

COMMONWEALTH OF PENNSYLVANIA,  
v. FRED GRIMES III, Defendant  
In the Court of Common Pleas of the 39th Judicial District of Pennsylvania,  
Franklin County Branch  
Criminal Action-- Law , No. 925 of 2010; 1004 of 2010

*Search Warrants; Knock and Announce Rule;  
Reasonable Amount of Time Before Entry of a Home*

1. When executing a search warrant at a residence, police officers must give notice of their identity, authority, and presence, and then wait a reasonable amount of time for a response before entering the premises, unless there are exigent circumstances. Pa. R.C.P. 207.
2. The purpose of the "knock and announce" rule is threefold. First of all, it prevents violence and injury to both parties. Secondly, it prevents property damage that often results from forced entry. Lastly, it protects a resident's expectation of privacy.
3. There are three factors to determine whether the amount of time police wait before entering a home is reasonable: 1) whether drugs are believed to be present; 2) whether police believe that the resident is armed or dangerous; and 3) whether the search warrant is executed in the morning or at night.
4. Even if drugs are believed to be present in a residence, a 20-30 second wait is unreasonable when a search warrant is executed late at night, there are no known threats posed to police officers, and the officers know that the suspect resides on the third floor of the residence.

Appearances:

Eric R. Augustine, Esquire, *Assistant District Attorney*

Scott J. Thomas, Esquire, *Assistant Public Defender*

OPINION

Walsh, J., September 10, 2010

The Court took testimony on August 12, 2010, on Defendant's Suppression Motion in this case. To summarize the facts, the Court quotes at length from the brief filed by Defendant's counsel:

On April 21, 2010 at approximately 7:30 p.m., a confidential informant working with Detective Jason Taylor of the Franklin County Drug Task Force made an undercover purchase of heroin from Rachel Kornfield at 226 West Sixth Street in Waynesboro. That house is owned by Kornfield's parents. As of April 2010, the task force had the house under surveillance for approximately two months because information received from informants indicated that drugs were being sold out of the house. Police had information that Kornfield and a black male named "Fred," who stayed on the third floor of the house, were selling drugs. Shortly after the undercover but was made on April 21, Det. Taylor applied for a

search warrant for the residence identified above. At 9:02 p.m., M.D.J. Kelly L. Rock authorized a search of the residence to be conducted "any time during the day or night but in no event later than" April 23, 2010 at 9:02 p.m. Det. Taylor requested a nighttime search so that the marked money used in the undercover purchase on April 21 could be recovered because "said money is of the greatest importance for supporting criminal charges."

On April 22, 2010 at approximately 12:15 a.m.-- fewer than five hours from the time of the undercover purchase from Kornfield-- the warrant was executed. At that time, neither Kornfield's vehicle nor Fred's vehicle were parked at the house. A marked Pennsylvania State Police (PSP) cruiser arrived and troopers broadcast a message over its public address system warning the residences at 226 West Sixth Street that the police were there to execute a search warrant. Det. Taylor, who was in the area but not in that cruiser, testified that the message was played for approximately 20 seconds.

While that message was being played, ten or more members of the PSP "SERT TEAM" assembled at the front door of the residence. They knocked on the door, waited approximately ten seconds, and then made forcible entry into the house.<sup>[1]</sup> Fred Grimes III, an overnight guest of Kornfield, was on the third floor of the house. Grimes was watching television and he did not hear anything until he heard somebody bashing in the front door of the house.

Brief in Support of Defendant's Motion to Suppress Evidence, pp. 2-3.

Police found heroin, cocaine, currency, and packaging materials on the third floor of the house, and Defendant Grimes was subsequently charged with various drug offenses. Defendant now seeks to suppress the evidence found during the search of the house, and makes two arguments in doing so.

### **I. Knock and Announce Rule**

First of all, Defendant argues that police in this case did not follow the "knock and announce" rule. Pennsylvania Rule of Criminal Procedure 207 states:

(A) A law enforcement officer executing a search warrant shall, before entry, give, or make reasonable effort to give, notice of the officer's identity, authority, and purpose to any occupant of the premises specified in the warrant, unless exigent circumstances require the officer's immediate forcible entry.

(C) If the officer is not admitted after such reasonable period, the officer may forcible enter the premises and may use as much physical force to effect entry therein as is necessary to execute the search.

The purpose of this rule "is to prevent violence and physical injury to the police and occupants, to protect an occupant's privacy expectation against the unauthorized entry of unknown persons, and to prevent property damage resulting from forced entry." *Commonwealth v. Douventzidis*, 679 A.2d 795, 799 (Pa. Super. 1996).

Defendant is not arguing that police failed to identify themselves or their purpose. Instead, Defendant argues that police did not wait a reasonable time before entering the house. Specifically, Defendant argues that police did not wait a reasonable time before entering the house. Specifically, Defendant claims that based on the time that the warrant was executed (approximately 12:15 a.m.), 20-30 seconds was not a reasonable amount of time to wait before entering the house. Thus, the police executing the search warrant failed to follow the "knock and announce" rule, and the evidence seized from the house should be suppressed as a remedy. We agree.

In *Commonwealth v. Doven*, 848 A.2d 1007 (Pa. Super. 2004), the Superior Court held that a broadcast over a public address system that occurred for one to minutes before entry into a house satisfied the knock and announce rule. *Id.* at 102. In doing so, the court relied upon *United States v. Spikes*, 158 F.3d 913 (6th Cir. 1998). In *Spikes*, police announced their presence through a bullhorn 15 to 30 seconds before a forced entry into a home. *Id.* at 919. The court, in evaluating whether police waited a reasonable period of time before entering the home, measured the time period from the first announcement over the bullhorn until actual entry into the home. *Id.* at 925. The court then concluded that 15 to 30 seconds was a reasonable amount of time. *Id.* at 927.

The court in *Spikes* relied upon three factors. First of all, the court noted that the officers were to be searching the house

for drugs, and that the presence of drugs “lessens the length of time law enforcement must ordinarily wait outside before entering a residence.” *Id.* at 926. Secondly, the officers, prior to serving the warrant, were warned that the “drug traffickers...had taken measures to defend themselves and their drugs..., includ[ing] the use of police scanning equipment, the placement of lookouts in various strategic places within the home, and most importantly, the presence of guns and armed guards.” *Id.* Lastly, the court held that it was important that “the police executed the warrant during the middle of the morning when most people are awake and engaged in everyday activities.” *Id.* at 927. Expounding on this matter, the court commented:

The amount of time officers need to wait before entering a home necessarily depends on how much time it would take for a person in the house to open the door. *When the police execute a warrant in the dead of night or have some other reason to believe that a prompt response from the homeowner would be unlikely, the length of time the officers should wait increases.*

*Id.* (emphasis added).

The Court finds the factors listed in *Spikes* persuasive, and we will apply them here, as the Superior Court has cited to *Spikes* with approval. Applying the *Spikes* factors, we find that the police in this case did not wait a reasonable time before entering the house. Even though the presumed presence of drugs in the home lessened the length of time that police needed to wait to enter, both the second and third factors in *Spikes* show that 20-30 seconds from the announcement to the police until entry into the house was not a reasonable length of time.

First of all, there is no evidence that Defendant or Kornfield were tipped off to the search in any way, so as to pose a danger to the police or the evidence that the police sought. This case differs markedly from *Spikes*, where sophisticated drug traffickers had set up lookouts with armed guards and monitored the police through police scanning equipment. Here, all the police knew was that drugs were purchased from the house. There was no particular reason for a quick entry, and the Commonwealth does not contend that there were exigent circumstances. Secondly, the police in this case executed the warrant shortly after midnight, it should be expected that occupant of the house could be asleep so that it would take them a while to figure out what was going on and to come to the door.” *Brief in Support of Defendant’s Motion to Suppress Evidence*, p. 5. The facts in this case are similar to *Griffin v. United States*, 618 A.2d 114 (D.C. App. 1992). The D.C. Court of Appeals, in construing a statute providing that police may forcible enter and home only after being “refused admittance,” held that it was unreasonable for police to only wait 30 seconds before making a forcible entrance at 1:40 a.m. *Id.* at 125. In doing so, the court stated:

We may thus take judicial notice that, at that time of night, most people are in bed, and many are asleep. If a person is awakened by banging on the door, an immediate and appropriate response may not be feasible. For at least a brief period, the erstwhile sleeper is likely to be too bewildered to react. He or she must then focus on the possibility that those demanding entry may have no legitimate business on the premises. This is especially true where, as here, the bedroom is a considerable distance from the door, so that a suddenly awakened individual may not hear the officer’s oral announcements identifying the apparent disturbers of a peaceful night as police officers armed with a search warrant. Indeed, the occupant’s first instinct-- a reasonable one-- may be to call 911. Moreover, most citizens are not clad at 1:40 a.m. in manner suitable for opening the door to strangers. If someone is not dressed, sufficiently or at all, dressing takes time. Finally, for most people awakened or startled by loud banging at twenty to two in the morning, the circumstances are not likely to be conducive to rational analysis or to swift or provident decision-making.

*Id.* at 121. With *Spikes* and *Griffin* in mind, this Court finds that a 20-30 second wait before entry into a home at approximately 12:15 a.m. is unreasonable under the “knock and announce” rule. Most people are asleep at this time of night. Even if a person is not asleep, it is reasonable to believe that it will take people at this time of night more than 20-30 seconds to come to the door after being alerted of police presence. Additionally, Detective Taylor testified that due to previously investigating the house, he knew that Defendant resided on the third floor. It was unreasonable to expect that Defendant would be able to come to the front door from the third floor of the house in a mere 20-30 seconds, especially after midnight. Therefore, since police did not wait a reasonable period of time under Pa. R. Crim. P. 207 before entering the house, the Court will suppress all evidence obtained during the search of the home.

## **II. Nighttime Search**

Defendant also argues that the search warrant did not establish reasonable cause for a nighttime search. However, since we are suppressing the evidence found in the home as a result of a violation of the "knock and announce" rule, this argument is now moot and will not be addressed.

For all the reasons expressed in this Opinion, we will grant the Defendant's Motion to Suppress.

September 10, 2010, upon consideration of the Defendant's Omnibus Pre-Trial Motion for suppression and upon further consideration of the testimony of both the Commonwealth's witness and Defendant, the arguments of counsel, the authorities provided by counsel and their arguments and upon consideration of the law, it is ordered the Defendant's Motion to Suppress is Granted. This determination shall be final, conclusive, and binding at trial, except upon a showing of evidence which was theretofore unavailable.

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[1] Detective Taylor testified that the time period from the beginning of the broadcast until entry of the home was 20-30 seconds. This fact is of critical importance to this case.