.S. at 936 (establishing there are some exceptions to the knock and announce rule). The Court noted that it may be in the best interest of law enforcement officers to enter a residence unannounced in order to avoid physical violence that may result from a surprise entry. *Id.* Giving the example of an escaped prisoner, the Court stated that in some circumstances, knocking and announcing one's presence may be futile and unnecessary. *Id.* Lastly, the Court indicated that law enforcement officers would be reasonable in entering a residence unannounced if it meant that evidence would likely be destroyed if advance notice was given. *Id. See also* Richards v. Wisconsin, 520 U.S. 385, 394 (1997) (holding there can be no blanket exception to the knock and announce rule in drug cases). The *Richards* Court stated that "in each case, it is the duty of a court confronted with the question to determine whether the facts and circumstances of the particular entry justified dispensing with the knock-and-announce requirement." *Richards*, 520 U.S. at 394. *See, e.g.*, United States v. Ramirez, 523 U.S. 65 (1998) (holding that a "no knock" entry pursuant to a "no knock" warrant was reasonable under the circumstances and therefore not a violation of the Fourth Amendment). In *Ramirez*, police obtained a "no knock" warrant to enter a residence where they believed an escaped prison inmate was hiding. *Ramirez*, 523 U.S. at 68. In executing the warrant the police announced their presence on a loud speaker system and proceeded to enter the residence by breaking a window. *Id.* at 69. Although police did not locate the escaped inmate, they found illegally owned firearms in the possession of the owner of the residence. *Id.* The Court held that the police officers' "no knock" entry into the residence was reasonable under the dangerous circumstances and therefore no Fourth Amendment violation had occurred. *Id.* at 71.

[34] *Compare* United States v. Langford, 314 F.3d 892, 894 (7th Cir. 2002) (holding that a violation of the knock and announce rule does not warrant suppression of evidence seized during the subsequent search), *and* Michigan v. Stevens, 597 N.W.2d 53, 64 (Mich. 1999) (holding that the exclusionary rule is an inappropriate remedy for knock and announce violations), *with* United States v. Bates, 84 F.3d 790, 795 (6th Cir.1996) (stating that

ter problem encompassed within two Supreme Court cases, *Miller v. United States*[35] and *Sabbath v. United States*,[36] other lower courts have chosen not to follow those cases as binding precedent.[37]

In *Hudson v. Michigan*, the Supreme Court granted certiorari to determine whether a violation of the knock and announce rule requires that all evidence subsequently recovered during the search be excluded.[38] The exclusionary rule, the Court noted, must be used as a last resort given its substantial costs to society.[39] The Court explained that whether the exclu-

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"unless exigent circumstances exist, the failure of law enforcement officials to knock and announce their presence will render the evidence procured during the ensuing execution of a warrant inadmissible"), *and* United States v. Marts, 986 F.2d 1216, 1220 (8th Cir. 1993) (holding that exclusion is the only appropriate remedy for violations of the knock and announce rule), *and* State v. Ramos, 130 P.3d 1166, 1172 (Idaho Ct. App. 2005) (rejecting a claim that exclusion of evidence is not an appropriate remedy for a knock and announce rule violation).

[35] 357 U.S. 301 (1958).

[36] 391 U.S. 585 (1968).

[37] In *Miller*, the police went to the defendant's home after receiving a tip that he was involved in drugs. 357 U.S. at 302-03. The police entered the home by ripping off the chain holding the door shut without stating their purpose or announcing their presence. *Id.* at 303-04. The police then arrested the defendant and searched his home without an arrest or search warrant. *Id.* at 304. The police officers argued that they had probable cause to arrest the defendant and as a result, the incriminating evidence recovered after the arrest should be admissible. 357 U.S. at 304-05. The Court, however, held that because the defendant did not receive notice before the officers broke into his residence, in violation of the common law principle requiring police officer to knock and announce their authority and purpose, the evidence recovered after the arrest should have been suppressed. *Id.* at 313-14. Similarly, in *Sabbath*, police officers went to the defendant's home without a warrant and knocked, but only waited a few seconds before entering the premises through an unlocked door. *Sabbath*, 391 U.S. at 587-88. The Court held that because the police officers entered the defendant's home without announcing their identity and purpose, the subsequent arrest was invalid, and therefore the evidence seized during the search should not be admissible. *Id.* at 586. *See also Ramos*, 130 P.3d at 1172 (citing *Miller* and *Sabbath*); United States v. Langford, 314 F.3d 892, 894 (7th Cir. 2002) (failing to hold the exclusionary rule as applicable to knock and announce violations); Michigan v. Stevens, 597 N.W.2d 53, 64 (Mich. 1999) (holding the exclusionary rule is an inappropriate remedy for knock and announce violations).

[38] 126 S. Ct. at 2162 (identifying issue presented). Before beginning its analysis, the Court noted that although the common law principle requiring law enforcement officers to announce their presence is an ancient one, there are exigent circumstances where it would not be necessary for officers to knock and announce before entering a residence. *Id.* In the case-at-bar, however, none of these exigent circumstances existed, and the Court acknowledged the prosecution's concession that police had violated the knock and announce rule when entering Hudson's residence. *Id.*

[39] *Hudson*, 126 S. Ct. at 2163 (discussing the scope of the exclusionary rule). The Court examined precedent cautioning against the expansive use of the exclusionary rule. *Id.* Although earlier case law suggests a wide scope for the exclusionary rule, the Court acknowledged that such an approach has since been rejected. *Id. But see Hudson*, 126 S. Ct. at 2175 (Breyer, J., dissenting) (opining that the circumstances are limited in which the exclusionary rule is not applied to Fourth Amendment violations). Justice Breyer stated that the Court has refused to suppress evidence when the application of the exclusionary rule

sionary rule is invoked in a particular case is not directly tied to whether a Fourth Amendment violation has occurred.[40] While causation between the constitutional violation and the recovery of evidence is a necessary condition for the exclusion of evidence, the Court explained that causation alone is not sufficient to justify exclusion.[41] The Court explained that if the "but for" causation is "too attenuated" the exclusionary rule is inappropriate.[42] In order to determine when causation may be "too attenuated to justify exclusion," the Court directed its attention to the purpose of the knock and announce rule, holding that the interests protected by the rule have no relation to the subsequent seizure of evidence; therefore, the exclusionary rule is inapplicable to violations of the knock and announce rule.[43]

The Court next stressed that the exclusionary rule should only be applied "where its deterrence benefits outweigh its 'substantial social costs.'"[44] The Court concluded that the social costs of applying the exclusionary rule to knock and announce violations are considerable and that the "deterrence of knock and announce violations is not worth a lot."[45]

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would not result in "appreciable deterrence" or where "admissibility in proceedings other than criminal trials was at issue." *Id.*

[40] *Hudson*, 126 S. Ct. at 2164 (setting forth a limitation to the application of the exclusionary rule). *But see id.* at 2173 (Breyer, J., dissenting) (quoting Mapp. v. Ohio, 367 U.S. 643, 655 (1961)) (noting the Court previously held that "all evidence obtained by searches and seizures in violation of the Constitution is, by that same authority, inadmissible in a state court").

[41] *Hudson*, 126 S. Ct. at 2164 (establishing a standard greater than mere causation for application of the exclusionary rule). The Court explained that the question of whether the exclusionary rule may be appropriately invoked must be answered separately from the inquiry of whether the police violated a defendant's Fourth Amendment rights. *Id.* The Court cited precedent noting that it has never mechanically applied the exclusionary rule to every piece of evidence having a causal connection with police misconduct. *Id.*

[42] *Hudson*, 126 S. Ct. at 2164 (setting forth a limitation to the application of the exclusionary rule).

[43] *Hudson*, 126 S. Ct. at 2165. The Court explained that the knock and announce rule protects three interests, including the preservation of life and limb, the interest in preventing the destruction of property, and the interest in maintaining one's privacy and dignity. *Id.* The Court noted that these interests are quite different from the single interest vindicated by the exclusionary rule, which is shielding "potential evidence from the government's eyes" until a valid warrant has been issued. *Id. But see Hudson*, 126 S. Ct. at 2180 (Breyer, J., dissenting) (stating that the majority's use of the word "attenuated" is inconsistent with case precedent). Justice Breyer noted that case precedent defines the word "attenuated" to mean that the discovery of evidence occurred "long after the unlawful behavior took place or in an independent way." *Id.* Justice Breyer then noted that the Court, instead of using the meaning given to "attenuated" in precedent, gave the word a new meaning when it held that "attenuation" may occur when the interest protected by the constitutional guarantee that has been violated would not be served by applying the exclusionary rule. *Id.*

[44] *Hudson*, 126 S. Ct. at 2165 (using a balancing test to determine when the exclusionary rule may be appropriately applied).

[45] *Hudson*, 126 S. Ct. at 2165-66. The Court examined the value of deterring knock and announce violations by looking at the incentive police officers have to violate the rule. *Id.*

There are several methods other than exclusion, the Court noted, to deter police from violating the knock and announce requirement.[46] In addition to a growing trend of internal police discipline for misconduct, police officers may be held civilly liable for their inappropriate actions.[47] Lastly, the Court compared the facts from the case-at-bar to previous jurisprudence as further assurance that suppression was unwarranted in the case-at-bar.[48]

The *Hudson* decision renders the knock and announce rule virtually meaningless.[49] Without the threat of suppression, law enforcement no longer has an incentive to comply with the rule.[50] The Court mistakenly justified its holding by relying on alternative methods such as civil liability and internal police discipline as proper deterrence.[51] The evidence overwhelmingly suggests, however, that these alternative methods are ineffective.[52] As a result, the right to expect privacy and sanctity in one's own home, which has been highly coveted throughout history, is diminished.[53]

While police officers have a strong incentive to violate a warrant requirement because it can lead to the seizure of evidence that would otherwise be unattainable, the Court opined that violation of the knock and announce requirement achieves very little. *Id.*

[46] *Hudson*, 126 S. Ct. at 2166-68 (noting there are factors to deter police misconduct other than the exclusionary rule). *But see Hudson*, 126 S. Ct. at 2171(Breyer, J., dissenting) (concluding that the Court's opinion "destroys the strongest legal incentive to comply with the Constitution's 'knock and announce' requirement"); *id.* at 2174 (citing Mapp v. Ohio, 367 U.S. 643, 652 (1961)) (noting that the exclusionary rule is necessary because alternative methods used to enforce the Fourth Amendment's guarantees have, in the past, proved to be "worthless and futile").

[47] *Hudson*, 126 S. Ct. at 2166-68. *But see id.* at 2174 (Breyer, J., dissenting) (noting the majority opinion fails to cite any cases where damages other than nominal damages were awarded as a result of knock and announce violations).

[48] *Hudson*, 126 S. Ct. at 2168-70 (strengthening reasoning). The Court stated that because Segura v. United States, 468 U.S. 796 (1984), New York v. Harris, 495 U.S. 14 (1990), and United States v. Ramirez, 523 U.S. 65 (1998) all involved some form of illegal entry by law enforcement followed by the recovery of incriminating evidence, they were factually similar to the case-at-bar and therefore the case-at-bar warranted the same treatment given therein: no application of the exclusionary rule. *Hudson*, 126 S. Ct. at 2168. *But see id.* at 2171 (Kennedy, J., concurring in part and concurring in the judgment) (doubting the relevance of *Harris*, *Segura,* and *Ramirez* to the case-at-bar). *See also supra* note 26 (laying out facts and legal analysis of *Harris*); *supra* note 27 (laying out facts and legal analysis of *Segura*); *supra* note 33 (laying out facts and legal analysis of *Ramirez*).

[49] *See Hudson*, 126 S. Ct. at 2168 (holding that the exclusionary rule is an inappropriate remedy for knock and announce violations); *Hudson*, 126 S. Ct. at 2171 (Breyer, J., dissenting) (concluding that the Court's opinion "destroys the strongest legal incentive to comply with the Constitution's 'knock and announce' requirement").

[50] *See supra* notes 22 and 23 and accompanying text (discussing the importance of the exclusionary rule in deterring police from violating the Constitution).

[51] *See Hudson*, 126 S. Ct. at 2166-68 (noting there are alternative factors other than the exclusionary rule that serve to deter law enforcement from violating the Constitution). *See also supra* notes 46-47 and accompanying text.

[52] *See supra* notes 22 and 23 accompanying text (citing literature and case law suggesting that that both civil remedies and internal police discipline are ineffective deterrents).

[53] *See supra* notes 18 and 30 and accompanying text (noting the importance that society has placed throughout history on the right to privacy and sanctity in one's home).

Without an effective deterrent in place for knock and announce violations, the Court has essentially taken away a right that is guaranteed by the Fourth Amendment.[54] The Fourth Amendment prohibits unreasonable invasions of privacy, and the knock and announce rule is part of that reasonableness inquiry.[55] Contrary to the Court's belief, the interests that the knock and announce rule, and hence the Fourth Amendment, are intended to protect will no longer be protected without the application of the exclusionary rule.[56] Police officers are now more likely to enter residences without first knocking and announcing their presence, resulting in both the destruction of property and an increase in violence arising from the surprise and fright of an unexpected entry.[57]

Finally, the Court erred when it reached a conclusion that disregarded much of the relevant precedent.[58] The Court focused exclusively on the significant costs of the exclusionary rule and precedent narrowing the scope of its application while completely disregarding *Miller* and *Sabbath*, two Supreme Court cases where the court unmistakably suppressed evidence due to knock and announce rule violations.[59] While the Court was correct in recognizing that the scope of the exclusionary rule has been narrowed over time, the Court's analysis focused on precedent that did not discuss the knock and announce rule.[60] Instead, the Court should have fo-

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[54] *See supra* notes 22 and 23 and accompanying text (discussing the importance of the exclusionary rule in deterring police from violating the Constitution).

[55] *See supra* note 1 and accompanying text (noting that the Fourth Amendment protects against unreasonable searches and seizures); Wilson v. Arkansas, 514 U.S. 927, 934 (1995) (holding knock and announce principles form part of the reasonableness inquiry under the Fourth Amendment).

[56] *See supra* note 43 and accompanying text (opining that the interests protected by the knock and announce rule are different from the single interest justified by the exclusionary rule).

[57] *See supra* note 30 and accompanying text (discussing reasoning behind the knock and announce rule).

[58] *See supra* note 37 and accompanying text (discussing *Miller* and *Sabbath*). In these cases the Court suppressed evidence seized by police after they had violated the federal statutory knock and announce requirement. *Hudson*, 126 S. Ct. at 2171 (Breyer, J., dissenting) (noting the Court's decision is unsupported by case precedent); *supra* note 37 and accompanying text.

[59] *See supra* notes 39-44 and accompanying text (emphasizing that the exclusionary rule must be narrowly applied and that the rule's application has high social costs); *supra* note 37 and accompanying text (discussing *Miller* and *Sabbath*). In both *Miller* and *Sabbath*, the Court suppressed evidence seized by police after they had violated the federal statutory knock and announce requirement. *Supra* note 37.

[60] *See supra* notes 25-28 and accompanying text (discussing limitations to the application of the exclusionary rule). Although the Court relied on *Harris*, *Segura*, and *Ramirez* to help support its conclusion, none of these cases, unlike *Miller* and *Sabbath*, involved a knock and announce rule violation. *See supra* note 48 (Kennedy, J., concurring in part and concurring in the judgment) (doubting the relevance of the cases relied on by the majority). *See also supra* note 26 (laying out facts and legal analysis of *Harris*); *supra* note 27 (laying out facts and legal analysis of *Segura*); *supra* note 33 (laying out facts and legal analysis of

cused its discussion on precedent directly relevant to the case-at-bar, such as *Miller* and *Sabbath.*[61]

In *Hudson v. Michigan,* the Supreme Court considered whether a violation of the knock and announce rule requires the suppression of all evidence found in the subsequent search. The Court rendered the knock and announce rule obsolete when it held that evidence found during a search following a knock and announce rule violation is admissible. The Court failed to consider the significant deterrent effects of the exclusionary rule, relying instead upon ineffective methods to preserve the interests protected by the knock and announce rule. Additionally, the Court based its conclusion on case precedent only indirectly relevant to the case-at-bar, while failing to acknowledge case precedent directly related to the issue at hand. Consequently, the Court's decision undermines its own precedent while leaving victims of knock and announce rule violations without a meaningful remedy.

Rachel Rediker

Ramirez).

[61] *See supra* note 37 and accompanying text (discussing *Miller* and *Sabbath* where the court applied the exclusionary rule in response to a violation of the federal statutory knock and announce rule). Additionally, case history establishing limitations on the application of the exclusionary rule has never encompassed the knock and announce rule. *See supra* note 28 (discussing cases limiting the application of the exclusionary rule); *supra* note 43 (Breyer, J., dissenting) (concluding that the majority's analysis of circumstances when the exclusionary rule should be applied is inconsistent with case precedent).