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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

**THE PEOPLE,**

**Plaintiff and Respondent,**

**v.**

**LANECIA MICHELLE MONDO,**

**Defendant and Appellant.**

**A107293**

**(Contra Costa County  
Super. Ct. No. 5-030411-3)**

Appellant Lanecia Michelle Mondo contends the trial court erred in denying her motion to suppress pursuant to Penal Code Section 1538.5.

**I. FACTS AND PROCEDURAL HISTORY**

This appeal arises from a search of appellant's home and person, pursuant to a search warrant.

On July 30, 2002, Detective Marty Ryan from the Contra Costa County Sheriff's Department applied for a search warrant for the residence at 123 Marys Avenue in Bay Point, and for the persons of Debra and Lanecia Mondo. In his statement of probable cause, Ryan declared that he had previously served a search warrant at the Bay Point residence on November 15, 2001. At that time, drug paraphernalia had been recovered, and Debra Mondo was arrested.

According to the affidavit in support of the search warrant, Ryan had spoken to a confidential reliable informant (CRI) who reported that Debra Mondo was in possession of methamphetamine, and that appellant possessed cocaine, at the 123 Marys Avenue residence. The affidavit indicated that the CRI feared for

his safety, and therefore Ryan requested that the identity of the CRI remain confidential on safety grounds, and to permit the informant's future usefulness to law enforcement. A records check disclosed that both appellant and Debra Mondo resided at 123 Marys Avenue in Bay Point and that Debra Mondo had an extensive narcotics related criminal history.

On July 30, 2002, a magistrate issued a search warrant authorizing the search of the 123 Marys Avenue residence, and a search of the persons of Debra and Lanecia Mondo. The same day, at about three in the afternoon, Detective Ryan and other officers from the Contra Costa County Sheriff's Department arrived at 123 Marys Avenue in Bay Point, to serve the search warrant.

They entered onto the front porch and found the solid front door was open, although a "mesh" security door, which was heavier than a normal screen door, was shut. Detective Ryan announced his presence and purpose, using his standard "knock and announce" statement. After about five seconds, the officers opened the door and walked in, without further waiting for the occupants to respond.

At the suppression hearing, appellant's sister, Danielle Hueners, testified she was in the living room of the residence, together with her boyfriend, her mother, and appellant, when the police entered. She confirmed that the front door was open and the security door was shut. Hueners was sitting on the couch, about a yard from the door, watching television and talking. She claimed she did not hear any knocking or words from the police officers, or see them outside, before they entered.

Appellant was seated about two feet from the door, and she also testified that she did not hear any knocking or words from the police prior to their entry.

After entering the front room of the residence, Lieutenant Kathleen Parker removed appellant to another room, and conducted a strip search. As appellant was ordered to bend over, Parker noticed a plastic bag between appellant's legs. Parker tried to retrieve the bag from appellant, but appellant resisted. Three other

detectives then entered the room to assist Parker, and a plastic bag containing six separately packaged rocks of cocaine was forcibly recovered from appellant.

The Contra Costa District Attorney's Office filed an information charging appellant with possession of a controlled substance (Health & Saf. Code, § 11350, subd. (a)). After her motion to suppress evidence was denied, appellant pled no contest to the charged offense and she was placed on probation, pursuant to Proposition 36.

## II. DISCUSSION

Appellant's principal contention is that the officers executing the search warrant failed to comply with applicable knock-notice requirements (Pen. Code, § 1531)<sup>1</sup>, which resulted in a violation of her federal Fourth Amendment rights and parallel state constitutional rights. The Attorney General contends the officers substantially complied with these statutory requirements.

Section 1531 reads: "The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute the warrant, *if, after notice of his authority and purpose, he is refused admittance.*" (Italics added.) Whether officers comply with such statutory requirements is relevant to the reasonableness inquiry under the Fourth Amendment. (*United States v. Banks* (2003) 540 U.S. 31, 36 (*Banks*); see also *People v. Hoag* (2000) 83 Cal.App.4th 1198, 1209 (*Hoag*).) Noncompliance with the foregoing statutory provisions may render a search unreasonable within the meaning of the Fourth Amendment. (*People v. Jacobs* (1987) 43 Cal.3d 472, 484 (*Jacobs*).)

Although an officer's unannounced entry into a home might be unreasonable under the Fourth Amendment, the reasonableness requirement is flexible. Not every entry must be preceded by an announcement and delay. (*Wilson v. Arkansas* (1995) 514 U.S. 927, 934 (*Wilson*).) For example, "if events indicate that compliance with the statutory requirements would be a useless gesture . . . , the requirement that the officers wait for a refusal of permission to

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<sup>1</sup> All further section references are to the Penal Code.

enter is excused.” (*People v. Gonzalez* (1989) 211 Cal.App.3d 1043, 1048; see also *People v. Uhler* (1989) 208 Cal.App.3d 766, 769-771 [“federal useless gesture rule” is both a statutory and a constitutional exception.]) *Wilson* expressly “[left] to the lower courts the task of determining the circumstances under which an unannounced entry is reasonable under the Fourth Amendment.” (*Wilson, supra*, at p. 936.)

In *Banks, supra*, 540 U.S. at pages 31-36, the United States Supreme Court found that an interval of about 15 seconds between the time the police first knocked, and their forced entry to serve a search warrant based on suspected cocaine sales, represented a “close” case, but was nevertheless reasonable. The high court rejected a set of factors or rules crafted by the Ninth Circuit, choosing instead to base the determinative test on a general assessment of reasonableness, in which the householder is given a realistic opportunity to come to the door and open it unless there is some demonstration of exigency. (See *ibid.*) California courts have also followed similar principles. (See *Jacobs, supra*, 43 Cal.3d at pp. 482-483; *People v. Peterson* (1973) 9 Cal.3d 717, 723-724 (*Peterson*); *Hoag, supra*, 83 Cal.App.4th at pp. 1208-1212; *People v. Trujillo* (1990) 217 Cal.App.3d 1219, 1227-1228 (*Trujillo*); *People v. Tacy* (1987) 195 Cal.App.3d 1402, 1415-1416 (*Tacy*)).

The essential inquiry is whether, under the totality of the circumstances, the policies underlying the knock-notice requirements have been served. (*Hoag, supra*, 83 Cal.App.4th at p. 1208.) Those policies are identified as: “(1) the protection of the privacy of the individual in his home [citations]; (2) the protection of innocent persons who may also be present on the premises where an arrest is made [citation]; (3) the prevention of situations which are conducive to violent confrontations between the occupant and individuals who enter his home without proper notice [citations]; and (4) the protection of police who might be injured by a startled and fearful householder.” (*Peterson, supra*, 9 Cal.3d at p. 723, quoting *Duke v. Superior Court* (1969) 1 Cal.3d 314, 321 (*Duke*)).

The trial court was “satisfied in this case that the warrant was properly issued. [And, t]hat in the case of an open--of a screen type door that the officers entered within the limits of the law with their search warrant [;] so I don’t find that to have violated anybody’s rights.”

In reviewing the court’s decision, “all presumptions are drawn in favor of the factual determinations of the superior court[’s] . . . express or implied findings if they are supported by substantial evidence.” (*People v. Laiwa* (1983) 34 Cal.3d 711, 718 (*Laiwa*)). Although the trial court also decides, as a matter of law, whether the search under section 1538.5 was unreasonable within the meaning of the Constitution, on appeal it nevertheless “becomes the ultimate responsibility of the appellate court to measure the facts, as found by the trier, against the constitutional standard of reasonableness.” (*People v. Lawler* (1973) 9 Cal.3d 156, 160.)

On this record, there is substantial evidence that Detective Ryan announced his presence about five seconds before entering through the mesh doorway. We accept this fact for purposes of our review, even though it appears the occupants of the living room may not have heard the announcement. (See *Laiwa, supra*, 34 Cal.3d at p. 718.)

*Tacy, supra*, 195 Cal.App.3d 1402, provides some guidance to our determination of whether the entry was lawful. There, the Court of Appeal reaffirmed that substantial or “reasonable” compliance with knock-and-notice requirements is required to render a search constitutional. (*Tacy, supra*, at pp. 1415-1421.) Under the particular facts presented in *Tacy*, officers armed with a search warrant made eye contact through an open door with the occupant inside, announced their identity, authority, and purpose, and then made immediate entry without knocking or requesting admission or being refused admission. The resulting search was ruled constitutional. Any invasion of privacy was minimal in view of the open door, and the possibility of violence was negated by the

occupant's awareness of the officers' identity and purpose, and the fact that the officers were armed. (*Tacy, supra*, at p. 1421.)

The appellate court in *People v. Uhler* (1989) 208 Cal.App.3d 766, 769-771, reached a similar result. There, an entry pursuant to search warrant and the resulting search was upheld even though the officers had not waited to be refused entry before crossing the threshold. Citing both federal and state cases, the court concluded that where the door was open and the officers and occupants were visible to each other, and the officers made eye contact, announced their identity and purpose, demanding entry, it would have been an "idle act" to await refusal. (*Ibid.*) Since the occupants had no right to refuse admittance in any event, the statutory and constitutional purpose of avoiding armed resistance was fully satisfied under the circumstances. (*Ibid.*)

In *Trujillo, supra*, 217 Cal.App.3d at pp. 1225-1228, uniformed officers, who were attempting to serve a search warrant at 6:30 a.m., knocked four times and gave notice of their presence at Trujillo's upstairs apartment. The officers could hear some indiscernible sounds from within, but there was no response. They knocked again, waited approximately 18 seconds from the first knocks, and then kicked in the door. The court rejected the prosecution's argument that the 18-second delay between knocking and entering complied with the knock-notice requirements, reasoning that there is no "bright-line" rule that a given period of waiting is sufficient. Instead, the amount of delay is simply one relevant factor, as compliance with section 1531 depends on a variety of circumstances. (*Trujillo, supra*, at p. 1225.) Characterizing the case as a close one, *Trujillo* nevertheless upheld the entry—stressing that the actions of the police had the effect of preventing a violent confrontation, as well as substantially protecting the occupant's limited privacy interest "under all the circumstances." (*Id.* at pp. 1227-1228; accord, *People v. Bustamante* (1971) 16 Cal.App.3d 213, 218-219 [substantial compliance where door open, officers could see occupants inside,

gave notice of identity and purpose, but did not wait for refusal; the purposes of the statute were not frustrated].)

In *Peterson, supra*, 9 Cal.3d at pages 723-724, an officer opened an exterior screen door about a minute after announcing his identity, authority, and purpose. The inner door was open, and the occupants were visible from outside. Our high court ruled there was no violation: “Thus, no right of privacy was infringed as the opening of the screen door revealed nothing more than was already exposed to the officers’ view and they did not physically intrude into the home until after the announcement. [¶] It is equally clear that no greater risk of violence to any person on the premises was created, . . . [nor] that the occupants might respond violently . . . , as the officers were immediately visible and announced their purpose to the occupants who were thus made aware of the situation and its demands. . . . We conclude that in the particular circumstances of this case there was substantial compliance with section 1531. . . .” (*Ibid.*)

Under the particular facts of this case, we cannot find that a delay of about five seconds between the officers’ announcement and entry substantially complies with the purposes of the knock-notice statute. Detective Ryan’s testimony on this point is particularly revealing: “Q. [MR. JAMESON (defense counsel)]: And no one was given a chance to come in and open the door and let you in, is that right? [¶] . . . [¶] THE WITNESS: I couldn’t see the people on the front couch moving toward the front door. Miss Mondo was the closest. I didn’t realize she was there. Whether she could have got to the front door or not I honestly don’t know. [¶] MR. JAMESON: But it happened pretty fast, right? [¶] A. I would say probably 5 seconds or right around there would give or take a second or 2 would be about it. [¶] Q. Did Detective Simmons give anybody an opportunity to come to the door and open the door? [¶] A. No. No.”

Unlike the majority of decisions we have reviewed, the wait time in the present case was drastically lessened, there was no eye contact between any of the occupants and the officers, and none of the occupants were identifiable prior to

entry. The record reveals no compelling exigency that would require such a brief waiting time. (See *Peterson, supra*, 9 Cal.3d at pp. 723-724; *Tacy, supra*, 195 Cal.App.3d at p. 1421; *Wilson, supra*, 514 U.S. at p. 936.) In short, it cannot be said that the officers' method of entry furthered any of the purposes and policies behind the knock-notice rules. (*Peterson, supra*, at p. 723, citing *Duke, supra*, 1 Cal.3d at p. 321.)

We must conclude there was an unexcused failure of compliance with section 1531, and that appellant's motion to suppress should have been granted. (See *Jacobs, supra*, 43 Cal.3d at p. 484; *Tacy, supra*, 195 Cal.App.3d at p. 1421.) We therefore reverse and remand, with instructions to the trial court to grant the motion to suppress.<sup>2</sup> (See *Jacobs, supra*, at p. 484.)

### III. DISPOSITION

The judgment of conviction is reversed. The matter is remanded to the trial court with instructions to grant the motion to suppress.

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STEVENS, J.

We concur.

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JONES, P.J.

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SIMONS, J.

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<sup>2</sup> We therefore need not address appellant's other contentions on appeal, which are moot.