

**CERTIFIED FOR PUBLICATION**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

**THE PEOPLE,**

**Plaintiff and Appellant,**

**v.**

**DEEMARIO BOMONE MAGEE,**

**Defendant and Respondent.**

**A124598**

**(Solano County  
Super. Ct. No. VCR199809)**

**ORDER MODIFYING OPINION  
AND DENYING REHEARING  
[NO CHANGE IN JUDGMENT]**

THE COURT:

It is ordered that the opinion filed herein on April 12, 2011, be modified as follows:

At the end of the first partial paragraph on page 14, after the sentence ending with “warrantless entry,” add as footnote 12 the following footnote, which will require renumbering of all subsequent footnotes:

<sup>12</sup> Defendant argues for the first time in a petition for rehearing that Potts’s act of kicking open the locked bathroom door was a “show of . . . authority” that effected a seizure *before* Potts observed any illegal narcotics. (*United States v. Mendenhall* (1980) 446 U.S. 544, 553.) However, for purposes of the Fourth Amendment, a seizure does not occur where a suspect does not yield to an officer’s show of authority. (*California v. Hodari D.* (1991) 499 U.S. 621, 625-626.) Defendant did not yield when Potts kicked down the door; he had to be physically restrained by Potts with the assistance of other officers. Moreover, even assuming Potts’s conduct did effect a seizure, that seizure was supported by reasonable suspicion. (See *id.* at p. 623, fn. 1.) In particular,

defendant, in a high-crime area known for narcotics trafficking, evaded contact with the police and immediately locked himself in a bathroom. (See *Illinois v. Wardlow* (2000) 528 U.S. 119, 124 [reputation of area for narcotics trafficking and suspect's "nervous, evasive behavior" are relevant considerations in determining whether officer had reasonable suspicion].)

There is no change in the judgment.

Respondent's petition for rehearing is denied.

Dated: \_\_\_\_\_, P. J.