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Criminal Law–Arrest without a Warrant–A Man's Home Is His Castle

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CRIMINAL LAW—ARREST WITHOUT A WARRANT—A MAN'S HOME IS HIS CASTLE.—*Payton v. New York*, 445 U.S. 573 (1980).

The appeals of two similar cases, *Payton v. New York* and *Riddick v. New York*, were consolidated to consider the constitutionality of New York statutes authorizing police "to enter a private residence without a warrant and with force, if necessary, to make a routine felony arrest."[1]

Payton v. New York—Facts

Believing Theodore Payton had murdered a gas station manager two days earlier, New York detectives went to his apartment at 7:30 A.M. to arrest him. They had no warrant although there was probable cause and ample time to obtain one. Light and music were coming from inside the apartment but there was no response to the detective's knock. They then sent for help and, about thirty minutes later, police entered after breaking open the metal apartment door with crowbars. No one was home but in open sight was a thirty caliber shell casing that officers seized and later had admitted as evidence at Payton's murder trial. The police then searched the apartment thoroughly, seizing other evidence indicating Payton's guilt.

The next day Payton surrendered and was subsequently indicted for murder. At the suppression hearing the prosecutor acknowledged that most of the evidence seized in Payton's apartment was the result of an illegal search and should not be admitted into evidence. However, he contended, because the warrantless, forcible entry to arrest Payton was authorized by a New York statute,[2] the

1. Payton v. New York, 445 U.S. 573, 574 (1980).

2. N.Y. CODE CRIM. PROC. §§ 177-178 (McKinney 1958) (repealed 1971), in effect at the time of this entry, provided in pertinent part:

§ 177. In what cases allowed.

A peace officer may, without a warrant, arrest a person,

. . .

3. When a felony has in fact been committed, and he has reasonable cause for believing the person to be arrested to have committed it.

§ 178. May break open a door or window, if admittance is refused.

To make an arrest, as provided in the last section, the officer may break open an outer or inner door or window of a building, if, after notice of his office and purpose, he be refused admittance.

"plain view doctrine"[3] validated the seizure of the shell casing; it was properly admissible at trial. The judge agreed. The Appellate Division affirmed Payton's murder conviction.[4]

Riddick v. New York—Facts

In June 1973 two victims identified Obie Riddick as the man who had robbed them in 1971. Although police found out where Riddick lived in January 1974 they did not bother to obtain a warrant before they went to his home to arrest him about noon on March 14 the same year. When they knocked, Riddick's three-year-old son opened the door. Seeing Riddick sitting in bed covered with a sheet, they rushed in and arrested him. Before allowing him to dress, however, they made a *Chimel*-type search[5] of the bedroom. In a chest of drawers near the bed they found narcotics and related paraphernalia. When Riddick was indicted—not for robbery but for narcotics violations—he moved to suppress the evidence. The trial judge ruled that the warrantless entry into Riddick's home and his subsequent arrest were authorized by the revised New York statute;[6] therefore, the search of the immediate area was proper and the

3. "[A]n object that comes into view during a search incident to arrest . . . under existing law may be seized without a warrant." Coolidge v. New Hampshire, 403 U.S. 443, 465 (1971).

4. People v. Payton, 55 A.D.2d 859, 390 N.Y.S.2d 769 (1976) (mem.).

5. "There is ample justification . . . for a search of the arrestee's person and the area 'within his immediate control'—construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence." Chimel v. California, 395 U.S. 752, 763 (1969).

6. N.Y. CRIM. PROC. LAW § 140.15(4) (McKinney 1971) provides in pertinent part:

> In order to effect such an arrest, a police officer may enter premises in which he reasonably believes such person to be present, under the same circumstances and in the same manner as would be authorized, by the provisions of subdivisions four and five of section 120.80, if he were attempting to make such arrest pursuant to a warrant of arrest.

Id. § 120.80 (amended 1980) provides in pertinent part:

> 4. In order to effect the arrest, the police officer may, under circumstances and in a manner prescribed in this subdivision, enter any premises in which he reasonably believes the defendant to be present. Before such entry, he must give, or make reasonable effort to give notice of his authority and purpose to an occupant thereof, unless there is reasonable cause to believe that the giving of such notice will:
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> (a) Result in the defendant escaping or attempting to escape; or
>
> (b) Endanger the life or safety of the officer or another person; or
>
> (c) Result in the destruction, damaging or secretion of material evidence.
>
> 5. If the officer is authorized to enter premises without giving notice of his authority and purpose, or if after giving such notice he is not admitted, he may enter such premises, and by a breaking if necessary.

evidence seized was admissible. The Appellate Division affirmed Riddick's conviction for criminal possession of a controlled substance.[7]

The New York Court of Appeals consolidated the two cases and affirmed both convictions. The court stated that the scope of an intrusion on the privacy of the home for the purpose of making an arrest was minimal compared to the scope of an intrusion for the purpose of making an intensive search of a person's belongings. It also reasoned that the community had a legitimate interest in apprehending purported felons.[8]

The Decisions

The United States Supreme Court accepted the cases to resolve the issue expressly left unanswered in several previous opinions,[9] namely whether police may, in the absence of exigent circumstances,[10] enter a suspect's home to make an arrest without either a warrant or the consent of a responsible occupant. The Supreme Court reversed, holding that the fourth amendment to the United States Constitution[11] "prohibits the police from making a warrantless and nonconsensual entry into a suspect's home in order to make a routine felony arrest."[12]

Although there is an abundance of fourth amendment history regarding the validity of warrantless entries into a home to conduct a search, there is little mention of warrantless entry to make an arrest. The courts have generally assumed such entries to be constitutional[13] and ignored the question.[14]

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7. People v. Riddick, 56 A.D.2d 937, 392 N.Y.S.2d 848 (1977) (mem.).

8. People v. Payton, 45 N.Y.2d 300, 310-11, 380 N.E.2d 224, 229, 408 N.Y.S.2d 395, 400 (1978).

9. United States v. Watson, 423 U.S. 411 (1976); Gerstein v. Pugh, 420 U.S. 103 (1975); Coolidge v. New Hampshire, 403 U.S. 443 (1971); Jones v. United States, 357 U.S. 493 (1958).

10. Emergency conditions which justify immediate action, *e.g.*, hot pursuit, danger of physical harm to a person, response to an emergency, evidence in the process of being destroyed, or evidence in the process of being removed from the jurisdiction. *See* Vale v. Louisiana, 399 U.S. 30 (1970); Warden v. Hayden, 387 U.S. 294 (1967).

11. U.S. Const. amend. IV provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

12. 445 U.S. 573, 576 (1980).

13. *See* Sabbath v. United States, 391 U.S. 585 (1968); Ker v. California, 374 U.S. 23

The validity of this assumption was first questioned in *Jones v. United States*.[15] There the Court observed in dictum that a warrantless entry *at night* to arrest would present a "grave constitutional question" which it did not have to consider.[16] Later, in *Collidge v. New Hampshire*[17] the Court quoted this passage from *Jones* with approval and suggested that re-examination of the assumption might be prudent.[18]

In several cases since that time the question has been expressly avoided, most notably in *United States v. Watson*[19] where the Court in a footnote stated that the case *did not* present the "still unsettled question . . . whether and under what circumstances an officer may enter a suspect's home to make a warrantless arrest."[20]

In *Payton* the Court answered the question, thereby settling the conflict of opinion that had developed in the circuit courts of appeals and in the courts of last resort in several states. Those courts that had squarely faced the issue of whether warrantless entry to arrest was constitutional had developed two distinctly opposite lines of opinion.

The majority view was that the police violated the fourth amendment if they entered a person's home to make an arrest without either a warrant, the consent of a responsible resident, or exigent circumstances.[21]

(1963); Miller v. United States, 357 U.S. 301 (1958); Trupiano v. United States, 334 U.S. 699 (1948); Johnson v. United States, 333 U.S. 10 (1948).

14. *See* C. WHITEBREAD, CRIMINAL PROCEDURE—AN ANALYSIS OF CONSTITUTIONAL CASES AND CONCEPTS § 3.04 (1980).

15. 357 U.S. 493 (1958).

16. *Id.* at 499, 500.

17. 403 U.S. 443 (1971).

18. *Id.* at 480.

19. 423 U.S. 411 (1976).

20. *Id.* at 418 n.6.

21. United States v. Houle, 603 F.2d 1297 (8th Cir. 1979); United States v. Prescott, 581 F.2d 1343 (9th Cir. 1978); United States v. Campbell, 581 F.2d 22 (2d Cir. 1978); United States v. Reed, 572 F.2d 412 (2d Cir.), *cert. denied sub nom.*, 439 U.S. 913 (1978); United States v. Killebrew, 560 F.2d 729 (6th Cir. 1977); United States v. Jarvis, 560 F.2d 494 (2d Cir. 1977); United States v. Calhoun, 542 F.2d 1094 (9th Cir. 1976), *cert. denied*, 429 U.S. 1064 (1977); United States v. Phillips, 497 F.2d 1131 (9th Cir. 1974); United States v. Shye, 492 F.2d 886 (6th Cir. 1974); Salvador v. United States, 505 F.2d 1348 (8th Cir. 1974); Vance v. North Carolina, 432 F.2d 984 (4th Cir. 1970); Dorman v. United States, 435 F.2d 385 (D.C. Cir. 1970) (en banc); State v. Cook, 115 Ariz. 188, 564 P.2d 877 (1977); People v. Ramey, 16 Cal. 3d 263, 545 P.2d 1333, 127 Cal. Rptr. 629, *cert. denied*, 429 U.S. 929 (1976); People v. Moreno, 176 Colo. 488, 491 P.2d 575 (1971); State v. Jones, 274 N.W.2d 273 (Iowa 1979); State v. Platten, 225 Kan. 764, 594 P.2d 201 (1979); Commonwealth v. Forde, 367 Mass. 798, 329 N.E.2d 717 (1975); State v. Olson, 287 Or. 157, 598 P.2d 670 (1979); Commonwealth v. Williams, 483 Pa. 293, 396 A.2d 1177 (1978), *cert. denied*, 446 U.S. 912 (1980);

The minority view[22] was that such entries did not violate the fourth amendment if probable cause was present because, historically, the practice had been condoned. Moreover, it frequently was authorized by state statute. The courts thought this reflected the judgment of the community that it was more important to apprehend criminals than to protect the privacy of the home.[23]

Before addressing the question presented by these appeals, Mr. Justice Stevens, writing for the majority, first made clear the issues that had not been considered.[24] The Court did not examine these cases for the presence of exigent circumstances that would have justified the intrusions. Both cases were treated as routine felony arrests in which the police had probable cause and ample time to obtain a warrant but did not do so. Neither did the Court consider when, if ever, the police may enter a third person's home without a warrant to effect an arrest. The opinion addressed only the narrow issue of whether a routine felony arrest on the suspect's residential premises is valid without a warrant.

The majority opinion was founded on the ancient adage "[A] man's house is his castle."[25] The Court noted the importance placed on the sanctity of the home in several of its prior decisions.[26] It reiterated that protecting the privacy of the home from governmental intrusion is the whole purpose of the fourth amendment, quoting from *United States v. United States District Court*:[27] the "physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed."[28]

After establishing that an arrest is "quintessentially a seizure"[29]

State v. McNeal, 251 S.E.2d 484 (W. Va. 1978); Laasch v. State, 84 Wis. 2d 587, 267 N.W.2d 278 (1978).

22. United States v. Williams, 573 F.2d 348 (5th Cir. 1978); United States v. Burnett, 526 F.2d 911 (5th Cir.), *cert. denied*, 425 U.S. 977 (1976); United States *ex rel.* Wright v. Woods, 432 F.2d 1143 (7th Cir. 1970), *cert. denied*, 401 U.S. 966 (1971); Michael v. United States, 393 F.2d 22 (10th Cir. 1968); State v. Perez, 277 So. 2d 778 (Fla.), *cert. denied*, 414 U.S. 1064 (1973); State v. Linkletter, 345 So. 2d 452 (La. 1977), *cert. denied*, 434 U.S. 1016 (1978); People v. Payton, 45 N.Y.2d 300, 380 N.E.2d 224, 408 N.Y.S.2d 395 (1978); State v. Luellen, 17 Wash. App. 91, 562 P.2d 253 (1977).

23. People v. Payton, 45 N.Y.2d 300, 311-12, 380 N.E.2d 224, 229-30, 408 N.Y.S.2d 395, 400-01 (1978).

24. 445 U.S. 573, 582-83 (1980).

25. *Id.* at 596.

26. Silverman v. United States, 365 U.S. 505 (1961); McDonald v. United States, 335 U.S. 451 (1948); Johnson v. United States, 333 U.S. 10 (1948).

27. 407 U.S. 297 (1972).

28. *Id.* at 313.

29. 445 U.S. 573, 585 (1980) (quoting J. Powell's concurring opinion in United States v. Watson, 423 U.S. 411, 428 (1976)). *See also* Beck v. Ohio, 379 U.S. 89 (1964).

required by the fourth amendment to be reasonable, the Court rejected the New York Court of Appeals' conclusion that an entry for the purpose of conducting a search for objects is a greater intrusion than an entry for the purpose of conducting a search for a person to make an arrest. The crucial point, in the majority's opinion, was not the purpose of the entry, but the *fact* of the entry. The Court stated:

> The two intrusions share this fundamental characteristic: the breach of the entrance to an individual's home. The Fourth Amendment protects the individual's privacy in a variety of settings. In none is the zone of privacy more clearly defined than when bounded by the unambiguous physical dimensions of an individual's home—a zone that finds its roots in clear and specific constitutional terms: "The right of the people to be secure in their . . . houses . . . shall not be violated." That language unequivocally establishes the proposition that "[a]t the very core [of the Fourth Amendment] stands the right of a man to retreat into his own home and there be free from unreasonable government intrusion." [citations omitted]. In terms that apply equally to seizures of property and to seizures of persons, the Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant.[30]

As urged by New York, the Court next applied to the instant case each of the three criteria relied upon in *United States v. Watson*[31] to uphold a warrantless arrest in public and found no support for allowing similar practices on private premises.

First, the Court was able to find no definitive common law rule permitting arrest without a warrant in private places as opposed to "the well-settled common-law rule that a warrantless arrest in a public place is valid if the arresting officer had probable cause to believe the suspect is a felon."[32] In fact, the Court found a strong disagreement about the question among such common-law commentators as Coke, Blackstone, and Hale.[33]

The second point used to support public warrantless arrests in *Watson* was the "clear consensus among the States" that the practice was desirable. In this case, the Court said that although many states have statutes similar to New York's, support for the practice has recently declined and that "virtually all" of the courts that have

30. 445 U.S. 573, 589-90 (1980).
31. 423 U.S. 411 (1976).
32. 445 U.S. 573, 590 (1980).
33. *Id.* at 591-98.

directly confronted the issue have ruled these entries invalid.[34]

The third point relied upon in *Watson* was that Congress had expressly stamped the practice of making warrantless arrests in public "reasonable" by giving federal officers authority to make public warrantless arrests.[35] The Court found no such Congressional support for warrantless arrests on private premises.[36]

The Court also found it unnecessary to consider the practical and policy consequences of a warrant requirement in light of the clear constitutional mandate: "[N]either history nor this Nation's experience requires us to disregard the overriding respect for the sanctity of the home that has been embedded in our traditions since the origins of the Republic."[37]

In contrast, the dissent[38] read the common law and the history of the fourth amendment as specifically allowing warrantless arrest entries. The dissenters also thought that the warrant requirement would hamper police and force them to make frequently difficult on-the-spot decisions resulting in "endless litigation with respect to the existence of exigent circumstances."[39] Additionally, the dissenting justices felt the judgment of state legislators should have been given greater deference.[40]

The *Payton* rule requiring police to have a warrant before entering private premises to arrest in the absence of exigent circumstances will affect the law in about one-half the states,[41] including Arkansas.[42] Those state statutes authorizing forcible entry to arrest will have to be rewritten by legislatures to require a warrant or the courts will have to read the requirement into the existing statutes. Otherwise, a routine arrest inside the home will be invalid.

The decision also emphasizes the Court's reverence for the sanctity of the home. It emphatically declares that only extreme

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34. *Id.* at 598-99. *See also* notes 21 and 22 *supra*.

35. 445 U.S. 573, 590-91 (1980).

36. *Id.* at 601.

37. *Id.* at 601 (footnote by the Court omitted).

38. Mr. Justice White wrote the dissenting opinion with the Chief Justice [Burger] and Mr. Justice Rehnquist joining.

39. 445 U.S. 573, 620 (1980) (quoting United States v. Watson, 423 U.S. 411, 423-24 (1976)).

40. 445 U.S. 573, 614 (1980).

41. *Id.* at 598-99 n.46.

42. ARK. STAT. ANN. § 43-414 (1977).

"To make an arrest, an officer may break open the door of a house in which the defendant may be, after having demanded admittance, and explained the purpose for which admittance is desired."

emergency can outweigh the individual's interest in preserving the privacy of his home. Although this decision does little to help clear up the doctrinal muddle of the fourth amendment, the Court reached a logical conclusion in light of its overriding respect for the home.

The decision, when viewed from a balancing of the interests perspective, is consistent with both the desire to maintain effective law enforcement and the desire to guarantee to all citizens that the police will not transgress on their property except in cases of absolute necessity. A person now has the same protection from governmental intrusion to arrest in his home that he has long enjoyed from governmental intrusion to search.

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