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United States v. Brinkley, “Knock and Talk without Probable Cause”

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Our case today comes from the Fourth Circuit. In February 2017, a federal-state task force in Charlotte, North Carolina pursued outstanding arrest warrants. Among the targets was Kendrick Brinkley, who had an outstanding arrest warrant for unlawfully possessing a firearm as a convicted felon. An ATF agent and Detective on the taskforce found Brinkley after extensive research into his addresses. Where things start to fall apart, however, is when Agent Murphy and Detective Stark only followed up with one address after “following their gut”.

An important note before we move forward; in most cases police officers must have a search warrant, consent, or an exception to the warrant requirement to enter a home. However, in [Payton v. New York](#), the Supreme Court held that in some circumstances an arrest warrant may allow officers to enter a home in order to apprehend a suspect. Specifically, the Court held that **“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 the suspect is within.”** The circuit courts of appeals have always interpreted *Payton*’s standard the same way and believe that the “reason to believe the suspect is within,” requires a two-prong test. First, officers must have reason to believe both: (1) that the location is the suspect’s residence, and (2) that the suspect will be home when the officers enter.

Let’s review the facts of the case and talk about what could have been done differently.

FACTS

In February 2017, a federal-state task force in Charlotte, North Carolina sought to execute outstanding arrest warrants. Kendrick Brinkley had an outstanding arrest warrant for unlawfully possessing a firearm as a convicted felon. ATF Special Agent Jason Murphy oversaw the operation. An ATF analyst provided Agent Murphy with at least two possible addresses; because a water bill for one of these addresses was in Brinkley’s name, Agent Murphy initially believed that address was Brinkley’s most likely residence. One of the other addresses that the analyst provided was an apartment on Stoney Trace Drive.

At the same time, Detective Robert Stark of the Charlotte-Mecklenburg Police Department, who was also a member of Agent Murphy’s task force, tried to locate Brinkley. Detective Stark searched for Brinkley on CJLEADS, North Carolina’s statewide law enforcement database. Detective Stark found

multiple addresses linked to Brinkley. Two CJLEADS entries entered in January 2017 were associated with the Stoney Trace apartment. However, other CJLEADS entries placed Brinkley at numerous other addresses.

To further confirm his findings, Detective Stark found Brinkley's public Facebook page. Posts and photos there led him to believe that Brinkley was dating Brittany Chisholm. Detective Stark searched for Chisholm on CJLEADS and found that she was also associated with the Stoney Trace apartment. Based on this information, Detective Stark concluded that Brinkley lived there with Chisholm. Detective Stark reported his conclusion to Agent Murphy, who agreed that Brinkley probably lived in the Stoney Trace apartment. However, neither officer was certain that they had located Brinkley's address. Instead, in Agent Murphy's experience, it was "common for someone like Mr. Brinkley...to have more than one place where they will stay the night."

The next day, Agent Murphy, Detective Stark, and three other police officers went to the Stoney Trace apartment at 8:30 a.m. to conduct what both Agent Murphy and Detective Stark characterized as a "knock-and-talk" to "start [their] search for Mr. Brinkley." Agent Murphy acknowledged that he "had no idea if [Brinkley] was going to be there that morning," but thought the Stoney Trace apartment was the "most likely address" to "find Mr. Brinkley or evidence of his whereabouts."

Detective Stark knocked on the front door, and Brittany Chisholm opened it. Detective Stark told Chisholm the officers were looking for Brinkley and asked to enter the apartment. Chisholm denied that Brinkley was there. According to Detective Stark, Chisholm grew "very nervous"; her "body tensed" and her "breathing quickened," and she looked back over her shoulder into the apartment. The officers saw another woman, later identified as Jermica Prigon, in the living room. The officers heard movement coming from a room in the back of the apartment, and both Chisholm and Prigon repeatedly looked back toward that area. Detective Stark again asked if Brinkley was present and if the officers could enter to look for him. He explained that the officers "had information that [Brinkley] was staying at this residence" and "asked for [Chisholm's] permission...to come through and just do a walkthrough to make sure that he was indeed not at the residence." Chisholm, still seeming nervous, answered that she did not want the police officers to enter her apartment and asked if they had a search warrant authorizing them to do so.

Based on Chisholm's demeanor, Prigon's presence, the movement they heard in the back of the apartment, and the morning hour (8:30 a.m.), the officers believed that Brinkley was inside. At this point, the officers decided not to follow the original plan to secure the area and wait to see if Brinkley

left the home. Instead, Agent Murphy told Chisholm that he believed she was hiding Brinkley and that the officers were going to enter the apartment to serve an arrest warrant on him. The five officers entered the apartment, found Brinkley in a bedroom, and arrested him.

Afterwards, while conducting a protective sweep, the officers found digital scales, a plastic baggie containing cocaine base, and a bullet. The officers then obtained a warrant to search the apartment and seized three firearms and magazines. The government charged Brinkley with several drug and firearm offenses based on the discovery of this evidence.

Brinkley filed a motion to suppress the evidence the officers obtained after entering the Stoney Trace apartment, arguing that when the officers entered the apartment, they lacked reason to believe that he: (1) resided in the apartment or, (2) would be present there at that time. The district court disagreed and denied Brinkley's motion. Brinkley appealed.

FOURTH CIRCUIT OPINION

The Fourth Circuit Court of Appeals recognized that the circuit courts of appeals were divided as to the level of proof needed to satisfy the "reason to believe" standard set forth in *Payton*; the court found that some circuits feel that "reason to believe" is less than probable cause while other circuits believe it should equate to probable cause. In this case, the court agreed with the circuits that have found "reason to believe" to equate with probable cause. Applying this requirement, the court concluded that before entering the Stoney Trace Apartment without a search warrant, the officers needed to have probable cause that Brinkley resided there and would be present when they entered.

Looking at *Payton*'s first prong, the court found that the information known to the officers suggested that Brinkley may have stayed temporarily in several places. However, the court noted that the officers investigated only the Stoney Trace apartment, even though they found several addresses. Under *Payton*, the officers needed to establish reason to believe not just that Brinkley was staying in the Stoney Trace apartment, but that he resided there. Detective Stark's discovery that Brinkley was involved with Chisholm and that Chisholm was associated with the Stoney Trace apartment provided evidence that Brinkley might have stayed in Chisholm's home, but it did not prove if he was fully living there or just Chisholm's overnight guest from time to time.

After focusing on the Stoney Trace apartment, the officers did not investigate the address on the utility bill associated to Brinkley or any of the numerous addresses found on CJLEADS, even though some of them were listed multiple times. The court stated that had the officers ruled out any of these alternatives, it could have reinforced their theory that Brinkley resided in the Stoney Trace apartment. Although the officers developed a well-founded suspicion that Brinkley might have

stayed in the Stoney Trace apartment at times, the court held that that the officers failed to establish probable cause that Brinkley resided there. As a result, the court found that the officers' entry into the apartment was unlawful.

Next, the court added that even if the available information were enough to give the officers reason to believe that Brinkley resided in the Stoney Trace apartment, the officers did not satisfy *Payton's* second prong because they failed to establish probable cause that Brinkley would be present in the home when they entered. The court noted that "a substantiated belief as to the suspect's residence is especially important," because if a person is known to live at a particular location, it is reasonable to expect him to be there. However, in this case, the officers documented multiple other possible primary residences for Brinkley and initially only went to the Stoney Trace apartment to gather more information.

The court also argued that the noises the officers heard in the apartment, and Chisholm and Prigon's reactions to them, could have been made by anyone. The officers had no reason to believe that the noises came from Brinkley.

Lastly, the court held that Chisholm's nervousness was understandable under the circumstances, as she was confronted by five armed police officers who consistently pressed her to allow them to enter the apartment. The court concluded that "when police have limited reason to believe a suspect resides in a home, generic signs of life inside and understandably nervous reactions of residents, without more, do not amount to probable cause that the suspect is present within."

TAKEAWAYS

In law enforcement, there are so many times when we just trust our gut. Arguably it can be what makes someone an outstanding investigator and officer. But even when you trust your gut, you have to follow proper protocol to protect yourself and your department from liability in court. This team did extensive research into Brinkley's addresses and had they fully followed through with some of their leads they would have been better able to argue their case. The Fourth Circuit even noted that had the task force followed up with a few of the addresses and proven that Brinkley was not residing there, this would have strengthened their proof of residence claims about Stoney Terrace. Unfortunately, years of experience and a hunch about something does not hold up in court.