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NOTE

**AFTER *UNITED STATES v. VANEATON*,
DOES *PAYTON v. NEW YORK* PREVENT
POLICE FROM MAKING WARRANTLESS
ROUTINE ARRESTS INSIDE THE HOME?**

I. INTRODUCTION

In *United States v. Vaneaton*,¹ the Ninth Circuit held that police did not violate the Fourth Amendment to the United States Constitution by making a warrantless arrest of a suspect who answered his door in response to their knock.² The majority distinguished the case from the United States Supreme Court's holding in *Payton v. New York*,³ which ordinarily requires police to obtain a warrant before arresting a suspect inside his or her dwelling.⁴ Instead, the court found that the police did not need a warrant to arrest the suspect, even though he stood within the identifiable threshold of the doorway, because he voluntarily exposed himself to the warrantless arrest by freely opening his door.⁵ In so holding, the Ninth Circuit ignored the firm line drawn in *Payton* by allowing a

1. 49 F.3d 1423 (9th Cir. 1995) (per Trott, J., joined by Thompson J.) (Tashima J., District Judge for the C.D. of Cal., sitting by designation, dissenting), *cert. denied*, 116 S. Ct. 1271 (1996).

2. *Id.* at 1427.

3. 445 U.S. 573 (1980) (drawing a bright line at the identifiable threshold of a dwelling and holding that the Fourth Amendment prohibits police from making a warrantless entry absent consent or exigent circumstances). See *infra* notes 53-69 and accompanying text for a discussion of *Payton*.

4. *Vaneaton*, 49 F.3d at 1427. The *Payton* rule also applies to motel rooms. *E.g.*, *United States v. Carrion*, 809 F.2d 1120, 1127-28 (5th Cir. 1987) (The *Payton* warrant requirement applies to guest rooms in commercial establishments.).

5. *Id.*

warrantless entry into a dwelling so long as police use no coercion and announce the arrest before stepping inside.⁶

II. FACTS AND PROCEDURAL HISTORY

In 1992, the Bend, Oregon police suspected John Vaneaton in several burglaries.⁷ In September, police went to Vaneaton's motel room intending to arrest him.⁸ Uniformed officers knocked on Vaneaton's door, but did not demand entry.⁹ Vaneaton looked out of his window, saw the officers, and opened the door.¹⁰ A detective asked if he was Jack Vaneaton.¹¹ When Vaneaton answered affirmatively, police arrested him.¹² At that point, Vaneaton stood inside the threshold of the door while the officers stood outside.¹³ The arresting officer entered the room only after notifying Vaneaton that he was under arrest.¹⁴ After handcuffing Vaneaton and advising him of his *Miranda* rights,¹⁵ the police asked for permission to search the room.¹⁶ Vaneaton gave verbal permission and signed a written consent form.¹⁷ When asked if he had a gun, Vaneaton directed the police to a closet where they found a revolver.¹⁸

6. *See id.* at 1429 (Tashima, J., dissenting).

7. *United States v. Vaneaton*, 49 F.3d 1423, 1425 (9th Cir. 1995).

8. *Id.* at 1424-25. The parties did not dispute that the police had probable cause to arrest Vaneaton for receiving stolen property. *Id.* at 1424. Police were aware that Vaneaton had been selling jewelry stolen from the Bend area to Portland pawn shops. *Id.* On September 9, 1992, Bend police toured motels to determine whether Vaneaton had been in Bend when the jewelry was stolen. *Id.* at 1425. Police not only discovered that Vaneaton had been in town at the time of the burglaries, but learned that he was staying at the Rainbow Motel that night. *Id.*

9. *Vaneaton*, 49 F.3d at 1425.

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Vaneaton*, 49 F.3d at 1425. "At no time did Vaneaton ask the officers into his room, step back to allow them to enter, or indicate in any other way that he consented to their [initial] entry [to arrest]." *Id.* at 1428 (Tashima, J., dissenting).

15. *See Miranda v. Arizona*, 384 U.S. 436 (1966) (Police must clearly inform a person of his or her Fifth Amendment privilege against self-incrimination prior to a custodial interrogation.).

16. *Vaneaton*, 49 F.3d at 1425.

17. *Id.*

18. *Id.*

At trial, Vaneaton moved to suppress introduction of the revolver as evidence, claiming that the warrantless arrest violated the rule of *Payton v. New York*.¹⁹ Absent consent or exigent circumstances, *Payton* requires police to obtain a warrant before entering a dwelling to make an arrest.²⁰ The district court denied Vaneaton's motion which allowed the prosecution to secure a conditional plea of guilty to a charge of felon in possession of a firearm.²¹ Vaneaton appealed the denial to the Ninth Circuit Court of Appeals.²²

III. BACKGROUND

A. THE FOURTH AMENDMENT

The Fourth Amendment to the United States Constitution applies to all searches and seizures by the government.²³ The first clause protects individuals against unreasonable searches and seizures by government officials.²⁴ The second clause requires warrants to be specific and supported by probable cause.²⁵

The relationship between these two clauses has created a recurring controversy in Fourth Amendment interpretation.²⁶

19. *Vaneaton*, 49 F.3d at 1424. *Payton v. New York*, 445 U.S. 573 (1980). See *infra* notes 53-69 and accompanying text for a discussion of *Payton*.

20. *Vaneaton*, 49 F.3d at 1425 (citing *Payton*, 445 U.S. 573).

21. *Id.* at 1424.

22. *Id.*

23. U.S. CONST. amend. IV. The Fourth Amendment provides that:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Id. The Supreme Court has held that the Fourth Amendment also controls searches and seizures by state officials through the Due Process Clause of the Fourteenth Amendment. See *Wolf v. Colorado*, 338 U.S. 25, 27-28 (1949).

24. U.S. CONST. amend. IV.

25. *Id.*

26. William W. Greenlaugh & Mark J. Yost, *In Defense of the "Per Se" Rule: Justice Stewart's Struggle to Preserve the Fourth Amendment's Warrant Clause*, 31 AM. CRIM. L. REV. 1013, 1013-14 (1994). The Fourth Amendment does not explicitly demand warrants for all searches or seizures, but if a warrant is issued, it must be specific and supported by probable cause. See U.S. CONST. amend. IV.

Since the framers did not focus their attention on precise language, different interpretations have emerged.²⁷ One interpretation contends that the second clause should define the first.²⁸ Under this view, a reasonable search or seizure requires a warrant unless exceptional circumstances exist which make obtaining a warrant impractical.²⁹

However, a majority of the Supreme Court reads the two clauses independently.³⁰ It contends that the government need not obtain a warrant so long as the search or seizure is reasonable in light of all the circumstances of the case.³¹ The Court balances the individual's expectation of privacy against the governmental interest in investigating and preventing crime.³² Even under this interpretation, however, the Court demands that police obtain a warrant to enter a home absent consent or exigent circumstances.³³

27. Silas J. Wasserstrom, *The Fourth Amendment's Two Clauses*, 26 AM. CRIM. L. REV. 1389, 1391 (1989). The framers' immediate motivation was to protect individuals from indiscriminate searches conducted by the King's officers under the authority of "general warrants." *Id.* at 1392. Therefore, James Madison's proposed version to the first Congress contained only one clause directed to prevent the abuses arising from "general warrants." *Id.* at 1391. The original proposal to the first Congress provided that:

The right to be secure in their persons, their houses, their papers, and their other property, from all unreasonable searches and seizures, shall not be violated by warrants issued without probable cause, supported by oath or affirmation, or not particularly describing the places to be searched, or persons to be seized.

Id. (emphasis added). However, before accepting the proposal, Congress amended the phrase "by warrants issued" to "and no warrants shall issue." *Id.* The state legislatures adopted and ratified this version of the Fourth Amendment with little discussion of its precise meaning. *Id.*

28. Greenlaugh & Yost, *supra* note 26, at 1016.

29. *Id.*

30. *Id.* at 1014.

31. *Id.*

32. Thomas K. Clancy, *The Future of Fourth Amendment Seizure Analysis After Hodari D. And Bostick*, 28 AM. CRIM. L. REV. 799, 799-800 (1991).

33. See *Payton v. New York*, 445 U.S. 573 (1980); see *infra* notes 53-69 and accompanying text for a discussion of *Payton*; see also *United States v. Harris*, 495 U.S. 14 (1990) (applying *Payton*).

B. THE FOURTH AMENDMENT'S ARREST WARRANT REQUIREMENT

In *United States v. Watson*,³⁴ the Supreme Court held that a statute authorizing a warrantless arrest based on probable cause carried out in a public place did not violate the Fourth Amendment.³⁵ The strong presumption of constitutionality was not overcome in light of the statute's consistency with the Court's prior cases, the common law, and the prevailing rule under state constitutions and statutes.³⁶ However, the Court left open the question whether police needed a warrant to enter a suspect's dwelling to make an arrest.³⁷ The Court answered this question affirmatively in *Payton v. New York*.³⁸

In *Payton*, the Supreme Court held that the Fourth Amendment prohibits the police from making a nonconsensual warrantless entry into a suspect's home to make an arrest absent exigent circumstances.³⁹ However, four years earlier in *United States v. Santana*,⁴⁰ the Supreme Court held that a suspect standing directly in her doorway as police approached stood in a public place.⁴¹ Considering these holdings, whether *Payton* prevents police from simply knocking on a suspect's door and then making an arrest when he opens it is not clear.⁴²

34. 423 U.S. 411 (1976) (Having probable cause to believe the defendant possessed stolen credit cards, postal officers made the arrest without a warrant in a public place.).

35. *Id.*

36. *Id.* at 415-19.

37. *Id.* at 418 n.6.

38. 445 U.S. 573 (1980).

39. *Id.* at 576.

40. 427 U.S. 38 (1976).

41. *Id.* at 42. See *infra* notes 43-52 and accompanying text for a discussion of *Santana*.

42. Thomas Y. Davies, *Denying a Right by Disregarding Doctrine: How Illinois v. Rodriguez Demeans Consent, Trivializes Fourth Amendment Reasonableness, and Exaggerates the Excuseability of Police Error*, 59 TENN. L. REV. 1, 17 n.43 (1991).

1. *United States v. Santana*

In *United States v. Santana*,⁴³ the defendant stood directly in her doorway as police approached.⁴⁴ When police identified themselves, the suspect retreated into the vestibule of her house.⁴⁵ Without a warrant, the police pursued her into the house to effectuate the arrest.⁴⁶

The Supreme Court held that Santana was standing in a public place when police first sought to arrest her.⁴⁷ The Court found that "she 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."⁴⁸ Therefore, the Court ruled that Santana had no expectation of privacy while standing directly in her doorway.⁴⁹

The *Santana* Court also held that a suspect could not thwart an arrest set in motion in a public place by retreating into a private place.⁵⁰ The Court found that once Santana saw the police, there was a realistic expectation that any delay by police in completing the arrest would result in the destruction of evidence.⁵¹ Therefore, the entry was justified as involving "hot pursuit," an exigent circumstance which allows police to enter a dwelling without a warrant.⁵²

43. 427 U.S. 38 (1976).

44. *Id.* at 40. An officer testified that one step forward would have put her outside, while one step backward would have put her in the vestibule of her residence. *Id.* at n.1.

45. *Id.* at 40.

46. *Id.*

47. *Id.* at 42.

48. *Santana*, 427 U.S. at 42.

49. *Id.*

50. *Id.* at 43.

51. *Id.*

52. *Id.* See generally 2 JOHN W. HALL, JR., SEARCH AND SEIZURE § 22:27-30 at 113-123 (2d ed. 1993) (discussing four justifications for a warrantless entry into the home: hot pursuit, possible destruction of evidence, likelihood of escape, and apprehension of peril).

2. *Payton v. New York*

Two years later, in *Payton v. New York*⁵³ and its companion case *People v. Riddick*,⁵⁴ the Supreme Court drew a firm line at the entrance of the house.⁵⁵ The Court held that the Fourth Amendment prohibits police from making a warrantless and nonconsensual entry into a suspect's home to make an arrest absent exigent circumstances.⁵⁶

In *Payton*, officers forcibly entered the suspect's home after they received no response to their knock.⁵⁷ Although Payton was not at home, officers seized evidence later used to convict him.⁵⁸ In *Riddick*, the suspect's young son answered the door after the police knocked.⁵⁹ When the officers saw the suspect sitting in bed through the opened door, they entered and arrested him.⁶⁰ The Supreme Court held that both warrantless entries violated the Fourth Amendment.⁶¹

The Court noted that "physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed."⁶² The majority held that courts should treat warrantless searches and seizures inside a home as presumptively unreasonable.⁶³ The majority agreed that:

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. This is simply too substantial an invasion to allow without a warrant, at least in the absence of exigent circumstances, even when it is accomplished

53. 445 U.S. 573 (1980).

54. The Court consolidated *Riddick* with *Payton* and issued only one opinion. *Id.* For the purposes of this note, the rules and principles announced by the Court will be referred to as *Payton*.

55. *Id.* at 590.

56. *Id.* at 576. See generally HALL, *supra* note 52, at 113-123.

57. *Payton*, 445 U.S. at 576.

58. *Id.* at 576-77.

59. *Id.* at 578.

60. *Id.*

61. *Id.* at 603.

62. *Payton*, 445 U.S. at 585 (quoting *United States v. United States Dist. Court*, 407 U.S. 297, 313 (1972)).

63. *Payton*, 445 U.S. at 586.

under statutory authority and when probable cause is clearly present.⁶⁴

The Court interpreted the Fourth Amendment to draw a firm line at the entrance to the house, and held that, absent exigent circumstances, that threshold may not reasonably be crossed without a warrant.⁶⁵

The Court then distinguished its reasoning in *United States v. Watson*,⁶⁶ which upheld warrantless arrests in public places.⁶⁷ The majority found the common law rule on warrantless arrests in the home less settled than that for warrantless public arrests.⁶⁸ The majority noted that the prevailing practice when the Fourth Amendment was adopted required a warrant to make an arrest inside a home unless police were in hot pursuit.⁶⁹

3. Which Decision Controls When Police Summon the Arrestee's Presence at the Door by a Knock?

Courts and commentators disagree whether *Payton* prevents the police from simply knocking on a door and then arresting a suspect when he answers it.⁷⁰ Since *Payton* prohibits only a warrantless entry into a home, police should not need to obtain a warrant if the arrest can be accomplished without crossing the threshold.⁷¹ *Payton* does not prohibit suspects from surrendering to the police at their door.⁷² One commentator argues that the legality of such arrests should not "be determined by resort to a plumb bob."⁷³ He suggests that a "de

64. *Id.* at 588-89 (quoting *United States v. Reed*, 572 F.2d 412, 423 (2d Cir. 1978)).

65. *Payton*, 445 U.S. at 590.

66. 423 U.S. 411 (1976).

67. *Payton*, 445 U.S. at 590-98.

68. *Id.* at 596.

69. *Id.* at 598.

70. See 2 WAYNE R. LAFAVE, SEARCH AND SEIZURE § 6.1(e) at 589 (2d ed. 1987); HALL, *supra* note 52, at 127.

71. LAFAVE, *supra* note 70, at 590.

72. *Id.*

73. See *id.* A "plumb bob" is a piece of lead or some other weight attached to a line used for determining perpendicularity. WEBSTER'S ENCYCLOPEDIA UNABRIDGED DICTIONARY 1107 (1989).

minimis" breaking of the vertical plane of the threshold by the arresting officer should not be a violation of the *Payton* rule.⁷⁴ However, another commentator argues that police should obtain a warrant before knocking on a suspect's door because the police invariably need to enter to perfect an arrest.⁷⁵

The Fifth Circuit relied on *Santana* to find that an individual had no protectable expectation of privacy after opening his hotel room door to police.⁷⁶ The court held that the warrantless arrest of a suspect standing inside the threshold did not violate *Payton* because the arrest was effected before officers entered the room.⁷⁷

However, courts have held that a person does not necessarily surrender his or her expectation of privacy merely by answering the door in response to a knock.⁷⁸ If the police assert their authority to arrest from outside a dwelling, the Seventh Circuit allows them to cross the threshold to the extent necessary to complete the arrest only if the arrestee submits to that authority.⁷⁹ Some courts have maintained that an arrest occurs in the home even if the arresting officer never crosses the threshold.⁸⁰ These courts consider the location of the ar-

74. See LAFAVE, *supra* note 70, at 590.

75. See HALL, *supra* note 52, at 127.

76. See *United States v. Carrion*, 809 F.2d 1120, 1128 (5th Cir. 1987).

77. *Id.* In *Carrion*, an agent aimed a gun at the suspect and ordered him to raise his hands. *Id.* The court found that the suspect must have understood that he was under arrest. *Id.*

78. See, e.g., *United States v. Berkowitz*, 927 F.2d 1376, 1387 (7th Cir. 1991) (people do not abandon their expectation of privacy by opening their door from within to answer a knock), *cert. denied*, 502 U.S. 845 (1991); *State v. Holeman*, 693 P.2d 89, 91 (Wash. 1985) (the Fourth Amendment prohibits police from arresting a suspect standing in the doorway of his house without a warrant absent exigent circumstances).

79. *Berkowitz*, 927 F.2d at 1387. In *Berkowitz*, the government contended that the agent notified the suspect that he was under arrest from outside the threshold and that the defendant did not resist, but merely asked for his coat. *Id.* at 1380. The government's version of the facts would not have violated the Fourth Amendment. *Id.* at 1385.

80. E.g., *United States v. Morgan*, 743 F.2d 1158, 1166 (6th Cir. 1984) (rejecting the argument that *Payton* is inapplicable since officers did not cross the threshold until the defendant was arrested at the door), *cert. denied*, 471 U.S. 1061 (1985); *State v. Holeman*, 693 P.2d 89, 91 (Wash. 1985) (rejecting the argument that *Payton* is inapplicable if police never physically cross the threshold because it is the location of the arrestee that determines whether an arrest occurs in the home).

restee, not the arresting officer, to determine whether an arrest occurs inside the home.⁸¹

4. Prior Ninth Circuit Decisions

Before the Supreme Court decided *Payton*, the Ninth Circuit in *United States v. Botero*⁸² held that police did not need a warrant to arrest a suspect as he opened his door in response to their knock.⁸³ The unanimous court noted that the arresting officers had not entered the apartment.⁸⁴ Therefore, the court stated that an issue of a warrantless entry was not before them.⁸⁵ However, in dictum, the court noted that the arresting officers could have entered the suspect's apartment because *Santana* held a doorway to be a public place.⁸⁶

After the Supreme Court decided *Payton*, the Ninth Circuit in *United States v. Johnson*⁸⁷ considered the police conduct to determine whether a warrant was required to arrest a suspect who opened his door after police knocked.⁸⁸ The *Johnson* court held that the warrantless arrest in the doorway violated the Fourth Amendment because the police used a subterfuge to get the defendant to open his door.⁸⁹ The Ninth Circuit recognized that the defendant stood inside while the officers stood outside the home with their weapons drawn. The court found that "in these circumstances, it is the location of the arrested person,

81. *Id.* Courts commonly cite *United States v. Johnson*, 626 F.2d 753, 757 (9th Cir. 1980), *aff'd*, 457 U.S. 537 (1982), for the proposition that it is the location of the arrestee that determines whether an arrest occurs inside the home. Broad reliance on *Johnson* may be unwarranted, however, because the court added the qualifier, "[i]n these circumstances," which included the fact that police had their weapons drawn. *See id.* at 757.

82. 589 F.2d 430 (9th Cir. 1978), *cert. denied*, 441 U.S. 944 (1979).

83. *Id.* at 432.

84. *Id.*

85. *Id.*

86. *Id.*

87. 626 F.2d 753 (9th Cir. 1980).

88. *See id.* at 757.

89. *Id.* Police misrepresented their identities so "Johnson's initial exposure to the view and the physical control of the agents was not consensual on his part." *Id.* Other circuits agree with this reasoning. *E.g.*, *United States v. Morgan*, 743 F.2d 1158 (6th Cir. 1984) (warrantless arrest violated the Fourth Amendment when police obtained the defendant's presence at the door by flooding the house with spotlights and summoned him with a bullhorn).

not the arresting agents, that determines whether an arrest occurs in the home."⁹⁰

In *United States v. Whitten*,⁹¹ the Ninth Circuit upheld a warrantless arrest of a suspect who stood in the doorway after opening his door.⁹² The Ninth Circuit relied on *Santana* for the proposition that a doorway, unlike the interior of a hotel room, is a public place.⁹³ Therefore, the court concluded that the police did not need a warrant.⁹⁴ However, before *United States v. Vaneaton*, the Ninth Circuit had not decided a case in which the government conceded that the arrestee clearly stood "inside" the threshold after answering his door to police who had simply knocked.⁹⁵

IV. THE COURT'S ANALYSIS

A. MAJORITY: EXPOSED TO ARREST BY VOLUNTARILY OPENING THE DOOR

The majority in *United States v. Vaneaton* held that police did not violate the Fourth Amendment to the United States Constitution when they made a warrantless arrest of a suspect who answered his door in response to their knock.⁹⁶ The majority noted that this case did not implicate the zone of privacy that the Supreme Court sought to protect in *Payton v. New York*.⁹⁷ The majority found that knocking on Vaneaton's door did not resemble the kind of "invasion" or "intrusion" that

90. *Johnson*, 626 F.2d at 757.

91. 706 F.2d 1000 (9th Cir. 1983).

92. *Id.* at 1015. *Contra* *United States v. Morgan*, 743 F.2d 1158, 1166 n.2 (6th Cir. 1984) ("To the extent that *Whitten* validates the warrantless arrest of individuals standing in the doorway of a private residence absent exigent circumstances, we believe that this holding is contrary to the rule established in *Payton*.").

93. *Whitten*, 706 F.2d at 1015.

94. *Id.* Although the warrantless arrest at the door was legal, the *Whitten* court found the subsequent entry into the suspect's room to have violated the Fourth Amendment since police had not obtained consent. *Id.* at 1016.

95. *See Vaneaton*, 49 F.3d 1423.

96. *United States v. Vaneaton*, 49 F.3d 1423, 1427 (9th Cir. 1995).

97. *Id.* *Payton v. New York*, 445 U.S. 573 (1980). In *Payton*, the Supreme Court stated that 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." *Id.* at 590. See *infra* notes 53-69 and accompanying text for a discussion of *Payton*.

Payton guards against.⁹⁸ The majority distinguished *Payton* by noting that in that case the entries preceded the arrests, while police advised Vaneaton that he was under arrest while still outside the threshold.⁹⁹

Although the majority recognized that police are prohibited from making a nonconsensual entry into a suspect's dwelling to make a felony arrest absent exigent circumstances, the court refused to decide the case on whether Vaneaton was standing inside or outside the threshold of the doorway.¹⁰⁰ Instead, the majority focused on whether Vaneaton voluntarily exposed himself to the warrantless arrest by freely opening the door of his motel room to the police.¹⁰¹

The Ninth Circuit relied heavily on its earlier holding in *United States v. Johnson*¹⁰² that the warrantless arrest of the defendant in his doorway violated the Fourth Amendment because the police misrepresented their identities to get the defendant to open his door.¹⁰³ According to the majority, *Johnson* implied that police could arrest a suspect without a warrant if he voluntarily opened the door in response to a noncoercive knock.¹⁰⁴ The majority then noted the consistency with its previous decision in *United States v. Whitten*,¹⁰⁵ that a warrantless arrest of a suspect standing in the doorway of his motel room in response to a police knock did not violate *Payton* because a doorway, unlike the interior of a hotel room, is a public place.¹⁰⁶

Since the police used no force, threats, or any type of subterfuge to compel Vaneaton to open his door, the court found

98. *Vaneaton*, 49 F.3d at 1427. The majority noted that knocking on a door is hardly a mark of a police state. *Id.*

99. *Id.* at 1426-27.

100. *Id.* at 1426.

101. *Id.*

102. 626 F.2d 753 (9th Cir. 1980).

103. *Vaneaton*, 49 F.3d at 1426.

104. *Id.*

105. 706 F.2d 1000 (9th Cir. 1983).

106. *Vaneaton*, 49 F.3d at 1426. See *United States v. Watson*, 423 U.S. 411 (1976) (The Fourth Amendment is not violated by a warrantless felony arrest in a public place.).

that he voluntarily exposed himself in a public place.¹⁰⁷ The majority pointed out the district court's finding that Vaneaton opened the door voluntarily without police coercion.¹⁰⁸ The majority noted that the trial court's findings should not be overturned unless they are clearly erroneous.¹⁰⁹ Since Vaneaton voluntarily exposed himself in a public place, the majority held that his warrantless arrest did not violate the Fourth Amendment.¹¹⁰

B. DISSENT: ANSWERING THE DOOR SHOULD NOT EXPOSE ONE TO A WARRANTLESS ARREST

Judge Tashima, dissenting from the majority, asserted that arresting a citizen inside his or her home without a warrant, merely because he opened his door in response to a knock by police, is flatly contrary to *Payton v. New York*.¹¹¹ To make a warrantless arrest inside one's dwelling, the dissent maintained that *Payton* requires a showing of exigent circumstances or of defendant's consent to the entry.¹¹² The dissenting judge noted that the government failed to make a showing of either.¹¹³ He suggested that Vaneaton, after seeing the uniformed officers out of his window, merely submitted to the implied authority of the police and did not consent to their entry into his motel room.¹¹⁴

107. *Vaneaton*, 49 F.3d at 1427.

108. *Id.*

109. *Id.* (citing *United States v. Al-Azzawy* 784 F.2d 890, 895 (9th Cir. 1985), *cert. denied*, 476 U.S. 1144 (1986)).

110. *Vaneaton*, 49 F.3d at 1427.

111. *Id.* at 1427 (Tashima, J., dissenting).

112. *Id.* at 1428. In a footnote, the dissent cited *Johnson*, 626 F.2d at 757, for the proposition that it is the location of the arrested person, and not the arresting officer, that determines whether an arrest occurs within the home. *See Vaneaton*, 49 F.3d at 1428 n.3. Therefore, the dissent concluded that it is unquestioned that Vaneaton was arrested within his dwelling under Ninth Circuit law. *Id.*

113. *Id.* at 1428. The government also argued that exigent circumstances justified the warrantless arrest. *Id.* at 1428 n.2. However, nothing prevented the police from obtaining a telegraphic warrant since four officers prevented Vaneaton from escaping. *Id.* Furthermore, police did not have a justifiable apprehension that evidence might be destroyed as in a drug case. *Id.*

114. *Vaneaton*, 49 F.3d at 1428. *See United States v. Shaibu*, 920 F.2d 1423 (9th Cir. 1990) (Mere submission to the implied authority of uniformed police officers at one's door does not imply consent.).

The dissent characterized the majority opinion as adding a new "voluntary exposure" exception to *Payton*.¹¹⁵ However, Judge Tashima asserted that neither Ninth Circuit nor Supreme Court case law supports a "voluntary exposure" exception.¹¹⁶ His opinion noted that a recent Supreme Court case, *New York v. Harris*,¹¹⁷ was factually very similar to *Vaneaton*.¹¹⁸ In *Harris*, the Court accepted the trial court's finding that Harris did not consent to the entry and held the warrantless arrest to have violated the rule of *Payton*.¹¹⁹

Judge Tashima contended that the majority's use of case law was misguided.¹²⁰ He pointed out that, independent and unrelated to police conduct, the defendant in *Santana* stood on the threshold when police approached her.¹²¹ In a footnote, the dissent also pointed out that exigent circumstances justified the actual entry into Santana's home.¹²² Judge Tashima then attacked the majority's use of *Johnson*, in which the police misidentified themselves to coerce the arrestee to open his door.¹²³ His opinion noted that *Johnson* did not hold that the warrantless arrest would have been legal if they had not misidentified themselves.¹²⁴ Although the *Whitten* court, relying on *Santana*, found the suspect to be in a public place while standing *in* the doorway, the dissent urged that the warrantless arrest would have violated the Fourth Amendment if the defendant clearly stood *inside* the room.¹²⁵ He further argued that *United States v. Al-Azzawy*¹²⁶ made clear that one may voluntarily expose oneself to arrest only by stepping *outside* of

115. *Vaneaton*, 49 F.3d at 1428.

116. *Id.*

117. 495 U.S. 14 (1990) (Police knocked on the door with their guns and badges displayed and arrested the defendant after he let them enter.).

118. *Vaneaton*, 49 F.3d at 1428.

119. *Id.* at 1428-29.

120. *See id.* at 1429.

121. *Id.*

122. *Id.* at 1429 n.5.

123. *Vaneaton*, 49 F.3d at 1429.

124. *See id.*

125. *Id.*

126. 784 F.2d 890 (9th Cir. 1985). In *Al-Azzawy*, police drew their weapons used a bullhorn to order the defendant to come out of his trailer. *Vaneaton*, 49 F.3d at 1429. The court held that the defendant did not voluntarily expose himself outside his trailer but emerged only under circumstances of extreme coercion. *Id.*

one's home, not by remaining within it.¹²⁷ The dissent urged that the Ninth Circuit cases do not represent the proposition that a citizen exposes himself to a warrantless arrest anytime he answers a door to the police.¹²⁸ Therefore, the dissent concluded that the majority's position is inconsistent with *Payton*.¹²⁹

Judge Tashima asserted that the majority's opinion not only erodes the privacy interests protected by the Fourth Amendment, but is also bad policy.¹³⁰ His opinion warned that routine police investigation would be more difficult because the majority's decision discourages citizens from answering their doors when police knock.¹³¹

V. CRITIQUE

The *Vaneaton* majority decided that police do not need a warrant to make a doorway arrest as long as they do not use coercion or subterfuge to compel the suspect to open his door.¹³² In doing so, the Ninth Circuit has ignored the firm line drawn by *Payton v. New York*.¹³³ Instead, the Ninth Circuit has adopted a rule that effectively protects only those who refuse to answer their doors when the police knock.¹³⁴ Since police did not need to obtain consent or have exigent circumstances to enter Vaneaton's motel room, the dissent correctly characterized the majority's opinion as creating a third exception to *Payton's* warrant requirement.¹³⁵ The Ninth Circuit now permits police to cross a threshold without a warrant to

127. *Vaneaton*, 49 F.3d at 1429.

128. *Id.*

129. *Id.* at 1430. Alternatively, the dissent argued that Vaneaton's behavior was not voluntary. *Id.* at 1430 n.8. The dissent pointed out that "coercion is implicit in situations where consent is obtained under color of the badge." *Id.* (citing *Shaibu*, 920 F.2d at 1427).

130. *Vaneaton*, 49 F.3d at 1430.

131. *Id.*

132. *United States v. Vaneaton*, 49 F.3d 1423, 1427 (9th Cir. 1995). See *supra* notes 96-110 and accompanying text for a discussion of the majority's analysis.

133. *Vaneaton*, 49 F.3d at 1429 (Tashima, J., dissenting). *Payton v. New York*, 445 U.S. 573 (1980).

134. See *Vaneaton*, 49 F.3d at 1430 (Tashima, J., dissenting).

135. *Id.* at 1428 (Tashima, J. dissenting). See *supra* notes 111-31 and accompanying text for a discussion of the dissent's opinion.

the extent necessary to effectuate an arrest as long as the suspect voluntarily exposes himself to arrest by freely choosing to answer his or her door.¹³⁶

Courts, including the Ninth Circuit, have relied on *United States v. Santana*¹³⁷ to uphold warrantless arrests in doorways.¹³⁸ However, three factual differences distinguish *Santana* from *Vaneaton*. First, the Supreme Court expressly noted that the defendant in *Santana* stood directly in the doorway, not inside of it.¹³⁹ She exposed herself to public view, speech, hearing, and touch as though she had been standing completely outside her house.¹⁴⁰ Conversely, *Vaneaton* stood directly inside the identifiable threshold of his doorway.¹⁴¹

Second, *Santana* stood in her doorway as police approached, not as a result of a summons by police.¹⁴² The *Vaneaton* majority cursorily stated that the zone of privacy sought to be protected in *Payton* was not implicated in this case.¹⁴³ However, there seems to be a significant difference in the level of privacy an individual expects when answering his or her door but remaining inside the threshold as opposed to standing in an open doorway as police approach.¹⁴⁴ The Ninth Circuit's decision in *Vaneaton* assumes an individual forfeits his Fourth Amendment privacy interest by answering his door.¹⁴⁵ However, individuals should be allowed to answer

136. See *Vaneaton*, 49 F.3d 1423.

137. 427 U.S. 38 (1976) (a defendant had no expectation of privacy while standing directly in her doorway). See *supra* notes 43-52 and accompanying text for a discussion of *Santana*.

138. 2 WAYNE R. LAFAVE, SEARCH AND SEIZURE § 6.1(e) at 589 (2d ed. 1987) (Some of the post-Payton lower court cases have upheld warrantless doorway arrests by relying on *Santana* and describing the location of the arrestee as *in* the doorway.); see, e.g., *United States v. Whitten*, 706 F.2d 1000, 1015 (9th Cir. 1983) (citing *Santana* for the proposition that a doorway, unlike the interior of a hotel room, is a public place).

139. *Santana*, 427 U.S. at 40 n.1.

140. *Id.* at 42.

141. *Vaneaton*, 49 F.3d at 1425.

142. *Santana*, 427 U.S. at 40.

143. See *Vaneaton*, 49 F.3d at 1427.

144. See *United States v. Berkowitz*, 927 F.3d 1376, 1387 (7th Cir. 1991). The *Berkowitz* court found that a person does not forfeit his privacy interest in his home by merely answering the door in response to a knock. *Id.* "We think society would recognize a person's right to choose to close his door on and exclude people he does not want within his home." *Id.*

145. *Accord United States v. Carrion*, 809 F.2d 1120, 1128 (5th Cir. 1987) (The

their doors without exposing themselves to a warrantless arrest.¹⁴⁶

Finally, *Santana* does not clearly stand for the proposition that police are justified in making a warrantless entry to arrest anytime a suspect stands at a doorway.¹⁴⁷ In *Santana*, exigent circumstances justified the actual entry into the defendant's home.¹⁴⁸ In *Vaneaton*, the majority did not contend that exigent circumstances justified the warrantless entry into the motel room to effectuate the arrest.¹⁴⁹

Absent exigent circumstances or consent, *Payton* requires police to obtain a warrant before crossing the threshold of a home to make an arrest.¹⁵⁰ The dissent correctly pointed out that *Vaneaton* never gave his consent to the entry by police.¹⁵¹ In *United States v. Shaibu*, the Ninth Circuit recognized that individuals do not expect others to come into their homes, even though the door is open, without first requesting permission to enter.¹⁵² The court found that a defendant's submission to an officer thrusting himself into an apartment did not constitute effective consent.¹⁵³

Without a showing of exigent circumstances or consent, *Vaneaton* allows police to enter a dwelling to the extent necessary to effectuate an arrest so long as the suspect "voluntarily

defendant had "no protectable expectation of privacy at the open door to his hotel room.").

146. *State v. Holeman*, 693 P.2d 89, 91 (Wash. 1985).

147. *See Santana*, 427 U.S. 38 (1976).

148. *See id.* at 42-43. *Santana* involved "hot pursuit". *Id.* at 42-43. Police had a realistic expectation that any delay would result in the destruction of evidence. *Id.* at 43.

149. *Vaneaton*, 49 F.3d at 1428 n.2 (Tashima, J., dissenting).

150. *Payton*, 445 U.S. at 590.

151. *See id.* at 1428 (Tashima, J., dissenting). *See also United States v. Edmonson*, 791 F.2d 1512 (11th Cir. 1986). After agents ordered the suspect to open his door, the suspect opened it, turned around, and placed his hands on his head. *Id.* at 1514. The court held that this did not amount to implied consent to be arrested inside his residence since it was prompted by a show of official authority. *Id.* at 1515.

152. *United States v. Shaibu*, 920 F.2d 1423, 1427 (9th Cir. 1990) (recognizing that we do not expect others to walk into our homes without consent even if the door is open, and that an open door does not give police legal grounds to enter the home without an explicit request when they infer consent from acquiescence).

153. *Id.*

exposes" himself by opening his door.¹⁵⁴ In so holding, the Ninth Circuit has ignored *Payton's* clear rule.

VI. CONCLUSION

The Ninth Circuit in *United States v. Vaneaton* allowed police to make a warrantless arrest of a suspect who opened his door in response to a knock but remained inside the threshold.¹⁵⁵ The court refused to accept the argument that the Supreme Court's decision in *Payton v. New York* required a warrant, even when the police had to cross the identifiable threshold to complete the arrest.¹⁵⁶ With this decision, the Ninth Circuit allows police to make a warrantless arrest inside a suspect's dwelling so long as the suspect opens his door voluntarily and the police notify him of his arrest from outside the threshold.¹⁵⁷

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154. *See Vaneaton*, 49 F.3d at 1423.

155. *United States v. Vaneaton*, 49 F.3d 1423 (9th Cir. 1995).

156. *Id.* at 1426.

157. *Vaneaton*, 49 F.3d 1423.

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