

U.S. SUPREME COURT ISSUES TIMING GUIDELINE FOR EXECUTING CERTAIN SEARCH WARRANTS

A recent decision by the United States Supreme Court has established that a 15-20 second wait prior to using a battering ram in order to execute a search for cocaine satisfied the Fourth Amendment's test of reasonableness.

The Fourth Amendment "protects the right of the people...against unreasonable search and seizure" and the Supreme Court in *United States v. Banks*, 540 U.S. ____ (2003)¹ identifies two factors to consider when carrying out a warrant to search. First, there is no template to determine when the actions of police officers satisfy Fourth Amendment requirements; rather, "the facts known to the police are what count in judging reasonable waiting time." *Banks* at 8. Second, when executing a search warrant where an exigent circumstance exists, such as the destruction or loss of evidence, the time a reasonable officer must wait before entrance is the same as a "no-knock" warrant. A "noknock" warrant permits law enforcement officials to enter the warranted premises unannounced.

Totality of Circumstances

Looking at the specific facts in *Banks* offers a glimpse at how to apply the Fourth Amendment reasonableness standard. The Court held, "when a warrant applicant gives reasonable grounds to expect futility or to suspect that one or another such exigency already exists or will arise instantly upon knocking" the officers may go straight in. *Banks* at 5.

In *Banks*, the North Las Vegas police acquired a search warrant for a suspected drug dealer's apartment, knocked on the door, announced their presence and waited 15-20 seconds before forcibly entering the apartment. The police found Banks dripping wet as his afternoon shower had just been interrupted and, upon further search, discovered crack cocaine, drug paraphernalia and weapons.

The officers' entrance was based on the fact that at two o'clock on a Wednesday afternoon, with police officers posted at the front door calling out "police search warrant" and rapping hard enough on the door to be heard by the officers posted at the back door, "after 15 to 20 seconds without a response, police could fairly suspect that cocaine would be gone if they were reticent any longer." *Banks* at 7. At this time the police did not know Banks was in the shower and based their entrance on an exigent circumstance, the potential destruction of evidence.

Reasonableness is to be "judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Banks* at 8. Upholding the decision of the officers to enter, the Supreme Court held that, "once exigency had matured...the officers were not bound to learn anything more or wait any longer before going in." *Banks* at 9.

Exigent Circumstances

The main factor in *Banks* was "imminent disposal, not travel time to the entrance, that governs when the police may reasonably enter." *Banks* at 9. The Court rejected the argument that reasonableness is to be based on the time it takes a defendant to reach the door. While executing a search warrant for drugs, the officers reasonably believed that

announcing themselves and waiting longer than 15 to 20 seconds would allow Banks the opportunity to destroy evidence. It should be noted that when there is “no reason to suspect an immediate risk of frustration or futility in waiting at all, the reasonable wait time may be longer when the police make a forced entry.” *Banks* at 10.

Application to Law Officers

In a felony situation where the possibility of destruction of evidence exists, law enforcement officers can reasonably assume that announcing their presence may lead to an exigent circumstance allowing them to forcibly enter the premises. To ensure that the law enforcement officers in your municipality follow this rule, the development of departmental procedures regarding the execution of search warrants is suggested. When developing these procedures it is important to emphasize that facts specific to the scenario are what determine how long an officer must reasonably wait before entering. In conclusion, whenever an exigent circumstance –such as the destruction of evidence – exists, the reasonable time an officer must wait to forcibly enter is the same as a “no knock” warrant.

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(For help developing procedures regarding the execution of search warrants contact the VLCT Municipal Assistance Center, dcloud@vlct.org.)

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ⁱ Further citations from this recent decision are referenced to <http://www.supremecourtus.gov/opinions/03pdf/02-473.pdf>.