

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

Nos. 2009-0523

The State of New Hampshire

v.

Matthew Sconsa

APPEAL PURSUANT TO RULE 7 FROM A JUDGMENT OF THE
SUPERIOR COURT FOR THE NORTHERN JUDICIAL DISTRICT OF
HILLSBOROUGH COUNTY

BRIEF FOR THE STATE OF NEW HAMPSHIRE

THE STATE OF NEW HAMPSHIRE

Michael A. Delaney
Attorney General

Stephen D. Fuller
NH Bar No. 14009
Senior Assistant Attorney General
Criminal Justice Bureau
New Hampshire Department of Justice
33 Capitol Street
Concord, NH 03301-6397
603.271.3671

(15 Minutes)

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

ISSUE PRESENTED 1

STATEMENT OF THE CASE 2

STATEMENT OF FACTS 3

 A. Evidence At The Suppression Hearing 3

 B. The Defendant’s Motion, The State’s Objection, And The Trial
 Court’s Ruling 5

SUMMARY OF THE ARGUMENT 7

ARGUMENT 9

I. THE KNOCK-AND-ANNOUNCE RULE WAS INAPPLICABLE
WHERE THE OFFICERS KNOCKED ON THE DEFENDANT’S HOTEL
ROOM DOOR, THE DOOR WAS OPENED BY AN OCCUPANT, AND
THE OFFICERS USED NO FORCE IN WALKING THROUGH THE
OPEN DOOR TO ARREST THE DEFENDANT 9

II. THE KNOCK-AND-ANNOUNCE RULE IS BASED IN THE COMMON
LAW AND NOT THE NEW HAMPSHIRE CONSTITUTION WHERE
THIS COURT SPECIFICALLY HELD SUCH IN JONES AND
NOTHING HAS CHANGED IN THE HISTORY OF THE COMMON
LAW. 19

III. THE EXCLUSIONARY RULE IS INAPPROPRIATE IN THE CONTEXT
OF KNOCK-AND-ANNOUNCE VIOLATIONS BECAUSE IT DOES
NOT ACHIEVE THE PROPER BALANCE BETWEEN DETERRENT
BENEFITS AND SOCIAL COSTS. 22

 A. The Exclusionary Rule Is Not Required Under The New Hampshire
 Constitution Even If This Court Finds A Violation Of The Knock-
 And-Announce Rule. 23

B. Even If There Is A Violation Of The Knock-And-Announce Rule Under The Federal Constitution The Defendant Would Not Be Entitled To Suppression Of The Evidence.....	25
CONCLUSION.....	27
STATE'S APPENDIX.....	29

TABLE OF AUTHORITIES

Cases

Adcock v. Commonwealth, 967 S.W.2d 6 (Ky. 1998).....16, 17

Commonwealth v. Macias, 711 N.E.2d 130 (Mass. 1999).....21

Hudson v. Michigan, 547 U.S. 589 (2006).....passim

People v. Keogh, 120 Cal. Rptr. 817 (Ct. App. 1975).....15

Sabbath v. United States, 391 U.S. 585 (1968)11, 15, 17

Semayne’s Case, 5 Coke 91, 77 Eng. Rep. 194 (1604)..... 10, 12

State v. Beauchesne, 151 N.H. 803 (2005).....23, 25

State v. Canelo, 139 N.H. 376 (1995)24

State v. Coyman, 130 N.H. 815 (1988)13, 14

State v. Dixon, 924 P.2d 181 (Haw. 1996).....16, 17

State v. Jones, 127 N.H. 515 (1985).....passim

State v. LaPonsie, 664 P.2d 223 (Ariz. Ct. App. 1983).....14

State v. Miller, 499 P.2d 241 (Wash. Ct. App. 1972).....15

State v. Robinson, 158 N.H. 792 (2009)9

State v. Sakellson, 379 N.W.2d 779 (N.D. 1985).....14

United States v. Acosta, 502 F.3d 54 (2d Cir. 2007).....26

United States v. Alejandro, 368 F.3d 130 (2d Cir. 2004).....16

United States v. Ankeny, 502 F.3d 829 (9th Cir. 2007).....26

<u>United States v. Bruno</u> , 487 F.3d 304 (5th Cir. 2007).....	26
<u>United States v. Bustamante-Gamez</u> , 488 F.2d 4 (9th Cir. 1973)	11
<u>United States v. Contreras-Ceballos</u> , 999 F.2d 432 (9th Cir. 1993).....	16, 18
<u>United States v. Esser</u> , 451 F.3d 1109 (10th Cir. 2006).....	26
<u>United States v. Farias-Gonzalez</u> , 556 F.3d 1181 (11th Cir. 2009)	26
<u>United States v. Gaver</u> , 452 F.3d 1007 (8th Cir. 2006).....	26
<u>United States v. Mosley</u> , 454 F.3d 249 (3d Cir. 2006).....	26
<u>United States v. Pelletier</u> , 469 F.3d 194 (1st Cir. 2006).....	26
<u>United States v. Remigio</u> , 767 F.2d 730 (10th Cir. 1985).....	11
<u>United States v. Salter</u> , 815 F.2d 1150 (7th Cir. 1987)	16
<u>United States v. Smith</u> , 526 F.3d 306 (6th Cir. 2008).....	26
<u>United States v. Southerland</u> , 466 F.3d 1083 (D.C. Cir. 2006).....	26
<u>United States v. Watson</u> , 558 F.3d 702 (7th Cir. 2009)	26
<u>Wilson v. Arkansas</u> , 514 U.S. 927 (1995).....	19, 20, 21

Constitutional Provisions

N.H. Const. pt. I, art. 19.....	9, 10
U.S. Const. amend. IV	9

Statutes

RSA 318-B:2 (2004).....	2
RSA 318-B:26 (Supp. 2009).....	2

Other Authorities

1 William E. Ringel, <u>Searches & Seizures, Arrests and Confessions</u> § 6:11 (2d ed. 2003).....	12
Wayne R. LaFave, <u>Search and Seizure</u> § 4.8 (4th ed. 2004)	10

ISSUE PRESENTED

1. Whether the knock-and-announce rule was inapplicable where the officers knocked on the defendant's hotel room, the door was opened by an occupant inside, and the officers used no force in walking through the open door to arrest the defendant.

2. Whether the knock-and-announce rule is based in the common law and not the New Hampshire Constitution where this Court specifically held such in Jones and nothing has changed in the history of the common law.

3. Whether the exclusionary rule is inappropriate in the context of knock-and-announce violations where it does not achieve the proper balance between deterrent benefits and social costs.

STATEMENT OF THE CASE

The defendant, Matthew Sconsa, was indicted by a Hillsborough County grand jury on one count of possession of a controlled drug. See RSA 318-B:2 (2004) (amended 2008); RSA 318-B:26 (Supp. 2009). Prior to trial, the defendant filed a motion to suppress the drug evidence as fruit of an unlawful search and seizure claiming that the officers violated the knock-and-announce rule. NOA 7.¹ The trial court held a suppression hearing and subsequently denied the defendant's motion. S 3-28; NOA 7-12.

The defendant then entered into a stipulated fact bench trial by offer of proof. DA 2. The court (Smuckler, J.) found the defendant guilty and sentenced him to twelve months at the House of Corrections, all but ten days suspended for two years on the defendant's good behavior; three days of pretrial confinement credit; one year of probation; and a \$350 fine plus penalty assessment. DA 3. This appeal followed.

¹ Citations to the record are as follows:
"S" refers to the suppression hearing transcript;
"DB" refers to the defendant's brief;
"DA" refers to the appendix to the defendant's brief;
"SA" refers to the appendix to the State's brief;
"NOA" refers to the notice of appeal.

STATEMENT OF FACTS

A. Evidence At The Suppression Hearing

On July 20, 2008, Officer Brian Karoul of the Manchester Police Department was on duty patrolling the west side of Manchester. S 4. Radio traffic was slow on that evening so Officer Karoul drove to the Econo Lodge Hotel, a location known for frequent criminal activity, and patrolled the parking lot. S 4. Officer Karoul went to the front desk and asked the clerk for a copy of the guest registry so that he could proactively check for outstanding warrants during this time of slow radio traffic. S 5, 13. Of the forty or fifty names on the registry, Officer Karoul had checked between ten and fifteen before he entered the defendant's name. After entering the defendant's name into the computer, Officer Karoul learned that there was an outstanding electronic bench warrant for failing to appear on a charge of operating after suspension. S 5, 13. After confirming that the warrant was active, Officer Karoul contacted fellow officers John Cunningham and Lisa Mackey and asked for assistance at the Econo Lodge. S 6.

As the officers approached the door to the room they could hear several voices talking loudly inside the room. S 6. The officers knocked on the door and received no response. Id. Following the first knock the officers could hear what sounded like "people scurrying or kind of rummaging through the room" and also "could hear some like running water from outside the door." Id. The officers then

knocked on the door again approximately three or four more times. Id. A woman, later identified as Sabrina Vignola, opened the door to the hotel room. S 7. The officers asked Vignola if the defendant was in the room, and Vignola responded that he was on the bed and pointed to the far end of the room. Id. The officers could not see the defendant from their position at the door, so Officer Karoul called out to the defendant. S 8. Vignola also called out to the defendant, and when she failed to elicit a response, she turned and began walking into the room toward the bed where the defendant was lying down. Id.

After calling out to the defendant twice and not receiving any response, Officer Karoul and Officer Cunningham entered the room. S 9. As the officers entered the room and looked around the corner they could see the defendant lying face down on the bed with his hands under a pillow and a second man sitting at a round table. Id. The officers ordered the defendant to take his hands out from under the pillow and the defendant complied. Id. Officer Karoul asked the defendant for identification, but the defendant stated that he did not have any. S 10. The defendant provided his last name and date of birth, both of which matched the electronic bench warrant, and Officer Karoul placed the defendant under arrest. Id.

Before escorting the defendant out of the hotel room, the defendant asked Officer Mackey for his money and identification, which were located in the top

drawer of a bureau in the room. S 11. Officer Karoul went to the bureau to secure the defendant's items and when he opened the top drawer he found a plastic baggie containing a white powdery substance consistent with cocaine. Id.

B. The Defendant's Motion, The State's Objection, And The Trial Court's Ruling

The defendant filed a motion to suppress the evidence seized from the hotel room incident to his arrest. SA 1. The defendant claimed that the police officers violated the knock-and-announce rule requiring officers, prior to forcibly entering a dwelling, to make their presence known, give their identity and purpose, and ask for admission. Id. The defendant claimed that while the officers knocked on the door they did not give their identity and purpose and therefore violated the rule, which should result in the suppression of any evidence seized. SA 6.

The state filed an objection arguing that the knock-and-announce rule only applies to forcible entries and that since the police officers knocked on the door and only entered after the door had been opened, there was no forcible entry to trigger a violation of the rule. SA 14.

The trial court denied the defendant's motion finding that the officers' entry into the defendant's hotel room involved no force and thus the knock-and-announce rule did not apply. NOA 11. While the trial court found that the use of force was dispositive, in the interest of judicial economy it went on to examine the

suppression issue and found that even had there been a technical violation of the rule, the officers' manner of entry was not so unreasonable as to rise to a constitutional violation requiring suppression. NOA 12.

SUMMARY OF THE ARGUMENT

There was no violation of the knock-and-announce rule when the officers entered the defendant's hotel room through the open front door. The officers had already knocked on the door and spoken with the woman who opened the door. The knock-and-announce rule applies only to forcible entries into a defendant's dwelling. The officers used no force when they walked through an open door and into the defendant's hotel room to arrest him.

Even if this Court finds that the knock-and-announce rule applies and that the officers violated the rule, the Court should not rule that the violation rose to a constitutional level. The knock-and-announce rule is based in the common law rather than the New Hampshire Constitution, but it does play a role in the reasonableness analysis for searches and seizures. There is no *per se* violation of the New Hampshire Constitution for violations of the knock-and-announce rule and should the Court find that there was a violation, the method of entry was nonetheless reasonable under the New Hampshire Constitution.

Should the Court find that the knock-and-announce rule applies, that it was violated, and that there was a constitutional violation, application of the exclusionary rule would be inappropriate. The exclusionary rule should achieve a proper balance between society's interest in deterring unlawful police conduct and the public interest in prosecuting crimes. Because the deterrent value is relatively

small while the potential social costs in failing to prosecute crimes is very high, the exclusionary rule should be rejected for violations of the knock-and-announce rule.

ARGUMENT

I. THE KNOCK-AND-ANNOUNCE RULE WAS INAPPLICABLE WHERE THE OFFICERS KNOCKED ON THE DEFENDANT'S HOTEL ROOM DOOR, THE DOOR WAS OPENED BY AN OCCUPANT, AND THE OFFICERS USED NO FORCE IN WALKING THROUGH THE OPEN DOOR TO ARREST THE DEFENDANT.

On appeal, the defendant challenges the trial court's denial of his motion to suppress, asserting that the officers' entry into the hotel room violated the knock-and-announce rule, that the knock-and-announce rule has its basis in the New Hampshire Constitution, and that the appropriate remedy for a violation of the knock-and-announce rule is suppression of any evidence recovered.

"When reviewing a trial court's ruling on a motion to suppress, [this Court] accept[s] the trial court's findings unless they are unsupported by the record or clearly erroneous. [The Court] review[s] the trial court's legal conclusions de novo." State v. Robinson, 158 N.H. 792, 795 (2009) (citations omitted).

Under both the United States and the New Hampshire Constitutions, a person has the right to be secure against unreasonable searches and seizures. See U.S. Const. amend. IV; N.H. Const. pt. I, art. 19. Both constitutions also set forth warrant requirements, and "[a] search conducted without a search warrant is *per se* unreasonable and invalid, unless it comes within one of the few recognized exceptions to the warrant requirement." State v. Jones, 127 N.H. 515, 522 (1985). "An arrest, to be valid, must meet the requirement for reasonable searches and

seizures of part I, article 19 of the New Hampshire Constitution.” Id.

“It is generally required that officers armed with a search warrant give notice of their authority and purpose prior to entry of the premises to be searched.” Wayne R. LaFave, Search and Seizure § 4.8 (4th ed. 2004). This “knock-and-announce” requirement has been traced back to the decision in Semayne’s Case in 1603 where it was ruled that,

In all cases when the King is a party, the sheriff (if the doors be not open) may break the party’s house, either to arrest him, or to do execution of the King’s process, if otherwise he cannot enter. But before he breaks it, he ought to signify the cause of his coming, and to make request to open the doors.

Semayne’s Case, 5 Coke 91, 77 Eng. Rep. 194, 195 (1604).

This Court recognized that this knock-and-announce rule has its grounding in the common law and has held that “New Hampshire police officers, before forcibly entering a dwelling, should knock, identify themselves and their purpose, and demand admittance.” Jones, 127 N.H. at 518 (emphasis added). This Court went on to note that “the knock and announce rule applies only to forcible entries,” and noted that almost any force, however slight, triggers the requirement. Id.

The defendant, relying on a handful of cases from other state courts, alleges that the officers in this case violated the knock-and-announce rule when they walked through the door to the defendant’s hotel room which had been opened in response to the officers’ knocking. The defendant attempts to equate the

circumstances in the current case with those cases in which a court has held that entry through an open door requires compliance with the knock-and-announce rule. Not only is the rule that the defendant argues for contrary to the majority rule from the federal courts, but also the cases the defendant relies on are factually dissimilar from the circumstances in the present case.

“[T]he majority rule is that entry through an open door is not a ‘breaking’ within the meaning of the federal knock and announce statute.”² United States v. Remigio, 767 F.2d 730, 732–33 (10th Cir. 1985) (collecting cases). “Three interests are said to be served by the rule of announcement: (1) it reduces the potential for violence to both the police officers and the occupants of the house into which entry is sought; (2) it guards against the needless destruction of private property; and (3) it symbolizes the respect for individual privacy summarized in the adage that ‘a man’s house is his castle.’” United States v. Bustamante-Gamez, 488 F.2d 4, 9 (9th Cir. 1973). This rule, that entry through an open door does not require compliance with the knock-and-announce rule, satisfies these three interests. The potential for violence is reduced when the door is already open because officers are not suddenly and violently bursting into the home of unsuspecting occupants. The entry through an open door is peaceful and without

² Because the federal statute is a codification of the common law, federal courts’ analysis of the federal knock-and-announce statute is helpful in examining the New Hampshire rule which has its basis in the common law. See Sabbath v. United States, 391 U.S. 585, 598 n.8 (1968).

force and thus does not carry with it the same inherent dangers of unexpectedly breaking down a door to gain entry. There is no needless destruction of property because there is no property to be destroyed. The door is already open and merely requires the officers to walk across the threshold. Finally, this rule does not undermine the respect for individual privacy. “The right of privacy is minimal when police have a warrant, because there is no right to refuse entry to the police, only a right to submit voluntarily.” 1 William E. Ringel, Searches & Seizures, Arrests and Confessions § 6:11 (2d ed. 2003). Furthermore, because the door is already open, there is not an unexpected exposure of private activities.

This rule is also consistent with the common law from which this State’s knock-and-announce rule is derived. In Semayne’s Case, upon which the Court in Jones relied, the rule is stated that:

In all cases when the King is a party, the sheriff (if the doors be not open) may break the party’s house, either to arrest him, or to do execution of the King’s process, if otherwise he cannot enter. But before he breaks it, he ought to signify the cause of his coming, and to make request to open the doors.

Semayne’s Case, 5 Coke 91, 77 Eng. Rep. at 195 (emphasis added). Even at common law, it was contemplated that the only circumstances under which the knock-and-announce rule was required were when the doors were closed. If the doors were open, there would be no need to break the party’s house and therefore there would be no knock-and-announce requirement. Semayne’s Case went on to state that “[i]n all cases when the door is open the sheriff may enter the house, and

do execution at the suit of any subject, either of the body or of the goods; and so may the lord in such case enter the house and distrain for his rent or service.” Id. Quite clearly, at common law, the knock-and-announce requirements did not apply to open doors.

The rule that the knock-and-announce requirement does not apply to open doors, would also be consistent with the jurisprudence of this Court. On both occasions that this Court has had to examine the knock-and-announce rule, it has stressed that the element of force is required before the rule is to be applicable. In State v. Jones, this Court held that “New Hampshire police officers, before forcibly entering a dwelling, should knock, identify themselves and their purpose, and demand admittance.” Jones, 127 N.H. at 518. This Court went on to say that “[a]lthough the knock and announce rule applies only to forcible entries, it is usually held that almost any force, however slight, triggers the requirement.” Id. at 520. The Court then cited as support cases in which the police pushed open a screen door that came unlatched when they knocked and in which the police opened an unlocked door. Id. In State v. Coyman, this Court ruled that an officer did not violate the knock-and-announce rule, “since that rule applies only when a police officer forcibly enters a dwelling.” State v. Coyman, 130 N.H. 815, 821

(1988). Because the officer in this case was invited into the defendant's residence, it could not be said that he forcibly entered a dwelling.³

Reading Jones and Coyman together, there must be at least a minimal application of force to invoke the rule. While the Court noted that almost any force, however slight, triggers the requirement, the examples cited indicate that there must still be at least a slight force. Entry through an open door involves not even a token application of force. This rule that entry through an open door does not implicate the knock-and-announce rule is in line with the two prior knock-and-announce cases that this Court has already decided.

Should this Court decide not to adopt the federal majority rule on entry through an open door, the defendant would still not prevail even under his proposed rule. The defendant cites four cases in substance in support of his claim that the Manchester Police Officers violated the knock-and-announce rule. These cases, however, are inapposite to the facts in this case. In State v. LaPonsie, 664 P.2d 223, 224 (Ariz. Ct. App. 1983), the police entered the defendant's residence through a wide open front door; in State v. Sakellson, 379 N.W.2d 779, 781 (N.D. 1985), the police entered through a closed storm door to the defendant's porch and

³ The defendant notes that the Court in Coyman could have held broadly that the police did not forcibly enter because they did not physically open any doors but instead decided more narrowly that there was no forcible entrance because the officer was invited into the house. The defendant seems to suggest that because the Court chose the narrower holding it necessarily rejected the broader holding. DB 11. Obviously this cannot be the case as this would undermine the very point in issuing a limited holding.

then through the open main door to the residence; in People v. Keogh, 120 Cal. Rptr. 817, 820 (Ct. App. 1975), the manager of the apartment complex unlocked and opened the defendant's door about half way and the police entered after seeing the defendant inside lying on a bed; and in State v. Miller, 499 P.2d 241, 242 (Wash. Ct. App. 1972), the police officer observed a child open the door to the residence and stepped back to remain out of site, and when the child turned around and went back into the house the officer followed him into the house without announcing his purpose or demanding admittance.

In none of the cases that the defendant cites for support did the police officers knock before entering the open door and in none of the cases cited by the defendant did an occupant of the dwelling open the door in response to police knocking. State v. Miller is the closest factually to the current case, but in that case the officer did not knock and the child did not see the officer before the officer entered the open door. Unlike the four cases cited by the defendant, the officers in the present case did not happen upon the fortuitous circumstance of an open door. See Sabbath, 391 U.S. at 590.

Requiring police officers to comply with the knock-and-announce rule after the door is opened in response to an officer's knock makes little sense.

Because an occupant, in the face of a valid search warrant, has no right to refuse admission to police, no interest served by the knock and announce rule would be furthered by requiring police officers to

stand at an open doorway for a few seconds in order to determine whether the occupant means to admit them.

Adcock v. Commonwealth, 967 S.W.2d 6, 11 (Ky. 1998). Far more helpful and factually similar to the current case are the “entry by ruse” cases.

In the typical “ruse” case, the police gain access to a defendant’s dwelling by pretending to be someone other than the police to induce the defendant to open the door. See United States v. Alejandro, 368 F.3d 130, 132 (2d Cir. 2004) (police officer posed as an employee for the gas company investigating a gas leak); United States v. Contreras-Ceballos, 999 F.2d 432, 433 (9th Cir. 1993) (police officer posed as a Federal Express deliveryman); United States v. Salter, 815 F.2d 1150, 1151 (7th Cir. 1987) (police officer posed as a hotel clerk who needed the defendant to sign paperwork); State v. Dixon, 924 P.2d 181, 183 (Haw. 1996) (police had hotel security guard knock on defendant’s door with the purpose of checking the air conditioning); Adcock v. Commonwealth, 967 S.W.2d at 7 (police knocked at door disguised as a pizza delivery person).

“Federal courts interpreting [the knock-and-announce statute] have held, virtually universally, that the use of deception, without force, to effect entry into a house is not a ‘breaking’ within the meaning of the statute, and thus, there is no requirement to knock and announce.” Dixon, 924 P.2d at 186 (examining several federal decisions dealing with entry by ruse and the knock-and-announce rule); see also Adcock, 967 S.W.2d at 9 (“Entry obtained through the use of deception,

accomplished without force, is not a ‘breaking’ requiring officers to first announce their authority and purpose”) (collecting cases). “State courts, interpreting either knock and announce statutes or the common law knock and announce rule, have also generally held that an entry obtained by ruse, without use of force, is not a breaking requiring officers to first announce their authority and purpose.” Dixon, 924 P.2d at 188 (collecting cases).

The proposition that the knock-and-announce rule proscribes unannounced intrusions into a defendant’s dwelling would not apply to these entry-by-ruse cases because, as the Sabbath Court specifically noted entry-by-ruse cases are “viewed as involving no ‘breaking.’”⁴ Sabbath, 391 U.S. at 590 n.7. This is so because the use of a ruse to entice the defendant to open the door satisfies the purposes behind the knock-and-announce rule: “there [is] no real likelihood of violence, no unwarranted intrusion on privacy, and no damage to the defendant’s residence.” Adcock, 967 S.W.2d at 9.

If the nearly universally recognized rule is that entry by ruse does not require compliance with the knock-and-announce rule, the current case clearly does not require compliance with knock and announce. Unlike the ruse cases, the

⁴ The Court in Sabbath was examining whether the language of the federal knock-and-announce statute, which used the words “break open,” implied a use of force. The New Hampshire Supreme Court chose not to use the broad term “break open” and instead chose the more specific phrase “forcibly enter a dwelling.” Jones, 127 N.H. at 518; compare Dixon, 924 P.2d at 189 (“Unlike [the federal knock-and-announce statute] or the state knock and announce statutes interpreted in the cited cases, [Hawaii’s statute] expressly refers to the use of force: the officer or person making the arrest may force an entrance by breaking doors or other barriers”).

officers knocked on the door to the defendant's hotel room dressed in full police uniforms. There was no attempt to induce the defendant through trickery to open the door. The police knocked, the door was opened, and the door remained open. Compare Contreras-Ceballos, 999 F.2d at 433 (no violation of knock-and-announce rule when defendant tried to slam the door shut on police and officer pushed his shoulder into the door to keep the door open). The officers applied no force to open the door and applied no force in entering the dwelling. This Court should hold, as is nearly universally held by both state and federal courts, that entry through a door opened by an occupant in response to a knock does not implicate the knock-and-announce rule.

II. THE KNOCK-AND-ANNOUNCE RULE IS BASED IN THE COMMON LAW AND NOT THE NEW HAMPSHIRE CONSTITUTION WHERE THIS COURT SPECIFICALLY HELD SUCH IN JONES AND NOTHING HAS CHANGED IN THE HISTORY OF THE COMMON LAW.

In the event that this Court were to find that the knock-and-announce rule was applicable in the current case and that the rule was violated, the defendant asks that the Court overrule its holding in State v. Jones and find that the knock-and-announce rule has its basis in the New Hampshire Constitution. In Jones, this Court specifically “[held] that our knock and announce rule has its basis in the common law rather than the New Hampshire Constitution, and that therefore, a violation of the knock and announce rule is not *per se* unconstitutional under part I, article 19 of the State Constitution.” Jones, 127 N.H. at 520.

The only significant development in the time since this Court decided Jones is that in 1995, the United States Supreme Court held that the knock-and-announce principle was an element of the reasonableness inquiry under the Fourth Amendment. Wilson v. Arkansas, 514 U.S. 927, 934 (1995). The defendant asks this Court to now find that the knock-and-announce rule also has its basis in the New Hampshire Constitution and apparently that a violation of the rule would be a violation of the Constitution. However, even under the Supreme Court’s Wilson decision, this would not be the case. In Wilson, the Court was careful to say:

This is not to say, of course, that 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. As even petitioner concedes, the common-law principle of announcement was never stated as an inflexible rule requiring announcement under all circumstances.

Id. at 934.

The Court went on to clarify that it “need not attempt a comprehensive catalog of the relevant countervailing factors here. For now, [the Court left] to the lower courts the task of determining the circumstances under which an unannounced entry is reasonable under the Fourth Amendment.” Id. at 936. This is similar to how the knock-and-announce rule works in New Hampshire under the current Jones standard. This Court in Jones held that every violation of knock-and-announce was not a *per se* violation, but “[did] not foreclose the possibility that a failure to knock and announce may be so flagrant that it will influence whether a subsequent entry violates the State Constitution’s prohibition against unreasonable searches and seizures.” Jones, 127 N.H. at 520. The New Hampshire knock-and-announce analysis, similar to the federal constitutional analysis, looks to the reasonableness requirement. Neither the federal nor state rules require a violation to be *per se* unconstitutional. In fact, the trial court undertook this very “reasonableness” inquiry in its order, just as the Supreme Court in Wilson instructed lower courts to do in the context of the federal constitution. See NOA 12.

There is nothing about the history and origins of the knock-and-announce rule and the New Hampshire Constitution that has changed in the time since Jones decided that the rule was based in the common law. Simply because the United States Supreme Court found that the rule had a basis in the Fourth Amendment does not change the analysis that this Court undertook in Jones. See Commonwealth v. Macias, 711 N.E.2d 130, 132 n.2 (Mass. 1999) (post-Wilson case noted that “[a]lthough we have described the knock and announce rule as long featured prominently in our common law, we have also been careful to note that it is not constitutionally required”).

Even were the Court to overrule Jones and find that the rule is based in the New Hampshire Constitution, the trial court did a “reasonableness” analysis under the New Hampshire Constitution. The officers knocked on the door prior to entry. A female occupant opened the door and she saw the officers in their uniforms. Both the officers and the woman who opened the door called to the defendant. The woman turned away from the officers and walked back into the hotel room while leaving the door wide open. Under these circumstances, it can hardly be said that the officers’ manner of entry in serving the arrest warrant was unreasonable. Whether the rule is based in the common law or in the New Hampshire Constitution, the result is the same: there was no violation of the defendant’s rights.

III. THE EXCLUSIONARY RULE IS INAPPROPRIATE IN THE CONTEXT OF KNOCK-AND-ANNOUNCE VIOLATIONS BECAUSE IT DOES NOT ACHIEVE THE PROPER BALANCE BETWEEN DETERRENT BENEFITS AND SOCIAL COSTS.

Should this Court find that the knock-and-announce rule does apply to the current case, that the police violated the rule, that the rule is based in the New Hampshire Constitution, and that the trial court was incorrect in its analysis of the constitutional issue, this Court should not find that the evidence collected must be suppressed.

In the recent case of Hudson v. Michigan, the United States Supreme Court held that the exclusionary rule was an inappropriate remedy for a constitutional violation of the knock-and-announce rule. Hudson v. Michigan, 547 U.S. 589, 599 (2006). The Court began by saying:

Suppression of evidence . . . has always been our last resort, not our first impulse. The exclusionary rule generates substantial social costs which sometimes include setting the guilty free and the dangerous at large. We have therefore been cautious against expanding it, and have repeatedly emphasized that the rule's "costly toll" upon truth-seeking and law enforcement objectives presents a high obstacle for those urging its application.

Id. at 591 (citations, quotations, and brackets omitted). The Court went on to explain that "the exclusionary rule has never been applied except where its deterrence benefits outweigh its substantial social costs." Id. at 594. After analyzing the benefits of deterrence against the substantial social costs in the context of the knock-and-announce rule the 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 being 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.

Id. at 599. This is not to say that there is no remedy for a violation of the knock-and-announce rule. The Court pointed out that there was already a remedy in place in the form of a § 1983 civil lawsuit and addressed any concerns that such a suit would not be a deterrent or worth the plaintiff's time. Id. at 596–98.

A. The Exclusionary Rule Is Not Required Under The New Hampshire Constitution Even If This Court Finds A Violation Of The Knock-And-Announce Rule.

In this State, “[t]he purpose of the exclusionary rule is threefold. The rule serves to deter police misconduct, to redress the injury to the privacy of the victim of the unlawful search or seizure and to safeguard compliance with State constitutional protections.” State v. Beauchesne, 151 N.H. 803, 818 (2005). As the Court in Hudson recognized

the value of deterrence depends upon the strength of the incentive to commit the forbidden act. Viewed from this perspective, deterrence of knock-and-announce violations is not worth a lot. Violation of the warrant requirement sometimes produces incriminating evidence that could not otherwise be obtained. But ignoring knock-and-announce can realistically be expected to achieve absolutely nothing except the prevention of destruction of evidence and the avoidance of life-threatening resistance by occupants of the premises—dangers which, if there is even a “reasonable suspicion” of their existence, *suspend the knock-and-announce requirement anyway*. Massive deterrence is hardly required.

Hudson, 547 U.S. at 596.

The exclusionary rule is hardly appropriate to redress the injury to the privacy of the defendant. “The right of privacy is minimal when police have a warrant, because there is no right to refuse entry to the police, only a right to submit voluntarily.” Ringel, supra, § 6:11. The social costs of suppressing the evidence to redress the injury to the minimal privacy right in a knock-and-announce case is far too high to warrant use of the exclusionary rule in this context.

“Enforcement of [the exclusionary] rule places the parties in the position they would have been in had there been no violation of the defendant’s constitutional right” State v. Canelo, 139 N.H. 376, 387 (1995). In the knock-and-announce situation, the exclusionary rule does not achieve this purpose. In the case of knock and announce, the police have a warrant to enter the defendant’s dwelling and the defendant has no right to refuse their entry. By suppressing evidence that the officers had a right to view, and in the case of a search warrant, a right to take, the exclusionary rule would put the defendant in a better position than he would have been had there been no violation of the knock-and-announce rule. Assuming no violation of the rule, the officers still have a right to enter a defendant’s apartment to search for the items in a search warrant, or to arrest a defendant pursuant to a warrant and conduct a protective sweep.

In the current case, the evidence was discovered when the defendant instructed the officers to collect his wallet and identification. The officers had a right to enter the hotel room and arrest the defendant. The defendant then pointed them towards the drugs. Should this Court find a violation of the knock-and-announce rule, it is unclear how the outcome would have been different, as even without a violation the police would have entered and arrested the defendant. Applying the exclusionary rule to knock-and-announce violations would not “achieve[] a proper balance between society’s interest in deterring unlawful police conduct and the public interest in prosecuting crimes” Beauchesne, 151 N.H. at 818.

B. Even If There Is A Violation Of The Knock-And-Announce Rule Under The Federal Constitution The Defendant Would Not Be Entitled To Suppression Of The Evidence.

The defendant attempts to limit the Supreme Court’s decision in Hudson v. Michigan and argues that suppression of evidence is still the proper remedy for a violation under the federal constitution. Even assuming that there is a violation of the knock-and-announce rule under the federal constitution, the defendant would not be entitled to suppression of the evidence.

The Court in Hudson held:

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-imcomparably greater than the factors deterring warrantless entries when Mapp was decided. Resort to the massive remedy of suppressing evidence of guilt is unjustified.

Hudson, 547 U.S. at 599.

While the defendant attempts to limit the Court's holding to its facts, every federal court of appeals that has addressed this issue has found that the case stands for the broader holding that suppression is never warranted for violations of knock and announce. See United States v. Watson, 558 F.3d 702, 704 (7th Cir. 2009); United States v. Farias-Gonzalez, 556 F.3d 1181, 1187 (11th Cir. 2009); United States v. Smith, 526 F.3d 306, 311 (6th Cir. 2008); United States v. Acosta, 502 F.3d 54, 58 (2d Cir. 2007); United States v. Bruno, 487 F.3d 304, 305 (5th Cir. 2007); United States v. Ankeny, 502 F.3d 829, 835 (9th Cir. 2007); United States v. Pelletier, 469 F.3d 194, 199 (1st Cir. 2006); United States v. Mosley, 454 F.3d 249, 259 n.15 (3d Cir. 2006); United States v. Gaver, 452 F.3d 1007, 1008 (8th Cir. 2006); United States v. Esser, 451 F.3d 1109, 1113 n.3 (10th Cir. 2006); United States v. Southerland, 466 F.3d 1083, 1084 (D.C. Cir. 2006). The proper remedy for a violation of the Fourth Amendment knock-and-announce rule is to file a § 1983 civil suit. See Hudson, 547 U.S. at 598. Even if the defendant had a valid Fourth Amendment claim for violation of the knock-and-announce rule, he would still not be entitled to suppression of the evidence.

CONCLUSION

For the foregoing reasons, the State respectfully requests that this Honorable Court affirm the judgment below.

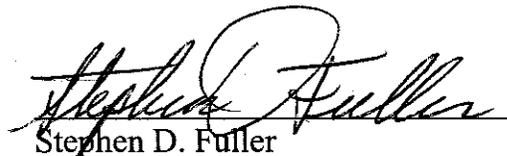
The State requests a fifteen-minute oral argument.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

By its attorneys,

Michael A. Delaney
Attorney General



Stephen D. Fuller

NH Bar No. 14009

Senior Assistant Attorney General

Criminal Justice Bureau

New Hampshire Department of Justice

33 Capitol Street

Concord, NH 03301-6397

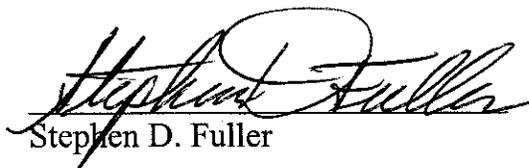
603.271.3671

March 1, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have sent two copies of the State's brief to counsel for the defendant, Charles J. Keefe, of Wilson, Bush, Durkin & Keefe, P.C., by first-class mail postage prepaid, at the following address:

Charles J. Keefe
Wilson, Bush, Durkin & Keefe, P.C.
184 Main Street, Suite 222
Nashua, NH 03060


Stephen D. Fuller

March 1, 2010

APPENDIX TABLE OF CONTENTS

Defendant's Motion to Suppress 1

State's Objection to Defendant's Motion to Suppress..... 11

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.
NORTHERN DISTRICT

SUPERIOR COURT

DOCKET NO. 08-S-2690

STATE OF NEW HAMPSHIRE

V.

MATTHEW SCONSA

DEFENDANT'S MOTION TO SUPPRESS

NOW COMES the Defendant, Matthew Sconsa, by and through his attorneys, Wilson, Bush, Durkin & Keefe, P.C. ("the Defendant"), and hereby respectfully requests that this Honorable Court suppress any and all evidence, including controlled substances, found and seized inside the Defendant's hotel room on July 20, 2008. The Manchester Police Department failed to properly give their identity and purpose, or ask for admission, before entering his hotel room, thus violating the "knock and announce" rule. Therefore, the police entered the hotel room and ultimately located and seized the controlled drugs which are the subject of this matter in violation of the Defendant's rights enumerated in Part I, Article 19 of the New Hampshire Constitution and the Fourth Amendment to the United States Constitution. In support thereof, the Defendant submits the following.

Factual Background

1. On the evening July 20, 2008, Officer Brian Karoul of the Manchester Police Department was on routine patrol in the area of the Econolodge hotel in Manchester.¹ According to Officer Karoul, "the Econolodge is a location in which patrol units are

¹ All factual assertions made herein derive from discovery materials provided by the State of New Hampshire.

requested to pay special attention because of high criminal activity known to frequent the location [sic]." After checking the hotel's parking lot, Officer Karoul entered the hotel and asked the desk clerk for a list of registered guests. After obtaining the list, Officer Karoul returned to his vehicle. He then conducted a random record check of the listed registered guests. By doing so, he discovered that the guest registered to Room 311, Matthew Sconsa, had an outstanding electronic bench warrant (EBW) for failing to appear in Manchester District Court on a charge of operating after suspension. He then confirmed the EBW with dispatch at the Manchester Police Department and contacted a second officer for backup. A third officer also arrived at the hotel to participate.

2. Upon re-entering the hotel, Officer Karoul and the two other officers proceeded to room 311. As he approached the room, he could hear several people talking inside the room. He then knocked on the door and did not receive an immediate response. The Officer wrote in his report, "I could hear what sounded like running water and people scurrying or rummaging through the room." The Officer then knocked "approximately three or four more times without a response."

3. A female later identified as Sabrina Vignola opened the door. Officer Karoul asked if Matthew was there, and Sabrina stated, "Yes, he is laying on the bed [sic]." As she said this, Sabrina pointed to the far, L-shaped portion of the room that was out of Officer Karoul's sight. The Officer then called out to the Defendant, and he did not respond. Sabrina then "stepped away from the door towards the room and called out to Matthew, as Officer Karoul also called Matthew's name again.

4. Matthew did not respond, and it was unknown to Officer Karoul what Matthew was doing in his own hotel room out of Officer Karoul's view. Because of this,

Officer Karoul and a second officer entered the room without invitation or informing anyone that they were there acting on an arrest warrant for the Defendant.

5. Upon entering the main part of the room, Officer Karoul observed the Defendant lying face-down on the bed. He also saw a second male, John Paul Briere, seated on a chair at a table at the foot of the bed. The Defendant had his hands under a pillow, so Officer Karoul commanded Matthew to take his hands from out under the pillow, and Matthew immediately complied. The Defendant then got off of the bed.

6. Officer Karoul asked Matthew if he had identification, and he replied the he did not have any identification. The Officer asked the Defendant's last name and date of birth. The Defendant provided him the correct name and date of birth. The Officer then told the Defendant he had an outstanding warrant for his arrest and placed the Defendant in handcuffs. This was the first time the Manchester Police announced their reason for approaching, and ultimately entering without invitation, the Defendant's hotel room.

7. At this point, while another officer was speaking with Mr. Briere, Officer Karoul observed "in plain view" on the table at which Mr. Briere sat several different types of drug paraphernalia.²

8. Officer Karoul then noticed that the bathroom door was closed, and he asked Sabrina if anyone else was in the room. She stated that her husband was in the bathroom, and the Officer then gave several verbal commands for the person in the bathroom to open the door. This person did not open the door. The door finally opened, and a man later identified as Keith Vignola exited the bathroom. Officer Karoul asked him why he had not

² These items included a silver, metal vial; a small piece of tin foil; the inside of a pen (commonly used as a "push rod" according to Officer Karoul); and just below the foot of the bed the Officer observed a metal spoon with residue on it.

immediately come out of the bathroom, and Mr. Vignola stated he was going to the bathroom. The Officer then conducted a pat down search of Mr. Vignola for weapons. He also asked Mr. Vignola if he had anything illegal on him. Mr. Vignola replied, "No, go ahead and check me." The Officer located \$241.00 in Mr. Vignola's pocket. Mr. Vignola stated the money for his rent, and Officer Karoul asked how much his rent cost. Mr. Vignola stated it was \$100.00 per week. Mr. Vignola also stated that he did not hear the Officer calling him to come out, and the Officer noted that Mr. Vignola was sweating profusely, shaking, making sharp jerking motions, grinding his teeth, and sticking his tongue out of his mouth. Officer Karoul noted that this type of behavior is consistent with someone under the influence of narcotic drugs. The Officer asked Mr. Vignola if "he had been using anything," and Mr. Vignola stated he was ex-heroin addict. The Officer then observed several track marks on the inside of Mr. Vignola's arm, and Mr. Vignola stated he "shot up" several days ago.

9. After Mr. Vignola exited the bathroom, Officer Karoul searched the bathroom. He noted inside the waste basket four syringes and two small, plastic baggies which he believed to contain cocaine. A field test confirmed this suspicion. The Officer also noted that one of the syringes contained a clear liquid inside of it.

10. Officer Karoul asked Mr. Vignola if he could explain the syringes and bags of cocaine in the bathroom, and he denied any involvement and stated they did not belong to him. Mr. Vignola then became very uncooperative and stated that the officers were harassing him. Another officer searched the bathroom and located a black, plastic case containing four plastic baggies of cocaine.

11. The same officer then asked Sabrina Vignola for consent to search her purse, which she gave. He located inside of it several syringes, brillo pads, and a plastic baggie with white powder in it. Ms. Vignola stated it was baking soda. In response to the officer's question, Ms. Vignola stated that she keeps the baking soda in order to cook cocaine into crack.

12. During this time, Officer Mackey stood by with the Defendant. The Officer then informed Officer Karoul that the Defendant had requested his identification and money which were located in the far left corner of the top drawer of the bureau. Officer Karoul then opened the top drawer to the bureau to retrieve these items, and he observed on top of these items a plastic baggie with cocaine inside of it. After this, Officer Karoul ultimately arrested Keith Vignola for possession of a controlled drug as well as falsifying physical evidence. The State subsequently obtained an indictment against the Defendant charging him with possession of the cocaine on top of his wallet.

Legal Argument

13. Every citizen is guaranteed the right to be free from unreasonable searches and seizures by the Fourth Amendment to the United States Constitution and Part I, Article 19 of the New Hampshire Constitution. An arrest, the seizure of a person, implicates these rights. McNamara 1 NEW HAMPSHIRE PRACTICE § 183, p. 173 (1997). Absent exigent circumstance or consent, both the federal and state constitutions require that police obtain a warrant to enter a suspect's home to arrest him. New York v. Harris, 494 U.S. 10, 14 (1990); State v. Chaisson, 125 N.H. 403, 406 (1984). A bench warrant, issued by a district court judge, satisfies this requirement to permit police to enter a person's home to affect an arrest. State v. Jones, 127 N.H. 515, 518 (1985). Such a warrant, however, only allows a police officer to

enter a person's home when there is reason to believe the suspect is within after compliance with the "knock and announce" rule. Payton v. New York, 445 U.S. 573, 579 (1980); Jones, 127 N.H. at 518. The Defendant notes at this point that for purposes of considering the constitutional issues at hand, a person's hotel or motel room is considered that person's "home" because it is an accommodation that is akin to a temporary residence. Stoner v. California, 376 U.S. 483, 590 (1964); State v. Watson, 151 N.H. 537, 540 (2004).

14. There has long been a rule originating from common law that an officer seeking to gain admission to a private dwelling in order to execute a warrant must first do three things: 1) make his presence known; 2) give his identity and purpose; and 3) ask for admission. Jones, 127 N.H. at 517. If the officer is denied admission after conforming to these requirements, he may then forcibly gain entrance. Id. The requirement that the officer notify the occupants of a dwelling of his purpose in coming there was stated as early as 1604 in an English case. Semayne's Case, 77 Eng. Rep. 194, 195 (1604). The reasons most often cited in support of this rule are protection of an individual's privacy in his house and the prevention of violence. Jones, 127 N.H. at 518 (citing Sabbath v. United States, 391 U.S. 585, 589 (1968)). In Jones the New Hampshire Supreme Court confirmed that the "knock and announce" rule requires that before entering a dwelling to effectuate an arrest, an officer must knock, identify himself and his purpose, and then demand admittance.³ Id.

15. The "knock and announce" rule is generally given broad and liberal application. Id. at 520 (citing Sabbath, 391 U.S. at 589 ("The requirement of prior notice of

³ In Jones, the New Hampshire Supreme Court found that the rule did not have its basis in the New Hampshire Constitution. In doing so, it relied upon a federal appellate decision for support, United States v. Nolan, 718 F.2d 589 (3d Cir. 1983). However, the United States Supreme Court has since held that the "knock and announce" rule does in fact have its basis in the Fourth Amendment. Wilson v. Arkansas, 514 U.S. 927, 939 (1995). As the Court is well aware, the New Hampshire Constitution is more protective than the federal constitution regarding search and seizure issues. State v. Goss, 150 N.H. 46, 49-51 (2003).

authority and purpose before forcing entry into a home is deeply rooted in our heritage and should not be given grudging application.”)). The New Hampshire Supreme Court has found that an uninvited entry amounts to a “forcible entry.” State v. Coyman, 130 N.H. 815, 821 (1988); see Jones, 127 N.H. at 520 (citing Sears v. State, 528 P.2d 732, 733 (Okla. Crim. App. 1974) (forcible entry where police pushed open screen door); Nank v. State, 406 So.2d 1282 (Fla. Dist. Ct. App. 1981) (forcible entry where police open unlocked screen door)); Wilson v. Arkansas, 514 U.S. 927, 937 (1995) (police opened an unlocked screen door). The United States Supreme Court has unequivocally drawn the line at the uninvited intrusion though the door of a person’s home. In Payton, the Court stated:

The Fourth Amendment protects the individual’s privacy in a variety of settings. In none is the zone of privacy more clearly defined than when bounded by the unambiguous physical dimensions of an individual’s home – a zone that finds its roots in clear and specific constitutional terms: “The right of the people to be secure in their ... houses ... shall not be violated.” That language unequivocally establishes the proposition that “[a]t the very core [of the Fourth Amendment] stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion.

Payton, 445 U.S. at 579.

16. Further, the rule requires an express announcement by police of their identity and purpose before demanding admission. Id. (citing Miller v. United States, 357 U.S. 301 (1958) (court held that an officer saying “police” was not sufficient announcement of purpose); State v. Laponsie, 664 P.2d 223 (Ariz. App. 1982) (where police went through open front door and simultaneously said “police” held to have violated rule)).

17. The Supreme Court of Iowa, considering an alleged “knock and announce” violation resulting from the arrest of an individual inside of a hotel room reasoned that if the

defendant had been arrested outside of the hotel room, the police would not have been constitutionally permitted to enter her room and seize items in plain view. State v. Kubit, 627 N.W.2d 914, 919 (2001). "It follows then that an arrest that can occur on the outside of a dwelling should be executed on the outside." Id.

18. In this case, the Manchester Police Department failed to abide by the strictures of the "knock and announce" rule. The officers knocked on the door, making their presence known. However, they did not give their identity and purpose, nor did they ask for admission. As such, they clearly violated the parameters of the rule.

19. Because the Manchester Police Department violated the "knock and announce" rule, this Court should suppress the evidence obtained by them subsequent to the violation. The United States Supreme Court has found that when evaluating a violation of the "knock and announce" rule, the inquiring court must determine whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of the illegality or instead by means sufficiently distinguishable to be purged of the primary taint. Hudson v. Michigan, 000 U.S. 04-1360 (June 15, 2006), p. 6 (citing Wong Sun v. United States, 371 U.S. 471, 487-88 (1963)). Although its language is similar to the federal constitution, Article 19 of the New Hampshire Constitution provides greater protection for individual rights than does the Fourth Amendment. State v. Ball, 124 N.H. 226, 235 (1983) (choosing not follow the United States Supreme Court's "plain view" doctrine). The New Hampshire Supreme Court has held that the exclusionary rule has neither the sole purpose of deterring police misconduct, nor the sole purpose of guaranteeing compliance with constitutional provisions. State v. Martin, 145 N.H. 362, 366 (2001).

Rather, it serves both purposes, as well as to redress injury to the privacy of the search victim. Id. (citing State v. Canelo, 139 N.H. 376, 387 (1995)).

20. Therefore, because the Manchester Police violated the "knock and announce" rule, and because this rule has a constitutional foundation, this Court should suppress the evidence found in the Defendant's hotel room. Suppression of this evidence is mandated under the federal constitution because it has been come at by exploitation of the illegal entry by the officers instead of by means sufficiently distinguishable to be purged of the primary taint. Suppression is also mandated under the State constitution because it is the only way to redress the injury to the Defendant's privacy rights occasioned by the Manchester Police, deter police misconduct, and guarantee compliance with constitutional provisions.

21. For all of these reasons, this Court should suppress the evidence, including controlled drugs, located in the Defendant's hotel room on July 20, 2008.

WHEREFORE, the Defendant, Matthew Sconsa, respectfully requests that this Honorable Court:

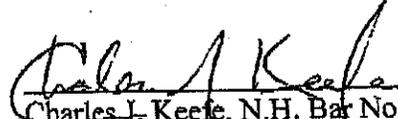
- A. Suppress any and all evidence, including controlled substances, found and seized inside the Defendant's hotel room on July 20, 2008; and
- B. Grant such other and further relief this Court may deem just and proper.

Respectfully submitted,

Matthew Sconsa,
By his attorneys

Wilson, Bush, Durkin & Keefe, P.C.

DATED: March 24, 2009


Charles J. Keefe, N.H. Bar No. 14209
Wilson, Bush, Durkin & Keefe, P.C.
184 Main Street, Suite 2222
Nashua, NH 03060
(603) 595-0007

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was this day forwarded to Michael Zaino, Esq., counsel for the State of New Hampshire.

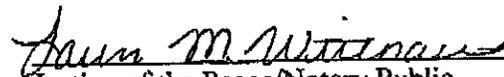
DATED: March 24, 2009


Charles J. Keefe

STATE OF NEW HAMPSHIRE
HILLSBOROUGH, SS.

Then personally appeared the above-named attorney and, upon oath, swore that the facts alleged herein, unless otherwise noted, derive from the discovery materials provided by the State of New Hampshire in this matter.

DATED: March 24, 2009


Justice of the Peace/Notary Public
My commission expires: 6/1/2010

THE STATE OF NEW HAMPSHIRE
NORTHERN DISTRICT OF HILLSBOROUGH COUNTY

HILLSBOROUGH, SS

SUPERIOR COURT
DOCKET NO. 08-S-2690

STATE OF NEW HAMPSHIRE

v.

MATTHEW SCONSA

STATE'S OBJECTION TO DEFENDANT'S MOTION TO SUPPRESS

NOW COMES the State of New Hampshire, by and through the Hillsborough County Attorney's Office, with this Objection to Defendant's Motion to Suppress. In support of its objection, the State offers the following:

PROCEDURAL HISTORY

1. The Defendant stands charged with one felony indictment charging Possession of a Controlled Drug (cocaine), contrary to RSA 318-B:2. The Defendant was indicted by the Hillsborough County Grand Jury on November 20, 2008.

2. On or about March 24, 2009, the defendant filed his Motion to Suppress arguing that the officers that executed the arrest warrant on the defendant failed to follow the "knock and announce" rule. The Motion was received in our office on March 25, 2009.

FACTS

3. On July 20, 2008, Officer Karoul of the Manchester Police Department was patrolling the area of the Econolodge Hotel on West Hancock Street. Officer

Karoul, like other patrol officers, is asked to pay special attention to the area of the Econolodge because it is a known high crime area.

4. During his patrol, Officer Karoul secured a list of registered guests and ran the names through his computer to conduct a record check at random. At this time, Officer Karoul learned that the defendant, a registered guest of the Econolodge, had an active electronic bench warrant. Officer Karoul confirmed the warrant through dispatch and then requested back-up from other officers.

5. The fully uniformed officers approached room number 311, the room registered to the defendant. Inside, the officers could hear several people talking inside the room. Officer Karoul knocked on the door and received no response. At this time, Officer Karoul could hear what sounded like running water and people scurrying and/or rummaging inside the room. Officer Karoul then knocked three or four times without a response. Finally, a female identified as Sabrina Vignola, opened the door.

6. Officer Karoul asked Vignola if the defendant was there. Vignola indicated that he was and that he was lying on the bed. Officer Karoul called for the defendant and received no response. Ms. Vignola then stepped aside from the door and called for the defendant, receiving no response. At this point, the bed and the defendant were out of sight from the officers.

7. Receiving no response, Officer Karoul and Officer Cunningham stepped into the room, observing the defendant lying on the bed with his head at the foot of the bed and his hands under a pillow. At this point, the defendant complied with all of the officers' requests and identified himself as the defendant, at which point he was taken into custody.

LAW

8. The Defendant now argues that the officers' entry into the hotel room violated the so called "knock and announce" rule when they entered the hotel room to effect the arrest of the defendant. The State objects.

9. The "knock and announce" rule has its roots in the common law rather than the New Hampshire Constitution. State v. Jones, 127 N.H. 515, 520 (1985). Accordingly, a violation of the rule is not per se unconstitutional under part I, article 19 of the New Hampshire Constitution. Id. The Jones Court noted that the "knock and announce" rule applies only to forcible entries. Id. The Court stated that the use of almost any force, however slight, triggers the requirement. Id.

10. The purpose of the "knock and announce" rule is twofold. First, the rule has been established in an effort to protect citizens' rights to privacy in their homes. State v. Matos, 135 N.H. 410, 411 (1992). Second, the rule is designed to prevent unnecessary violence which could result from unannounced entries. Id.

11. In Matos, the Court noted that the rule applies "before effecting a forcible entry." Id. The Court also noted several recognized exceptions to the rule, including exigent circumstances, flight, and safety. Id. As well, the Jones Court also noted a separate exception to the rule, specifically if compliance with the rule would be a useless gesture. 127 N.H. at 521.

12. In this case, the uniformed officers knocked on the door of the hotel room several times before it was opened. During this time between the knocking and the opening, the officers could hear loud voices as well as scurrying and running water inside the hotel room. Finally the door is opened and the uniformed officers ask if the

defendant is present. The defendant's presence is confirmed by the girl opening the door during a brief conversation with the uniformed officers.

13. At this point, no entry had been made, whether forcible or otherwise. Therefore, the knock and announce rule, if applicable, had been complied with. Prior to any entry into the room, the presence of the uniformed officers had been made known and the fact that they were looking for the defendant had been made known. The uniformed officers knocked on the door and made contact with the occupants. In fact the officers even called out to the other occupants of the room while they were speaking to the girl at the door. The defendant and the other occupants chose to ignore the officers' call. The occupants even chose to ignore the calls of the girl that opened the door.

14. Based on these facts, the officers fully complied with the rule because prior to their entry into the room, their presence had been made known to the occupants and that they were looking for the defendant had been made known. At that point, no forcible entry had taken place.

15. In the event, this Court disagrees in terms of compliance with the rule, the State intends to rely upon the "useless gesture" exception based on the fact that the defendant chose not to respond to the officers when they called his name. Since the defendant failed to respond to any inquiries, whether from the police or another occupant in the room, seems to imply that announcing further their purpose would have been a useless gesture at that point. Moreover, strict compliance with the rule under these facts would not serve to better meet or attain the stated purposes of the rule.

WHEREFORE, the State of New Hampshire respectfully requests this Honorable Court:

- a) DENY the Defendant's Motion to Suppress; AND
- b) GRANT any further relief as justice may require.

Dated: April 7, 2009

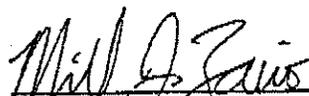
Respectfully submitted,



Michael J. Zaino, Esq.
 N.H. Bar No. 17177
 Assistant County Attorney
 300 Chestnut Street
 Manchester, NH 03101
 (603) 627-5605

CERTIFICATE OF SERVICE

I hereby certify that a copy of the within Objection has been forwarded this day, April 7, 2009, to Charles J. Keefe, Esq., at 184 Main Street, Suite 222, Nashua, New Hampshire 03060.



Michael J. Zaino, Esq.
 Assistant County Attorney