

SUPREME COURT OF LOUISIANA

98-KK-2146

STATE OF LOUISIANA

VERSUS

LEE MISKELL

**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL
FOURTH CIRCUIT, PARISH OF ORLEANS**

JOHNSON, J., Dissenting

Thousands of law-abiding citizens in Louisiana will be shocked to discover that the burglar bars they installed for security reasons now provide the reasonable circumstances necessary for the police department to kick in their doors and make an unannounced entry of their homes. According to the majority, it is reasonable for the police to infer, from the presence of burglar bars, that the occupants intended to slow down the entry of the police, as much as to protect themselves from criminals. Everywhere else in America police officers must adhere to the standard set forth by the United States Supreme Court in Richards v. Wisconsin, where the Court stated:

In order to justify a “no-knock” entry, the police must have a reasonable suspicion that knocking and announcing their presence, under the particular circumstances, would be dangerous or futile, or that it would inhibit the effective investigation of the crime by, for example, allowing the destruction of evidence. This standard—as opposed to a probable cause requirement—strikes the appropriate balance between the legitimate law enforcement concerns at issue in the execution of search warrants and individual privacy interest affected by the no-knock entries. This showing is not high, but the police should be required to make it whenever the reasonableness of a no-knock entry is challenged.

520 U.S. 385, 394, 117 S.Ct. 1416, 1421-22, 137 L.Ed. 2d 615 (1997)(citations omitted).

This case represents a “no-knock” entry in the execution of a search warrant for drugs. The investigating officer went to the defendant’s residence with seven other officers and a van equipped with a winch to execute the search warrant. The officers briefly watched the residence and observed what appeared to be three more drug transactions. Thereafter, the winch was used to rip burglar bars off the front door, the door was kicked in, and the officers made an unannounced entry of the defendant’s residence with guns drawn.

The only justification offered by police for the no-knock entry was the known ease with which drugs may be discarded or destroyed. Clearly, this justification alone does not meet the

reasonableness standard set forth in Richards. The facts of this case make clear that the officers had no information creating an exigent circumstance prior to executing the search warrant. The informant did not mention any weapons that would create the possibility of danger if the officers' presence was announced, the prior surveillance had not revealed the presence of any other persons in the residence to aid in the destruction of evidence, and the defendant had no history of violence.

Today, most homes are equipped with some form of security device. Burglar bars have become one of the tools adopted by law-abiding citizens in the protection of their homes and property. The mere presence of such devices does not indicate an intention to prevent the police from gaining admittance to a home. While it is true that under certain circumstances the use of extreme security measures, such as a combination of burglar bars, attack dogs, and surveillance cameras may well justify a no-knock entry; such is not the case here. I cannot support a decision that allows the police to justify "no-knock" entries with the mere presence of burglar bars, and I respectfully dissent.