

B434. "Search Warrant Timing" National Law Journal (October 20, 2003) p. 31.

On Oct. 8, the U.S. Supreme Court heard a case it should never have had to deal with in the first place. The issue before the court is how long police officers have to wait after they knock on someone's door and announce that they have a search warrant. Is 20 seconds enough? The case concerns Lashawn Lowell Banks, who says he did not hear the police knocking at his door around 2 p.m. because he was in the shower. The police, after waiting 15 to 20 seconds and hearing no response, made a forced entry. They searched the apartment and found crack cocaine and firearms; they also questioned Banks.

His lawyers argue that all of the evidence should be suppressed because the police officers violated his Fourth Amendment rights by not waiting a reasonable period of time, as required by 18 U.S.C. 3109, and that Banks did not knowingly and voluntarily waive his Fifth Amendment right to counsel. The district court denied the motion to suppress, but the 9th U.S. Circuit Court of Appeals reversed, saying that unless officers are explicitly denied admittance or there are exigent circumstances, officers should wait longer than 20 seconds before forcefully entering a premises. The U.S. Department of Justice appealed.

How long is long enough?

As a sociologist, I wonder on what constitutional grounds or legal principles the highest court in the land is going to base its ruling. The average length of a shower? The amount of noise the spraying water generates? The number of screaming children? Would 60 seconds have been long enough if Banks likes to indulge himself in the shower? Perhaps we'd best not go there.

As I see it, the underlying issue is whether or not the police, at this stage, need to be tied up in more knots or whether cops need a bit more latitude to do their job. If the Supreme Court rules that a longer waiting period is required and that its length is not a given number of seconds or minutes, but depends on the size of the premises, the volume of the music being played, the number of screaming children and God knows what else, then the court will clearly signal to police officers across the land that they are abusing their authority and must be better restrained.

The sociological reality out there is quite different. With few exceptions, law-abiding Americans are not cowering in their apartments, fearful that if they do not rush to answer a knock on their door, the police will storm in. At the same time, there are numerous reports of criminals who are using the waiting time to flush evidence down the toilet or to take a back exit. Drug houses are fortifying their doors with steel plates to delay police entrance for the very same purpose.

The Supreme Court should adapt the American legal system to changing circumstances in society. Our current situation calls for granting the police—once they obtain a proper search warrant—the wherewithal to do their job. Yes, a bit longer waiting period might well be called for under many circumstances, but it should be left to the discretion of the police to make such decisions without the fear that they will lose the case because they did not wait until someone finished his or her shower.

Such a ruling would be in line with a general trend toward alleviating several of the restrictions imposed on public authorities in the name of the Fourth Amendment. Take, for instance, the "exclusionary rule," the result of a 1961 case. However, since then the Supreme Court has made it easier to live with that rule. Since 1984, it has repeatedly

invoked the "good-faith exception" to the exclusionary rule, which states that evidence collected under reasonable reliance on a search warrant can be introduced, regardless of technical flaws in the warrant itself. In the case of *Massachusetts v. Sheppard*, a detective was forced to use an old warrant form because his local court was closed on Sunday. A judge approved the warrant at his own house, although the judge was made aware by the detective that the substantive part of the form did not include all the needed information. The Massachusetts Supreme Judicial Court ruled that the evidence, which led to a charge of first-degree murder, was inadmissible because the form did not explicitly describe the items to be seized. The U.S. Supreme Court rejected this, recognizing that the detective had acted in good faith.

What we need now is a "good faith" waiting period. Unless there is other evidence that the police officers are conducting themselves inappropriately, there should be no specifically prescribed number of seconds the officers have to linger if they have a valid search warrant and come to visit, as they did in this case, in the middle of the day rather than, say, in the dead of night.

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