IN THE SUPREME COURT OF FLORIDA

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

ON PETITION FOR REVIEW FROM
THE SECOND DISTRICT COURT OF APPEAL
STATE OF FLORIDA

PETITIONER'S INITIAL BRIEF

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STATEMENT OF THE CASE

Respondent was charged by information with trafficking in methamphetamine, in violation of Section 893.135, Florida Statutes (2006), and possession of drug paraphernalia, in violation of Section 893.147 (R 20-21). She filed a motion to suppress the evidence against her on the ground that the warrant for her arrest was illegally executed (R 26-27). After an evidentiary hearing, the trial court denied the motion (R 69-70). Respondent subsequently entered a negotiated nolo contendere plea to the trafficking charge in exchange for a minimum mandatory sentence of 3 years in prison, reserving the right to appeal the denial of her motion to suppress (R 72-79, 91-94), and the State nolle prossed the paraphernalia possession count (R 75, 102). On October 31, 2007, Respondent was sentenced in accordance with the plea agreement (R 95-102), and her notice of appeal was filed on November 5, 2007 (R 103).

On appeal, the Second District Court of Appeal held that the trial court erred in denying Respondent's motion to suppress and therefore reversed her judgment and sentence and remanded with directions to discharge her, certifying 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 FLORIDA'S STATUTORY KNOCK-AND-ANNOUNCE PROVISIONS?

Cable v. State, 18 So. 3d 37, 40 (Fla. 2d DCA 2009). The State timely sought review of this decision, which this Court granted.

STATEMENT OF THE FACTS

Deputy Richard Lawrence testified that, on May 15, 2007 at 6:37 a.m., he was checking motor vehicle licenses at the Lake Wales Inn (R 32, 35). He was in uniform and was driving a marked patrol car (R 33). He saw a vehicle that he had seen at a drug house the previous day, ran the tag number, and learned that the vehicle was registered to Respondent (R 32-33). An NCIC/FCIC check revealed that Respondent had an outstanding Polk County warrant for her arrest for failure to appear on a charge of possession of methamphetamine (R 33). Lawrence then contacted the motel manager and learned that Respondent and her husband were renting a room at the motel (R 33).

Lawrence returned to his patrol car and saw a juvenile come out of the room registered to Respondent (R 33). He called the youth over to his patrol car and spoke with him (R 33-34). The young man identified himself as R.E., age 16, and said that he was trying to wake his mother, Respondent, to get her to take him to school (R 33-34). Lawrence told R.E. to go back to his room and get his mother up because the deputy needed to speak to her (R 34, 38). Lawrence did not mention that there was a warrant for Respondent's arrest because he believed that she might try to escape

through a back door (R 38, 40). R.E. returned to the room, and Lawrence waited for R.E. and Respondent to come outside (R 34-36).

At 7:09 a.m., after waiting for 10-15 minutes, Lawrence knocked on the door of Respondent's room, but there was no answer (R 34-36). He knocked again and said, "Sheriff's Office" and "come to the door," but still received no answer (R 35-36, 39). He did not, however, announce that he had a warrant for Respondent's address or otherwise state his specific purpose for being there (R 39). Lawrence knocked several times, and "it could wake up a graveyard the way I knock a door" (R 36). He waited a matter of minutes, allowing plenty of time for someone to come to the door (R 36). He finally entered the room through the unlocked door (R 35-36). Upon opening the door, Lawrence saw Respondent lying fully clothed on top of a bed and her husband at the foot of the bed (R 35). R.E. and two other boys were sitting in chairs (R 35-36). When Lawrence asked why no one had answered the door, he got a "deer in the headlight glare" from everyone (R 35-36).

Lawrence told Respondent to get up because he had a warrant for her arrest, then stood her up and handcuffed her (R 37). His search of her person pursuant to the arrest revealed drugs in her right front pants pocket (R 37).

R.E. testified that he and his family were staying in the motel on the date in question because they had just been evicted from their house (R 42-43). R.E. was in high school and needed his

mother to drive him to school (R 42-43). On the morning in question, when the deputy called him over, the deputy asked for his name and age and the names of the other people in the motel room, and R.E. gave him that information (R 44-45, 48). The deputy told him to go back and wake his mother but did not ask him to bring his mother outside to talk to the deputy (R 45, 48).

When R.E. returned to the room, one of the other boys was awake, but everyone else was asleep (R 45, 48). R.E. unsuccessfully tried to wake his parents, then heard knocking on the door but did not hear anyone say anything (R 45-46, 49). R.E. believed that it was the deputy who was knocking and that the knocking woke his stepfather (R 46, 49). R.E. did not answer the door when he heard the knocking, but he tried to wake his mother and stepfather up to tell them that someone was at the door (R 49). The deputy opened the door after knocking a couple of times (R 46).

In its written order denying Respondent's motion to suppress, the trial court found:

> On the morning of May 15, 2007, Polk County Deputy Sheriff Richard Larence [sic] observed Defendant's vehicle at the Lake Wales Inn. He recognized the vehicle as being one which he observed the previous day at the home of a known felon. Deputy Sheriff Larence then ran the tags on the vehicle and discovered that Defendant had an outstanding warrant for her arrest.
>
> Shortly thereafter, Deputy Sheriff Larence observed [R.E.], Defendant's son, walking outside the room and made contact with him. [R.E.] advised the Deputy Sheriff that Defen-

dant and several other persons were in the room. Deputy Sheriff Larence then asked [R.E.] to wake Defendant and have her come outside. [R.E.] agreed and Deputy Sheriff Larence waited approximately 20 minutes, but neither [R.E.] nor the Defendant exited the room.

Deputy Sheriff Larence proceeded to knock on the door of the room and announce "Sheriff's Office." He waited, and repeated the process. With no response, Deputy Sheriff Larence opened the door, which was unlocked, and observed a number of people awake in the room and Defendant, still unresponsive on the bed. Deputy Sheriff Larence woke the Defendant and placed her into custody. Subsequently, Deputy Sheriff Larence found methamphetamine and drug paraphernalia on Defendant's person.

Defendant contends that the Deputy Sheriff failed to announce his purpose for being there when knocking on the door, and therefore, the entry and arrest were unlawful. The Court disagrees.

Pursuant to V.P.S. v. State, 816 So. 2d 801 (Fla. 4th DCA 2002), arrest warrants carry with them the limited authority to enter a dwelling when there is reason to believe that the person is within. Florida also recognizes a "substantial compliance" standard for arrest statutes. Conti v. State, 540 So. 2d 934 (Fla. 1st DCA 1989). In accordance with these standards, and in light of all of the attendant facts and circumstances, the Court holds that there was, at a minimum, substantial compliance on the part of the officer and lawful authority to enter the room to arrest the Defendant.

Furthermore, in Hudson v. Michigan, 126 S. Ct. 2159 (2006), a case in which it was undisputed that the knock and announce statute was violated, the United States Supreme Court held that, "exclusion [of the evidence] may not be premised on the mere fact that a constitutional violation was a "but-for" cause of ob-

taining evidence." Id. at 2164.

> Accordingly, it is **ORDERED AND ADJUDGED** that Defendant's *Motion to Suppress Evidence* is **DENIED**.

(R 69-70)

SUMMARY OF THE ARGUMENT

The trial court correctly found that, because *Hudson v. Michigan*, 547 U.S. 586, 126 S. Ct. 2159, 165 L. Ed. 2d 56 (2006), abrogated application of the Exclusionary Rule to Fourth Amendment knock-and-announce violations, any failure of the deputy to fully comply with the Knock and Announce statute did not entitle Respondent to suppression of the evidence against her. Accordingly, the Second District Court of Appeal should have affirmed the trial court's denial of Respondent's motion to suppress.

ARGUMENT

IN VIEW OF THE ABROGATION OF THE EXCLUSIONARY RULE FOR FOURTH AMENDMENT KNOCK-AND-ANNOUNCE VIOLATIONS, APPLICATION OF THE JUDICIAL REMEDY OF EXCLUSION OF EVIDENCE TO VIOLATIONS OF FLORIDA'S STATUTORY KNOCK-AND-ANNOUNCE PROVISIONS IS PRECLUDED.

A trial court's factual findings on a motion to suppress evidence are clothed with a presumption of correctness and will not be overturned if there is competent, substantial evidence which would support the decision under the correct analysis, while application of the law to the facts as found by the trial court is a mixed question of law and fact and is reviewed de novo. *E.g.*, *Nelson v. State*, 850 So. 2d 514, 521 (Fla.), *cert. denied*, 540 U.S. 1091, 124

S. Ct. 961, 157 L. Ed. 2d 797 (2003).

Before knocking on the door, Deputy Lawrence, who was in uniform and driving a marked patrol car, had told the young man who had come out of the room in question and who had identified himself as Respondent's son to wake his mother and have her come outside because Lawrence needed to speak with her, and Lawrence had then waited in vain for 10-15 minutes for Respondent to emerge. He then knocked loudly on the door several times, announced himself as being from the Sheriff's Office and added "come to the door," and waited a matter of minutes before opening the unlocked door.

The Second District held, however, that the trial court should have granted Respondent's motion to suppress the evidence against her because the deputy who arrested her had failed to announce before opening the door to her motel room that his purpose was to arrest her. The State submits that the Second District is wrong.

It is true that the deputy involved here did not announce that his purpose was to arrest Respondent before opening the door to her motel room and entering the room. However, Respondent's arrest, being predicated on a warrant, was nevertheless valid.

> [A]n illegal entry does not vitiate [an] arrest[] pursuant to [a] concededly valid arrest warrant[]....the arrest[], if not the entry, w[as] proper. The arrest warrant[] represent[s] judicial sanction of the deprivations of the suspect[']s] libert[y]. Possession of the warrant[] was a completely self-validating justification for the arrest[] regardless of the circumstances under which the police reached the location where they served the

> warrant[]....Thus, the arrest[is] valid, though the method of effecting [it] be not.

United States v. Cravero, 545 F. 2d 406, 416-417 (5th Cir. 1976), *cert. denied*, 430 U.S. 983, 97 S. Ct. 1679, 52 L. Ed. 2d 377 (1977) (footnote omitted).

And the United States Supreme Court has held that items seized in warrantless searches incident to lawful arrests are admissible inasmuch as such searches are reasonable to protect the arresting officer's safety and prevent the concealment or destruction of evidence. *Chimel v. California*, 395 U.S. 752, 762-763, 89 S. Ct. 2034, 2040, 23 L. Ed. 2d 685 (1969).

Moreover, the trial court properly relied on *Hudson v. Michigan*, 547 U.S. 586, 126 S. Ct. 2159, 165 L. Ed. 2d 56 (2006), in which the United States Supreme Court held that application of the exclusionary rule is not appropriate for violation of the knock-and-announce requirement, notwithstanding the knock-and-announce requirement's deep roots in the common law of England and the holding in *Wilson v. Arkansas*, 514 U.S. 927, 115 S. Ct. 1914, 1915, 131 L. Ed. 2d 976 (1995), that "this common-law 'knock and announce' principle forms a part of the reasonableness inquiry under the Fourth Amendment."

In *State v. Robinson*, 565 So. 2d 730, 734 (Fla. 2d DCA), *review dismissed*, 574 So. 2d 143 (Fla. 1990), where law enforcement officers with a search warrant gained entry to a house through an unlocked screen door without first knocking or announcing their

authority or purpose, the Second District affirmed but presciently questioned whether, in situations where, as here, there was no physical injury, violence, or property damage, "the extreme penalty of exclusion is necessary or appropriate." Sure enough, the United States Supreme Court now agrees that a violation of the knock-and-announce rule in and of itself does not require the exclusion of evidence seized after an entry into a dwelling that violated the knock-and-announce rule.

Although it is true that the states may place more rigorous restraints on government intrusion than the United States Constitution imposes and that the Florida Constitution arguably provides greater protection of the privacy of Florida's citizens, this case remains a Fourth Amendment case involving a decision as to whether evidence found in a search incident to arrest should be suppressed.

Article I, Section 12, of the Florida Constitution, which was amended in 1982 and effective January 3, 1983, provides in pertinent part: "The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures,...shall not be violated....This right shall be construed in conformity with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme Court." This Court held in *Bernie v. State*, 524 So. 2d 988, 990-991 (Fla. 1988), that, following the 1982 amendment to the Florida Constitution, "we are bound to follow the interpretations of the United States Su-

preme Court with relation to the fourth amendment, and provide no greater protection than those interpretations. Indeed, an exclusionary rule that was once constitutionally mandated in Florida can now be eliminated by judicial decision of the United States Supreme Court." *Perez v. State*, 620 So. 2d 1256, 1258 (Fla. 1993), is to the same effect.

Accordingly, *Hudson* is controlling here, and it contains two separate holdings that support the trial court's denial of Respondent's motion to suppress.

The first such holding in *Hudson* is that there are many situations in which it is not necessary to knock and announce, including when there is reason to believe that evidence would likely be destroyed if advance notice were given or if knocking and announcing would be futile. 126 S. Ct. at 2162-2163. If it is not necessary to knock and announce when there is reason to believe that evidence would likely be destroyed, then it should similarly not be necessary for a law enforcement officer to announce his purpose when he is there to effect an arrest pursuant to an arrest warrant if there is reason to believe that the subject of that warrant will exit the premises through a door or window other than the door at which the officer is standing and flee. Deputy Lawrence, who was alone, testified to just such a concern in the instant case, and *Hudson* notes, "We require only that police 'have a reasonable suspicion ...under the particular circumstances' that one of these grounds for

failing to knock and announce exists, and we have acknowledged that '[t]his showing is not high.'" 126 S. Ct. at 2163.

Hudson, in which the state conceded that the law enforcement officers' entry through an unlocked door only 2-3 seconds after knocking and announcing their presence constituted a knock-and-announce violation, further held that the interests violated by a knock-and-announce violation have nothing to do with the evidence sought to be suppressed, the interests protected by the knock-and-announce requirement being as follows:

> One of those interests is the protection of human life and limb, because an unannounced entry may provoke violence in supposed self-defense by the surprised resident. Another interest is the protection of property. Breaking a house (as the old cases typically put it) absent an announcement would penalize someone who "'did not know of the process, of which, if he had notice, it is to be presumed that he would obey it....'" The knock-and-announce rule gives individuals "the opportunity to comply with the law and to avoid the destruction of property occasioned by a forcible entry." And thirdly, the knock-and-announce rule protects those elements of privacy and dignity that can be destroyed by a sudden entrance. It gives residents the "opportunity to prepare themselves for" the entry of the police. "The brief interlude between announcement and entry with a warrant may be the opportunity that an individual has to pull on clothes or get out of bed." In other words, it assures the opportunity to collect oneself before answering the door.

126 S. Ct. at 2165 (citations omitted). Following a lengthy discussion that noted, inter alia, that, since the decision in *Mapp v.*

Ohio, 367 U.S. 643, 81 S. Ct. 1684, 6 L. Ed. 2d 1081 (1961), the remedy of a civil lawsuit has become available in the event of a knock-and-announce violation—a fact also relied on by the Second District in *Robinson*, 565 So. 2d at 733—the Supreme Court concluded that

> the social costs of applying the exclusionary rule to knock-and-announce violations are considerable; the incentive to such violations is minimal to begin with, and the extant deterrences against them are substantial--incomparably greater than the factors deterring warrantless entries when *Mapp* was decided. Resort to the massive remedy of suppressing evidence of guilt is unjustified.

126 S. Ct. at 2168.

Respondent relied below on *Moreno v. State*, 277 So. 2d 81 (Fla. 3d DCA 1973); *Urquhart v. State*, 211 So. 2d 79 (Fla. 2d DCA 1968); and *Guerrie v. State*, 691 So. 2d 1132 (Fla. 4th DCA 1997). However, all of these cases are factually distinguishable from the instant case. *Moreno* involved forced entry, which did not occur here. The first officer who entered the defendant's home in *Urquhart* did not wait until he was refused entry, pushing past the woman who opened the door to his knock without waiting for her to invite him in or tell him he would not be permitted to enter, and no justification for noncompliance with the Knock and Announce statute was given, unlike here, where there was refusal of admittance in the form of failure to answer the door within a reasonable time and where the deputy offered an explanation for his failure to

expressly state his purpose to arrest Respondent pursuant to the outstanding warrant, i.e., his concern, based on his experience, that such a warning would likely result in Respondent's flight. And in *Guerrie*, the officers announced neither their authority nor their purpose and did not have a warrant.

More important, these cases (and, perforce, the cases upon which they rely) antedate *Hudson*, and this Court recognized that *Hudson* may affect the continued viability of prior case law in *Jenkins v. State*, 978 So. 2d 116, 130 n. 14 (Fla. 2008), a case which does not involve either Knock and Announce statute.

In sum, the trial court correctly found that, because *Hudson v. Michigan*, 547 U.S. 586, 126 S. Ct. 2159, 165 L. Ed. 2d 56 (2006), abrogated application of the Exclusionary Rule to Fourth Amendment knock-and-announce violations, any failure of the deputy to fully comply with the Knock and Announce statute did not entitle Respondent to suppression of the evidence against her. Accordingly, the Second District Court of Appeal should have affirmed the trial court's denial of Respondent's motion to suppress.

CONCLUSION

Petitioner respectfully requests that this Honorable Court quash the Second District's opinion discharging Respondent and remand this case with directions to affirm Respondent's judgment and sentence for trafficking in methamphetamine.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to John C. Fisher, Assistant Public Defender, P.O. Box 9000—Drawer PD, Bartow, Florida 33831-9000, this 10th day of December, 2009.

CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 12-point Courier New, in compliance with Fla. R. App. P. 9.210(a)(2).

Respectfully submitted,

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