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# Recent Development: Barnes v. State: A Suspect's Detention Did Not Evolve Into De Facto Arrest When the Execution of a Warrant Was Delayed for Three Hours; Police May Detain a Suspect After the Warrant Execution if They Reasonably Suspect Criminal Activity

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## **RECENT DEVELOPMENT**

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***BARNES V. STATE: A SUSPECT’S DETENTION DID NOT EVOLVE INTO DE FACTO ARREST WHEN THE EXECUTION OF A WARRANT WAS DELAYED FOR THREE HOURS; POLICE MAY DETAIN A SUSPECT AFTER THE WARRANT EXECUTION IF THEY REASONABLY SUSPECT CRIMINAL ACTIVITY.***

**By: Harrison Bliss**

The Court of Appeals of Maryland held that a three-hour delay in the execution of a warrant was reasonable and did not constitute de facto arrest. *Barnes v. State*, 437 Md. 375, 394, 86 A.3d 1246, 1257 (2014). The court of appeals also held that a short investigatory detention, following the execution of the warrant, did not suggest de facto arrest, and therefore did not require probable cause. *Id.* at 397, 86 A.3d at 1259. Finally, the court held that the evidence collected from the search of an individual’s storage unit was lawfully obtained because the officers had the requisite reasonable suspicion to detain the individual when he consented to the search. *Id.* at 399, 86 A.3d at 1260.

On January 14, 2009, Prince George’s County Police discovered the bodies of Seth Aidoo and Eunice Baah in Mr. Aidoo’s home, after receiving a 911 call from a concerned friend. It was determined the victims were likely murdered on January 12, 2009. During their investigation, detectives discovered that Sheila Aidoo and her brother, Samuel Culley Jr. (“Culley”), had previously lived with Mr. Aidoo. However, at the time of the murders, Ms. Aidoo and Culley were living with Delford Mitchell Barnes (“Barnes”) in Ms. Aidoo’s home.

Detectives further discovered that Culley had obtained a transponder to enter Mr. Aidoo’s gated community while residing at Mr. Aidoo’s home. Video surveillance showed Barnes’ vehicle using that same transponder to enter the community approximately two weeks before the murders. Additionally, a mini-van entered Mr. Aidoo’s gated community, using the same transponder, on the evening of the murders.

On February 18, 2009, detectives obtained a warrant to collect Barnes’ DNA and fingerprints, as well as to search Ms. Aidoo’s residence and Barnes’ car. The following evening, police stopped Barnes and asked him to come to the station to execute the warrant for his DNA and fingerprints. Barnes agreed and was transported to the police station. Upon arrival, Barnes was placed in an interview room where the door remained unlocked and Barnes was unrestrained.

Meanwhile, other detectives executed the search warrant for Ms. Aidoo’s residence, which ultimately delayed police from taking Barnes’ DNA and fingerprints for approximately three to four hours. After Barnes’ DNA and

fingerprints were taken, Barnes was escorted to the restroom to wash his hands. Upon returning to the interview room, police immediately questioned Barnes about a storage unit receipt found at Ms. Aidoo's residence. Barnes confirmed that the storage unit belonged to him and gave the police consent to search the unit approximately seven minutes after his return to the interview room. The search of Barnes' storage unit revealed a candle etched with Mr. Aidoo's address and several statements regarding Mr. Aidoo, such as "Seth please die," and "I want you to take a knife & kill yourself." Barnes was subsequently arrested and charged with premeditated murder.

Barnes filed a motion to suppress the candle, claiming that it was the product of an unlawful detention and therefore was inadmissible. The suppression court denied Barnes' motion and Barnes was convicted on two counts of first-degree murder. On appeal, the court of special appeals affirmed the lower court's decision, finding the delay to be reasonable, and Barnes' second detention lawful. Barnes petitioned for a writ of certiorari, which the Court of Appeals of Maryland granted.

The court of appeals applied a deferential standard of review, relying solely on the record from the suppression hearing and viewing the evidence in the light most favorable to the prevailing party. *Barnes*, 437 Md. at 389, 86 A.3d at 1254 (citing *Briscoe v. State*, 422 Md. 384, 30 A.3d 870 (2011)). The factual findings of the suppression court were upheld because they were not clearly erroneous; however, the court of appeals made its own independent constitutional evaluation. *Id.* at 389, 86 A.3d at 1254-55 (citing *State v. Luckett*, 413 Md. 360, 375 n. 3, 993 A.2d 25 (2010); *Lee v. State*, 418 Md. 136, 148-49, 12 A.3d 1238 (2011)).

The court of appeals began its analysis by concluding that any non-consensual detention of a person constitutes a "seizure" under the Fourth Amendment. *Barnes*, 437 Md. at 390, 86 A.3d at 1255. The court stated that Fourth Amendment seizures fall into one of two categories. *Id.* First, a formal or de facto arrest, requiring probable cause that the suspect was involved in criminal activity. *Id.* (citing *Maryland v. Pringle*, 540 U.S. 366, 370 (2003)). Second, a more limited stop of an individual, requiring only reasonable suspicion that criminal activity is afoot. *Id.* (citing *Terry v. Ohio*, 392 U.S. 1, 30-31 (1968)).

In addressing whether the delay in the execution of the warrant for Barnes' DNA and fingerprints was reasonable, the court referred to the testimony of two detectives from the suppression hearing, which showed that no one was available to execute the warrant during the delay. *Barnes*, 437 Md. at 392-93, 86 A.3d at 1256-57. The court stated that its task was not to speculate on whether police could have executed the warrant sooner, but only to determine if the delay was reasonable. *Id.* at 394, 86 A.3d at 1257. Ultimately, the court held that Barnes' initial detention never evolved into de facto arrest. *Id.* The delay in warrant execution was found to be reasonable due to the lack of available detectives to carry it out. *Id.*

Additionally, the court of appeals addressed whether Barnes' second detention constituted de facto arrest without probable cause. *Barnes*, 437

Md. at 394-95, 86 A.3d at 1257-58. Relying on *Dunaway v. New York*, Barnes argued that the circumstances of his detention had the attributes of a formal arrest, thus requiring probable cause. *Id.* at 395-96, 86 A.3d at 1258 (citing *Dunaway v. New York*, 442 U.S. 200 (1979)). Rejecting this argument, the court identified the crucial distinctions between an arrestee being detained based on mere suspicion, as in *Dunaway*, and the detention of an arrestee incident to the execution of a lawful warrant. *Barnes*, 437 Md. at 396, 86 A.3d at 1268.

The court of appeals disagreed finding that Barnes was lawfully detained for three hours to execute a warrant, whereas *Dunaway* was held under prolonged investigatory detention by police without a warrant or other official grounds to detain him. *Barnes*, 437 Md. at 397, 86 A.3d at 1259. The court held that Barnes was not under de facto arrest during the second detention because it was brief and less intrusive than in *Dunaway*, and therefore probable cause was not required. *Id.*

The court of appeals then addressed whether the detectives had the requisite reasonable suspicion to detain Barnes following the execution of the warrant. *Barnes*, 437 Md. at 398, 86 A.3d at 1259. In emphasizing the distinction between reasonable suspicion and probable cause, the court stated that the former is a less demanding standard than the latter. *Id.* at 398, 86 A.3d at 1260 (citing *Alabama v. White*, 496 U.S. 325, 330 (1990)). Based on the evidence that initially allowed police to obtain the warrant for Barnes' DNA and fingerprints, the court held that the detectives had reasonable suspicion that Barnes was involved in the murders at the time they entered the interview room to question Barnes about the storage locker. *Id.* at 398-99, 86 A.3d at 1260. Because the detectives obtained Barnes' consent to search his locker during a lawful detention, the court held that all evidence resulting from the search of his locker was admissible. *Barnes*, 437 Md. at 398-99, 86 A.3d at 1260.

In *Barnes*, the court of appeals held that a delay in the execution of a search and seizure warrant is lawful if it is deemed reasonable. This ruling makes it clear that the courts give police wide discretion to conduct investigations in the manner they see fit. Such discretion discourages defense counsel from challenging the reasonableness of a delay in the execution of a warrant because it is unlikely that a court will find the delay unreasonable. When delays such as the one in *Barnes* are deemed reasonable, the likelihood for coercion increases. A suspect may be convinced or browbeaten into giving police search consent or a confession during a prolonged detention. This ruling shows that such a confession or consent will likely be found to be valid which is troublesome because it shows that the rights of criminal suspects have been eroded.