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ADMINISTRATION OF JUSTICE MEMORANDA

PUBLISHED BY THE INSTITUTE OF GOVERNMENT
The University of North Carolina at Chapel Hill

April 1980

No. 80/03

ENTERING A HOME TO ARREST WITHOUT A WARRANT

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On April 15, 1980, the United States Supreme Court held in Payton v. New York (27 Criminal Law Reporter 3033) that a police officer may not enter a home to make a routine felony arrest unless he has an arrest warrant. This memorandum reviews the Court's decision and explains its effect on North Carolina law.

The cases. Two cases were consolidated in Payton. In the first, New York City detectives went to Payton's house to arrest him two days after the murder of a gas station attendant. They did not have an arrest warrant. When there was no answer to their knocking, the officers broke open the door and entered. No one was inside, but the officers found in plain view a shell casing which was later used in evidence in Payton's murder trial.

In the other case, New York City officers went to arrest the defendant Riddick approximately two months after they had learned his address and nine months after they had learned his identity, which was two years after the armed robbery was committed. When the officers went to the address, without an arrest warrant, Riddick's three-year-old son opened the door; the officers saw the defendant and entered immediately. In a search incident to the armed robbery arrest the officers found drugs and drug paraphernalia. That evidence was used to convict Riddick for drug offenses.

At the time of both the attempted arrests of Payton and the actual arrest of Riddick, New York law allowed an officer to enter a dwelling to arrest for a felony without first obtaining an arrest warrant. The United States Supreme Court found that practice unconstitutional. An arrest, a seizure of the person, is governed by the Fourth Amendment just as a seizure of property. The Fourth Amendment prohibits unreasonable seizures, and seizures inside a home without a warrant, whether of evidence or of a person, are presumed unreasonable. In these cases there are no facts establishing an exception to the requirement for a warrant, and the seizures are thus in violation of the Fourth Amendment. For seizure of property inside a home, a search warrant is necessary; for seizure of a person an arrest warrant is sufficient. The arrest warrant carries implied authority to enter a dwelling to make the arrest.

Although the court does not explicitly say so, it seems likely that when the cases are returned to the lower courts for further action the result will be the exclusion of the shell casing found in plain view during the attempted arrest of Payton and the drugs and paraphernalia found incident to the actual arrest of Riddick.

Both the majority and dissenting opinions assume that later cases will establish an "exigent circumstances" exception to this new requirement of an arrest warrant. This possibility is discussed in a separate section below.

North Carolina statute. North Carolina's basic arrest statute, G.S. 15A-401, allows an officer to arrest for a felony whenever he has probable cause to believe that such a crime has been committed; he need not worry about first obtaining a warrant. The statute allows entry into private premises to arrest--after establishing that the suspect is present and giving notice, of course--whenever the officer has authority to arrest, which would be without a warrant in a felony case. Under the Supreme Court decision the part of G.S. 15A-401 permitting entry into the home without an arrest warrant is now unconstitutional. An officer may not enter a defendant's home to make an arrest, unless he has an arrest warrant for that person. There may be some exceptions to the rule.

Exceptions to the rule. The Court in Payton found no reason to excuse the officers from getting a warrant; however, the opinions show a clear expectation that warrantless arrests will be allowed inside homes under some circumstances. The most likely exception is for exigent circumstances. The rule, which should be similar to that for emergency searches of automobiles, may be stated as follows: if an officer has probable cause for issuance of a warrant but he does not have time to get one before the person he wants to arrest will be gone, then he may enter to arrest without a warrant. The most obvious example is when an officer gets a radio report that a known suspect has committed an armed robbery and was last seen heading toward his home. The officer arrives and finds the car in the driveway and a neighbor reports that the suspect just entered the house. The officer has probable cause to arrest for the felony, he has probable cause to believe the suspect is in the house, and he does not have time to get an arrest warrant before the suspect is likely to leave. Thus he may enter the house if necessary to make the arrest.

The officer may not create his own emergency, however. If an officer has enough information to get a warrant on Tuesday but does not do so, when he hears on Thursday that the suspect is home he may not go into the home then without a warrant under a claim that he no longer has time to get the warrant.

Another possible exception is the consent of an occupant of the dwelling. Just as an officer may enter a home without a search warrant to search for evidence if he has the permission of someone who lives there, he should be able to enter a home to make an arrest without a warrant if someone who has control of the premises agrees to let him

enter. The person who agrees will need to be someone with full use and control of the premises; a visitor or minor child would not have the authority to allow the entry.

Another possible exception is one similar to the plain view exception for searches of evidence. If an officer has already lawfully entered a home for some reason other than making an arrest--say he has entered to search with a search warrant--and while inside sees someone he knows to have committed a felony a week earlier, he ought to be able to arrest that person even though no arrest warrant has been issued.

Remember that the Supreme Court has not yet ruled on any exceptions to the new arrest warrant requirements. These exceptions seem likely, but to know their full bounds we will have to wait for later cases to reach the Court.

Summary. The Court's opinion in Payton v. New York seems to justify the following statements:

- (1) That portion of G.S. 15A-401(e) that authorizes entries into private dwellings to arrest without an arrest warrant is unconstitutional.
- (2) Entries into homes to arrest without warrants may still be made in exigent circumstances and with the consent of the occupant. See G.S. 15A-231.
- (3) Even if an officer has an arrest warrant, he may not enter a home unless the other requirements of G.S. 15A-401(e) are met: he must have probable cause to believe the person is actually inside and he must first give notice of his authority and request admission. He is excused from giving notice only when doing so would present a clear danger to life.
- (4) An arrest warrant is all that is needed to enter a home to make an arrest. It is not necessary to also obtain a search warrant for the defendant.
- (5) An order for arrest, issued following the indictment of the defendant or on any other lawful ground, will justify entry the same as an arrest warrant.
- (6) If an officer enters a home to make an arrest when he does not have an arrest warrant--and he is not excused from getting a warrant because of exigent circumstances or any other reason--any evidence he sees in plain view or he finds incident to the arrest should be excluded at trial.
- (7) Arrests may continue to be made outside homes without being concerned about having an arrest warrant (except as G.S. 15A-401(b) continues to require an officer to have a warrant for a misdemeanor not committed in his presence).

The Court's opinion offers less guidance on two other issues. The first is whether the officer needs to have a copy of the warrant with him when he goes in the house. This appears not to be a constitutional requirement. The Court's concern was in having a judicial official confirm the officer's judgment on probable cause for the arrest before the officer could go inside the house looking for the suspect. If a warrant has been issued, that judicial determination has been made and

it should not matter whether the officer has a copy in his possession. However, North Carolina's statute, G.S. 15A-401(e)(1)a, requires an officer entering premises to have a warrant in his possession unless he is authorized to arrest without a warrant. One possible view of the law is that after the Payton decision he is no longer authorized to arrest inside the home without a warrant and therefore should have a copy with him when he goes in. Or at least one officer among those going to the house should have the copy. Although failure to have a copy of the warrant is probably not a constitutional violation, it may be a violation of the state statute and officers would be wise to avoid any question by carrying along a copy of the warrant.

The remaining question is whether it matters that the suspect is hiding in someone's house other than his own. It may be that the defendant has no standing, no legal basis, for objecting to an entry into someone else's house, but certainly the safest course for officers is to obtain an arrest warrant before making any arrest inside any home--be it the suspect's house or someone else's.