

Recent Case Report

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U.S. v. Jackson

(7th Cir. 2009) __ F.3d __ [2009 WL 2392874]

Issues

(1) Did officers violate Jackson's Fourth Amendment rights when they entered a friend's apartment to arrest him? (2) Did officers have sufficient reason to believe that Jackson was presently inside the apartment?

Facts

Officers in Winnebago County, Illinois had a warrant for the arrest of Eric Jackson for aggravated battery, but they were having trouble finding him. One day they received an anonymous tip that he would be at the apartment of his father's girlfriend early the next morning. When they arrived at about 8:30 A.M., they spoke with the resident, LanDonna Joseph who invited them into the vestibule. LanDonna claimed she didn't know Jackson, but the officers thought she was lying based on her "body language." So they asked another woman who was sitting nearby who "started to cry and nodded her head." The officers then searched the apartment and found Jackson sleeping in the back bedroom. After arresting him, they conducted a search incident to arrest and found a handgun under the blanket.

Jackson was charged with being a felon in possession of a firearm and, after his motion to suppress the gun was denied, he was found guilty.

Discussion

Jackson argued that the gun should have been suppressed for two reasons: (1) the officers' search of the apartment was unlawful because they did not have a search warrant, and (2) they did not have probable cause to believe he was inside the apartment.

WAS A SEARCH WARRANT REQUIRED? The United States Supreme Court ruled in *Payton v. New York* that officers may not forcibly enter or search a home to arrest someone who lives there unless they have an arrest warrant.¹ A year later in *Steagald v. United States* it ruled that officers may not forcibly enter or search a home to arrest a visitor unless they have a search warrant.² The purpose of *Steagald* was to prevent situations in which officers who have only an arrest warrant could lawfully enter and search for the arrestee in the homes of his various friends and relatives.

The court assumed that Jackson did not live in the apartment, which meant the officers violated *Steagald* when they entered without a search warrant. But that does not mean the gun should have been suppressed. As the court pointed out, because the purpose of *Steagald* is to protect the privacy rights of the residents of the home in which the arrestee happens to be located, evidence can be suppressed as the result of a *Steagald* violation only if prosecutors sought to use it against a resident.

¹ (1980) 445 U.S. 573. ALSO SEE *People v. Ramey* (1976) 16 Cal.3d 263, 275.

² (1981) 451 U.S. 204.

On the other hand, if prosecutors seek to use the evidence against the arrestee, it will be admissible if officers had an arrest warrant because only an arrest warrant is required to enter the arrestee's house. As the court in *Jackson* noted, "[I]t would be anomalous if the subject of an arrest warrant had a greater expectation of privacy in another person's home than he had in his own."³ So, because the officers could have entered Jackson's home to arrest him if they had an arrest warrant, and because they had one, their forcible entry into the home of his father's girlfriend did not violate his Fourth Amendment rights.

The court pointed out, however, that although the gun was admissible against Jackson, LanDonna might have a civil cause of action against the officers because they apparently violated her privacy rights when they searched her apartment without a search warrant.

SUFFICIENT PROOF THAT JACKSON WAS INSIDE: There is one other requirement that must be met before officers may enter the arrestee's home to execute an arrest warrant: they must have "reason to believe" he is presently inside.⁴ Unfortunately, it is unclear whether "reason to believe" means probable cause to believe the arrestee is inside, or whether some lower level of proof will suffice.⁵ In fact, the court in *Jackson* observed that three circuit courts have ruled that probable cause is required, while four have ruled that reasonable suspicion is enough. (While the Ninth Circuit requires probable cause,⁶ California courts have not resolved the issue.⁷)

In any event, the court in *Jackson*, having assumed that probable cause was required, ruled that it was present here:

The police received a tip that Jackson was staying at Joseph's apartment and that he would be there the following morning. When the police arrived at the apartment, they asked Jackson's girlfriend if Jackson was inside and she nodded yes and started crying. This was more than enough to lead a prudent person to believe that Jackson was inside the apartment when he or she entered.

Accordingly, the court ruled that the gun was properly received in evidence, and it affirmed Jackson's conviction. POV

³ ALSO SEE *U.S. v. Underwood* (9th Cir. 1983) 717 F.2d 482, 484 ["A person has no greater right of privacy in another's home than in his home."]; *U.S. v. McCarson* (D.C. Cir. 2008) 527 F.3d 170, 172 ["Nor does McCarson have standing to invoke [the rights of the apartment owner]."]; *U.S. v. Agnew* (3rd Cir. 2005) 407 F.3d 193, 196 ["If Agnew resided at 2740 Ludwig Street, his arrest was lawful under *Payton* because the police acted pursuant to an arrest warrant. If Agnew did not reside at 2740 Ludwig Street, he may have lacked a privacy interest in the residence and would have no standing to challenge the police officers' entry."].

⁴ See *Payton v. New York* (1980) 445 U.S. 573, 603 ["[A]n 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." Emphasis added.].

⁵ See *U.S. v. Diaz* (9th Cir. 2007) 491 F.3d 1074, 1077 ["The question of what constitutes an adequate 'reason to believe' has given difficulty to many courts"].

⁶ See *U.S. v. Gorman* (9th Cir. 2002) 314 F.3d 1105, 1111 ["[T]he 'reason to believe,' or reasonable belief, standard ... embodies the same standard of reasonableness inherent in probable cause."].

⁷ See *People v. Jacobs* (1987) 43 Cal.3d 472, 479, fn.4 ["Whatever the quantum of probable cause required by the Fourth Amendment, the officers in this case did not have it."].