10-1980

Steagald v. United States

Lewis F. Powell Jr.

Grant e
Conflict.
(As I think CA
is better view
I may den
-dependen
on the
Descrim

Q - Whether police, armed with an arrest warrant, may enter the residence of a third party to make the arrest.

CA 5 held that if police reasonably believed the party ~~for whose arrest~~ named in an arrest warrant was in the residence of a 3rd party (Petr in this case), they may enter the home.
(I'm inclined to agree with CA 5
-but there is a conflict)

PRELIMINARY MEMORANDUM

Summer List 28, Sheet 1

No. 79-6777 Cert to CA 5 (Thornberry, C. Clark; Kravitch dissenting)

STEAGALD

v.

UNITED STATES Federal/Criminal Timely

1. SUMMARY. Petr challenges CA 5's rule that police armed with a warrant for an individual's arrest need not obtain a search warrant to enter the house of a third party to execute the arrest warrant.

2. FACTS AND HOLDING BELOW. In January 1978 a confidential informant who previously had supplied police with information that proved reliable informed Agent Rassey of the

Grant, I think. (See supp. mem. attached.) This probably is not a good case to address the "good faith mistake of law" question. There is no indication that the officers were relying on ~~that~~ Cravero. Paul C.

DEA in Detroit that he might be able to locate Ricky Lyons, wanted by the DEA, and another individual named Jimmy, wanted on Georgia drug charges. The informant contacted Rassey subsequently and told him that Lyons and Jimmy were in Atlanta. The informant gave Rassey a telephone number that Jimmy had said would be good for twenty-four hours and said he had heard Lyons' voice on the other end of the line. Rassey passed this information on to Agent Goodowens of the DEA office in Savannah, Georgia. Goodowens knew that a Ricky Lyons had been indicted on federal drug charges in the SD of Ga and, after further checking, discovered that a warrant had been issued for Lyons' arrest.

Goodowens contacted the telephone company and learned the address of the number Jimmy had supplied. In the meantime, Rassey received a series of calls from the informant, who told Rassey each time that Jimmy had called again and still said he and Lyons were at the same number. Rassey passed this information on to Goodowens in a series of conversations.

On the afternoon of January 18, Goodowens led a force of several DEA agents and local police officers to the address they had obtained from the telephone company. The agents saw two men in the front yard, later identified as petr and codefendant Hoyt A. Gaultney. When Goodowens determined that neither was Lyons, he sent another agent to the house. Mrs. Gaultney answered. In response to the agent's questioning, she stated there was no one named Ricky Lyons inside. The agent then entered the house without Mrs. Gaultney's consent to look for Lyons. He observed a light from behind the door of a

bedroom. He entered and found balance scales, a clear plastic bag containing white powder, and other apparent drug paraphernalia. One of the agents then drove to Atlanta to obtain a warrant to search the entire house. When he obtained it, he phoned the agents who had stayed behind, and they conducted an extensive search. They found some forty-three pounds of pure cocaine and a variety of narcotics-processing paraphernalia.

On the basis of this evidence, petr was indicted and convicted of one substantive and one conspiracy count relating to possession of cocaine with intent to sell. (Gaultney also was convicted; Mrs. Gaultney and "Jimmy" received directed acquittals.) Petr received five years to run concurrently on each count, to be followed by a special parole term of three yeas. Petr appealed to CA 5, arguing, inter alia, that the search of the house in an attempt to locate Lyons violated the fourth amendment.

The CA upheld the introduction of the evidence seized. It reiterated the CA 5 rule, first enunciated in United States v. Cravero, 545 F.2d 406 (5th Cir.), cert. denied, 430 U.S. 983 (1976), that police armed with an arrest warrant need not obtain a search warrant to enter the house of a third party if they reasonably believe the person to be arrested is within. It also held that the information given to Rassey and passed on to Goodowens was sufficient to meet that standards of Aguilar and Spinelli. Judge Kravitch dissented, doubting that the evidence connecting linking Lyons to the premises was sufficient to pass Aguilar and Spinelli. The panel majority

subsequently amended its opinion to elaborate on the reasons why Aguilar and Spinelli were met; Judge Kravitch added a brief dissent questioning the validity of the Cravero rule. The full CA denied rehearing en banc.

3. CONTENTIONS. Petr argues, first, that the Cravero rule is incorrect. He believes that police should be required to reappear before a magistrate before they invade the privacy of a third person. He contends that this decision conflicts with CA 3's decision in Government of Virgin Islands v. Gereau, 502 F.2d 914, 928 (3d Cir. 1974), which held that police may execute arrest warrants on the premises of third parties without the authorization of a magistrate only if there are exigent circumstances. Petr thus believes that the initial entry into the house was unlawful; the drugs and paraphernalia subsequently discovered, including those found pursuant to the search warrant, are fruits of the poisonous tree.

Second, petr believes the information supplied by the informant was inadequate to support a warrant under Aguilar and Spinelli. He contends that the informant did not provide Rassey with the circumstances underlying his assertion that Lyons was in the house and that Jimmy was to be believed.

4. ANALYSIS. The first issue petr raises is fairly significant and presents a conflict between CA 3 and CA 5. Although this Court's decision last term in Payton v. New York, Nos. 79-5420 & 79-5421 (Apr. 15, 1980), suggests that an arrest warrant may suffice to authorize entry into the suspect's own house when police believe he is inside, it said nothing about whether police may enter the residence of a third person. This question left open is important.

Despite the importance of the issue, this may not be the proper case for resolving it. Petr nowhere in his petn asserts that he owned, resided in, or regularly used the house searched; the petn and the CA 5 opinion indicate only that he was standing in the driveway talking with Gaultney when the police arrived. Under the circumstances, then, it is likely that petr would not be able to demonstrate a legitimate expectation of privacy in the premises searched sufficient to prove a violation of his, as opposed to the Gaultneys', fourth amendment rights. Calling for a response might clarify this factual question, but it may be better to wait for a clear case.

The second issue--whether the informant's tip satisfied Aguilar and Spinelli--is fact specific and not certworthy.

There is no response.

9/8/80 Ale Opinions in petn

SUPPLEMENTAL MEMORANDUM

Summer List 28, Sheet 1

No. 79-6777 Cert to CA 5 (Thornberry, C. Clark; Kravitch dissents)

STEAGALD

v.

UNITED STATES Federal/Criminal Timely

Since I prepared the preliminary memorandum in this case, the SG has filed a response. First, his factual discussion resolves the question of whether petr had a legitimate expectation of privacy in the house searched: the SG states that the house was "occupied by petitioner . . . ." Brief in Opp at 3. Thus, petr could challenge the lawfulness of the officers' conduct.

The SG admits that the issue is significant and that the circuits are split. He nevertheless believes that because the officers complied with Cravero, the prevailing CA 5 rule at the time they entered the house, no deterrent purpose would be served by excluding this evidence; he cites Michigan v. DeFillipo, 443 U.S. 31 (1979), Bowen v. United States, 422 U.S. 916 (1975), and United States v. Peltier, 422 U.S. 531 (1975),

for this proposition. Thus, the SG argues, it would not be wise to take this case. He also notes that the lower courts should have the opportunity to reassess CA 5's rule in light of the language at the end of Payton.

I now believe this Court should grant cert. This issue is one of great practical significance and the circuits are split, as the SG has conceded. Any hesitation due to the lack of a description of petr's interest in the house now has been dispelled. The SG's attempt to avoid cert based on the retroactivity cases is disingenuous. DeFillipo involved a conviction based on evidence seized after a stop authorized by an unconstitutional statute. In Bowen and Peltier, the Court refused to apply a previously decided rule to police conduct occuring before the rule was announced. This case, on the contrary, would be the seminal case on this issue, not one subsequently winding its way through the judicial system. Even when retroactivity would be inappropriate, this Court traditionally allows the petr initially seeking review to pursue his claim; otherwise, no one would have the incentive to litigate the underlying constitutional question. If cert is not granted, I am not sure how the SG believes this issue ever can reach this Court for definitive resolution. If the Court grants cert, and if it determines that Cravero is incorrect, it can decide in a later case whether this new rule should be applied prospectively only. I see little to be gained by waiting for lower courts to reconsider this issue in light of the short phrase in Payton.

There is now a response.

9/9/80 Ale Opinion in petn

September 29, 1980

Court .....
Argued ....., *19*...
Submitted ....., *19*...

Voted on ....., *19*...
Assigned ....., *19*...
Announced ....., *19*...

No. 79-6777

STEAGALD

vs.

UNITED STATES

We should assume probable cause & no exigent circumstances

Grant as to Q #1

	HOLD FOR	CERT. G	CERT. D	JURISDICTIONAL STATEMENT N	JURISDICTIONAL STATEMENT POST	JURISDICTIONAL STATEMENT DIS	JURISDICTIONAL STATEMENT AFF	MERITS REV	MERITS AFF	MOTION G	MOTION D	ABSENT	NOT VOTING
Burger, Ch. J.			✓										
Brennan, J.		✓											
Stewart, J.				Join 4									
White, J.			✓										
Marshall, J.		✓											
Blackmun, J.			✓										
Powell, J.					Join 3								
Rehnquist, J.			✓										
Stevens, J.		✓											
.....													

We granted this case to consider Q left open in Payton: whether police, with an arrest warrant, may enter a home to make the arrest when the home is that of a 3rd party & the suspect doesn't reside there.

PS 01/10/81

But, contrary to what was said by SG in brief responding to Cert. Petn, Petr who was arrested was not in the home (outside beside a parked car), & there is no ev. that he lived in the home. Petr. was convicted on basis of ev (drugs) found in home & test. of witnesses who also were in home. Petr. argues entry & search of home was illegal & his arrest & conviction were "fruit" of this illegality.

On these facts Petr had no expectation of privacy in the home & no standing to object. But this issue was not considered below because we had not decided Salvucci, & thereon "automatic standing" rule applied. BENCH MEMORANDUM

Probably we should vacate & remand to consider the standing issue. There was little or no ev. on Q of Petr's expectation of privacy in the home.

To: Mr. Justice Powell January 10, 1981

From: Paul Smith

If we reach the Payton issue on its merits the logic of Payton would require a decision for Petr - i.e. that 4th Amend. requires search warrant. Such a holding would create dilemma for police as they often would have to decide on spot whether a suspect is a resident or visitor. If the former, no arrest warrant suffices.

No. 79-6777: Steagald v. United States

Question Presented

Whether it is permissible under the Fourth Amendment for the police to enter a home for the purpose of arresting a person who does not reside there, armed with an arrest warrant but no search warrant.

Background

Petr was part of a ring of importers of cocaine. He

was arrested at a cabin in Buford, Georgia by DEA agents. These agents had received information from a reliable informant that two fugitives--Ricky Lyons and "Jimmy"--would be at at certain phone number for 24 hours. Two days later, the informant called with information that the two men were still at the same location. The agents traced the phone number to the Buford cabin during the following two days, and received confirmations from the informant that their targets remained at the same phone number. They then proceeded to the cabin to attempt to arrest Lyons, for whom there was an outstanding DEA arrest warrant.

Warrant for arrest of Lyons

When the agents arrived at the cabin, they noticed two men squatting by a car in the driveway--petr and Hoyt Gaultney. One of the agents thought Gaultney was Lyons, but soon realized his error. Both men produced identification, and one agent proceeded to the front door, where he encountered Kathy Gaultney. She said that Lyons was not there, but the agent proceeded to search the cabin for him. He came across drug paraphernalia and white powder in one room. He then drove to Atlanta to obtain a search warrant, while another agent proceeded to look through an open suitcase containing more white powder. Petr and the Gaultney's were arrested. Gaultney asked to speak privately with an agent, and the agents prepared for this conversation by searching the whole room for weapons (including a closed suitcase in the closet, where they discovered more incriminating evidence).

Petr. outside

Searched cabin

Gaultney ultimately directed the officers to yet another suitcase containing cocaine. Later, James Smith, to whom the cabin was leased, came home and was arrested. Finally, a thorough search was conducted pursuant to a search warrant.

Petr moved to suppress all the evidence in the case, arguing that the initial entry in search of Lyons was illegal and led to all subsequent events. The district court suppressed a few specific items of evidence but held that the initial entry itself was legal because the agents had an arrest warrant for Lyons. There remained sufficient unsuppressed evidence to convict petr and his codefendants. The CA5 affirmed, citing United States v. Cravero, 545 F.2d 406 (5th Cir. 1976), cert. denied, 429 U.S. 1100 (1977) (entry permitted where officers have arrest warrant for third party and reasonable belief that he is on the premises). Judge Kravitch dissented on the ground that the agents did not have a "reasonable belief" that Lyons was in the cabin. ?

Fruit of illegal entry

Discussion

This case was granted in order to decide a question left open after Payton v. New York, 445 U.S. 573 (1980) (arrest warrant required for arrest in suspect's own home)--whether an arrest warrant is sufficient to justify an entry into a third party's home, or whether a search warrant is required for such an arrest entry. There are, however, two preliminary issues that may prevent the Court from reaching

Left open in Payton

Q

But two preliminary issues.

this important question.

I. Petr's Expectation of Privacy in the Cabin

The SG begins by arguing quite correctly that if petr did not live in the cabin himself, he probably had no expectation of privacy there and cannot raise this Fourth Amendment claim. See Rakas v. Illinois, 439 U.S. 128 (1978). This case was decided below on the apparent assumption that petr had "automatic standing" to raise this claim, before this concept was rejected in United States v. Salvucci, No. 79-244 (June 25, 1980). As a result, the record is ambiguous on the connection between petr and the cabin. The cabin was leased to another of the conspirators--Jim Smith--and petr was not even arrested while inside. A few of his possessions were found inside, but nothing indicating that he was a full-time resident of the cabin, even on a short-term basis.

It is worth noting that this problem with the case is a direct result of the SG's own statements in his Brief in Opposition to the Petition. In the original pool memo, the author recommended against a grant on the ground that the record did not show that petr had an expectation of privacy in the cabin. Then, in its brief, the SG's office described the cabin as "petitioner's residence," and stated that it was occupied by petr and the Gaultneys. The SG brief on the merits now describes those statements as erroneous, explaining that a "closer review of the record in connection with the preparation of this brief has revealed that those statements

were mistaken." Br. at 17 n.8.

In his reply brief, petr argues that the government has waived the standing argument by failing to raise it below and by conceding in its brief in opposition that petr lived in the cabin. Responding to the argument that the government had no reason to raise this issue prior to Salvucci, he points out that a challenge to the automatic standing rule was raised in Salvucci itself, and could have been made here.

I have my doubts about whether the government can be said to have waived this argument or conceded forever that petr lived in the cabin. On the other hand, it seems unfair simply to DIG the case, after having agreed that petr had presented a certworthy question on the merits of his Fourth Amendment claim. Petr might well have been able to offer evidence at the suppression hearing showing that he had been staying in the cabin. Thus, unless the Court is willing to assume this factual issue against the Government, or to decide that Salvucci does not apply "retroactively" in this situation, I would recommend some sort of remand for factual development.

II. The Retroactivity Question

The SG also argues that the issue raised here should not be decided in a case such as this one involving a search that preceded Payton. The argument is that petr is suggesting an application of the Payton rule to his case and that he cannot do so because Payton should not be given retroactive

application. See Bowen v. United States, 422 U.S. 916 (1975); Michigan v. Payne, 412 U.S. 47 (1973). I believe this argument is fallacious.

The SG is probably correct that the Payton rule--barring warrantless entries into a suspect's home to arrest him--should not apply retroactively to entries of that kind, at least in jurisdictions that had previously authorized such entries. In exclusionary rule cases, the Court has held that there is no deterrent purpose served by excluding evidence on the basis of a new constitutional rule created after the search in question. United States v. Peltier, 422 U.S. 531 (1975).

You, however, have adopted a different approach, that of Justice Harlan in United States v. Mackey, 401 U.S. 667, 675 (1971) (new rules apply to all cases still on direct review). See Hankerson v. North Carolina, 432 U.S. 233, 246 (1977) (Powell, J., concurring in judgment). This rule appears to apply even in exclusionary rule cases. Justice Harlan's Mackey opinion applied as well to Williams v. United States, 401 U.S. 646 (1971), a Fourth Amendment exclusionary rule case. And in Hankerson you referred to the fact that the police often rely in good faith on the existing state of the law, 432 U.S. at 247, thus suggesting that you would apply the Mackey rule to this kind of case. If Hankerson does apply, then there can be no retroactivity argument with respect to Payton in this case.

In any event, even applying Peltier, I believe that the SG is wrong in suggesting that this is a case where the issue of the retoactivity of Payton is at issue. Although the thrust of the Payton opinion offers some support for the view that third parties should be protected in their homes from entries based solely on arrest warrants naming their guests, the issue in this case is essentially separate from the issue in Payton itself. As the SG concedes, petr's claim does not depend at all on the Payton holding and there were several circuits that required a search warrant in this kind of situation long before Payton was decided. It therefore seems appropriate to treat this as a case involving a new point of law, and to grant petr the benefit of the Court's new holding if he prevails on the merits. He is "the lucky individual whose case was chosen as the occasion for announcing the new principle." Hankerson, supra, at 247. In sum, I would apply the exclusionary rule to this case if the Court reaches the merits and rules for petr.

III. The Merits

The SG concedes the logic of petr's basic position on the merits. Petr's argument is that a person residing in a home should be protected from searches of his home for suspects just as he is protected from searches of his home for things. The basic protection in this area is the determination by a neutral magistrate that there is probable cause to believe that the "thing" sought is on the premises to

be searched. The fact that an arrest warrant for the person sought has been issued provides none of this protection to the resident of the home being entered, even if police are required to determine in advance that they have reasonable cause to believe that the suspect is on the premises.

In Payton, the Court stated that

> In terms that apply equally to seizures of property and to seizures of person, 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.

445 U.S. at 590. The Court went on to hold, however, that an arrest warrant alone is sufficient to justify an entry into the suspect's own home, explaining:

> It is true that an arrest warrant requirement may afford less protection than a search warrant requirement, but it will suffice to interpose the magistrate's determination of probable cause between the zealous officer and the citizen. If 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. Thus, for Fourth Amendment purposes, 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.

Two facts held imp. in Payton: 1. Arrest was made in D's home 2. Permit to search warrant. & (2) Belief — reasonable belief that D was at home

Id., at 602.

Thus, the Court adopted an accommodation that allowed entries based solely on arrest warrants because it seemed reasonable to allow such an intrusion on someone's home once a magistrate had found probable cause that he was guilty

of a crime. As petr points out, the Court would be going "much further" if it were to hold that innocent third parties may have their homes "searched" whenever the police think they have reason to believe that a fugitive (against whom an arrest warrant has issued) is within.

Faced with the logic of petr's position, the SG takes refuge in history and practical considerations. He argues that at common law an officer armed with an arrest warrant for someone could enter any premises to arrest him. In addition, he asserts that persons differ significantly from things in terms of their mobility, making a search warrant requirement unworkable.

In my judgment, these arguments are an insufficient response to petr's basic point that an arrest warrant for someone else offers him no protection of any kind and, if sufficient to justify an entry without a search warrant, amounts to a "general warrant" because it allows the police to make entries anywhere without the further intervention of a neutral magistrate. The practical problems appear to be overblown. First, it is not clear that persons are in fact more mobile than things. Objects can be carried from place to place and are much easier to conceal than persons. In a case like the present one, the officers would not have faced insuperable difficulties if they had been required to obtain a search warrant. They had information that Lyons was in the cabin for several days and, assuming that this information was

sufficiently reliable to justify any entry, they could have used it to obtain a search warrant. Even in a hypothetical case in which the police learned of a suspect's presence in a home and felt a need to apprehend him immediately, they could set up a surveillance outside during the period of time that it took to obtain a search warrant. If, in the meantime, the suspect attempted to leave, he could be arrested immediately in a public place. Presumably Payton contemplated a similar approach in the event officers are seeking a suspect they know is at home but have not yet obtained an arrest warrant.

Perhaps the best argument in favor of the practicality of a search warrant requirement in this kind of case is the fact that such a rule has prevailed in several circuits for some time. See Government of Virgin Islands v. Gereau, 502 F.2d 914, 928 (3d Cir. 1974), cert. denied, 420 U.S. 909 (1975); Wallace v. King, 626 F.2d 1157 (4th Cir. 1980), cert. pending, No. 80-503; United States v. Prescott, 581 F.2d 1343 (9th Cir. 1978). To be sure, the majority of circuits have adopted the opposite rule, see cases cited in the SG's brief at 34 n.19, but it is apparently not impossible to live with a search warrant requirement in this kind of case.

On the other hand, a rule along the lines suggested by petr would create a different kind of practical problem--identifying those who "reside" at a particular location. Under Payton, an arrest warrant is sufficient to justify an

entry into the suspect's own home, but petr would establish a different rule for the homes of others. Especially when the person being sought is a fugitive, it may be difficult in many cases for the police to determine whether he has the status of a resident in a particular home, or is merely a visitor. Indeed, this issue may present intractable line-drawing problems.[1] Here, for example, the cabin was leased by one coconspirator, and the police knew that their suspect--Lyons--had been staying there for several days. Did this make him a resident or a visitor?

This last consideration is almost sufficient to convince me that the Payton rule authorizing entries based solely on arrest warrants should extend to entries in the homes of third parties. On balance, however, such a rule would impose too little restriction on the police when armed with an arrest warrant, and I would lean toward a search-warrant requirment, with the police advised that they should err on the side of caution when uncertain whether their suspect "lives" at a particular location.

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[1] Interestingly, a similar problem is presented by the question of petr's status in this home. See § I, supra. Rakas and Salvucci require the courts to decide whether the person raising a Fourth Amendment claim had a reasonable expectation of privacy in the premises searched. But this determination can be made after-the-fact, and these cases do not require the police to make a determination on their own prior to a search.

Summary and Recommendation

There is a serious problem presented by the question of petr's status in the cabin. If he was not a resident of the cabin, he has no standing to raise the Fourth Amendment claim. This issue was not litigated below because "automatic standing" was still the law, but the SG did describe the cabin as petr's residence in its Brief in Opposition to the Petition. Now, the SG describes that as an error and seeks a remand or some other disposition that does not reach the merits. I tend to agree, since it does not appear that the SG waived this question. A DIG, however, would seem unfair to petr.

The SG's argument that petr should not be able to raise his claim on the merits because Payton does not apply retroactively is wrong for two reasons. First, under your opinion in Hankerson, all new decisions should apply to cases still on direct appeal. Second, petr's argument is not based directly on Payton. Instead, he is arguing for a new Fourth Amendment rule that was followed in some circuits well before Payton. He therefore is entitled to the benefit of a decision for him on the merits.

Petr's argument is different from Payton

On the merits, petr makes a forceful argument that an arrest warrant for a third party does little or nothing to protect a resident of a house from unreasonable entries. And the practical difficulties associated with obtaining search warrants prior to such entries do not seem unbearable, since

people are not all that different from objects. There is, however, a serious problem with requiring the police to decide on the spot whether their suspect is a resident or a visitor in a given home. If you think this last problem can be overcome, and that it is proper to reach the merits here, I would rule for petitioner.

79-6777 STEAGALD v. U.S. Argued 1/14/81

We took then care to decide whether Payton applies where officers, w/o a search warrant, enter home of a 3rd party when police have arrest warrant for a person believed to be in house.

Young (appointed by Court to represent Rakas)

~~House was leased~~

Standing issue is not before Court.

Salvucci was decided after this case was decided by CA5. Thus "automatic standing" was relied ~~on~~ on by Ct. below.

But even under Salvucci, the ~~D~~ suffered ev. to show reasonable expectation ~~of~~ of privacy. Cited a number of relatively minor facts as probably showing this interest. (e.g. sweater in home, two checks there, D was at front in short sleeves, etc)

Frey (SG)

Three issues:

1. Standing. (ground for remand)

This is not an Art III standing issue. But SG is entitled to raise it here. See N.H. Tel Case, Dandridge v Williams, Bondholders Committee v Communications

The record contains ~~no~~ insufficient ev. that Rakas had reasonable expectation of privacy.

WJB noted that Govt relied on Rakas's coat & checks in house as ev. of his part in conspiracy, & asked why this was not ~~enough~~ enough to establish privacy for D.

Frey (cont)

2. Exclusionary Rule should not be applied retroactively here.

Agts had reasonable suspicion to think D was in premises.

Payton altered settled law in CA 5. The [redacted] Court. issue here is different.

[redacted]

If Payton is not retroactive, we should not reach the Payton issue here.

Relies on Stovall, Paine.

It was Payton that basically changed the law. Pre Payton seizures should not be invalidated.

Oppers acted with good faith

3. Payton issue

Relies on common law. Coke

There must be reason to believe the suspect is in the home.

Issue must be placed in context; many cases will involve exigent circumstances, as presence of suspect in 3rd party's house is likely to be brief.

See 56's brief for other points.

History weighs more heavily on Govt's side than in [redacted] Payton

The issue is one of Const. policy.

Intrusion is less on entry to arrest than entry to search.

Here there had been partial recourse to magistrate.

Frey (cont)

Payton rule would put police in extremely difficult position in many cases. Always Q in whose home in it.

Telephonic warrant OK in federal practice. (Have we upheld this?)

4 to 4 at Conference
CJ voted later to Reverse

79-6777 Steagald v. U.S. Conf. 1/16/81

The Chief Justice Passed
Awaited discussion. could DIG
After discussion, CJ took case under advisement.

Mr. Justice Brennan Reverse
Standing argument not raised by SG & so we don't have to consider it.
No exigent circumstances here.
Search warrant was required.

Mr. Justice Stewart Reverse
SG's arguments are not frivolous.
The law enforcement officers were operating under automatic standing rule.
But would reach merits (how?)
& reverse.

Mr. Justice Powell Affirm (somewhat tantalizing)

As to standing, I'd say Payton is not retroactive. Then D relied on "automatic standing" rule. So did Police.. Also, as SG did'nt raise this, we need not consider it.

(I used my notes on Black Memo)

Police severely handicapped if must obtain search warrant. Non-residents are likely to be transitory ~~is~~ visitors in other people's homes.

Mr. Justice Rehnquist Aff.

Agrees with BRW & LFP

History stronger here than in Payton

Not a general. Over cases limit degree of intrusion. See ~~Co~~ Chimel.

Mr. Justice Stevens Rev.

Agree we can ignore standing. Gov. had duty to make Salvucci argument in lower court.

In Payton hist. was "muddy".

Here history may be different, but there may be stronger case for search warrant than in Payton for arrest warrant.

Payton doesn't control. This is a ~~fresh~~ case.

Mr. Justice White Affirm

Payton doesn't control.

Move history supports Govt

Move in Payton.

Mr. Justice Marshall Reverse

Then is a gen. warrant case.

Mr. Justice Blackmun Affirm - tentative

Initial inclination was to DIG

Close case.

In Payton there was probable

cause. Here there is both an

arrest warrant & probable cause

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

January 26, 1981

RE: 79-6777 - Steagald v. United States

MEMORANDUM TO THE CONFERENCE:

My vote in the above is to reverse.

Regards-

WEB

Payton vote
- sustained

CJ
W+R
BRW

Harry concurred

March 12, 1981

No. 79-6777 Gary Keith Steagald v. United States

Dear Thurgood:

As I voted tentatively to affirm in this case, I will await the dissent.

Sincerely,

Mr. Justice Marshall

LFP/lab

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 12, 1981

Re: 79-6777 - Steagald v. United States

Dear Thurgood:

Please join me.

Respectfully,

JPS

Justice Marshall

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 16, 1981

RE: No. 79-6777 Steagald v. United States

Dear Thurgood:

I agree.

Sincerely,

Bill

Justice Marshall

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 16, 1981

Re: No. 79-6777 Stegald v. United States

Dear Thurgood:

In due course I will circulate a dissent in this case.

Sincerely,

WHR

Mr. Justice Marshall

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

March 16, 1981

Re: No. 79-6777, Steagald v. United States

Dear Thurgood,

I am glad to join your opinion for the Court.

Sincerely yours,

PS

Justice Marshall

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 2, 1981

Re: No. 79-6777 - Steagald v. United States

Dear Thurgood:

Although after the argument I was troubled by this case, I am now convinced that your opinion reaches the correct result. Please join me.

Sincerely,

HAB.

Mr. Justice Marshall

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 15, 1981

Re: 79-6777 - Steagald v. U.S.

Dear Bill,

Please join me in your dissenting opinion in this case.

Sincerely yours,

Byron

Mr. Justice Rehnquist

Copies to the Conference

cpm

PS 04/15/81

To: Mr. Justice Powell

From: Paul Smith

Re: Justice Rehnquist's Dissent in No. 79-6777, Steagald v. United States

I do not find this the most convincing argument for the dissenting point of view. Leaving aside the long common-law discussion, which I do not consider determinative in a case of this kind, the opinion is somewhat schizophrenic in that it initially bemoans the effect of the majority's position on law enforcement, then points out the narrow limits of the holding. I find the second set of arguments somewhat more persuasive. The search warrant argument would apply only where there are no exigent circumstances and the person cannot be said to "live" in the home. Moreover, telephonic warrants can be obtained while a

home is under surveillance, and this should be possible in those cases that lack exigent circumstances.

I continue to believe that Justice Rehnquist's most telling point is one he merely mentions, on p. 15 of the typewritten draft--the uncertainty from the point of view of the police concerning who resides at a particular residence. But on balance I would no allow this problem to prevent a join of the majority. Neither answer is wholly satisfactory, but Justice Marshall's seems truer to basic Fourth Amendment principles.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

April 17, 1981

RE: 79-6777 - Steagald v. United States

Dear Thurgood:

Please show me joining the judgment.

Regards,

Justice Marshall

Copies to the Conference

April 16, 1981

79-6777 Steagald v. United States

Dear Thurgood:

Although I continue to have some doubts, given Payton that I joined, I believe your opinion reflects Fourth Amendment principles under our cases.

Your subpart IV-B also is persuasive on the question of whether the Court's holding in this case will present practical problems for law enforcement officers.

Accordingly, I join your opinion for the Court.

Sincerely,

Mr. Justice Marshall

lfp/ss

cc: The Conference

THE C. J.	W. J. B.	P. S.	B. R. W.	T. M.	H. A. B.	L. F. P.	W. H. R.	J. P. S.
				1/27/81				
Join in Judgment 4/17/81	Join TM	Join TM 3/16/81	Join WHR 4/15/81	1st draft 3/11/81	Join TM 4/2/81	await dissent 3/12/81	will dissent 3/16/81	Join TM 3/12/81
				2nd draft 4/20/81		Join TM 4/16/81	typed draft 4/15/81	
							1st printed draft 4/16/81	
				79-6777 Steagald v. US				