The Burger Court Opinion Writing Database

Payton v. New York

445 U.S. 573 (1980)

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

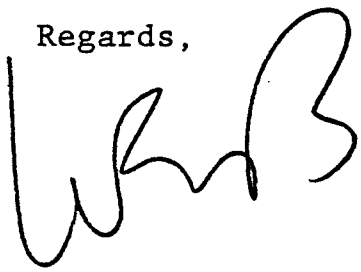
March 20, 1980

Re: (78-5420 - Payton v. New York
(
(78-5421 - Riddick v. New York

Dear Byron:

I join your dissent.

Regards,



Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 19, 1980

Re: Payton v. New York and Riddick v. New York,
Nos. 78-5420 and 78-421

Dear John:

I am very impressed by the work and thought you have put into these cases. Would you consider two suggestions, neither of which, I think, would affect the thrust of the opinion.

First, could footnote 30 on page 16 be slightly amended? I am concerned that the wording "Essentially, our holding today is nothing more than an application of the 'plain view' doctrine" creates confusion because I am not confident that the lower courts have a correct understanding of the scope of the plain view doctrine. I am thinking particularly about a case such as Riddick where the police might, without a warrant, knock on the suspect's door, not expecting to find the suspect at home. Some courts might hold that when the police saw the suspect through the open door they were free to enter to arrest him because they were lawfully on his porch and saw him in plain view without their having to enter the house. This ambiguity might be eliminated, I suggest, if the note were revised to read as follows (the altered portions in brackets):

> [Our holding today bears some similarity to] an application of the "plain view" doctrine. If the police come across an object subject to seizure in plain view and in a place where the police have a lawful right to be, they may seize the object without a warrant. Under our search cases, absent exigent circumstances or consent, the police have no lawful right to enter a house and seize even those objects that [are in] plain view unless a warrant has first been obtained authorizing entry. We merely hold that in seizing people rather than property, [this rule applies].

Second, would you be willing to add a footnote something like the following at the end of the penultimate paragraph to explain what a defendant's rights would be:

> 57. Thus, if challenged at a suppression hearing, the arresting authority would have to show not only that the warrant was properly issued, but also that the suspect lived in the dwelling and that the officers had reason to believe the suspect was there at the time.

If you could accomodate me as to these points, I would gladly join the opinion.

Sincerely,

Bill

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 17, 1980

Re: No. 78-5420 and 78-5421,
Payton v. New York, etc.

Dear John,

I am glad to join your opinion for the Court.

Sincerely yours,

P.S.

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 18, 1980

MEMO TO THE CONFERENCE

Re: No. 78-5420 - Payton v. New York;
No. 78-5421 - Riddick v. New York.

As an initial effort, here is a proposed dissent in the above cases.

Sincerely yours,

Byron

No. 78-5420) Payton v. New York

No. 78-5421) Riddick v. New York

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: 3.18.80

Recirculated: _____

MR. JUSTICE WHITE, dissenting.

The Court today holds that absent exigent circumstances officers may never enter a home during the daytime to arrest for a dangerous felony unless they have first obtained a warrant. This hard-and-fast rule, founded on erroneous assumptions concerning the intrusiveness of home arrest entries, finds little or no support in the common law or in the text and history of the Fourth Amendment. I respectfully dissent.

I

As the Court notes, ante at 18, the common law of searches and seizures, as evolved in England, as transported to the Colonies, and as developed among the States, is highly relevant to the present scope of the

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: 9 APR 1980

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: pp. 6,12-13,17-18
fn. renumbered

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 78–5420 AND 78–5421

Theodore Payton, Applicant,
78–5420 *v.*
New York.

Obie Riddick, Applicant,
78–5421 *v.*
New York.

On Appeals from the Court of Appeals of New York.

[March —, 1980]

MR. JUSTICE WHITE, dissenting.

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I

As the Court notes, *ante*, at 18, the common law of searches and seizures, as evolved in England, as transported to the Colonies, and as developed among the States, is highly relevant to the present scope of the Fourth Amendment. *United States* v. *Watson*, 423 U. S. 411, 418–422 (1976); *id.*, at 425, 429 (POWELL, J., concurring); *Gerstein* v. *Pugh*, 420 U. S. 103, 111, 114 (1975); *Carroll* v. *United States*, 267 U. S. 132, 149–153 (1925); *Bad Elk* v. *United States*, 177 U. S. 529, 534–535 (1900); *Boyd* v. *United States*, 116 U. S. 616, 622–630 (1886); *Kurtz* v. *Moffitt*, 115 U. S. 487, 498–499 (1885). Today's decision virtually ignores these centuries of common-law development, and distorts the historical meaning of the

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: 10 APR 198

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 1

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 78–5420 AND 78–5421

Theodore Payton, Applicant,
78–5420 *v.*
New York.

Obie Riddick, Applicant,
78–5421 *v.*
New York.

On Appeals from the Court of Appeals of New York.

[March —, 1980]

MR. JUSTICE WHITE, with whom THE CHIEF JUSTICE and MR. JUSTICE REHNQUIST join, dissenting.

The Court today holds that absent exigent circumstances officers may never enter a home during the daytime to arrest for a dangerous felony unless they have first obtained a warrant. This hard-and-fast rule, founded on erroneous assumptions concerning the intrusiveness of home arrest entries, finds little or no support in the common law or in the text and history of the Fourth Amendment. I respectfully dissent.

I

As the Court notes, *ante,* at 18, the common law of searches and seizures, as evolved in England, as transported to the Colonies, and as developed among the States, is highly relevant to the present scope of the Fourth Amendment. *United States* v. *Watson,* 423 U. S. 411, 418–422 (1976); *id.,* at 425, 429 (POWELL, J., concurring); *Gerstein* v. *Pugh,* 420 U. S. 103, 111, 114 (1975); *Carroll* v. *United States,* 267 U. S. 132, 149–153 (1925); *Bad Elk* v. *United States,* 177 U. S. 529, 534–535 (1900); *Boyd* v. *United States,* 116 U. S. 616, 622–630 (1886); *Kurtz* v. *Moffitt,* 115 U. S. 487, 498–499 (1885). Today's decision virtually ignores these centuries of common-law development, and distorts the historical meaning of the

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 27, 1980

Re: Nos. 78-5420 and 78-5421 - Payton v. New York
and Riddick v. New York

Dear John:

Please join me.

Sincerely,

T.M.

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 17, 1980

Re: No. 78-5420 - Payton v. New York
No. 78-5421 - Riddick v. New York

Dear John:

For now, I shall await the dissent.

Sincerely,

Harry

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 28, 1980

Re: No. 78-5420 - Payton v. New York
No. 78-5421 - Riddick v. New York

Dear John:

I voted the other way at conference, but, after study and review of the historical factors (compare my dissent in Gannett!), I have now concluded that a reversal and remand in each of these cases is indicated. I therefore join your opinion. I shall circulate a two-paragraph concurrence later today.

Sincerely,

Harry

Mr. Justice Stevens

cc: The Conference

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

From: Mr. Justice Blackmun

Circulated: MAR 28 1980

Recirculated: _____

No. 78-5420 - Payton v. New York
No. 78-5421 - Riddick v. New York

MR. JUSTICE BLACKMUN, concurring.

I joined the Court's opinion in United States v. Watson, 423 U.S. 411 (1976), upholding, on probable cause, the warrantless arrest in a public place. I, of course, am still of the view that the decision in Watson is correct. The Court's balancing of the competing governmental and individual interests properly occasioned that result. Where, however, the warrantless arrest is in the suspect's home, that same balancing requires that, absent exigent circumstances, the result be the other way. The suspect's interest in the sanctity of his home then outweighs the governmental interests.

1st DRAFT

MAR 2 8 1980

SUPREME COURT OF THE UNITED STATES

Nos. 78–5420 AND 78–5421

Theodore Payton, Applicant, 78–5420 *v.* New York.	On Appeals from the Court of Appeals of New York.
Obie Riddick, Applicant, 78–5421 *v.* New York.	

[April —, 1980]

MR. JUSTICE BLACKMUN, concurring.

I joined the Court's opinion in *United States* v. *Watson*, 423 U. S. 411 (1976), upholding, on probable cause, the warrantless arrest in a public place. I, of course, am still of the view that the decision in *Watson* is correct. The Court's balancing of the competing governmental and individual interests properly occasioned ~~the~~ that result. Where, however, the warrantless arrest is in the suspect's home, that same balancing requires that, absent exigent circumstances, the result be the other way. The suspect's interest in the sanctity of his home then outweighs the governmental interests.

I therefore join the Court's opinion, firm in the conviction that the result in *Watson* and the result here, although opposite, are fully justified by history and by the Fourth Amendment.

March 18, 1980

78-5420 and 78-5421 Payton and Riddick

Dear John:

I have read with admiration your fine opinion.

My willigness to make what in effect would be a major change in the law of many states, is dependent to a considerable extent on the flexibility that exists under the "exigent circumstances rule". You and I both, according to my notes, made this point at Conference.

On page 10 of your opinion, I assume that you were thinking of this rule and noting that it was not implicated in this case. But I fear the sentence as written may create some doubt as to whether the Court may limit reliance on exigent circumstances. Would you consider rewriting the sentence to read as follows:

> "Accordingly, we have 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."

If you can make a change generally along the foregoing lines, I will be happy to join you.

Sincerely,

Mr. Justice Stevens

lfp/ss

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 18, 1980

78-5420 and 78-5421 Payton and Riddick v. New York

Dear John:

Please join me.

Sincerely,

Lewis

Mr. Justice Stevens

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 14, 1980

Re: Nos. 78-5420 and 78-5421 - Payton v. New York, et al.

Dear John:

In due course I will circulate a dissent in these cases.

Sincerely,

Mr. Justice Stevens

Copies to the Conference

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

From: Mr. Justice Rehnquist

Circulated: 20 MAR 1980

Recirculated: _____

No. 78-5420 Payton v. New York

MR. JUSTICE REHNQUIST, dissenting.

The Court today refers to both Payton and Riddick as "routine felony arrests". I have no reason to dispute the Court's characterization of these arrests, but cannot refrain from commenting on the social implications of the result reached by the Court. Payton was arrested for the murder of the manager of a gas station; Riddick was arrested for two armed robberies. If these are indeed "routine felony arrests", which culminated in convictions after trial upheld by the state courts on appeal, surely something is amiss in the process of the administration of criminal justice whereby these convictions are now set aside by this Court under the exclusionary rule which we have imposed upon the states under the

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 20, 1980

Re: No. 78-5420 Payton v. New York

Dear Byron:

This will confirm what I have already said in my separate dissent: please join me in your dissent.

Sincerely,

Mr. Justice White

Copies to the Conference

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: MAR 13 '80

1st DRAFT Recirculated: _____

SUPREME COURT OF THE UNITED STATES

Nos. 78–5420 AND 78–5421

Theodore Payton, Applicant,
78–5420 v.
New York.

Obie Riddick, Applicant,
78–5421 v.
New York.

On Appeals from the Court of Appeals of New York.

[March —, 1980]

MR. JUSTICE STEVENS delivered the opinion of the Court.

These appeals challenge the constitutionality of New York statutes that authorize police officers to enter a private residence without a warrant and with force, if necessary, to make a routine felony arrest.

The important constitutional question presented by this challenge has been expressly left open in a number of our prior opinions. In *United States* v. *Watson*, 423 U. S. 411, we upheld a warrantless "midday public arrest" expressly noting that the case did not pose "the still unsettled question . . . whether and under what circumstances an officer may enter a suspect's home to make a warrantless arrest." 423 U. S., at 418, n. 6.[1] The question has been answered in different ways by other appellate courts. The Supreme Court

[1] See also *United States* v. *Watson*, 423 U. S. 411, 433 (STEWART, J., concurring); *id.*, at 432–433 (POWELL, J., concurring); *Gerstein* v. *Pugh*, 420 U. S. 103, 113, n. 13; *Coolidge* v. *New Hampshire*, 403 U. S. 443, 474–481; *Jones* v. *United States*, 357 U. S. 493, 499–500. Cf. *United States* v. *Santana*, 427 U. S. 38.

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 18, 1980

Re: 78-5420 and 78-5421 - Payton and Riddick
v. New York

Dear Lewis:

Many thanks for your letter. Your suggested language for page 10 is a definite improvement and I will adopt it verbatim.

Respectfully,

John

Mr. Justice Powell

1, 2, 9–16, 18–20, 22–24, 27

Some fns, renumbered

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: MAR 19 '80

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 78–5420 AND 78–5421

Theodore Payton, Applicant,
78–5420 *v.*
New York.

Obie Riddick, Applicant,
78–5421 v.
New York.

On Appeals from the Court of Appeals of New York.

[March —, 1980]

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P. -79

Footnotes renumbered

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: MAR 28 '80

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 78–5420 AND 78–5421

Theodore Payton, Applicant,
78–5420 *v.*
New York.

Obie Riddick, Applicant,
78–5421 v.
New York.

On Appeals from the Court of Appeals of New York.

[March —, 1980]

MR. JUSTICE STEVENS delivered the opinion of the Court.

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The important constitutional question presented by this challenge has been expressly left open in a number of our prior opinions. In *United States* v. *Watson*, 423 U. S. 411, we upheld a warrantless "midday public arrest," expressly noting that the case did not pose "the still unsettled question . . . whether and under what circumstances an officer may enter a suspect's home to make a warrantless arrest." 423 U. S., at 418, n. 6.[1] The question has been answered in different ways by other appellate courts. The Supreme Court

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 15, 1980

MEMORANDUM TO CONFERENCE

Re: Cases heretofore held for Payton v. New York, No. 78-5420, and Riddick v. New York, No. 78-5421

Brown v. Florida, No. 77-6769 (Court of Appeals, First District, Florida):

In this case, the Florida Court of Appeals affirmed the denial of a suppression motion without opinion. Petitioner alleges he was arrested in his dwelling at night without a warrant and where there were no exigent circumstances. Petitioner also urges that there was insufficient probable cause to arrest. The State responds only to the latter point. There are no opinions, and no finding that exigent circumstances justified the warrantless entry. I would grant, vacate and remand this case in light of Payton and Riddick.

Pennsylvania v. Williams, No. 78-1697 (Supreme Court of Pennsylvania):

In this case, the Pennsylvania Supreme Court held that a warrantless entry to arrest in the absence of exigent circumstances violates the Fourth Amendment. Because the arrest was illegal, respondent's confession made at the time of arrest was suppressed. The State raises the questions whether the arrest violated the constitution and whether the exclusionary rule should be applied to