

# The Burger Court Opinion Writing Database

*United States v. Santana*  
427 U.S. 38 (1976)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



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

CHAMBERS OF  
THE CHIEF JUSTICE

June 9, 1976

Re: 75-19 - United States v. Santana and Alejandro

Dear Bill:

I join your proposed opinion dated May 26.

Regards,

WCB

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

June 18, 1976

RE: No. 75-19 United States v. Santana

Dear Thurgood:

Please join me in the dissenting opinion you have  
prepared in the above.

Sincerely,



Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

May 27, 1976

No. 75-19, U. S. v. Santana

Dear John,

I should appreciate your adding  
my name to your concurring opinion.

Sincerely yours,

PS.

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

May 27, 1976

No. 75-19, U. S. v. Santana

Dear Bill,

I am glad to join your opinion for the Court in this case. As you will note, I have also asked John to add my name to his concurring opinion.

Sincerely yours,

PS  
1/

Mr. Justice Rehnquist

Copies to the Conference

✓  
To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice White

Circulated: 5-27-76

Recirculated: \_\_\_\_\_

No. 75-19 - United States v. Santana

Mr. Justice White, concurring.

It is not disputed here that the officers had probable cause to arrest respondent and to believe that she was in the house. In these circumstances, a warrant was not required to enter the house to make the arrest, at least where entry by force was not required. This has been the long-standing rule in the majority of jurisdictions in the United States. American Law Institute, A Model Code of Pre-arraignment Procedure 306-314, 696-697 (1975). I agree with the Court that the arrest here did not violate the Fourth Amendment.

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice White

Circulated: \_\_\_\_\_

Recirculated: 6-1-76

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 75-19

United States, Petitioner,  
v.  
Dominga Santana and  
William Alejandro. } On Writ of Certiorari to the  
United States Court of Appeals for the Third Circuit.

[June —, 1976]

MR. JUSTICE WHITE, concurring.

It is not disputed here that the officers had probable cause to arrest respondent and to believe that she was in the house. In these circumstances, a warrant was not required to enter the house to make the arrest, at least where entry by force was not required. This has been the longstanding rule in the majority of jurisdictions in the United States. American Law Institute, A Model Code of Pre-arraignment Procedure, 306-314, 696-697 (1975). I agree with the Court that the arrest here did not violate the Fourth Amendment.

To: The Chief Justice  
 Mr. Justice Brennan  
 Mr. Justice Stewart  
 Mr. Justice Marshall  
 Mr. Justice Blackmun  
 Mr. Justice Powell  
 Mr. Justice Rehnquist  
 Mr. Justice Stevens

From: Mr. Justice White

Circulated: \_\_\_\_\_

Recirculated: 6-21-76

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-19

United States, Petitioner,  
 v.  
 Dominga Santana and  
 William Alejandro. } On Writ of Certiorari to the  
 } United States Court of Ap-  
 } peals for the Third Circuit.

[June —, 1976]

MR. JUSTICE WHITE, concurring.

It is not disputed here that the officers had probable cause to arrest Santana and to believe that she was in the house. In these circumstances, a warrant was not required to enter the house to make the arrest, at least where entry by force was not required. This has been the longstanding statutory or judicial rule in the majority of jurisdictions in the United States, see American Law Institute, A Model Code of Pre-arraignment Procedure, 306-314, 696-697 (1975), and has been deemed consistent with state constitutions, as well as the Fourth Amendment. It is also the Institute's recommended rule. *Id.*, § 120.6. I agree with the Court that the arrest here did not violate the Fourth Amendment.

My Brother MARSHALL, *post* and *United States v. Watson*, — U. S. —, — (dissenting opinion), would reinterpret the Fourth Amendment to sweep aside this widely held rule and to establish a constitutional standard requiring warrants for arrests except where exigent circumstances clearly exist. The States are, of course, free to limit warrantless arrests, as is Congress; but I would not impose his suggested nationwide edict, founded as it is on a belief in the superior wisdom of the members of this Court and their power to divine that the country's practice to this date with respect to arrests is after all unreasonable within the meaning of the Fourth Amendment.

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 1, 1976

MEMORANDUM TO THE CONFERENCE

Re: No. 75-19 -- United States v. Dominga Santana and  
William Alejandro

In due time I shall circulate a dissent in this case.

*JM*  
T. M.

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice Marshall  
Circulated: JUN 17 1976

No. 75-19, United States v. Santana

Recirculated: \_\_\_\_\_

Mr. Justice Marshall, dissenting.

Earlier this Term, I expressed the view that, in the absence of exigent circumstances, the police may not arrest a suspect without a warrant. United States v. Watson, \_\_\_ U.S. \_\_\_, \_\_\_ (1976) (Marshall, J., dissenting). For this reason, I cannot join either the opinion of the Court or that of Mr. Justice White, each of which disregards whether exigency justified the police decision to approach Santana's home without a warrant for the purpose of arresting her. Nor can I accept Mr. Justice Stevens' approach, for while acknowledging that some notion of exigency must be asserted to justify the police conduct in this case, Mr. Justice Stevens fails to consider that the exigency present in this case was produced solely by police conduct. I would remand the case to allow the District Court to determine whether that police conduct was justifiable or was solely an attempt to circumvent the warrant requirement.

The Court declines today to settle the oft-reserved question of whether and under what circumstances a police officer may enter the

To: The Chief Justice  
 Mr. Justice Brennan  
 Mr. Justice Stewart  
 Mr. Justice White  
 Mr. Justice Blackmun  
 Mr. Justice Powell  
 Mr. Justice Rehnquist  
 Mr. Justice Stevens

From: Mr. Justice Marshall  
 Circulated: JUN 21 1976

PRINTED  
 1st / DRAFT

Recirculated: \_\_\_\_\_

## SUPREME COURT OF THE UNITED STATES

No. 75-19

United States, Petitioner, } On Writ of Certiorari to the  
 v. } United States Court of  
 Dominga Santana and } Appeals for the Third  
 William Alejandro. } Circuit.

[June —, 1976]

MR. JUSTICE MARSHALL, with whom MR. JUSTICE BRENNAN joins, dissenting.

Earlier this Term, I expressed the view that, in the absence of exigent circumstances, the police may not arrest a suspect without a warrant. *United States v. Watson*, — U. S. —, — (1976) (MARSHALL, J., dissenting). For this reason, I cannot join either the opinion of the Court or that of MR. JUSTICE WHITE, each of which disregards whether exigency justified the police decision to approach Santana's home without a warrant for the purpose of arresting her. Nor can I accept MR. JUSTICE STEVENS' approach, for while acknowledging that some notion of exigency must be asserted to justify the police conduct in this case, MR. JUSTICE STEVENS fails to consider that the exigency present in this case was produced solely by police conduct. I would remand the case to allow the District Court to determine whether that police conduct was justifiable or was solely an attempt to circumvent the warrant requirement.

The Court declines today to settle the oft-reserved question of whether and under what circumstances a police officer may enter the home of a suspect in order to make a warrantless arrest. *United States v. Watson*, — U. S. at — n. 6; *Gerstein v. Pugh*, 420 U. S. 103, 113 n. 13 (1975); *Coolidge v. New Hampshire*, 403 U. S. 443, 480-481 (1971); *Jones v. United States*, 357 U. S.

3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 75-19

United States, Petitioner, } On Writ of Certiorari to the  
v. } United States Court of  
Dominga Santana and } Appeals for the Third  
William Alejandro. } Circuit.

[June 24, 1976]

MR. JUSTICE MARSHALL, with whom MR. JUSTICE BRENNAN joins, dissenting.

Earlier this Term, I expressed the view that, in the absence of exigent circumstances, the police may not arrest a suspect without a warrant. *United States v. Watson*, — U. S. —, — (1976) (MARSHALL, J., dissenting). For this reason, I cannot join either the opinion of the Court or that of MR. JUSTICE WHITE, each of which disregards whether exigency justified the police decision to approach Santana's home without a warrant for the purpose of arresting her. Nor can I accept MR. JUSTICE STEVENS' approach, for while acknowledging that some notion of exigency must be asserted to justify the police conduct in this case, MR. JUSTICE STEVENS fails to consider that the exigency present in this case was produced solely by police conduct. I would remand the case to allow the District Court to determine whether that police conduct was justifiable or was solely an attempt to circumvent the warrant requirement.

The Court declines today to settle the oft-reserved question of whether and under what circumstances a police officer may enter the home of a suspect in order to make a warrantless arrest. *United States v. Watson*, — U. S. at — n. 6; *Gerstein v. Pugh*, 420 U. S. 103, 113 n. 13 (1975); *Coolidge v. New Hampshire*, 403 U. S.

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 28, 1976

Re: No. 75-19 - United States v. Santana

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 26, 1976

No. 75-19 United States v. Santana

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Rehnquist

lfp/ss

cc: The Conference

✓  
C.4  
To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice [unclear]  
Mr. Justice [unclear]

✓  
[unclear]

✓  
[unclear] APR 26 1976

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 75-19

United States, Petitioner, } On Writ of Certiorari to the  
v. } United States Court of  
Dominga Santana and } Appeals for the Third  
William Alejandro. } Circuit.

[June —, 1976]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

I

On August 16, 1974, Michael Gilletti, an undercover officer with the Philadelphia Narcotics Squad arranged a heroin "buy" with one Patricia McCafferty (from whom he had purchased narcotics before). McCafferty told him it would cost \$115 "and we will go down to Mom Santana's for the dope."

Gilletti notified his superiors of the impending transaction, recorded the serial numbers of \$110 [sic] in marked bills, and went to meet McCafferty at a prearranged location. She got in his car and directed him to drive to 2311 North Fifth Street, which, as she had previously informed him, was respondent Santana's residence.

McCafferty took the money and went inside the house, stopping briefly to speak to respondent Alejandro who was sitting on the front steps. She came out shortly afterwards and got into the car. Gilletti asked for the heroin; she thereupon extracted from her bra several glassine envelopes containing a brownish-white powder and gave them to him.

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 22, 1976

MEMORANDUM TO THE CONFERENCE

Re: Cases held for United States v. Santana, No. 75-19.

There is one case held for Santana: McLaughlin v. United States, No. 75-6129.

In this case, petr was convicted of possession of 378 pounds of marijuana with intent to distribute in S.D. Cal. The evidence showed that police were informed by a reliable informant that petr was selling marijuana out of his house and that a quantity of same would be removed from the house on July 5. DEA agents went to the house and saw a truck pull up, receive a package and drive away. The agents gave chase and the occupants tossed four kilos of marijuana from the truck. Another individual was arrested emerging from the house with a bagful of grass.

The agents then went to the house, knocked on the door and demanded entrance. They heard "shuffling" so they broke in, whereupon they saw marijuana in plain view. They then obtained a search warrant and found more marijuana concealed about the premises. Petr was arrested when he arrived home later on.

Petr claims that the seizure of the "plain view" marijuana was unconstitutional. This case involves a warrantless search and is not governed by Santana which involved a challenge to a warrantless arrest. CA 9 did not decide whether a warrantless entry merely to effect an arrest could be justified.

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

No. 75-19

From: Mr. Justice Stevens

Circulated: 5/26/76

United States, ) Recirculated: \_\_\_\_\_  
Petitioner, )  
v. ) On Writ of Certiorari to the  
Dominga Santana and ) United States Court of  
William Alejandro. ) Appeals for the Third  
Circuit.

[June 1976]

MR. JUSTICE STEVENS, concurring.

When Officer Gilletti placed McCafferty under arrest, the police had sufficient information to obtain a warrant for the arrest of Santana. It is therefore important to note that their failure to obtain a warrant at that juncture was both (a) a justifiable police decision, and (b) even if not justifiable, harmless.

The decision was justified by the significant risk that the marked money would no longer be in Santana's possession if the police waited until a warrant could be obtained. The failure to seek a warrant was harmless because it would have been proper to keep the Santana residence under surveillance while the warrant was being sought; since she ventured into plain view, a warrantless arrest would have been justified before the warrant could have been procured.

I therefore join the opinion of the Court.

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

From: Mr. Justice Stevens

Circulated: \_\_\_\_\_

Recirculated: 6/1/76

*Printed*  
1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 75-19

United States, Petitioner, } On Writ of Certiorari to the  
v. } United States Court of  
Dominga Santana and } Appeals for the Third  
William Alejandro. } Circuit.

[June —, 1976]

MR. JUSTICE STEVENS, with whom MR. JUSTICE STEWART joins, concurring.

When Officer Gilletti placed McCafferty under arrest, the police had sufficient information to obtain a warrant for the arrest of Santana. It is thus important to note that their failure to obtain a warrant at that juncture was both (a) a justifiable police decision, and (b) even if not justifiable, harmless.

*therefore*

The decision was justified by the significant risk that the marked money would no longer be in Santana's possession if the police waited until a warrant could be obtained. The failure to seek a warrant was harmless because it would have been proper to keep the Santana residence under surveillance while the warrant was being sought; since she ventured into plain view, a warrantless arrest would have been justified before the warrant could have been procured.

I therefore join the opinion of the Court.