

Loyalty to the King: The Circuits' Interpretation of the Overhauled "Police-Created Exigency" Doctrine

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Have the U.S. Federal Circuit Courts adhered to precedent established by the U.S. Supreme Court in *Kentucky v. King* (“*King*”)?¹ In *King*, the Court ruled that the police could not and did not impermissibly create the exigent circumstances unless they had expressly “violated or threatened to violate the Fourth Amendment.”² The Exigent Circumstances Exception (the “Exception”) to the Fourth Amendment has long served as a legitimate tool affording the police a legal method to bypass the warrant requirement, presuming that there is a presence of circumstances that inherently requires the immediate attention of the police.³ The Exception was not preconceived with the objective of acting as an apparatus for police to habitually circumvent the warrant requirement.⁴ However, the Exception has been prone to instances in which the police have willingly chosen to create the exigent circumstances in order to circumvent the warrant requirement.⁵ The Court

¹ *Kentucky v. King*, 563 U.S. 452 (2011).

² *Id.*

³ Gordon J. Mowen, II, *Closing the Door on Subjective Reasonableness: Evaluating Police-Created Exigencies and the Issues with the Doctrinal Shift to Objectivity in Warrantless Searches*, 101 Ky. L.J. 639* (2013).

⁴ *See King*, 563 U.S. at 453. (“[W]arrantless searches are allowed when the circumstances make it reasonable, within the meaning of the Fourth Amendment, to dispense with the warrant requirement. Thus, a warrantless entry based on exigent circumstances is reasonable [only] when the police did not create the exigency by engaging or threatening to engage in conduct violating the Fourth Amendment.”)

⁵ *See, e.g., United States v. Arias*, 992 F. Supp. 832, 835-36 (S.D. W. Va. 1997) (“D'Alessio admitted that he positioned himself directly in front of the hotel room door so that the defendants would see the police when the door opened... According to D'Alessio, this action prompted [the defendant] to rush into the hotel room to prevent Arias from destroying evidence.”); *United States v. Coles*, 437 F.3d 361, 371 (3d Cir. 2006) (“[O]nce the officers knocked on the door and announced, ‘open the door, this is the police,’ they heard sounds indicating that evidence was being destroyed. But that exigency did not arise naturally or from reasonable police investigative tactics.”); *United States v. Conner*, 948 F. Supp. 821, 826-37 (N.D. Iowa 1996) (“Sergeant Young repositioned himself to the north of the door, and withdrew his pistol from its holster and held the pistol behind his back so that it wasn't exposed to anyone's view. Sergeant Young shouted, ‘Open up,’ in a voice loud enough to be heard two rooms away

suitably addressed this issue in *King*, laying out a framework for similar disputes.⁶ Legal scholars have, nonetheless, ubiquitously asserted that the *King* decision was indeterminate and eclectic in nature, claiming that it declined to meet the fundamental threshold deemed necessary for legal clarification.⁷ To assess whether the Circuits have struggled in interpreting and applying *King*, I will evaluate a plethora of post-*King* legal disputes. This collection of qualitative data will then acquiesce for the construction of a substantiate empirical analysis. The *King* decision had dealt a seemingly calamitous blow to the already unstable equilibrium balancing liberty and police power. This research furthers the query regarding the relative deterioration the Fourth Amendment has capitulated as a direct consequence to the refurbished “police-created exigency” doctrine.

by Wendie Oestmann, another resident at the motel. Tilton opened the door in response to Sergeant Young's command that he open the door. When Tilton opened the door, Sergeant Young observed what appeared to be foreign currency at the foot of one bed, coins and envelopes the size of currency on the bed, as well as blue, gold, and maroon boxes matching the description given by Uhlir. Believing the currency and other materials he observed to be the proceeds of the Uhlir burglary, Sergeant Young drew his weapon on Tilton and ordered him to back away from the door. Tilton complied with Sergeant Young's request and backed away from the doorway.... Because Tilton opened the door in response to a show of official authority, and his opening of the door was thus nonconsensual, the officers' visual search of and entry into the motel room was illegal, and the evidence later obtained must be suppressed.”)

⁶ See *King*, 563 U.S. at 464 (quoting *Brigham City v. Stuart*, 547 U.S. 398, 404 (2006)) (“Our cases have repeatedly rejected a subjective approach, asking only whether “the circumstances, viewed objectively, justify the action.”)

⁷ Christopher LoGablo, *Resolving the Threat of Ambiguity by Defining a Threat to Violate the Fourth Amendment under Kentucky v. King*, 78 Brooklyn L. Rev. 1487* (2013). (One Christopher LoGablo, Former Editor of the Brooklyn Law Review, proceeded so far as to state that “[t]his ambiguity poses a threat to the very principles that the Court sought to protect and uphold.”)