IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

UNITED STATES OF AMERICA	*	
v.	*	**Criminal No. AMD-01-0217**
ROBERT JUNIOR WARDRICK	*	

* * * * *

MOTION TO SUPPRESS EVIDENCE #3

The defendant herein, Robert Junior Wardrick, by and through his attorneys, James Wyda, Federal Public Defender for the District of Maryland, and Michael T. CitaraManis, Assistant Federal Public Defender, hereby moves this Honorable Court to suppress for use against him at trial, all evidence seized from the residence owned by him at 1808 Division Street, Baltimore, Maryland 21217, on January 23, 2001, pursuant to a search warrant for that residence, and all fruits thereof, on grounds that the "no-knock" entry and subsequent search pursuant to the warrant were in violation of the Fourth Amendment and 18 U.S.C. §3109. In support of this motion, undersigned counsel states the following:

I. INTRODUCTION

Robert Junior Wardrick is charged by way of indictment with three counts of possession of a firearm after conviction of a felony, in violation of 18 U.S.C. §922(g)(1).

In Count One, Wardrick is charged with possessing five specified firearms (four handguns and one shotgun). In Count Two, Wardrick is charged with possessing two firearms (two shotguns, the barrels of which have allegedly been "sawed-off" or shortened). In Count Three, Wardrick is charged with possessing a single firearm (a shotgun).

The firearms specified in Counts One and Two were seized on January 23, 2001, pursuant to a search warrant issued by a Maryland District Court judge, from a residence owned by Wardrick located at 1808 Division Street, Baltimore, Maryland 21217. Also seized was a variety of ammunition, two gun holsters, and personal papers and photographs.

The firearm charged in Count Three was seized from a nearby residence located at 1835 Division Street, Baltimore, Maryland, occupied by Wardrick's son.

Entry to 1808 Division Street was made by police with them knocking and announcing their presence as required under 18 U.S.C. §3109. Even though, as discussed below, the search warrant specifically authorized police to enter without knocking, undersigned counsel maintains that Maryland law did not authorized the District Court judge to do this and/or the circumstances proffered to support the "no-knock" entry is insufficient to justify such an entry in this case.

II. ARGUMENT

Under common law, "an announcement of both lawful authority and purpose was required before the police could break and enter a home." *Miller v. United States*, 357 U.S. 301, 307 (1958). The purpose of this requirement "is to prevent violence and physical injury to the police and occupants and to protect an occupant's privacy expectation against the unauthorized entry of unknown persons. *Ker v. California*, 374 U.S. 23, 39 (1963).

This requirement has been codified into federal law pursuant to 18 U.S.C. §3109, which provides:

> The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute a search warrant, if, *after* notice of his authority and purpose, he is refused admittance or when necessary to liberate himself or a person aiding him in the execution of the warrant. (Emphasis added.)

Under §3109, police may forcibly enter a premises only after complying with the knock and announce rule. *United States v. Lalor*, 996 F.2d 1578, 1584 (4th Cir. 1993).

In *Wilson v. Arkansas*, 513 U.S. 1014 (1994), the United States Supreme Court ruled that the knock and announce requirement is incorporated into the Fourth Amendment. *Id*. at 934.

Although the Supreme Court has also recognized exceptions to the "knock and announce" requirement -- s*ee e.g., Wong Sun v. United States*, 371 U.S. 471, 484 (1963) ("imminent destruction of evidence or to rescue a victim in danger"); Wilson, 513 U.S. at 936 ("threat of physical violence," "in pursuit of a recently escaped arrestee," or when police "have reason to believe that evidence would likely be destroyed. . ."); and *Richards v. Wisconsin*, 520 U.S. 385, 394 (1997) ("knocking and announcing their presence, under the particular circumstances, would be dangerous or futile, or . . . would inhibit the effective investigation of the crime by, for example, allowing the destruction of evidence.") -- the Supreme Court has rejected any *per se* exceptions to the knock and announce requirement for certain types of cases, such as felony drug investigations. *Id*.

Instead, there must "particular" facts giving rise to a reasonable suspicion that legally sufficient exigent circumstances exist. *Id.*

If police officers violate the knock and announce rule, the evidence seized during the search must be suppressed. *Miller*, 357 U.S. at 313 (1958) ("Because the petitioner did not receive . . . notice before the officers broke the door to invade his home, . . . the evidence seized should have been suppressed."); *also see United States v. DiCesare*, 765 F.2d 890 (9th Cir. 1985).

In the instant case, preliminarily, it need be noted that some states allow a court to issue "no-knock" warrants, but Maryland does not. As a result, Judge Williams was without authority to expressly excuse the knock and announce requirement. *Cf. Lee v. State,* ___ *Md. App.* ___, n.1, 2001

WL 431249 (April 27, 2001) (where the Maryland Court of Special Appeals, without deciding the issue, recognized authority cited in *Richards* from other jurisdictions to this effect.)

Further, Judge Williams's authorization of a "no-knock" entry does not excuse the police officers' actions in failing to knock and announce. *Gould v. Davis*, 165 F.3d 265, 272 (4th Cir. 1998) (citing *Malley v. Briggs*, 475 U.S. 335, 345 (1986) and observing, "obtaining a warrant is not per se evidence of objective reasonableness.").

Next, a reasonable belief that firearms are in a residence, "standing alone, is clearly insufficient" to excuse the knock and announce requirement. *United States v. Marts*, 986 F.2d 1216, 1218 (8th Cir. 1993) (quoted in *Wynn v. State*, 117 Md. App. 133, 163 (1997); *also see United States v. Moore*, 91 F.3d 96, 99 (10th Cir. 1996).

As the Fourth Circuit observed in *Gould*: ". . . guns do not fire themselves." *Gould*, 165 F.3d at 272. A justifiable fear for officer safety includes not only a reasonable belief that a gun is in the home but that a particular person inside the home might shoot at officers. *Id*. at 271-72.

Here, assuming probable cause to believe firearms would be found at 1808 Division Street, this could not excuse the knock and announce requirement under the Fourth Amendment and §3109.[1]

Allegations in Det. Overfield's affidavit concerning prior handgun violations by Wardrick or his wife might be relevant but only to whether it is likely they possessed one or more firearms and

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[1] Although §3109 does not apply to state agents, the search in the instant case appears to have been a joint state-federal effort by virtue of the involvement of the Bureau of Alcohol, Tobacco, and Firearms. Regardless, because §3109 encompasses the requirements of the Fourth Amendment, "it not only governs federal searches by federal agents, but also provides the proper framework for analyzing the execution of state search warrants." *United States v. Kennedy*, 32 F.3d 876, 882 (4th Cir. 1994); *Gould*, 165 F.3d at 270, n.1.

not whether they might fire a gun at police. Further, the fact that Wardrick has prior convictions for assault and battery does not rise to the "particular[ized]" showing necessary to reasonably suspect that Wardrik would fire upon police if they first knocked and announced their presence. Finally, the fact that Wardrick's wife has a conviction for possession with intent to distribute CDS likewise adds nothing since there was no allegation that drugs were suspected to be in the house or that Wardrick himself was suspected of drug activity.[2]

Under these circumstances, the knock and announce requirement could not legally be excused.

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[2] Although in his affidavit, Det. Overfield attributes to Wardrick ,"references to assaulting police officers," this is such a vague allegation so as to not provide any real substance to support of a claim of exigent circumstances.

III. CONCLUSION

For the foregoing reasons, Robert Junior Wardrick respectfully requests this Court to direct that any and all evidence seized from 1808 Division Street, Baltimore, Maryland, on January 23, 2001, and all fruits thereof, including but not limited to the firearm seized at 1835 Division Street, Baltimore, Maryland, be suppressed for use herein against him.

Respectfully submitted,
JAMES WYDA
Federal Public Defender
for the District of Maryland

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REQUEST FOR HEARING

Pursuant to Rule 105.6 of the Local Rules of the United States District Court for the District of Maryland, a hearing is requested on the Defendant's Motion.

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MICHAEL T. CITARAMANIS
Assistant Federal Public Defender

CERTIFICATE OF SERVICE

_____I HEREBY CERTIFY that on this 4th day of June 2001, a copy of the foregoing Motion to Suppress Evidence #3 was delivered by fax and first-class mail to James H. Green, Assistant United States Attorney, 6625 United States Courthouse, 101 W. Lombard Street, Baltimore, Maryland 21201-2692.

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MICHAEL T. CITARAMANIS
Assistant Federal Public Defender

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