

The Emergency Doctrine

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A couple of recent cases got me thinking about the authority of the police to enter a home without a warrant when there is an emergency.

First, the legal background. Generally, a warrant is required to enter a home without the consent of the occupants. Yet “a warrant is not required to break down a door to enter a burning home to rescue occupants or extinguish a fire, to prevent a shooting, or to bring emergency aid to an injured person. The need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal.” *Wayne v. United States*, 318 F.2d 205 (D.C. Cir. 1963). In the more clinical words of the Supreme Court, “police may enter a home without a warrant when they have an objectively reasonable basis for believing that an occupant is seriously injured or imminently threatened with such injury.” *Brigham City v. Stuart*, 547 U.S. 398 (2006). The subjective motivations and intentions of the officers – that is, whether they are actually motivated by a desire to protect an occupant of the home or by a desire to gather evidence – are irrelevant. *Id.* For a general discussion of the emergency doctrine, see Wayne R. LaFave, *Search and Seizure* §6.6(a)-(b) (4th ed. 2004). North Carolina has codified the doctrine by statute. [G.S. 15A-285](#) (allowing an officer to enter a building when he or she “reasonably believes that doing so is urgently necessary to save life, prevent serious bodily harm, or avert or control public catastrophe.”).

An issue that frequently arises in cases involving the emergency doctrine is what counts as an “objectively reasonable basis for believing that an occupant is” injured or endangered? The recent cases that got me started thinking about this doctrine shed some light on this issue.

In [State v. Cline](#), __ N.C. App. __ (2010), a toddler was found wandering near a highway. A motorist collected the child and called the police, who began looking for the child’s parents in a nearby neighborhood. A resident told them that the child was likely the defendant’s son. An officer knocked on the front door of the defendant’s residence several times and got no answer. The back door was ajar, and a diaper was lying nearby. The officer was concerned that the child’s parent could be dead or otherwise in need of assistance, so he entered the residence, finding marijuana growing in the bathtub in plain view. The defendant was charged with drug offenses and moved to suppress, but the trial court denied the motion and the court of appeals affirmed, finding that the officer’s entry was supported by his uncertainty about whether the defendant’s father was dead or injured.

In *Johnson v. Memphis*, __ F.3d __, 2010 WL 3305264 (6th Cir. Aug. 24, 2010), a 911 operator received a hang-up call. The operator called back and received no answer, and police were dispatched to the residence from which the call originated. They found the front door wide open, and received no response when they announced their presence. They entered “to make sure that no one was hurt or in need of assistance,” encountered an aggressive occupant, and shot him. The occupant’s widow sued, claiming, *inter alia*, that the officers’ entry violated the Fourth Amendment. Both the trial court and the reviewing court disagreed, with the latter holding that “the combination of the 911 hang[-up] call, an unanswered return call, and an open door with no response from within the residence is sufficient to satisfy . . . the emergency aid exception.” The unanswered return call, in particular, suggested that “after the initial call was placed the caller or the phone has somehow been incapacitated.”

I don’t know whether, in theory, an “objectively reasonable basis for believing” means probable cause, or reasonable

suspicion, or something else. (*Brigham City v. Stuart* dodges this issue in a pretty conspicuous manner.) But I'm confident that, in practice, courts are likely to defer to officers' decisions about when an emergency entry is justified. As the *Wayne* court explained, "the business of policemen . . . is *to act*, not to [engage in] . . . the calm deliberation associated with the judicial process."