

Below is a sample of my Appellate Advocacy brief from last spring. My purpose was to persuade the court that the defendant's Fourth Amendment right against unreasonable searches and seizures had not been violated. I decided that these five pages illustrate my ability to write persuasively.

ARGUMENT

I. THE WARRANTLESS SEARCH WAS PERMISSIBLE BECAUSE THERE WAS PROBABLE CAUSE AND SUFFICIENT EXIGENCY TO ENTER LOCKE'S HOME.

A search warrant is required in order for officers to enter a home, unless an exception to the warrant requirement applies. The Fourth Amendment to the United States Constitution guarantees the right of people to be free from unreasonable searches or seizures. U.S. Const. amend. IV. When both probable cause and exigent circumstances exist, a warrantless search will not violate the Fourth Amendment's warrant requirement. *Sealed Case*, 153 F.3d at 763. Courts apply an objective standard to determine whether probable cause exists, looking at the totality of the circumstances to decide whether an objectively reasonable officer would have entered immediately without a warrant. *Id.* at 766. The inquiry is limited to the facts known by the officers and the inferences drawn from those facts at the time of entry. *Id.* at 765. To obtain a search warrant, officers do not need to show an actual crime, "[o]nly a probability or substantial chance of criminal activity" *U.S. v. Johnson*, 9 F.3d 506, 509 (6th Cir. 1993). Here, because the officers had both probable cause to believe a crime was in progress and were in the midst of exigent circumstances, a warrant was not required for their initial entry.

A. Probable cause existed because the officers had a reasonable belief that a crime had been committed or was in progress.

Officers can make a warrantless entry when they reasonably believe a crime may be occurring. Even if that belief later is found to be mistaken, probable cause is found to exist at the time of entry. *U.S. v. Tibolt*, 72 F.3d 965 (1st Cir. 1995). In *Tibolt*, two officers responded to a burglar alarm but arrived at the wrong address. *Id.* at 967. The first officer on the scene searched around the exterior of the home and found no signs of forced entry but noticed that the rear door was unlocked. *Id.* The officer announced his presence but received no response. *Id.* When the second officer arrived, the officers entered without a warrant "[t]o rule out the presence of intruders, captives, or injured occupants." *Id.* While conducting a security sweep inside, the officers found marijuana in the basement. *Id.* The court held that the officers had probable cause for their warrantless entry and admitted the evidence, even though the officers entered the wrong home. *Id.* at 971. The appellate court appropriately denied Tibolt's motion to suppress the evidence.

Probable cause was also found where experienced officers followed a man running into an unlit home, believing that he was breaking in. *Sealed Case*, 153 F.3d 759. The officers observed the defendant force open the front door and rush into the unlit home. *Id.* at 762. When they approached the home, one officer found the front door damaged and lock broken. *Id.* The officer announced his presence but nobody responded. *Id.* He tried to push the door open, but someone inside pushed back so the officer entered and followed him upstairs. *Id.* The defendant was arrested and brought downstairs. *Id.* at 763. The officers needed to ensure nobody else was inside and during their security sweep observed cocaine in plain view. *Id.* at 762. The appellate court admitted the evidence from the warrantless search, holding that there was sufficient probable cause for the officers to reasonably believe a crime was in progress based on their experience and the facts known to them at the time of entry. *Id.* at 765.

A finding of probable cause was upheld where officers made a warrantless entry after responding to a reported burglary in progress. *Johnson*, 9 F.3d 506. A neighbor saw people crawl through the kitchen window and called police. *Id.* at 507. Upon arrival, the officers observed the broken window. *Id.* They knocked on the front door but nobody answered. The officers spoke with a female inside who could not open the front door because she did not have a key or any identification to prove that she lived there. The officers entered to ensure nobody else was inside and found “[b]omb-making materials” in plain view. *Id.* The appellate court held that there was sufficient probable cause to justify the warrantless entry, as the circumstances presented would have led a reasonable officer to believe that a crime was in progress. *Id.* at 509. The court appropriately admitted the evidence even though it was obtained without a warrant.

In the aforementioned cases, the appellate courts found probable cause for the officers to reasonably believe a crime was in progress. *Tibolt*, 72 F.3d 965, *Sealed Case*, 153 F.3d 759, *Johnson*, 9 F.3d 506. In the present case, the district court erred in not finding probable cause for the warrantless entry. Here, the officers had sufficient probable cause to make a warrantless entry based on the facts known to them at the time of entry. A concerned neighbor reported to police that lights were on in a neighboring house which she knew to be vacant for a few months. RT 3. Bentham arrived at 1:05 a.m., confirmed that lights were on, and checked the exterior of the house for signs of forced entry. RT 3, 4. There were no signs of forced entry until he reached the front of the house and found the front door open “About two feet.” RT 4. Bentham thought the open door and lights on could indicate that a burglary was in progress. RT 5. Pope arrived shortly after Bentham called for backup. *Id.* The officers rang the

doorbell and knocked on the front door but received no answer. *Id.* Bentham loudly announced their presence but still received no response. *Id.* The officers entered immediately to secure the home and conducted a security sweep to rule out the presence of intruders. *Id.* After ensuring the rooms were secure, they entered the open basement door and found “[a] marijuana grow operation” in plain view. RT 6. The officers left without taking any evidence. RT 7. Bentham followed procedures by reporting to Decker all circumstances that led to their warrantless entry. RT 10. Decker executed the search warrant with four other task force agents and found “348 marijuana plants and various types of growing equipment and paraphernalia.” RT 11. Joan Locke was found to be the owner and was arrested. *Id.*

Based on the totality of the circumstances known by the officers at the time of their warrantless entry, they held an objectively reasonable belief that a crime had been or was being committed. The officers responded to the correct address, unlike the officers in *Tibolt*, and were completely honest to Decker about the circumstances leading to their initial warrantless entry. As shown above, probable cause has been found in cases where the facts are less compelling than in the present case. The district court erred in not finding probable cause under the totality of the circumstances.

B. There was sufficient exigency for the officers’ warrantless entry into Locke’s home.

In addition to probable cause, exigent circumstances must be present to justify a warrantless entry. *Sealed Case*, 153 F.3d at 765-66. Exigent circumstances are emergency situations where an objectively reasonable officer would not stop to get a warrant because of potential immediate harm to people or property, and also to prevent the destruction of evidence. *Id.* at 766. The purpose behind the exigent circumstances protection is to allow officers to react immediately when faced with a potential crime, as “[t]he Fourth Amendment does not require police officers to delay in the course of an investigation if to do so would gravely endanger their lives or the lives of others.” *Id.* at 767.

Exigent circumstances, similar to the probable cause determination, are viewed under an objective standard, “[f]ocusing on what a reasonable, experienced police officer would have believed.” *Id.* The totality of the circumstances and facts known by the officers at the time of entry are analyzed. *Id.* at 766. Here, the totality of the circumstances demonstrate sufficient exigency to justify the officers’ initial warrantless entry.

1. *PROBABLE CAUSE THAT A BURGLARY IS IN PROGRESS CONSTITUTES SUFFICIENT EXIGENCY TO PERMIT A WARRANTLESS ENTRY.*

Courts have held an officer's reasonable belief that a burglary is in progress can create sufficient exigency, allowing an immediate warrantless entry to prevent the crime from being completed. *Sealed Case*, 153 F.3d at 766. Similarly, courts have found exigent circumstances to exist where officers have a reasonable believe of an imminent threat to public safety. *Johnson*, 9 F.3d at 509.

In the present case, the officers reasonably believed that there was either an ongoing burglary or an immediate threat to somebody inside. As shown above, the officers had probable cause to reasonably believe a burglary was in progress and were presented with sufficient exigency which did not require that they stop for a warrant.

2. *A WARRANTLESS ENTRY IS ALLOWED WHEN REASONABLE, EXPERIENCED OFFICERS BELIEVE THERE IS AN IMMEDIATE NEED TO ENTER.*

Exigent circumstances were found based on an alarm being triggered, officers finding the rear patio door unlocked, albeit at the incorrect house, and from no response after announcing their presence. *Tibolt*, 72 F.3d 965. The appellate court stated that without entering the home, the officer “[c]ould not have known but what an intruder had managed to get into the residence, and even injured or captured a resident . . .” *Id.* at 970.

Conversely, exigent circumstances were not present where a warrantless entry was based upon the officers' mere suspicions, and they tried using a pretense to enter. *U.S. v. McGough*, 412 F.3d 1232 (11th Cir. 2005). In *McGough*, the defendant left his five-year-old daughter alone inside the apartment and she accidentally dialed 911. *Id.* at 1233. Police responded, finding her frightened and trapped behind burglar bars with no key. *Id.* Mr. McGough returned to the apartment, identified himself as the father and apartment resident, and was immediately arrested for child endangerment. *Id.* at 1234. One officer noticed the daughter was shoeless and accompanied her back into the apartment “[o]stensibly to grab her shoes.” *Id.* at 1239. Once inside, the daughter pointed up to a bar where the officer observed a bag of marijuana and a gun. *Id.* at 1234. The officers left the apartment without taking anything and prepared an affidavit for a search warrant. *Id.* at 1235. The appellate court stated that there were no exigent circumstances permitting the warrantless entry, as the daughter's need for shoes was not urgent enough to be sufficient exigency. *Id.* at 1239. The court held that the evidence obtained from the search was inadmissible. *Id.*

In contrast, there was sufficient exigency in the present case to allow an immediate warrantless entry. The circumstances present at the time of entry would not have led a reasonable officer to stop for a warrant because there may have been an injured resident or intruder inside. *McGough* is distinguishable from our case, as the officer had already ensured the daughter's safety prior to entering. Here, the officers did not know what was occurring inside and entered to ensure that nobody needed immediate aid. They responded to a suspicious incident report from a neighbor who knew that the home had been vacant for a few months. Vacant homes usually do not have lights on inside at 1:00 a.m. In the present case, the officers had no pretense in entering the home and did not enter to search for evidence. Therefore, because these officers had both probable cause to believe a crime was in progress and were in the midst of exigent circumstances, the warrantless entry did not violate the Fourth Amendment's warrant requirement.