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ONE MINUTE BRIEF

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NUMBER: 2018-16 **DATE:** 09-21-18 **BY:** Devallis Rutledge **TOPIC:** Justifying Entry

ISSUE: What are the 4 ways law enforcement officers can justifiably enter private premises (including the curtilage) without violating the Fourth Amendment?

- “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.” *Payton v. New York* (1980) 445 US 573, 590 (ordering **suppression of evidence** from unjustifiable entry).
- “[I]f officers enter without [legal justification], they expose themselves to potential **civil liability** under 42 USC § 1983.” *Segura v. US* (1984) 468 US 796, 812.
- And, “the Court considers **curtilage**—the area immediately surrounding and associated with the home—to be part of the home itself for Fourth Amendment purposes.” *Collins v. Virginia* (2018) 138 S.Ct. 1663, 1670.

These principles mean that officers entering the curtilage or the home must do so under one or more of the 4 recognized justifications (but note that entry onto the curtilage to seek a consensual “**knock-and-talk**” is **OK**, per *Florida v. Jardines* (2013) 569 US 1, 8). These 4 recognized justifications are (1) warrant, (2) consent, (3) probation/parole/PRCS search term, and (4) exigency. There are, in turn, 2 common kinds of warrants, and 6 categories of exigency:

(1) Warrants. Entry can be made under a **search warrant** for a particular place. *US v. Leon* (1984) 468 US 897, 912. Entry can also be made under an **arrest warrant**, but **only if** two conditions are met: “[A]n arrest warrant, founded on probable cause, implicitly carries with it the limited authority **to enter** a dwelling [1] in which the suspect **lives**, [2] when there is reason to believe the suspect is **within**.” *Payton v. New York* (1980) 445 US 573, 603.

(2) **Consent.** Entry is reasonable if authorized by the **voluntary** consent of someone with **apparent authority** to give it, *Illinois v. Rodriguez* (1990) 497 US 177, 186, provided no spouse/co-tenant is **present and objecting**. *Fernandez v. California* (2014) 571 US 292, 301.

(3) **Searchable Resident.** If someone who **resides** in the premises is on residential search terms of **probation/parole/PRCS/supervised release**, this allows entry. *Griffin v. Wisconsin* (1987) 483 US 868, 873; *People v. Woods* (1999) 21 Cal.4th 668, 671-72.

(4) **Exigency.** A need for prompt action may justify entry in 6 categories of situations:

- **Rescue.** Police may enter “to protect or preserve life or avoid serious injury.” *Brigham City, Utah v. Stuart* (2006) 547 US 398, 403 (fist fight in progress inside).

- **Preventing Substantial Property Damage.** “[A] compelling need for official action” to safeguard property justifies entry. *Michigan v. Tyler* (1978) 436 US 499, 509 (fire); *People v. Duncan* (1986) 42 Cal.3d 91, 98-99 (burglary in progress).

- **Fresh Pursuit.** **Immediate** and **continuous** pursuit of a suspect from the scene of a recently-committed **dangerous** crime permits entry. *Warden v. Hayden* (1967) 387 US 294, 299 (robbery); *People v. Escudero* (1979) 23 Cal.3d 800, 809 (residential burglary).

- **Preventing Escape.** If a suspect flees inside when police **attempt any** lawful detention or arrest **in public**, police may enter to complete the arrest. *US v. Santana* (1976) 427 US 38, 42 (arrest at open doorway); *People v. Lloyd* (1989) 216 Cal.App.3d 1425, 1429 (traffic stop).

- **Preventing the Imminent Destruction of Evidence.** If the facts indicate that evidence will likely be destroyed without immediate action, police may enter to preserve the evidence. *Kentucky v. King* (2011) 563 US 452, 460 (occupant reacted suspiciously to knock-and-talk).

- **Public Safety/Community Caretaking.** Neutralizing public dangers and checking on the welfare of occupants can justify entry. *Ryburn v. Huff* (2012) 565 US 469, 477 (imminent threat of armed violence); *People v. Duncan* (1986) 42 Cal.3d 91, 99-100 (meth lab); *People v. Ray* (1999) 21 Cal.4th 464, 478 (community-caretaking welfare check).

BOTTOM LINE: Entry onto the curtilage or into private premises by law enforcement officials must be justified by warrant, consent, search terms, or exigent circumstances.

(Emphases added and citations and punctuation omitted in some quoted material.)

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