Louisiana Law Review

Volume 42 | Number 1
Fall 1981

Arrest At The Castle: Payton v. New York

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NOTES

ARREST AT THE CASTLE: *Payton v. New York*

Police officers, acting with probable cause but without a warrant, went to the defendant's apartment to arrest him for murder. The officers knocked on the apartment's metal door, but received no response. They then forcefully opened the door and entered the apartment. The defendant was not there. However, in plain view was an incriminating .30-caliber shell casing which was seized by the officers and later admitted into evidence at the defendant's murder trial. The New York courts refused to suppress the shell casing, holding that the entry was authorized by state statutes.[1] The United States Supreme Court reversed and *held* that the New York statutes were unconstitutional, as the fourth amendment[2] prohibits police officers, in the absence of exigent circumstances, from making warrantless and nonconsensual entry into a suspect's home in order to make a felony arrest. *Payton v. New York*, 445 U.S. 573 (1980).[3]

According to the express terms of the fourth amendment, the people are to be secure against "unreasonable searches and seizures"

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1. The applicable state statutes seemingly authorized police officers, without consent, to enter private residences without a warrant and with force if necessary to make routine felony-arrests. People v. Payton, 45 N.Y.2d 300, 408 N.Y.S.2d 395, 380 N.E.2d 224 (1978).

2. The pertinent language from the fourth amendment to the United States Constitution states that, "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated...." The fourth amendment was made applicable to the states through the fourteenth amendment. *See* Wolf v. Colorado, 338 U.S. 25, 27-28 (1949) ("The security of one's privacy against arbitrary intrusion by the police—which is at the core of the Fourth Amendment—is basic to a free society. It is therefore implicit in 'the concept of ordered liberty' and as such enforceable against the States through the Due Process Clause."). *See also* Mapp v. Ohio, 367 U.S. 643 (1960).

3. The companion case of *Riddick v. New York* involved similar circumstances. Police officers, acting with probable cause but without a warrant, went to the defendant's home to arrest him for the commission of two armed robberies. When the officers knocked on the door, defendant's young son opened it. The defendant then was arrested as he sat in his bed. Before allowing him to dress, the officers opened a chest of drawers near his bed and found narcotics and related drug paraphernalia. At his trial, the seized materials were admitted into evidence against him, and he was convicted on narcotics charges. The trial judge held that the entry was authorized by the revised state statute, NEW YORK CRIM. PROC. LAW § 140.15(4) (McKinney, 1974), and that the search was reasonable under *Chimel v. California*, 395 U.S. 752 (1969). The New York Court of Appeals affirmed the convictions of the defendants Payton and Riddick in a single opinion.

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."[4] When the framers of the amendment drafted the enactment, however, they did not specify whether warrants were necessary or which actions might make a search or seizure "unreasonable."[5] This omission can be attributed to the fact that the drafters of the fourth amendment were primarily concerned with the "warrant clause" of the enactment. The "warrant clause" was specifically drawn up to prohibit the indiscriminate searches and seizures then being conducted under the dreaded "writs of assistance" existing in the colonies at the time of the Revolution. As originally proposed, the amendment was to be a "one-barrelled affair, directed apparently only to the essentials of a valid warrant."[6] The original draft contained only a single clause, which placed several restrictions on the issuance of warrants. The right of security from "unreasonable searches and seizures" was added later in an additional clause. When it was finally adopted, the amendment contained two separate clauses: one clause required that warrants be particular and supported by probable cause, while the other protected the general right to be free from unreasonable searches and seizures.[7]

As a result, the monumental task of resolving the meaning of the ambiguous language in the amendment and of determining what actions were to be prohibited by the "unreasonable searches and seizures" clause was left primarily to the judiciary. Yet during the first century following the adoption of the Bill of Rights, only a few cases involving interpretation of the fourth amendment reached the United States Supreme Court.[8] During this period the limited criminal jurisdiction of the federal government was not exercised to any

4. U.S. CONST. amend. IV.

5. N. LASSON, THE HISTORY AND DEVELOPMENT OF THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION 100-03 (1973). *See also* Comment, *The Constitutionality of Warrantless Home Arrests*, 78 COLUM. L. REV. 1550, 1551 n.9 (1978) ("There is no independent legislative history of the fourth amendment establishing the framers' intent as to what constitutes an 'unreasonable' search and seizure.").

6. LASSON, *supra* note 5, at 103. The indiscriminate searches and seizures conducted under the authority of general warrants were the immediate evils which prompted the framers of the fourth amendment to draft that particular provision. The "general warrants" granted almost unlimited authority to law enforcement officials and allowed them to conduct searches and seizures at virtually any time and place. The "fourth amendment was primarily a response to the indiscriminate employment of general writs." Comment, *Forcible Entry to Effect a Warrantless Arrest—The Eroding Protection of the Castle*, 82 DICK. L. REV. 167, 169 & n.12 (1977).

7. LASSON, *supra* note 5, at 100-03.

8. *Id.* at 106.

great extent by Congress. However, when the criminal jurisdiction of the United States was later expanded to cover such matters as the sale of narcotics and intoxicating liquors,[9] the fourth amendment rapidly became "one of the most prominent and litigated provisions of the Bill of Rights."[10]

This increase in litigation finally gave the Supreme Court the opportunity to develop the meaning of the phrase "unreasonable searches and seizures" within the context of the fourth amendment. In performing this function, the Court accepted the idea that warrants could and should be used as a method of safeguarding fourth amendment rights instead of being used "as a powerful tool of law enforcement,"[11] as general warrants had been used at common law. The modern system consisted of interposing a warrant *requirement* between law enforcement agents and the citizens. A neutral and detached magistrate could then rule on whether sufficient probable cause existed to bring a particular search or seizure within the directives of the fourth amendment.[12]

While the exact historical development of this modern warrant system is not very clear,[13] the system is nevertheless now called a "time-tested means of effectuating Fourth Amendment rights,"[14] and has been praised in numerous cases over the years.[15] Thus, while some commentators have stated that the warrant requirement is actually a "relatively modern concept,"[16] not really contemplated by

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9. *Id.*

10. *Id.*

11. *See* Payton v. New York, 445 U.S. 573, 608 (1980) (White, J., dissenting) ("Hence at the time of the Bill of Rights, the warrant functioned as a powerful tool of law enforcement rather than as a protection for the rights of criminal suspects.").

12. *See, e.g.*, McDonald v. United States, 335 U.S. 451 (1948); Johnson v. United States, 333 U.S. 10 (1948).

13. Although the theory of interposing a neutral and detached magistrate between law enforcement agents and the citizens has frequently been approved of by the courts, the actual historical basis is vague. *See* Comment, *supra* note 6, at 169 n.16. *See also* Farrar, *Aspects of Police Search and Seizure Without Warrant in England and the United States*, 29 U. MIAMI L. REV. 491, 502 (1975) ("It was not until the creation of a separate police organization in the nineteenth century that it was possible to separate the combined criminal investigatory and judicial powers which the justices exercised during the period in which they developed the common law search warrant.").

14. United States v. United States Dist. Court, 407 U.S. 297, 318 (1972) (citing Beck v. Ohio, 379 U.S. 89, 96 (1964)).

15. *See, e.g.*, Gerstein v. Pugh, 420 U.S. 103 (1975); Coolidge v. New Hampshire, 403 U.S. 443 (1971); McDonald v. United States, 335 U.S. 451 (1948); Johnson v. United States, 333 U.S. 10 (1948).

16. Comment, *supra* note 6, at 169.

the drafters of the amendment,[17] it is undoubtedly now one of the chief vehicles used to protect fourth amendment guarantees.[18] Justice Jackson explained the reasoning behind this concept in the now famous passage from *Johnson v. United States*:[19]

> The point of the Fourth Amendment, which often is not grasped by zealous officers, is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. Its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime. . . . When the right of privacy must reasonably yield to the right of search is, as a rule, to be decided by a judicial officer, not by a policeman or government enforcement agent.[20]

Once the Supreme Court fully endorsed the warrant requirement as a protective device, its application to searches and seizures conducted within a party's home became fairly obvious for the "physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed . . . ."[21] Not as clear, however, was whether the Court would extend the warrant requirement to cover certain other types of searches and seizures occurring outside the home.

While recognizing the "unique sensitivity"[22] given by the federal courts to one's reasonable expectation of privacy in his home, the Court nevertheless realized that the physical entry of a man's home is not the *only* evil against which the fourth amendment was

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17. Since the fourth amendment *expressly* prohibits "unreasonable" rather than "warrantless" searches and seizures, whether the framers of the amendment meant to prohibit warrantless searches and seizures as "unreasonable" is debatable. Some commentators contend that the "fourth amendment was intended only to prohibit searches and seizures made pursuant to a 'general' warrant, a warrant that does not specifically describe the places to be searched or things to be seized . . . ." Note, *supra* note 5, at 1550 n.6. Therefore, these commentators believe that the Supreme Court errs in construing the language of the fourth amendment as a prohibition against warrantless searches and seizures. *See* T. TAYLOR, TWO STUDIES IN CONSTITUTIONAL INTERPRETATION 20-49 (1969), where the author states that the Supreme Court has "stood the Fourth Amendment on its head" when reading a warrant requirement into it. *See also* Payton v. New York, 445 U.S. at 607 (1980) (White, J., dissenting).

18. Comment, *supra* note 6, at 169.

19. 333 U.S. 10 (1948).

20. *Id.* at 13-14.

21. United States v. United States Dist. Court, 407 U.S. 297, 313 (1972).

22. United States v. Reed, 572 F.2d 412, 422 (2d Cir.), *cert. denied*, 439 U.S. 913 (1978).

directed.[23] Stating this proposition in *Katz v. United States*,[24] the Court held that "the Fourth Amendment protects people, not places,"[25] and added that all "searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions."[26]

Conversely, although the Court has affirmed that the arrest of a person is "quintessentially a seizure,"[27] and that arrests are species of seizures required by the amendment to be reasonable,[28] the Court has not governed these "seizures" with the identical rules applicable to seizures of property. In *Gerstein v. Pugh*,[29] the Court noted this difference in treatment:

> Maximum protection of individual rights could be assured by requiring a magistrate's review of the factual justification prior to any arrest, but such a requirement would constitute an intolerable handicap for legitimate law enforcement. Thus, while the Court has expressed a preference for the use of warrants when feasible . . . it has never invalidated an arrest (supported by probable cause) solely because the officers failed to secure a warrant.[30]

While warrantless arrests in public places had in fact been taking place from the earliest days of American independence,[31] the practice was never actually challenged and directly faced on constitutional grounds by the Supreme Court until *United States v. Watson*[32] in 1976. In *Watson*, the Court stated that the necessary inquiry "was not whether there was a warrant or whether there was time to get one but whether there was probable cause for the arrest."[33] Still, while the Court found that warrantless arrests in public places based upon probable cause were indeed constitutional, Mr. Justice Stewart, in a concurring opinion,[34] limited the decision

23. *See, e.g.*, United States v. United States Dist. Court, 407 U.S. 297 (1972); Katz v. United States, 389 U.S. 347 (1967).
24. 389 U.S. 347 (1967).
25. *Id.* at 351.
26. *Id.* at 357.
27. United States v. Watson, 423 U.S. 411, 428 (1976).
28. Beck v. Ohio, 379 U.S. 89 (1964).
29. 420 U.S. 103 (1975).
30. *Id.* at 113.
31. Comment, *supra*, note 6, at 168.
32. 423 U.S. 411 (1976).
33. *Id.* at 417 (construing Henry v. United States, 361 U.S. 98 (1959)).
34. *Id.* at 433 (Stewart, J., concurring).

by stating that the Court did not on this occasion address the issue of "whether or under what circumstances an officer must obtain a warrant before he may lawfully enter *a private place* to effect an arrest."[35] On several prior occasions, however, the Supreme Court had referred specifically to that particular issue.

In the 1958 case of *Jones v. United States*,[36] although Justice Harlan characterized the issue of warrantless arrests in private residences as a "grave constitutional question,"[37] the Court did not resolve the issue. In *Ker v. California*,[38] a 1963 case, the Court noted in dicta that these arrests could be permissible "under certain circumstances."[39] Then, in 1967, the Court established the "hot pursuit"[40] doctrine in *Warden v. Hayden*[41] and justified the policemen's entry into a suspect's home for the purpose of making a warrantless arrest. Yet, at the same time, the Court failed to mention whether the arrest would have been valid absent the particular "exigent circumstances" existing in that case. Nevertheless, four years later in *Coolidge v. New Hampshire*[42] the Court emphasized that the *Warden* case "certainly stands by negative implication for the proposition that an arrest warrant is required in the absence of exigent circumstances."[43] The *Coolidge* Court added that the "warrantless entry of a man's house in order to arrest him on probable cause . . . is in fundamental conflict with . . . basic principle[s] of Fourth Amendment law,"[44] and that the practice, if allowed, would "simply . . . read the Fourth Amendment out of the Constitution."[45] Despite this strong language, the Court found it "unnecessary to decide the question,"[46] and the statements were therefore merely dicta. In 1972 the Court once again had the opportunity to resolve the issue in *John-*

35. *Id.* (emphasis added). The arrest in *Watson* was made upon probable cause in a public place in broad daylight.

36. 357 U.S. 493 (1958).

37. *Id.* at 499.

38. 374 U.S. 23 (1963).

39. *Id.* at 38.

40. This doctrine states that policemen in "hot pursuit" of a suspect may validly enter a private residence, without a warrant, to arrest a suspect whom they believe has entered the premises. "Hot pursuit" is therefore one of the "exigent circumstances" which allow police officers to dispense with the warrant requirement. The doctrine is based on the "need to act quickly." *See* United States v. Santana, 427 U.S. 38, 41-42 (1976).

41. 387 U.S. 294 (1967).

42. 403 U.S. 443 (1971).

43. *Id.* at 480-81.

44. *Id.* at 477-78.

45. *Id.* at 480.

46. *Id.* at 481.

son v. Louisiana,[47] but instead held that the "validity of Johnson's arrest" was "beside the point" because "no evidence that might properly be characterized as the fruit of an illegal entry and arrest was used against him at his trial."[48] Finally, in 1976 the Court once again seemed destined to decide the issue of warrantless home arrests in *United States v. Santana*.[49] The suspect, standing in the doorway of her home, attempted to retreat into her house when officers approached to arrest her. The Court, once again skirting the issue, held that the doorway to Santana's home was a "public place" and that her retreat into the house did not "defeat an arrest which had been set in motion in a public place . . . ."[50]

As a result of the preceding cases, the Supreme Court was still evading the issue of warrantless home arrests at the beginning of 1980. But during that same period, a number of lower American courts were forming definite and sometimes contrasting opinions on the subject.[51] Of the seven United States Courts of Appeals that confronted the issue, five agreed that these warrantless home arrests were unconstitutional,[52] while two believed that they were "reasonable" within the terms of the fourth amendment.[53] Of the state courts of last resort, ten of the twelve that addressed the issue held that unless special circumstances were present, warrantless arrests in the home were unconstitutional.[54] Two of these state courts, how-

47. 406 U.S. 356 (1972).

48. *Id.* at 365.

49. 427 U.S. 38 (1976).

50. *Id.* at 43.

51. The early American cases unanimously accepted the proposition that officers could, without warrants, break into a dwelling to make arrests. The early Massachusetts case of *Rohan v. Sawin*, 59 Mass. 281 (1850), typified those cases. However, in 1949, the District of Columbia Circuit Court, in *Accarino v. United States*, 179 F.2d 456 (D.C. Cir. 1949), provided the initial break from the earlier decisions by holding that a warrantless home arrest was improper in the absence of some type of emergency. Since that time, a true split has grown in the lower courts concerning the issue. *See* Comment, *supra* note 6, at 168-71.

52. *See* United States v. Houle, 603 F.2d 1297 (8th Cir. 1979); United States v. Reed, 572 F.2d 412 (2d Cir.), *cert. denied*, 439 U.S. 913 (1978); United States v. Killebrew, 560 F.2d 727 (6th Cir. 1977); Dorman v. United States, 435 F.2d 385 (D.C. Cir. 1970).

53. *See* United States v. Williams, 573 F.2d 348 (5th Cir. 1978); United States *ex rel.* Wright v. Woods, 432 F.2d 1143 (7th Cir.), *cert. denied*, 401 U.S. 966 (1970).

54. *See* 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), *cert. denied*, 446 U.S. 907 (1980); 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, *cert.*

ever, rejected the constitutional attacks. Among those rejecting the warrant requirement were the Supreme Court of Florida in *State v. Perez*[55] and the New York Court of Appeals in the present case.[56]

In the instant case, the United States Supreme Court held for the first time that the fourth amendment prohibits police from making a warrantless and non-consensual entry into a suspect's home in order to make a *routine* felony-arrest.[57] The defendant's conviction was reversed, for even though the officers had relied in good faith upon a state statute which seemed to authorize such a procedure, the trial judge had committed reversible error by improperly refusing to suppress the evidence that had been seized upon the entry.[58]

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denied, 446 U.S. 912 (1980); State v. McNeal, 251 S.E.2d 484 (W. Va. 1978); Laasch v. State, 84 Wis. 2d 587, 267 N.W.2d 278 (1978).

While Louisiana's Code of Criminal Procedure article 213 seemingly authorizes warrantless home arrests based upon probable cause, dicta in the case of *State v. Ranker*, 343 So. 2d 189 (La. 1977), implied that a good possibility existed that such arrests would later be found unconstitutional.

55. 277 So. 2d 778 (Fla.), *cert. denied*, 414 U.S. 1064 (1973).

56. People v. Payton, 45 N.Y.2d 300, 408 N.Y.S.2d 395, 380 N.E.2d 224 (1978).

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

58. In the recent case of *Michigan v. DeFillippo*, 443 U.S. 31 (1979), officers had arrested the defendant under a "refusal to identify oneself" ordinance. *Id.* at 33. A search incident to that arrest revealed that the defendant was in illegal possession of a controlled substance. The defendant was never charged with a violation of the ordinance for which he was arrested, but he was convicted on charges of possession. The Supreme Court assumed that the ordinance was unconstitutionally vague, but upheld the conviction for possession because the invalidity of the ordinance did not affect the validity of the defendant's arrest. Probable cause existed for the arrest and the search was incident to that arrest; therefore, the evidence was admissible against the defendant. The Court stressed that an officer is not required to anticipate that a court will later hold a statute unconstitutional, unless the law is "so grossly and flagrantly unconstitutional that any person of reasonable prudence would be bound to see its flaws." *Id.* at 38.

The officers in *Payton* were likewise relying on a statute which had not yet been found to be unconstitutional by the Supreme Court. *Payton* is, however, distinguishable from *Michigan v. DeFillippo*. In *DeFillippo*, the arrest was valid because none of the *procedures* used in making the arrest were violative of the Constitution. Therefore, even though the statute outlining the *underlying crime* was later found to be unconstitutionally vague, the *arrest itself* was still constitutionally *valid*. The evidence obtained from the search incident to that arrest was therefore admissible against the defendant when he was later tried for another crime. On the other hand, in *Payton* it was the *procedural* statute authorizing warrantless home arrests which was later found to be unconstitutional. Therefore, because the *procedure* used to arrest the defendant was unconstitutional, the *arrest itself was also unconstitutional*. As a result, the evidence obtained in the search incident to that invalid arrest should have been excluded at trial, despite the good faith actions of the officers. For another recent case dealing with the good faith of police officers and its effect on the admissibility of evidence at trial. *see United States v. Williams*, 622 F.2d 830 (5th Cir. 1980), *cert. denied.*, 101 S. Ct. 946 (1981).

The case was therefore remanded "for further proceedings not inconsistent with" the Court's ruling.[59]

Since the Court had never directly faced this particular issue prior to *Payton*, the Court had to base its decision primarily on "rules that [had become] well established in [earlier] Fourth Amendment litigation involving *tangible items*."[60] The Court saw no problem, however, in applying these rules to the present case, since the "simple language of the Amendment applies equally to seizures of persons and to seizures of property."[61]

The Court reasoned that since arrests are "seizures" required by the fourth amendment to be reasonable, "any differences in the intrusiveness of entries to search and entries to arrest are merely ones of degree rather than kind."[62] Recognizing that both types of intrusions "breach . . . the entrance to an individual's home,"[63] the Court concluded that the "basic principle of Fourth Amendment law"—that warrantless searches and seizures are presumptively unreasonable[64]—"has equal force when the seizure of a person is involved."[65] The Court explained this position further in the following passage:

> The Fourth Amendment protects the individual's privacy in a variety of settings. In none of these 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." . . . In terms that apply equally to seizures of property and to seizures or persons, the Fourth Amendment has drawn a firm line at the

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59. Payton v. New York, 445 U.S. 573, 603 (1980).

60. *Id.* at 585 (emphasis added).

61. *Id.*

62. *Id.* at 589.

63. *Id.*

64. *Id.* at 586 (quoting Coolidge v. New Hampshire, 403 U.S. 443, 447-78 (1971), where the Court stated that it is a "basic principle of Fourth Amendment law that searches and seizures inside a man's house without warrant are *per se* unreasonable in the absence of some one of a number of well defined 'exigent circumstances.'").

65. Payton v. New York, 445 U.S. 573, 587 (1980). *See also* the following two cases upon which the Court relied heavily: United States v. Reed, 572 F.2d 412, 423 (2d Cir.), *cert. denied*, 439 U.S. 913 (1978) ("To be arrested in the home involves not only the invasion attendant to all arrests but also an invasion of the sanctity of the home. This is simply too substantial an invasion to allow without a warrant . . . ."); Dorman v. United States, 435 F.2d 385 (D.C. Cir. 1970) (An entry to arrest and an entry to search for and to seize property violate the same interest in preserving the privacy and sanctity of the home; therefore, they deserve the same level of constitutional protection.)

entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant.[66]

The Court openly rejected New York's argument that the reasons which supported the holding in *United States v. Watson*[67] required a similar result in the instant case.[68] In *Watson*, the Court relied on (a) the well-settled common-law rule that a warrantless arrest in a public place was valid if probable cause existed, (b) the overwhelming approval of this common-law rule by the states, and (c) the expression of Congressional judgment, through federal statutes, that such an arrest was "reasonable."[69]

Conversely, in *Payton* the Court found that none of the above mentioned reasons for upholding warrantless arrests in public places were applicable to warrantless invasions of privacy in the home.[70] First of all, the common-law rule on warrantless home arrests was not nearly as clear as the common-law rule on arrests in public places.[71] Second, while a majority of the states had indeed permitted warrantless home arrests (even in the absence of any exigency), a declining trend was noted in this practice.[72] And finally, unlike the situation in *Watson*, no federal statute was cited in *Payton* to indicate any congressional determination that warrantless home arrests were "reasonable."[73]

The *Payton* majority also rejected New York's contention that the warrant requirement for home arrests would constitute an undue hardship on effective law enforcement practices.[74] Since no evi-

66. 445 U.S. at 589-90.

67. 423 U.S. 411 (1976).

68. 445 U.S. at 590.

69. *Id.*

70. *Id.* at 591.

71. *Id.* at 592. The Court found that, unlike the situation in *Watson*, at common law a "surprising lack of judicial decisions and a deep divergence among scholars" existed on the question of warrantless home arrests. Lords Coke, Burn, Foster, Hawkins, East, and Russell all took the view that a warrantless entry for the purpose of arrest was illegal, while Blackstone, Chitty, and Stephen took the opposite view. However, noting "the prominence of Lord Coke" the Court stated that "the weight of authority as it appeared to the Framers was to the effect that a warrant was required, or at the minimum that there were substantial risks in proceeding without one." *Id.* at 596.

72. *Id.* at 599. The Court noted that while twenty-four states permitted warrantless home arrests by statute and only fifteen states prohibited them, the "current figures reflect a significant decline during the last decade in the number of States permitting warrantless entries for arrest." The Court went on to add that "[v]irtually all of the state courts that . . . [have considered the question] have held warrantless entries into the home to arrest to be invalid in the absence of exigent circumstances." *Id.*

73. *Id.* at 601.

74. *Id.* at 602.

dence was brought before the Court showing that "effective law enforcement has suffered in those States that already have such a requirement,"[75] the Court viewed this argument with "skepticism," and noted that "such arguments of policy must give way to a constitutional command that we consider to be unequivocal."[76]

In response to the state's suggestion that "only a search warrant based on probable cause to believe a suspect is at home . . . can adequately protect the privacy interests at stake,"[77] the Court stated that while an arrest warrant requirement may afford less protection than a search warrant requirement, the arrest warrant would nevertheless be sufficient for fourth amendment purposes. The arrest warrant requirement still interposes a neutral magistrate between the police and the public, and "[i]f there is sufficient evidence of a citizen's participation in a felony to persuade a judicial officer that his arrest is justified, it is constitutionally reasonable to require him to open his doors to the officers of the law."[78]

In addition, the majority emphasized that it was putting to one side several related problems which were not before the Court.[79] First, the Court noted that it had "no occasion to consider the sort of emergency or dangerous situation, described in our cases as 'exigent circumstances,' that would justify a warrantless entry into a home for the purpose of either arrest or search."[80] Second, the case did not present any questions "concerning the authority of the police, without either a search or arrest warrant, to enter a third party's home to arrest a suspect."[81]

Despite the limitations placed upon *Payton* by the Court, the

75. *Id.*

76. *Id.*

77. *Id.* The state suggested that only a search warrant would be sufficient to protect the interests at stake, and "since such a warrant requirement is manifestly impractical, there *need be no warrant of any kind.*" The Court, however, found this "ingenious argument" unpersuasive. *Id.* (emphasis added).

78. *Id.*

79. *Id.* at 583.

80. *Id.* The Court therefore cast no doubt on either *United States v. Santana*, 427 U.S. 38 (1976) (where the Court held that police may enter a premises without a warrant to arrest a person who sought refuge therein after seeing the police approach), or on *Warden v. Hayden*, 387 U.S. 294 (1967) (where the police entered a premises without a warrant in "hot pursuit" of a suspect).

81. *Id.* However, several of these questions were resolved in the recent Supreme Court decision of *Steagald v. United States* 101 S. Ct. 1642 (1981), where the Court held that absent exigent circumstances or consent, a law enforcement officer may not legally search for the subject of an arrest warrant in the home of a *third* party without first getting a search warrant, but that an arrest warrant alone *is* sufficient to enter a suspect's *own* residence to arrest him.

decision still stands as a landmark case in the field of criminal law. The opinion lays to rest a conflict which had existed in the lower courts for years and demands that individuals be given certain protections never before guaranteed to them by the Supreme Court under the fourth amendment.

The Court's logic is comprehended easily. The majority simply recognized that the "physical entry of the home is the chief evil against which . . . the Fourth Amendment is directed,"[82] and that "[t]he simple language of the Amendment applies equally to seizures of persons and to seizures of property."[83] Therefore, since "[i]t is a 'basic principle of Fourth Amendment law' that searches and seizures inside a home without a warrant are presumptively unreasonable,"[84] arrests in a home without a warrant are also presumptively unreasonable.[85]

The Court's rejection of the proposition that a substantial difference exists between the intrusiveness of an entry to search for property and an entry to search for a person[86] also appears proper. Both entries deal with breaching what is "[a]t the very core" of the Fourth Amendment—"the right of a man to retreat into his own home and there to be free from unreasonable government intrusion."[87] In dissent Justice White stated that "a front door arrest . . . is no more intrusive on personal privacy than the public warrantless arrests which we found to pass constitutional muster in *Watson*."[88] However, this argument totally disregards the "unique sensitivity" given to "one's reasonable expectation of privacy in the home"[89] and fails to recognize that not one but two invasions of privacy take place when home arrests are involved: "To be arrested in the home involves not only the invasion attendant to all arrests but also an invasion of the sanctity of the home. This is simply too substantial an invasion to allow without a warrant, at least in the absence of exigent circumstances . . . ."[90]

The minority's statement that law enforcement would be "se-

82. *Id.* at 585 (quoting United States. v United States Dist. Court, 407 U.S. 297, (1972)).

83. *Id.*

84. *Id.* at 586 (quoting Coolidge v. New Hampshire, 403 U.S. 443, 477-78 (1971)).

85. *Id.* at 588.

86. *Id.* at 589.

87. *Id.* at 589-90 (quoting Silverman v. United States, 365 U.S. 505, 511 (1960)).

88. *Id.* at 617.

89. See note 22, *supra*, and accompanying text.

90. *Id.* at 588-89 (quoting United States v. Reed, 572 F.2d 412, 423 (2d Cir.), *cert. denied sub nom.* Goldsmith v. United States, 439 U.S. 913 (1978)).

verely hamper[ed]"[91] seems to be without substance. Justice Stevens' majority opinion specifically stated that the Court had "no occasion to consider the sort of emergency or dangerous situation . . . that would justify a warrantless entry into a home for the purpose of either arrest or search."[92] Therefore, since the exceptions to allowing warrantless home arrests which were previously expounded by the Supreme Court[93] still remain valid, Justice White's concern "that a dangerous criminal will escape into the community"[94] is without constitutional merit. A situation dealing with a "dangerous criminal" suspected of a recent, violent crime would probably create sufficient exigent circumstances to justify a warrantless home arrest, or at least would justify a "stake out" until the suspect left his home or until a warrant was obtained.

Finally, the dissent's contention that "[t]he policeman on his beat must now make subtle discriminations that perplex even judges in their chambers"[95] is in no way supportive of warrantless home arrests. Police were already being asked to determine whether probable cause existed in cases of this type. The decision of whether "exigent circumstances" exist is similar to determining whether probable cause exists. To say that officers are competent to make one of these decisions but that they are not competent to make the other would be inconsistent. Policemen, therefore, should be given the power to make both of these decisions, or warrantless arrests should be done away with altogether.

The latter proposal is not a wise one, for valid reasons exist for allowing warrantless arrests in *public places*; *some* degree of "exigency" occurs with almost every arrest made in a public place. The danger that the suspect will not be sighted again and that he will escape before a warrant can be obtained is often present in cases of this nature. However, this danger is not present to the same degree when a suspect is in his home. If probable cause exists, the police can protect society's interest by arresting the suspect if he attempts to leave the premises before the warrant is procured or by entering the premises if exigent circumstances call for such action.

Granted, new techniques are needed to halt the spiraling increase in crime. However, the privacy rights of our citizens should not be sacrificed unless some purposeful advantage is given to our

91. *Id.* at 618.
92. *Id.* at 583.
93. See notes 41 & 49, *supra*, and accompanying text.
94. Payton v. New York, 445 U.S. 583, 619 (1980) (White, J., dissenting).
95. *Id.* at 618-19 (White, J., dissenting).

law enforcement officials. From this standpoint, the *Payton* decision appears very sound indeed, for it grants individuals protections guaranteed by the Constitution and, at the same time, gives society the protection it needs in a time of greatly increasing crime.

Paul E. Brown

MORAL DAMAGES FOR BREACH OF CONTRACT: THE EFFECT ON RECOVERY OF AN OBLIGOR'S BAD FAITH

After hearing a strange noise emanating from his automobile engine, the plaintiff delivered his automobile, a Mercedes, to the defendant for repair. The defendant claimed to have corrected the problem, but the engine produced a louder and more disturbing sound when the plaintiff reclaimed his vehicle. Immediate attempts by the defendant to locate the source of the new sound were unsuccessful; consequently, the plaintiff was required to leave the car for additional repair. The defendant's failure to repair various defects eventually resulted in the plaintiff's being stranded on three separate occasions.[1] The plaintiff sued the defendant for breach of duty to repair and was awarded $500 in non-itemized damages by the district court. On appeal, the defendant argued that the portion of the award evidently representing recovery of "moral damages"[2] under

1. The Court stated:

> The unfortunate part of these episodes is that, after each attempt at repairs, plaintiff's car broke down on the road, leaving him stranded on one occasion on Downman Road near the Lakefront Airport in New Orleans, once on Interstate 10 Highway in the swamp area past LaPlace and once on the Lake Pontchartrain Causeway. On each of these occasions, plaintiff and his companions had to arrange for an alternate method of returning home and plaintiff had to have the vehicle towed to the defendant's for repairs.

Coddington v. Stephens Imports, Inc., 383 So. 2d 416, 417 (La. App. 4th Cir. 1980).

2. Moral damages, commonly known as nonpecuniary damages, may be defined as damages that repair prejudice to one's emotional equanimity. Since the $500 award by the district court was not itemized, proving that the award included any moral damages is difficult, although this fact was implied by the district court judge. Reasons for Judgment, Coddington v. Stephens Imports, Inc., No. 77-14342 (Dist. Ct. Orl. La. 1979). Moreover, on appeal both the plaintiff and the defendant assumed that moral damages had been awarded. Brief for Defendant-Appellant Stephens Imports, Inc. at 6, Brief for Plaintiff-Appellee Coddington at 6, Coddington v. Stephens Imports, Inc., 383 So. 2d 416 (La. App. 4th Cir. 1980).