

# THIRD DEGREE COMMUNICATIONS, INC.

## TRAINING BULLETIN: LEGAL UPDATE

### *Ramey/Payton Warrants*

By Charles Gillingham

I like my house. I bet you do too. An easy way to put all that you have worked for in jeopardy is to fail to follow the law when it comes to the entry of a suspect's residence. Everything that follows from an illegal entry is bad! Not only do you jeopardize your case, but an aggressive attorney will sue you civilly. What do you do when you have no warrant for a suspect for whom you have probable cause to arrest?

***I want to arrest my suspect. She is at home. How do I get in the house?***

In the past, whenever officers had probable cause to arrest a suspect, they just drove to the house she was in, broke in, if necessary, and arrested her. After that entry, if officers were free to seize any contraband or evidence they saw in the house, they were free to seize it. This procedure was, nothing, if not efficient, as it avoided the necessity of judicial or prosecutorial review.

#### **The procedure changes.**

In 1976, the California Supreme Court, stated in *People v. Ramey*<sup>1</sup> that officers cannot enter a home to arrest a suspect without, a warrant, exigent circumstances, or consent to enter. The U.S. Supreme Court followed suit four years later in *Payton v. New York*, and made the *Ramey* rule the law of the land.<sup>2</sup> As a result, courts will suppress any evidence located and any statement taken in the residence for failure to comply with the *Ramey* requirements. Both courts were clear, officers must have a warrant to enter the suspect's home to arrest with probable cause.

#### **What is a *Ramey/Payton* warrant?**

A *Ramey/Payton* warrant is an arrest warrant. Usually, a judge issues a conventional arrest warrant after the DA has filed a criminal complaint against a suspect. The judge reviews the complaint and the police report or felony

affidavit and then, finding probable cause, issues the warrant for arrest. A *Ramey/Payton* warrant is a pre-complaint warrant. Generally no review occurs by the District Attorney. So, similar to a search warrant, the judge reviews a probable cause declaration by an officer and issues a warrant for the suspect's arrest before a prosecutor reviews the case or a case filed. Frequently, *Ramey/Payton* warrants are issued after normal court hours. In California, the Penal Code sections 817 and 840 codify the procedure to obtain a *Ramey/Payton* warrant.

### **When must officers comply with Ramey?**

An officer must comply with Ramey when she enters a home or private structure, for the sole purpose of arresting an occupant. The courts broadly define a private structure as anywhere the occupant has a reasonable expectation of privacy.<sup>3</sup> This includes, houses, apartments, condominiums and motel rooms.<sup>4</sup> *Ramey/Payton* does NOT apply to public places and/or businesses open to the public.<sup>5</sup> The requirements of *Ramey/Payton* also do not apply if officers are there for another purpose such as the execution of a search warrant or a parole or probation search.<sup>6</sup>

### **What about at the door?**

What happens when you go to the house, knock on the door and the suspect comes to the front door? Can you arrest that suspect without a warrant? Yes, provided the suspect steps to the threshold of the doorway. When the suspect comes to the front door and opens the door, the doorway becomes a public place.<sup>7</sup>

The question then becomes, does it matter how the suspect got to the door? The answer, in California, seems to be no. Officers can ask the suspect to come outside,<sup>8</sup> they can order the suspect out of the house,<sup>9</sup> and they can trick the suspect to the door in order to arrest.<sup>10</sup> Once the suspect is at the door, even if she retreats back into the house officers can enter and arrest.<sup>11</sup> When the suspect comes to the door, if she stays inside the doorway, not coming to the threshold, the cases vary as to whether stepping inside to arrest at that point is unlawful.<sup>12</sup> The careful officer will not have to worry, because they will have a *Ramey/Payton* warrant already in pocket.

### **What do I need to have to enter the suspect's home?**

Officers must have an arrest warrant or know a warrant is outstanding (signed by a judge) in order to enter the suspect's home to arrest her; second, you must reasonably believe the suspect lives in the home; and third, you must reasonably believe that the suspect is inside. The courts broadly define, however, whether

the suspect actually lives somewhere as whether the suspect has a substantial relationship to the property.<sup>13</sup> So, uncertainty exists whether a reasonable belief that a suspect lives at the residence equates to probable cause. Thus, the safer course is to gather probable cause. The court will evaluate your reasonable belief based on a totality of the circumstances.

### **How do I get a *Ramey/Payton* warrant?**

Prepare a declaration of probable cause to arrest. Fill out a *Ramey/Payton* warrant. Most jurisdictions have a standard form for officer use. Take the warrant to a judge for her signature. The consequences if you choose not to get a *Ramey/Payton* warrant include suppression of any physical evidence that is found in the residence and suppression of any statements taken at the residence. The suspect will not be released as a result of the illegal arrest and the case will be allowed to proceed, probably along with the federal civil rights lawsuit that will be filed. Comply with *Ramey/Payton*.

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<sup>1</sup> (1976) 16 Cal.3d 263

<sup>2</sup> *Payton v. New York* (1980) 445 U.S. 573.

<sup>3</sup> *People v. Willis* (1980) 104 Cal.App.3d 433.

<sup>4</sup>

<sup>5</sup> *People v. v. Lee* (1986) 186 Cal.App.3d 743, 746-7

<sup>6</sup> *People v. Palmquist* (1981) 123 Cal.App.3,1; *People v. Lewis* (1999) 74 Cal.App.4<sup>th</sup> 662.

<sup>7</sup> *U.S. v. Santana* (1976) 427 U.S. 38, 42; *U.S. v. Whitten* (9<sup>th</sup> Cir.1983) 706 F.2d 430, 432.

<sup>8</sup> *People v. Tillery* (1979) Cal.App.3d 975.

<sup>9</sup> *People v. Trudell* (1985) 173 Cal.App.3d 1221.

<sup>10</sup> *People v. Martino* (1985) 166 Cal.App. 777. Officers call suspect anonymously and tell him the police are coming and with a search warrant. Suspect flees residence and is arrested outside his residence.

<sup>11</sup> *U.S. v. Santana* 427 U.S. at 42-43, Officers go to suspect's house, they see her standing at the doorway, when she saw the officers she went back inside. The Court ruled that the officers could enter to arrest once they saw her outside.

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<sup>12</sup> *U.S. v. McCraw* (4<sup>th</sup> Cir. 1990) 920 F.2d 224, suspect opened door halfway, officers go in and arrest. Payton violation. But see, *U.S. v. Vaneaton* (9<sup>th</sup> Cir. 1995) 49 F3d. 1423, suspect opened door after seeing the officers outside. Arrest upheld.

<sup>13</sup> *U.S. v. Litteral* (9<sup>th</sup> Cir.1990) 910 F.2d 192.