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IN THE SUPREME COURT OF FLORIDA

NATHANIEL H. THOMAS,
Petitioner,
vs.
STATE OF FLORIDA,
Respondent.

Supreme Court Case No. 80,624

PETITIONER'S BRIEF ON THE MERITS

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PETITIONER'S BRIEF ON THE MERITS

STATEMENT OF THE CASE

Petitioner was charged by an information filed on March 5, 1991 charging Petitioner with Possession of a firearm by a convicted felon in violation of Section 790.23, Florida Statutes. (R 53)

Petitioner filed a motion to suppress the evidence illegally seized from his home because the officers violated the Florida's knock and announce statute when executing the warrant. (R 28-31) The motion asserted (1) the affidavit was insufficient to support probable cause; (2) the warrant was not served in a timely fashion; (3) the officers who executed the warrant violated the knock and announce statute in doing so. (R 28-31) A hearing was held on the motion to suppress on July 22, 1991 before the Honorable Belvin Perry, Jr., Circuit Court Judge of the Ninth Judicial Circuit in and for Osceola County, Florida. (R 1-27) The trial court granted the motion to suppress the firearm seized from Petitioner's residence, finding that the

affidavit presented to the magistrate was sufficient, but that the Kissimmee police officers had violated the knock and announce statute.[1] (R 40, 26)

The state appealed to the Fifth District Court of Appeal, arguing that the trial court erred in granting Petitioner's motion to suppress the evidence of the firearm. The state argued that according to the Fifth District Court of Appeal's decision in State v. Bell, 564 So.2d 1235 (Fla. 5th DCA 1990), that when there are small amounts of contraband readily disposable in a residential sink or toilet, that the no knock raid was permissible. Petitioner asked the Fifth District Court of Appeal to reconsider its opinion in Bell based upon a direct conflict with the Second District Court of Appeal's case of State v. Bamber, 592 So.2d 1129 (Fla. 2d DCA 1991).

On September 11, 1992, the Fifth District Court of Appeal reversed the trial court's order granting the motion to suppress while acknowledging conflict with the Second District Court of Appeal's case of State v. Bamber, 592 So.2d 1129 (Fla. 2d DCA 1991).

Notice to Invoke this Honorable Court's Discretionary Jurisdiction was filed in the Fifth District Court of Appeal on October 12, 1992. A Jurisdictional Brief was filed with this

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[1] The trial court made no findings concerning the timeliness of the execution of the warrant; the warrant was issued on February 4, 1991 and executed on February 8, 1991. See Section 933.05, Florida Statutes (1989); Spera v. State, 467 So.2d 329 (Fla. 2d DCA 1985). The state filed notice of appeal on July 30, 1991. (R 41)

court on October 22, 1992. This Honorable Court accepted jurisdiction on December 23, 1992. This appeal follows.

STATEMENT OF THE FACTS

At the hearing on the motion to suppress, Officer Russell Barnes of the Kissimmee Police Department testified that he was involved in an investigation of Petitioner selling cocaine from his residence. (R 8-9) Officer Barnes said that there had been two purchases of crack cocaine by a confidential informant at the residence, each involving no more than fifty dollar quantities. (R 8) He testified that small amounts of crack cocaine can be easily disposed of in normal plumbing fixtures. (R 9) Officer Barnes testified that he believed that the utility records were checked before the warrant was obtained and that the residence had normal plumbing facilities. (R 9) He testified that Petitioner's house was on the west side of Pearson Street and that there was another house across the street from him on the east side. (R 11)

The first of the two police initiated purchases of cocaine from Petitioner was made during the week before the warrant was issued. (R 11) The second of those two purchases was made at 7:56 p.m. on February 8, 1991, one hour and thirty-four minutes before the warrant was executed. (R 22) However, before the warrant was executed Petitioner had left the house and no one was home at the time the officers entered the house. (R 12)

The trial court found that as the officers forced down the front door of Petitioner's residence with a battering ram, that the officers announced their presence. (R 25-26) A video

tape was made of the officers executing the warrant. (R 4-5)

The affidavit for the search warrant stated that on February 1, 1991, a confidential informant was searched, given fifty dollars, and sent to purchase cocaine from Petitioner's residence. Apparently after the purchase was made, the officers supervising in the buy recovered three pieces of crack cocaine from the informant. A search warrant was issued on February 4, 1991 for the residence based on that information. However, the search warrant was not executed until February 8, 1991, after the second purchase was made. (R 8, 22)

SUMMARY OF ARGUMENT

The Fifth District Court of Appeal erred in reversing the trial court's order granting Petitioner's motion to suppress where the officers violated Florida's knock and announce statute when executing the warrant. The Fifth District Court of Appeal held that they disagreed with the holding of the Second District Court of Appeal in State v. Bamber, 592 So. 2d 1129 (Fla. 2d DCA 1991). The Fifth District Court of Appeal stated that they intend to continue following their decision in State v. Bell, 564 So. 2d 1235 (Fla. 5th DCA 1990), where the Court held that if there are small quantities of contraband it is likely that the evidence would be destroyed and therefore the officers can violate the knock and announce statute. Petitioner maintains the Fifth District Court of Appeal's decision in Bell must be reversed because this is such a large exception it will completely overshadow Florida's knock and announce rule. Thus, this Court should follow the well-reasoned opinion of the Fourth District Court of Appeal in State v. Bamber.

Assuming arguendo, that this Court upholds the Fifth District Court of Appeal's decision finding that although the officers violated Florida's knock and announce statute, the facts presented here justify an exception. The evidence seized from Petitioner's home should still be suppressed. The search warrant was based on an affidavit which failed to establish probable cause. The officers unreasonably relied on this warrant and the evidence seized must be suppressed.

ARGUMENT

THE FIFTH DISTRICT COURT OF APPEAL ERRED IN REVERSING THE TRIAL COURT'S ORDER GRANTING PETITIONER'S MOTION TO SUPPRESS.

In Earman v. State, 265 So.2d 695, (Fla. 1972), this Honorable Court reversed the appellate court's order denying defendant's motion to suppress. This Court held that the appellate court was not justified in concluding that the exception to the knock and announce rule applied as a matter of law where the record was completely devoid of testimony by the police officers or other competent evidence showing they had reasons to fear at the time of entry the destruction of evidence. This Court stated:

> Essential to such proof in this case is testimony by the arresting officers or other competent evidence that they had reasonable grounds to believe the marijuana within the house would be immediately destroyed if they announced their presence. Absent such evidence, the fruits of any search conducted pursuant to such arrest must be considered illegally obtained.

Id. at 697.

However, the Fifth District Court of Appeal in State v. Bell, 564 So.2d 1235 (Fla. 5th DCA 1990), held that "Since the contraband sought was maintained by defendant Bell in quantities readily disposable in a residential sink or toilet, the no-knock raid was permissible." Id. at 1237.

Recently, in State v. Bamber, 17 FLW D 55 (Fla. 2d DCA December 20, 1991), the Second District Court of Appeal recog-

nized express conflict with Bell, supra and Armenteros v. State, 554 So.2d 574 (Fla. 3rd DCA 1989). In Bamber, the informant told the deputy that the defendant had retrieved cocaine from an area near a bathroom and that he had a Rotweiler dog in the residence. However, the Second District Court of Appeal, in a well-reasoned opinion refused to accept the rule as announced in Bell. The court stated that:

> Addressing the merits of the rule announced in Armenteros and Bell, we are not convinced that the existence of normal plumbing in one's home dispenses with the need to knock and announce during the execution of a warrant to search for small quantities of cocaine. Plumbing is required in virtually any home that complies with applicable building codes. Many warrants involve searches for small items which in theory could be flushed down a toilet. If flushable items and plumbing are allowed to create an exigent set of circumstances, then the exception will begin to overshadow the rule.
>
> In this case, the police did not provide a case-specific explanation that reasonably caused them to believe that Mr. Bamber's household was likely to destroy evidence. There clearly are facts and circumstances under which the police can reasonably decide, at the time they serve a warrant, that a household presented an unusual risk concerning the destruction of evidence. Such circumstances are not presented in this case.

Id. at 56.

In the instant case, the trial court was obviously troubled by the Fifth District Court of Appeal's decision in Bell, stating that:

> The thing that concerns me about Bell...

> is that in every case where there is a "small amount of drugs, be it crack cocaine or marijuana, then the no knock provision of the Florida Statute need not be complied with".
>
> I really don't think Bell is saying that or the Third District Court of Appeal's case is saying that and...but in this particular case, Officer Barnes did testify that he had no articulable facts in this particular case that would lead him to believe that the destruction of evidence would occur, except that in all cases of user type quantities, that is a possibility.

(R 24-25)

The trial court attempted to distinguish this case from Bell because of the amount of time that had transpired from the last sale of cocaine and the execution of the warrant. (R 26) The trial court after granting the motion to suppress, expressed a strong desire to have the Fifth District Court of Appeal clarify its opinion in Bell as to whether it really means that whenever there are "user quantity drugs" involved the officers need not comply with the knock and announce statute. (R 26) The Fifth District Court of Appeal did clarify its opinion in Bell in the instant case by stating "Bell is still the law of this district and only requires that the officers believe that because of a small amount of contraband and the facilities available to the suspect, destruction is likely if immediate execution of the warrant is not effective". Id. at 1279. Petitioner maintains that such a broad exception to Florida's knock and announce statute cannot be tolerated.

In the instant case, there were no drugs found in the

residence. Petitioner was charged with possession of a firearm by a convicted felon. The officers possessed simply the knowledge that there was residential plumbing and a small quantity of cocaine had allegedly been purchased from Petitioner earlier.[2] There was no evidence to indicate Petitioner had other drugs stored in his home. Even assuming there were facts to show Petitioner maintained drugs at his residence, there was no evidence to indicate that Petitioner kept this flushable quantity of cocaine near a toilet or a sink. There was no evidence to indicate that if the officers knocked and announced Petitioner would have time to dispose of this quantity or that Petitioner would attempt to dispose of it. Furthermore, Petitioner was not even at the residence when the officers failed to comply with the knock and announce provision. The police did not provide any case specific explanation that reasonably caused them to believe Petitioner would destroy evidence. Officer Barnes testified that he possessed only a general belief because of the quantity involved it might be destroyed. (R 13-14) Petitioner argues that this is insufficient to justify the officers failure to comply with the knock and announce statute and use a battering ram on an individual's home. Thus, Petitioner maintains that because the officers violated the statute, the Fifth District Court of Appeal's decision denying the motion to suppress must be reversed and the case remanded to the trial court to grant the

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[2] Officer Barnes only believed that the officer who wrote the report had checked and found that the house had normal active plumbing. (R 9)

motion to suppress.

Even if this Honorable Court decides to follow the Fifth District Court of Appeal's decision in Bell allowing such an expansive exception to the knock and announce statute, nonetheless this Court should reverse the Fifth District Court of Appeal's decision because the search warrant is invalid. The search warrant states that the affiant believed the following material facts to exist:

> On February 1, 1991 a confidential reliable informant was given fifty dollars of departmental funds with the intent to purchase crack cocaine at a house at the dead end of Persons Street... The confidential reliable informant was searched for contraband prior to going to the house on Persons Street and nothing was located. Your affiant observed the confidential reliable informant enter and leave the house. The confidential reliable informant was met at a pre-arranged location and gave your affiant three pieces of rock like substance similar to crack cocaine... The confidential reliable informant stated that he purchased the cocaine from a black male subject who identified himself as "Tony". (Supplemental Record 5, 6)

At the suppression hearing, the officer testified that there were two homes located at the dead end of Persons Street. (R 11, 15) The search warrant is invalid for two reasons. First, it does not adequately set forth the facts indicating which home at the dead end of Persons Street the confidential informant entered. Secondly, the confidential informant never told the officers that he purchased the cocaine in a particular house or any house for that matter. Further, there is nothing to

indicate that cocaine was maintained on the premises. Indeed, the officers did not find any type of narcotics after searching Petitioner's residence.

In Illinois v. Gates, 462 U.S. 213 (1983) the Supreme Court held that the task of the issuing magistrate is simply to make a practical, common sense decision whether, given all the circumstances set forth in the affidavit before him, there is a fair probability that contraband or evidence of a crime will be found in a particular place. The duty of a reviewing court is simply to ensure that the magistrate had a substantial basis for concluding that probable cause existed.

In State v. Macolino, 583 So.2d 705 (Fla. 2d DCA 1991), the Appellate Court while reversing the trial court's order suppressing the evidence found that there was substantial evidence in the affidavit to support the magistrates finding of probable cause. In that case however, the court stated that:

> We further find that the factual basis for the probability that cocaine would be found on the premises was sufficient. The confidential informant had personally observed cocaine in the Appellee's house the week before the search was executed and knew that Appellee Anderson regularly stored and distributed cocaine from there. . . In addition, the informant escorted the affiant to the premises where he had seen the cocaine and informed her that it was the residence of Appellee Anderson.

Id. at 707.

The instant case can be easily distinguished from Macolino because the confidential informant never told the police

that he knew Petitioner regularly stored cocaine in this house. From the face of the affidavit there is nothing to indicate that the confidential informant purchased the cocaine in this house. There is nothing to indicate that the police kept constant surveillance of the confidential informant, only that they met sometime later at a predetermined location. Thus, unlike the affidavit in Macolino, this affidavit is insufficient on its face. Because the affidavit is insufficient on its face by its complete failure to show probable cause it is entirely unreasonable for the officers to rely on such a warrant. Therefore, according to United States v. Leon, 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984), the state is not entitled to rely on the good faith reliance. Thus, this Court must reverse the Fifth District Court's order denying Petitioner's motion to suppress.

PAGE(s) MISSING

CONCLUSION

Based on the foregoing cases, argument and authorities, Petitioner respectfully requests that this Honorable Court reverse the Fifth District Court of Appeal's order denying Petitioner's motion to suppress.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been hand delivered to the Honorable Robert A. Butterworth, Attorney General, 210 N. Palmetto Avenue, Suite 447, Daytona Beach, Florida 32114 in his basket at the Fifth District Court of Appeal and mailed to: Nathaniel H. Thomas, 606 Person St. Kissimmee, FL 34741, this 18th day of February, 1993.

M. A. LUCAS
ASSISTANT PUBLIC DEFENDER

IN THE SUPREME COURT OF FLORIDA

NATHANIEL H. THOMAS, Petitioner, vs. STATE OF FLORIDA, Respondent.	)	Supreme Court Case No. 80,624

A P P E N D I X

State v. Thomas, 604 So. 2d 1277 (Fla. 5th DCA 1992)

record that establishes unquestionably that the proposed evidence would have to be admitted as a matter of law. In fact, it is a close call. The state has not made it clearly appear on this petition for common law certiorari that the trial judge had only one course left open to him.

CERTIORARI DENIED.

LETTS, DELL and FARMER, JJ., concur.

STATE of Florida, Appellant,

v.

Nathaniel Hirum THOMAS, Appellee.

No. 91-1756.

District Court of Appeal of Florida, Fifth District.

Sept. 11, 1992.

Suppression motion made by felon suspected of selling small quantities of cocaine from his home was denied by the Circuit Court, Osceola County, Belvin Perry, Jr., J. Defendant appealed. The District Court of Appeal, Harris, J., held that police officers' knowledge of small size of rock cocaine and that house to be searched had normal plumbing facilities justified entry into house to execute search warrant without complying with knock and announce rule.

Reversed and remanded.

Goshorn, C.J., dissented and filed opinion.

1. Drugs and Narcotics ⇐189(3)

Police officers executing search warrant were not required to knock and announce before entering home of felon suspected of selling small quantities of cocaine under destruction of evidence exception to knock and announce rule since cocaine being sold could have been disposed of by being eaten, flushed, crushed or hidden, house to be searched had normal plumbing facilities, and drug dealers with small amounts of drugs normally try to conceal or discard such drugs. U.S.C.A. Const. Amend. 4.

2. Drugs and Narcotics ⇐189(3)

Fact that warrant to search home of felon suspected of selling small quantities of cocaine was executed more than 30 minutes after last controlled buy was irrelevant to whether destruction of evidence exception to knock and announce rule applied during execution of warrant. U.S.C.A. Const.Amend. 4.

3. Searches and Seizures ⇐143

"Destruction of evidence exception" to knock and announce rule for executing search warrants applies if officers believe that, because of small amount of contraband and facilities available to suspect, destruction is likely if immediate execution of warrant is not effected. U.S.C.A. Const. Amend. 4.

See publication Words and Phrases for other judicial constructions and definitions.

Robert A. Butterworth, Atty. Gen., Tallahassee, and Nancy Ryan, Asst. Atty. Gen., Daytona Beach, for appellant.

James B. Gibson, Public Defender, and M.A. Lucas, Asst. Public Defender, Daytona Beach, for appellee.

HARRIS, Judge.

Nathaniel H. Thomas was a convicted felon suspected of selling small quantities of cocaine from his home. After conducting a controlled buy, the officers obtained a search warrant on February 4, 1991. Four days later a second controlled buy was effected at 7:56 p.m. The warrant was executed one hour and thirty four minutes after the second purchase.

The officers did not comply with the knock and announce rule. When they entered, Thomas was not there. The search revealed no drugs but a firearm was dis-

covered. Thomas was arrested for possession of a firearm by a convicted felon.[1]

Thomas moved to suppress, and the court granted suppression, solely on the basis that the officers had failed to knock and announce. We reverse.

[1] Officer Barnes testified that the cocaine purchased from Thomas had been small size rock cocaine. The officer had reason to believe that additional cocaine was in the house. The size of the rocks involved in this case could easily be disposed of by being "eaten, flushed, crushed or hidden." The utility records were checked and the house was determined to have normal plumbing facilities.

The officer further testified that normally drug dealers with small amounts of drugs will try to conceal or discard such drugs. The officers believed that Thomas, dealing in small amounts of cocaine, would follow that "general normal procedure."

[2] The trial judge suppressed the evidence for two reasons. First, the knock and announce rule should be enforced because the search warrant was executed more than 30 minutes after the last controlled buy. This fact is totally irrelevant as to whether the destruction of evidence exception is applicable to the knock and announce rule.

The trial court gave as the second reason: "Officer Barnes did testify that he had no articulable facts in this particular case that would lead him to believe that the destruction of evidence would occur, except that in all cases of user-type quantities, that is a possibility."

[3] The trial judge apparently relied on the Second District opinion in *State v. Bamber*, 592 So.2d 1129 (Fla. 2d DCA 1991) which disagreed with our *Bell* decision.[2] The *Bamber* court held:

> Addressing the merits of the rule announced in *Armenteros* and *Bell*, we are not convinced that the existence of normal plumbing in one's home dispenses with the need to knock and announce during the execution of a warrant to search for small quantities of cocaine. Plumbing is required in virtually any home that complies with applicable building codes. Many warrants involve searches for small items that could in theory be flushed down a toilet. If flushable items and plumbing are allowed to create an exigent set of circumstances, then the exception will begin to overshadow the rule.
>
> In this case, the police did not provide a case-specific explanation that reasonably caused them to believe that Mr. Bamber's household was likely to destroy evidence. There clearly are facts and circumstances under which the police can reasonably decide, at the time they serve a warrant, that a household presented an unusual risk concerning the destruction of evidence. Such circumstances are not presented in this case.

Bamber at 1132–33.

Neither *Bell*, *Armenteros v. State*, 554 So.2d 574 (Fla. 3d DCA 1989), nor *Berryman v. State*, 368 So.2d 893 (Fla. 4th DCA 1979) require "that a household present an unusual risk concerning the destruction of evidence" in order to justify the exception.[3]

If the concern about the destruction of evidence is a valid exception to the knock and announce rule, it must be interpreted reasonably or, rather than the exception overshadowing the rule, the exception will

1. The record does not indicate how or where the firearm was discovered.

2. *State v. Bell*, 564 So.2d 1235 (Fla. 5th DCA 1990).

3. Actually Berryman requires that "the police must have some facts pertaining to the case which would reasonably cause such apprehension." (Berryman at 895). The requirement in Berryman was satisfied because "the police had viewed the small amount of narcotics and other contraband ... hence, they had good reason to fear destruction of the evidence if there was any delay in making their entry."

Consider also *State v. Roman*, 309 So.2d 12 (Fla. 4th DCA 1975), rev. denied, 312 So.2d 761 (Fla.1975), in which the court refused to apply the destruction of evidence exception where "the occupants of a room which had no drain and only two exits, at both of which armed police officers were standing, had no opportunity at all to get rid of the seized marijuana ..." (Roman at 14.)

be rendered meaningless. The Second District has not told us what "facts and circumstances" would justify a belief that the "household present[s] an unusual risk." It appears that drains and fireplaces would be insufficient. Certainly if the officers viewed the destruction of the evidence from outside, or heard the suspects planning or carrying out the destruction, the *Bamber* test might be met. That is of little comfort, of course, if the small quantities of contraband have been destroyed during this delay. The practical effect of *Bamber* will render the execution of search warrants where only a small amount of contraband is involved totally ineffective.

Bell is still the law of this district and only requires that the officers believe that because of the small amount of contraband and the facilities available to the suspect, destruction is likely if immediate execution of the warrant is not effected.

REVERSED and REMANDED.

W. SHARP, J., concurs.

GOSHORN, C.J., dissents with opinion.

GOSHORN, Chief Judge, dissenting.

I respectfully dissent. While I agree that the lapse of time between the last controlled buy at 7:56 P.M. and the execution of the search warrant at 9:30 P.M. would not justify granting Thomas's motion to suppress, I cannot accept the view that this court's opinion in *State v. Bell*, 564 So.2d 1235 (Fla. 5th DCA 1990), provides an exception to the knock and announce requirement of section 933.09, Florida Statutes (1991), in all instances where the subject of the search warrant consists of small quantities of drugs. Such an expansive reading of *Bell* renders meaningless the protection guaranteed to the citizens of this state by the legislature's enactment of the "knock and announce" statute.

Our holding in *Bell* relied upon the supreme court's opinions in *Earman v. State*, 265 So.2d 695 (Fla.1972) and *Benefield v. State*, 160 So.2d 706 (Fla.1964). *See Bell*, 564 So.2d at 1236–37. In *Benefield*, where the court quashed an opinion of the district court of appeal denying the defendant's motion to suppress, Justice Terrell observed:

> Entering one's home without legal authority and neglect to give the occupants notice have been condemned by the law and the common custom of this country and England from time immemorial. It was condemned by the yearbooks of Edward IV, before the discovery of this country by Columbus. Judge Prettyman for the Court of Appeals in *Accarino v. United States*, 85 U.S.App.D.C. 394, 179 F.2d 456, 465, discussed the history and reasons for it. See also 22 Mich.L.Rev. 541, 673, 798, "Arrest Without a Warrant," by Wilgus. William Pitt categorized a man's home as his castle. Paraphrasing one of his speeches in which he apostrophized the home, it was said in about this fashion: The poorest pioneer in his log cabin may bid defiance to the forces of the crown. It may be located so far in the backwoods that the sun rises this side of it; it may be unsteady; the roof may leak; the wind may blow through it; the cold may penetrate it and his dog may sleep beneath the front steps, but it is his castle that the king may not enter and his men dare not cross the threshold without his permission.
>
> This sentiment has moulded our concept of the home as one's castle as well as the law to protect it. The law forbids the law enforcement officers of the state or the United States to enter before knocking at the door, giving his name and the purpose of his call. There is nothing more terrifying to the occupants than to be suddenly confronted in the privacy of their home by a police officer decorated with guns and the insignia of his office. This is why the law protects its entrance so rigidly. The law so interpreted is nothing more than another expression of the moral emphasis placed on liberty and the sanctity of the home in a free country. Liberty without virtue is much like a spirited horse, apt to go berserk on slight provocation if not restrained by a severe bit.

Benefield, 160 So.2d at 709. In *Earman*, the court held that an appellate court is not

justified in finding an exception to the knock and announce rule as a matter of law when the record fails to show any proof that the officers had reasonable grounds to fear the destruction of evidence at the time of entry. *Earman*, 265 So.2d at 697. In so holding, the supreme court rejected the appellate court's broadening of the exception to the knock and announce rule to include instances where the facts merely showed that destruction *could* have occurred. The court was explicit in its rejection of the relaxed "could have" standard:

> Essential to [proof of the validity of the arrest as a predicate for the proper admission of the seized contraband] is testimony by the arresting officers or other competent evidence that they had reasonable grounds to believe the marijuana within the house *would be* immediately destroyed if they announced their presence. Absent such evidence, the fruits of any search conducted pursuant to such arrest must be considered illegally obtained. [Emphasis added.]

Id.

With these precepts in mind, I would read *Bell* to require evidence of articulable and particularized facts showing more than small quantities of drugs and indoor plumbing before dispensing with the requirements of the knock and announce rule. Specifically, I would adopt the reasoning of the Second District Court of Appeal in *State v. Bamber*, 592 So.2d 1129 (Fla. 2d DCA 1991) and find that *Bell* is in agreement, not conflict, with *Bamber*. In *Bamber*, the Second District considered facts similar to those in *Bell* and held that the mere fact that the small quantity of cocaine could have been disposed of in the home's normal residential plumbing did not constitute exigent circumstances which would allow the law enforcement officers to dispense with the knock and announce rule. *Id.* at 1132. The court explained:

> In this case, the police did not provide a case-specific explanation that reasonably caused them to believe that Mr. Bamber's household was likely to destroy evidence. There clearly are facts and circumstances under which the police can reasonably decide, at the time they serve a warrant, that a household presented an unusual risk concerning the destruction of evidence. Such circumstances are not presented in this case.

Id. at 1133 (footnote omitted).

While the facts in *Bell* are unclear, the evidence apparently showed that the quantities of contraband maintained by Bell in his residence would be readily disposed of in a residential sink. *Bell*, 564 So.2d at 1237. However, no such evidence exists in this case. In fact, the record in this case is even devoid of any evidence relating to the amount of drugs the officers had probable cause to believe Thomas kept in his residence. Evidence of the quantity of drugs believed to be involved is relevant to determining the reasonableness of the decision not to knock and announce.

In this case, the only evidence offered to excuse compliance with the knock and announce rule was:

1. testimony that controlled buys resulted in the *purchase* of small quantities of drugs from within the residence (but not testimony concerning the quantity of drugs in the residence),
2. testimony that utility records indicated the residence appeared to have normal plumbing facilities, and
3. testimony that generally, drug dealers will try to conceal or discard small amounts of drugs when served with a warrant.

The possibility of weapons in the house apparently did not concern the officers and was not discussed by them prior to serving the warrant. The officers further testified that they had no knowledge of specific facts in this case in any way indicating that Thomas would have destroyed evidence had the officers complied with the knock and announce rule when they served the warrant.

Recognizing the scourge in this state caused by illegal drugs and related activity, it is tempting to approve any law enforcement procedure which is perceived as assisting in the control of the drug problem. We must, however, strike a balance and