"Knock and Talks"

The "knock and talk" procedure used by the police is a legitimate investigative technique.[1]

Criminal investigations sometimes lead to the front door of the suspect's home where officers hope he will answer some questions or consent to a search. Known as "knock and talks," these visits are especially productive when an investigation has stalled and officers have determined that the danger of alerting the suspect to their investigation is outweighed by the lack of practical alternatives.

On the surface, knock and talks appear quite unintrusive because, as the California Supreme Court noted, "it is not unreasonable for officers to seek interviews with suspects or witnesses or to call upon them at their homes for such purposes."[2] It is, however, unreasonable for officers to conduct themselves as if they had a legal right to compel answers or consent. And this has happened. In fact, knock and talks have sometimes taken on the character of the "dreaded knock on the door" that is prevalent in totalitarian and police states. Addressing this concern, the Sixth Circuit observed that the "right of officers to thrust themselves into a home is a grave concern, not only to the individual but to society which chooses to dwell in reasonable security and freedom from surveillance."[3]

For this reason, there are restrictions on what officers may say and do when they conduct knock and talks. As we will explain, these restrictions cover everything from the time and manner of arrival, the officers' conduct as they walked to the front door, the manner in which they knocked and greeted the person who answered, the number of officers who were present, and the manner in which they questioned the suspect or sought consent to search.

The consequences of failing to comply with these restrictions are severe. For example, if a court concludes that the suspect reasonably believed that he was not free to terminate the encounter, it will likely be deemed an illegal de facto detention. As the result, anything the suspect said might be suppressed, along with any evidence discovered during a consensual search. And if a court concludes that the officers' initial entry onto the suspect's property constituted a "search," any evidence they happened see while walking to the front door might also be suppressed.

Relevant Circumstances

Although the courts will consider the totality of circumstances surrounding the visit in determining the legality of a knock and talk, the following are most frequently cited.

Time of arrival

The time that officers arrived at the suspect's home and knocked on the door is significant because "visitors" do not ordinarily show up in the middle of the night or when the residents are apparently sleeping. For example, in *U.S. v. Jerez* the court invalidated a knock and talk because the officers had arrived at about 11 P.M. and it appeared that the residents had gone to bed; e.g., "no sounds were heard."[4]

Number of officers

While there is no rule that only two officers may conduct knock and talks, it is a good rule of thumb. That is because seeing three or more officers at the door is more apt to be perceived as a show of force, which is something that visitors rarely do. For example, the courts have invalidated knock and talks,

[1] *U.S. v. Lucas* (6th Cir. 2011) 640 F.3d 168, 174.
[2] *People v. Michael* (1955) 45 Cal.2d 751, 754.
[3] *U.S. v. Morgan* (6th Cir. 1984) 743 F.2d 1158, 1161.
[4] (7th Cir. 1997) 108 F.3d 684, 690. Also see *Bailey v. Newland* (9th Cir. 2001) 263 F.3d 1022, 1026.