

In this issue of the WSTOA quarterly newsletter the overall goal is to talk about the use of port and cover during missions. I will discuss knock and announce, proper tools for the job and also the tactic/techniques of port and cover.

I have not done a survey of teams around the region but I do know that many teams use port and cover as a tactic for search warrants, barricaded subjects, as well as hostage rescue. The question is: are SWAT teams utilizing the proper tools, techniques and case law when doing a port and cover.

- 1) So let's start with the Knock and Announce rule as written in the WA State search and seizure guide for Police.

Knock and Announce Rule.

RCW 10.31.040 provides:

To make an arrest in criminal actions, the officer may break open any outer or inner door, or windows of a dwelling house or other building, or any other enclosure, if, after notice of his office and purpose, he be refused admittance.

A. The rule exists to:

- Reduce the potential for violence to all parties from unannounced entry
- Prevent unnecessary property damage
- Protect the privacy rights of occupants.

B. Strict compliance with the statute is required unless exigent circumstances are present or compliance with the dictates of the rule would be futile. The validity of an entry under the knock and announce rule depends upon the facts of a particular case. The rule requires that police must:

- (a) Have a warrant.
- (b) Announce their identity. This is especially critical when officers are in plain clothes.
- (c) Demand Admittance.
- (d) State the purpose of their demand.
- (e) Be explicitly or implicitly denied admittance.

Objective evidence of refusal include attempts by the suspect to close the door after becoming aware that the persons seeking entry are police officers, or the suspect running back inside the building.

No bright line rule exists for how long police need to wait after knocking and announcing their purpose. Cases have repeatedly held 10 seconds to be adequate. A five second delay was approved where the police heard commotion inside after knocking. As a general rule, officers should wait 30 seconds, unless there are affirmative indications that the occupants are aware of the officer's presence, or other specific facts demonstrating an unusual degree of danger to officers or of destruction of evidence.

The reasonableness of the delay will depend upon two primary factors: (1) how easily the sought evidence can be destroyed; and (2) whether the suspects are likely to be armed or dangerous. *See generally United States v. Banks*, 540 U.S. 31, 124 S. Ct. 521, 157 L. Ed. 2d 343 (2003). If the search warrant is for controlled substances, 10 seconds may be sufficient as drugs may be easily flushed down a toilet. If the search warrant is for a grand piano or other less fungible evidence, the wait should be longer.

So after reading the RCW, let's focus on a couple lines from the first paragraph above which are italicized.

*break open any outer or inner door, **or windows***

***if** after notice of his office and purpose, he be refused admittance.*

Simply stating we are allowed to break open (PORT) a window if after a PROPER knock and announce we are refused admittance. The main point here is that it is done AFTER we are refused. Not on the knock, or as soon as we set up and no knock and announce has begun, because as soon as we place anything inside of the residence (tool, etc) that warrant has been served. And our goal is to assist detectives in completing their case and we do not want to lose part or all due to not following the rules of K&A. Obviously this is only for warrants, not HR or a barricaded person.

2) Proper tools/training

A window can be broken with just about anything as we know from being kids. However there are some items that we have available which work far better than others.

- Specific tool made for port and cover of windows
 - Yes you will have to buy or have one made, but the benefit is they are designed to break and take out glass as well as help pull blinds down, etc. They are also several feet long which help limit any injuries to operators. (See halligan)
- Halligan
 - Will work if it is what you have, but due to length you lose power, you can over insert the tool and possibly cut your hands or arms, and if it is a larger window you may not be able to reach all sides.
- Pike pole
 - Better than halligan but still not as good as a specific port tool.
- Gloves
 - Goes without saying. If you can get the operator heavier gloves it will provide more protection.

- Eye pro
 - Again, glass in your eyes is a negative.
- Ladders
 - Small ladders that are non-skid, padded to be quiet if needed and not heavy.

And believe it or not you do need to train on doing a port of a window. I have personally seen several operators hit a window and watched the tool bounce off. It was not some kind of magic glass, it was due to no formal training and a bit of psychological stuff since we have always been taught (don't break the windows).

Port and cover is a vital tactic in the success of missions so why would we just assume that we can do it without any training? If you cannot successfully port a window quick enough to "cover" inside then you may miss an important opportunity.

For you SWAT supervisors, assigning this duty to a SWAT officer that has not been trained on how to do it may make them and your agency subject to the legal theory of "Negligent Entrustment."

3) Technique

Before you read the following I will precede it with the standard "a way not the only way". I have found that it has worked for us in the past.

- How many operators?
 - If you need a ladder, port tool, cover officer(s) and possible a bang pole then you would need 3-5 operators to do it correctly. Do not give an operator too many roles.
- Approach
 - Cover officer(s)
 - Ladder set officer
 - Porting officer
 - Bang pole operator if being used
- Set up/execution
 - Ladder officer will place ladder quietly at base of window, then can be used as security, etc
 - Depending on the location of the window, the porting officer will decide which side is best for the port. Once port is done can be used for security, etc
 - Cover officer will cover the porting officer then cover the interior of the location. If possible two cover officers are better. I also recommend covering from outside, not sticking half of your body in the window.

I hope that the information has been helpful. Port and cover is a great tactic and we need to be proficient in it. A hostage rescue is not the time to try and figure out how to port a window, cover the room and extricate a possible hostage out the window. These skills need to be polished at training!

Stay safe,