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MARYLAND'S INTERMEDIATE APPELLATE COURT REVISITS "KNOCK AND ANNOUNCE" RULE

QUESTION: HOW LONG MUST OFFICERS EXECUTING A SEARCH WARRANT WAIT AFTER KNOCKING AND ANNOUNCING THEIR PRESENCE BEFORE THEY CAN FORCIBLY ENTER THE DWELLING TO BE SEARCHED?

ANSWER: A VERY BRIEF PERIOD OF TIME, IF CIRCUMSTANCES INDICATE THAT WAITING FOR A REFUSAL OF PERMISSION TO ENTER WOULD UNDERMINE LAW ENFORCEMENT INTERESTS.

**CASE: *Archie v. State*, Court of Special Appeals of Maryland,
Decided February 14, 2005**

In *Archie v. State*, the Court of Special Appeals considered the question of whether officers serving a search warrant violated the "knock and announce" rule. The "knock and announce" rule requires officers who are executing a search warrant at a dwelling to: (1) knock and announce their presence and authority prior to entering, and (2) wait until they receive an actual refusal of permission before making a forced entry or wait a period of time sufficient to infer that their request to enter has been refused. The Defendant in this case argued that the officers who searched his apartment violated this rule by entering his apartment too quickly after they knocked and announced their presence.

The facts of the case established that on May 8, 2002, agents of the Washington County Narcotics Task Force and the Hagerstown Police Department executed a Search and Seizure Warrant at an apartment leased by Tyrone Archie in Hagerstown. Officers conducted surveillance on Archie's apartment building and waited for him to arrive. When Archie was observed entering the building, a SWAT Team followed and approached his apartment. One of the team members pounded on the door and announced the officers' presence and purpose. A brief delay followed in which nothing happened. The SWAT Team then forced the door with a ram and entered the apartment. Archie was found lying on the floor with most of his body in the bathroom and his legs out in the hallway. His body was directly in front of the toilet and his arm was "wet up to the elbow." Numerous plastic bags of marijuana were found at various places in the apartment, as well as bags containing cocaine residue. Archie was arrested, charged, and brought to trial. A Washington County jury convicted Archie of possession of marijuana and possession of cocaine and he appealed.

The Court of Special Appeals affirmed the convictions. In doing so, the court rejected Archie's contention that the officers were required to wait longer than they waited before making the forcible entry into his apartment. The court first noted that there are exceptions even to the "knock and announce" rule itself. For example, officers executing search warrants may enter a dwelling without knocking and announcing when they have a reasonable suspicion that, under the particular circumstances, knocking and announcing would be dangerous or futile, or that evidence will be destroyed if they give advance warning of their entry. Similarly, the court observed that there are exceptions to the requirement that officers, after knocking and announcing, must be verbally denied permission to enter before they can make a forced entry. Exigent circumstances allow forced entries when the officers' "knock and announce" is met with silence or other unresponsiveness. The court identified several factors that are involved in determining when such exigency exists. These factors include the size of the premises to be searched, the likelihood of the presence of weapons, the presence of dangerous criminals, the existence of easily disposable evidence such as drugs, and the presence of counter-surveillance equipment.

In light of the information known to the officers in this case, information that included Archie's criminal history, the criminal histories of his known associates, the small size of his apartment, and his use of surveillance equipment to monitor people approaching the apartment building, the Court of Special Appeals concluded that the Fourth Amendment was satisfied when the officers: (1) knocked on Archie's door, providing clear notice of their purpose and authority, (2) waited a very brief time, and then (3) forced their way into the apartment.

NOTE: In "knock and announce" case scenarios, an express, verbal refusal of permission to enter is the exception, not the rule. In most cases, courts have implied the existence of such refusal from the period of silence or unresponsiveness following the knock and announce. "Absent exigency, the police must knock and receive an actual refusal or wait out the time necessary to infer one." *United States v. Banks*, 540 U.S. 31, 43 (2003). The "time necessary to infer one" is, as in *Archie v. State*, measured in seconds. Under appropriate circumstances, courts have upheld forcible entries that have occurred within five to ten seconds of knocking (*United States v. Cline*, 349 F.3d 1276 (10th Cir. 2003), within four seconds of knocking and announcing (*State v. Ordonez-Villanueva*, 138 Or. App. 236, 908 P.2d 333 (1995), and within six to eight seconds of knocking (*State v. Reid*, 151 N.C. App. 420, 565 S.E.2d 747 (2002). The circumstances of each case will determine whether the time waited was reasonable or not.

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