

ISSUES

(1) Did officers have probable cause for a search warrant? (2) After officers knocked and announced, did they reasonably believe the occupants of the premises were refusing to admit them?

FACTS

A DEA informant made two controlled buys of heroin from Jose Magana at Magana's house in Santa Ana. Just before the informant arrived to make the second buy, agents saw Magana drive up with a man later identified as Chavez-Miranda. Magana went inside the house; Chavez-Miranda drove off. The informant then arrived and bought five ounces of heroin from Magana.

After the second sale, the agents focused their attention on identifying Magana's supplier. To do this they had the informant phone Magana and tell him he needed five ounces of heroin immediately. Shortly after the call was made, Magana left his house but was either not followed or he eluded agents. In any event, when he returned he phoned the informant and said he now had the heroin.

When the informant was admitted into the house, both Magana and Chavez-Miranda was there. After Magana introduced them, Chavez-Miranda left and the sale was completed. At this point, the informant told Magana that he needed five more ounces. Magana said he would have to contact his "friend" to get it, but that he'd probably have it later in the evening.

In the meantime, DEA agents were following Chavez-Miranda as he drove to a gated apartment complex where he used an electronic device to gain access to the parking lot. About 15 minutes later—presumably in response to a call from Magana saying he needed five more ounces of heroin—Chavez-Miranda left the apartment and drove back to Magana's house. He did not, however, go inside. Instead, a unidentified man leaned into his car, they spoke awhile, then Chavez-Miranda drove off. About two minutes later, Magana phoned the informant and said the heroin had arrived.

Again, the agents followed Chavez-Miranda as he drove back to his apartment. This time he engaged in counter-surveillance driving techniques; e.g., "driving erratically, varying his speed,, and frequently looking in his mirrors."

Back at Magana's house, the fourth sale of heroin to the informant was completed.

About five days later, the informant arranged to buy 100 ounces of heroin from Magana. Two days after that, Magana told the informant he had the heroin, that it was inside his house. Agents then sought and obtained search warrants for the apartment and Magana's house.

Magana's house was searched first. Among other things, agents found almost three kilograms of heroin. Meanwhile, the agents who were watching Chavez-Miranda's apartment saw him arrive with a woman and a child. All three went inside. Santa Ana police then arrived to help execute the warrant. One of the officers said he'd been inside the apartment before; it was small, less than 800 square feet.

At about 7 P.M. officers knocked and announced. When they received no response after 20 to 30 seconds, they broke down the door with a battering ram. Although the court did not say what, if anything, was found during the search of the apartment, it appears something incriminating was found because Chavez-Miranda filed a motion to suppress it.

DISCUSSION

Chavez-Miranda contended the evidence discovered in his apartment should be suppressed for two reasons: (1) the warrant was invalid because probable cause did not exist, and (2) the officers failed to comply with the knock-notice requirements.

Probable cause

Probable cause to search a house requires a “fair probability” that evidence will be found there. Here, probable cause was based on two assertions. First, that Chavez-Miranda was Magana’s supplier. Second, that Chavez-Miranda was storing his heroin inside his apartment. Although these assertions were based solely on circumstantial evidence, the court ruled it was sufficient.

WHO’S MAGANA’S SUPPLIER? The court ruled the following information established probable cause to believe that Chavez-Miranda was Magana’s supplier:

- (1) The informant made four controlled purchases of heroin from Magana.
- (2) On three of those occasions, Chavez-Miranda was at or near the place where the exchange occurred.
- (3) On two of those occasions, the heroin arrived at Magana’s home “within minutes of Chavez-Miranda’s arrival,”
- (4) Chavez-Miranda employed counter-surveillance driving tactics which, said the court, “we have recognized as being indicative of narcotics distribution.

WHERE’S THE HEROIN? The court also ruled that even though no one actually saw heroin inside Chavez-Miranda’s apartment, it was reasonable to believe it was there because the arrival of the heroin at Magana’s house coincided with Chavez-Miranda’s arriving there directly from his home. Said the court, “Chavez-Miranda traveled to and from [Magana’s] apartment at time and in a manner that appeared consistent with heroin being stored there before it was delivered to drug dealer Magana for sale to DEA operatives.”

In addition, even without such circumstantial evidence it would have been reasonable to believe Chavez-Miranda was storing his heroin inside his apartment because, as the court noted, “[W]e have recognized that in narcotics cases evidence is likely to be found where dealers live.”¹ Thus, said the court, “Chavez-Miranda was reasonably suspected of supplying the heroin, and it made sense to look for drugs in his apartment.”

Knock-notice

As noted, Chavez-Miranda also argued the evidence must be suppressed because the agents and police who executed the warrant failed to comply with the knock-notice requirements. The court disagreed.

When executing a warrant to search a residence, officers must comply with the knock-notice requirements unless compliance is excused for good cause. To fully comply, officers must do the following:

- (1) **Knock:** Knock or take other action to get the occupants’ attention.
- (2) **Authority:** Announce their authority; e.g., “Santa Ana police!”
- (3) **Purpose:** Announce their purpose; e.g., “Search warrant! Open the door!”
- (4) **Wait for refusal:** Wait until the occupants refused to admit them.²

¹ ALSO SEE *People v. Miller* (1978) 85 Cal.App.3d 194, 204 [“A number of California cases have recognized that from the nature of the crimes and the items sought, a magistrate can reasonably conclude that a suspect’s residence is a logical place to look for specific incriminating items.”]; *People v. Bennett* (1998) 17 Cal.4th 373, 388; *People v. Kraft* (2000) 23 Cal.4th 978, 1049.

² See *Jeter v. Superior Court* (1983) 138 Cal.App.3d 934, 936; *People v. Neer* (1986) 177 Cal.App.3d 991, 996; *People v. Montenegro* (1985) 173 Cal.App.3d 983, 989; *People v. Ramsey*

It was this fourth requirement—waiting for a refusal—that was the issue in *Chavez-Miranda*. As noted, the officers knocked, announced and, after receiving no response for 20 to 30 seconds, forcibly entered. The question, then, was whether 20 to 30 seconds is enough time to constitute an implied refusal.

Although the amount of time the officers waited is an important circumstance, there are other circumstances that are just as important. They are:

- Officers reasonably believed the premises were occupied.
- There was no apparent reason for the delay.
- The house was not so big that it would take long for the occupants to respond to the front door.
- It was not late at night or early in the morning when people are usually asleep.³

Applying these circumstances to the facts, the court ruled the 20-30 second delay in responding to the announcement constituted an implied refusal. As the court noted, the warrant was executed in the early evening, the officers knew the apartment was small, and that it was occupied by three people.

Chavez-Miranda's conviction was affirmed.

(1988) 203 Cal.App.3d 671, 680; *Duke v. Superior Court* (1969) 1 Cal.3d 314, 319; *People v. Franco* (1986) 183 Cal.App.3d 1089; *People v. Maita* (1984) 157 Cal.App.3d 309, 321, 319; *People v. Alaniz* (1986) 182 Cal.App.3d 903, 906.

³ See *People v. Drews* (1989) 208 Cal.App.3d 1317, 1328; *People v. Elder* (1976) 63 Cal.App.3d 731, 739 [overruled on another ground in *People v. Chapman* (1984) 36 Cal.3d 98, 109-13]; *People v. Valdivia* (1980) 114 Cal.App.3d 24, 28; *People v. Gallo* (1981) 127 Cal.App.3d 828, 838-9; *People v. Nealy* (1991) 228 Cal.App.3d 447, 450-1.