Filed 11/4/03

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

THE PEOPLE, Plaintiff and Respondent, v. JEAN MICHEL RABADUEX, Defendant and Appellant.	C041818 (Super. Ct. No. TF030882A)

APPEAL from a judgment of the Superior Court of San Joaquin County, Richard Guiliani, Judge. Affirmed.

Peter Dodd, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Jo Graves, Senior Assistant Attorney General, Susan Rankin Bunting, Acting Supervising Deputy Attorney General, Patrick J. Whalen, Deputy Attorney General, for Plaintiff and Respondent.

Defendant Jean Michel Rabaduex was charged with 199 offenses arising out of his sexual acts with and electronic surveillance of his live-in girlfriend's daughter. Defendant moved to suppress evidence obtained from a search of his house because "the police did not comply with knock and announce

principles, particularly by failing to wait a sufficient period of time after 'knock-notice' to infer a constructive refusal to enter." The court denied defendant's motion. He subsequently pled guilty to all counts and was sentenced to 35 years in prison.

On appeal, defendant contends the trial court erred in denying his motion to suppress. Defendant argues that because police had reason to know the only person at home was asleep, it was unreasonable for them to enter the house only 30 seconds after first announcing their presence.

Because the only person home at the time of the entry was defendant's girlfriend, we conclude defendant failed to show the violation of *his* Fourth Amendment rights necessary to require suppression of the evidence against him. Accordingly, the trial court did not err in denying defendant's motion to suppress, and we will affirm the judgment.

FACTUAL AND PROCEDURAL HISTORY

I

Background

In September 2001, Deborah S. was living at a house in Tracy with her 14-year-old daughter C.S. and defendant. Defendant had lived with Deborah S. for about eight years but was not married to her and was not C.S.'s father.

In late September 2001, defendant's nephew Richard moved into the house. During his stay, Richard saw defendant touching C.S. inappropriately. Richard also discovered that hidden cameras had been installed in C.S.'s bedroom and bathroom.

Richard found videotapes in defendant's bedroom depicting defendant and C.S. engaging in sexual intercourse. Richard then contacted the Tracy Police Department.

A search warrant was issued for the house, and the resulting search, which was conducted on September 20, 2001, led to the seizure of numerous items, including two computers and various videotapes. The two computers contained over 1,000 images depicting child pornography. Police also determined that the video surveillance cameras set up in C.S.'s bedroom and bathroom were connected to a monitor in defendant's room.

Several days after the search, officers interviewed C.S. C.S. initially told officers that she began having sex with defendant when she was about 12 years old. At the preliminary hearing, C.S. testified that she began having sex with defendant when she was 14. She stated that she loved defendant and that he was the only father she had ever known.

II

Suppression Hearing

Deborah S. is employed as a nurse and had worked the night shift before the morning of the search. On the morning of the search, Deborah S. arrived home at 8:30 a.m. and went to bed about 10:30 a.m. Before going to bed, she spoke with defendant three or four times by telephone. The last call she received from defendant that morning was at 9:43 a.m.

Deborah S. testified that she sleeps in the master bedroom at the top of the stairs with the door closed and that her dog sleeps in the room with her and barks whenever someone knocks on

the door. There is a sign taped over the doorbell which reads, "Day sleeper. Do not ring doorbell."

Deborah S. claimed that on the day police executed the search warrant, she neither heard the police knocking nor her dog barking. She awoke from the sound of her home alarm system and opened the bedroom door to find police officers on the landing outside her bedroom.

A defense investigator testified that she went to the house with Deborah S. and waited inside the bedroom with the dog while defendant's lawyer rang the doorbell and knocked on the door. The investigator testified that the dog barked in response to both the knock and the doorbell.

The parties stipulated that C.S. had given officers the key to the house on the morning the warrant was executed. The parties also stipulated that the police asked C.S. if anyone was home, and C.S. said, "'My mom, she's sleeping.'" The prosecutor did not argue that C.S. gave the police consent to enter the house.

Detective Daniel Schnepple of the Tracy Police Department testified that on September 20, 2001, at approximately 11:30 a.m., he and more than one-half dozen other officers approached defendant's two-story house. Detective Schnepple recalled noticing a sign about a day sleeper. Detective Shawn Steinkamp knocked on the door very loudly with his bare hand and yelled, "Tracy Police Department. Search warrant. Demand entry." Detective Steinkamp waited approximately five to eight seconds and then knocked again and repeated the announcement. The

officers waited approximately 20 more seconds before entering the house with the key C.S. had given them. Detective Schnepple testified that the total time from the first knock to entry was roughly 30 to 35 seconds.

After entering the house, the officers looked around downstairs for approximately 35 to 45 seconds, maybe longer, then continued upstairs to find Deborah S. coming out of the master bedroom wearing a T-shirt and removing a sleep mask from her face. Detective Schnepple testified that Deborah S. appeared to be fumbling with earplugs; however, he never actually saw any earplugs. Deborah S. testified that she never wears earplugs because she needs to hear the phone ring in case of emergency.

The trial court found that officers waited approximately 30 to 35 seconds after knocking and announcing their presence before entering the house and concluded this was a sufficient wait during the middle of the day. The court observed, "it may be that the officers constructively at least should have known that there was a sleeping person there," but the court concluded the officers did not have to wait longer based on that fact. The court stated: "Should the police have . . . waited five minutes because that's how much time it takes a sleeping person who happens to sleep in a certain clothing configuration to get downstairs? No. You know, it's the reasonableness of the police conduct to meet the policy generally of noticing people that police are about to come into their house. Not of this person specifically."

The trial court expressed reservation about allowing more time for people with "do not disturb" or "day sleeper" signs to respond to police seeking to execute search warrants, noting that drug dealers might place such signs on their doors to buy themselves more time to destroy the evidence of their crimes. The court concluded that the police "have to wait the appropriate time" and that "the cases have fixed that somewhere around 30 seconds," which the court found was the amount of time the police waited in this case. Accordingly, the court denied defendant's motion to suppress.

DISCUSSION

Defendant contends the trial court erred in denying his motion to suppress because the court improperly concluded officers waited a reasonable time after knocking and giving notice of their presence and purpose before entering the house to execute the search warrant. Defendant contends that waiting only 30 to 35 seconds was unreasonable because officers knew the occupant of the house was likely to be asleep and they had no reason to make a quick entry. We conclude, however, that because the person who was at home at the time of the entry was defendant's girlfriend, and not defendant himself, the alleged knock-notice violation did not provide any basis for suppressing evidence against defendant. Therefore, the trial court did not err in denying defendant's motion to suppress.

I

Standard of Review

In reviewing a trial court's ruling on a motion to suppress, we defer to the trial court's findings of fact, both express and implied, if supported by substantial evidence. However, we independently apply the pertinent legal principles to those facts to determine as a matter of law whether there has been an unreasonable search or seizure. (*People v. Miranda* (1993) 17 Cal.App.4th 917, 922.)

II

The Knock-Notice Rule

Penal Code section 1531, which applies to the execution of search warrants, provides: "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." "[A]n entry effected in violation of the provisions of this statute renders any following search and seizure unreasonable within the meaning of the Fourth Amendment." (*Garcia v. Superior Court* (1973) 29 Cal.App.3d 977, 980.) As the United States Supreme Court has declared, "the common-law knock and announce principle forms a part of the Fourth Amendment reasonableness inquiry." (*Wilson v. Arkansas* (1995) 514 U.S. 927, 930 [131 L.Ed.2d 976, 980].) There is no dispute in this case that the officers seeking to search defendant's house gave notice of their authority and purpose, or that they "broke" into defendant's house within the meaning of Penal Code section 1531

when they used the key C.S. gave them to open the door. (See *People v. Flores* (1968) 68 Cal.2d 563, 567 [entry by means of a key constitutes a "breaking" within the meaning of Penal Code section 1531], overruled on other grounds in *People v. De Santiago* (1969) 71 Cal.2d 18, 28, fn. 7.) The issue here is whether, when the police entered the house, they had been "refused admittance."

"Section 1531 permits an officer executing a search warrant to break into the premises *only if he is refused admission after announcing 'his authority and purpose*.' Even where the police duly announce their identity and purpose, forcible entry is not permitted under the statute if the occupants of the premises are not first given an opportunity to surrender the premises voluntarily." (*Jeter v. Superior Court* (1983) 138 Cal.App.3d 934, 937, italics added.)

There need not be an explicit refusal of admittance before officers are entitled to enter a house to execute a search warrant. "The failure to respond within a reasonable time under the circumstances may constitute a refusal within the meaning of the statute." (*People v. Gallo* (1981) 127 Cal.App.3d 828, 838.) "There is no convenient test for measuring the length of time necessary to support an implied refusal." (*People v. Neer* (1986) 177 Cal.App.3d 991, 996.) "[T]he test is whether 'the circumstances were such as would convince a reasonable man that permission to enter had been refused.'" (*United States v. Bustamante-Gamez* (9th Cir. 1973) 488 F.2d 4, 11, quoting *McClure v. United States* (9th Cir. 1964) 332 F.2d 19, 22; see also

People v. Neer, *supra*, 177 Cal.App.3d at p. 996 [question is whether there are "specific facts, such as shouting or running, to support an objectively reasonable belief the occupants had refused entry"].)

III

Defendant's Right to Raise the Alleged Knock-Notice Violation

Because it was *Deborah S.*, not defendant, who was at home when the police allegedly entered the house without waiting to be refused admittance, we asked the parties to brief the issue of whether defendant had "standing" to challenge the alleged failure of the police to comply with knock-notice requirements. Defendant contends the "standing" issue cannot be raised for the first time on appeal and, in any event, "a temporarily absent resident [has] 'standing' to object to an unannounced entry into the premises." The People contend that phrasing the issue in terms of "standing" "only confuses the analysis." According to the People, "the pertinent inquiry is whether this particular search . . . was reasonable as to defendant, an absent resident with no ownership interest in the property."[1]

---

[1] The record of the suppression hearing is actually silent as to whether defendant had an ownership interest in the house. Deborah S. testified the mortgage on the house was in her name, and she qualified for the mortgage based on her income alone. While this evidence supports the inference that Deborah S. alone owned the house, it does not compel that conclusion. In any event, for reasons set forth below, the ownership issue is irrelevant.

For the reasons set forth below, we conclude that because the alleged knock-notice violation in this case was not a violation of *defendant's* Fourth Amendment rights, his motion to suppress was properly denied.

"'Fourth Amendment rights are personal rights which . . . may not be vicariously asserted.'" (*Rakas v. Illinois* (1978) 439 U.S. 128, 133-134 [58 L.Ed.2d 387, 394], quoting *Alderman v. United States* (1969) 394 U.S. 165, 174 [22 L.Ed.2d 176, 187].) "[S]ince the exclusionary rule is an attempt to effectuate the guarantees of the Fourth Amendment [citation], it is proper to permit only defendants whose Fourth Amendment rights have been violated to benefit from the rule's protections." (*Rakas*, at p. 134 [58 L.Ed.2d. at p. 395].) Thus, the question in a case such as this is "whether the challenged search . . . violated the Fourth Amendment rights of [the] criminal defendant who seeks to exclude the evidence obtained during [the search]. That inquiry in turn requires a determination of whether the disputed search and seizure has infringed an interest of the defendant which the Fourth Amendment was designed to protect." (*Id.* at p. 140 [58 L.Ed.2d. at p. 399].)

With the question before us properly framed, we reject defendant's assertion that the issue cannot be raised for the first time on appeal. The issue we confront -- whether the challenged search violated *defendant's* Fourth Amendment rights -- is not new; it is the fundamental issue presented by defendant's motion to suppress. Subdivision (a)(1)(B)(iv) of Penal Code section 1538.5 authorizes a defendant to "move . . .

to suppress as evidence any tangible or intangible thing obtained as a result of a search or seizure" when "[t]he search or seizure with a warrant was unreasonable because . . . [¶] [t]he method of execution of the warrant violated federal or state constitutional standards." As the moving party, it was defendant's burden to prove the police entry violated his constitutional rights. (See *People v. Moreno* (1992) 2 Cal.App.4th 577, 582.) If he failed to carry this burden, then the motion to suppress was properly denied, regardless of the reason for the trial court's ruling. "'"No rule of decision is better or more firmly established by authority, nor one resting upon a sounder basis of reason and propriety, than that a ruling or decision, itself correct in law, will not be disturbed on appeal merely because given for a wrong reason. If right upon any theory of the law applicable to the case, it must be sustained regardless of the considerations which may have moved the trial court to its conclusion." [Citation.]'" (*People v. Zapien* (1993) 4 Cal.4th 929, 976, quoting *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 19.)

Under the foregoing rule, "a respondent [on appeal] may assert a new theory to establish that an order was correct on that theory '*unless* doing so would unfairly prejudice appellant by depriving him or her of the opportunity to litigate an *issue of fact*.'" (*Bailon v. Appellate Division* (2002) 98 Cal.App.4th 1331, 1339.) Relying on this exception, defendant contends "this court does not have all the facts necessary to make a determination as to whether [he] lacked 'standing' to object to

the failure of the police to comply with knock-and-announce rules" because "trial counsel was not put on notice of the 'standing' issue so as to be able to develop whether [defendant] was within earshot or 'eyeshot' of the home."

We disagree. In his written motion to suppress, defendant vaguely asserted that the police entry into the house violated knock-notice requirements because police entered "without giving adequate notice to the resident therein." In its written opposition to the motion, the prosecution asserted the search occurred "while the defendant was at work" and while Deborah S. was at home. At the subsequent hearing, defendant offered no evidence to dispute the assertion that he was at work. Instead, defendant's motion was premised on the ground that police did not give *Deborah S.*, the "sleeping occupant [who] they knew or should have known was present in that home and asleep time to get down and answer the door." Furthermore, the evidence showed that from the time she arrived home from work at about 8:30 a.m. until 9:43. a.m., when she started to get ready for bed, Deborah S. received several telephone calls from defendant -- suggesting he was nowhere near the house. Under these circumstances, defendant's belated suggestion that he might have been able to prove he was "within earshot or 'eyeshot' of the home" when the police arrived about 11:30 that morning does not persuade us that defendant was denied a fair opportunity "to develop the pertinent facts" before the trial court.

Having concluded the issue is properly before us, we turn to the question of whether defendant's Fourth Amendment rights were violated by the police conduct in this case.

Four primary reasons underlie the knock-notice rule in California: "'"(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 . . . [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."'" (*People v. Hoag* (2000) 83 Cal.App.4th 1198, 1203.) Additionally, the privacy interest underlying the knock-notice rule has several aspects. "First, [the knock-notice rule] protects the homeowner from the outrage of having his 'castle' suddenly and violently broken into. [Citations.] . . . [¶] Second, the rule may prevent embarrassing circumstances resulting from the unexpected exposure of private activities. [Citations.]" (*United States v. Bustamante-Gamez*, *supra*, 488 F.2d at pp. 11-12.) Third, because officers must wait to be refused admittance even under circumstances where immediate entry will not require the destruction of property, the "refused admittance" aspect of the knock-notice rule gives the homeowner an opportunity to consent to the entry of his or her home, rather than suffering the

indignity of having law enforcement officers both enter *and* search without his or her permission.[2]

As we have explained, the alleged knock-notice violation here was the failure of police to wait a reasonable time before entering the house. Assuming for the sake of argument the police did not wait a sufficient amount of time, and their premature entry into the house infringed on the privacy interests protected by the knock-notice rule, those interests were not those of defendant, because he was not home at the time and therefore was in no position either to be embarrassed by a premature entry or to let the police into the house in response to their demand. The only occupant of the house at the time of the search was Deborah S. The infringement on *Deborah's* rights to avoid embarrassing circumstances and to have a reasonable opportunity to let the police in, however, provides no basis for the suppression of evidence to be used against *defendant*. To successfully suppress evidence against him, defendant had to show that *his* Fourth Amendment rights were violated by the actions of the police. He failed to do so.

We note that our conclusion is at odds with the conclusion in *People v. Hoag* on the same point. In *Hoag*, the court noted the rule that a defendant moving to suppress evidence "may not

---

[2] By referring to the homeowner's consent, we do not mean to suggest that the search pursuant to the warrant is transformed into a search pursuant to the homeowner's consent. The consent to which we refer is the homeowner's consent -- or rather, his *opportunity* to consent -- to the officers' entry to the property not to the search of it.

vicariously challenge the alleged violation of another's interests." (*People v. Hoag*, *supra*, 83 Cal.App.4th at p. 1203.) Nonetheless, under circumstances similar to those in this case,[3] the court concluded that the defendant, who was not home at the time of the police entry, had the right to challenge the alleged knock-notice violation that occurred in his absence. (*Id.* at pp. 1203-1207.) The court based its conclusion on the defendant's "personal interest in the safety of the mother of his child, who was present when the officers entered his residence," and on the defendant's "right to be protected from the unnecessary destruction of his property." (*Id.* at p. 1205.)

We disagree with the *Hoag* court that the right to be protected from the unnecessary destruction of property provides a basis for a suppression motion based on a knock-notice violation where no such destruction occurs. To the extent knock-notice requirements protect a homeowner's right to avoid the unnecessary destruction of his property, that right is not even implicated -- let alone infringed -- when police entry occurs through an unlocked door (as in *Hoag*) or, as here,

---

[3] In *Hoag*, sheriff's deputies served a search warrant on the defendant's home one evening while he was away. (*People v. Hoag*, *supra*, 83 Cal.App.4th at p. 1202.) A deputy knocked and announced, "'Sheriff's Department, search warrant, we demand entry.'" (*Ibid.*) After hearing no response following a second knock and announcement, a second deputy turned the door handle and the deputies entered. (*Ibid.*) The entry occurred approximately 15 to 20 seconds after the deputies' first knock. (*Ibid.*) Deputies found the defendant's fiancé inside studying. (*Id.* at pp. 1201-1202.) They searched the residence and found marijuana in the garage. (*Id.* at p. 1202.)

through a locked door opened with a key. Of course, such an entry may infringe the homeowner's right to privacy, or some other interest protected by knock-notice requirements. If that is the case, however, then the analysis properly focuses on whether the infringement of those other interests justifies the suppression of evidence. We can perceive no valid basis for holding that a person whose property is not damaged in the slightest by a premature entry in violation of knock-notice requirements is nonetheless entitled to the suppression of evidence seized following the entry because one of the purposes of knock-notice requirements in the abstract is the protection against the unnecessary destruction of property.

We find the decision of the Arizona Court of Appeals in *State v. Papineau* (1985) 146 Ariz. 272 [705 P.2d 949] persuasive on this point. In *Papineau*, "officers waited five to ten seconds after knocking and announcing before entering, and . . . they entered [through an unlocked door] only after hearing 'rustling' movements within," while the defendant was not home. (*Id.* at p. 950.) In concluding the defendant had no "standing" to assert the knock-notice violation, the appellate court succinctly wrote: "Only one whose own rights have been violated may seek the remedy of exclusion. [Citation.] 'The right which knock and announce rules provide occupants is the right to be warned that their privacy is about to be legally invaded.' [Citation.] Also important are avoidance of violent confrontations attendant to unannounced entries, prevention of destruction of property, and preventing unexpected exposure of

private activities. [Citations.] Entry through an unlocked door involves no destruction of property. While those present may have felt their privacy unjustifiably invaded and while the entry may have heightened the risk of violent confrontation, only those present would have rights that would be violated. One not present at the entry would lose nothing. No rights of the defendant having been invaded, he has no standing to assert the illegality of the entry." (*Id.* at pp. 950-951, italics omitted.)

As we have noted, the question in a case such as this is "whether the disputed search and seizure has infringed on an interest of the defendant which the Fourth Amendment was designed to protect." (*Rakas v. Illinois*, *supra*, 439 U.S. at p. 140 [58 L.Ed.2d. at p. 399].) An entry that does not destroy any property does not infringe on the defendant's right to avoid the unnecessary destruction of his property. Therefore, if such an entry is to provide a basis for the suppression of evidence, suppression can be justified only because the entry infringed on some *other* interest protected by knock-notice requirements.

We also disagree with the *Hoag* court's conclusion that an absent defendant's "personal interest in the safety of [another] who was present when the officers entered his residence" provides a valid basis for a suppression motion based on a knock-notice violation. (*People v. Hoag*, *supra*, 83 Cal.App.4th at p. 1205.) In reaching that conclusion, the *Hoag* court relied on the decision of the Arkansas Supreme Court in *Mazepink v. State* (1999) 336 Ark. 171 [987 S.W.2d 648]. In *Mazepink*, the

court concluded that because "at least one person was present to comply with the officers' request for entry so that they could execute their search warrant," "[i]t seems irrelevant . . . that Mazepink was not actually present at the time of entry; his standing to seek exclusion of the evidence obtained after the search is grounded in his right to exclude others and to be free from illegal police invasion of his privacy in his residence. Furthermore, Mazepink's legitimate expectation of privacy in his residence encompasses the right to expect not only privacy for himself, but for his family and invitees, including his live-in girlfriend . . . and her daughter." (*Id.* at p. 652.) Thus, the *Mazepink* court concluded that the defendant's legitimate expectation of privacy for himself *and* for his family and invitees in his home gave him the right to assert that a knock-notice violation that occurred in his absence violated *his* Fourth Amendment rights.

In support of its conclusion, the *Mazepink* court cited the United States Supreme Court's decision in *Alderman v. United States*, *supra*, 394 U.S. 165, 179, fn. 11 [22 L.Ed.2d at p. 190]. (*Mazepink v. State*, *supra*, 987 S.W.2d at p. 652.) *Alderman*, however, did not involve a knock-notice violation, but instead involved illegal electronic surveillance. In *Alderman*, the court reiterated that "Fourth Amendment rights are personal rights which, like some other constitutional rights, may not be vicariously asserted," and went on to conclude that a defendant "would be entitled to the suppression of government evidence originating in electronic surveillance violative of his own

Fourth Amendment right to be free of unreasonable searches and seizures . . . if the United States unlawfully overheard conversations of [the defendant] himself or conversations occurring on his premises, whether or not he was present or participated in those conversations." (*Alderman v. United States*, *supra*, 394 U.S. at pp. 174, 176 [22 L.Ed.2d at pp. 187-188].) The court explained that the defendant's presence was not necessary to render the electronic surveillance a violation of *his* Fourth Amendment rights because "[t]he rights of the owner of the premises are as clearly invaded when the police [illegally] enter and install a listening device in his house as they are when the entry is made to undertake a warrantless search for tangible property; and the prosecution as surely employs the fruits of an illegal search of the home when it offers overheard third-party conversations as it does when it introduces tangible evidence belonging not to the homeowner, but to others." (*Id.* at pp. 179-180 [22 L.Ed.2d at p. 190].)

That the Fourth Amendment protects a person against the unlawful electronic surveillance of his house, even when he is absent, does not mean, as the *Mazepink* court concluded, that the person has "the right to expect . . . privacy . . . for his family and invitees," (*Mazepink v. State*, *supra*, 987 S.W.2d at p. 652) such that a knock-notice violation that occurs in the person's absence necessarily constitutes a violation of *his* Fourth Amendment rights. Again, we point out that the pertinent question in a case such as this is "whether the disputed search and seizure has infringed an interest *of the defendant* which the

Fourth Amendment was designed to protect." (*Rakas v. Illinois*, *supra*, 439 U.S. at p. 140 [58 L.Ed.2d at p. 399], italics added.) The court in *Alderman* did not hold that a defendant has a legitimate interest in the privacy of *others* present in his house. Rather, the court held that unlawful electronic surveillance of a house violates the homeowner's legitimate right to privacy in his own house, even when the "fruit" of the unlawful search is a conversation that occurs between two other people when the homeowner is not even home.

Furthermore, the legitimate expectation of privacy a person has for *himself* in his own house -- which was the interest at issue in *Alderman* -- is not implicated by a knock-notice violation that occurs when the person is absent. The Alaska Court of Appeals offered a cogent explanation of this point in *State v. Johnson* (Alaska.Ct.App. 1986) 716 P.2d 1006. In *Johnson*, the appellate court concluded the trial court had erred in suppressing evidence against two defendants (Robert Johnson and Michael Davey) who were not present when the knock-notice violation occurred. (*Id.* at p. 1010.) In explaining its conclusion, the court noted "the purposes of knock and announce requirements [are] as follows: [¶] '(1) to protect the occupant's right to privacy . . . ; (2) to safeguard the police who might be mistaken for prowlers and be shot . . . ; and (3) to protect other persons who might be injured by violent resistance to unannounced entries. . . .'" (*Id.* at p. 1009, quoting *Davis v. State* (Alaska 1974) 525 P.2d 541, 544-545.) The court then explained: "Since Johnson and Michael Davey were

not present, they were not vulnerable to injury as a result of any violent resistance [the occupant] might have interposed to the officers' entry. Johnson and Michael Davey had the same interest as any other citizen in preventing injury to the police officers. Thus, if the knock and announce rules were intended to protect them, it must be because of the first purpose announced in *Davis*, protection of the occupant's right to privacy. We assume, for purposes of this case, that Robert Johnson and Michael Davey had privacy interests protected by the fourth amendment in materials stored on the premises. Johnson argues that this privacy interest is identical to the privacy interest protected by the knock and announce rules. We disagree. As the Oregon Supreme Court pointed out in *State v. Valentine*, 264 Or. 54, 504 P.2d 84 (1972), cert. denied, 412 U.S. 948, 93 S.Ct. 3001, 37 L.Ed.2d 1000 (1973), 'The only right of privacy protected by the announcement requirement is the right to know who is entering, why he is entering, and a few seconds to prepare for his entry.' *Id.* at 87. The knock and announce rules are not intended to protect an absent co-tenant's possessory and privacy interests in items stored on the premises. The requirement that the police obtain a warrant and limit their search to the scope of the warrant protects these interests. Consequently, since the knock and announce rules were not enacted to protect the rights of those who are not present when a warrant is executed, it necessarily follows that they cannot complain of a violation of those rules." (*State v. Johnson*, *supra*, 716 P.2d at pp. 1009-1010.)

Johnson illustrates the proposition that the privacy interests infringed by a knock-notice violation are not the same as the privacy interest infringed by an invalid search that should not have occurred at all. In determining whether a knock-notice violation warrants the suppression of evidence, it is critical to focus on the interests protected by knock-notice requirements and whether any of those interests belong to the defendant seeking suppression. The *Mazepink* court failed to do this, and the *Hoag* court adopted the *Mazepink* court's faulty reasoning. Thus, we cannot follow *Hoag* on this point.

IV

Conclusion

In summary, we conclude the search of the house did not violate *defendant's* Fourth Amendment rights because defendant was not present when the police made their allegedly premature, but nondestructive, entry into the house, and therefore no interest of *defendant* was infringed by the entry. Accordingly, the trial court did not err in denying defendant's motion to suppress.

DISPOSITION

The judgment is affirmed.

ROBIE, J.

We concur:

BLEASE, Acting P.J.

DAVIS, J.