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SECOND CIRCUIT REVIEW

Expert Analysis

Fourth Amendment Protections And Arrests at Other People's Homes

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This month, we discuss *United States v. Bohannon*, in which the U.S. Court of Appeals for the Second Circuit vacated an order suppressing evidence seized pursuant to the arrest of a defendant, who was apprehended while a guest in the residence of a third party. In the decision, written by Judge Reena Raggi and joined by Judge Richard C. Wesley and Judge Christopher F. Droney, the panel ruled that a suspect named in an arrest warrant, who is arrested while visiting another person's residence, cannot object to the arresting officers' unlawful entry into the home. *United States v. Bohannon*, No. 14-4679-CR, 2016 WL 3067993 (2d Cir. May 31, 2016).

After narrowly construing the level of suspicion required to justify entry under these circumstances, the panel vacated the district court's suppression order along with its conclusion that the officers lacked the requisite suspicion to justify entering the dwelling.

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Background

This decision tackled the requirements for an arrest executed in a home—reconciling two Supreme Court cases, decided just one year apart, over two decades ago. In 1980, the Supreme Court stated in *Payton v. New York* that, although special constitutional protections attach to the home, "an arrest warrant founded on probable cause implicitly carries with it the limited authority to enter *a dwelling in which the suspect lives* when there is reason to believe the suspect is within."[1]

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The next year, in *Steagald v. United States*,[2] the Supreme Court held that officers are required to obtain a search warrant before entering the home of a third party to apprehend a suspect named in an arrest warrant. Because the challenge in *Steagald* was brought by a third-party resident whose home had been invaded, the Supreme Court expressly reserved the question of whether the suspect named in an arrest warrant could likewise object to the unauthorized entry of another's home.

Since *Steagald* was decided, eight circuit courts have held that the subject of an arrest warrant, who is a guest in the home of a third party, may not vicariously invoke *Steagald* to object to the unlawful entry precipitating his arrest.[3] But the First Circuit and earlier Second Circuit decisions reserved the possibility that suppression is necessary under such circumstances to guarantee protection of the home, independent of which party raises the claim.[4] Moreover, where a

Steagald defense is not available, courts have differed concerning the standard of suspicion required to justify entry under *Payton*.

Prior Proceedings

Jonathan Bohannon was arrested at around 6 a.m., in the apartment of Dickson, at 34 Morgan Avenue. Although the officers possessed an arrest warrant for Bohannon, they had not obtained an arrest warrant for Dickson, nor had they served a search warrant authorizing the entry into her apartment. During searches executed pursuant to Bohannon's arrest, the officers discovered drugs, a large quantity of cash, and three firearms. Bohannon, and 13 of his confederates, were subsequently charged with various narcotics and firearms offenses.

Bohannon filed pre-trial motions to suppress the evidence seized from Dickson's apartment as the fruit of an illegal search. Bohannon asserted that he did not reside at 34 Morgan Avenue, where he was staying as an overnight guest at the time of his arrest. Relying on *Steagald*, he contended that the arresting officers violated the Fourth Amendment by entering and searching Dickson's apartment, without first obtaining a search warrant for that address. In the alternative, he argued that, even if a search warrant was not required, the officers did not possess a reasonable belief that he was present in Dickson's apartment at the time of his arrest, as required under *Payton*.

On Dec. 15, 2014, the district court (Judge Janet C. Hall) rejected Bohannon's first argument, that the officers were required to obtain a search warrant before finding and arresting him in Dickson's apartment. The district court reasoned that the subject of a search warrant could not rely on *Steagald* to vicariously invoke the Fourth Amendment protections guarding the home where he is a mere guest. Nonetheless, the district court granted Bohannon's motion to suppress. Relying on *Payton*, it held that the officers required a reasonable basis for believing that Bohannon was on the premises before entering Dickson's apartment, which was absent under the facts and circumstances presented. *United States v. Bohannon*, 67 F.Supp.3d 536 (D. Conn. 2014)

The government's evidence concerning Bohannon's whereabouts relied largely on cellular data and prior surveillance of the area surrounding 34 Morgan Avenue. Information from Bohannon's cell phone indicated that his last call on the evening prior to his arrest—at around 2:30 a.m.—came from a sector that included Dickson's apartment building on Morgan Avenue, but did not include Bohannon's residence. Through prior surveillance, the officers also knew that Bohannon had once been seen walking to the door of 34 Morgan Avenue, and other surveillance placed him in the vicinity of the building on multiple occasions in the preceding months.

Dickson, in turn, was a resident of one of the apartments at 34 Morgan Avenue. She also owned another apartment that the police suspected was used to sell heroin as well as a car that had once been parked outside Bohannon's home. On the evening of the arrest, the officers concluded Bohannon was not at home, based on surveillance of his home and the location of his last-placed call.

The district court concluded that this evidence did not give rise to a reasonable belief that Bohannon was present in Dickson's apartment at the time of his arrest. In particular, the district court faulted the imprecise cellular location data used that evening, which placed Bohannon is a relatively large and undefined area, including other buildings as well as another apartment within Dickson's own building. It also discredited the circumstantial evidence connecting Bohannon to Dickson by way of her car and her apartment. Applying the exclusionary rule, the district court therefore suppressed the evidence seized pursuant to Bohannon's arrest.

Second Circuit Decision

The Second Circuit reviewed de novo the legal question of whether the officers' entry, in the absence of a search warrant, violated Bohannon's Fourth Amendment rights. It also reviewed de novo the district court's determination that the officers lacked a reasonable belief that Bohannon was present in Dickson's apartment at the time of his arrest. While recognizing that findings of fact are reviewed for clear error, the Second Circuit noted that the government did not dispute the district court's factual findings.

Reconciling 'Payton' and 'Steagald.' The court began its discussion by analyzing the interaction of *Payton* and *Steagald*, to determine which case controls. In

Payton, a suspect was arrested inside his home, in the absence of either a search warrant or arrest warrant. In reversing the judgment of conviction, the Supreme Court held that, absent consent or exigent circumstances, the police could not enter a defendant's home to arrest him without at least an arrest warrant and reason to believe that the suspect was at home. At the same time, the court noted that, where officers have obtained an arrest warrant for a suspect, it is constitutionally reasonable to require him to open his doors to police officers.

Confronting a different scenario in *Steagald*, the Supreme Court clarified that the same rule does not apply when a third party objects to officers searching his home for an arrest warrant subject. *Steagald* involved a challenge brought by such a third party, who was arrested after the police entered his home, armed only with an arrest warrant for a different individual believed to be hiding at the address, and discovered drugs on the premises.

In that scenario, two distinct Fourth Amendment interests are implicated. First, the subject of the arrest warrant has an interest in being free from an unreasonable seizure. Second, the third-party resident has an interest in being free from an unreasonable search of his home. According to the Second Circuit, the Supreme Court in *Steagald* addressed only the latter interest, when it held that an arrest warrant—as opposed to a search warrant—is inadequate to protect the Fourth Amendment interests of a third-party resident in his home.

Neither *Payton* nor *Steagald* controlled the scenario before the Second Circuit. In contrast to *Payton*, Bohannon was not arrested in his own home. Nor did *Steagald* directly apply, because Bohannon was not an unwitting third party, but rather the suspect named in the arrest warrant. The Second Circuit recognized that *Steagald* established that it was unlawful for the officers to enter Dickson's apartment. But it rejected Bohannon's right to contest the unlawful entry.

> The panel adhered to the minority view, that officers may enter a dwelling based on something less than probable cause to believe the suspect named in an arrest warrant is present inside.

Adopting the reasoning of eight sister circuits, the panel cited two considerations that would render it illogical to apply *Steagald* to these facts. First, Fourth Amendment rights are personal and cannot be asserted vicariously. Second, requiring police who already possess an arrest warrant for a suspect to obtain a search warrant before pursuing that suspect into a third party's home would grant the suspect broader rights in the third party's residence than he would have in his own home under *Payton*. The court then dismissed the authorities urged by *Bohannon*. Insofar as these cases suggested that *Steagald* was not restricted to claims brought by third-party residents, the court deemed this language dicta. The court concluded that *Payton*, not *Steagald,* governs the rights of the subject of an arrest warrant who is arrested while visiting a third party's residence.

Issues Not Decided

In a footnote, the court observed that *Payton's* reason-to-believe requirement applies only if the subject of the arrest warrant has standing to object to the officers' entry into the home of a third party. The panel did not address whether standing in fact existed, noting that the government did not challenge Bohannon's expectation of privacy in the home as an overnight guest.

The court also did not address the question of what Fourth Amendment protections attach when officers enter the home of a third party, for which they possess no search warrant, based on a reasonable but mistaken belief that it is the home of a suspect for whom they do hold an arrest warrant. That scenario was previously addressed by the Second Circuit in *United States v. Lovelock*, 170 F.3d 339, 344 (2d Cir. 1999), which the panel construed to narrow the protections afforded third-party residents under *Steagald*, where the arresting officers did not know they were entering the home of a third party.

Reason-to-Believe Standard

Having determined that *Payton* provided the applicable standard, the court proceeded to consider whether the record demonstrated that the officers had "reason to believe" that Bohannon was present in Dickson's apartment at the time of the arrest. Here, again, the court confronted a circuit split

regarding the proper standard, with some circuits equating the reason-to-believe standard to probable cause and others interpreting it to require something less.

As the panel observed, the Third, Fifth, and Ninth circuits have held that officers armed with an arrest warrant may enter a home to arrest a suspect only if they have probable cause to believe the suspect is present in the home. The Sixth Circuit also has indicated its agreement with this position, although it has not yet squarely decided the issue. By contrast, the D.C. Circuit and the Tenth Circuit apply a more relaxed standard. Several other circuits have addressed, but declined to decide, the issue.

The panel adhered to the minority view, that officers may enter a dwelling based on something less than probable cause to believe the suspect named in an arrest warrant is present inside. In so ruling, the court relied on *United States v. Lauter*, where the Second Circuit stated that probable cause is "too stringent a test" under these circumstances.[5] The panel determined it was bound by the circuit's prior decision, even though the court in *Lauter* found that the facts satisfied either standard.

The panel expressly declined to articulate a precise definition for the reason-to-believe standard. It stated that it would not equate this standard with reasonable suspicion, since that concept is so closely associated with investigatory stops, rather than the invasion of a home or a full-fledged arrest. Nonetheless, in analyzing the issue, the panel "borrowed from" reasonable suspicion precedent, requiring "specific and articulable facts," which, taken together, objectively permit the rational inference that a suspect is present inside the premises to be entered.

Applying the Reason-to-Believe Standard. The court then evaluated whether the arresting officers possessed a reason to believe that Bohannon was present inside Dickson's apartment. In contrast to the district court, the panel concluded that they did.

The court relied heavily on the cell phone information, which showed that Bohannon had ceased using his phone late in the evening, in a sector that included Dickson's apartment, but not his own home. While the court recognized it could not "merely defer to the officers' judgment in assessing reasonable suspicion," it noted that it must view the totality of the circumstances through the eyes of a reasonable and cautious police officer on the scene. With that in mind, the panel concluded that the officers' prior surveillance combined with the cell phone information sufficiently justified the inference that Bohannon had retired at Dickson's home.

Accordingly, the panel held that Bohannon failed to demonstrate that his arrest violated the Fourth Amendment. It therefore vacated the district court's order suppressing the evidence seized pursuant to Bohannon's arrest.

Conclusion

In a digital age where vast amounts of personal information are routinely stored by third parties, an individual's ability to challenge the search of another becomes increasingly important. The Second Circuit's ruling in *United States v. Bohannon* answers a question that the Supreme Court had expressly left open for over three decades, narrowing one's ability to vicariously invoke Fourth Amendment protections. While the basic facts presented in *Bohannon* are as old as the Constitution itself, it remains to be seen how these legal principles will be applied to modern data-collection technologies.

1. *Payton v. New York*, 445 U.S. 573, 602-03 (1980) (emphasis added).

2. *Steagald v. United States*, 451 U.S. 204, 222 (1981).

3. See *United States v. Hollis*, 780 F.3d 1064, 1068–69 (11th Cir. 2015); *United States v. Jackson*, 576 F.3d 465, 468 (7th Cir. 2009); *United States v. Kern*, 336 F. App'x 296, 297–98 (4th Cir. 2009); *United States v. McCarson*, 527 F.3d 170, 172–73 (D.C. Cir. 2008); *United States v. Pruitt*, 458 F.3d 477, 482 (6th Cir. 2006); *United States v. Agnew*, 407 F.3d 193, 197 (3d Cir. 2005); *United States v. Kaylor*, 877 F.2d 658, 663 & n.5 (8th Cir. 1989); *United States v. Underwood*, 717 F.2d 482, 484 (9th Cir. 1983) (en banc).

4. *United States v. Snype*, 441 F.3d 119, 133 (2d Cir. 2006); *United States v. Weems*, 322 F.3d 18, 23 (1st Cir. 2003); *United States v. Lovelock*, 170 F.3d 339, 344 (2d Cir. 1999).

5. *United States v. Lauter*, 57 F.3d 212 (2d Cir. 1995).