

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT HENRY GONZALES,

Defendant-Appellant.

UNPUBLISHED

July 30, 1996

No. 182116

LC No. 94 0377 FH

Before: Michael J. Kelly, P.J., and Reilly and E. Sosnick,* JJ.

MICHAEL J. KELLY, P.J. (dissenting).

I respectfully dissent. I cannot find that the trial court's ruling at the suppression hearing was clearly erroneous.

The court's order is set forth in its entirety:

All right. Thank you. The Court has had an opportunity to review the testimony of Annette Sallask, the only witness that was offered in the Evidentiary Hearing. And I apologize to both counsel for the time that has taken, but the reason for it was that we were handling a number of other matters that the court was ruling on.

After a careful review of her testimony, this Court will deny the Motion to suppress the evidence. The Court finds that there was no violation of the defendant's Constitutional Rights in this case.

The Court finds that the officers did not violate the knock and announce requirements. From that testimony included, that the officer [sic] stopped 2 doors down the road and they came running up as the witness was leaving the house. She had just gone down the driveway a short time and had been in the house visiting. Then,

* Circuit judge, sitting on the Court of Appeals by assignment.

shortly thereafter, and of course they were yelling to her, 'Police warrant'. Shortly thereafter, the second van pulled up and there seemed to be considerable amount of commotion outside. The officers in the first van who were attired in their SWAT team, so to speak, attire with cops and vests on. They were directing the traffic around the house and telling officers where to go. And then from the testimony, as I understood it, they yelled several times, 'Police warrant' and rammed the door, or knocked on the door 4 times with the ram. And her testimony was that about 2 minutes elapsed while they were ramming. So, for that reason, the court has denied the Motion.

Taking the evidence on favorable view to the prosecution, it would appear that approximately two minutes passed from when the officers in the first van arrived until the door was opened. It is not clear to me whether it was opened from within or broken open after the shouting and rapping on the door with the police ram. Appellant's brief says: "Approximately 2 minutes elapsed from the time the first van pulled up and the door was opened." It is apparent that a large-scale and noisy disturbance took place in front of and on the premises of the Gonzales residence during the two minutes that elapsed while two vans of police officers arrived in the area yelling, "stop, police warrant", repeatedly.

I believe two minutes' time is abundant to satisfy the statute. The troubling factor in this case, which results in a majority vote for reversal, emanates from the prosecution's decision not to present witnesses at the evidentiary hearing, which may have been the result of a combination of factors; e.g., the minimal importance of the case which resulted in probation for this defendant; the failure of defense counsel to identify the specifics of the statutory violation claimed in support of his request for an evidentiary hearing; the reluctance of the court and the prosecution to postpone the hearing.

I would affirm.

/s/ Michael J. Kelly