

# ANCHORAGE POLICE DEPARTMENT



## BUREAU BULLETIN



LEGAL BULLETIN # 34

May 6, 1980

### WARRANTLESS ENTRY INTO PRIVATE RESIDENCE TO EFFECT ARREST

Reference: Theordore PAYTON  
v.  
State of New York

~~442 US 200 (1979)~~ U.S. Supreme Court  
~~Nos. 78-5420 & 5421~~  
~~April 15, 1980~~  
445 US 573 (1980)

### FACTS:

During a two-day investigation after the murder of a gas station manager, detectives assembled evidence sufficient to establish probable cause to believe PAYTON was responsible. Instead of applying for an arrest warrant, six officers went to PAYTON's apartment. When they arrived about 7:30 a.m. and knocked on the door, no one answered. The officers could, however, hear music coming from the apartment and could also see light inside. (New York statutes allowed a police officer to enter the premises of the person to be arrested if he reasonably believed that person to be present on the premises.) After about thirty minutes with still no answer, crow bars were used and the officers were able to make entry.

PAYTON was not present, but, while looking for him in "plain view" was a shell casing that was seized and later used at his trial. PAYTON asked that the evidence be suppressed. Relying on a New York statute, the court ruled that the warrantless and forcible entry was authorized and that the evidence in "plain view" was properly seized. PAYTON appealed to the U.S. Supreme Court.

### ISSUE:

Can the police, pursuant to a state statute, enter a private home to search for and arrest a suspect and while there seize an object in plain view without an arrest warrant?

HELD: No.

### REASONING:

1. State statutes cannot be enacted that enable police to violate the constitution (in this case, the Fourth Amendment).
2. In terms that apply equally to seizures of property and to seizures of persons, the Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant (emphasis added).

NOTES:

There also was a companion case to this (Obie RIDDICK v. New York) where the police made a warrantless entry into a private residence and effected the arrest of RIDDICK. Evidence found "incident to arrest" was suppressed.

Alaska Statute 12.25.100 is similar to the New York State that was held invalid in PAYTON. Because of the PAYTON case it would appear that the Alaska Statute is likewise invalid.

In this case, what the court did not say is of most importance Officers with probable cause who face truly exigent circumstances may still make warrantless entry into a dwelling to arrest a suspected felon. It is important to build a solid record so you will be able to articulate the "exigent circumstances" you have encountered. If you have "consent" to enter the dwelling, you may still effect the arrest if the suspect is in your "plain view". Again, you must demonstrate the "consent" as in any other search situation. The U.S. Supreme Court (see Warden v. Hayden, 387 U.S. 294) has already permitted a warrantless entry into a private residence under the "hot pursuit" exception to the warrant requirement.

The Alaska Supreme Court has also given us guidelines on what is permissible regarding warrantless entry into private residences. Recall the following:

- (1) State v. SPIETZ (APD Legal Bulletin No. 18)----where police made warrantless entry into a private residence and seized a quantity of marijuana which was suppressed; this case is sometimes referred to as the "threshold" case.
- (2) Charles S. FINCH v. State (APD Legal Bulletin No. 22)---where police made warrantless entry into a hotel room looking for a suspect (who was not present) and seized evidence which was later suppressed; this case is similar to PAYTON.
- (3) Donald SCHULTZ v. State (APD Legal Bulletin No. 23)----evidence gathered during investigation of a fire was used against him pursuant to "emergency" exception.

THE BEST RECOURSE STILL IS TO OBTAIN A WARRANT TO ARREST A PERSON, ABSENT EXIGENT CIRCUMSTANCES, JUST AS IT IS TO MAKE A SEARCH.