



ROLL CALL REPORTER

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The Significance of the Continued Detention of a Person After a Warrant to Collect the Person's DNA and Fingerprints Has Been Executed

QUESTION: Can the police continue to detain a person after they have executed a warrant authorizing them to obtain the person's DNA and fingerprint evidence?

ANSWER: Yes, but only if there is probable cause or reasonable suspicion to do so. If there is only reasonable suspicion, officers need to ensure that they move diligently so that the detention is not viewed as an arrest requiring probable cause.

CASE: *Delford Mitchell Barnes v. State of Maryland*
Court of Appeals of Maryland, Decided March 5, 2014

The Murders: On January 14, 2009, the Prince George's County Police Department received a 911 phone call from a friend of Seth Aidoo reporting his concern that he had not seen Mr. Aidoo or his girlfriend, Eunice Baah, in a few days. The police responded to Mr. Aidoo's home, which was located within a gated community in Upper Marlboro. Upon entering the home, the police discovered the bodies of Mr. Aidoo and Ms. Baah in the basement and, shortly thereafter, pronounced both victims dead. Mr. Aidoo had died from multiple stab wounds and Ms. Baah died from a gunshot to her head. Both deaths were ruled to be homicides. It was determined that Mr. Aidoo and Ms. Baah likely had been killed on the evening of January 12, 2009.

The Investigation: Detectives Anthony Schartner and William Watts and Corporal Benjamin Brown were assigned to investigate the murders. They learned during their investigation that Mr. Aidoo had previously lived in Upper Marlboro with his wife, Sheila Aidoo, and her brother, Samuel Culley, Jr. Ms. Aidoo had moved from the home when the Aidoo's separated. Shortly thereafter, Mr. Aidoo forced Culley to leave the home because of several confrontations between the two men. At the time of the murders, Ms. Aidoo, Culley, and Delford Mitchell Barnes lived together in Ms. Aidoo's home in Springdale, Prince George's County, Maryland.

The access gates to Mr. Aidoo's community were controlled by transponders. Culley had obtained a transponder in March 2008 while he was residing with his sister and Mr. Aidoo. Video surveillance of the entrance to the community revealed that, approximately two weeks before the murders, a Mercedes Benz registered to Barnes entered the community using the transponder issued to Culley. On the evening of the murders, a mini-van entered the community at 6:00 p.m. using the same transponder. Detectives learned that Barnes' cell phone had been powered off that evening from 5:00 p.m. until 2:15 a.m., which was inconsistent with Barnes' "normal" cell phone usage.

The Warrants: On February 18, 2009, Detective Schartner applied for and obtained warrants to collect Barnes' DNA and fingerprints and to search Ms. Aidoo's Springdale residence and Barnes' Mercedes. Also, shortly after 6:00 p.m. on February 19, Corporal Brown, along with two other officers, conducted surveillance outside Ms. Aidoo's Springdale residence in preparing to execute the

warrants. At approximately 6:40 p.m., Barnes and two others individuals left the Springdale residence in Barnes' Mercedes. The police stopped the vehicle one block from the residence. Corporal Brown identified himself as a detective and explained that he was investigating the murders of Mr. Aidoo and Ms. Baah. He then told Barnes of the warrant to collect his DNA and fingerprints. Barnes was asked, and he agreed, to go to the police station for the purpose of executing the warrant.

Detective John Piazza transported Barnes to the police station. Barnes sat in the front passenger seat of the detective's vehicle and was handcuffed during the ride to the station. Barnes' two passengers were transported to the station by Detective Watts. At the station, the police removed the handcuffs and placed Barnes in a five-by-five foot interview room. Barnes was not restrained while in the room and the door to the room remained unlocked while he was inside. At some point, Barnes asked to leave the interview room to use the restroom and was allowed to do so.

Meanwhile, other officers, including Detective Schartner and Corporal Brown, executed the search warrant at the Springdale residence. Corporal Brown left at 7:25 p.m., before the search was concluded, to transport Ms. Aidoo to the station for questioning. He questioned her for approximately four hours. During the course of the interview, he left the room several times to check on Barnes. Somewhere between 9:00 p.m. and 9:30 p.m., Detective Schartner drove from the residence directly to the police station. There was simply no one available to recover Barnes' DNA and fingerprints until after the police had completed the search of the Springdale residence.

At approximately 10:15 p.m., Detectives Schartner and Watts entered the interview room in which Barnes was waiting. They took a DNA swab from his mouth, and then left. The detectives returned at 10:47 p.m. and took Barnes' fingerprints. Barnes was then escorted to the restroom to wash his hands.

The Locker Search: Barnes was escorted back to the interview room at 10:53 p.m. and immediately questioned about a storage locker, a rent-receipt payment for which the police had found during the search of the Springdale residence. Barnes confirmed that the storage locker belonged to him. The detectives asked for Barnes' consent to search it and Barnes gave it. At 11:00 p.m., Barnes signed a form consenting to the search of the locker. During the search of the locker, the police recovered a candle containing a hand-etched message, apparently about Mr. Aidoo. The message included several references to wanting to kill Mr. Aidoo. Meanwhile, Barnes remained at the station. At 1:30 a.m., Corporal Brown questioned Barnes for about a half-hour. Brown was then allowed to leave the station.

The Charges, the Suppression Hearing, and the Trial: Barnes was charged with the premeditated murders of Mr. Aidoo and Ms. Baah and related crimes. His attorney filed a motion to suppress the evidence found in the storage locker, namely the candle, arguing that it was the fruit of an unlawful detention. Essentially Barnes argued that the several hours he spent at the police station before consenting to the search of the locker were a *de facto* arrest without probable cause. Barnes focused on the three hours he had spent at the station until his DNA sample and fingerprints were taken. Barnes also argued that his continued detention after the samples were taken was unlawful. The court denied the motion and Barnes was found guilty and sentenced to imprisonment. He appealed.

The Appeal and the Decision: The Court of Special Appeals upheld Barnes' convictions and the Court of Appeals agreed to hear the case. That court also upheld the convictions. In doing so, the court first acknowledged that there was no question that Barnes was lawfully detained and transported to the police station. This was because of the warrant for Barnes' DNA and fingerprints. As such, the validity of Barnes' initial detention at the police station was not in question. The question was whether the three hour delay between initial detention and warrant execution was, in fact, an arrest. The court said that it was not. The court's decision was based on the "reasonableness" of the delay

between Barnes' transport and the execution of the warrant for his DNA and fingerprints. The delay was reasonable because there simply was no one available to take the sample and fingerprints until *after* the Springdale residence had been searched. Thus, the three hour delay was not tantamount to an arrest. Further, the delay between the taking of Barnes' DNA and fingerprints and his giving consent to search the locker also was not an arrest. In reaching this conclusion, the court turned to cases concerning the duration of traffic stops, *i.e.*, when traffic stops end and the continued detention of drivers for other purposes begins. Thus, the court drew a similar "bright line" between a lawful detention of a person to execute a warrant to collect DNA and fingerprint evidence and the continued detention of that person following execution of the warrant. Here, once the sample and fingerprints were obtained, the detectives moved quickly to ask Barnes about the locker and to obtain his consent to search it. Barnes' detention after the warrant was executed until he gave consent was only a few minutes, and it was based on reasonable suspicion (everything the police had learned in their investigation up to that point). Accordingly, there was neither an unlawful arrest nor an unlawful detention.

NOTE: This case is important because the time line usually so critical in traffic stop cases was applied, for the first time, to a post-warrant execution detention. Thus, if the delay between warrant execution and the giving of consent had been for a longer period of time, for example hours and not minutes, the outcome might have been different. Thus, the adage "haste makes waste" can be re-written in this context as "delay makes waste," meaning that officers should always act with diligence when operating in the realm of reasonable suspicion, because the longer detentions based on reasonable suspicion go on, the more likely they are to be called arrests.

By John F. Breads, Jr., Director of Legal Services, Local Government Insurance Trust

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