

SYLLABUS

(This syllabus is not part of the opinion of the Court. It has been prepared by the Office of the Clerk for the convenience of the reader. It has been neither reviewed nor approved by the Supreme Court. Please note that, in the interests of brevity, portions of any opinion may not have been summarized).

State v. Lydia Lopez Sanchez (A-41-2003)

[NOTE: This is a companion case to State v. Jones, also filed today.]

Argued January 6, 2004 -- Decided April 21, 2004

PER CURIAM

The narrow issue raised in this appeal is whether the totality of the circumstances justified a no-knock warrant on the basis of officer safety.

In May 2001, the Cape May Prosecutor's Office received information from a confidential informant of known reliability that Lydia Sanchez was selling cocaine out of her second-floor, duplex apartment in Wildwood. Based on that tip and on two controlled drug buys performed at the apartment, Agent Darrell Shelton applied for a warrant before a judge of the Wildwood Municipal Court to search Sanchez's apartment and person.

In the search warrant application, Shelton also sought approval for a no-knock entry (without police knocking or announcing their presence). Shelton's affidavit asserted that Sanchez's nine-year-old arrest for aggravated assault and unlawful possession of a weapon posed a risk to officer safety. It also disclosed that Sanchez's criminal history included a 1992 arrest for possession of CDS and a 1972 arrest for shoplifting. The municipal court judge issued the search warrant and authorized its execution without knocking.

When police executed the no-knock warrant at Sanchez's residence, they discovered a substantial quantity of cocaine, a small supply of marijuana, and miscellaneous drug paraphernalia. Sanchez was charged with numerous drug-related offenses.

Sanchez moved to suppress the seized narcotics, arguing that there was insufficient information in the search warrant application to permit a no-knock entry. The trial court granted Sanchez's motion to suppress. On appeal, the Appellate Division reversed in an unpublished opinion. Noting that this was a close case, two of the panel's three judges concluded that Sanchez's criminal record provided the police reasonable suspicion to believe that they were dealing with a person with a potentially violent disposition in the drug milieu. The third member of the panel dissented, reasoning that the record presented to the municipal court judge did not provide a reasonable, particularized suspicion of a danger to officer safety sufficient to justify a no-knock entry.

The Supreme Court granted Sanchez's motion for leave to appeal.

HELD: In the totality of the circumstances, the police articulated a reasonable, particularized suspicion of a danger to officer safety sufficient to justify the no-knock entry.

1. This Court addressed in detail the controlling principles concerning no-knock warrants in State v. Jones, ___ N.J. ___ (2004), also decided today. Here, as in Jones, the criminal drug activity occurred in Wildwood; Agent Shelton sought a search warrant based on the tip of a confidential informant and controlled drug buys; the same Wildwood Municipal Court Judge issued the warrant; and the warrant allowed a no-knock entry. Although this case presents a closer question than Jones, the Court concludes that in the totality of the circumstances, particularly Sanchez's arrest for aggravated assault and unlawful possession of a weapon, the police articulated a reasonable, particularized suspicion of a danger to officer safety sufficient to justify their no-knock entry into Sanchez's apartment. (pp. 3-4)

Judgment of the Appellate Division is **AFFIRMED**.

**CHIEF JUSTICE PORITZ and JUSTICES LONG, VERNIERO, LaVECCHIA, ZAZZALI, ALBIN
and WALLACE join in this opinion.**

SUPREME COURT OF NEW JERSEY
A-41 September Term 2003

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

LYDIA LOPEZ SANCHEZ,

Defendant-Appellant.

Argued March 15, 2004 - Decided April 21, 2004

On appeal from the Superior Court, Appellate
Division.

Vincent N. Simone argued the cause for
appellant.

Johanna Barba, Deputy Attorney General,
argued the cause for respondent (Peter C.
Harvey, Attorney General of New Jersey,
attorney).

PER CURIAM

In May 2001, the Cape May County Prosecutor's Office
Narcotics Task Force received information from a confidential
informant of known reliability that defendant Lydia Sanchez was
selling cocaine out of her second-floor, duplex apartment in
Wildwood. Based on that tip and on two controlled drug buys
performed at the apartment during a subsequent police
investigation, Agent Darrell Shelton applied for a warrant

before a judge of the Wildwood Municipal Court to search defendant's apartment and person.

In his affidavit offered in support of the search warrant application, Shelton asserted that a no-knock entry was necessary because of the easily disposable nature of the drugs and for officer safety. As support for his concern for the safety of the executing officers, Shelton called specific attention to defendant's nine-year-old arrest for aggravated assault and unlawful possession of a weapon. Shelton's affidavit also disclosed that defendant's certified criminal history ordered by the police revealed that defendant had been arrested in 1992 for possession of CDS and in 1972 for shoplifting. The municipal court judge issued the search warrant and authorized its execution without knocking and announcing the identity and purpose of the law enforcement officers.

The police executed the no-knock warrant at defendant's residence. They discovered a substantial quantity of cocaine, a small supply of marijuana, and miscellaneous drug paraphernalia. Defendant was charged with numerous drug-related offenses.

Defendant moved to suppress the seized narcotics, arguing that there was insufficient information in the search warrant application to permit a no-knock entry. After a hearing, the trial court granted defendant's motion to suppress, finding that

Agent Shelton's affidavit did not provide the municipal court judge with sufficient information to justify a departure from the knock-and-announce requirement.

On appeal, the Appellate Division reversed in an unpublished opinion. Noting that this was a "close case," two of the panel's three judges concluded that defendant's criminal record provided the police reasonable suspicion to believe that "they were dealing with a person with a potentially violent disposition in the drug milieu" The third member of the panel dissented, reasoning that the record presented to the municipal court judge did not provide a reasonable, particularized suspicion of a danger to officer safety sufficient to justify a no-knock entry. We granted defendant's motion for leave to appeal nunc pro tunc. State v. Sanchez, 178 N.J. 244 (2003).

The narrow issue before this Court is whether the totality of the circumstances justified a no-knock warrant on the basis of officer safety. The facts in this appeal are similar to those found in State v. Jones, ___ N.J. ___ (2004), also decided today. Here, as in Jones, the criminal drug activity occurred in Wildwood; Agent Shelton sought a search warrant based on the tip of a confidential informant and controlled drug buys; the same Wildwood Municipal Court Judge issued the warrant; and the warrant allowed a no-knock entry. Unlike Jones, however,

defendant in this appeal does not challenge the probable cause determination underlying the search warrant.

We set forth the controlling principles concerning no-knock warrants in State v. Johnson, 168 N.J. 608 (2001), and reaffirmed them in Jones, supra. Although this case presents a closer question than Jones, after a careful review of the record we conclude that in the totality of the circumstances, particularly defendant's arrest for aggravated assault and unlawful possession of a weapon, the police articulated a reasonable, particularized suspicion of a danger to officer safety sufficient to justify their no-knock entry into defendant's apartment.

As we noted in Johnson, the showing required to justify a no-knock entry "is not high[.]" 168 N.J. at 624 (quoting Richards v. Wisconsin, 520 U.S. 385, 394-95, 117 S. Ct. 1416, 1422, 137 L. Ed. 2d 615, 622 (1997)). In view of that required showing, our concerns for police officer safety, Jones, supra, ___ N.J. at ___-___ (slip op. at 34-38), and because a "search based upon a warrant is presumed to be valid once the State establishes that the search warrant was issued in accordance with the procedures prescribed by the rules governing search warrants[.]" State v. Valencia, 93 N.J. 126, 133 (1983), we affirm.

CHIEF JUSTICE PORITZ and JUSTICES LONG, VERNIERO,
LaVECCHIA, ZAZZALI, ALBIN, and WALLACE join in this opinion.

SUPREME COURT OF NEW JERSEY

NO. A-41

SEPTEMBER TERM 2003

ON APPEAL FROM Appellate Division, Superior Court

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

LYDIA LOPEZ SANCHEZ,

Defendant-Appellant.

DECIDED April 21, 2004

Chief Justice Poritz

PRESIDING

OPINION BY Per Curiam

CONCURRING OPINION BY _____

DISSENTING OPINION BY _____

CHECKLIST	AFFIRM		
CHIEF JUSTICE PORITZ	X		
JUSTICE LONG	X		
JUSTICE VERNIERO	X		
JUSTICE LaVECCHIA	X		
JUSTICE ZAZZALI	X		
JUSTICE ALBIN	X		
JUSTICE WALLACE	X		
TOTALS	7		