

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED

Plaintiff-Appellant,

v

No. 199175

Recorder's Court

EUGENE STEVENS,

LC No. 94-009116

Defendant-Appellee.

ON REMAND

Before: Doctoroff, P.J., and Markman and O'Connell, JJ.

O'CONNELL, J. (concurring in part and dissenting in part).

I agree with the majority opinion that the recent United States Supreme Court decision in *Richards v Wisconsin*, ___ US ___, 117 S Ct 1416; 137 L Ed 2d 615 (1997) controls the outcome of this case. However, I disagree with the majority's conclusion that the prosecution has had an opportunity to "articulate a reasonable justification for an unannounced entry" as required by the *Richards* decision. *Richards* was decided almost two and one-half years after the trial court entered its order granting the motion to dismiss for violation of the "knock and announce rule." I would vacate the decision of the trial court and remand this case for further proceedings pursuant to *Richards, supra*.¹ If the prosecutor can "articulate a reasonable justification for the entry" then the evidence should not be suppressed. However, if the prosecutor is unable to comply with the *Richards*' requirements then the suppression order should be affirmed.

/s/ Peter D. O'Connell

¹ I concur with the majority opinion that this is not a "no knock" case. The police did, in fact, knock and then waited eleven seconds prior to entry. The narrow issue appears to be the reasonableness of the waiting period.