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ADMINISTRATION OF JUSTICE MEMORANDA

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

May 1981 No. 81/03

A 'ROUTINE" FELONY ARREST MAY NOT BE MADE IN THE HOME OF A THIRD PARTY WITHOUT A SEARCH WARRANT

Supreme Court Announces Rule in Steagald v. United States

by Kenneth S. Cannaday

Search and seizure cases in the United States Supreme Court in recent years seem to demonstrate a conservative trend that (1) chips away at the exclusionary rule as a technical defense available to the criminal defendant,[1] while (2) expanding privacy rights of individuals,[2] especially in their own homes.[3] On April 21 the Court decided a case that falls squarely within the second part of this trend. The case is Steagald v. United States,[4] and it is of vital interest to all law enforcement professionals who may be called upon to make a judgment concerning the arrest of a person named in a warrant.

BACKGROUND

Last year, the Supreme Court decided the companion cases of Payton v. New York and Riddick v. New York.[5] These cases involved warrantless entries by police into the defendants' homes to arrest the defendants for murder and robbery, respectively. In Payton's case the trial court did not decide whether there were exigent circumstances surrounding the entry; in Riddick's case there was clearly no emergency. In neither case had police officers obtained an arrest (or search) warrant, nor did they obtain consent before the

entries. A New York statute authorized warrantless entries for purposes of making felony arrests. Both entries resulted in the seizure of evidence which was used against the defendants at their respective trials. The Supreme Court held that the evidence should have been suppressed and reversed both convictions. Noting that "physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed," the Court held that police may not cross the threshold of a suspect's home to make a routine felony arrest, unless they have (1) an arrest warrant, (2) consent, or (3) exigent circumstances.

The Court expressly left undecided issues that arise when police enter the home of a third party (that is, a person other than the one to be arrested) to make an arrest. On January 14, 1981, these issues were argued in the Supreme Court, and on April 21, 1981, they were decided.

STEAGALD V. UNITED STATES: THE FACTS

Agents of the Drug Enforcement Agency had an arrest warrant for one Ricky Lyons, a federal fugitive. There was probable cause (or so the Court assumed) to believe that Lyons could be found in a certain residence occupied by the defendant Steagald. The agents made an armed entry into the residence which resulted (eventually) in the seizure of 43 pounds of cocaine, and the conviction of Steagald for its possession. Lyons, however, was not found. There was no "physical hinderance" preventing agents from obtaining a search warrant, and they did not do so because they believed that the arrest warrant for Ricky Lyons was sufficient authority to make the entry.

STEAGALD V. UNITED STATES: THE HOLDING

The Supreme Court held, however, that in the absence of exigent circumstances or consent, an arrest warrant (plus a reasonable belief that the person named in the warrant is within) does <u>not</u> authorize law enforcement officers to cross the threshold of a third party's residence (as opposed to the suspect's own residence) to make an arrest. Rather, a search warrant must be obtained.

The Court reasoned that such an entry involves two distinct interests: (1) the interest of the suspect, here Lyons, to be free from an unreasonable seizure of his person;

and (2) the interest of the householder, here Steagald, to be free of an unreasonable search of his home. The arrest warrant, said the court, addressed only the first interest, that of Lyon's. In the absence of exigency or consent, the second interest, that of the householder (Steagald), must be protected by requiring that a judicial official (magistrate) pass upon the question of probable cause to believe that the person to be arrested is within the dwelling to be entered.

STEAGALD V. UNITED STATES: THE IMPLICATIONS

Although Steagald was decided in the context of a motion to suppress, that is a context that should rarely arise. Normally, it will be the person whom police intend to arrest that will be prosecuted; and he will be the only one making a motion to suppress. If he is arrested (and evidence is seized) in a third party's home with a valid arrest warrant, then he would not have standing to object to the lack of a search warrant.[6] Even assuming that the arrestee has a legitimate expectation of privacy in the third party's home,[7] as to him, the arrest warrant is sufficient authority for the entry.[8] The suppression-motion context of Steagald then is not likely to arise unless, as in Steagald, the police discover evidence which incriminates the householder.

The far more likely context for application of the rule announced in Steagald is a private lawsuit, such as the civil rights action in Wallace v. King.[9] That case involved attempts by law officers to serve a bench warrant on a woman who had failed to comply with a court order in a child custody fight. The officers, relying on the authority of the arrest warrant, and acting without a search warrant but with probable cause, conducted brief walk-through searches for the woman at the residence of her parents and later at the residence of her friends. The United States Court of Appeals for the Fourth Circuit (which includes North Carolina) held that: (1) the occupants of the houses searched were entitled to declaratory and injunctive relief; and (2) the officers were not personally liable to the occupants for damages, since they acted in good faith--that is, the walk-through searches were conducted in a limited and professional manner, the officers were following policies or instructions from their superiors, and the controlling law as to the need for a search warrant had not been authoritatively decided. Since the controlling law now has been authoritatively decided, law enforcement officers should be very cautious when attempting to serve an arrest warrant in the residence of a person other than the person named in the warrant, lest they be held

personally liable for damages in a federal court. That is, officers must follow the Steagald decision.

The Steagald rule is not without substantial limits, however. Officers may still search for a defendant if the householder consents. In the case of consent, no warrant--search or arrest--is required. Also, officers may search without a search warrant in exigent circumstances, such as when they are in hot pursuit of the suspect,[10] or when they have a justifiable fear of injury to persons or property if the arrest is delayed.[11] Other factors which may be considered on the question of exigency include the availability of a magistrate in the area, and the availability of a sufficient number of officers to keep watch on the premises while a warrant is being obtained.[12]

ADDITIONAL IMPLICATIONS FOR NORTH CAROLINA

North Carolina statutes governing search warrants do not contemplate the issuance of a warrant to search for "persons" as opposed to "items." G.S. 15A-242 describes what may be seized under a search warrant as any item that is: (1) stolen, (2) contraband, (3) the instrumentality of a crime, or (4) evidence of a crime or the identity of the perpetrator. G.S. 15A-244(2) requires that an application for a search warrant contain a statement that items subject to seizure under G.S. 15A-242 may be found on the premises to be searched. Thus the initial problem faced by law officers and magistrates is the question of how to proceed in applying for and issuing a search warrant for a third party's premises where a defendant is believed to be hiding. Three possibilities come to mind.

First, reliance might be placed on G.S. 15A-231, which provides that constitutionally permissible searches not regulated by statute are not prohibited. Warrant-authorized searches of dwellings for defendants, which are constitutionally permissible, and apparently are not regulated by statute, are thus not prohibited. It would appear that the only requirements for such search warrants are the requirements mandated by the Fourth Amendment: probable cause, oath or affirmation, and particularity in the description of the place to be searched and the person to be seized. Statutory procedures relating to search warrants for (and seizure of) "items" (such as the requirement that a list of items seized be prepared, G.S. 15A-254) could be ignored.

A second alternative is simply a modification in the arrest warrant so that it supports both the search and the arrest. There is statutory authority for the issuance of an

arrest warrant (G.S. 15A-304). All Steagald requires is that the magistrate pass on the additional question as to the probable cause to believe the premises to be searched will contain the person to be seized. The arrest warrant form could be modified to incorporate this finding in addition to the usual finding that there is probable cause to believe the defendant committed the offense charged. Again reliance would be placed on the provisions of G.S. 15A-231 that constitutional searches are not prohibited.

The third alternative, which is the alternative supported by the North Carolina Attorney General's Office,[13] is to attempt to make the existing statutes fit the situation. Under this approach the defendant would be considered an "item." He would be subject to seizure under G.S. 15A-242 as evidence of the identity of a person participating in a crime since his presence at trial gives the witnesses an opportunity to identify him as the perpetrator. Appended to this memorandum is a copy of a sample application for a search warrant drafted and circulated by the Attorney General's Office.

CONCLUSIONS

Law officers should be guided by the following rules in making otherwise valid arrests within dwellings:[14]

(1) Officers may enter a dwelling for the purposes of making an arrest without either an arrest warrant or a search warrant if they have obtained the valid consent of the householder.

(2) Officers may enter a dwelling for the purpose of making an arrest without a search warrant (and probably without an arrest warrant) if they have both exigent circumstances and probable cause to believe the suspect is within.

(3) Officers may enter the defendant's dwelling to make an arrest without a search warrant if they have a valid arrest warrant.

(4) Officers may enter the home of a person other than the defendant for purposes of arresting the defendant if they have a valid search warrant (or a valid arrest warrant with a magistrate's finding of probable cause as to the presence of the defendant on the premises).

(5) Otherwise, an officer is not authorized to enter a private dwelling to make an arrest.

FOOTNOTES

1. See, e.g., Rawlings v. Kentucky, 100 S.Ct. 2556 (1980); United States v. Salvucci, 100 S.Ct. 2547 (1980); United States v. Payner, 100 S.Ct. 2439, Reh. den. 101 S.Ct. 25 (1980); United States v. Havens, 446 U.S. 620 (1980).

2. See, e.g., Arkansas v. Sanders, 442 U.S. 753 (1979); Ybarra v. Illinois, 444 U.S. 85 (1979); United States v. Chadwick, 433 U.S. 1 (1977).

3. See, e.g., Payton v. New York, 445 U.S. 573 (1980); Mincey v. Arizona, 437 U.S. 385 (1979).

4. 49 U.S.L.W. 4418.

5. 445 U.S. 573 (1980).

6. See Rawlings v. Kentucky, 100 S.Ct. 2556 (1980); United States v. Salvucci, 100 S.Ct. 2547 (1980); Rakas v. Illinois, 439 U.S. 128 (1978).

7. As to the arrestee's standing to object to the search in the third party's premises, compare Rakas v. Illinois, 439 U.S. 128 (1978) with the facts and holding in Jones v. United States, 362 U.S. 257 (1960) [overruled as to "automatic standing" in United States v. Salvucci, 100 S.Ct. 2547 (1980)].

8. Payton v. New York, 445 U.S. 573 (1980). If the person police intend to arrest has acquired a privacy right in the premises of the householder, it is possible that the house has become his "home" as well, for purposes of the rules announced in Payton and Steagald. Steagald v. United States, 49 U.S.L.W. at 4425 (Rehnquist, J. dissenting).

9. 626 F.2d 1157 (4th Cir. 1980).

10. Warden v. Hayden, 387 U.S. 294 (1967).

11. Wallace v. King, 626 F.2d 1157 (4th Cir. 1980).

12. Id.

13. The form attached to this memorandum was prepared by Joan Byers, Assistant Attorney General.

14. Of course law officers must also be guided by other rules of law relating to arrests, such as the rule in North Carolina which prohibits a warrantless arrest (subject to exceptions) for a misdemeanor not committed in the officer's presence. G.S. 15A-401(b)(2).

APPLICATION FOR SEARCH WARRANT

I, Buford T. Justice, Sheriff, being
(Insert name and address; or, if a law officer, insert name, rank and agency)
duly sworn, hereby request that the court issue a warrant to search the (person) (place) (vehicle) described in this application and to find and seize the items described in this application. There is probable cause to believe that certain ~~property~~ person, to wit: Ricky Lyons, w/m 30, 6'0", 185 lbs., blue eyes, brown hair, for whom I hold a warrant

(~~constitutes evidence of~~) (constitutes evidence of the identity of a person participating in) a crime, to wit: sale and delivery of cocaine

and the ~~property~~ person is located (in the place) (~~in the vehicle~~) (~~on the person~~) described as follows: *(Unmistakably describe the building, premises, vehicle or person -- or combination -- to be searched.)* one-story yellow brick dwelling located at 3118 Fairfax Dr., Greenwood, N. C.

The applicant swears to the following facts to establish probable cause for the issuance of a search warrant: The premises described belongs to Lyons' parents. Neighbors who know Lyons observed him entering premises this date. I observed a 1977 Cadilac Seville, license SFL 298 (NC) parked in the driveway and ran same on PIN, which indicates vehicle registered to Ricky Lyons. Greenwood telephone book indicates that Samuel Lyons of 3118 Fairfax Dr., Greenwood, N.C. has telephone number 376-1812. I dialed this number within the past 90 minutes and recognized the answering voice as that of Rick Lyons. I have known Lyons for 6 months and have heard him talk on several occasions. A confidential informant told me he saw Lyons at these premises within the past 48 hours. This informant has given information in the past which has proven true through my own investigations. He has never given information which proved false.

(*Continue if necessary.)

Sworn to and subscribed before me
this _____ day of _____, 19____.

Signature of Applicant

Assistant Deputy Clerk of Superior Court
Magistrate/District/Superior Court Judge

* * * * *

☐ In addition to the allegations of fact included in this application, this application is supported by affidavits attached, made by _____.

☐ In addition to the allegations of fact included above, this application is supported by sworn testimony, given by _____ and reduced to writing by me and filed with the clerk.

Assistant Deputy Clerk of Superior Court
Magistrate/District/Superior Court Judge

* If a continuation is necessary, continue the statement on an attached sheet of paper with a notation saying "see attachment." Date the continuation and include on it the signatures of applicant and issuing official.