



By Kathryn Grill Graeff

KNOCK: WHO'S THERE?

*The knock-and-announce requirement's
impact on the reasonableness
of the execution of a search warrant*

Suppose you are a police officer charged with the task of executing a search warrant at the home of a drug dealer, where the dealer is believed to store his “stash” of drugs. Suppose further that you have information that leads you to believe that there are several guns in the residence, and that the residence is shared by several people, a couple of whom have lengthy and violent criminal records.

Do you want to go up to the door, knock on the door and announce your presence, thereby giving the drug dealer an opportunity to destroy the drugs or get his weapons together to mount a defense to prevent you from seizing his drugs? Or, if you decide not to knock and announce your presence, are you risking a later finding by a judge that you did not act reasonably in executing the search warrant, resulting in the court's suppression of the drugs seized? These are issues that routinely confront the police and, ultimately, the courts.

Supreme Court Jurisprudence on the Knock-and-Announce Requirement

The Fourth Amendment to the United States Constitution protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." In *Wilson v. Arkansas*, 514 U.S. 927, 931 (1995), the Supreme Court addressed the issue whether the reasonableness of a search of a dwelling depended on whether the police announced their presence and authority before entering. The Court noted that the common law rule required the police to first announce their presence and authority prior to entering a dwelling, and it held that this rule, known as the "knock-and-announce" principle, formed a part of the reasonableness inquiry under the Fourth Amendment. The Court recognized, however, that in some circumstances an officer's unannounced entry into a home would not be unreasonable under the Fourth Amendment and thus, not every entry must be preceded by an announcement. *Id.* at 936. According to the Court: "The Fourth Amendment's flexible requirement of reason-

ableness should not be read to mandate a rigid rule of announcement that ignores countervailing law enforcement interests." *Id.* at 934.

The Court in *Wilson* set forth three exceptions to the knock and announce rule: (1) where the circumstances present a threat of physical violence; (2) where a prisoner escapes and retreats to his dwelling; and (3)



"where police officers have reason to believe that evidence would likely be destroyed if advance notice were given." *Id.* The Court did not attempt to prepare "a comprehensive catalog" of exceptions to the knock and announce rule but, rather, left to the lower courts the task of determining under what circumstances an unannounced entry would be reasonable. *Id.* The Court simply recognized that "if police officers enter without a prior announcement, law enforcement interests may also establish the reasonableness of an unannounced entry." *Id.*

The Supreme Court further clarified the knock and announce principle in *Richards v. Wisconsin*, 520 U.S.

385 (1997). In that case, a police officer knocked on Richards' motel room door and stated that he was a maintenance man. Richards opened the door slightly, with the chain still on the door, and, when he saw a uniformed police officer, he quickly slammed the door closed. *Id.* at 388. Officers forced the door open. *Id.* The Wisconsin Supreme Court upheld the search, concluding that police officers are *never* required to knock and announce their presence when executing a search warrant in a felony drug investigation, finding it reasonable to assume that in all such cases there is a high risk of serious injury to the police, as well as the potential for the disposal of drugs by the occupants prior to entry by the police. *Id.* at 387-88.

The United States Supreme Court rejected this blanket exception to the knock and announce requirement for this entire category of criminal activity. *Id.* at 388. The Court then clarified the circumstances in which a no knock entry was authorized as follows:

In order to justify a "no-knock entry, the police must have a reasonable *suspicion* that knocking and announcing their presence, under the particular circumstances, would be dangerous or futile, or that it would inhibit the effective investigation of the crime, by, for example, allowing the destruction of evidence. This standard — as opposed to a probable cause requirement — strikes the appropriate balance between the legitimate law enforcement concerns at issue in the execution of search warrants and the individual privacy interests affected by no-knock entries. . . . This showing is not high, but the police should be required to make it

whenever the reasonableness of a no-knock entry is challenged.

Id. at 394-95 (*emphasis added*). The Court ultimately upheld the no-knock entry, holding that, under the circumstances, taking into account the disposable nature of the drugs, the officers had reasonable suspicion that Richards might destroy evidence if given the opportunity to do so. *Id.* at 395.

Although the test set forth in *Richards* seems explicit enough, there has been much litigation regarding what constitutes reasonable suspicion of danger or destruction of evidence. In *United States v. Banks*, 124 S.Ct. 521, 525 (2003), the United States Supreme Court recently recognized that there is no hard and fast rule governing when a "no-knock entry is a reasonable execution of a warrant." "We have treated reasonableness as a function of the facts of cases so various that no template is likely to produce sounder results than examining the totality of circumstances in a given case." *Id.*

Certain circumstances, however, do weigh significantly in the determination whether there is a reasonable suspicion of danger or destruction of evidence. This article will discuss some of those circumstances.

Reasonable Suspicion that Knocking and Announcing Police Presence would be Dangerous

In determining whether the police had a reasonable suspicion to believe that knocking and announcing their presence would be dangerous, courts look to the totality of the circumstances. Factors considered include: (1) the type of crime that the defendant is suspected of committing, which led to the issuance of the search warrant; (2) the presence and likelihood of the use of weapons; and (3)

the prior criminal background of both the accused and others potentially in the residence.

In *Wynn v. State*, 117 Md. App. 133, 167 (1997), *rev'd on other grounds*, 351 Md. 307 (1998), the Maryland Court of Special Appeals assessed some of these factors in upholding a no-knock entry. The Court held that Wynn's long criminal background, including drug, assault and handgun convictions, and his act of pulling a concealed weapon to resist arrest and flee from law enforcement, gave the police a reasonable basis to conclude that Wynn would use a gun when confronted. *Id.* at 68. Moreover, the Court noted Wynn's wife's past violent criminal activity, and her fear of being picked up on an outstanding violation of probation warrant. *Id.* Accordingly, the Court held that there were "exigent circumstances in which the risk to the police officers' safety justified a no-knock entry into appellant's home." *Id.* at 168.

In *Davis v. State*, 144 Md. App. 144, 152-60, *cert. granted*, 372 Md. 268 (2002) (argued January 3, 2003), and *State v. Riley*, 147 Md. App. 113, 117-31 (2002), the Court of Special Appeals addressed "no-knock" entries authorized by a warrant. In *Davis*, the Court upheld the no-knock provision of a narcotics search warrant based on several factors. Initially, the warrant application set forth the affiants' experience "that narcotic/drug dealers/users have, carry and use firearms to protect their operations." 144 Md. App. at 157. Moreover, the warrant application set forth that Davis and his co-defendant, Adams, stored large amounts of drugs in the dwelling. *Id.* at 157-58. And, the residence was shared by several people, including one person who had "several previous arrests for drug violations." *Id.* at 158. The Court of Special

Appeals concluded that the judge who issued the warrant "had a substantial basis for concluding that the affidavit established reasonable suspicion to believe that the executing officers needed to gain entry without knocking and announcing." *Id.*

In *Riley*, the no-knock entry was based on an informant's observation of evidence of large-scale commercial narcotics activity, as well as the fact that the occupant of the apartment had a lengthy "rap sheet" for offenses including both assault and battery and the possession of handguns. 147 Md. App. at 117. The Court of Special Appeals, applying the deferential standard of review to police action authorized by a warrant, stated that there was "a substantial basis for concluding that a police entry into a den of commercial narcotics-related activity, with [the occupant] probably present, could be a dangerous undertaking calling for maximum tactical surprise." *Id.* at 127. Accordingly, the Court upheld the no-knock entry. *Id.*

Other courts have noted the combination of drugs and guns in upholding a no-knock entry based on reasonable suspicion of danger to the police. For example, in *United States v. Stowe*, 100 F.3d 494, 499 (7th Cir. 1996), *cert. denied*, 520 U.S. 1171 (1997), a no-knock entry was upheld based on information that the persons living at the apartment were selling drugs, the residence contained two handguns and a large amount of crack cocaine, and the apartment was protected by a steel door. The Seventh Circuit noted that, although the presence of a gun alone is not necessarily enough to justify a no-knock entry, the presence of guns and drugs "together distinguish the millions of homes where guns are present from those housing potentially dangerous drug dealers — an important narrowing factor." *Id.* at



499. Under these circumstances, and the fact that Stowe was a convicted felon operating under an alias, the Court found that law enforcement officers could conclude that there was a possibility that the occupants would mount an armed defense to the execution of the search warrant. *Id.*

Moreover, in *State v. Wasson*, 615 N.W.2d 316, 320-21 (Minn. 2000), the Minnesota Court of Appeals held that there was reasonable suspicion to believe the officer's safety might be jeopardized based on evidence of ongoing drug activity and the fact that numerous weapons were found on the defendant three months previously. In *People v. Lee*, 758 N.Y.S.2d 407, 408 (N.Y. App. Div. 2003), the Court held that a no-knock entry was reasonable given that there was probable cause to believe that drugs were in the residence and there was a reasonable belief, due to the defendant's criminal record, that the defendant might possess firearms.

Thus, although the Supreme Court in *Richards* rejected a blanket exception to the knock and announce rule for certain categories of crime, the nature of the crime the defendant is suspected of committing is clearly a relevant factor in the analysis. That factor and others that bear on the possibility that the defendant would use force against the officers when confronted are significant in determining whether the officers had reasonable suspicion to believe that knocking and announcing their presence would be dangerous.

Reasonable Suspicion that Knocking and Announcing Police Presence would Result in Destruction of Evidence

What evidence must be shown to justify a no-knock entry based on reason-

able suspicion of destruction of the evidence is another issue the courts have addressed, and this issue also must be analyzed based on the totality of the circumstances. Again, however, certain factors have more significance. For example, in situations where the defendant has previously stated that he would destroy evidence if the police try to seize it, there could well be reasonable suspicion that knocking and announcing the police presence prior to execution of the search warrant would result in the destruction of evidence. Indeed, in *State v. Ortega*, 870 P.2d 122 (N.M. 1994), the New Mexico Court of Appeals held that a no-knock entry was reasonable where the informant who had purchased drugs from the defendant advised that the drugs would be destroyed if the defendant knew the police were coming, and, when the police approached the premises to execute the warrant, children outside shouted a warning.

The significance of other factors, however, is not as clear cut. For example, where the nature of the contraband itself is particularly susceptible to destruction, such as a small quantity of drugs, does that provide reasonable suspicion of destruction of evidence to justify a no-knock entry? The courts do not agree on that issue. In *State v. Johnson*, 775 A.2d 1273, 1280 (N.J. 2001), the Supreme Court of New Jersey held that, although small quantities of narcotics stored at a person's home are almost always susceptible to destruction or disposal, "[i]f that reason alone justified a no-knock entry, it would justify an unannounced entry in virtually every residential search, thereby resembling the kind of blanket rule forbidden by *Richards*."

A review of *Richards* shows that, although the Court rejected a blanket

exception to the knock and announce requirement for all felony drug cases, the reasoning was that, although a drug case “frequently does pose special risks to officer safety and the preservation of evidence,” that is not uniformly the case. *Richards*, 520 U.S. at 393. The Court suggested as an example that “the police could know that the drugs being searched for were of a type or in a location that made them impossible to destroy quickly. In those situations, the asserted governmental interests in preserving evidence and maintaining safety may not outweigh the individual privacy interests intruded upon by a no-knock entry.” *Id.* Thus, where the police have information that the drugs involved are the type that can be destroyed quickly, the above concern expressed in *Richards* is not present. Accordingly, some courts have focused on the ability to destroy the contraband in upholding a no-knock entry. In *State v. George*, 687 A.2d 958, 960 (Me. 1997), the Court found that it was reasonable for the police to conduct a no-knock entry, in part because “the officers anticipated the defendant would be in possession of a small amount of cocaine that could easily be disposed of.”

Sometimes the police will not have reasonable suspicion of the destruction of evidence prior to approaching the house, but such suspicion develops after they knock and announce their presence. In *United States v. Gilliam*, 372 F.3d 848, 855 (7th Cir. 2004), the Court held that when the police knocked on the door to execute a search warrant and heard footsteps running from the door, it was reasonable to believe that someone was attempting to destroy evidence, particularly when the search warrant was for cocaine, “the quintessential form of evidence that may be easily

destroyed.” And in the recently decided Supreme Court case of *United States v. Banks*, 124 S. Ct. at 526, when the police knocked on the door and waited fifteen to twenty seconds with no answer, the Supreme Court held that they were justified in breaking open the front door with a battering ram because the police “could fairly suspect that cocaine would be gone if they were reticent any longer.” The Court in *Banks* focused on “the opportunity to get rid of cocaine, which a prudent dealer will keep near a commode or kitchen sink.” *Id.* at 527. The disposable nature of the drugs was clearly a significant factor in *Banks*. See *id.* at 528 (noting that “[p]olice seeking a stolen piano may be able to spend more time to make sure they need the battering ram”).

No-Knock Entries must be Reasonable Based on the Totality of the Circumstances

Although the crime the defendant is suspected of committing and the nature of the contraband involved are certainly significant factors, there are no bright-line rules with respect to the analysis of no-knock entries. Rather, the reasonableness of the execution of a warrant under the Fourth Amendment must be evaluated by examining the totality of the circumstances. Accordingly, the police and the courts will continue to grapple with the proper balancing of the safety of the officer in the performance of his or her duties against the privacy interests of the individual.

Kathryn Grill Graeff may be reached at kgraeff@oag.state.md.us.

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