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Search and Seizure - The Exigent Circumstances Exception to the Fourth Amendment Warrant Requirement for Home Arrests: The Key to the Castle: State v. Chavez

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NOTES

SEARCH AND SEIZURE—THE EXIGENT CIRCUMSTANCES EXCEPTION TO THE FOURTH AMENDMENT WARRANT REQUIREMENT FOR HOME ARRESTS: THE KEY TO THE CASTLE: *State v. Chavez*

INTRODUCTION

In *State v. Chavez*,[1] the New Mexico Court of Appeals addressed the issue of whether the warrantless entry into a suspect's home to arrest him was justified by the existence of exigent circumstances.[2] The court upheld the arrest. It relied solely on the exigency of imminent escape of the suspect[3] despite the weakness of this rationale and the existence of other important factors. The court designated the police entry as "in the nature of a hot pursuit."[4] In so limiting the basis for its decision, the court unnecessarily widened the exigent circumstances exception. It thus set a precedent which permits "the exception to swallow the rule."[5] The court very likely reached the right result but should have adhered to a more thorough analysis suggested by other exigent circumstances cases.[6]

This Note will provide the historical background necessary for an understanding of the precarious nature of the warrant requirement for arrests in the home and the consequent need for strict circumscription of the exigent circumstances exception. Against this background, the New Mexico Court of Appeals' analysis can be seen to tip the balance away from the individual's interest in the privacy and sanctity of his home and towards the governmental interest in effective law enforcement. Three basic modes of analysis were available to the court. This Note will com-

1. 98 N.M. 61, 644 P.2d 1050 (Ct. App.) *cert. denied*, ___ N.M. ___, 648 P.2d 794 (1982).

2. The New Mexico Court of Appeals framed the issue as "whether defendant's arrest was a routine arrest. If exigent circumstances were involved, the arrest was not routine." 98 N.M. at 62, 644 P.2d at 1051.

3. *Id.* at 63, 644 P.2d at 1052.

4. *Id.* at 64, 644 P.2d at 1053.

5. James v. Superior Court of Tulare County, 87 Cal. App. 3d 985, 993, 151 Cal. Rptr. 270, 274 (1978). In *James*, a case cited in *Chavez*, the court prevented the exigent circumstances exception from swallowing the rule by holding that the warrantless arrest of a robbery suspect was not justified by exigent circumstances. The police were not in hot pursuit. The officers did not fear the suspect was armed because he had not used a weapon in the robbery. There was little danger of destruction of evidence because the defendant had no warning the police sought him. The court said that the police should have sent one of the officers to obtain a warrant while the others remained to arrest James if he left the apartment before the warrant was issued.

6. Chief among them are Dorman v. United States, 435 F.2d 385 (D.C. Cir. 1970), and People v. Ramey, 16 Cal. 3d 263, 545 P.2d 1333, 127 Cal. Rptr. 629, *cert. denied*, 429 U.S. 929 (1976), both cited in *State v. Chavez*.

pare each of these to the court's approach and will evaluate their relative merits as to their ability to strike the fairest balance between the individual's right to privacy and society's right to effective law enforcement.

STATEMENT OF THE CASE

The facts and circumstances of exigent circumstances cases must be carefully considered.[7] The court of appeals thus recounted the facts in *State v. Chavez* in some detail. Abie Van Chavez, the defendant-appellant, abducted his victim at about 10:00 p.m. He drove her in his truck to his home. He beat her and committed three acts of criminal sexual penetration. The evidence showed violence, brutality, and torture which left the victim permanently injured.[8]

The victim escaped about 3:30 a.m. when the defendant fell asleep. She was taken in by the defendant's neighbors. They called the police. The police were dispatched at 3:34 a.m. After talking with the victim, the police went to the house she had described. There they saw the truck, which the victim had also described. The police satisfied themselves that the house was the residence they sought by the defendant's nameplate on the door. The door was ajar, as the victim had said she had left it. The policemen rang the bell and announced their presence. There was no response. They then knocked on the door, which swung open. Before entry, the policemen observed blood on the floor and on garments. When they entered to look for the defendant, they saw bloody sheets, newspapers, towels, and the victim's shoes. The police found the defendant asleep in the bedroom and arrested him. The trial court later admitted the articles found by the police into evidence.[9]

The defendant moved to suppress this evidence at trial. He contended that the United States Supreme Court's opinion in *Payton v. New York*[10] required suppression because there was a warrantless entry into the home to arrest. The trial court denied this motion on the grounds that exigent circumstances justified the warrantless entry into the defendant's home.[11]

7. In other New Mexico cases, the court has carefully analyzed the facts and circumstances of each case. *See* State v. Sanchez, 88 N.M. 402, 540 P.2d 1291 (1975) (exigent circumstances justified police entry where police had probable cause to believe the defendant was selling heroin from his home and kept a weapon on the premises; further, police heard people moving about after they knocked and announced and thus had a good faith belief evidence was about to be destroyed); and State v. Moore, 92 N.M. 663, 593 P.2d 760 (Ct. App. 1979) (exigent circumstances justified police entry in "hot pursuit" of a suspect whom police had allowed to enter his house for identification but who had not returned).

8. 98 N.M. at 62, 644 P.2d at 1051.

9. *Id.*

10. 445 U.S. 573 (1980).

11. 98 N.M. at 62, 644 P.2d at 1051.

The defendant appealed, and the New Mexico Court of Appeals affirmed the district court's decision. The New Mexico Supreme Court denied certiorari.

DISCUSSION AND ANALYSIS

The defendant argued at trial that the court should, under the fourth amendment, exclude the items of physical evidence seized because the search did not fit into one of the narrowly drawn exceptions to the warrant requirement. The trial court refused to accept this reasoning, stating that there were exigent circumstances and that the items were in plain view.[12]

The genesis of the New Mexico Court of Appeals' opinion was the United States Supreme Court's holding in *Payton v. New York*. In that case, the Supreme Court held that the fourth amendment,[13] made applicable to the states by the fourteenth amendment, prohibits police from making a warrantless entry into a suspect's home to make a routine felony arrest.[14] The Supreme Court noted, however, the exigent circumstances exception to the warrant requirement.[15] It even observed that Payton's warrantless arrest might have been justified by exigent circumstances.[16] The Supreme Court indicated, however, that it meant the exigent circumstances exception to be carefully circumscribed.[17]

On appeal, the New Mexico Court of Appeals offered one reason for upholding the trial court's finding of exigent circumstances: the possibility of the defendant's imminent escape. It distinguished the instant case from *Payton v. New York* and *State v. Devigne*,[18] a New Mexico Court of Appeals case applying *Payton*. In those cases, the home arrests were held invalid because the arrests were routine.[19] In *Chavez*, however, the court of

12. Appellant's Brief In Chief at 2, *State v. Chavez*.

13. U.S. Const. amend. IV provides:

> 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.

14. 445 U.S. 573, 576 (1980).

15. *Id.* at 590.

16. *Id.* at 583. The New York courts, however, did not rely on the exigent circumstances justification. The New York Court of Appeals treated Payton's case as involving a routine arrest. *Id.*

17. The *Payton* Court did not specify "the sort of emergency or dangerous situation" described in prior cases as exigent circumstances. *Id.* at 583. It did point out the New York Court of Appeals' dissenters' view in *Payton* was that warrantless entries to arrest are forbidden except in "carefully circumscribed" situations. 445 U.S. at 581. The Court also quoted Coolidge v. New Hampshire, 403 U.S. 443, 477–78 (1971), which stated that searches and seizures in a suspect's house are per se unreasonable absent some "well defined" exigent circumstance. 445 U.S. at 586 n. 25.

18. 96 N.M. 561, 632 P.2d 1199 (Ct. App. 1981). In *Devigne*, the police arrested the defendant during the daytime in his residence two weeks after police obtained probable cause to arrest. The court held his warrantless arrest invalid under *Payton*. *Id.* at 563, 632 P.2d at 1201.

19. 445 U.S. at 573; 96 N.M. at 561, 632 P.2d at 1199.

appeals held the arrest was not routine because of the possibility of escape.[20]

In determining that the arrest was not routine, the court relied in part on *People v. Ramey,*[21] a California case which defined exigent circumstances.[22] Elements of the definition which could possibly be applied to *Chavez* include an emergency requiring swift action to prevent imminent danger to life, to prevent imminent escape of a suspect, and/or to prevent the destruction of evidence. The *Chavez* court relied on another California case, *James v. Superior Court of Tulare County,*[23] for its definition of "imminent." It quoted part of the *James* definition of "imminent" as meaning " 'about to happen'; . . . 'ready to take place'; 'near at hand'. . . ."[24] The New Mexico court omitted other language from the *James* definition, however, such as "impending," "immediate," and "threatening."[25] This deletion is telling in light of the court's limited application of the *Ramey* definition to the "imminent" escape of a sleeping suspect.

In *State v. Chavez,* the court explicitly discounted danger to life or danger of destruction of evidence as bases for its decision.[26] It relied only on the imminent escape of a suspect.[27] The court reasoned that an imminent escape emergency is not limited to a chase situation, calling the police action "in the nature of a hot pursuit."[28] The court stressed that there only need be strong reason for *believing* an attempted escape was at hand. The court noted that the defendant's truck was a means of escape at hand and pointed out the posting of a guard at the defendant's back door to forestall escape. The court concluded that the officers could reasonably have believed that if the suspect awoke to find the victim gone, he might have tried to escape because of the violence of his crimes.[29]

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20. 98 N.M. at 64, 644 P.2d at 1053.

21. 16 Cal. 3d 263, 545 P.2d 1333, 127 Cal. Rptr. 629, *cert. denied,* 429 U.S. 929 (1976).

22. The *Ramey* definition, which the *Chavez* court quoted, is that exigent circumstances involve:

> an emergency situation requiring swift action to prevent imminent danger to the life or serious damage to property, or to forestall the imminent escape of a suspect or destruction of evidence. There is no ready litmus test for determining whether such circumstances exist, and in each case the claim of an extraordinary situation must be measured by the facts known to the officers.

16 Cal. 3d at 277, 545 P.2d at 1341, 127 Cal. Rptr. at 637.

23. 87 Cal. App. 3d 985, 151 Cal. Rptr. 270 (1978). See *supra* note 5 for a discussion of *James.*

24. 87 Cal. App. 3d at 992, 151 Cal. Rptr. at 273; 98 N.M. at 63, 644 P.2d at 1052.

25. 87 Cal. App. 3d at 992, 151 Cal. Rptr. at 273.

26. 98 N.M. at 63, 644 P.2d at 1052.

27. *Id.* The court's indication that there was no claim of danger to life or imminent destruction of evidence does not foreclose consideration of these factors. The state forcibly argued the dangerous nature of the suspect. Plaintiff-Appellee's Answer Brief at 12, *State v. Chavez* [hereinafter cited as Answer Brief]. In any event, the court's analysis could have departed from the arguments advanced by both the state and the defendant when neither position sufficiently reflected the facts of the case. State v. Moore, 92 N.M. 663, 665, 593 P.2d 760, 762 (Ct. App. 1979).

28. 98 N.M. at 64, 644 P.2d at 1053.

29. *Id.* at 63–64, 644 P.2d at 1052–53.

In reaching the conclusion that the officers acted reasonably in not delaying to get a warrant, the court excluded from consideration the difficulty of getting a warrant at 3:30 a.m. and the fact that the defendant was asleep when found.[30]

In focusing on only the "imminent escape" element of the *Ramey* exigent circumstances definition, the court widened the exception to the warrant requirement. The court's analysis shows the ease with which the exception can be invoked in New Mexico, especially given the weakness of the "imminent escape" rationale in this case. The defendant was asleep when found. Police evidently were covering the front and back doors. The defendant's truck was arguably in their control.

Reliance on this weak rationale alone is curious because the court could have applied other elements of the *Ramey* definition. The state, for example, argued the defendant's dangerousness based on the violence of his crime.[31] In fact, the state questioned the constitutionality of resting a finding of exigency on only a single factor,[32] perhaps because it is a "basic principle of fourth amendment law that searches and seizures inside a man's house without a warrant are per se unreasonable"[33] in the absence of clearly defined exigent circumstances. Indeed, many of the cases cited by the *Chavez* court rest on more than one element of the exigent circumstances definition.[34]

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30. *Id.* at 64, 644 P.2d at 1053. Other courts have found such factors important. The *James* court, for example, considered the fact that the suspect had gone to bed as an indication that there was *not* an imminent escape emergency. 87 Cal. App. 3d at 993, 151 Cal. Rptr. at 274. The *Chavez* court, on the other hand, said in considering whether there is an imminent escape emergency: "[T]he issue is *not* whether the suspect was in fact preparing to escape; the issue is whether, on the basis of facts known to a prudent, cautious, and trained officer, the officer could reasonably conclude that swift action was needed to forestall an escape." 98 N.M. at 63, 644 P.2d at 1052 (emphasis by the court). On the importance of the time of a warrantless arrest, see Dorman v. United States, 435 F.2d 385, 393 (D.C. Cir. 1970).

31. Answer Brief, *supra* note 27, at 12.

32. *Id.*; see Mincey v. Arizona, 437 U.S. 385 (1978), cited by the state for this proposition. Answer Brief, *supra* note 27, at 13.

33. Coolidge v. New Hampshire, 403 U.S. 443, 477–78 (1971).

34. *Chavez* was based on only one element of the exigent circumstances definition. Remarkably, however, most of the cases cited in *Chavez* were based on more than one element of the exigent circumstances definition. Leading federal cases in the area of exigent circumstances cited by the New Mexico court include United States v. Santana, 427 U.S. 38 (1976) (based on the elments of hot pursuit and imminent destruction of evidence); Warden v. Hayden, 387 U.S. 294 (1967) (based on imminent escape of a suspect and danger to life); and Dorman v. United States, 435 F.2d 385 (D.C. Cir. 1970) (based on imminent escape of a suspect and imminent destruction of evidence). One of the cases from another state also contained two elements of the *Ramey* definition. Weddle v. State, 621 P.2d 231 (Wyo. 1980) (based on the elements of reasonable possibility of dangers of injury or death and likelihood of escape). New Mexico itself has based a finding of exigency on the two elements of imminent danger to life and destruction of evidence. State v. Sanchez, 88 N.M. 402, 540 P.2d 1291 (1975).

The court, however, did cite cases based on only one element. In State v. Hansen, 87 N.M. 16, 528 P.2d 660 (Ct. App. 1974), the finding of exigency was based on the sole element of imminent destruction of evidence, although the element of danger to life was also present. State v. Moore,

In *Chavez*, the New Mexico Court of Appeals tipped the balance away from the protection of the privacy of the home and towards the protection of society. Its analysis sends a clear message that warrantless arrests in the home may easily be justified. This easy justification is contrary to the rationale of *Payton v. New York*. The New Mexico court's analysis reflects, however, the precarious nature of the right expounded in *Payton* to be free from warrantless intrusions into the home. The history of the warrant requirement for home arrests further reveals the tenuous nature of this right. The ease with which this right can be lost has led courts to three basic modes of analysis to protect it: the atomistic, the definitional, and the holistic.[35] A comparison of each of these modes to the New Mexico court's approach suggests that the court should adhere to a thorough definitional analysis to strike a true balance between the right to individual privacy and the right of society to effective law enforcement. The following discussion will first consider the historical background of warrantless home arrests and then will proceed to the modes of analysis available to the New Mexico court.

A. Historical Perspective

In deciding that warrantless routine home arrests are unconstitutional, the Supreme Court in *Payton v. New York* surveyed the authorities from the time of the framing of the Constitution to the present. This survey revealed the division of opinion on the constitutionality of warrantless entries into the home to arrest.

Three distinct views were expressed by the common law commentators relied on by the framers of the fourth amendment.[36] Lord Coke clearly saw warrantless entry into the home to arrest as illegal. Only the King's indictment could justify forced entry to effect an arrest founded on sus-

92 N.M. 663, 593 P.2d 760 (Ct. App. 1979), was based on the danger of imminent escape. *Moore*, however, was a "pure" example of "hot pursuit." The police in *Moore* sought a suspect who knew the police sought him and was actively fleeing. Unlike *Moore*, the entry in *Chavez* was described as "in the nature of a hot pursuit," 98 N.M. at 64, 644 P.2d at 1053, because Chavez had not been alerted nor was he fleeing.

In a case decided subsequent to *Chavez*, State v. Pool, 21 N.M. St. B. Bull. 5123 (Sept. 16, 1982), the New Mexico Court of Appeals, citing the *Ramey* definition, based its holding in part on the exigent circumstance of imminent destruction of evidence. *Id.* at 1526. In *Pool*, the defendant answered a knock at his motel room door to find a policeman and the motel manager. They had come to evict a trespasser. The policeman smelled marijuana. The defendant quickly shut the door. *Id.* at 1524. The court found the policeman's warrantless entry justified because of his good faith belief that contraband was about to be destroyed. *Id.* at 1525–26. Although the court did not mention it, there was also an element of hot pursuit in the officer's entry immediately after the defendant's retreat into the motel room.

35. Donnino & Girese, *Exigent Circumstances for a Warrantless Home Arrest*, 45 Alb. L. Rev. 90 (1980) [hereinafter cited as Donnino & Girese]. Donnino and Girese actually used the term "qualitative" to refer to the atomistic mode. *Id.* at 99. This Note will use the term "atomistic" to emphasize the contrast with "holistic."

36. 445 U.S. at 593–94.

picion. Not even a warrant issued by a justice of the peace would suffice.[37] East and Russell believed an officer had to have a magistrate's warrant.[38] Blackstone, on the other hand, thought warrantless arrests were legal.[39] Thus, reliance on the major common law commentators for an indication of the framers' view is impossible, for they appear to have been closely divided.[40] Part of the reason for their divergence was the difficulty of reconciling the sanctity of the home and the preeminent demands of the king.[41] Two maxims reflected the dichotomy:[42] "Every man's house is his castle,"[43] and "The king's keys unlock all doors."[44] Though the former was strictly applicable only to civil actions, "its cautionary impact . . . was substantial."[45]

Nor is the modern perspective any clearer. At the time *Payton v. New York* was decided, five of the seven United States Courts of Appeals which had considered the question had held warrantless home arrests unconstitutional.[46] State law was also divided. Twenty-three states authorized warrantless home arrests by statute, and one state by judicial decision.[47] Fifteen states clearly prohibited them,[48] ten of these on constitutional grounds.[49] Eleven states had taken no position.[50]

The *Payton* Court noted, however, a "significant decline" in recent years of the number of states permitting warrantless entries for arrest.[51] The Court emphasized the strength of the "trend" by pointing to recent holdings of seven state courts that warrantless home arrests violated their *state* constitutions, thus immunizing their decisions from review by the United States Supreme Court.[52]

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37. *Id.* at 594 n. 37 (citing 4 E. Coke, Institutes * 177).

38. 445 U.S. at 595 n. 39 (citing 1 E. East, Pleas of the Crown 322 (1806), and 1 W. Russell, A Treatise on Crimes and Misdemeanors 745 (1819)).

39. 445 U.S. at 595 n. 40 (citing 4 W. Blackstone, Commentaries * 292).

40. Payton v. New York, 445 U.S. at 593; Comment, *The Constitutionality of Warrantless Home Arrests*, 78 Colum. L. Rev. 1550, 1553 (1978).

41. Comment, *Forcible Entry to Effect a Warrantless Arrest—The Eroding Protection of the Castle*, 82 Dick. L. Rev. 167, 168 n. 5 (1977) [hereinafter cited as Comment, *Forcible Entry]; see* Wilgus, *Arrest Without a Warrant*, 22 Mich. L. Rev. 798, 800 (1924) [hereinafter cited as Wilgus].

42. Comment, *Forcible Entry, supra* note 41, at 168 n. 5.

43. *Id.* (quoting Broom's Legal Maxims * 417).

44. Wilgus, *supra* note 41, at 800.

45. Comment, *Forcible Entry, supra* note 41, at 168 n. 5; *see* Payton v. New York, 445 U.S. 598 (The Supreme Court said that this maxim "strongly suggests that the prevailing practice was not to make such arrests except in hot pursuit or when authorized by a warrant").

46. The Court lists the circuit courts' decisions in footnote 4. 445 U.S. at 575 n. 4. The Tenth Circuit had upheld a warrantless home arrest without discussing the constitutional issue. Michael v. United States, 393 F.2d 22 (10th Cir. 1968).

47. 445 U.S. at 598 n. 46.

48. *Id.* at 598.

49. *Id.* at 599 n. 47.

50. *Id.* at 598. New Mexico was among these states. *Id.* at 599 n. 48.

51. *Id.* at 599.

52. *Id.* at 600.

The *Payton* Court's reliance on the "trend" is understandable in light of the somewhat indefinite standard of reasonableness required by the fourth amendment and in light of the necessity for "custom and contemporary norms" as elements of constitutional analysis.[53] There being "by no means the kind of virtual unanimity on this question that was present . . . with regard to warrantless arrests in public places,"[54] the *Payton* Court decided at least in part on the basis of the trend. It also found that "the overriding respect for the sanctity of the home that has been embedded in our traditions since the origins of the Republic"[55] made warrantless home arrests unconstitutional. The keys to the castle seemed safe in the hands of the citizen.

This use of "trend" as a basis for the Court's decision, however, as well as the narrowness of the margin (6/3 decision), and the Court's mention of the exigency exception, [56] makes the individual's grip on the key less certain. If the "trend" relied on by the Court swings back to return the key to the king, the exigency exception may well be the agent for its return. Unless the exigency exception is applied in only a few circumscribed situations, as the Supreme Court has indicated it should be,[57] it will indeed become the "exception that swallows the rule."[58]

B. Modes of Analysis

Courts have applied three basic modes of analysis in determining whether exigent circumstances exist. These modes vary in the manner in which they circumscribe the situation which gives rise to a finding of exigent circumstances. No matter which mode is selected, when a person's right to the sanctity and privacy of his home is overborne by the government's

53. *Id.*

54. *Id; see* United States v. Watson, 423 U.S. 411 (1976).

55. 445 U.S. at 601. In few areas of the law is the rhetoric more stirring than that surrounding the privacy of the citizen in his home. *See, e.g.*, McDonald v. United States, 335 U.S. 451, 455 (1948) (absent "grave emergency," the fourth amendment interposes a magistrate between the citizen and the police because "[p]ower is a heady thing; and history shows that the police acting on their own cannot be trusted"); Dorman v. United States, 435 F.2d 385, 389 (D.C. Cir. 1970) ("[f]reedom from intrusion into the home . . . is the archetype of the privacy protection secured by the Fourth Amendment"); People v. Ramey, 16 Cal. 3d 263, 276, 545 P.2d 1333, 1340, 127 Cal. Rptr. 629, 636, *cert. denied,* 429 U.S. 929 (1976) (Intrusion into the home by the police for any reason is a "most awesome incursion of police power." That power must be restricted. "The frightening experience of certain foreign nations with the unexpected invasion of private homes by uniformed authority to seize individuals therein, often in the dead of night," warns that this power should not be in the uninhibited discretion of the police.).

56. 445 U.S. at 583.

57. Mincey v. Arizona, 437 U.S. 385, 391 (1978); McDonald v. United States, 335 U.S. 451, 454–55 (1948); Johnson v. United States, 333 U.S. 10, 15 (1947). "In its entire history, the Supreme Court has upheld warrantless entry into a home in only six cases." Harbaugh & Faust, *"Knock On Any Door"—Home Arrests after Payton and Steagald,* 86 Dick. L. Rev. 191, 220 n. 188 (1982) [hereinafter cited as Harbaugh & Faust].

58. James v. Superior Court of Tulare County, 87 Cal. App. 3d at 993, 151 Cal. Rptr. at 274.

intrusion to protect society, it is imperative that the court be explicit about the basis of its reasoning. The New Mexico court failed to set forth its reasoning explicitly.

The three *schema* by which the New Mexico Court of Appeals could have analyzed the circumstances in *State v. Chavez* are the atomistic[59] approach of *Dorman v. United States,*[60] the "definitional"[61] approach of *People v. Ramey,*[62] and the "holistic"[63] approach utilized by the Texas courts. The New Mexico court implicitly recognized the first two of these modes and applied the last one.

1. The Atomistic Approach

The atomistic or "qualitative" approach of *Dorman v. United States* attempts to reduce the facts relevant to finding exigent circumstances to a checklist that seems all-encompassing and easy to apply.[64] As in all exigent circumstances cases, the particular facts of *Dorman* are essential to an understanding of the court's holding. That case involved an armed robbery at 6:00 p.m. on a Friday. The evidence, including probation papers bearing Dorman's name and address, led directly to Dorman. The police tried to get a warrant but could not because no magistrate was available. Police entered Dorman's home to arrest him at 10:20 p.m.[65] The District of Columbia Circuit Court held the arrest was justified by the existence of exigent circumstances.[66] These circumstances included the danger to life presented by an armed felon, the risk of escape, and the risk of loss of evidence.[67]

In finding exigent circumstances, the *Dorman* court propounded seven criteria that it believed useful in determining the existence of exigency[68] in any case in which the homeowner's right to privacy must yield to society's right to the quick apprehension of suspects.[69] These included 1) the gravity and violence of the crime; 2) whether the suspect was reasonably believed to be armed; 3) *clear* (not just the minimum) probable cause; 4) strong reason to believe the suspect was on the premises; 5)

59. Donnino & Girese, *supra* note 35, at 99, call the *Dorman* approach the "qualitative" approach, while Harbaugh & Faust, *supra* note 57, at 224, call it the "checklist" approach.

60. 435 F.2d 385 (D.C. Cir. 1970).

61. Donnino & Girese, *supra* note 35, at 106.

62. 16 Cal. 3d 263, 545 P.2d 1333, 127 Cal. Rptr. 629, *cert. denied,* 429 U.S. 929 (1976).

63. Donnino & Girese, *supra* note 35, at 109. Harbaugh & Faust, *supra* note 57, at 225, collapse the last two categories in one "totality of the circumstances" approach. While such a category has some validity, it is more illuminating to use Donnino and Girese's three categories.

64. Donnino & Girese, *supra* note 35, at 99; Harbaugh & Faust, *supra* note 57, at 224.

65. 435 F.2d at 388.

66. *Id.* at 393.

67. *Id.*

68. Donnino & Girese, *supra* note 35, at 100.

69. Note, *Arrest Warrants Required for Arrests Within the Home—Payton v. New York,* 30 De Paul L. Rev. 207, 213–214 (1980) [hereinafter cited as Note, *Arrest Warrants*].

likelihood of escape without quick apprehension; 6) the peaceable nature of the entry; and 7) the time of the entry. A late hour might underscore the impracticability of obtaining a warrant and therefore justify proceeding without one. It might also raise particular concern over reasonableness.[70]

The state in *State v. Chavez* cited these seven criteria[71] and analyzed its case in light of them. It pointed out that most of the criteria found in *Dorman* were met in the instant case.[72] For example, the police in *Chavez* were investigating a grave offense, which involved grievous injury to the victim. The state conceded that there was no reason to believe the suspect was armed but pointed to the violence of the crimes as an important consideration. Probable cause was not minimal but clear.[73] The victim reported the crime and described the truck, the house, and the open door. All of these circumstances supported a strong finding of probable cause. Further, her identification of her assailant as "Abie" was confirmed by the truck's front license plate, by a motor vehicle check, and by the nameplate on the door.[74] The probability was high that the suspect was still on the premises. The victim had told the police that Chavez was still there when she left, and his truck remained in front of the house. Though no one was running, one officer testified that he believed the situation was urgent, just as in a "hot pursuit." The police entered peacefully after first ringing, knocking, announcing, and receiving no response. The police arrived at the suspect's house at about 4:00 a.m., an unlikely hour for a magistrate to be available.[75]

The New Mexico Court of Appeals declined to adopt the widely accepted[76] *Dorman* approach, citing it only in a passing comment on the lack of anything in the record about the practicality of obtaining a warrant at that time of night.[77] Perhaps the court accepted the view of some commentators that the *Dorman* factors are a "conjunctive" list of requirements,[78] *i.e.*,

70. 435 F.2d at 392–93.

71. Answer Brief, *supra* note 27, at 9.

72. The state argued that the *Dorman* standards should be used as guidelines rather than as a checklist. It cited United States v. Acevedo, 627 F.2d 68 (7th Cir. 1980), for the proposition that not all the elements need be present to establish exigent circumstances. Answer Brief, *supra* note 27, at 10.

73. Answer Brief, *supra* note 27, at 10.

74. *Id.* at 7–8.

75. *Id.* at 10. It is not feasible to call a magistrate for verbal authorization in such a situation because of the extreme difficulty of reaching a magistrate at 4:00 a.m. Telephone interview with Judge Thomas Davis, Albuquerque Metropolitan Court (Nov. 16, 1982).

76. Donnino & Girese, *supra* note 35, at 100 (the authors list cases in footnote 49); Harbaugh & Faust, *supra* note 57, at 224 (the authors list cases in footnote 211); Note, *Arrest Warrants*, *supra* note 67, at 214 (the author lists cases in footnote 54).

77. 98 N.M. at 64, 644 P.2d at 1053.

78. Harbaugh & Faust, *supra* note 57, at 224; Comment, *Warrantless Entry to Arrest: A Practical Solution to a Fourth Amendment Problem*, 1978 Ill. L. F. 655, 678 [hereinafter cited as Comment, *Warrantless Entry*].

that *all* the criteria must be met, despite the state's argument to the contrary.[79] The court might also have been concerned that some of the enumerated factors might conflict, thus requiring a weighing of their importance,[80] or might be considered invalid when seen in the light of subsequent cases.[81] Finally, many of the factors might exist when exigency does not. The presence of all the factors is irrelevant if the court decides there was ample time to secure a warrant.[82]

It is more likely that the court declined to follow *Dorman* because of the fair criticism that it is impractical[83] to require police to make "on the spot decisions by a complicated weighing and balancing of a multitude of imprecise factors."[84] The court may well have decided that *Dorman* was too sophisticated to be applied by policemen forced to make quick decisions in the field.[85] The court in any event rejected the atomistic approach in favor of a less confining mode of analysis, one that widens the exigency exception instead of strictly circumscribing it.

2. The "Definitional" Approach

The New Mexico Court of Appeals seemingly embraced the "definitional" approach of *People v. Ramey,*[86] another frequently cited exigent circumstances decision. In *Ramey,* a defendant was arrested in his home on the basis of an informant's tip. The informant said Ramey had received stolen property, including a gun. The defendant was convicted of possession of marijuana seized because it was in plain view of the arresting officers.[87] The California Supreme Court held this arrest unlawful because, absent exigent circumstances, a warrant must be obtained for an arrest in the home.[88]

In deciding the case, the California court defined exigent circumstances as "an emergency situation requiring swift action to prevent imminent

79. *See supra* note 72; *see also* Donnino & Girese, *supra* note 35, at 106. The New Mexico court did mention some *Dorman* factors (i.e., the development of probable cause, the brutality of the crimes, and the likelihood that the suspect was on the premises), but did not identify them as *Dorman* factors. The court used them only as support for its imminent escape rationale. 98 N.M. at 63–64, 644 P.2d at 1052–53.

80. Donnino & Girese, *supra* note 35, at 104. For example, there might be strong reason to believe a dangerous suspect might flee, but a weaker reason to believe he was armed.

81. See Comment, *Warrantless Entry, supra* note 78, at 679, specifically mentioning that although the defendant in *United States v. Santana,* 427 U.S. 38 (1976), was not armed, the Supreme Court still upheld the warrantless entry to arrest.

82. Donnino & Girese, *supra* note 35, at 105–106.

83. *Id.* at 104; Harbaugh & Faust, *supra* note 57, at 224; Comment, *Warrantless Entry, supra* note 78, at 678.

84. Donnino & Girese, *supra* note 35, at 104 (quoting W. LaFave, Search and Seizure § 6.5(a), at 390 (1978)).

85. Donnino & Girese, *supra* note 35, at 106.

86. 16 Cal. 3d 263, 545 P.2d 1333, 127 Cal. Rptr. 629, *cert. denied,* 429 U.S. 929 (1976).

87. 16 Cal. 3d at 269, 545 P.2d at 1334–35, 127 Cal. Rptr. at 631.

88. *Id.* at 277–78, 545 P.2d at 1341, 127 Cal. Rptr. at 637.

danger to life or serious danger to property, or to forestall the imminent escape of a suspect or destruction of evidence."[89] The New Mexico Court of Appeals quoted this definition with approval,[90] but it did not adopt the California court's *application* of the definition.

The California court specifically tested each of the elements of its definition by the facts of the case. For example, it found no imminent danger to life or property. Ramey was arrested for receiving stolen property, a "non-violent crime evidencing no propensity for endangering life."[91] The court noted that the stolen property included a gun. However, it found no reason to infer that the gun presented an imminent danger.[92] The court found that the defendant was not likely to flee. The court mentioned a three-hour delay between the receipt of the informant's tip and the arrest. The police made no effort to obtain a warrant, though the delay took place in the middle of a week-day afternoon when magistrates were readily available. This delay influenced the court to find that the possibility of destruction of the evidence did not rise to the level of exigency.[93]

There is "no ready litmus test"[94] for determining whether exigent circumstances exist. Therefore, the California Supreme Court explicitly measured the claim of an extraordinary situation by *all* the relevant facts known to the officers. Indeed, that court went beyond its own definition in mentioning the feasibility of obtaining a warrant. The New Mexico Court of Appeals declined to follow this explicit analysis of all the facts in relationship to all the elements of the definition. Rather, it limited the basis of its decision to an imminent escape "in the nature of a hot pursuit"[95] even though other persuasive elements existed.

This limitation would have been more tenable if the "hot pursuit" rationale had been stronger in *Chavez*. In two of the "hot pursuit" cases cited by the court, a suspect was actively fleeing.[96] In *Chavez,* the suspect was not actually alerted to the fact that the police sought him; there was no "chase" involved. The court took note of this fact by saying that the officers' actions were "*in the nature* of a hot pursuit." The court was left with an "imminent escape emergency" which has usually been used in

89. *Id.*

90. 98 N.M. at 63, 644 P.2d at 1052.

91. 16 Cal. 3d at 277, 545 P.2d at 1341, 127 Cal. Rptr. at 637.

92. *Id.* The police acted on information that Ramey had received an item of stolen property (a gun) but probably no longer had it.

93. *Id.*

94. *Id.*

95. 98 N.M. at 64, 644 P.2d at 1053.

96. United States v. Santana, 427 U.S. at 40; State v. Cook, 26 Ariz. App. 198, 200, 547 P.2d 50, 52 (1976). *Cook* was subsequently vacated by the Arizona Supreme Court because the officers in the case violated Arizona's knock and announce rule. State v. Cook, 115 Ariz. 188, 564 P.2d 877 (1977).

conjunction with some other circumstance to justify a finding of exigent circumstances.[97]

The court could have relied on other persuasive elements. The strongest of these was that the defendant in *Chavez* could well have been considered dangerous because of the heinousness and violence of his crime. Also, the police could reasonably have feared the destruction of evidence if the defendant had awakened and found his victim gone. This reasoning is analogous to the court's conclusion that the police might have feared the defendant's attempted escape if he had awakened and found his victim gone. Finally, the court could have taken notice of the virtual impossibility of finding a magistrate at 4:00 a.m. The New Mexico court, then, adopted *Ramey*'s rule without adopting its analysis.

3. The "Holistic" Approach

A final way of approaching the problem is to avoid any broad, all-encompassing definition of exigency. The question is then resolved on a case-by-case basis. This is the approach of the Texas courts. They rely on a very general definition of exigent circumstances: circumstances which made procuring a warrant impracticable.[98] A representative case, *Jones v. State*,[99] reveals that the courts recount the facts bearing on the finding of exigency with care. The Texas courts then consider such factors as the proximity of times of the commission of the crime and the arrest; the availability of a magistrate; whether the suspect was armed or dangerous; and whether the suspect was likely to flee. Therefore, the absence of enumerated factors or an all-encompassing definition does not mean that the actual criteria considered are very different from those of more formal approaches. The court is freed from formal strictures and can focus its attention on the important factors of a particular case.[100]

This approach is the one in fact adopted by the New Mexico Court of Appeals. The court's recounting of the facts in such detail was necessary because its holding required the justification of all the facts.[101] It was not

97. *See* Warden v. Hayden, 387 U.S. 294 (1967); *Warden* is commonly referred to as a "hot pursuit" case, though the Court never used that language. In *Warden*, police traced Hayden to his home within minutes of an armed robbery. They arrested him without a warrant; the Court found that this arrest was justified because of the danger that Hayden might have used the gun against police to effect an escape. Similarly, in Weddle v. State, 621 P.2d 231, 240 (Wyo. 1980), the Wyoming court depended on the possibility that *armed* suspected rapists would injure police or others if they awoke to find the victim gone and then tried to escape.

98. Donnino & Girese, *supra* note 35, at 109.

99. 565 S.W.2d 934, 936 (Tex. Crim. App. 1978).

100. Donnino & Girese, *supra* note 35, at 109–110.

101. It is also arguable that the court's exhaustive listing of the facts meant that the court intended to *narrow* the exigency exception by reserving the right to distinguish future cases. This argument is weakened by the court's explicit reliance on the "imminent escape emergency" rationale. In any event, such an exhaustive listing was consonant with a holistic analysis, with its incident confusion to police and practitioners. *See infra* text accompanying note 103.

just that the defendant might awaken and flee that concerned the court. The defendant's heinous crime showed his dangerousness to society. This fact bolstered the reasonableness of the police decision that they could not "brook the delay incident to obtaining a warrant."[102] The court's constant reference to the facts reveals the influence of those facts on its decision. It viewed the situation holistically rather than focusing on the definitional element of imminent escape.

The disadvantage of this approach is that it provides less guidance for police and practitioners than the more formal approaches.[103] One reading of the *Chavez* decision is that the requirements for the "exigent circumstances" exception are loose and are easily met. Under this reading, a warrantless home arrest for any crime is justified no matter how late the hour as long as probable cause has ripened and there is some possibility the suspect might try to escape. In fact, though the court was not explicit in its reasoning, it was obviously influenced by the heinousness of the crime and hence the dangerousness of the suspect. Equally obvious was the impracticability of obtaining a warrant at 4:00 a.m.

The court would have sent a clearer and more accurate message if it had embraced *Ramey*'s analysis as well as its definition of exigent circumstances. The definitional approach is superior to both the atomistic and holistic approaches. It protects the privacy interest of the individual because it explicitly narrows the range of circumstances in which the police can invade the home. At the same time, it is understandable to police and practitioners and is flexible enough to allow for the protection of society.

CONCLUSION

The tension between the individual's interest in the privacy of his home and the governmental interest in effective law enforcement is at the heart of warrantless home arrest cases. The framers of the fourth amendment provided for the general resolution of this tension by interposing a warrant requirement between the public and the police in all but a few carefully circumscribed situations.[104] *Payton v. New York* settled the question of whether the fourth amendment prohibited warrantless home arrests. *Payton* held 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."[105] In *State v. Chavez*, the New Mexico Court of Appeals held that the exigent circumstances exception

102. Dorman v. United States, 435 F.2d 385 (1970).

103. Donnino & Girese, *supra* note 35, at 110.

104. *See, e.g.*, McDonald v. United States, 335 U.S. 451, 455–56 (1948); Johnson v. United States, 333 U.S. 10, 13–14 (1947); Boyd v. United States, 116 U.S. 616, 630 (1885).

105. 445 U.S. at 576.

justified the warrantless nighttime entry to arrest the suspect. Many of the elements traditionally relied on to show the existence of exigent circumstances were present in *State v. Chavez*. The court ignored or discounted all of them, however, except for the possibility of imminent escape. It is questionable that this element alone was strong enough to justify a finding of exigency in this case. In unnecessarily limiting the basis for its decision, the court sent the message that the exigent circumstances requirement is more a loophole than a carefully circumscribed exception to the general warrant requirement of the fourth amendment.

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