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State v. Lee:

**Application of the Inevitable Discovery Exclusion Exception Cannot Make
Evidence Obtained Through an Improperly Executed Narcotics Search
Warrant Admissible**

By: Carlin La Bar

The Court of Appeals of Maryland, in a case of first impression, held application of the inevitable discovery exclusion exception cannot make evidence obtained through an improperly executed narcotics search warrant admissible. *State v. Lee*, 374 Md. 275, 821 A.2d 922 (2003). The court held failure of police to knock and announce their presence while executing a search warrant that did not contain a no-knock clause violated the Fourth Amendment. *Id.* The court further stated, to admit evidence obtained in such an illegally executed search negates Fourth Amendment knock and announce protections and allows officers to use forcible entry under any valid search warrant. *Id.*

In September 1998, a Harford County district court judge issued a warrant for police to search the home of Kai Ruchell Lee ("Lee") on suspected narcotics charges. The warrant did not contain a no-knock clause permitting surprise entry. In executing the warrant, law enforcement officials entered Lee's home without knocking or announcing their presence, searched, and then seized, *inter alia*, over twenty-six grams of cocaine. Subsequently, Lee was charged with

possession with intent to distribute a controlled, dangerous substance.

Prior to trial, Lee filed a Motion to Suppress the cocaine, contending the no-knock search was invalid because it violated his Fourth Amendment rights. The Circuit Court for Harford County denied his motion holding the easy destructibility of evidence was an exigent circumstance justifying the officers' surprise tactics. Lee appealed to the court of special appeals, which reversed and stated no exigent circumstances existed and the failure of police to knock and announce rendered the search unreasonable. The Court of Appeals of Maryland granted certiorari to determine if evidence obtained pursuant to a valid warrant under which police failed to knock and announce prior to entry was admissible under the inevitable discovery exception to the exclusionary rule.

The court first discussed the knock and announce rule. *Id.* at 282-91, 821 A.2d at 926-31. Then the court reviewed the inevitable discovery exception to the exclusionary rule, including a discussion of its companion argument, the independent source doctrine. *Id.* at 291-316, 821 A.2d at 931-

45.

The court in *Henson v. State* established Maryland's requirement that an officer "give proper notice of his purpose and authority and be denied admittance before using force to break and enter." *Id.* at 282, 821 A.2d at 926 (*Henson*, 236 Md. 518, 521-22, 204 A.2d 516, 518-19 (1964)). Some courts have carved out exceptions to this general rule in cases where it was evident that the officer's purpose was known, or where announcement would frustrate arrest, increase peril to the arresting officer, or permit destruction of evidence. *Id.* at 285, 821 A.2d at 927. The *Henson* court expressly stated narcotics searches require an element of surprise entry because, with opportunity, evidence may be easily destroyed. *Id.* The court emphasized that *Henson's* blanket exception to the knock and announce requirement was contrary to subsequent Supreme Court decisions and was no longer good law. *Id.* at 316, 821 A.2d at 930.

The Supreme Court addressed the issue of surprise entry in narcotics cases and a *per se* rule allowing surprise entry in *Richards v. Wisconsin*, and concluded

police entry requires an element of reasonableness under the Fourth Amendment, leaving it to lower courts to determine reasonableness on a case-by-case basis. *Id.* at 286-87, 821 A.2d at 929 (citing *Richards*, 520 U.S. 385 (1995)). The court of appeals reviewed this reasonableness standard as applied by other jurisdictions, noting the Supreme Court had overturned a blanket exception to the knock and announce requirement in narcotics cases. *Id.* at 286-87, 821 A.2d at 928-29.

The court went on to address the State's contention that the search warrant was an independent source for the seizure, separate from the entry, and the cocaine would have inevitably been discovered through execution of the valid search warrant. *Id.* at 291, 821 A.2d at 931. The court noted one purpose of the general rule, preventing admission of evidence obtained through the improper execution of a valid search warrant, is to reduce police misconduct. *Id.* at 297, 821 A.2d at 935. Conversely, a purpose of the inevitable discovery exclusionary rule admitting illegally obtained evidence is to prevent the prosecution from being placed in a worse position than it would have occupied had the search warrant been properly executed, while precluding the prosecution from profiting from improper activity. *Id.* at 297, 821 A.2d at 933-35. For evidence to be admissible despite a knock and announce violation, the prosecution must show it possesses a source,

both independent and free of constitutional violation, which would have inevitably led to the discovery of the evidence. *Id.*

The court cited Maryland cases that reviewed the inevitable discovery and independent source exclusion exceptions, noting admission of evidence discoverable by means independent of the violation. *Id.* at 305, 821 A.2d at 939. The court then reviewed other jurisdictions' decisions and agreed when "execution of the warrant is illegal, the State cannot invoke that very warrant as an independent source of the illegal entry." *Id.* at 313, 821 A.2d at 944. The court agreed with the reasoning in *United States v. Marts*, that with the application of the independent source exception in cases of failure to knock and announce "an officer could obviate illegal entry in every instance simply by looking to the information used to obtain the warrant [and] in executing a valid search warrant, could break in doors of private homes without sanction." *Id.* at 304, 821 A.2d at 939 (citing *Marts*, 986 F.2d 1216 (8th Cir. 1993)).

Contrary to the court's comment in *Henson*, the Court of Appeals of Maryland noted a blanket exception to the knock and announce requirement in narcotics cases directly opposes the Supreme Court rejection of a *per se* rule and its requirement for a case-by-case analysis. *Id.* at 308-09, 821 A.2d at 941. The court of appeals stated that applying inevitable discovery and independent source exceptions removed the knock and announce

requirement from Fourth Amendment protection, permitting unannounced entry under any valid search warrant. *Id.* at 316, 821 A.2d at 945. Therefore, evidence obtained in the search should have been suppressed. *Id.*

Prior to this decision, Maryland was among a minority of states, as illustrated by the *Henson* decision. *Henson* supported a *per se* rule in narcotics cases, which suggested the mere acquirement of a search warrant justified any means necessary for entry. Under *Henson*, society's protection from criminal activity was paramount to a private individual's rights. There is a balance weighed by some states in favor of government privileges, but the court of appeals stressed that in Maryland, rights of the individual are not secondary. This decision may affect not only the manner in which police officers execute search warrants, but it may also impact other methods of evidence acquisition. Some long-standing accepted methods of investigation, such as witness or suspect interrogation, may be viewed more critically in light of this decision, where the end result does not justify the means.