

Entry to Arrest

Ramey-Payton and Steagald

“An intrusion by the state into the privacy of the home for any purpose is one of the most awesome incursions of police power into the life of the individual.”

*People v. Ramey*¹

In the past, whenever officers thought they had probable cause to arrest a suspect they would drive over to his house, break in if necessary, and arrest him. This procedure was, to say the least, efficient—uncluttered by such things as paperwork and judicial review. And no one questioned whether these unchecked incursions were lawful. After all, it was “standard operating procedure.”

But then, on February 25, 1976, the rules changed dramatically. That was when the California Supreme Court announced its landmark decision in the case of *People v. Ramey*.² In *Ramey*, the court decreed that officers could no longer enter a house to arrest an occupant merely because they had probable cause. Instead, they must have an arrest warrant issued by a judge. Said the court:

[I]n the absence of a bona fide emergency, or consent to enter, police action in seizing the individual in the home must be preceded by the judicial authorization of an arrest warrant.³

The court knew that its decision would have a dramatic impact on police procedure. But it also knew that a forcible entry into a home to arrest an occupant was a terrifying experience for the arrestee and, more importantly, for his family or other occupants. While a warrant would not make the experience less terrifying, it would provide some assurance that probable cause did, in fact, exist.⁴

Just four years later, the issue of in-home arrests came before the United States Supreme Court. The case was *Payton v. New York*, and the Court essentially adopted *Ramey*'s reasoning and ruling in their entirety.⁵ *Ramey* had become the law of the land.

Although *Ramey* and *Payton* mandated significant changes in police procedure, it was believed the changes could be implemented without much trouble. Before long, however, questions started surfacing. For example, if officers did not have a warrant, could they arrest the suspect as he stood in his doorway? Could they arrest him if they tricked him into walking outside, or if they tricked him into letting them inside? What if they arrested him after they had been invited inside to talk? Did officers need an arrest warrant if the suspect was inside the home of a friend or relative?

There was also some confusion over a sentence in *Payton* in which the Court said that even if officers had a warrant they could not enter a residence unless they reasonably believed the arrestee “lives” there and was now inside. The problem was that many people who commit crimes move around a lot, which makes it difficult to determine where they “live.” And if they are on-the-run, they will often go to great lengths to keep their whereabouts a secret, often with the help of friends and family.

So, *Ramey* was a problem. But it was not an insurmountable problem. Over the years, officers, prosecutors, and judges worked through many of the difficulties to the point where, today, *Ramey* is considered “standard operating procedure.”

¹ (1976) 16 Cal.3d 263, 275.

² (1976) 16 Cal.3d 263.

³ At p. 275.

⁴ See *People v. Ramey* (1976) 16 Cal.3d 263, 275 [“The frightening experience of certain foreign nations with the unexpected invasion of private homes by uniformed authority to seize individuals therein, often in the dead of night, is too fresh in memory to permit this portentous power to be left to the uninhibited discretion of the police alone.”].

⁵ See *Payton v. New York* (1980) 445 U.S. 573, 588-9 [“To be arrested in the home involves not only the invasion attendant to all arrests but also an invasion of the sanctity of the home.”]; *United States v. U.S. District Court* (1972) 407 U.S. 297, 313 [“(P)hysical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.”]; *People v. Marquez* (1992) 1 Cal.4th 553, 566 [“The United States Supreme Court reached the same conclusion [as we did in *Ramey*] in *Payton v. New York*”].

Still, there are several issues surrounding *Ramey* that regularly cause problems, or at least uncertainty. Those issues, all of which are covered in this article, pertain to the following:

- When must officers comply with *Ramey*?
- What types of arrest warrants will justify a forcible entry?
- When can officers enter the home of a suspect's friends or relatives to arrest the suspect?
- What constitutes "consent" to enter under *Ramey*?
- What kinds of exigent circumstances will justify a warrantless entry?
- How can officers prove that a suspect lives in a certain house and is now inside?
- What happens if officers violate *Ramey*?

WHEN RAMEY APPLIES

As we will now discuss, officers must comply with *Ramey* when, (1) they enter a home or other private structure, and (2) their purpose is to arrest an occupant. As the Court of Appeal summed it up, "Both decisions [*Ramey* and *Payton*] hold that without a valid warrant police may not *enter* a residence to effect an arrest absent consent or an emergency."⁶

Private structure

Ramey applies only if officers enter a structure in which the occupants have a reasonable expectation of privacy.⁷ This includes houses, apartments, condominiums, and motel rooms.⁸ It also applies to busi-

nesses and other commercial structures if officers enter an area that is not open to the general public; e.g., the suspect's private office.⁹ On the other hand, *Ramey* does not apply when officers make the arrest in a place that is open to the public, such as a store, restaurant, or the reception area of an office.¹⁰

To simplify things, the term "house," as used in this article, will cover any residential or commercial structure in which the occupants have a reasonable expectation of privacy.

Crossing the threshold

The sole concern of *Ramey* is the intrusion by officers into a house—"the breach of the entrance to an individual's home."¹¹ To put it another way, "[I]t is the intrusion into, rather than the arrest in, the dwelling which offends constitutional standards under *Ramey*."¹² This means there can be no violation of *Ramey* unless officers crossed the threshold.

OUTSIDE ARRESTS: Officers do not violate *Ramey* when they arrest a suspect on his front porch, driveway, yard, or any other place outside the door.¹³ For example, in *People v. Tillery*¹⁴ the court ruled there was no *Ramey* violation when an officer arrested the defendant after asking him to step outside to talk. Said the court, "The privacy interests protected by *Ramey* were satisfied when appellant voluntarily stepped outside. Once he stepped outside, it was lawful for the officer to arrest him."

In fact, officers may even *order* the suspect to exit. This occurred in *People v. Trudell*¹⁵ where officers

⁶ *People v. Trudell* (1985) 173 Cal.App.3d 1221, 1229.

⁷ See *People v. Willis* (1980) 104 Cal.App.3d 433, 443 ["(F) or *Ramey* purposes, 'home' should be defined in terms as broad as necessary to protect the privacy interests at stake and, therefore, would include any premises in which the occupant had acquired a legitimate expectation of privacy." Quoting from *People v. Escudero* (1979) 23 Cal.3d 800, 807].

⁸ See *People v. Bennett* (1998) 17 Cal.4th 373, 384 [hotel room]; *People v. Franco* (1986) 183 Cal.App.3d 1089, 1093 [enclosed hut used as sleeping quarters]; *People v. Bigham* (1975) 49 Cal.App.3d 73, 81 [converted garage]; *People v. Superior Court (Arketa)* (1970) 10 Cal.App.3d 122 [shed in which a light was burning, the shed was about 25 yards from a house].

⁹ See *O'Rourke v. Hayes* (11th Cir. 2004) 378 F.3d 1201, 1206; *People v. Lee* (1986) 186 Cal.App.3d 743, 750.

¹⁰ See *United States v. Watson* (1976) 423 U.S. 411, 418, fn.6 [restaurant]; *People v. Lovett* (1978) 82 Cal.App.3d 527, 532 [store]; *People v. Pompa* (1989) 212 Cal.App.3d 1308, 1311 [open business]; *People v. Lovett* (1978) 82 Cal.App.3d 527, 532 [store].

¹¹ See *Minnesota v. Olson* (1990) 495 U.S. 91, 95 ["The purpose of [*Payton*] was not to protect the person of the suspect but to protect his home from entry in the absence of a magistrate's finding of probable cause."]; *New York v. Harris* (1990) 495 U.S. 14, 17; *People v. Lewis* (1999) 74 Cal.App.4th 662, 672; *People v. Trudell* (1985) 173 Cal.App.3d 1221, 1229; *People v. Ford* (1979) 97 Cal.App.3d 744, 748 ["(I)t is the unlawful intrusion into the dwelling which offends constitutional safeguards"].

¹² *People v. Evans* (1980) 108 Cal.App.3d 192, 196.

¹³ See *People v. Bacigalupo* (1991) 1 Cal.4th 103, 122; *People v. Green* (1983) 146 Cal.App.3d 369, 377 ["Appellant's reliance on *Ramey* is misplaced, since the arrest took place outside his home."]; *People v. Jackson* (1986) 187 Cal.App.3d 499, 505.

¹⁴ (1979) 99 Cal.App.3d 975, 979-80.

¹⁵ (1985) 173 Cal.App.3d 1221, 1228.

went to Trudell’s home to arrest him for kidnapping and rape. After confirming he was inside the house, an officer used the public address system on his patrol car to order him to step outside. Trudell complied and was arrested. In rejecting his argument that the arrest was unlawful, the court said, “[S]ince the arrest occurred outside of appellant’s residence any reliance by appellant on *Payton* and *Ramey* is unwarranted.”

Just as officers may order a suspect to exit, they may trick him into exiting, then arrest him as he steps outside.¹⁶ As the Court of Appeal explained, “[P]ost-*Ramey* decisions have upheld the use of subterfuge to trick a defendant into *leaving* a residence.”¹⁷

For example, in *People v. Porras*¹⁸ a narcotics officer phoned a drug dealer, identified himself as a customer and said he had just been forced by some narcs to snitch him off, and that he’d better “get rid of the dope” because the cops were “coming with a search warrant” in 20 minutes. As expected, the dealer grabbed his stash and ran outside, where he was arrested. His conviction was affirmed.

DOORWAY ARRESTS: A “doorway” arrest occurs when officers, having probable cause to arrest a suspect, knock on his door and arrest him when he opens it.¹⁹ This does not violate *Ramey* because a person who is standing in the doorway of his home is, for *Ramey* purposes, in a public place.²⁰ Furthermore, if the suspect retreats or steps behind the threshold, the officers may go in after him.²¹

For example, *U.S. v. Santana*²² narcotics officers in Philadelphia went to Santana’s house to arrest her shortly after she sold heroin to an undercover officer. As they pulled up, they saw her “standing in the doorway of the house.” As an officer testified, “[O]ne step forward would have put her outside, one step backward would have put her in the vestibule.” When Santana saw the officers, she ran inside—so the officers went in after her and, in the process of apprehending her, seized some heroin in plain view.

The Supreme Court ruled the arrest did not violate *Payton* because, as Santana stood at the threshold of her house, she was in a public place. Why was it a public place? Because, said the Court, Santana “was not merely visible to the public but was as exposed to public view, speech, hearing, and touch as if she had been standing completely outside her house.”

Furthermore, the Court ruled that because the officers had attempted to arrest her in a public place, they could pursue her into her home or any other place into which she fled. In the words of the Court, “[A] suspect may not defeat an arrest which has been set in motion in a public place by the expedient of escaping to a private place.”²³

ARRESTS INSIDE THE DOORWAY: What if the suspect is standing just *inside* the doorway? Is it a violation of *Ramey-Payton* to reach inside or step inside to arrest him? Although the California courts have not addressed the issue, the U.S. Court of Appeal—citing the “not merely visible” language in *Santana*—has

¹⁶ See *In re Danny E.* (1981) 121 Cal.App.3d 44, 51 [“(T)he use of a ruse to persuade a potential arrestee to leave a house, thereby subjecting himself to arrest on the street where the concerns attendant to *Ramey* are not present is not necessarily precluded.”]; *People v. Thompson* (1979) 89 Cal.App.3d 425, 431 [“It is true that where officers use trickery to gain entry to a place where they would not otherwise be permitted to enter, any evidence recovered as a result of such fraudulently obtained consent cannot be used against a defendant. Here, however, the officers had an absolute right to enter the premises.”]; *People v. McCarter* (1981) 117 Cal.App.3d 894, 906 [“Employment of a ruse to obtain consent to enter is immaterial where officers have a right to enter”]; *U.S. v. Michaud* (9th Cir. 2001) 268 F.3d 728, 733 [“We have held that there is no constitutional mandate forbidding the use of deception in executing a valid arrest warrant. Citing *Leahy v. U.S.* (9th Cir. 1960) 272 F.2d 487, 490.]

¹⁷ *People v. Trudell* (1985) 173 Cal.App.3d 1221, 1229.

¹⁸ (1979) 99 Cal.App.3d 874. ALSO SEE *People v. Martino* (1985) 166 Cal.App.3d 777 [officer made an anonymous call to the suspect and said, “The cops are getting a search warrant. If you have any dope, you had better get it out of there”; the suspect was arrested as he fled the house].

¹⁹ See *People v. Watkins* (1994) 26 Cal.App.4th 19, 29.

²⁰ See *U.S. v. Santana* (1976) 427 U.S. 38, 42; *People v. Hampton* (1985) 164 Cal.App.3d 27, 36 [“(I)t appears to be undisputed that respondent was standing on the threshold when the officer placed her under arrest.”]; *U.S. v. Whitten* (9th Cir. 1983) 706 F.2d 1000, 1015 [“A doorway, unlike the interior of a hotel room, is a public place.”]; *U.S. v. Botero* (9th Cir. 1978) 589 F.2d 430, 432.

²¹ See *U.S. v. Albrektsen* (9th Cir. 1998) 151 F.3d 951, 954, fn.5 [“If, for example, Albrektsen had retreated from the threshold, [the officer] could have followed him in.”].

²² (1976) 427 U.S. 38.

²³ At p. 43. Edited.

ruled a warrantless entry does not violate *Ramey-Payton* if, (1) the suspect freely opened the door and exposed himself to public view, and (2) officers did not misrepresent their identities or otherwise utilize subterfuge to cause him to open the door.²⁴

For example, in *U.S. v. Vaneaton*²⁵ officers in Portland, having probable cause to arrest Vaneaton for several burglaries, went to his motel room and knocked. After looking through a window and seeing the uniformed officers, Vaneaton opened the door. At this point, he was standing “just inside the threshold” so an officer went in and arrested him.

Although the officers did not have a warrant, the Ninth Circuit ruled their entry into the motel room did not violate *Payton* because Vaneaton “voluntarily exposed himself to warrantless arrest by freely opening the door of his motel room to the police.”

In contrast, in *U.S. v. McCraw*²⁶ federal agents went to a hotel room in which cocaine was being sold. According to the court, the agents “knocked on the door without announcing themselves.” A man named Mathis opened the door about halfway. When he saw the agents, he tried to shut the door but the agents forced their way in and arrested him. The court ruled the entry violated *Payton* because, “By opening the door only halfway, Mathis did not voluntarily expose himself to the public to the same extent as the arrestee in *Santana*.”

Entry to arrest

Finally, *Ramey* applies only if officers entered with the intent to immediately arrest an occupant. This means that *Ramey* does not apply if the decision to arrest was made after officers entered, or if the arrest was contingent on something happening after officers entered.

UNDERCOVER BUYS: Undercover officers are commonly admitted into the homes of suspects for the

purpose of buying drugs, illegal weapons, stolen property, or other contraband. As the officers walk through the door, they may plan to arrest the suspect *if* the sale is made or *if* they see contraband. But because an arrest is merely a possibility—because it is contingent on what happens after the officers enter—*Ramey* does not apply.

For example, in *People v. Evans*²⁷ two undercover narcotics officers went to Evans’ motel room in hopes of buying prescription drugs. When Evans admitted them inside and they saw several prescription bottles, they arrested him. In rejecting Evans’ argument that the officers violated *Ramey* when they entered without a warrant, the court pointed out that the officers’ intent when they entered was “to continue the investigation by effecting a purchase of Quaalude or Dilaudid.”

EXECUTING SEARCH WARRANTS: Officers who enter a home for the purpose of executing a search warrant may intend to arrest the occupants *if* they find contraband or otherwise develop probable cause to arrest. But, again, *Ramey* does not apply in these situations because the arrest is contingent on something happening after they enter; i.e., finding evidence.

(Note that even if officers intended to arrest an occupant *before* starting the search, there is no need for an arrest warrant in this situation because the search warrant provides sufficient assurance that the entry was supported by probable cause.²⁸)

CONDUCTING PROBATION AND PAROLE SEARCHES: *Ramey* does not apply when officers enter for the purpose of conducting a probation or parole search. This is because the purpose of the entry is to search, not arrest. (Again, even if the officers intended to arrest the suspect before conducting the search, the entry would not have violated *Ramey* because the existence of the probation or parole search condition is sufficient justification for the entry.²⁹)

²⁴ See *U.S. v. Vaneaton* (9th Cir. 1995) 49 F.3d 1423, 1426. COMPARE *U.S. v. Johnson* (9th Cir. 1980) 626 F.2d 753, 757; *U.S. v. Edmondson* (11th Cir. 1986) 791 F.2d 1512 [entry unlawful because the suspect opened the door after an agent yelled at him, “FBI. Open the door.”].

²⁵ (9th Cir. 1995) 49 F.3d 1423.

²⁶ (4th Cir. 1990) 920 F.2d 224.

²⁷ (1980) 108 Cal.App.3d 193. ALSO SEE *Lopez v. United States* (1963) 373 U.S. 427, 438 [(“The IRS agent) was not guilty of an unlawful invasion of petitioner’s office simply because his apparent willingness to accept a bribe was not real.”]

²⁸ See *People v. Palmquist* (1981) 123 Cal.App.3d 1, 15 [(“Since the officers had authorization to enter the home to search, the arrest inside was of no constitutional significance.”)]; *People v. Lewis* (1999) 74 Cal.App.4th 662, 672.

²⁹ See *People v. Palmquist* (1981) 123 Cal.App.3d 1, 15; *People v. Lewis* (1999) 74 Cal.App.4th 662, 671-2 [(“The idea that Officer Grubensky could enter to conduct a warrantless search but not to make a warrantless arrest seems, at best, anomalous.”)].

ENTRY TO INTERVIEW: Officers will often go to the home of a suspect, witness, or other person for the purpose of conducting an interview or otherwise obtaining information. This might occur in the course of a criminal investigation or in response to a call for service, such as a domestic violence call. In any event, if officers end up arresting an occupant after being admitted, their entry does not violate *Ramey-Payton* if, as they crossed the threshold, their purpose was to obtain information or otherwise conduct an investigation. As the Court of Appeal put it:

[I]f probable cause to arrest arises *after* the officers have been voluntarily permitted to enter a residence in connection with their investigative work, an arrest may then be effected within the premises without the officers being required to beat a hasty retreat to obtain a warrant.³⁰

For example, in *People v. Patterson*³¹ LAPD narcotics officers went to Patterson's home in response to a tip from an untested informant that Patterson was processing PCP there. When Patterson answered the door, the officers told her about the tip and she responded, "I don't know anything about angle dust. Come on in." As the officers entered, they noticed a "strong odor of ether, alcohol and other chemicals." They also saw some vials and beakers containing liquid. Based on these observations, they arrested Patterson.

On appeal, the court ruled the arrest did not violate *Ramey* because, "There is nothing in the record to indicate that the police intended to arrest Patterson immediately following the entry or that they were not prepared to discuss the matter with Patterson first in order to permit her to explain away the basis of the officers' suspicions."

RAMEY COMPLIANCE

Entering the Suspect's Home

If officers are about to enter a house for the purpose of arresting an occupant, the question arises: What must they do to comply with *Ramey*? The answer depends on whether they will be entering the suspect's home or the home of a third person, such as a friend or relative of the suspect. In this section, we will cover entries into suspects' homes. The other types of entries will be discussed in the next section.

There are three requirements that must be met before officers may enter a suspect's home:

- (1) Arrest warrant: Officers must know that a warrant for the suspect's arrest is outstanding.
- (2) Suspect's home: Officers must reasonably believe the suspect lives in the home.
- (3) Suspect is inside: Officers must reasonably believe the suspect is now inside.

Arrest warrant is outstanding

There are several types of arrest warrants that will satisfy this requirement.

CONVENTIONAL ARREST WARRANT: A conventional arrest warrant is issued by a judge after prosecutors have filed a criminal complaint against the suspect.³² The judge then reviews the complaint and all supporting documents (such as police reports and witness statements) and, if probable cause exists, issues the warrant.³³ The warrant may be based on either a felony or misdemeanor.³⁴

RAMEY WARRANT: A so-called *Ramey* Warrant is an arrest warrant that is issued *before* a complaint has been filed. As the name implies, *Ramey* warrants were developed in response to the *Ramey* decision. Why were they necessary?

³⁰*In re Danny E.* (1981) 121 Cal.App.3d 44, 52. ALSO SEE *Toubus v. Superior Court* (1981) 114 Cal.App.3d 378; *People v. Villa* (1981) 125 Cal.App.3d 872, 878 ["Here the evidence disclosed the entry was for the purpose of investigating the earlier incident."].

³¹(1979) 94 Cal.App.3d 456.

³²See Penal Code § 813(a) [felony warrants], § 1427(a) [misdemeanor warrants]; *Steagald v. U.S.* (1981) 451 U.S. 204, 213 ["An arrest warrant is issued by a magistrate upon a showing that probable cause exists to believe that the subject of the warrant has committed an offense and thus the warrant primarily serves to protect an individual from an unreasonable seizure."]; *Payton v. New York* (1980) 445 U.S. 573, 602-3 ["(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."].

³³See Penal Code § 813(a); *Steagald v. United States* (1981) 451 U.S. 204, 214, fn.7 ["Because an arrest warrant authorizes the police to deprive a person of his liberty, it necessarily also authorizes a limited invasion of that person's privacy interest when it is necessary to arrest him in his home."]; *People v. Sesslin* (1968) 68 Cal.2d 418, 424-5.

³⁴See *U.S. v. Clayton* (8th Cir. 2000) 210 F.3d 841, 843; *U.S. v. Spencer* (2nd Cir. 1982) 684 F.2d 220, 224. **NOTE:** Although it is good practice to have a copy of the arrest warrant when entry is made, it is not required. See *Nunes v. Superior Court* (1980) 100 Cal.App.3d 915, 935-6; *Washington v. Simpson* (8th Cir. 1986) 806 F.2d 192, 196, fn.4.

When *Ramey* was decided, there was essentially only one type of arrest warrant: the conventional warrant. And because conventional warrants could not be issued unless the suspect was charged with the crime, officers could not obtain one unless they could prove he was guilty beyond a reasonable doubt.³⁵

As prosecutors considered the situation, it became apparent that because the Fourth Amendment permits judges to issue search warrants based on probable cause, there was no reason they could not issue arrest warrants based on the same standard. Consequently, judges began issuing these pre-complaint warrants which became known as *Ramey* warrants. As the court noted in *People v. Case*:

From a practical standpoint the use of the “*Ramey* Warrant” form was apparently to permit, prior to an arrest, judicial scrutiny of an officer’s belief that he had probable cause to make the arrest without involving the prosecutor’s discretion in determining whether to initiate criminal proceedings.³⁶

Today, the *Ramey* warrant procedure has been incorporated into the Penal Code which authorizes judges to issue felony and misdemeanor arrest warrants based solely on a Declaration of Probable Cause.³⁷ (Although these warrants are technically known as “Warrants of Probable Cause for Arrest,” they are still commonly called *Ramey* warrants.)

It should be noted that a *Ramey* warrant need not contain the suspect’s address.³⁸ This is because, as we will discuss later, the warrant authorizes officers to

enter any home in which they reasonably believe the suspect lives and is present.³⁹ Although *Ramey* warrants sometimes contain the suspect’s last known address, this is merely an aid to locating the suspect—it does not constitute authorization to enter that residence, nor does it prevent officers from entering another residence.

A sample *Ramey* warrant is shown on page 14 and on POV Online, www.acgov.org/da. Click on “Forms for officers.” To obtain this and other forms in Microsoft Word format, e-mail a request to alcoda@acgov.org and we will e-mail them to you.

OTHER WARRANTS: There are five other types of arrest warrants that, although they are not commonly used, will support an entry into the arrestee’s home. They are as follows:

INDICTMENT WARRANT: Issued by a judge on grounds the suspect has been indicted by a grand jury.⁴⁰

PAROLE BOARD WARRANT: Issued by a parole board when there is probable cause to believe a parolee has violated the terms of parole.⁴¹

PROBATION VIOLATION WARRANT: Issued by a judge based on probable cause to believe a probationer violated the terms of probation.⁴²

BENCH WARRANT: Issued by a judge when a defendant fails to appear in court.⁴³ Either a felony or misdemeanor bench warrant will suffice.⁴⁴

WITNESS FTA WARRANT: Issued by a judge for the arrest of a witness who has failed to appear in court after being ordered to do so.⁴⁵

³⁵ See Uniform Crime Charging Standards (CDA 1989) p. II-1.

³⁶ (1980) 105 Cal.App.3d 826, 831. Quote edited. ALSO SEE *People v. Bittaker* (1980) 48 Cal.3d 1046, 1070; *Godwin v. Superior Court* (2001) 90 Cal.App.4th 215, 225 [“To comply with *Ramey* and *Payton*, prosecutors developed the use of a *Ramey* warrant form, to be presented to a magistrate in conjunction with an affidavit stating probable cause to arrest.”].

³⁷ See Penal Code §§ 817, 840.

³⁸ See *U.S. v. Bervaldi* (11th Cir. 2000) 226 F.3d 1256, 1263; *U.S. v. Lauter* (2nd Cir. 1995) 57 F.3d 212, 214; *Cerva v. Fulmer* (E.D. Penn. 1984) 596 F.Supp. 86, 90 [“In an arrest warrant, unlike a search warrant, the listed address is irrelevant to its validity and to that of the arrest itself.”]; *U.S. v. Stinson* (D. Conn. 1994) 857 F.Supp. 1026, 1029-30. **NOTE:** An address may be necessary for a John Doe warrant where the address is needed to establish the identity of the arrestee. See *Powe v. City of Chicago* (7th Cir. 1981) 664 F.2d 639; *U.S. v. Stinson* (D. Conn. 1994) 857 F.Supp. 1026, 1030, fn.8.

³⁹ See *U.S. v. Stinson* (D. Conn. 1994) 857 F.Supp. 1026, 1029-30 [“Under *Payton* and the Second Circuit precedent, an officer’s authority to execute a warrant at a particular address is limited by reason to believe that the suspect may be found at the particular address, and not necessarily by the address, or lack of address, on the face of the warrant.”].

⁴⁰ See Penal Code § 945.

⁴¹ See Penal Code § 3060; *U.S. v. Harper* (9th Cir. 1991) 928 F.2d 894, 896.

⁴² See Penal Code § 1203.2(a).

⁴³ See Penal Code §§ 804(d), 813(c), 978.5 *et seq.*, 983; *U.S. v. Clayton* (8th Cir. 2000) 210 F.3d 841, 842; *U.S. v. Spencer* (2nd Cir. 1982) 684 F.2d 220, 222-4 [misdemeanor bench warrant was sufficient].

⁴⁴ See *U.S. v. Clayton* (8th Cir. 2000) 210 F.3d 841, 844.

⁴⁵ See Code of Civil Procedure § 1993.

Is it the arrestee's house?

Officers who have obtained a warrant to arrest a suspect may enter a residence to arrest him only if they reasonably believe he is, in fact, living there.⁴⁶ While this requirement may be difficult to satisfy if the suspect is a transient,⁴⁷ it is especially difficult if the suspect knows he is wanted, in which case he may try to conceal his whereabouts by moving around, staying with friends for a short while, and renting motel rooms.⁴⁸ In addition, it is common for a suspect's friends to furnish officers with false leads or lie about not knowing where the suspect is staying.⁴⁹

This is why the courts require only that officers have a *reasonable belief* that the suspect lives in the house. Furthermore, the term "lives" is defined broadly to include situations in which the suspect "possesses common authority over, or some other significant relationship" to the house.⁵⁰ Finally, in determining whether officers had such a reasonable belief, the courts will consider the totality of circumstances known to the officers, and they will analyze the circumstances by applying common sense, not hypertechnical analysis.⁵¹

For example in *Washington v. Simpson* the court ruled the arrestee "resided" at a house when she stayed there two to four nights per week, kept some

personal belongings there, and previously gave that address as her residence when she was booked.⁵² On the other hand, in *Perez v. Simpson* the court ruled the arrestee did not reside in the house merely because "he spent the night there on occasion."⁵³

Also note that if the information concerning the suspect's residence is old or "stale," officers will be required to prove they had reason to believe he still lives there. For example, seeing the suspect's car parked out front would indicate he has not moved.⁵⁴

Examples of circumstances that are relevant in establishing a reasonable belief that a suspect lived in a certain house are listed at the end of this article.

Is the arrestee now inside?

The last *Ramey-Payton* requirement is that officers must have "reason to believe" the suspect is now inside the residence.⁵⁵ Again, the "reason to believe" standard is based on common sense and reasonable inferences. For example, in ruling it was reasonable to believe an arrestee was at home at 6 P.M., the court in *U.S. v. Magluta* noted, "[O]fficers may presume that a person is at home at certain times of the day—a presumption which can be rebutted by contrary evidence regarding the suspect's known schedule."⁵⁶ Or, as the court observed in *U.S. v. Gay*:

⁴⁶ See *Payton v. New York* (1980) 445 U.S. 573, 603; *U.S. v. Magluta* (11th Cir. 1995) 44 F.3d 1530, 1533; *Valdez v. McPheters* (10th Cir. 1999) 172 F.3d 1220, 1225; *U.S. v. Clayton* (8th Cir. 2000) 210 F.3d 841, 843; *U.S. v. Risse* (8th Cir. 1996) 83 F.3d 212, 216-7; *U.S. v. Junkman* (8th Cir. 1998) 160 F.3d 1191, 1194; *U.S. v. Gay* (10th Cir. 2001) 240 F.3d 1222, 1226. **NOTE:** There is some uncertainty as to whether "reasonable belief" means "probable cause" or whether it is a lower standard of proof. For citations and notes on this issue, go to this article (footnote 46) on Point of View Online (www.acgov.org/da).

⁴⁷ See *U.S. v. Gay* (10th Cir. 2001) 240 F.3d 1222, 1226-7; *Valdez v. McPheters* (10th Cir. 1999) 172 F.3d 1220, 1225.

⁴⁸ See *People v. Manderscheid* (2002) 99 Cal.App.4th 355, 362; *Valdez v. McPheters* (10th Cir. 1999) 172 F.3d 1220, 1225; *U.S. v. Gay* (10th Cir. 2001) 240 F.3d 1222, 1227; *People v. Ott* (1978) 84 Cal.App.3d 118, 126 [the suspect told his parole officer "that he resided in various motels."]; *U.S. v. Bervaldi* (11th Cir. 2000) 226 F.3d 1256, 1263.

⁴⁹ See *U.S. v. Ayers* (9th Cir. 1991) 924 F.2d 1468, 1480 ["The officers had no duty to accept Mrs. Ayers' statements as truthful in light of the facts known to them prior to their search."]; *People v. Icenogle* (1977) 71 Cal.App.3d 576, 585.

⁵⁰ See *Valdez v. McPheters* (10th Cir. 1999) 172 F.3d 1220, 1225 ["The rule announced in *Payton* is applicable so long as the suspect possesses common authority over, or some other significant relationship to the residence entered by police."]; *U.S. v. Risse* (8th Cir. 1996) 83 F.3d 212, 216, fn.3; *U.S. v. Gay* (10th Cir. 2001) 240 F.3d 1222, 1226; *U.S. v. Litteral* (9th Cir. 1990) 910 F.2d 547, 553.

⁵¹ See *U.S. v. Bervaldi* (11th Cir. 2000) 226 F.3d 1256, 1263; *Washington v. Simpson* (8th Cir. 1986) 806 F.2d 192, 196; *U.S. v. Lovelock* (2nd Cir. 1999) 170 F.3d 339, 344. **NOTE:** Although officers must attempt to acquire information that the suspect lives in the home, their investigation need not be exhaustive. See *U.S. v. Lovelock* (2nd Cir. 1999) 170 F.3d 339, 344 [officers must have "a basis for a reasonable belief as to the operative facts, not that they acquire all available information or that those facts exist."]; *U.S. v. Route* (5th Cir. 1997) 104 F.3d 59, 62-3 [whether the suspect actually lived at the house "is irrelevant"]; *U.S. v. Junkman* (8th Cir. 1998) 160 F.3d 1191, 1193.

⁵² (8th Cir. 1986) 806 F.2d 192, 196.

⁵³ (9th Cir. 1989) 884 F.2d 1136, 1141.

⁵⁴ See *U.S. v. Bervaldi* (11th Cir. 2000) 226 F.3d 1256, 1264. COMPARE *Motley v. Parks* (9th Cir. 2004) 383 F.3d 1058, 1069.

⁵⁵ See *Payton v. New York* (1980) 445 U.S. 573, 603; *People v. Alcorn* (1993) 15 Cal.App.4th 652, 655; Penal Code § 844.

⁵⁶ (11th Cir. 1995) 44 F.3d 1530, 1535.

We recognize we must be sensitive to common sense factors indicating a resident's presence. The officers are not required to actually view the suspect on the premises. Indeed the officers may take into account the fact that a person involved in criminal activity may be attempting to conceal his whereabouts.⁵⁷

Examples of relevant circumstances are listed at the end of this article.

RAMEY COMPLIANCE

Entering a Third Person's Home

Officers will sometimes have reason to believe that a wanted suspect is temporarily staying at the home of a friend, relative, or other third person. This typically occurs when the suspect does not have a permanent address or is staying away from his own home to avoid arrest. Like an entry into the suspect's home, an entry into the home of a third person is permissible if officers have obtained consent or if there were exigent circumstances.

But unlike entries into suspects' homes, officers may not enter merely because they have an arrest warrant. Instead, the U.S. Supreme Court ruled in *Steagald v. United States* that officers must have a search warrant that expressly authorizes a search of the premises for the suspect.⁵⁸

There are essentially two reasons for requiring a search warrant in these situations. First, the entry constitutes an invasion of the privacy rights of the suspect's hosts.⁵⁹ Second, there would exist a "potential for abuse" if officers with only an arrest warrant could forcibly enter the homes of all the suspect's friends and relatives to search for him.⁶⁰ This actually happened in a case where officers, armed with arrest warrants for two men, searched some 300 homes for them, based mainly on anonymous tips.⁶¹

Obtaining a Steagald Warrant

To obtain a *Steagald* search warrant, officers must submit an affidavit that establishes two things:

(1) **PROBABLE CAUSE TO ARREST:** The affidavit must show that there is probable cause to arrest the suspect. If an arrest warrant has already been issued, the affiant can simply identify the issuing court, the date on which the warrant was issued, and the crimes for which the suspect is wanted. Alternatively, the affiant can attach to the affidavit a copy of the arrest warrant and incorporate it by reference; e.g., "Attached hereto and incorporated by reference is a copy of the warrant for the suspect's arrest. It is marked Exhibit A."

If an arrest warrant has not been issued, the affidavit must set forth the facts upon which probable cause is based. Note that if this option is used, the *Steagald* search warrant also serves as an arrest warrant; i.e., a judicial determination that there is probable cause to arrest the suspect.

(2) **SUSPECT IS NOW THERE:** The affidavit must set forth facts establishing probable cause to believe the suspect is now inside the house.

Note that *Steagald* warrants must ordinarily be executed without delay, otherwise a court may rule that, because people are inherently mobile,⁶² probable cause to search evaporated before the warrant was executed.

A sample *Steagald* warrant is posted on POV Online, www.acgov.org/da. Click on "Forms for officers". To obtain this warrant and other forms in Microsoft Word format, e-mail a request to alcoda@acgov.org and we will e-mail them to you.

Alternatives to Steagald Warrants

As a practical matter, officers will seldom need a *Steagald* warrant because they can usually locate the suspect inside his own residence (in which case only

⁵⁷ (10th Cir. 2001) 240 F.3d 1222, 1227. ALSO SEE *U.S. v. Magluta* (11th Cir. 1995) 44 F.3d 1530, 1535.

⁵⁸ (1981) 451 U.S. 204, 205-6. ALSO SEE *U.S. v. Litteral* (9th Cir. 1990) 910 F.2d 547, 553 ["(U)nder *Steagald*, if the suspect is just a guest of the third party, then the police must obtain a search warrant for the third party's dwelling in order to use evidence found against the third party."]; *U.S. v. Harper* (9th Cir. 1991) 928 F.2d 894, 896 ["An arrest warrant does not carry with it the authority to enter the homes of third persons."]; *U.S. v. De Parias* (11th Cir. 1986) 805 F.2d 1447, 1457 ["An arrest warrant alone is an insufficient basis for searching a third party's home for those named in the warrant."].

⁵⁹ See *Steagald v. United States* (1981) 451 U.S. 204, 213 [the arrest warrant for Lyons "did absolutely nothing to protect petitioner's privacy interest in being free from an unreasonable invasion and search of his home."].

⁶⁰ See *Steagald v. United States* (1981) 451 U.S. 204, 215.

⁶¹ See *Lankford v. Gelston* (4th Cir. 1966) 364 F.2d 197.

⁶² See *Steagald v. United States* (1981) 451 U.S. 204, 220-1.

an arrest warrant is required) or they can wait until he is in a public place (in which case neither an arrest warrant nor a *Steagald* warrant is required). As the Supreme Court noted in *Steagald*, “[I]n most situations the police may avoid altogether the need to obtain a search warrant simply by waiting for a suspect to leave the third person’s home before attempting to arrest that suspect.”⁶³

Furthermore, as discussed below, officers may make a nonconsensual entry into a third person’s home to arrest the suspect if there are exigent circumstances that justify such an intrusion. Quoting again from *Steagald*, “[T]o the extent that searches for persons pose special problems, we believe that the exigent-circumstances doctrine is adequate to accommodate legitimate law enforcement needs.”⁶⁴

RAMEY-STEAGALD EXCEPTIONS

There are two exceptions to the rule that officers must have an arrest warrant or search warrant to enter a residence for the purpose of arresting an occupant. They are, (1) exigent circumstances, and (2) consent.

EXIGENT CIRCUMSTANCES: Officers who are in “hot” or “fresh” pursuit of a suspect do not violate *Ramey* or *Steagald* when they make a warrantless entry into a residence for the purpose of apprehending him.⁶⁵ For more information on this exception, see the article entitled “Exigent Circumstances” in the Winter 2002 *Point of View*. This article has also been posted on POV Online (www.acgov.org/da).

CONSENSUAL ENTRY: As frequently noted in this article, officers may enter a residence without a warrant to arrest a suspect if they obtained consent from an occupant. This type of consent is essentially the same as any other in that it must have been given voluntarily,⁶⁶ and the officers must have reasonably believed the consenting person had authority to consent to the entry.⁶⁷ There is, however, one issue that sometimes causes problems when the officers’ objective is to arrest an occupant: the permissible scope of the consent; specifically, what officers may do after they are admitted.

If officers obtain consent to enter without saying *why* they want to enter (“Can we come inside?”) the scope of the consent is basically limited to stepping over the threshold.⁶⁸ This means that officers may not, for example, wander into other rooms, open closets or drawers, or look under the furniture.⁶⁹

The consenting person may, however, expand the scope of consent by inviting or permitting officers to go into other rooms; e.g., “Let’s go into the kitchen.” Or, officers may request permission to search for the suspect. In any event, if officers see the suspect from a place they were expressly or impliedly invited to enter, they may arrest him and, if he flees, pursue him into any other rooms.⁷⁰

The same limitations apply when officers receive consent to come inside for the limited purpose of *talking* with the suspect, in which case they would exceed the permissible scope of consent if they immediately arrested him.⁷¹ As the Court of Appeal observed, “A right to enter for the purpose of talking

⁶³ (1981) 451 U.S. 204, 221, fn.14.

⁶⁴ (1981) 451 U.S. 204, 221-2.

⁶⁵ See *United States v. Santana* (1976) 427 U.S. 38; *Warden v. Hayden* (1967) 387 U.S. 294, 298; *People v. Bacigalupo* (1991) 1 Cal.4th 103, 122; *People v. Wilkins* (1993) 14 Cal.App.4th 761; *People v. Superior Court (Quinn)* (1978) 83 Cal.App.3d 609, 615-6; *People v. Abes* (1985) 174 Cal.App.3d 796; *People v. Lloyd* (1989) 216 Cal.App.3d 1425; *People v. Williams* (1989) 48 Cal.3d 1112; *People v. Gilbert* (1965) 63 Cal.2d 690; *In re Elizabeth G.* (2001) 88 Cal.App.4th 496; *People v. Smith* (1966) 63 Cal.2d 779, 797.

⁶⁶ See *Schneckloth v. Bustamonte* (1973) 412 U.S. 218, 228 [“(Consent must) not be coerced, by explicit or implicit means, by implied threat or covert force.”]; *Bumper v. North Carolina* (1968) 391 U.S. 543, 550 [“Where there is coercion there cannot be consent.”].

⁶⁷ See *Illinois v. Rodriguez* (1990) 497 U.S. 177; *People v. MacKenzie* (1995) 34 Cal.App.4th 1256, 1273.

⁶⁸ See *U.S. v. Carter* (6th Cir. en banc 2004) 378 F.3d 584; *Florida v. Jimeno* (1991) 500 U.S. 248, 251; *People v. Jenkins* (2000) 22 Cal.4th 900, 974.

⁶⁹ See *Lewis v. United States* (1966) 385 U.S. 206, 210-1; *Gouled v. United States* (1921) 255 U.S. 298, 304-6; *People v. Williams* (1979) 93 Cal.App.3d 40, 57-8 [“Cassandra’s consent [to enter] cannot be reasonably construed as a consent for the police to go into any room of the residence in order to find the defendant.”]; *U.S. v. Bramble* (9th Cir. 1997) 103 F.3d 1475, 1478.

⁷⁰ See *Arizona v. Hicks* (1987) 480 U.S. 321, 326.

⁷¹ See *People v. Superior Court (Kenner)* (1977) 73 Cal.App.3d 65, 69 [“(T)he purported ‘consent’ [‘to talk’] did not authorize the arrest that immediately followed the entry.”]; *People v. Villa* (1981) 125 Cal.App.3d 872, 878.

with a suspect is not consent to enter and effect an arrest.”⁷² Or, as the court said in *People v. Superior Court (Kenner)*:

A person may willingly consent to admit police officers for the purpose of discussion, with the opportunity, thus suggested, of explaining away any suspicions, but not be willing to permit a warrantless and nonemergent entry that affords him no right to explanation or justification.⁷³

On the other hand, if officers state their purpose they are not required to inform the consenting person of their various contingency plans. For example, officers may intend to arrest an occupant if, after speaking with him, they develop probable cause. Or they may already have probable cause but they are willing to give the suspect an opportunity to explain away the incriminating evidence.⁷⁴

For example, in *Toubus v. Superior Court*⁷⁵ the suspect admitted two undercover BNE agents into his apartment to buy drugs. When the sale was concluded, the suspect was arrested. In rejecting the argument that the agents obtained consent to enter by means of a ruse, the court said, “The argument is factually unfounded. Petitioner admitted [the agents] to sell them cocaine. [The agents] entered to purchase cocaine from him.”

OTHER PROCEDURAL ISSUES

The following are the other procedural issues that might arise when officers enter a house to arrest an occupant.

KNOCK-NOTICE: Unless the entry is consensual, officers must comply with the knock-notice requirements unless there is good cause for making an unannounced entry; e.g., an immediate threat of violence against officers.⁷⁶

LOCATE SUSPECT: If the entry was based on an arrest warrant, officers may, if necessary, search the premises for the suspect.⁷⁷

SEARCHES INCIDENT TO ARREST: After making the arrest, officers may search the arrestee and the area within his immediate control at the time of arrest.⁷⁸ They may also look in “spaces immediately adjoining the place of arrest from which an attack could be immediately launched.”⁷⁹

PROTECTIVE SWEEPS: Officers may conduct a protective sweep of the premises only if they reasonably believe there is a person on the premises (other than the arrestee) who poses a threat to them.⁸⁰

PLAIN VIEW SEIZURES: If officers see evidence in plain view, they may seize it if they have probable cause to believe it is, in fact, evidence of a crime.⁸¹

POST-ARREST PROCEDURE: If the entry was made per a *Ramey* warrant, officers must file a “Certificate of Service” with the court within a reasonable time after the arrest. This certificate must contain the date and time of arrest, the location of arrest, and the facility in which the arrestee is incarcerated.⁸² A sample certificate is posted on POV Online, www.acgov.org/da. Click on “Forms for officers”. To obtain this form in Microsoft Word format, e-mail a request to alcoda@acgov.org and we will e-mail it to you.

⁷² *In re Johnny V.* (1978) 85 Cal.App.3d 120, 130.

⁷³ (1977) 73 Cal.App.3d 65, 69.

⁷⁴ See *People v. Evans* (1980) 108 Cal.App.3d 193, 196 [(“The officers) were inside with consent, with probable cause to arrest but with the intent to continue the investigation by effecting a purchase of [drugs]. We find no violation of the *Ramey* principles”]; *Lopez v. U.S.* (1963) 373 U.S. 427, 438 [(“IRS agent) was not guilty of an unlawful invasion of petitioner’s office simply because his apparent willingness to accept a bribe was not real. He was in the office with [Lopez’s] consent, and while there he did not violate the privacy of the office by seizing something surreptitiously without [Lopez’s] knowledge.”]; *In re Reginald B.* (1977) 71 Cal.App.3d 398, 403

⁷⁵ (1981) 114 Cal.App.3d 378.

⁷⁶ See Penal Code § 844.

⁷⁷ See *Maryland v. Buie* (1990) 494 U.S. 325, 330 [(“U)ntil the point of Buie’s arrest the police had the right, based on the authority of the arrest warrant, to search anywhere in the house that Buie might have been found”]; *U.S. v. Harper* (9th Cir. 1991) 928 F.2d 894, 897; *U.S. v. Beck* (11th Cir. 1984) 729 F.2d 1329, 1332.

⁷⁸ See *Chimel v. California* (1969) 395 U.S. 752.

⁷⁹ See *Maryland v. Buie* (1990) 494 U.S. 325, 333.

⁸⁰ See *Maryland v. Buie* (1990) 494 U.S. 325, 333; *In re Sealed Case* (D.C. Circ. 1998) 153 F.3d 759, 769; *Sharrar v. Felsing* (3rd Cir. 1997) 128 F.3d 810, 825.

⁸¹ See *Arizona v. Hicks* (1987) 480 U.S. 321, 326-8.

⁸² See Penal Code § 817(h).

SUPPRESSION OF EVIDENCE

Not all evidence and statements obtained following an in-home arrest in violation of *Ramey* or *Steagald* will be suppressed. On the contrary, evidence may be suppressed only if the prosecution seeks to use it against a person whose privacy rights were violated by the officers' unlawful entry. Accordingly, evidence will be suppressed only if both of the following circumstances existed:

(1) **ENTRY INTO THE DEFENDANT'S HOUSE:** The evidence must have been discovered inside the home of the person who is seeking to have it suppressed.⁸³ For example, if officers entered the home of the suspect's brother in violation of *Steagald*, any evidence discovered in plain view would be inadmissible against the brother (because his privacy rights were violated by the unlawful entry). But it would be admissible against the suspect or any other person who is merely a casual visitor.⁸⁴ As the U.S. Court of Appeals noted in *U.S. v. Agnew*, "But *Steagald* protected the interests of the third-party owner of the residence, not the suspect himself."⁸⁵

(2) **EVIDENCE DISCOVERED INSIDE:** The evidence must have been obtained while officers were inside the premises.⁸⁶ Conversely, any evidence obtained outside the premises cannot be suppressed as the result of an illegal entry. For example, a statement would be suppressed if it was made by the defendant in his living room,⁸⁷ but not if he made it on his front porch or at the police station.⁸⁸ As the United States Supreme Court pointed out in *New York v. Harris*:

[P]ayton was designed to protect the physical integrity of the home; it was not intended to grant criminal suspects, like Harris, protection for statements made outside their premises where the police have probable cause to arrest the suspect for committing a crime.⁸⁹

Similarly, if the evidence was obtained during a search of the defendant incident to the arrest, it would be suppressed if the search occurred inside the house but not if it occurred anywhere outside the residence.

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⁸³ See *New York v. Harris* (1990) 495 U.S. 14, 20 ["The warrant requirement for an arrest in the home is imposed to protect the home, and anything incriminating the police gathered from arresting Harris in his home, rather than elsewhere, has been excluded, as it should have been."].

⁸⁴ See *Steagald v. United States* (1981) 451 U.S. 204, 219 ["The issue here is not whether the subject of an arrest warrant can object to the absence of a search warrant when he is apprehended in another person's home, but rather whether the residents of that home can complain of the search."]; *People v. Dyke* (1990) 224 Cal.App.3d 648, 658 ["(A) homeowner's Fourth Amendment rights are violated when officers enter his home to arrest a guest pursuant to an arrest warrant. A search warrant is required under such circumstances to protect the rights of the homeowner."]; *U.S. v. Agnew* (3rd Cir. 2004) 385 F.3d 288, 291; *U.S. v. Litteral* (9th Cir. 1990) 910 F.2d 547, 553 ["(U)nder *Steagald*, if the suspect is just a guest of the third party, then the police must obtain a search warrant for the third party's dwelling in order to use evidence found against the third party."]

⁸⁵ (3rd Cir. 2004) 385 F.3d 288.

⁸⁶ See *New York v. Harris* (1990) 495 U.S. 14, 18 ["Nothing in the reasoning of [*Payton*] suggests that an arrest in a home without a warrant but with probable cause renders unlawful continued custody of the suspect once he is removed from the house."]; *People v. Marquez* (1992) 1 Cal.4th 553, 569 ["(T)he lack of an arrest warrant does not invalidate defendant's arrest or require suppression of statements he made at the police station."]; *People v. Lewis* (1999) 74 Cal.App.4th 662, 673; *In re Jessie L.* (1982) 131 Cal.App.3d 202, 214 ["A technical violation of *Ramey* would not necessarily result in suppression of a subsequent statement to police."]; *U.S. v. McCraw* (4th Cir. 1990) 920 F.2d 224, 230 [vehicle search not unlawful because of *Payton* violation].

⁸⁷ See *New York v. Harris* (1990) 495 U.S. 14, 20 ["(T)he police know that a warrantless entry will lead to the suppression of any evidence found, of statements taken, inside the home."].

⁸⁸ See *People v. Watkins* (1994) 26 Cal.App.4th 19, 29 ["Where there is probable cause to arrest, the fact that police illegally enter a home to make a warrantless arrest neither invalidates the arrest itself nor requires suppression of any postarrest statements the defendant makes at the police station."]; *In re Reginald B.* (1977) 71 Cal.App.3d 398, 404 ["Any technical impropriety in arresting the minor in his home rather than on the street or elsewhere was certainly attenuated by the officers' scrupulous adherence to the dictates of *Miranda*."]; *U.S. v. McCraw* (4th Cir. 1990) 920 F.2d 224, 230 [subsequent statements admissible]. **NOTE:** A court may consider the *Ramey* or *Steagald* violation in determining whether the suspect's statement was voluntary. See *People v. Trudell* (1985) 173 Cal.App.3d 1221, 1231 ["Rather, the *Ramey* violation is simply a factor in determining whether the subsequent statement was a product of the suspect's free will in the totality of the circumstances."]

⁸⁹ (1990) 495 U.S. 14, 17.

Is it the suspect's home?

It usually takes a combination of circumstances to establish a reasonable belief that a suspect lived in a particular house and was now inside. On this page and the next are examples of circumstances that have been deemed relevant. For case citations, see the on-line version of this article on Point of View Online at www.acgov.org/da.

Listed Address

- It was the suspect's last known address.
- Suspect was receiving mail at the address.
- Utilities at the address were listed to the suspect.
- Suspect listed the address on a credit card application.
- Suspect listed the address on a vehicle repair work order.
- Suspect listed the address on DMV records.
- Suspect listed the address when booked recently.
- Suspect gave the address when he was recently given a traffic ticket.
- It was the most current address on the suspect's probation or parole records.
- Suspect's phone number was listed to that address.
- Hotel registration listed the suspect as an occupant of the room.

Suspect on the premises

- Suspect was seen at or near the residence.
- Suspect's car was parked at or near the residence.
- Suspect's trailer was parked adjacent to the house.
- Cars belonging to the suspect's known associates were regularly parked in the driveway or nearby.
- Officers saw the suspect unlock a door to the residence and enter.
- Officers saw the suspect taking the garbage out of the house, bringing in the laundry, or visiting with neighbors.
- Officers telephoned the residence and spoke with the suspect.
- Officers met with the suspect at the residence on one or more occasions.
- Officers saw the suspect leaving the house at 7:30 A.M. with his wife and child.

Information from suspect or others

- Suspect told an officer he was "staying" at the house and could be contacted there.
- Suspect said he was "staying with" the homeowner.
- An apartment manager or motel desk clerk identified the suspect as the occupant.
- A reliable informant said the suspect was living at the house.
- Two or more untested informants, acting independently, said the suspect lived there.
- An untested informant said the suspect was living there, plus there was some corroboration.
- Neighbors or household staff identified the suspect as a resident.
- Suspect's wife, child, or roommate said he was living there.

Miscellaneous

- Suspect leased the premises or paid the rent.
- Suspect possessed keys to the residence.
- Photos of the suspect or his family were inside the residence.
- Suspect was young, unemployed, and transient which suggests he was still living in his parent's home.
- Suspect had just been released from prison so he might be living at his parents' home.
- Suspect was evasive when asked if he lived in the house.
- Officers were unable to contact the suspect at the other residence in which he claimed to live.

Is the suspect now inside?

Information from others

- A friend or neighbor of the suspect said he was at home.
- A reliable informant said the suspect would be home if his car was parked out front.
- A reliable informant said he saw the suspect inside his house 35 minutes before officers entered.
- A reliable informant said the suspect was unemployed and usually slept late.
- The manager of a motel in which the suspect was staying told officers the suspect was now in his room.
- The person who answered the door said the suspect was inside.
- An officer phoned the suspect's home and spoke with someone who said the suspect was at home.
- A neighbor or occupant told officers that the suspect was *not* at home, but the manner in which the neighbor or occupant responded to the officer's questions reasonably indicated the person was lying.

Conditions inside or outside

- Suspect's car was parked at or near the residence.
- The officers arrived at 6 A.M. and saw several vehicles parked at the residence.
- The suspect lived alone and the interior lights were on, or there were TV or radio sounds inside.
- The interior lights were on and there was no reason to believe the arrestee had left the residence.
- "If the [suspect's] quarters are dark and no sounds or movements can be detected within and no one answers the door, the other facts and circumstances (e.g., nature of the crime, crime recently committed, [suspect's] car parked nearby) may nonetheless support the inference that the [suspect] is concealing himself therein."
- An officer saw the suspect inside the house in the early morning hours; at about 2:30 A.M. the lights in the house were turned off; officers entered at 6:15 A.M.

Miscellaneous

- Immediately after officers knocked and announced, they heard sounds or saw activity inside that reasonably indicated an occupant was trying to hide or avoid them.
- Court stated that "officers may presume that a person is at home at certain times of the day—a presumption which can be rebutted by contrary evidence regarding the suspect's known schedule."
- The person who answered the door, when asked if the suspect was inside, did not respond or was evasive.
- Court stated that "courts must be sensitive to common sense factors indicating a resident's presence. Direct surveillance or the actual viewing of the suspect on the premises is not required. Indeed, officers may take into account the fact that a person involved in criminal activity may be attempting to conceal his whereabouts."
- "While surveillance certainly may bolster a *Payton* entry, the cases fail to reveal any requirement of substantial prior surveillance of a residence prior to entry."
- There was no indication that suspect was not at home.
- Officers saw the suspect unlock a door to the residence and enter.
- A man matching the suspect's physical description ran into the house when officers identified themselves.
- The arrestee did not have a job, and officers entered at 8:30 A.M.
- Although no one responded to the officers' knock and announcement, they heard a "thud" inside.

SUPERIOR COURT OF CALIFORNIA

County of _____



ARREST WARRANT

Probable Cause Arrest Warrant
Ramey Warrant
[Penal Code § 817]

THE PEOPLE OF THE STATE OF CALIFORNIA

To any California peace officer

Warrant No. _____

Arrestee's name: *[Insert name here]*, hereinafter "Arrestee"

Declarant's name and agency: *[Insert declarant's name and agency here]*, hereinafter "Declarant"

ORDER: Proof by declaration under penalty of perjury having been made before me on this date by Declarant, I find there is probable cause to believe that Arrestee committed the crime(s) listed below. You are therefore ordered to execute this warrant and bring Arrestee before any magistrate in this county pursuant to Penal Code §§ 821, 825, 826, and 848.

Crime(s): *[List crime(s) here]*

Night service authorization [If checked]

- Felony:** This felony warrant may be executed at any hour of the day or night.
- Misdemeanor:** Good cause for night service having been established in the supporting declaration, this misdemeanor warrant may be executed at any hour of the day or night.

Bail: \$ _____ No bail

Date and time warrant issued

Judge of the Superior Court

◆ **Arrestee Information** ◆

For identification purposes only

Name:

AKA's:

Last known address(es):

Sex: M F Race: Height: Weight: Color of hair: Color of eyes:

Scars, marks, tattoos:

Vehicle(s) linked to Arrestee:

Other information: