

No. 78889-8

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

RAYMOND K. HATCHIE,

Petitioner.

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STATE OF WASHINGTON

**AMICUS CURIAE BRIEF OF
AMERICAN CIVIL LIBERTIES UNION OF WASHINGTON**

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INTEREST OF *AMICUS CURIAE*

The American Civil Liberties Union of Washington (“ACLU”) is a statewide, nonpartisan, nonprofit organization of over 20,000 members, dedicated to the preservation of civil liberties, including privacy. The ACLU strongly supports adherence to the provisions of Article 1, Section 7 of the Washington State Constitution, which prohibits unreasonable interference in private affairs and invasion of the home without authority of law. The ACLU has participated in numerous privacy-related cases as *amicus curiae*, as counsel to parties, and as a party itself.

STATEMENT OF THE CASE

The following summary of the facts is based on the parties’ briefs and the opinion of the Court of Appeals. In June 2003, Pierce County police officers were conducting surveillance in Tacoma, looking for purchasers of items that can be used in the manufacture of methamphetamine. They followed Eric Schinnell as he drove to three separate stores to buy such items. They ran a license check on his truck and discovered he had an outstanding misdemeanor arrest warrant (for driving while license suspended in the third degree). The officers lost track of Schinnell, but located him standing by his truck in a residential

driveway. The officers did not immediately confront or arrest Schinnell, but instead requested backup. In the meantime, Schinnell disappeared, presumably entering the house in whose driveway he was parked.

Officers talked to neighbors and intermittently knocked on the front door of the suspect house for about an hour. They also observed a revolver and items related to methamphetamine manufacture in Schinnell's truck. Eventually a man answered the door, and said he thought Schinnell was inside. The officers then entered the house without consent to arrest Schinnell. They knew they had no search warrant. While searching the home for Schinnell, the officers also found evidence of methamphetamine manufacturing. This evidence ultimately led to Raymond Hatchie, the house's tenant, being convicted of unlawful manufacture of a controlled substance after his suppression motion was denied.

The Court of Appeals affirmed the denial of the suppression motion. The Court held "that lawful entry into a dwelling to serve an arrest warrant requires that law enforcement have probable cause to believe (1) that the person named in the arrest warrant resides in the home to be entered, and (2) the arrestee is in the home at the time of entry." *State v. Hatchie*, 133 Wn. App. 100, 113, 135 P.3d 519 (2006). The Court decided that standard had been met, and held that there was no constitutional

“distinction between misdemeanor and felony arrest warrants” as authorization to enter a home. *Id.*

ARGUMENT

Both the Fourth Amendment to the United States Constitution and Article 1, Section 7 of the Washington Constitution generally prohibit entry into a home without a search warrant, subject to narrowly drawn exceptions. One such exception is the execution of a *felony* arrest warrant. Despite the term “warrant” being used for both arrest and search warrants, it must be emphasized that entry into a home in order to execute an arrest warrant is a *warrantless* search of the *home*. The arrest warrant must be based on probable cause to believe the suspect has committed a crime, and obtaining an arrest warrant from a neutral magistrate adequately protects the liberty interest of the suspect. An arrest warrant does not in any way, however, protect the privacy interest in the home, which is not even mentioned in the arrest warrant.

The arrest warrant exception to the search warrant requirement was recognized by the United States Supreme Court in a pair of cases 25 years ago. The Court held that a *felony* arrest warrant “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.” *Payton v. New York*, 445

U.S. 573, 603, 100 S. Ct. 1371, 63 L. Ed. 2d 639 (1980). An arrest warrant is insufficient, however, to enter a third party's home without consent. *See Steagald v. United States*, 451 U.S. 204, 101 S. Ct. 1642, 68 L. Ed.2d 38 (1981).

This Court has effectively accepted the *Payton-Steagald* framework under Article 1, Section 7 as well. *See State v. Williams*, 142 Wn.2d 17, 23-24, 11 P.3d 714 (1990). However, it has also “repeatedly held that article I, section 7 provides greater protection of individual privacy than the Fourth Amendment.” *State v. Morse*, 156 Wn.2d 1, 10, 123 P.3d 832 (2005)¹. The present case asks this Court to clearly, and narrowly, draw the limits of the arrest warrant exception to the search warrant requirement for entries into the home. For the following reasons, in order to comply with the greater privacy protection afforded by Article 1, Section 7, the arrest warrant exception must be limited to cases where the person named in the arrest warrant is an actual resident of the home, and further limited to felony arrest warrants, not minor misdemeanors.

¹ “Under the Washington Constitution, it is well established that article I, section 7 qualitatively differs from the Fourth Amendment and in some areas provides greater protections than does the federal constitution. Accordingly, a *Gunwall* analysis is unnecessary to establish that this court should undertake an independent state constitutional analysis.” *State v. Surge*, __ Wn.2d __, 156 P.3d 208 (2007) (citations and footnotes omitted).

A. An Arrest Warrant Justifies Entry into a Home Only If the Person Named in the Warrant Is an Actual Resident

In neither *Payton*, *Steagald*, nor *Williams* was there any question about whether the suspect sought in the arrest warrant resided in the home, so none of those opinions addressed situations in which police officers mistakenly believe a suspect is a resident. The parties in this case have strenuously disputed whether the proper standard to use is a “reasonable belief” of the police officers or “probable cause” to believe the suspect is a resident; the Court of Appeals held that probable cause is required. *See Hatchie*, 133 Wn. App. at 113.

Both the parties and the lower courts are mistaken. They incorrectly apply Fourth Amendment doctrine to the question to determine whether the entry into the home was “reasonable.” Under Article 1, Section 7, however, the belief of the police officers is simply immaterial; all that is relevant is whether the suspect named in the arrest warrant is *actually* a resident of the home being entered.

Morse describes in detail the differing analytical approaches necessary for the Fourth Amendment and Article 1, Section 7. “The analysis under the Fourth Amendment focuses on whether the police have acted reasonably under the circumstances.” *Morse*, 156 Wn.2d at 9. In

contrast, “our constitution focuses on the rights of the individual, rather than on the reasonableness of the government action.” *Id.* at 12.

Morse used this framework to determine that consent of a cohabitant is ineffective to authorize a warrantless search against a present, but nonconsenting, person. The good faith belief of the police is irrelevant:

A person is not absent just because the police fail to inquire, are unaware, or are mistaken about the person's presence within the premises. If the police choose to conduct a search without a search warrant based upon the consent of someone they believe to be authorized to so consent, the burden of proof on issues of consent and the presence or absence of other cohabitants is on the police.

Id. at 15. The Court recognized that determinations of presence and common authority may be difficult, but deemed those difficulties insufficient to overcome the resident’s constitutional right to privacy. When in doubt, “such difficulties may be avoided by the police by obtaining either a search warrant or the consent of the person whose property is to be searched.” *Id.* at 15 n. 5.

Applying the same analysis to the present situation leads to the clear conclusion that an arrest warrant only justifies entry into a home when the person named in the arrest warrant is an *actual* resident of that home. Just as consent is an exception to the search warrant requirement, so is execution of an arrest warrant. Just as consent of another is insufficient

to protect the privacy rights of a present resident, *see State v. Leach*, 113 Wn.2d 735, 782 P.2d 1035 (1989), obtaining an arrest warrant for a third party is insufficient to protect the privacy rights of a home's residents, *see Steagald*, 451 U.S. at 213. Since a mistaken belief that a resident is absent does not justify relying on the consent of a guest or cohabitant, *see Morse*, a mistaken belief of police officers that a person named in an arrest warrant is a resident of a home cannot justify entry into that home.

Amicus takes no position as to whether Eric Schinell was an actual resident of Raymond Hatchie's home, an issue that was not decided below. *See Hatchie*, 133 Wn. App. at 116 n. 8. We note, however, that there was ample opportunity for the police to disclose the facts to a magistrate and seek a search warrant to enter the home, obviating the need to conduct a warrantless search of the home by relying on the uncertain authority of the arrest warrant for Schinell.

B. A Misdemeanor Warrant Does Not Justify Entry into a Home Without Specific Judicial Authorization

Article 1, Section 7 guarantees that "[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law." Even if it is eventually determined that Schinnell was a resident of Hatchie's home, an arrest warrant for a minor misdemeanor still does not justify the invasion of his home without specific judicial authorization.

There are two competing interests at issue here. First is the legitimate public interest in law enforcement, and bringing offenders to justice. In tension with that is the constitutionally recognized privacy interest in one's home, the guarantee that the state will not invade the sanctity of the home without authority of law. This Court has described the balance between these interests under our state constitution:

The heightened protection afforded state citizens against unlawful intrusion into private dwellings places an onerous burden upon the government to show a compelling need to act outside of our warrant requirement. In cases of minor violations, where no danger exists, and where there is no threat of destruction of the evidence, we can find no compelling need to enter a private residence.

State v. Chrisman, 100 Wn.2d 814, 822, 676 P.2d 419 (1984).

The Court of Appeals misunderstood the meaning of *Chrisman*, distinguishing it because it did not involve execution of an arrest warrant. This may be an artifact of the language confusion discussed above. The "warrant requirement" mentioned in *Chrisman* refers to the constitutional requirement for a *search* warrant prior to entry into a residence, but the Court of Appeals apparently considered the existence of an *arrest* warrant sufficient to meet *Chrisman's* "warrant requirement." See *Hatchie*, 133 Wn. App. at 111-112.

A better understanding of *Chrisman* is as a discussion of the common thread that binds together all exceptions to the search warrant

requirement: a “compelling need” for entry into the home. This corresponds to the well-established rule that “exceptions to the warrant requirement are jealously and carefully drawn.” *Morse*, 156 Wn.2d at 4. Execution of an arrest warrant is only allowed as an exception to the search warrant requirement when the need for execution is compelling—a standard that is unlikely to be met when the arrest warrant is for a minor misdemeanor. *Chrisman* properly recognized that the seriousness of an offense is a factor to be considered, and that as a general proposition, enforcement of minor violations of the law does not present a “compelling need to enter a private residence.” *Chrisman*, 100 Wn.2d at 822. This is especially true since “this court has held that the home receives heightened constitutional protection.” *State v. Kull*, 155 Wn.2d 80, 84, 118 P.3d 307 (2005) (citing *State v. Young*, 123 Wn.2d 173, 185, 867 P.2d 593 (1994)).

Any suggestion that execution of misdemeanor arrest warrants is a compelling governmental need is belied by the statewide practice of enforcement—or, more accurately, lack thereof. Lack of enforcement has been noted for years by members of the Washington judiciary. *See, e.g.*, Minutes of the Commission on Justice, Efficiency and Accountability (June 22, 1998) (noting “the non-service of approximately 247,000 misdemeanor warrants.”); Richard P. Guy, *A Report To The Washington State Legislature* (January 2000) (“We currently have some 255,000

misdemeanor warrants that have been issued, but not served.”); Hon. Philip J. Van De Veer, *No Bond, No Body, and No Return of Service: The Failure to Honor Misdemeanor and Gross Misdemeanor Warrants in the State of Washington*, 26 Seattle U. L. Rev. 847 (2003).

Misdemeanor warrants continue to be routinely unenforced. Snohomish County, for example, “does not deliver warrants.” Christopher Schwarzen, *Snohomish County seeks ways to cut courts' backlog of warrants*, Seattle Times, Apr. 4, 2007. Even when a police officer stops a person in the normal course of business and discovers he or she has an outstanding misdemeanor warrant, the officer is likely to “just cut her loose.” Chris Halsne, *Misdemeanor Warrants Ignored To Save Money*, <<http://www.kiro7.com/investigations/4537192/detail.html>>, KIRO 7 Eyewitness News (2005). In the face of this statewide practice, it is hard to see how there could possibly have been a “compelling need” to enter Hatchie’s house to execute an arrest warrant for one of the most minor misdemeanors.

Not only is there no compelling need to enter homes to execute most misdemeanor warrants, there *is* a compelling reason to forbid such entry: the deterrence of pretextual searches. For decades, this Court has attempted “to lessen the risk of minor offenses being used for pretextual arrests.” *Chrisman*, 100 Wn.2d at 819 (discussing *State v. Hehman*, 90

Wn.2d 45, 578 P.2d 527 (1978) (prohibiting custodial arrests for minor traffic offenses)). With hundreds of thousands of outstanding misdemeanor warrants, there is a large potential for unconstitutional invasion of homes under the pretext of executing one of those warrants.

In a slightly different situation, the Court of Appeals has recognized this danger:

To allow an arrest warrant for a nonviolent misdemeanor to create *carte blanche* for searching the homes of third parties creates the risk of the sort of abuse complained of here: using the arrest warrant as a “pretext for entering a home in which the police have a suspicion, but not probable cause to believe, that illegal activity is taking place.” The reason for requiring a search warrant separate from the arrest warrant is to interpose a neutral magistrate between the police and unlawful pretextual searches.

State v. Anderson, 105 Wn. App. 223, 232, 19 P.3d 1094 (2001) (citations omitted). The warning rings equally true for entering the homes of residents with outstanding misdemeanor warrants; requiring the interposition of a neutral magistrate will deter pretextual searches and uphold the constitutional right of privacy in one’s home for hundreds of thousands of Washington residents.

Amicus agrees with the *Chrisman* court that it “is only from a close examination of the facts and not a bright line rule” that it can be determined whether execution of a particular arrest warrant presents a compelling need. *Chrisman*, 100 Wn.2d at 820. Not all misdemeanors are

the same, and in some instances officers should be able to enter a home to execute warrants. The most obvious situation is when public safety is at risk, as with warrants involving domestic violence. There may be other exigent circumstances as well, but the best method to protect the interests of both law enforcement and privacy is the intervention of a neutral magistrate. This can take the form of a note on the arrest warrant itself, specifically finding that special circumstances warrant the execution of the misdemeanor warrant in the suspect's residence. Or, of course, police officers may seek a separate search warrant pursuant to CrR 2.3(b)(4), authorizing the entry into a specific place (including a residence) to seize the suspect.

None of these special circumstances was present in the current case. The warrant for Schinnell's arrest involved a very minor misdemeanor, driving while license suspended in the third degree. There was no hint of a safety risk to anybody. The police officers were primarily motivated by a desire to investigate methamphetamine manufacturing, not a desire to enforce the warrant. They could have arrested Schinnell as they observed him standing in the driveway before he entered Hatchie's home. There was ample time for the officers to seek a search warrant, but they made no attempt to do so. In sum, there was no compelling need to enter Hatchie's house in order to execute the arrest warrant. Accordingly, the

entry into the house without a search warrant violated the privacy guaranteed to Hatchie by Article 1, Section 7 of the Washington Constitution.

CONCLUSION

For the foregoing reasons, the ACLU respectfully requests the Court to reverse the Court of Appeals, and hold that Article 1, Section 7 prohibited entry into Hatchie's house in order to execute the misdemeanor arrest warrant for Schinnell.

Respectfully submitted this 25th day of May 2007.

FILED AS ATTACHMENT
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