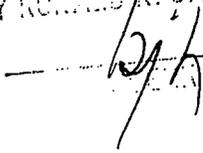


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BY RONALD A. LAWRENCE



**SUPREME COURT OF THE
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

RAYMOND HATCHIE, APPELLANT

Appeal from the Court of Appeals, Division II

No. 31544-1

SUPPLEMENTAL BRIEF OF RESPONDENT

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A. ISSUE PRESENTED.

1. Where officers are armed with a misdemeanor arrest warrant issued by a neutral and detached magistrate may they enter the suspect's home for the limited purpose of making the arrest, without the need to find the additional factors of "exigent circumstances," where our State Constitution is only concerned with entries into a person's home or private affairs without authority of law and where a person the subject of an arrest warrant has a lower expectation of privacy?¹

B. STATEMENT OF THE CASE.

On June 11, 2003, Pierce County Sheriff's Deputy Brockway and Deputy Fry were conducting an investigation into the purchase of precursor chemicals that are commonly related to the manufacturing of methamphetamine. RP 4-6, 98-100. Following a surveillance investigation of defendant Schinnell for the purchase of precursor chemicals at local stores, deputies made an attempt to stop defendant's vehicle. RP 105. However, before they could stop the car the deputies lost sight of him and minutes later located his car outside a residence. RP

¹ The State rests on its Opening Brief of Respondent as filed in the Court of Appeals in this matter for the remainder of the issues presented to the Court.

10-11. Officers then ran a registration for the vehicle and it came back to an Eric Schinnell. RP 13. The record's check also revealed that Schinnell's license was suspended and he had a misdemeanor warrant for his arrest. RP 13. This arrest warrant was issued by a municipal judge for Schinnell's failure to appear at sentencing on a driving while license suspended in the third degree offense. CP 172. Officers compared a booking photo of Schinnell to their observations of him and they appeared similar. RP 20.

Prior to entering the home, officers confirmed through neighbors that Schinnell was a resident at that address and also confirmed that a second vehicle parked on the lawn at the residence was registered to defendant. RP 21, 22, 28, 179.

Officers entered the home for the limited purpose of arresting defendant, and after searching the home for approximately five to seven minutes, they located defendant in the garage under a car. RP 33-34. The officers later applied for a search warrant and searched the home for evidence of methamphetamine production. RP 4, 41-43.

For a statement of the facts and procedure for the remainder of the case, please refer to the Opening Brief of Respondent as filed in the Court of Appeals.

C. ARGUMENT.

1. IF OFFICERS ARE ARMED WITH A JUDGE ISSUED WARRANT FOR ARREST OF A PERSON, THEN ARTICLE 1, SECTION 7 OF THE STATE CONSTITUTION IS SATISFIED FOR ENTRY INTO THE HOME FOR ARREST, AND NO ADDITIONAL REQUIREMENTS OF EXIGENT CIRCUMSTANCES IS NECESSARY.

Article 1, section 7, of the Washington Constitution, like its federal counterpart, seeks to protect citizens from unlawful searches and seizures. However, this constitutional provision is satisfied when officers are armed with a warrant issued by a neutral and detached magistrate. When officers have an arrest warrant for an individual then that warrant carries with it the inherent authority to enter that person's residence for the limited purpose of effectuating an arrest. Nothing in the development of search and seizure law has ever called for a distinction between misdemeanor arrests and felony arrest warrants. Defendant's position in this case begins with a misapplication of Chrisman II. Once that misinterpretation is cleared, defendant's argument falls short of calling for any distinction between felony and misdemeanor arrests; Chrisman II was only concerned with the need for the existence of exigent circumstances in the case of a *warrantless* arrest.

Since the United State's Supreme Court's issuance of Payton v. New York, 445 U.S. 573, 100 S. Ct. 1371, 63 L. Ed. 2d 639 (1980), warrantless entry into a suspect's home to make an arrest is violative of

the Fourth Amendment. At issue in Payton was a New York statute² that allowed warrantless entry into a person's home to make a felony arrest. 445 U.S. at 575. The court concluded that absent an arrest warrant for the person, the police were not justified in entering the person's home to make the arrest. Id. at 603.

In Chrisman II,³ the Washington Supreme Court examined under article 1 § 7 of the State constitution whether police could enter a residence *without a warrant* to complete an arrest. The court held that absent exigent circumstances, such a search violated article 1 § 7. There was no arrest warrant involved in Chrisman II; instead a Washington State University Police Officer arrested a minor, Overdahl, for underage drinking. 100 Wn.2d at 816. The officer escorted him to his dormitory

² The statute at issue in Payton, provided: 'A peace officer may, without a warrant, arrest a person When a felony has in fact been committed, and he has reasonable cause for believing the person to be arrested to have committed it.'

Section 178 of the Code of Criminal Procedure provided: 'To make an arrest, as provided in the last section, the officer may break open an outer or inner door or window of a building, if, after notice of his office and purpose, he be refused admittance.'
Payton, 445 U.S. 578, n. 6.

³ State v. Chrisman, 100 Wn.2d 814, 676 P.2d 419 (1984) (hereinafter Chrisman II). In State v. Chrisman, 94 Wn.2d 711, 619 P.2d 971 (1980) (Chrisman I), the Washington Supreme Court held that the officer's warrantless entry into a dormitory room violated the Fourth Amendment. The United States Supreme Court reversed, holding that the decision was a "novel reading of the Fourth Amendment." Washington v. Chrisman, 455 U.S. 1, 6, 102 S. Ct. 812, 70 L. Ed. 2d 778 (1982). The court reversed and remanded the case and Chrisman moved for the court to consider whether article 1, section 7 afforded broader protection.

room to pick up identification and from the doorway entry the officer observed a small pipe and seeds on a desk in the dormitory room. Id. The officer then entered the room for a closer inspection of these items and discovered the seeds to be marijuana. Id. Citing to Payton, supra, the court held that the *warrantless* entry into the dormitory following a misdemeanor arrest “was not permitted because the officer was not presented with facts sufficient to demonstrate (1) a threat to the officer’s safety, or (2) the possibility of destruction of evidence of the misdemeanor charged, or (3) a strong likelihood of escape.” Chrisman II, 100 Wn.2d at 821. The court went on to note that the fact that the officer did not initially accompany Overdahl into the room shows the “absence of any concern for safety or the integrity of the arrest. Even if we agreed with the United States Supreme Court’s rule [in Chrisman I], we think the officer abandoned any claim of reasonableness by allowing Overdahl to enter alone.” Id. The court reiterated the need to look to the facts of each case, rather than having a bright line rule.

Chrisman II’s holding was most recently applied in State v. Kull, 155 Wn.2d 80, 118 P.3d 307 (2006), which was issued after briefs were filed in this matter. At issue in Kull was whether officers may make a warrantless entry into a home after an arrest has already been made. In Kull, as here, officers were armed with a misdemeanor arrest warrant.

However, *before* reaching Kull's apartment, the officers noticed Kull in the community laundry room where officers arrested Kull, but informed her that she could avoid being booked into jail if she posted the value of the warrant. Kull then went to her apartment and instructed a friend to retrieve her purse from her bedroom. When an officer followed the friend into Kull's bedroom, he saw a baggie of cocaine. The officer then seized Kull's purse and found methamphetamine inside. Citing Chrisman II, Kull moved to suppress the evidence found in her apartment. The trial court denied the motion, finding that the officer had a legitimate safety concern in following the friend into Kull's bedroom. This court reversed, finding no support for the trial court's finding of exigent circumstances. Kull, 155 Wn.2d at 87-89. As noted by the Court of Appeals in this matter below, "the officers in Kull lost any authority that they had to enter Kull's apartment to make an arrest under the arrest warrant when they arrested her in the community laundry room." State v. Hatchie, 133 Wn. App. 100, 111, 135 P.3d 519 (2006) (citing Wilson v. Layne, 526 U.S. 603, 611, 119 S. Ct. 1692, 143 L. Ed. 2d 818 (1999) ("[T]he Fourth Amendment does require that police actions in execution of a warrant be related to the objectives of the authorized intrusion.")). The Court of Appeals went on to note that because the officers in Chrisman II and Kull lacked any authority to enter the dwellings to serve arrest warrants, lawful entry required proof of an exception to the search warrant requirement (e.g. exigent circumstances).

Since Payton, and Chrisman II, only a handful of Washington appellate courts have analyzed entry into a home on an arrest warrant, and most of these cases in their *dicta* suffer from the same flaw as petitioner's argument to this court, e.g. misapplication of Chrisman II. See State v. Wood, 45 Wn. App. 299, 725 P.2d 435 (1986) (holding that where officers had "security reasons" and pursued an individual into a home on a felony arrest warrant the search was justified); State v. McKinney, 49 Wn. App. 850, 857, 746 P.2d (1987) (holding that entry into a home on a misdemeanor arrest warrant was justified where there was a history of prior escape and the "integrity of the arrest was threatened"); State v. Anderson, 105 Wn. App. 223, 19 P.3d 1094 (2001) (holding that the entry into a third party's home on a misdemeanor arrest warrant was unjustified); See also State v. Thompson, 151 Wn.2d 793, 92 P.3d 228 (2004) (civil arrest warrants are not covered by the knock and announce statute, RCW 10.31.040).

None of these cases take into consideration that in Chrisman II there was no arrest warrant. Instead they pull language from Chrisman II in support of a heightened level of scrutiny for arrest warrants. It is this language that defendant relies on in this case in support of a higher standard. For example, in McKinney, the court states Chrisman II requires that there be a "strong justification for entering a private residence in the

case of minor violations.” 49 Wn. App. 850, 857 (citing Chrisman II, at 822). Similarly in Anderson, the court cites McKinney, supra, and Chrisman II, for the proposition that there must “be strong justification for forcefully entering even the suspect’s own residence in the case of a minor offense—here a misdemeanor.” 105 Wn. App. 223, 231.

In contrast, the court in Wood upheld a search of a home for a person on a felony warrant. 45 Wn. App. 299, 308. In Wood, police went to a third party’s home to execute an arrest warrant on Louis Marker. Marker opened the door when police arrived and stated that he was “ready to go,” but then turned back into the inside of the home and an officer followed. In plain view an officer saw roach pipes and smelled marijuana. Wood then agreed to show the officer where the marijuana grow operation was in the home. Wood challenged the search of the home under the plain view doctrine, arguing that there was no prior justification for the intrusion. 45 Wn. App. at 302. The court upheld the arrest, first noting that unlike Stegald, the arrestee was identified and found within the house before the police entered and that pursuant to the arrest warrant the officer had a right to stay “literally at [Marker’s] elbow at all times.” Wood, 45 Wn. App. 299, 305 (quoting Washington v. Chrisman, 455 U.S. at 6). It further held that there were “specific articulable facts” to justify their entry into Wood’s home under Chrisman II, because it involved a felony arrest warrant.

If the officers have an arrest warrant issued by a neutral and detached magistrate and it is the person's home then this should be the end of the inquiry. No further analysis should be needed. Destruction of evidence, hot pursuit, etc., all involve exceptions to the warrant requirement. An arrest warrant protects the individual from unreasonable seizure by allowing a neutral judicial officer to assess whether the police have probable cause to arrest. Steagald v. United States, 451 U.S. 204, 213, 101 S. Ct. 1642, 68 L. Ed. 2d 38 (1981). Once a warrant has been properly issued, the primary purpose has been served. See State v. Simmons, 35 Wn. App. 421; 667 P.2d 133, review denied, 100 Wn.2d 1025 (1983) ("the rules surrounding execution of a valid warrant are ministerial and exigent circumstances are not required to permit arrest pursuant to a valid warrant even though the warrant is not presently in the possession of the officer making the arrest," under RCW 10.31.030). A misdemeanor warrant carries with it the same safeguards of probable cause that a felony warrant does. "An arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe he is inside." Payton, 445 U.S. at 602-603.

In the Fourth Amendment context, the Court of Appeals in this case recognized that of "those courts directly addressing Payton have held that its rule applies with equal force to misdemeanor warrants. All 16 court that have considered this issue, five circuit courts and eleven state

courts, have concluded that the felony/misdemeanor distinction is irrelevant because Payton's main focus is the necessity of a magistrate's probable cause finding as a restraint on law enforcement's ability to enter a home for purposes of making an arrest." State v. Hatchie, 133 Wn. App. at 109.⁴ This purpose is accomplished when an arrest warrant is issued, whether the underlying offense is a misdemeanor or felony. For this reason, courts considering the question have refused to distinguish between felony and misdemeanor arrest warrants.

Looking beyond Chrisman II, and Payton, nothing in the development of Washington arrest law calls for a different treatment of arrests under Article 1, section 7. A determination that Article 1, section 7, affords enhanced protection in a particular context does not necessarily mandate such a result in a different context. State v. Johnson, 128 Wn.2d 431, 446, 909 P.2d 293 (1996) (quoting State v. Russell, 125 Wn.2d 24,

⁴ See, e.g., United States v. Spencer, 684 F.2d 220, 223-24 (2nd Cir. 1982), cert. denied, 459 U.S. 1109 (1983); State v. Coma, 133 Idaho 29, 31-32, 981 P.2d 754 (Ct. App. 1999). United States v. Clayton, 210 F.3d 841, 843 (8th Cir. 2000); United States v. Spencer, 684 F.2d 220, 222-24 (2nd Cir. 1982), cert. denied, 459 U.S. 1109 (1983); United States v. Meindl, 83 F. Supp. 2d 1207, 1214-15 (D. Kan. 1999); Smith v. Tolley, 960 F. Supp. 977, 990-91 (E.D. Va. 1997); People v. LeBlanc, 60 Cal. App. 4th 157, 164, 70 Cal.Rptr.2d 195 (1997); State v. Coma, 133 Idaho 29, 31-32, 981 P.2d 754 (Ct. App. 1999); Green v. State, 78 S.W.3d 604, 611 (Tex. Ct. App. 2002); Archer v. Commonwealth, 26 Va. App. 1, 10-11, 492 S.E.2d 826 (1997).

See also, State v. Bass (La.Ct.App. 1992) 595 So.2d 820, 823; Sloan v. State (Fla.Dist.Ct.App. 1983) 429 So.2d 354, 358, fn. 4. Kain v. Nesbitt, 156 F.3d 669, 672 (6th Cir. 1998) (assuming but not holding that principle applies to misdemeanor warrants); United States v. Albrektsen, 151 F.3d 951, 953 (9th Cir. 1998) (same); Lyles v. City of Barling, 17 F. Supp. 2d 848, 855 & n.6 (W. D. Ark. 1998) (same), aff'd, 181 F.3d 914 (8th Cir. 1999) (same).

58, 882 P.2d 747 (1994)). The focus of a challenge under this Article 1, section 7, is on whether the “language of the state constitutional provision and its prior interpretations actually compel a particular result.” State v. McKinney, 148 Wn.2d 20, 26, 60 P.3d 46 (2002), citations omitted.

Under article 1, section 7, the court has always looked to two main components: “authority of law” and “private affairs,” and an examination of these provisions shows that in this context, arrest warrants do not call for a different analysis than under the Fourth Amendment. In re Pers. Restraint of Maxfield, 133 Wn.2d 332, 339-42, 945 P.2d 196 (1997).

a. “Authority of Law.”

Starting first with “authority of law” the State maintains the position that a misdemeanor warrant carries the same “authority of law” as a felony warrant and thus looking to exceptions to the warrant requirement via exigent circumstances is simply unnecessary. As this court has held, the scope of article 1, section 7 protects “those privacy interests which citizens of this state have held, and should be entitled to hold, safe from governmental trespass *absent a warrant*.” State v. Surge, ___ Wn.2d ___, ___ P.3d ___ (2007), No. 76013-6, slip op. at 4 (quoting State v. Myrick, 102 Wn.2d 506, 511, 688 P.2d 151 (1984)). Indeed, the very language of article 1, section 7, is limited to actions that occur without a warrant: “[n]o person shall be disturbed in his private affairs, or his home invaded, without *authority of law*.” (emphasis added).

The authority of law does not turn on whether it is a felony or misdemeanor warrant since both must be founded on probable cause and both involve the same privacy interests. Under both the general Criminal Rules (CrR) the Criminal Rules for Court of Limited Jurisdiction (CrRLJ), an arrest warrant may only issue after a determination of probable cause is made by a judge. *Compare* CrR 2.2(a)(1)(2) with CrRLJ 2.2(a)(1)(2) (both requiring a determination of probable cause prior to issuance of an arrest warrant); CrR 3.2(j)(1) (arrest with warrant for violation of conditions), CrR 3.4(c), CrRLJ 3.4 (issuance of warrant when defendant is not present), CrR 3.2(h), CrRLJ 3.2(h) (release after finding or plea of guilty); But see, State v. Fisher, 145 Wn.2d 209, 35 P.3d (2001) (holding under the Fourth Amendment that a well-founded suspicion of violation of a condition of release was not met prior to issuing warrant under CrR 3.2(j)(1) and CrR 3.2(f)).

A misdemeanor warrant may even create a stronger need to enter a home than a felony warrant. For example, if officers are permitted to enter a home on an arrest warrant for simple felony property crimes (e.g. theft in the second degree), then it follows that they should also be allowed entry into the home on more violent misdemeanor crimes like assault, domestic violence arrest warrants, and unlawful endangerment. In fact, historically this State has permitted the arrest of persons who have committed simple misdemeanor crimes without the issuance of any warrant. See, RCW 10.31.040; State v. Walker, 157 Wn.2d 307, 138 P.3d

113 (2006). In Walker, this court expressly rejected the argument that article 1, section 7, commands *warrantless* misdemeanor arrests to be treated differently than felony warrantless arrests, provided officers follow RCW 10.31.100.

b. Private Affairs.

Turning next to “private affairs” defendant also has a lesser expectation of privacy in his home by being named in an arrest warrant. A disturbance of a person’s private affairs usually occurs when the government intrudes upon “those privacy interests which citizens of this state have held, and should be entitled to hold, safe from government trespass.” State v. Boland, 115 Wn.2d 571, 577, 800 P.2d 1112 (1990) (quoting State v. Myrick, 102 Wn.2d 506, 511, 688 P.2d 151 (1984)). Determining a constitutional violation turns on whether the State has unreasonably intruded into a person’s “private affairs.” “Thus, the first step is to determine whether the claimed privacy interest is one that has been recognized in our state.” State v. Carter, 151 Wn.2d 118, 125-26, 85 P.3d 887 (2004). Like a probationer who has a lessened expectation of privacy and may be searched without an arrest warrant, a person with an arrest warrant has a lesser expectation of privacy in their own home for the limited purpose of arrest. As outlined in State v. Surge, *supra*, “constitutional rights afforded to a person often depend on his or her status.” *slip op.* at 4. Thus, in Washington, a person’s privacy rights under

article 1, section 7 may vary based on that person's status as an arrestee, pretrial detainee, prisoner, or probationer. Id. (citing, State v. Cheatam, 150 Wn.2d 626, 642, 81 P.3d 830 (2003) (holding an arrestee loses any privacy interest in personal items already searched and stored pursuant to a valid inventory search); State v. Fisher, supra at 226-227 (holding that a criminal defendant who has been adjudged guilty has a diminished right of privacy). While a person the subject of an arrest warrant may enjoy a slightly broader expectation of privacy than a parolee, he or she nevertheless has a more limited expectation of privacy than the average citizen. And nothing in Cheatam and Surge, supra, turns on whether the arrestee or parolee are the subject of misdemeanor or felony arrest or convictions.

Also, as the subject of an arrest warrant, defendant held a lesser expectation of privacy in his home than others and an officer's entry into the home to effectuate that arrest does not turn the arrest into a carte blanche search of the home; in order to operate under this "authority of law" officers must, and did here, go back to a magistrate for a general search warrant. For example, in State v. White, 129 Wn.2d 105, 112, 915 P.2d 1099 (1996) defendant argued that he had an expectation of privacy in a bathroom stall and that officers could not enter the stall without a warrant to arrest him. In rejecting that argument this court looked to language in Payton, supra, which held that arrest warrant carries with it the limited authority to enter the dwelling and arrest the defendant. Id. (citing

Payton at 603). This court concluded that where a “warrantless arrest based on probable cause may be made, the fact that some intrusion is necessary to effect the arrest does not turn the arrest into a search.” Id. It also follows from this that where officers have a warrant that names an individual, the fact that it permits entry into the home to make that arrest, does not turn the arrest into a full search of the home and because of this officers should not be limited because it is a misdemeanor warrant rather than a felony warrant.

The real concern that petitioner presents to this court: “whether a citizen’s right to privacy is safeguarded,” is taken care of already in Washington law by requiring: (a) the existence of a valid arrest warrant founded on probable cause and issued by a judge or magistrate, and (b) a requirement that officers have a reason to believe that the person resides there and is home at the time of the arrest. Any requirements beyond this gets into an inquiry of exigent circumstances, an inquiry that is only warranted when officers seek to enter a home where a person has an expectation of privacy and do so without a warrant, both which are not at issue here.

D. CONCLUSION.

Both the Fourth Amendment and article 1, section 7, are satisfied when a neutral and detached magistrate issues a warrant for arrest and officers enter a home for the limited purpose of executing that arrest

warrant. The same rights are safeguarded whether it is a misdemeanor or felony warrant because both requiring a finding of probable cause prior to issuance of the warrant. A consideration of exigent circumstances is only necessary when officers conduct a search without authority of law. Here, officers entered a residence after confirmation of a judge issued arrest warrant, a verification that defendant was the suspect named in the warrant, and a determination that defendant resided at the address and was home at the time of the search. There was no general search of the home until after a search warrant was issued and defendant has failed to make his case that these searches, both protected by a warrant, violate the state constitution.

DATED: May 4, 2007.

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Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

5/4/07 *[Signature]*
Date Signature