IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,	:	
Petitioner,	:	
vs.	:	Case No. SC09-1684
KATHY JO CABLE,	:	
Respondent.	:	
	:	

DISCRETIONARY REVIEW OF DECISION OF THE
DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

ANSWER BRIEF OF RESPONDENT ON THE MERITS

JAMES MARION MOORMAN
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

JOHN C. FISHER
Assistant Public Defender
FLORIDA BAR NUMBER 999865

Public Defender's Office
Polk County Courthouse
P. O. Box 9000--Drawer PD
Bartow, FL 33831
(863) 534-4200

ATTORNEYS FOR RESPONDENT

TOPICAL INDEX TO BRIEF

PAGE NO.

STATEMENT OF THE CASE AND FACTS 1

SUMMARY OF THE ARGUMENT 8

ARGUMENT 9

ISSUE

IN VIEW OF THE ABROGATION OF THE EXCLUSIONARY RULE FOR FOURTH AMENDMENT KNOCK-AND-ANNOUNCE VIOLATIONS, SHOULD THE JUDICIAL REMEDY OF EXCLUSION OF EVIDENCE BE APPLIED FOR VIOLATIONS OF FLORIDAS STATUTORY KNOCK-AND-ANNOUNCE PROVISIONS?.....9

CONCLUSION 16

CERTIFICATE OF SERVICE 16

TABLE OF CITATIONS

	PAGE NO.
Federal Cases	
Accarino v. United States, 179 F.2d 456	9
Cooper v. California, 386 U.S. 58 (1967)	15
Hudson v. Michigan, 547 U.S. 586 (2006)	5, 6, 12
Miller v. United States, 357 U.S. 301 (1958)	10
Sibron v. New York, 392 U.S. 40, 61 (1968)	15
Smith v. Maryland, 442 U.S. 735 (1979)	15
Wilson v. Arkansas, 514 U.S. 927 (1995)	7, 11
State Cases	
Benefield v. State, 160 So. 2d 706 (Fla. 1964)	passim
Bernie v. State, 524 So. 2d 988 (Fla. 1988)	15
Berryman v. State, 368 So. 2d 893 (Fla. 4th DCA 1979)	14
Cable v. State, 18 So. 3d 37 (Fla. 2d DCA 2009)	6, 7, 8, 11
Cillo v. State, 849 So. 2d 353 (Fla. 2d DCA 2003)	10
Conti v. State, 540 So. 2d 934 (Fla. 1st DCA 1989)	6
Goldenberg v. Sawczak, 791 So. 2d 1078 (Fla. 2001)	15
Hurt v. State, 388 So. 2d 281 (Fla. 1st DCA 1980)	14
Kellom v. State, 849 So. 2d 391 (Fla. 1st DCA 2003)	4
Kistner v. State, 379 So. 2d 128 (Fla. 1st DCA 1979)	14
McLendon v. State, 176 So. 2d 568 (Fla. 3d DCA 1965)	12, 13
Moreno v. State, 277 So. 2d 81 (Fla. 3d DCA 1973)	13
Rasmussen v. South Florida Blood Services, Inc., 500 So. 2d 533 (Fla. 1987)	12
Shaktman v. State, 553 So. 2d 148 (Fla. 1989)	15
State v. Cable, 22 So. 3d 539 (Fla. 2009)	8
State v. Collier, 270 So. 2d 451 (Fla. 4th DCA 1972)	13
State v. Loeffler, 410 So. 2d 589 (Fla. 2d DCA 1982)	7, 11
State v. Robinson, 565 So. 2d 730 (Fla. 2d DCA 1990)	16
State v. Roman, 309 So. 2d 12 (Fla. 4th DCA 1975)	5
State v. Slaney, 653 So. 2d 422 (Fla. 3d DCA 1995)	15
Traylor v. State, 596 So. 2d 957 (Fla. 1992)	11
Urquart v. State, 211 So. 2d 79 (Fla. 2d DCA 1968)	5, 13
V.P.S. v. State, 816 So. 2d 801 (Fla. 4th DCA 2002)	6

STATEMENT OF THE CASE AND FACTS

On June 5, 2007, the State Attorney in Polk County filed an information in case no. CF07-3599-XX, charging Respondent Kathy Jo Cable with: trafficking in methamphetamine, a first-degree felony in violation of section 893.135, Florida Statutes (2005); and possession of drug paraphernalia, a first-degree misdemeanor in violation of section 893.147, Florida Statutes (2005) (v1/3, 20-21).

On August 15, 2007, the defense filed a motion to suppress evidence and statements (v1/7, 26-27). An arrest warrant was illegally executed (v1/26). The evidence was obtained as a result of an illegal search incident to the illegal arrest, in violation of the Fourth and Fourteenth Amendments to the United States Constitution and Article I, Sections 9 and 12 of the Florida Constitution (v1/R26). Ms. Cable's statements were tainted fruit of the poisonous tree (v1/26).

On September 17, 2007, a motion hearing was held before Judge Roddenbery (v1/8-9, 28-68).

Deputy Richard Lawrence testified that at 6:37 a.m. on May 15, 2007, he was checking vehicle licenses at the Lake Wales Inn (v1/32, 35). He was in uniform and had a marked Sheriff's Office vehicle (v1/33). He saw a vehicle that he saw at a drug house on the previous day (v1/32). He ran the tag number and found it was registered to Kathy Cable (v1/32-33). He ran a FCIC/NCIC check that showed she had a Polk County warrant for failure to appear on a charge of possession of methamphetamine (v1/33). He contacted

the motel manager and learned Ms. Cable and her husband were registered at the motel (v1/33).

Deputy Lawrence testified he returned to his vehicle, then he saw a juvenile come out of the room registered to Ms. Cable (v1/33). He called the juvenile to his vehicle and spoke to him (v1/33-34). The juvenile identified himself as sixteen-year-old Robert Ellis and said he was trying to wake his mother, Ms. Cable, in order to go to school (v1/33-34). Deputy Lawrence told Mr. Ellis to return to the room and get his mother up because the deputy needed to speak to her (v1/34, 38). The deputy did not tell him there was a warrant for her arrest because he believed she might head for a back door (v1/38, 40). The juvenile returned to the room and the deputy waited for them to come out of the room (v1/34-36).

Deputy Lawrence testified that after ten or fifteen minutes, at 7:09 a.m., he knocked on the door, but he received no answer (v1/34-36). He knocked again said “Sheriff’s Office” and “come to the door,” but again he received no answer (v1/335-36, 39). He did not announce the purpose he was there for and announce he had an arrest warrant for Ms. Cable (v1/39). He waited minutes after knocking, then entered the room (v1/36). Deputy Lawrence asked why they did not answer the door, but everyone sat with “deer in the headlight glare” (v1/R36). Ms. Cable was motionless and sprawled on the bed, apparently asleep, her husband was at the foot of the bed, and three boys were present (v1/36-37).

Deputy Lawrence testified he told Ms. Cable to get up and off

the bed because he had a warrant for her arrest (v1/37). She stood and he handcuffed her (v1/36). He searched her pursuant to the arrest and found drugs in her right front pants pocket (v1/37).

Deputy Lawrence testified he includes in his reports the facts he considers relevant including his compliance with statutes, but he keeps his reports “short and sweet” (v1/38-39). He was aware of the “knock and announce” statute (v1/39). He did not indicate in his report that he told Mr. Ellis to return to the room and get his mother up because the deputy needed to speak to her (v1/39).

Robert Ellis testified he was sixteen years old (v1/41). In May 2007, he attended Lake Wales Senior High School (v1/42). On May 14, 2007, he stayed in a motel because his family had just been evicted from their home (v1/42-43). His stepfather Martin Cable, mother Kathy Cable, brother Zachery Ellis, and friend Jason Baker also stayed in the room (v1/43). There was a large bed and a couch that folded out to make a second bed in the room (v1/46-47). Mr. Ellis expected his mother to drive him to school the following morning (v1/43).

Mr. Ellis testified that the following morning he left the motel room and saw a police car (v1/44, 48). An officer motioned to him to come to the car (v1/44). The officer asked for his name, his age, and the names of the persons in the motel room (v1/44). Mr. Ellis told the officer that his stepfather, mother, brother, and friend were in the room (v1/45, 48). Mr. Ellis also told the officer he had to wake his mother in order to get to school

(v1/45, 48). The officer told him to return to the room and wake his mother (v1/45, 48). The officer did not ask him to bring his mother out to talk to the officer (v1/45).

Mr. Ellis testified that when he returned to the room, his friend was awake, but his stepfather, mother, and brother were asleep (v1/45, 48). Mr. Ellis tried to wake his mother and stepfather, but he was not successful (v1/45, 49). Ten or fifteen minutes later, he heard knocking on the door, but he did not hear the officer say anything (v1/46, 49). Mr. Ellis believed it was the officer knocking and believed his stepfather woke at the sound of the knocking (v1/46, 49). After knocking a couple of times, the officer opened the door (v1/46). The officer asked why Mr. Ellis had not opened the door, but Mr. Ellis was speechless (v1/46).

Mr. Ellis testified that his mother was sleeping on the large bed and his stepfather was beside her on the bed (v1/47). His brother was sleeping on the fold-out couch (v1/47). The officer kicked Ms. Cable's leg that was dangling from the bed, told her to get up, and announced for the first time that he had a warrant (v1/47). At first she did not wake, then she jumped up in confusion (v1/48).

The State relied on *Kellom v. State*, 849 So. 2d 391 (Fla. 1st DCA 2003) and section 933.09, Florida Statutes (2005) (v1/50). The State asserted the officer was entitled to enter the room upon giving notice of his authority and purpose, saying he wished to speak with Ms. Cable was sufficient statement of purpose, to state that he had an arrest warrant would cause her to flee out of a

back door or window, and the failure to open the door was a refusal of admittance (v1/50-53, 60-62). The trial court noted the officer did not state his purpose when he knocked on the door and asked the State for case law addressing what has to be provided as purpose (v1/53, 60-62).

The defense asserted the State improperly relied on section 933.09, Florida Statutes (2005) which applied to search warrants, not arrest warrants (v1/54). The defense relied on section 901.19, Florida Statutes (2005); *Urquart v. State*, 211 So. 2d 79 (Fla. 2d DCA 1968); *Benefield v. State*, 160 So. 2d 706 (Fla. 1964); and *State v. Roman*, 309 So. 2d 12 (Fla. 4th DCA 1975) (v1/54-55, 59). The defense asserted the officer had to knock and announce his purpose of making an arrest pursuant to a warrant (v1/55-56). The defense noted that in *Hudson v. Michigan*, 547 U.S. 586 (2006), the U.S. Supreme Court held the exclusionary need not apply where the knock-and-announce rule was violated during the service of a search warrant, but noted this was an arrest warrant case and not a search warrant case, and further asserted the evidence should be excluded in light of the Florida constitutional right to privacy (v1/56-58).

The motion was taken under advisement (v1/8, 63-64).

On October 5, 2007, the trial court filed an order denying the motion to suppress (v1/10, 69-70). The trial court found "arrest warrants carry with them the limited authority to enter a dwelling when there is reason to believe that the person is within," citing *V.P.S. v. State*, 816 So. 2d 801 (Fla. 4th DCA

2002) (v1/70). The trial court held there was "substantial compliance" with the arrest statute, citing *Conti v. State*, 540 So. 2d 934 (Fla. 1st DCA 1989) (v1/70). The trial court further held the evidence should not be excluded for violation of the knock-and-announce statute, citing *Hudson v. Michigan*, 547 U.S. 586 (2006)(v1/70).

On October 31, 2007, a plea/sentencing hearing was held before Judge Roddenbery (v1/11-15, 71-85). Ms. Cable entered a negotiated no contest plea to count one in each of three cases, case nos. CF07-2556-XX, CF07-3332-XX, and CF07-3599-XX, reserving the right to appeal the denial of the dispositive motion to suppress in case no. CF07-3599-XX (v1/11, 72-79, 91-94, 102). The State nolle prossed count two in each case (v1/18, 74-75, 102).

Ms. Cable was adjudicated guilty in each case (v1/11, 82, 95). She was sentenced to a three year mandatory minimum sentence with credit for 169 days time served in case no. CF07-3599-XX, one year and one day imprisonment in case no. CF07-3332-XX, and one year and one day imprisonment in case no. CF07-2566-XX (v1/11-15, 82, 89, 98-100).

Timely notice of appeal was filed on November 5, 2007 (v1/17, 103).

The Second District Court of Appeal reversed, holding the trial court erred in denying the motion to suppress. *Cable v. State*, 18 So. 3d 37, 40 (Fla. 2d DCA 2009). The court held that although the United States Supreme Court in *Hudson v. Michigan*, 547 U.S. 586 (2006) held the Fourth Amendment does not require

suppression of evidence obtained in violation of the knock-and-announce rule, the issue in this case is not whether the evidence should be suppressed under the Fourth Amendment. *Cable*, 18 So. 3d at 39. The issue was whether the evidence should be suppressed as a remedy that must be applied for the violation of Florida's statutory knock-and-announce provision. The court noted:

> The Florida case law recognizes the common law and constitutional background for the knock-and-announce statute. *See Benefield,* 160 So. 2d at 710 (stating that section 901.19 "appears to represent a codification of the English common law which recognized the fundamental sanctity of one's home"); *State v. Loeffler,* 410 So. 2d 589, 593 (Fla. 2d DCA 1982) (stating that the purpose of the knock-and-announce statute "parallels that of the constitutional guarantees against search and seizure"). But the case law does not support the conclusion that the statute has no force independent of the requirements of the Fourth Amendment. Under the Florida case law, it is by no means clear that the exclusionary rule has been applied to violations of the knock-and-announce statute only because Fourth Amendment knock-and-announce violations were subject to the exclusionary rule. Indeed, *Benefield* applied the exclusionary rule for violations of the knock-and-announce statute long before the United States Supreme Court decided in *Wilson v. Arkansas,* 514 U.S. 927, 115 S.Ct. 1914, 131 L.Ed.2d 976 (1995), that the common law knock-and-announce rule was also a " 'command of the Fourth Amendment.' " *Id.* at 931, 115 S.Ct. 1914 (quoting *New Jersey v. T.L.O.,* 469 U.S. 325, 337, 105 S.Ct. 733, 83 L.Ed.2d 720 (1985)). Thus, we conclude that *Hudson* does not displace the existing Florida precedent, which mandates the application of the exclusionary rule for violations of the knock-and-announce statute.

Cable, 18 So. 3d at 39. The court certified the following question as being one of great public importance:

> IN VIEW OF THE ABROGATION OF THE EXCLUSIONARY RULE FOR FOURTH AMENDMENT KNOCK-AND-ANNOUNCE VIOLATIONS, SHOULD THE JUDICIAL REMEDY OF EXCLUSION OF EVIDENCE BE APPLIED FOR VIOLATIONS OF FLORIDAS STATUTORY KNOCK-AND-ANNOUNCE PRO-VISIONS?

Cable, 18 So. 3d at 40.

The State sought review of this decision of the Second District Court of Appeal. This Court granted review. *State v. Cable*, 22 So. 3d 539 (Fla. 2009).

SUMMARY OF THE ARGUMENT

The Second District Court of Appeal properly found that the trial court erred by failing to suppress evidence seized in violation of Florida's statutory knock-and-announce provision. The opinion of the Second District Court of Appeal should be affirmed.

ARGUMENT
ISSUE

IN VIEW OF THE ABROGATION OF THE EXCLUSIONARY RULE FOR FOURTH AMENDMENT KNOCK-AND-ANNOUNCE VIOLATIONS, SHOULD THE JUDICIAL REMEDY OF EXCLUSION OF EVIDENCE BE APPLIED FOR VIOLATIONS OF FLORIDAS STATUTORY KNOCK-AND-ANNOUNCE PROVISIONS?

The Second District Court of Appeal properly found that the trial court erred by failing to suppress evidence seized in violation of Florida's statutory knock-and-announce provisions.

> "If a peace officer fails to gain admittance after she or he has **announced her or his authority and purpose** in order to make an arrest either by a warrant or when authorized to make an arrest for a felony without a warrant, the officer may use all necessary and reasonable force to enter any building or property where the person to be arrested is or is reasonably believed to be.

Section 901.19(1), Florida Statutes (2005) (emphasis added).

> When an officer is authorized to make an arrest in any building, he should first approach the entrance to the building. **He should then knock on the door and announce his name and authority**, sheriff, deputy sheriff, policeman or other legal authority **and what his purpose is in being there**. If he is admitted and has a warrant, he may proceed to serve it. He is not authorized to be there to make an arrest unless he has a warrant or is authorized to arrest for a felony without a warrant. If he is refused admission and is armed with a warrant or has authority to arrest for a felony without a warrant, he may then break open a door or window to gain admission to the building and make the arrest. If the building happens to be one's home, these requirements should be strictly 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 v. State, 160 So. 2d 706, 709 (Fla. 1964) (emphasis added). See also *Miller v. United States*, 357 U.S. 301 (1958) (evidence seized in violation of knock-and-announce is inadmissible pursuant to statute and the common law). "When reviewing a motion to suppress, the standard of review for the trial court's application of the law to its factual findings is de novo, but a reviewing court must defer to the factual findings of the trial court that are supported by competent, substantial evidence." *Cillo v. State*, 849 So. 2d 353, 354 (Fla. 2d DCA 2003).

"Under our federalist system of government, states may place

more rigorous restraints on government intrusion than the federal charter imposes; they may not, however, place more restrictions on the fundamental rights of their citizens than the federal Constitution permits." *Traylor v. State*, 596 So. 2d 957, 961 (Fla. 1992). By enacting the statutory knock-and-announce provisions Florida placed more rigorous restraint on government intrusion than the federal charter imposes.

As the Second District Court of Appeal noted:

> The Florida case law recognizes the common law and constitutional background for the knock-and-announce statute. *See Benefield,* 160 So. 2d at 710 (stating that section 901.19 "appears to represent a codification of the English common law which recognized the fundamental sanctity of one's home"); *State v. Loeffler,* 410 So. 2d 589, 593 (Fla. 2d DCA 1982) (stating that the purpose of the knock-and-announce statute "parallels that of the constitutional guarantees against search and seizure"). But the case law does not support the conclusion that the statute has no force independent of the requirements of the Fourth Amendment. Under the Florida case law, it is by no means clear that the exclusionary rule has been applied to violations of the knock-and-announce statute only because Fourth Amendment knock-and-announce violations were subject to the exclusionary rule. Indeed, *Benefield* applied the exclusionary rule for violations of the knock-and-announce statute long before the United States Supreme Court decided in *Wilson v. Arkansas,* 514 U.S. 927, 115 S.Ct. 1914, 131 L.Ed.2d 976 (1995), that the common law knock-and-announce rule was also a " 'command of the Fourth Amendment.' " *Id.* at 931, 115 S.Ct. 1914 (quoting *New Jersey v. T.L.O.,* 469 U.S. 325, 337, 105 S.Ct. 733, 83 L.Ed.2d 720 (1985)). Thus, we conclude that *Hudson* does not displace the existing Florida precedent, which mandates the application of the exclusionary rule for violations of the knock-and-announce statute.

Cable, 18 So. 3d at 39.

Also, unlike the United States Constitution, the Florida Constitution explicitly protects the privacy of its citizens. See

Art. I, § 23, Fla. Const. ("Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein."). "Florida became the fourth state to adopt a strong, freestanding right of privacy as a separate section of its state constitution, [footnote deleted] thus providing an explicit textual foundation for those privacy interests inherent in the concept of liberty which may not otherwise be protected by specific constitutional provisions. [Footnote deleted.]" *Rasmussen v. South Florida Blood Services, Inc.*, 500 So. 2d 533, 536 (Fla. 1987). The evidence establishes police entered the residence of Ms. Cable without announcing their purpose while she was in bed sleeping (v1/33-40, 44-49). Entering the motel room of a sleeping woman in violation of the knock-and-announce provision clearly violates her right to privacy.

Although in *Hudson v. Michigan*, 547 U.S. 586 (2006), the Court found evidence obtained in violation of "knock-and-announce" did not require exclusion pursuant to the Fourth Amendment, Florida courts have excluded evidence seized in violation of the Florida statutory knock-and-announce provisions before the United State's Supreme Court applied the Fourth Amendment to knock-and-announce violations in 1995. See *Benefield v. State*, 160 So. 2d 706 (Fla. 1964); *McLendon v. State*, 176 So. 2d 568, 569 (Fla. 3d DCA 1965) ("Reluctant though we may be to disturb the findings made by the trial court regarding

admissibility of evidence, we are nevertheless impelled to hold here that a finding to the effect that the searching officers did in fact comply with Section 933.09, supra is manifestly against the weight of the evidence. The search was illegal and therefore should have been quashed and the seized evidence suppressed."); *Urquhart v. State*, 211 So. 2d 79, 83 (Fla. 2d DCA 1968) ("Inspector Salla's actions in pushing open the door constituted a breaking within the meaning of Section 901.19(1). [Citations deleted.] From his above-quoted testimony it is clear that Inspector Salla did not announce his purpose and he did not wait until he was refused admittance before pushing open the door. Therefore, Inspector Salla failed to comply with the provisions of 901.19(1). Such failure, unless, justified, makes the subsequent arrest and incidental search invalid and any evidence seized as a result thereof is inadmissible."); *State v. Collier*, 270 So. 2d 451, 454 (Fla. 4th DCA 1972) ("In the present case, the evidence clearly revealed that the officers did not comply with the controlling statute in that before entry they did neither knock nor otherwise announce their presence to the Colliers within nor did they announce their purpose. As a result of the failure of the officers to comply with the statute, the evidence seized under the warrant was seized illegally, was not admissible in evidence, and was, therefore, subject to suppression."); *Moreno v. State*, 277 So. 2d 81, 84 (Fla. 3d DCA 1973) ("The record before us is devoid of any testimony by the

police officers or other competent evidence showing any circumstances that would bring the case sub judice within any of the four exceptions to the strict dictates of the statute. Absent such evidence, the fruits of any search conducted pursuant to such arrest must be considered illegally obtained and should have been suppressed."); *Berryman v. State*, 368 So. 2d 893, 896 (Fla. 4th DCA 1979) ("The police had no "reason to fear at the time of entry the destruction of evidence." [Footnote deleted.] That being the case, the entry, the search and the seizure were unlawful and the evidence thereby uncovered should have been suppressed."); *Kistner v. State*, 379 So. 2d 128 (Fla. 1st DCA 1979) ("The sheriff found the contraband in appellant's home when executing a warrant for searching the house. The sheriff knocked repeatedly and called out, 'Anybody home?' to which there was no reply because his knock and call were not heard by the occupant, appellant's wife. So the sheriff entered. ... The state urges that the sheriff's failure to announce his identity and purpose should be excused because that announcement was or seemed futile, and it reasonably appeared to him that no one was home to hear his call. We cannot subscribe to that erosion of Benefield v. State, 160 So. 2d 706 (Fla. 1964)."); *Hurt v. State*, 388 So. 2d 281, 284 (Fla. 1st DCA 1980) ("Although, as found by the trial judge, the officers knocked and, as the door was opened, announced their identity, they nevertheless did not announce their purpose. ... As observed in *Benefield v. State*, supra,

arresting officers must comply strictly with the requirements of Section 901.19(1). Here they did not. The contraband seized must be suppressed as evidence.").

The Florida Legislature was presumably aware of these opinions construing the statutory knock-and-announce provisions to provide for suppression of evidence in order to protect liberty, privacy, and the sanctity of the home and yet found no need amend the statutes to eliminate suppression of evidence as a remedy for violating the knock-and-announce provisions. "Long-term legislative inaction after a court construes a statute amounts to legislative acceptance or approval of that judicial construction." *Goldenberg v. Sawczak*, 791 So. 2d 1078, 1081 (Fla. 2001).

> [T]he states are privileged under their state law to adopt higher, but not lower, standards for police conduct than those required by the Fourth Amendment. *Cooper v. California,* 386 U.S. 58, 62, 87 S.Ct. 788, 791, 17 L.Ed.2d 730 (1967) (state constitutional provision on search and seizure); *Sibron v. New York,* 392 U.S. 40, 61, 88 S.Ct. 1889, 1902, 20 L.Ed.2d 917 (1968) (state statute). In Florida, these higher standards may not, as a matter of state law, be imposed under the state constitutional guarantee against unreasonable searches and seizures, Art. I, § 12, Fla. Const. (1982 amendments); *Bernie v. State,* 524 So. 2d 988 (Fla. 1988), but may be imposed by other provisions of Florida law, including a state statute. *Compare Shaktman v. State,* 553 So. 2d 148 (Fla. 1989) (pen registers regulated under Article I, section 23 of the Florida Constitution) *with Smith v. Maryland,* 442 U.S. 735, 99 S.Ct. 2577, 61 L.Ed.2d 220 (1979) (pen registers; Fourth Amendment).

State v. Slaney, 653 So. 2d 422 (Fla. 3d DCA 1995).

The Second District Court of Appeal properly found that the

trial court erred by failing to suppress evidence seized in violation of Florida's statutory knock-and-announce provision. "This judicially created remedy was announced as a matter of common law in *Benefield.* This common law exclusionary rule is based on the sanctity of the home and the need for privacy." *State v. Robinson,* 565 So. 2d 730, 732 (Fla. 2d DCA 1990). The opinion of the Second District Court of Appeal should be affirmed.

CONCLUSION

In light of the foregoing reasons, arguments, and authorities, Respondent respectfully asks this Honorable Court to affirm the opinion of the Second District Court of Appeal.

CERTIFICATE OF SERVICE

I certify that a copy has been mailed to Bill McCollum, Concourse Center #4, 3507 E. Frontage Rd. - Suite 200, Tampa, FL 33607, (813) 287-7900, on this _____ day of February, 2010.

CERTIFICATION OF FONT SIZE

I hereby certify that this document was generated by computer using Microsoft Word with Courier New 12-point font in compliance with Fla. R. App. P. 9.210 (a)(2).

Respectfully submitted,

JAMES MARION MOORMAN
Public Defender
Tenth Judicial Circuit
(863) 534-4200

JOHN C. FISHER
Assistant Public Defender
Florida Bar Number 0999865
P. O. Box 9000 - Drawer PD
Bartow, FL 33831

jcf