STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellant,	UNPUBLISHED June 18, 1999
v	No. 207062 St. Clair Circuit Court
RICHARD VINCENT HALL, Defendant-Appellee.	LC No. 97-001600 FH AFTER REMAND

Before: McDonald, P.J., and Jansen and Talbot, JJ.

JANSEN, J. (dissenting).

I respectfully dissent. I would affirm the trial court's ruling that the police conduct in this case violated the Fourth Amendment standard of reasonableness, thereby suppressing the evidence.

The facts, as found by the trial court, cannot be set aside unless clearly erroneous. MCR 2.613(C). "In application of this principle, regard shall be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *Id.* The trial court found that the knock-and-announce statute, MCL 780.656; MSA 28.1259(6), was violated. The testimony of Detective Sergeant Jim Jones, one of the officers who executed the search warrant, was that he and at least one other person (probably the officer in charge of the investigation, Sergeant Bloomfield) knocked on the door, yelled, "Police, search warrant," and then forced their way into the motel room "probably two to three seconds" after they yelled. Another witness in the hallway also testified that the police knocked and entered the room about two seconds after knocking on the door. This two- to three-second time lapse is not a reasonable amount of time in which to allow the occupants to answer the door. *People v Polidori*, 190 Mich App 673; 476 NW2d 482 (1991) (a forced entry after a three- to six-second wait did not substantially comply with the statute), and contrast *People v Humphrey*, 150 Mich App 806; 389 NW2d 494 (1986) (a twenty- to thirty-second wait was sufficient before breaking the door down).

Further, I agree with the trial court that the police officers' conduct in executing the search warrant was not only statutorily illegal, but also constitutionally invalid. In *Wilson v Arkansas*, 514 US 927; 115 S Ct 1914; 131 L Ed 2d 976 (1995), the United States Supreme Court held that the Fourth Amendment incorporates the common-law requirement that police officers entering a dwelling must

knock on the door and announce their identity and purpose before attempting a forcible entry. As noted by the majority, in order to justify a no-knock entry, the police must have a reasonable suspicion that knocking and announcing their presence, under the particular circumstances, would be dangerous, futile, or would inhibit the effective investigation of the crime by, for example, allowing the destruction of evidence. *Richards v Wisconsin*, 520 US 385; 117 US 1416; 137 L Ed 2d 615 (1997); accord *People v Asher*, 203 Mich App 621; 513 NW2d 144 (1994). The United States Supreme Court in *Richards* held, specifically, that the Fourth Amendment does not permit a blanket exception to the knock-and-announce requirement when police execute a search warrant in a felony drug investigation.

The trial court in this case found that the Fourth Amendment was violated because the police waited only two or three seconds before forcibly entering the motel room, that they used a key card to enter the room, and that they failed to announce sufficiently their purpose to alert those inside the room. The trial court's factual findings in this regard are not clearly erroneous; these findings are clearly supported by record evidence. The trial court also found that no "exigent circumstances" existed, specifically that the police officers' concern that the drugs would be flushed down the toilet was not supported strongly enough by the testimony at the hearing.

Thus, the majority's reasons for reversing the trial court are nothing more than setting aside the factual findings of the trial court, findings that are clearly supported by the testimony, and substituting its own judgment for that of the trial court. This is not a permissible reason for reversing the trial court. *Arco Industries Corp v American Motorists Ins Co*, 448 Mich 395, 410; 531 NW2d 168 (1995). I find that the trial court did not err, either factually or legally, in ruling that the officers' conduct violated the Fourth Amendment requirement of reasonableness. Accordingly, I would affirm the trial court's order that the evidence be suppressed.

/s/ Kathleen Jansen