**NOT DESIGNATED FOR PUBLICATION**

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| **STATE OF LOUISIANA** | * | **NO. 2002-K-1994** |
| **VERSUS** | * | **COURT OF APPEAL** |
| **HAKEEM DUMAS** | * | **FOURTH CIRCUIT** |
| | * | **STATE OF LOUISIANA** |
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APPLICATION FOR WRITS DIRECTED TO
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 428-239, SECTION "H"
Honorable Camille Buras, Judge
* * * * * *
**Judge Dennis R. Bagneris, Sr.**
* * * * * *

(Court composed of Chief Judge William H. Byrnes, III,
Judge Dennis R. Bagneris, Sr., Judge David S. Gorbaty )

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**WRIT GRANTED; JUDGMENT OF THE TRIAL COURT AFFIRMED**

On February 22, 2002 the State filed a bill of information charging the defendant with possession of marijuana, second offense, a violation of La. R.S. 40:966(D)(2). On April 8, 2002 he pleaded not guilty. On April 29, 2002 defense counsel filed motions to suppress the evidence and the confession and for a preliminary hearing. On September 24, 2002 the trial court granted the motion to suppress and found probable cause. The State now seeks writs from this ruling.

**STATEMENT OF THE FACTS**

At the May 31, 2002 hearing Detective Nathan Gex testified that on January 22, 2002, he, along with Detective Roccaforte, Sgt. Imbraguglio, Paul Noel, and other officers, executed a search warrant at 7215 Pritchard Place. He had briefly looked over the warrant obtained by Detective Roccaforte. Detective Gex stated: "I approached the front of the residence. We knocked on the front door. I announced our presence. No answer. I checked the front door. It was unopened. We then entered the residence." Detective Gex said that he and Sgt. Imbraguglio entered the front room and

saw no one in the living room area. They continued to announce their presence and went down a hallway, where a doorway to the left led to the kitchen. The detective said: “And at that point I could hear scurrying in a room just beyond the kitchen area.” The two officers went through the kitchen and encountered two subjects. One was exiting a small bedroom, and the other subject was just inside the bedroom. Both subjects were placed in handcuffs. The other detectives went through the house and encountered a female and a small child in the rear bedroom. As Detective Gex entered the bedroom just beyond the kitchen where the defendant was located, he saw in plain view on an opened sofa bed a large amount of loose matter and packaging materials such as small, clear blue plastic bags (known as “nickel bags”). Each bag contained what the detective believed to be marijuana. He also saw a scissors and some empty clear plastic bags. Detective Gex believed that the subjects were packaging the marijuana for retail sale. He encountered the defendant in the bedroom where the marijuana was located. The detective said that he also seized from that bedroom a nine-millimeter handgun from a shelf and $625.00 in U.S. currency from a cup on the top of a dresser-like piece of furniture. Other firearms were seized, but not from the bedroom that Detective Gex searched. The detective said that he then transported the subjects to jail. No statements

were made.

On cross-examination Detective Gex stated that the door (if there was a door) to the bedroom with the marijuana was open to the kitchen. The other door leading to the living room area had been blocked off. The bedroom, which contained a piano, was very cluttered. He did not remember seeing a door to the bedroom; it may have been open. The detective conceded that the defendant was standing still when he was first observed, but he may have been leaning forward. The defendant was standing in the four or five feet between the sofa bed and the door. Only one door could be used; furniture blocked the other one. There was also one closed window in the bedroom. The other young man, Holmes, was in motion as he exited the bedroom and moved into the kitchen. He was probably handcuffed a little bit past the threshold to the kitchen. After handcuffing the suspects to secure them, the detective looked around and saw the marijuana. After he saw the marijuana, the two were escorted to another area of the house and were told that they were under arrest. After the two had been moved to the living room, Detective Gex, who had seized what he believed to be marijuana, informed the defendant that he was under arrest. Detective Paul Noel advised the two suspects of their rights. He said that five officers executed the warrant. The officers had the battering ram

when they arrived at the residence.

Detective Gex said that he knocked on the wooden door (the officer could not recall if there had been a screen door, which would have been opened first). He did not ring a doorbell. When the detective was asked how many times he knocked, he said that he did not recall. He then stated: "Maybe as a normal knock would be, a little louder like a fist pound." He clarified that his knock was "not overly exerting to alarm somebody in the living room. I don't want to get shot going through the front door." As Detective Gex knocked, he said: "Police. Search warrant." He testified that the officers "paused momentarily" and "[r]eceived no answer"; then he "knocked again" and announced their presence again. According to the detective, he then "[p]aused a few more seconds and then checked the door." He then opened the door, which was not locked. Detective Gex could not say how long he paused. The detective stated: "I'm not sure. I can't – there's no way I can even remember. I could tell you that there was [sic] two knocks, constant announcements. I can't tell you time frames. You are talking about a situation that is highly dangerous and precautions are made to keep us safe. But I can't give you time – I can't think of time frames." Detective Gex said that he [p]aused just enough for someone would [sic] come – someone would answer the door." When counsel asked if someone

in the back of the house would have had enough time to move to the front of the house before the second knock, the detective said: "Possibly." He explained that a "normal person I think would have heard the knock and been able to answer the door in timely frame [sic]." He heard another officer advising the suspects of their rights from his position in another room.

Detective Noel testified that Detective Gex entered the residence first, and he entered it last. He went straight to the back and encountered Mrs. Dumas and a small child, whom he escorted to the front of the residence. Once the two suspects and Mrs. Dumas and the child were seated in the living room, he explained that the officers had a search warrant and then he advised them of their Miranda rights. The defendant then stated that all the marijuana in the bedroom belonged to him, and he admitted that he had about $600.00 in a cup in the bedroom. Detective Noel asked if anyone had any narcotics, weapons, or money to declare. Mrs. Dumas stated that she had two guns in her bedroom.

On cross-examination Detective Noel stated that he was not sure whether Mrs. Dumas or the defendant moved to the living room first. He believed that Mrs. Dumas was not handcuffed, but the defendant and Holmes were handcuffed. According to Detective Noel, Detective Roccaforte advised the defendant that he was under arrest. Later in the

living room Detective Noel informed everyone about the investigation and the search warrant; he then advised them of their Miranda rights. That was standard procedure when they executed a search warrant. He asked each person if he/she understood his rights, and each responded. After certain articles were found, Detective Roccaforte advised the defendant that he was under arrest for narcotics violations. The officer could not recall the exact timing of the defendant's arrest and his being advised of his rights, but it was not within seconds. The statements were included in Detective Roccaforte's police report; they were not recorded. He denied saying that the mother would be taken to jail if someone did not acknowledge the drugs in the house. He could not recall which officer knocked on the door or the number of knocks. However, he said: "We knocked several times on the door loud enough where anybody in [sic] house should be able to hear us." The detective said that it was "several knocks." He stated: "There were several knocks in sequence right, one behind the other, loud knocks. Then we announced our presence." Detective Noel could not remember which officer announced their presence or the words used. He said that the battering ram was unnecessary because the door was unlocked. Detective Noel stated that after the knocks and announcements, "[w]e waited several seconds, probably about, between, somewhere between five and ten seconds." He clarified that

"probably" did not mean his general memory from the execution of warrants; he said that in this case the officers "waited several seconds, somewhere between five and ten."

Sgt. Imbraguglio testified that he, along with Detectives Gex, Noel, and Roccaforte, executed the warrant at 7215 Pritchard Place. He said that he entered the residence, but he did not discover evidence or hear any statements being made. He did see the marijuana in the bedroom. He secured Holmes. On cross-examination Sgt. Imbraguglio said that Detective Gex, who had the battering ram, knocked on the door; however, he did not recall how many times Gex knocked. According to the sergeant, Detective Gex knocked "a couple of times, two or three times, maybe." Between the knocks, the detective said that they were police officers with a search warrant. After the last knock, the detective again identified the officers. Then Sgt. Imbraguglio tried the door, and it was unlocked. The officers then entered. Sgt. Imbraguglio said that there could have been two knocks or four knocks. He could not remember the exact number of knocks, but it was more than one. Detective Gex was shouting when he said that they were police officers with a warrant. Detective Gex was the first officer to enter the residence. Sgt. Imbraguglio was right behind Gex. The officers then encountered two men. He thought that Detective Gex secured Holmes first

and then handcuffed the defendant. Then the marijuana was found. After the occupants had been placed in the living room, Sgt. Imbraguglio went to the back of the residence to double check. He was not present when the defendant was being advised of his rights.

At the July 12, 2002 hearing Detective Andrew Roccaforte testified that within twenty-four hours prior to January 22, 2002, he had received information from a reliable informant, whom he had used before, that a black male known as Hakeem (23 or 24 years old) was using 7215 Pritchard Street as a retail outlet for marijuana. The informant made a controlled buy from the address on January 22, 2002. Detective Roccaforte then obtained a search warrant around 1:45 p.m. At about 2:15 p.m. he, Detectives Gex and Noel, and Sgt. Imbraguglio executed the warrant. The officers approached the front door, where he believed there was an iron door. He said: "We knocked and announced our presence." The front door was unlocked, and the officers entered the residence. Detective Roccaforte proceeded to the back of the residence where he encountered Mrs. Dumas and a small child in a back bedroom. Ronald Holmes was found in the front left portion of the residence. Detective Gex secured Holmes and the defendant. In the room where the defendant and Holmes were located Detective Gex found a silver pan containing about seventy grams of marijuana along with fifteen small

Ziploc bags and a pair of scissors. $600.00 and a 9 mm semi-automatic gun were also seized from that room. He did not recover the evidence or money, but he observed the evidence seized. Detective Roccaforte stated that the officers "[a]bsolutely" knocked and announced their presence. He said that the delay between initially knocking and entering the residence was a "few – a few seconds." Although he did not personally run the defendant's rap sheet, it was discovered that he had a prior conviction for burglary. Based on finding the handgun in the residence, the defendant was also charged with being a felon in possession of a firearm.

On cross-examination Detective Roccaforte stated that he found Mrs. Dumas and the child in the back bedroom and escorted her then to the front living room. Then Holmes and the defendant were taken to the front room. Detective Noel advised everyone of the investigation and their rights. Detective Roccaforte was not present for the statements. He said that Detective Gex carried the battering ram, and to the best of his recollection either Detective Noel or Sgt. Imbraguglio knocked on the door. He said that he did not "recall specifically" because the officers do "a lot of search warrants," but he thought Detectives Gex and Noel had the tools. When asked again, Detective Roccaforte said that he was "not certain" which officer knocked on the door. The detective stated: "I don't recall exactly the

– the matter of the knock. But I believe he knocked on the – the wood frame of the residence and we announced our presence, 'Police with a warrant.'" Several of the officers made the statements because they wanted the occupants to know that police officers were entering. When asked when the announcement was made, he answered: "After the knock." When the officer was asked how long after announcing their presence did the officers enter, Detective Roccaforte answered: "Within a few seconds." He said the door was closed but unlocked.

On September 24, 2002 the trial court found probable cause, but granted the motion to suppress the evidence.

**DISCUSSION**

The State argues that the trial court erred by suppressing the evidence when the officers, who had a valid search warrant, knocked and announced their presence and were not granted entry into the residence. It contends that the occupants' refusal to answer the door after the officers knocked and announced their presence justified the officers forced entry. The State argues that due to their surveillance that day, the officers knew that there was contraband in the residence and that there were people in the house. When no one answered the door, it was reasonable for the officers to infer that the occupants were attempting to destroy the evidence. The State

contends that the forced entry was justified under the circumstances.

In the opposition (as well as the memorandum in support of the motion to suppress), defense counsel argues that the trial court correctly concluded that there were no exigent circumstances to justify the immediate forced entry into the defendant's residence. Counsel notes that the fact that the object of the search is narcotics does not automatically create exigent circumstances. The defense argues that the officers failed to give the defendant and other occupants a reasonable amount of time in which to open the door.

Under Louisiana statutory law in order to execute a search warrant, a peace officer may use such means and force as are authorized for an arrest. La. C.Cr.P. art. 164. In order to make an arrest, a peace officer, who has announced his authority and purpose, may break open an outer or inner door or window of any dwelling or other structure where the person to be arrested is or is reasonably believed to be, if he is refused or otherwise obstructed from admittance. The peace officer need not announce his authority and purpose when to do so would imperil the arrest. La. C.Cr.P. art. 224.

The State cites State v. Thorson, 302 So.2d 578 (La. 10/2874), an old case where the Louisiana Supreme Court upheld the validity of a search conducted pursuant to a warrant to search for narcotics against the

defendants' allegations that the search was invalid because force was not necessary. There the police officers knocked twice, identified themselves as policemen, heard noises within the residence, received no response, and forced their entry. The Court held that narcotics can be so quickly and easily destroyed as evidence, and such circumstances (where there was a warrant to search for drugs) particularly justified quick action by the officers to gain entry into the place they were authorized to search if their repeated knocks resulted in no responses. Id. at 5, 302 So.2d at 585. However, in State v. Miskell, 98-2146, p. 5 (La. 10/19/99), 748 So.2d 409, the Louisiana Supreme Court questioned the continued viability of earlier Louisiana cases, such as Thorson, decided prior to Wilson v. Arkansas, 514 U.S. 927, 115 S.Ct. 1914 (1995), which held that the failure to "knock and announce" prior to entering a house to execute a search warrant may, in the absence of special circumstances, violate the Fourth Amendment. Id. at 1264-65. Yet in State v. Williams, 2001-0732 (La. 11/28/01), 800 So.2d 819, 823 the Supreme Court noted "that the police knocked twice in Thorson and this court was satisfied that the entry was reasonable under the circumstances. This court addressed the reasonableness of the entry without touching on the amount of time which elapsed from the announcement to the entry." However, Thorson and other older cases must be considered in light of the

holding in Wilson. Regardless, Thorson is not similar to the facts in this case, where the officers heard and saw nothing to constitute exigent circumstances prior to forcing their entry into the defendant's residence.

> In Wilson v. Arkansas, 514 U.S. 927, 115 S.Ct. 1914, 131 L.Ed.2d 976 (1995), the Supreme Court established that the Fourth Amendment to the United States Constitution incorporates the common law requirement that police officers entering a residence must knock on the door and announce their identity and purpose before attempting forcible entry to execute a search warrant. Id. at 929, 934, 115 S.Ct. 1914. Nevertheless, the Court carefully recognized that not "every entry must be preceded by an announcement. The Fourth Amendment's flexible requirement of reasonableness should not be read to mandate a rigid rule of announcement that ignores countervailing law enforcement interests." Id. at 934, 115 S.Ct. 1914. Accordingly, the Court stated that, "[w]e simply hold that although a search or seizure of a dwelling might be constitutionally defective if police officers enter without prior announcement, law enforcement interest may also establish the reasonableness of an unannounced entry." Id. at 936, 115 S.Ct. 1914. The Court left to the lower courts the task of determining which circumstances make an unannounced entry reasonable and implied that the knock-and-announce requirement could yield "under circumstances presenting a threat of physical violence," or "where police officers have reason to believe that evidence would likely be destroyed if advance notice were given." Id.
>
> A few years later, in Richards v. Wisconsin, 520 U.S. 385, 117 S.Ct. 1416, 137 L.Ed.2d 615 (1997), a case which rejected a blanket exception to the knock-and-announce requirement in felony drug cases, the Supreme Court articulated the circumstances under which an unannounced entry is reasonable under the Fourth Amendment. There, the Court held that police officers may dispense with the knock-and-announce requirement when "they have a reasonable suspicion that knocking and announcing their presence, under the particular circumstances, would be dangerous or futile, or that it would inhibit the effective investigation of the crime by, for example, allowing the destruction of evidence." Id. at 394, 117 S.Ct. 1416.

> The Court further stated that the reasonable suspicion standard, as opposed to a probable cause requirement "strikes the appropriate balance between the legitimate law enforcement concerns at issue in the execution of search warrants and individual privacy interest affected by the no-knock entries. This showing is not high, but the police should be required to make it whenever the reasonableness of a no-knock entry is challenged." Id.
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> Later, in United States v. Ramirez, 523 U.S. 65, 118 S.Ct. 992, 140 L.Ed.2d 191 (1998), the Supreme Court announced that its decisions in Wilson and Richards "serve as guideposts in construing" 18 U.S.C.A. § 3109, the Federal counterpart to LA.CODE CRIM.P. art. 224. We are likewise guided by Wilson and Richards in our analysis of the facts presented herein.
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> Whether circumstances existed at the time of the entry, and whether these circumstances justify the extent of the noncompliance with the knock-and-announce requirement is determined by an analysis of the facts of each case. Richards, 520 U.S. at 394, 117 S.Ct. 1416. For a no-knock search to pass constitutional muster, police officers must have some particularized basis for their reasonable suspicion. United States v. Grogins, 163 F.3d 795, 797 (4 th Cir.1998).

(Footnote and citations omitted) State v. Miskell, at 4-6, 748 So.2d at 412-13.

In State v. Stewart, 2001-0530 (La. App. 4 Cir. 5/2/01), 785 So.2d 1053, the police officer had obtained a search warrant based on information from a reliable informant provided within seventy-two hours of the application for the warrant. The informant described the seller and said that the crack cocaine was usually hidden in the residence. The informant also made a controlled buy from the targeted residence, where others had been

arrested for narcotics violations in the past. Six days after the warrant was issued, during which time no drug activity was observed, the officers executed the warrant. The defendant was not the seller identified by the informant. When the officers executed the warrant, they did not knock. They announced that they were officers, checked the door that was unlocked, and walked in. There was no testimony that the officers had information about weapons in the residence. Id.

In State v. Stewart, 785 So.2d at 1053, this Court thoroughly discussed the facts of State v.Miskell, 748 So.2d at 409 where the court found that the police acted reasonably in removing burglar bars from the front door and then entering the residence in question unannounced. In Miskell the officer observed the informant's controlled buy from the defendant at the target residence along with two more near an automobile parked in front of the residence just before executing the warrant. It was noted that the presence of burglar bars on the main entrance supported the officers' inference that the delay in knocking and announcing their presence would have increased the likelihood that the defendant would dispose of the drugs. Id. at 5-6, 785 So.2d at 1056-57.

In Miskell the officers entered the residence without knocking and announcing their presence. Unlike Miskell (where the warrant was executed

the same day), in Stewart the tip and controlled buy occurred more than six days prior to the execution of the warrant. Officers conducting the surveillance observed no drug transactions or suspicious activities during that period. In Miskell the defendant was known to carry drugs on his person, while in Stewart the cocaine was hidden inside the residence. The residence in Miskell was protected by burglar bars, which would slow down officers seeking to enter, while there was no such protection in Stewart, where there was no information to indicate that the target was armed or that weapons were kept inside the residence. In Stewart, this Court concluded that the trial court did not err when it ruled that the officers were required to comply with the knock and announce rule before entering the residence to execute the warrant. Id. at 1057-58.

In the instant case the officers did knock and announce their presence prior to entry into the residence. However, the officers' testimony differed as to how many knocks there were and how many seconds they waited before entering the defendant's residence. In State v. Williams, 800 So.2d at 819, the Louisiana Supreme Court considered the *res nova* issue of the amount of time police officers must wait for admittance after announcing their presence before conducting a forceful intrusion. Although the trial court suppressed the evidence there, the Court noted that the ruling explicitly

stated that it was not the police's failure to knock and announce that was considered improper, but, rather, the fact that the officers did not wait an appropriate amount of time to allow the occupants time to respond at the early morning hour. The Supreme Court discussed the federal jurisprudence relating to the timing of the police entry:

> The knock-and-announce requirement is grounded in the Fourth Amendment and serves several purposes: 1) it decreases the potential for violence; 2) it protects the privacy of the individual by minimizing the chance of forcible entry into the dwelling of the wrong person; and 3) it prevents the physical destruction of property by giving the occupant time to admit the officers voluntarily. United States v. Ruminer, 786 F.2d 381, 383 (10th Cir.1986) (citations omitted). Thus, the basic purpose of the knock-and-announce requirement is to give notice to the occupant of a premises which is the subject of a search warrant so as to avoid a forcible entry by law enforcement officers.
>
> The notion that the knock-and-announce principle is part of the reasonableness inquiry is a relatively well accepted part of Fourth Amendment jurisprudence. However, not until United States v. Jones, 133 F.3d 358 (5th Cir.1998), had any federal court specifically addressed how long state officers must wait before entering a residence after knocking and announcing their presence.
>
> The federal equivalent of La.Code Crim. Proc. art. 224, 18 U.S.C. S 3109, has been construed as a limitation on, rather than an extension of, the authority of federal officers to use force in the execution of a warrant. United States v. Salter, 815 F.2d 1150, 1152 (7th Cir.1987). Read with this judicial gloss, S 3109, like La.Code Crim. Proc. art. 224, prohibits federal officers when executing search warrants from entering a dwelling until they have announced their authority and purpose and have been refused admittance absent exigent circumstances. Id. Similarly, S 3109 does not specify how long law enforcement officers must wait before they are constructively denied admittance and are entitled to enter the premises

forcibly. The time that S 3109 requires officers to wait before they may construe no response as a denial of admittance depends largely on the circumstances of each case. See United States v. McConney, 728 F.2d 1195, 1206 (9th Cir.), cert. denied, 469 U.S. 824, 105 S.Ct. 101, 83 L.Ed.2d 46 (1984); United States v. Davis, 617 F.2d 677, 695 (D.C.Cir.1979), cert. denied, 445 U.S. 967, 100 S.Ct. 1659, 64 L.Ed.2d 244 (1980).

Additionally, the timing question is relevant in S 3109 cases only to the extent necessary to imply refusal of admittance by the occupant, but these cases are of little value in determining how long state officers must wait before forcing entry under the Fourth Amendment reasonableness standard. United States v. Jones, 133 F.3d 358 (5th Cir.1998). It is possible that a delay in a particular case might be too short to imply refusal of admittance under S 3109, but be reasonable for Fourth Amendment purposes because of other exigent circumstances such as the potential for destruction of evidence or danger to law enforcement officers or innocent occupants. Id. In the instant case, our Statutes provide that officers knock-and-announce unless exigent circumstances warrant otherwise. Our Statutes combine and balance the Fourth Amendment rights of individuals with the police interests.

In the instant case, the record reveals that, by and large, the factual findings of the trial court are correct. The court held that the police did in fact knock-and-announce their presence before forcefully entering the home. Although none of the officers testified that they suspected defendant was armed and dangerous, they did witness persons running within the residence apparently in a panic over the police presence. However, the court deviated from a reasonable reading of the evidence in reasoning, "at 4 o'clock in the morning that individuals need a bit more time to get to the door. You're in bed at 4 o'clock in the morning you would certainly need a sufficient amount of time to get to the door." While it is certainly true of most households, the facts in evidence were that four of the six occupants of the home were awake at this early hour of the day and were not asleep in bed as the trial judge reasoned. The police could see individuals running around in the home and, therefore, knew they were not all asleep and did not they require extra time to get to the door.

However, the trial court erred in finding no testimony that the officers observed any activity which would lead them to believe contraband was being destroyed. The facts elicited reveal quite the contrary. Mr. and Mrs. Williams were awake and about the house, had the lights turned on, they were well within reach of the front door and within view of the police a good portion of the time the police were attempting to execute the warrant. From the police officers' perspective, these facts in themselves were enough to satisfy a reasonable suspicion that drug evidence was being destroyed, that the parties inside were arming themselves, or that they were attempting to flee or resist arrest, and, thus, an immediate forced entry would have been justified regardless of the amount of time which elapsed after the announcement. The above erroneous findings of the trial court to the contrary are manifestly erroneous and are hereby reversed.

The trial court omitted discussion of the amount of time that elapsed from the knock-and-announce to entry but concluded that it was not sufficient. Because the amount of time between announcement and entry is of key importance in a reasonableness determination, we now turn to the evidence to settle this detail.

Taking the testimony of the officers and the Williamses, we now determine that at least five but as much as fifteen or more seconds elapsed from the time the police knocked and announced their presence until they entered the dwelling. Testimony and statements from the officers, Mr. Williams, and Mrs. Williams indicated that the officer's presence had been detected and that the occupants were running around inside the house in response.

As the trial court implicitly found, Detective Pardo estimated that they knocked for "several seconds" before employing the battering ram and Mr. Williams heard the loud banging of the battering ram at their door for about fifteen seconds before the police entered his home. This means, in all likelihood, that more than fifteen seconds elapsed from the announcement to the entry, well above the five second threshold that courts have generally employed as the test of whether a constructive denial of entry has occurred. In this amount of time, the Williamses could have responded and voluntarily allowed the police to search their residence. However, they did not. The Williamses both stated that they were close by and watched the front door as the police attempted to enter. They made

no attempt to stop the police to allow them to enter, but remained silent, allowing the battering to progress to its fruition. Consequently, the Williamses constructively denied entry and the trial judge's fact finding to the contrary is manifestly erroneous.

We refuse to create a bright-line rule for all cases as to the amount of time appropriate for officers executing a warrant to wait to enter after knocking and announcing. We do pronounce that the officers in this case waited long enough after knocking and announcing their presence and purpose, although there was enough information available to provide the officers proof of exigent circumstances which would allow them to enter immediately and with force upon seeing the lights on, figures running within the residence in apparent response to their announcement, and with the understanding that they were serving a warrant to search for drug contraband. Furthermore, we provide the following guideline to the courts: In determining the reasonableness of an entry made upon a warrant to search and after announcement, the court must ascertain the sufficiency of the time that elapsed between the commencement of the "knock-and-announce" and the actual police "entry" into the home. This guideline is not to say that there must always be a knock-and-announce when police are executing a warrant to search as La.Code Crim. Proc. arts. 164 and 224 explicitly provide that the police may omit announcement where to do so would imperil the arrest.

The burden of proof is generally on the defendant to prove the grounds recited in a motion to suppress evidence. La.Code Crim. Proc. art. 703(D); State v. Seward, 509 So.2d 413 (La.1987). Since search and seizure of evidence was conducted pursuant to search warrant, defendant had burden to prove grounds of his motion to suppress, but failed to meet this burden….

Given the undisputed evidence, that the officers knocked and announced their intentions before entering the residence, and given the officers' observations, they were reasonable in believing that a longer wait might have resulted in the destruction of evidence or otherwise imperil the arrest. The totality of the circumstances leads to the conclusion that the force used was reasonable. Therefore, the officers' actions did not violate our knock-and-announce principle nor defendant's Fourth Amendment Rights. Accordingly, the lower courts erred in granting defendant's motion to suppress.

(Footnotes omitted and added) State v. Williams, at 7-11, 800 So.2d at 824-27.

Here defense counsel focuses on the contradictory statements of the police officers as to which officer knocked, how many times he knocked, and how much time elapsed after knocking and announcing their presence before they entered the residence. However, the officers' testimony as a whole indicated that they approached the residence, knocked more than once, announced their presence, and entered within seconds (although the number of seconds is not clear). Noting that State v. Williams, 800 So.2d at 819, controlled, the trial court stated: "Not only is the time element critical, but also what is observed by the Officers [sic]." The court declared:

> This Court notes that unlike State v. Williams [sic], where those officers visually observed and I guess auditorily heard people running through the house, movements, furtive movements in the house, which would have warranted an immediate exercise of entry into that house without a waiting period[sic]. None of those conditions, as Mr. Glass articulated in his argument, none of those conditions were present in this case. The officers by their collective testimony, although it was varied, all the officers seemed to say that absolutely no exigent circumstances existed. There was no pre-warning that the occupants may be armed or have guns or that the occupants from their being [sic] on the porch were destroying evidence are [sic] in [sic] process of doing such.
>
> And therefore, because of the time lapse between the knocking on the door and then entry into the house without any exigent circumstances being put on the record, the Court will suppress the evidence in this case, granting the motion to suppress the evidence in

> this case. Finding probable cause, but denying the motion – granting the motion to suppress the evidence….

A trial court's ruling on a motion to suppress the evidence is entitled to great weight because the court has the opportunity to observe the witnesses and weigh the credibility of their testimony. State v. Mayberry, 2000-1037 (La. App. 4 Cir. 5/9/01), 791 So.2d 725, writ denied, 2001-1621 (La. 4/26/02), 813 So.2d 1100. The trial court is vested with great discretion when ruling on a motion to suppress. State v. Scull, 93-2360 (La. App. 4 Cir. 6/30/94), 639 So.2d 1239.

This issue requires careful consideration. Unlike the officers in Stewart, who entered as they announced their presence without knocking, here Officer Gex and the others knocked more than once, announced their presence, and waited seconds before then entering the unlocked door. The warrant was not executed very early in the morning as in Williams; it was 2:15 p.m. when the officers approached the residence. In this case the target had been selling from inside the residence, and there was no indication that the marijuana was on the seller's person and easy to discard, a fact that helped to justify the unannounced forced entry in Miskell. Here the door was not protected by burglar bars, as in Miskell, even though one officer testified that there was an iron door. Although there is no set waiting time

that justifies a forced entry, the federal cases noted in a footnote in Williams seem to indicate that waiting five seconds or less is considered insufficient time. However, the issue under the federal statute is whether the delay shows that the officers were refused admittance.

From the officers' testimony in this case, it is clear that they waited only seconds before forcibly entering the defendant's residence; however, the officers did not realize that their timekeeping skill was to be crucial in the trial court's determination. Detective Gex said that they paused a few seconds and then a few seconds more before checking the door. Detective Noel stated that they waited five to ten seconds after knocking and announcing their presence before entering the residence. Detective Roccaforte said that they waited a few seconds before opening the unlocked door and entering. Under Louisiana's statutes, the reasonableness of the officers' forcible entry into a residence to execute a search warrant, in light of the circumstances of the case, is the issue. This was not an unannounced entry. Like Williams, the focus is the length of the delay before forcible entry. In Williams the five to fifteen second delay was considered sufficient in light of the exigent circumstances (the officers heard and saw the occupants running around inside the residence as they waited to enter) present there. The question therefore centers on whether the officers were

reasonable in believing that a longer wait might have resulted in the destruction of evidence. The trial court correctly concluded that the officers did not set forth any exigent circumstances (a warning that the target is armed or there are weapons in the residence or movement within the residence to suggest that evidence is being destroyed) in this case; therefore, the court concluded that the officers were not justified in forcibly entering the residence within seconds of knocking and announcing their presence.

Although we recognize that this is a difficult issue, we do not find that the trial court erred in its decision to grant the motion to suppress the evidence. Accordingly, we grant the writ and affirm the trial court's decision to grant the motion to suppress the evidence.

**WRIT GRANTED; JUDGMENT OF THE TRIAL COURT AFFIRMED**