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Training!*

**Issue 3. January 2014<sup>1</sup>**

## ***Arrest warrant execution***

***Police must have a "reasonable belief" that the subject of an arrest warrant is present before entering his residence.*** *Comm. v. Gentile*, 466 Mass. 817 (2014): The week before Conan Gentile's arrest, Trooper David Napolitano spoke to him about an unrelated incident and viewed the address on his identification card. Napolitano later discovered that Gentile had two outstanding arrest warrants. He confirmed that the address on Gentile's identification card matched his driver's license.

Napolitano and three Leominster police officers went to this address at 9:30 a.m. on a workday to execute the warrants. A teenage girl answered, followed by her mother, Maura. Napolitano informed Maura that he was looking for Gentile and had a warrant for his arrest. Maura appeared nervous. She said Gentile was not there, but looked toward a nearby bedroom. Napolitano heard movement indicating that someone was in the apartment. He told Maura he believed Gentile was there, and entered the apartment. He opened the bedroom door and found Gentile.

Napolitano saw the "butt end" of what appeared to be a rifle sticking out from under the bed. He looked underneath and removed an antique musket. In the process, he observed three firearm cases. He opened the cases and found two shotguns. Napolitano also observed a sword and BB gun in the bedroom, but only seized the musket, firearms, and cases.

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At the station, Gentile waived his *Miranda* rights. Napolitano received a report about a break-in, in which a musket, firearms, sword, and BB gun were stolen. He relayed this information to Gentile, who denied stealing the items, but said he knew who did. Gentile gave police consent to return to his apartment and search. The officers seized the sword and BB gun, and charged Gentile with receiving stolen property.

- **“Reasonable belief” that Gentile was present.** Trooper Napolitano’s good faith belief that Gentile was in the house was not enough, by itself, to justify entry to execute the warrant.
- **Before knocking on the door.** While there was sufficient evidence that Gentile lived in the apartment, there was no information indicating he was home at that time. No physical surveillance was conducted, and no third party had informed police that he was home. There was also no evidence linking him to any vehicle parked outside the residence.

If the officers had entered earlier in the morning, the early hour alone would have provided a reasonable belief that he would be present. However, the officers did not enter until 9:30 a.m., and there was no evidence that Gentile was unemployed or had a daily routine that led officers to believe he would be home at that time.

- **After knocking on the door.** Maura’s insistence that Gentile was not home did not provide a reasonable belief either. The evidence that she was lying was not compelling – it is normal to be nervous when an officer shows up with an arrest warrant, and there are many reasons she could have been looking toward the bedroom during her conversation.

According to the SJC, studies show that officers are more confident “in their ability to ascertain whether someone is lying than is [legitimately] warranted by the [statistical] evidence.” The high court actually referenced five separate studies in support of its conclusion. Here, Napolitano did not question Maura enough to show support for this hunch. For example, he did not ask her where Gentile was and then ask follow-up questions to test her credibility – as he told the court he normally did. Napolitano could not point to any statement Maura made that contradicted a known fact. He simply found her assertion that Gentile was not home implausible.

The fact that Napolitano heard movement in the apartment was also not enough, because there was no reason to believe it was Gentile, and not someone else, who made the noise. Napolitano did not know whether other people lived in the apartment, and he did not ask Maura whether anyone other than her and her daughter were at home.

- **Suppression of evidence.** Because police did not have a reasonable belief that Gentile was present, the entry was illegal. The firearms and musket had to be suppressed as fruits of the illegal entry. Because Gentile’s consent to search was also the product of the initial flawed entry, the sword and BB gun had to be suppressed too.

Hope this helps you on the street,

*John Sofis Scheft*