U.S. v. Granville
(9th Cir., August 28, 2000) __ F.3d __

ISSUE

(1) Did officers who were executing a search warrant comply with the knock-notice requirements? (2) If not, was compliance excused by exigent circumstances?

FACTS

Following a combined federal, state, and local investigation into a drug-trafficking organization headquartered in Oakland—the Emmanuel Lacy Organization—a federal grand jury indicted 12 people, one of whom was Granville. Officers also obtained warrants to search several homes and businesses connected to the operation. Granville's apartment in Hayward was one of them.

During a briefing just before the warrant on Granville's apartment was executed, officers were told, among other things, that the Lacy organization had a "history of violence" and "it was probable that firearms would be found at the residence."

When officers arrived at Granville's apartment just before 7 a.m., Oakland police officer and team leader Julian Kalama attempted to open the door with a pass key, but it did not work. The court explained what happened next:

"Officer Kalama knocked loudly with his fist three times and stated 'Oakland Police Officer, search warrant, open the door.' After waiting approximately five seconds without any response from the occupants of the apartment, Officer Kalama forced open the front door. The door did not open completely because someone had placed a dining room chair against the interior door knob. As the officers entered the apartment, Granville emerged from his bedroom. Officer Kalama yelled 'Oakland Police,' and another officer yelled 'FBI.' Granville then fired shots at the officers, and the officers returned fire. Two officers were wounded during this exchange. After being subdued, Granville stated that he did not know the agents were "cops" and that he thought he was being robbed."

The court did not say what evidence, if any, was found during the search of the apartment

DISCUSSION

Granville contended that any evidence found inside the apartment must be suppressed because the officers failed to comply with the knock-notice requirements. The court noted that the federal knock-notice statute "requires that an officer seeking to enter a house to execute a warrant must give notice of his purpose and authority, and he must be refused entry before forcibly entering the house." Although it was clear Kalama knocked and gave notice of his purpose and authority, Granville contended the officers did not give him enough time to open the door before they entered.

Was entry refused?

The court acknowledged that officers may infer they are being refused admittance if an occupant fails to admit them within a reasonable time after they announced their authority and purpose.[1] But the court added "there must be a lapse of a significant amount of time before officers may forcibly enter the premises." The question, said the court, was whether five seconds was enough. The court's answer was no:

"Under the facts of this case, five seconds cannot be considered a "significant amount of time." The five seconds Officer Kalama waited before forcing his way into Granville's apartment simply did not provide Granville with a reasonable opportunity to ascertain who was at the door and to respond to Kalama's request for admittance. This is especially apparent in light of the fact that the warrant was executed early in the morning when it was likely the occupants of the B Street apartment would be asleep."

The court went on to say that although "there is no fixed minimum amount of time officers must wait before entering, our case law has never authorized a forced entry after only five seconds." Thus, the court ruled the officers failed to comply with the knock-notice requirements.

Exigent circumstances?

Under certain circumstances, officers who are executing a search warrant will not be required to comply with the knock-notice requirements. Specifically, compliance is excused if it reasonably appeared that knocking or giving notice would, (1) inhibit their investigation by, for example, allowing the destruction of evidence;[2] or (2) significantly increase the level of danger to the search team or others.[3]

According to the court, the prosecution in Granville "fails to cite any specific facts, and we can find none in the record, that suggest Granville posed a threat to the officers. The government simply relies on generalizations and stereotypes that apply to all drug dealers. Our cases have made clear that generalized fears about how drug dealers usually act or the weapons that they usually keep is not enough to establish exigency."

The court then ruled that because exigent circumstances did not exist, the entry was unlawful and any evidence discovered inside the apartment must be suppressed.

DA's COMMENT

At one point the court quoted Officer Kalama as testifying he waited "approximately five seconds." But everywhere else throughout this opinion, the court omitted the word "approximately." Examples: "Officer Kalama stated that he 'waited five seconds' before kicking in the door." "[O]ur case law has never authorized a forced entry after only five seconds." "[A] delay of five-seconds or less after knocking and announcing has been held a violation [of knock-notice]."

Because it is doubtful Officer Kalama could accurately recall exactly how long he waited (especially considering he had been shot), it seems likely he would have used the word "approximately." But, for whatever reason, the court repeatedly insisted that Kalama waited exactly five seconds. This, despite the fact the court acknowledged that another officer on the search team testified, "Officer Kalama kicked the

door approximately twenty seconds after the knock and announce." And a third officer testified it was difficult to establish a specific time frame, "but I do recall there were several seconds that passed before Officer Kalama attempted to kick the door open."

Despite all this uncertainty—much of which was undoubtedly caused by Granville's decision to shoot Kalama and another officer—the court decided to give the benefit of the doubt to Mr. Granville. It, therefore, concluded that Kalama waited exactly five seconds. This is important, because, as the court acknowledged, a wait of ten seconds has been found sufficient to excuse compliance with the knock-notice requirements.

The court also seemed to unquestionably accept as true Granville's claim that he did not know the people who were yelling "Oakland Police" and "FBI" were, in fact, law enforcement officers—that he reasonably thought they were robbers. But robbers do not ordinarily knock and announce before making entry. And presumably these officers were in uniform or, as is usually the case, were wearing distinctively marked jackets.

The court sought to justify Granville's delay in answering the door by noting it was "early in the morning when it was likely the occupants of the G Street apartment would be asleep." According to the court, the search occurred at 7 a.m. on August 31, 1994, a Wednesday. It would be interesting to know how the court reached the conclusion that most people are likely to be asleep at 7 a.m. on weekdays.

The court concluded with these words: "The record does not contain any specific information that Granville himself was armed or dangerous." This statement is particularly puzzling because it overlooks the following: there was probable cause to believe Granville was a drug trafficker, that he was a member of one of the most armed-and-dangerous drug-trafficking organizations in the state, and that he was overheard discussing "possible shootings" with Lacy. Of course there was one other thing: he shot two law enforcement officers with a gun after they had identified themselves at least twice.

We hope the Ninth Circuit decides to take a closer look at this case.

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[1] See *People* v. *Hobbs* (1987) 192 Cal.App.3d 959, 964; *People* v. *Trujillo* (1990) 217 Cal.App.3d 1219, 1225.

[2] See *Richards* v. *Wisconsin* (1997) 520 US __ [137 L Ed 2d 615, 624-5]; *Parsley* v. *Superior Court* (1973) 9 Cal.3d 934, 938; *People* v. *Rosales* (1968) 68 Cal.2d 299, 305; *People* v. *Gastelo* (1967) 67 Cal.2d 586, 587-8; *People* v. *Dickson* (1983) 144 Cal.App.3d 1046, 1052; *People* v. *Dumas* (1973) 9 Cal.3d 871, 878-9; *People* v. *De Santiago* (1969) 71 Cal.2d 18, 28-9; *People* v. *Gonzales*(1971) 14 Cal.App.3d 881, 885-6; *People* v. *Thompson* (1979) 89 Cal.App.3d 425, 430-1; *People* v. *Alaniz* (1986) 182 Cal.App.3d 903, 907; *People* v. *Mayer* (1987) 188 Cal.App.3d 1101; *People* v. *Baldwin* (1976) 62 Cal.App.3d 727. COMPARE: *People* v. *Gonzales* (1989) 211 Cal.App.3d 1043; *People* v. *Marquez* (1969) 273 Cal.App.2d 341, 344-5.

[3] See *Wilson* v. *Arkansas* (1995) 514 US 927, 936; *United States* v. *Ramirez* (1998) 523 US __ [140 L.Ed.2d 191]; *People* v. *Dumas* (1973) 9 Cal.3d 871, 878-9; *Brown* v. *Superior Court* (1973) 34

Cal.App.3d 539, 544; *People* v. *Gilbert* (1965) 63 Cal.2d 690, 707; *People* v. *Thompson* (1979) 89 Cal.App.3d 425, 432; *People* v. *Ford* (1975) 54 Cal.App.3d 149, 155, fn.5; *People* v. *Galan* (1985) 163 Cal.App.3d 786, 795 [“(T)he law is well settled that exigent circumstances which justify the entry of the premises without a warrant also justify noncompliance with [the knock-notice statute].”]; *People* v. *Kizzee* (1979) 94 Cal.App.3d 927, 935 [“Emergency situations which excuse compliance with the warrant requirement also excuse compliance with [the knock-notice requirement].”]; *People* v. *Amos* (1977) 70 Cal.App.3d 562, 568 [“Compliance with 844 is excused if police have reason to believe that a weapon will be used against them and the reasoning is based on specific facts.”].