

13:07: Commanding a Suspect to Exit His Home During a Knock and Talk

Case: *Calloway v. State*, 38 Fla. L. Weekly D1609 (Fla. 5th DCA 2013)

Date: July 26, 2013

Subject: Commanding a Suspect to Exit His Home During a Knock and Talk

FACTS: Officers received an anonymous tip indicating that Calloway was conducting various drug activities at his house. The house was located in a high crime area. However, the officers were unable to corroborate the tip or otherwise establish probable cause for a warrant. Instead, the officers performed a knock and talk at Calloway's home. Nobody answered when the officers knocked on the front door. The officers then observed Calloway exiting a side door. As Calloway exited the door, he noticed the officers. Calloway exclaimed "oh, shit," and quickly retreated into his house. The officers then began knocking loudly on the side door. After two minutes of continuous knocking and police announcements, Calloway's mother opened the side door. The officers ordered her out of the house, and also commanded Calloway to exit with his hands up. Calloway complied. The officers handcuffed Calloway. While handcuffed, Calloway volunteered that he had marijuana in the house. His mother consented to a search of the house. During the search, the officers found marijuana and other contraband in Calloway's bedroom. Calloway was charged with possession of cannabis and other contraband. Calloway filed a motion to suppress, arguing that the police had no legal authority to order him to exit his house during the knock and talk. The trial court denied the motion, but the appellate court reversed.

RULING: During a knock and talk, the police cannot command or compel a suspect to exit his home unless the officers could lawfully enter the home.

DISCUSSION: The officers were not violating the law in conducting a knock and talk at Calloway's house, but a knock and talk is a consensual encounter. During a knock and talk, a resident is free to answer the door, not answer the door, talk to the police, or not talk to the police. However, an officer cannot issue commands such as "stay here" or "come here" during a consensual encounter; therefore, under the Court's holding, the officers elevated the encounter to a detention (requiring at least reasonable suspicion) when they commanded Calloway to exit the house. (Their actions might have been approved if they merely asked him if he was willing to step outside, instead of commanding him to exit.) However, an earlier appellate decision, *Davis v. State*, 744 So.2d 586 (Fla. 2d DCA 1999), ruled that an officer's "request" may be perceived as a command or a seizure. For that reason, officers engaging in knock and talks should either refrain from asking the suspect to step outside, or ensure that such a request is phrased as a neutral and non-coercive question.

The State argued that the officers had a reasonable suspicion to detain Calloway, because of Calloway's unprovoked "flight" into his home at the sight of the officers. Calloway's home was located in a high crime area – and unprovoked flight in a high crime area normally entitles the officer to detain a suspect. However, the Court was mindful that the Fourth Amendment places special restrictions on the government's ability to invade the privacy of a person's home. When a person retreats inside his home, the government can neither enter the home nor force a person to exit, unless the officers are armed with probable cause and a recognized exception to the warrant requirement (such as "hot pursuit").

David H. Margolis
Regional Legal Advisor
Florida Department of Law Enforcement
Orlando Regional Operations Center

Officers should consult with their agency legal advisors to confirm the interpretation provided in this Update and to determine to what extent the case discussed will affect their activities.