COURT OF APPEALS
DECISION
DATED AND FILED

August 26, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 98-3633-CR

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JULIAN D. POPE,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County: STEVEN D. EBERT, Judge. *Affirmed.*

Before Dykman, P.J., Vergeront and Roggensack, JJ.

PER CURIAM. Julian Pope appeals from a judgment convicting him of possessing cocaine with intent to deliver it. At Pope's jury trial, the State relied on evidence seized during the search of a private residence. The issue on appeal is whether the trial court erred when it allowed the State to use that evidence. We affirm.

Several police officers came with a warrant to search the apartment of Edith Carter. The lead officer knocked on the door, and two seconds later loudly announced "[p]olice, search warrant." Six to eight seconds after that announcement, with no response to the knock or announcement and hearing no sounds within the apartment, the officers knocked the door down and entered with weapons drawn. Pope was in the residence, along with Cobbins, another adult male. Pope was subsequently charged based on evidence of drug dealing seized in the ensuing search.

Before attempting a forcible entry into a residence to execute a warrant, the United States Constitution requires that police must knock and announce their identity and purpose. *See* ***State v. Long***, 163 Wis.2d 261, 265-66, 471 N.W.2d 248, 250 (Ct. App. 1991). They must also, in most circumstances, allow sufficient time for those inside to open the door. *See* ***id.***

Here, Pope moved to suppress the evidence seized in the apartment because the police entry occurred after what he contended was an unreasonably short delay from the time the officers knocked and announced. The commanding officer of the search squad testified at the suppression hearing that he chose not to wait longer out of concern for his officers' safety, and because further delay might have allowed the destruction of evidence. Pope takes this appeal from the trial court's ruling that the police entry did not violate the knock and announce rule, because the eight to ten second delay in entering was reasonable under the circumstances. We review that ruling *de novo*. *See* ***State v. Jackson***, 147 Wis.2d 824, 829, 434 N.W.2d 386, 388 (1989).

Based on the facts deemed credible by the trial court, the forcible entry into Carter's apartment was reasonable and therefore constitutional. The

entry occurred at 10:45 a.m., and the officers could reasonably expect that anyone present would be awake and up. Officers also had reason to expect someone to be at home to answer the door because a suspect's car was parked out front. Additionally, the lead officer was familiar with the layout of the apartment and testified, credibly in the court's determination, that eight to ten seconds was sufficient time to respond to his knock. Furthermore, the nature of the case, in which police anticipated finding substantial quantities of illicit drugs, reasonably led them to believe that destruction of evidence and the safety of officers and bystanders was of substantial concern. Comparable delays before effecting a forced entry have been found reasonable in other Wisconsin cases. *See* ***Long***, 163 Wis.2d at 264, 471 N.W.2d at 250; ***State v. Greene***, 172 Wis.2d 43, 50, 492 N.W.2d 181, 185 (Ct. App. 1992). The facts here do not support a different result.

In his reply brief, Pope contends for the first time that the trial court should have suppressed the evidence against him because the manner of the forcible entry was unreasonably dangerous to the persons within. Pope did not raise that issue in the trial court, and it is therefore waived. *See* ***Cappon v. O'Day***, 165 Wis. 486, 490-91, 162 N.W. 655, 657 (1917). Additionally, we do not address issues first raised in the appellant's reply brief. *See* ***Hogan v. Musolf***, 157 Wis.2d 362, 381 n.16, 459 N.W.2d 865, 873 n.16 (Ct. App. 1990), *rev'd on other grounds*, 163 Wis.2d 1, 471 N.W.2d 216 (1991).

By the Court.—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.