

Case No. 21-047

**In the
The Supreme Court of the United States**

Gina Grace Stone,
Petitioner,

v.

United States of America,
Respondent.

On Writ of Certiorari
to the United States Court of Appeals
for the Fifteenth Circuit

Brief for Petitioner

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QUESTIONS PRESENTED

- I. When executing an arrest warrant in a residence later determined not to be that of the warrant target, is probable cause that the target resided in and was present at the residence required?

- II. Did law enforcement have sufficient evidence to establish the required level of certainty that the warrant target resided and was present at 401 West Deerfield Court at the time of entry?

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CITATIONS TO THE OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifteenth Circuit is unreported. J.A. 71-73. The judgment of the United States District Court for the District of Alamo is also unreported. J.A. 56-67.

STATEMENT OF JURISDICTION

The United States Court of Appeals for the Fifteenth Circuit entered judgment on September 24, 2019. J.A. 68. Petitioner timely filed a Petition for Writ of Certiorari, which this Court granted on December 31, 2021. J.A. 73. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

STANDARD OF REVIEW

This Court reviews a district court's findings of fact for clear error and its legal conclusions *de novo*.

PROVISIONS INVOLVED

“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.” U.S. CONST. amend IV.

STATEMENT OF THE CASE

Relentless and zealous officers were in search of Bo Boudreaux (“Boudreaux”), a criminal involved in high end party drug trafficking. J.A. 17. On January 8th, 2018, an arrest warrant was issued for Boudreaux for assaulting a student; while fleeing, he dropped a plastic baggie with paraphernalia. J.A. 1, 4. After eight months of pursuing Boudreaux, an informant tipped officers Boudreaux was living in a big house in a fancy neighborhood. J.A. 17. Keen to arrest Boudreaux and without corroborating the other evidence, at 10:00 am on Saturday August 11th, 2018, officers forcefully entered the home of Gina Grace Stone (“Stone”), subsequently tasing and cuffing her while searching her home. J.A. 8.

Stone is a United States veteran who served her country in the Middle East. J.A. 15. During her service, she suffered a rocket attack. J.A. 15. As a result, she took medical discharge suffering from post-traumatic stress disorder and partial hearing loss in one ear. J.A. 15. To cope with her conditions, Stone has availed marijuana for medical purposes. J.A. 9. Though she has been charged with two prior state marijuana possession charges, Stone learned from her past mistakes and obtained a medical marijuana license from Alamo City on October 1, 2017 which is valid till September 30, 2018. J.A. 9,10. Moreover, her father gifted her a gun for her protection. J.A. 14. Since moving back, she now lives with her sister Issa Stone at 401 West Deerfield Court. J.A. 13. To celebrate the end of summer, Issa Stone threw a big celebration for her family on August 10th, 2018. J.A. 12. Khalil Pearce, Stone’s 6’2”, 165 pounds, 17-year-old nephew, attended the party. J.A. 13. Khalil

drove to the party in a white truck but left it at the house over night to avoid drinking and driving. J.A. 13,14.

The next morning, Stone woke up, put on headphones, and blasted music on the speaker system, cleaning up from the party. JA 14. At this moment, officers in search of Boudreaux forcibly entered her home. J.A. 8. Once inside, officers performed a protective sweep looking for Boudreaux. J.A. 8. Upon not locating Boudreaux, officers asked Stone for her ID to which she consented. J.A. 16. While retrieving her ID from her wallet on the dresser, which was out in plain sight, officers continued to search Stone's room. J.A. 8, 9. Without her permission, officers looked inside the closet shelves and between the mattress, finding marijuana remnants and a SIG Sauer P320 semi-automatic pistol. J.A. 8, 9. Officers arrested Stone for violation of 18 U.S.C. § 922(g)(3). J.A. 10. Eventually, Boudreaux was arrested at 3334 W. Deer Park Circle in the Deer Park neighborhood on August 14th, 2018. J.A. 23.

In her complaint, Stone moved to suppress all evidence seized from 401 West Deerfield Court. J.A. 32. The district court denied this motion concluding the officers' reasonably believed Boudreaux was residing and present in the home located. J.A. 66, 67. Stone was sentenced to two years in prison and two years of supervised release. J.A. 69. The appellate court affirmed. J.A. 72. Stone prays this court reverses the lower court's decision in sentencing.

SUMMARY OF THE ARGUMENTS

- I. The applicable standard to executing an arrest warrant of a third-party

home is probable cause, a judicial tool enshrined in the Fourth Amendment by the framers for the safeguard of the sanctity of the home and interpreted by the Supreme Court. The defense presents three arguments: First, officers must have probable cause when executing an arrest warrant as intended by the framers. Second, officers must have an arrest warrant and an additional search warrant obtained by a detached magistrate for a third-party home. *Steagald v. United States*, 451 U.S. 204, 221 (1981). Third, the holding of the seminal case of *Payton v. New York* in which this Court held an arrest warrant carries limited authority to enter the dwelling where the suspect resides and presides. *Payton v. New York*, 445 U.S. 573, 603 (1980).

The Fourth Amendment has a two-part effect- to protect the sanctity of home and balance individual and state rights. To achieve this, an objective magistrate determines probable cause by evaluating the totality of the circumstances rather than an officer scouring for criminals. While the state may argue officers can rely on their own reasonableness to determine if a search is justified, this may lead to homes being searched mistakenly. *Steagald v. United States*, 451 U.S. at 221.

Since the *Payton* holding, courts have followed a two-part test of residence and presence for probable cause. The threshold of the residence prong is essential requiring officers to corroborate their work rather than entering the home of a mistaken third-party home. The respondent may attempt to minimize this argument claiming officers acting reasonably with good conscience is sufficient to

enter the home. *Maryland v. Garrison*, 480 U.S. 79, 88 (1987). This interpretation by the circuit courts is only because the Supreme Court has yet to define the appropriate standard.

II. The standard of probable cause was not sufficiently established that the warrant target resided and presided at 401 West Deerfield Court. Though officers had an arrest warrant, they did not acquire a search warrant for the home of the third-party. They entered the residence without exigent circumstances or consent. *United States v. Veal*, 453 F.3d 164, 166 (3d Cir. 2006); *United States v. Vasquez-Algarin*, 821 F.3d 467, 473 (3d Cir. 2016). After concluding their protective sweep, they continued to search Stone's home finding incriminating evidence. While the respondent may implead the Court to apply the reasonable belief standard, the petitioner will establish the lack of insufficient evidence for residence and presence when applying reasonable belief. Accordingly, this Court should dismiss the lower court's judgment and hold the sanctity of one's home continues to be guaranteed by the Fourth Amendment in favor of the Petitioner.

ARGUMENTS

I. When executing an arrest warrant in an address later determined to be a third-party home, officers require probable cause before entering the home.

The overarching rule derives from the Fourth Amendment of the Constitution that secures the rights of persons, houses, papers, and effects against unreasonable searches and seizures based on probable cause. U.S. CONST. amend IV. To determine probable cause, a neutral judge uses a totality of circumstances test in

which the judge objectively assesses the probabilities to justify the warrant. *Illinois v. Gates*, 462 U.S. 213, 214 (1983); *Johnson v. United States*, 333 U.S. 10, 14 (1948). The probable cause is further determined by corroboration of the officer's affidavit and informant's tips to avoid "bare conclusions." *Gates*, 462 U.S. at 213, 239.

Forty years ago, the Supreme Court issued two major decisions regarding the requirement of probable cause for in-home arrests. In 1980, the Court held in *Payton v. New York* an arrest warrant is based on probable cause providing limited authority to enter the dwelling where the suspect lives when there is reason to believe the suspect is inside. *Payton*, 445 U.S. at 603. One year later, in *Steagald v. United States*, the Court further clarified officers executing an arrest warrant in a third-party's residence must first obtain a search warrant. *Steagald*, 451 U.S. at 221. It is imperative these holdings be taken together to ensure the sanctity of one's home is protected against unreasonable searches as guaranteed by the Fourth Amendment. U.S. CONST. amend IV.

A. Officers need a search warrant based on probable cause before forcibly entering any home.

The applicable rule for any warrant is procured from the Fourth Amendment where a warrant is issued upon probable cause. U.S. CONST. amend IV. Consequently, to protect the privacy rights of individuals, officers seeking to execute an arrest warrant at a home must be authorized by a magistrate to enter and search the home. *Commonwealth v. Romero*, 183 A.3d 364, 405 (Pa. 2018). This can be through a separate warrant or within the arrest warrant. *Id.* Notably, there are exigent circumstances when officers would not need a magistrate's warrant that

include destruction of evidence, hot pursuit of a fleeing suspect, or consent.

Johnson, 333 U.S. at 14; *Vasquez-Algarin*, 821 F.3d at 473; *Veal*, 453 F.3d at 166 (3d Cir. 2006); *Steagald*, 451 U.S. at 213.

The case illustration of *Johnson v. United States* rationalizes a search warrant. In this case, the *Johnson* court held the right of search should be decided by a judicial officer, not a government officer or agent. *Johnson*, 333 U.S. at 14. This protection derives from the Fourth Amendment that requires a neutral magistrate rather than a competitive officer to determine probable cause. *Id.* In this case, detectives received information from an informant about unknown people smoking opium in a hotel room. *Id.* at 13. When officers smelled the odor of burning opium, they knocked, announced their presence, and arrested Johnson. *Id.* The court reasoned though crime is a grave concern to society, the right of officers to enter and search homes without a warrant is also a grave concern. *Id.* at 14. Similarly in Stone's case, officers mistakenly entered Stone's home, searched through her belongings, and arrested her for the incriminating evidence found. J.A. 17.

To understand the historical backdrop of warrants, the defense looks to two objectives of the Fourth Amendment: to protect the sanctity of the home as intended by the framers of the Constitution and to ensure probable cause is determined by a detached magistrate to balance state and individual interests.

- 1. The intent of the framers was to protect the sanctity of home and privacy rights.**

From the nation's earliest days, the principle of prohibiting physical searches of residences which may lead to unreasonable searches and seizures has been

postulated. David E. Steinberg, *Article: The Original Understanding of Unreasonable Searches and Seizures*, 56 FLA. L. REV. 1052, 1063 (2004).

Historically, English monarchs justified the frequency of home searches by the government to search for evidence of political dissent and religious violations. *Id.* As the searches grew more frequent, the more unreasonable and unlawful the searches appeared to be. *Id.* Thus, the rationale for the Fourth Amendment derives from the concept “every man’s house is his castle” and is made a part of our constitutional law in the clause prohibiting unreasonable searches and seizures. THOMAS M. COOLEY, A TREATISE ON THE CONSTITUTIONAL LIMITATIONS WHICH REST UPON THE LEGISLATIVE POWER OF THE STATES OF THE AMERICAN UNION 299-300 (1868).

Further, the author of the Fourth Amendment’s text, James Madison, believed the evil to be combatted was warrants in general. Thomas K. Clancy, *The Framers’ Intent: John Adams, His Era, and the Fourth Amendment*, 86 IND. L.J. 979 (2011).

Courts have reaffirmed the application of the Fourth Amendment and analyzed it to protect against government intrusions. *Winston v. Lee*, 470 U.S. 753, 758 (1985). This is because the “right to be left alone is the most comprehensive and valued right.” *Id.* at 758 (quoting *Olmstead v. United States*, 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting)). This stems from the belief a person’s home, his castle, is of the utmost importance. *Romero*, 183 A.3d at 381; *Payton*, 445 U.S. at 603.

2. Probable cause is determined by a neutral magistrate to balance state and individual interests.

The warrant, subject to probable cause, serves to protect an individual’s home and the possessions within it from intrusions by officers. *Steagald*, 451 U.S. at 213.

Balancing the need for the right of privacy with the need for effective law enforcement to maintain a fair state and individual balance is pertinent to the purpose of the Fourth Amendment. *See Schmerber v. California*, 384 U.S. 757, 762 (1966) (holding a balance must be struck between allowing for effective law enforcement and the right to privacy); *see also Johnson*, 333 U.S. at 14. Officers have the burden of seeking the warrant securing a valid justification to gain access to one's home under the law; this responsibility comes with the color of office. *Johnson*, 333 U.S. at 13. Hence, the probable cause test is an objective one determined by a neutral magistrate and not by officers looking for evidence of crime. *Id.* The magistrate uses a totality of circumstances test to assess the probability of determining probable cause. *Id.* This procedure validates the intrusion by the law that would otherwise be unreasonable. *Romero*, 183 A.3d at 381. It is significant that there are situations when the burden on the officers is removed- destruction of evidence, hot pursuit of a suspect fleeing, or consent. *Johnson*, 333 U.S. at 14; *Vasquez-Algarin*, 821 F.3d at 477; *Veal*, 453 F.3d at 166 (3d Cir. 2006); *Steagald*, 451 U.S. at 213. Courts have applied the balancing test with the exclusionary rule that prevents governments lacking probable cause from using evidence gained from an unreasonable search or seizure. *Mapp v. Ohio*, 367 U.S. 643, 643 (1961).

The respondent may attempt to minimize this argument by proposing the holding in *Payton* relates to an arrest warrant based on probable cause that allows entry into the dwelling. *Payton*, 445 U.S. at 603. The Supreme Court, the sole

interpreter of the constitution, has directed this interpretation as a safeguard of the Fourth Amendment. U.S. CONST. art. III, §§ 1-2. Moreover, effective officers use their reasonableness to determine if a search is justified. *Steagald*, 451 U.S. at 227 (Rehnquist, J., dissenting). Further, respondent would argue the balancing test should favor the officers who have the burden to enforce the law while balancing the mobile nature of fugitives. *Id.*

For the purposes of the fundamental rights guaranteed by the Fourth Amendment, it is imperative search warrants are based on probable cause determined by a detached magistrate before forcibly entering any home. Anything less would present a grave danger to the sanctity of the home.

B. Officers need a search warrant based on probable cause before forcibly entering a mistaken third-party home.

From *Steagald v. United States*, the Supreme Court provides the rule that officers must obtain a search warrant for a third-party home when executing an arrest warrant. *Steagald*, 451 U.S. at 221. This is supported by the recent decision in *Commonwealth v. Romero* where the court held officers executing an arrest warrant must have authorization from a magistrate to search the home for the arrestee. *Romero*, 183 A.3d at 405.

The case analogy of *Steagald v. United States* illustrates the reasoning for a search warrant of third-party homes. In *Steagald*, the court held entry into a third-party home requires an additional warrant to prevent unreasonable searches and seizures. *Steagald*, 451 U.S. at 221. In this case, an informant provided agents with a phone number where federal fugitive Lyons could be reached. *Id.* at 206. Based on

the phone number, officers secured an address and drove by the house where they saw two men outside- Gaultney and Steagald. *Id.* The officers knocked, entered, and searched the home finding cocaine. *Id.* At that time, Agent Goodowens sent another officer to obtain a search warrant for the incriminating evidence found. *Id.* When Steagald challenged this in court, the court reasoned with only an arrest warrant, officers could search all homes of the person's acquaintances which would lead to unreasonable searches and seizures. *Id.* at 215. In Stone's case, officers were given information about the residence by an informant that led to officers driving by and entering the home of Issa Stone, a third-party, without consent. J.A. 17, 19. Officers then conducted a protective sweep and found incriminating evidence; they did not obtain a search warrant and continued to arrest Stone. J.A. 22.

The policy of securing an additional search warrant based on probable cause serves to limit a zealous officer who may clash with the privacy rights of a citizen. *Payton*, 445 U.S. at 602. This concept was developed in *Steagald* where the warrant serves as "checkpoint between the government and the citizen." *Steagald*, 451 U.S. at 212. The officer in search of a criminal may lack objectivity to weigh the evidence while ferreting out crime. *Johnson*, 333 U.S. at 15. It would entice the Court that the additional search warrant can now be given via electronic communication. *Romero*, 183 A.3d at 402. This is supported by *El Bey v. Roop* where any search that takes place once officers know they are in the wrong residence is no longer protected by immunity as it would violate constitutional rights. *El Bey v. Roop*, 530 F.3d 407, 421 (6th Cir. 2008).

The respondent may attempt to call into question the unduly inconvenience to require officers to obtain a warrant before entering a residence when they already have an arrest warrant provided by a magistrate. *United States v. Route*, 104 F.3d 59, 62 (5th Cir. 1997); *United States v. Magluta*, 44 F.3d 1530, 1530 (11th Cir. 1995). Moreover, the respondent may incorrectly assert that if an officer's conduct displays a reasonable effort and good conscience to verify the place intended to be searched, then the search is valid. *Garrison*, 480 U.S. at 88. However, this is not a compelling reason to bypass the constitutional requirement of probable cause. *Johnson*, 333 U.S. at 14. A reasonable officer would know warrantless searches and seizures are unreasonable and violate one's constitutional rights. *Roop*, 530 F.3d at 421.

Thus, the additional search warrant for a third-party home protects both the officers and individuals by serving as a checkpoint and fulfilling the constitutional requirement of the Fourth Amendment.

C. Officers require probable cause under *Payton v. New York*.

Since the Supreme Court ruling in *Payton v. New York*, the court has not clarified the meaning of the "reason to believe" standard. The third, seventh, and ninth circuits courts have comprehended reasonable belief and probable cause are the same. *Vasquez-Algarin*, 821 F.3d at 467; *United States v. Gorman*, 314 F.3d 1105, 1105 (9th Cir. 2002); *United States v. Jackson*, 506 F.3d 1358, 1358 (11th Cir. 2007). The six other circuits hold the reasonable belief of the officer is sufficient.

E.g., Valdez v. McPheters, 172 F.3d 1220, 1225 (10th Cir. 1999). The defense argues the text of the holding in the *Payton* court reaffirms the probable cause standard.

1. Residence is a threshold question in *Payton v. New York*.

The applicable rule derives from *Payton* from which the lower courts have divided into two prongs of residence and presence to effectuate warrants. *Payton*, 445 U.S. at 603. The defense examines the text and the consequent holdings to evaluate the significance of the residence prong.

To interpret the text of the Constitution, one way is by the nearest-reasonable-referent canon approach. ANTONIN G. SCALIA & BRYAN A. GARNER, *READING LAW: INTERPRETATION OF LEGAL TEXTS* 142 (2012). It states when the syntax shows unparallel nouns or verbs, the modifier applies to the nearest reference. *Id.* Examining the text by the nearest-reasonable-referent canon textual approach for *Payton*, “reason to believe” is closer to the residence prong of “suspect is within;” “probable cause” is closer to the presence prong of “dwelling in which the suspect lives.” *Payton*, 445 U.S. at 603.

Following the belief of man’s home as a castle, the significance of the residence prong protects the privacy and sanctity of the home. Steinberg, *supra*, at 1073. The Court draws a bright line at the entrance to the home. *See Payton*, 445 U.S. at 590 (holding the Fourth Amendment has drawn a firm line at the entrance to the house); *see also Kyllo v. United States*, 533 U.S. 27, 39 (2001) (reiterating precedent that Fourth Amendment draws line at entrance to home and elaborating that line “must not only be firm but also bright”). Lower courts require officers to take

reasonable steps to ensure they are not entering a mistaken third-party home. *Roop*, 530 F.3d at 416. The residence threshold also gives officers limited authority to enter the dwelling and must be based on an independent justification of the person or object or item to be searched in the home. *Payton*, 445 U.S. at 616, 617 (White, J., dissenting). The court in *United States v. Vasquez-Algarin* underlines the importance of the residency prong; it held probable cause upholds the sacred space of private homes and prevents searches upon mere suspicions. *Vasquez-Algarin*, 821 F.3d at 480.

The respondent may allude to the notion that the two prongs of *Payton* should not be governed by different standards of proof; thus, reasonable belief for residence should be sufficient. *McPheters*, 172 F.3d at 1225. Further, respondent may rely on the inherent nature of people to be mobile supporting the reasonable belief standard of officers and the totality of circumstances within their knowledge. *Steagald*, 451 U.S. at 225 (Rehnquist, J., dissenting). This understanding does not necessitate actual knowledge of the officers but only an objective reasonable belief lowering the standard in *Payton*. *McPheters*, 172 F.3d at 1225. It erases 150 years of history that has the protection of people's homes at the core of the Fourth Amendment.

For an arrest warrant to be sufficient, the officers must be entering the true residence of the warrant target or take steps to justify their entry by securing an additional warrant.

2. The “reason to believe” standard is grammatically analogous to the “probable cause” standard.

Payton provides the rule that an arrest warrant is based on probable cause providing limited authority to enter the dwelling where the suspect lives when there is reason to believe the suspect is within. *Payton*, 445 U.S. at 603.

After the major cases of *Payton* and *Steagald*, the Supreme Court established the definition of probable cause. The court has noted probable cause is a fluid concept and cannot be defined in a rigid manner. *Gates*, 462 U.S. at 213, 239. Probable cause deals with the totality of circumstances and probabilities within each case. *Id.* Furthermore, this Court has taken an additional step to use reasonable belief to define probable cause. *Maryland v. Pringle*, 540 U.S. 366, 371 (2003). The Court asserted, “the substance of all the definitions of probable cause is a reasonable ground for belief of guilt.” *Id.* at 371 (quoting *Brinegar v. United States*, 338 U.S. 106, 160 (1949)). Since then, three circuit courts have used the terms reason to believe and probable cause interchangeably. *Jackson*, 506 F.3d at 1358; *Vasquez-Algarin*, 821 F.3d at 467; *Gorman*, 314 F.3d at 1105, 1111 (holding reason to believe and probable cause should entail the same protection and reasonableness).

The respondent may attempt to minimize this argument by stating if the Supreme Court wanted, it could have used probable cause for both prongs when deciding *Payton*. *McPheters*, 172 F.3d at 1225 (pondering why the two prongs of the test were governed by two different standards of proof). Moreover, the recent trend of many circuit courts has been towards the reasonable belief of the officer’s knowledge and commonsense. *E.g.*, *Magluta*, 44 F.3d at 1535. These officers’

assessment need not be correct for the two prongs of *Payton* as no factor is solely dispositive. *McPheters*, 172 F.3d at 1225. However, the Court's holding in *Payton* cannot be untied as it provides limited authority for officers to enter a home protecting the individual rights at the core of the constitution. *Payton*, 445 U.S. at 603; U.S. CONST. amend IV.

In summary, the standard of reason to believe is interchangeable with probable cause as noted by the Supreme Court and anything else will violate the rights in the Fourth Amendment. When executing an arrest warrant, for a mistaken party, it is crucial the level of certainty be nothing less than probable cause.

II. Officers lacked sufficient evidence to establish probable cause that the warrant target resided and presided at 401 West Deerfield Court.

The overarching rule applicable to this question derives from the Fourth Amendment that recognizes the right of people to be secure in their homes, privacy, and security against unreasonable government intrusions. U.S. CONST. amend IV. Probable cause is determined by a neutral judge using a totality of circumstances test and the corroboration of the officer's affidavit and informant's tips. *Gates*, 462 U.S. at 213, 239; *Johnson*, 333 U.S. at 14. From *Payton*, the Court held an arrest warrant based on probable cause provides limited authority to enter a home when there is reason to believe the suspect resides and presides. *Payton*, 445 U.S. at 603. Further, *Steagald* holds officers may not execute an arrest warrant in a third-party home without also obtaining a search warrant. *Steagald*, 451 U.S. at 221. Additionally, there are exigent circumstances where a search warrant would not be

required- destruction of evidence, hot pursuit of a suspect fleeing, or consent.

Johnson, 333 U.S. at 14; *Vasquez-Algarin*, 821 F.3d at 473; *Veal*, 453 F.3d at 166; *Steagald*, 451 U.S. at 213.

Lower circuit courts have adapted the reasoning of the *Payton* Court to apply a two-part test for establishing probable cause: (1) residence - the target lives at the home and (2) presence- the target is present at the time. *Payton*, 445 U.S. at 603. On the other hand, the reasonable belief standard considers the total facts and circumstances known to the officer. *Magluta*, 44 F.3d at 1535. The defense builds on these holdings to explicate the officers in Stone's case entered a third-party home without a search warrant. They did not have either probable cause or reasonable belief for the residence and presence prongs.

A. Officers did not obtain a search warrant for a third-party home which was necessary for entry into the home and search to be reasonable.

The rule derives from *Steagald* holding officers must have a search warrant for a home of a third-party, absent exigent circumstances or consent. *Steagald*, 451 U.S. at 221. This is supported by *Commonwealth v. Romero* where the court held officers executing an arrest warrant must have authorization from a magistrate to search the home for the arrestee. *Romero*, 183 A.3d at 405. Once officers enter the home to execute an arrest warrant, they may perform a protective sweep if they possess reasonable belief dangers exist at the arrest scene. *Maryland v. Buie*, 494 U.S. 325, 325 (1990). However, the arrest warrant is limited and does not allow for a more

intrusive search, beyond eliminating potential danger. *United States v. Stover*, 474 F.3d 904, 911 (6th Cir. 2007).

Commonwealth v. Romero in which officers went to a mistaken party home with only an arrest warrant is instructive. *Romero* holds only probable cause as determined by a judge through the issue of a search warrant adequately protects the sanctity of a home, regardless of whether the home is indeed the residence of the target of an arrest warrant or is the home of a third-party. *Romero*, 183 A.3d at 405. In *Romero*, officers went to execute the warrant of Moreno at the residence of his half-brother Angel Romero and his wife Wendy Castro. *Id.* at 372. While searching the basement, they uncovered marijuana plants and then later obtained a search warrant leading to the arrest of Romero and Castro. *Id.* The court held the search violated Romero and Castro's Fourth Amendment rights. *Id.* at 406. The court reasoned probable cause to search a home can be determined by a separate search warrant or within the arrest warrant itself. *Id.* at 405. Similarly, in Stone's case, officers mistakenly went to execute Boudreaux's arrest warrant at Stone's home. J.A. 8. While conducting a protective sweep, they found marijuana remnants; however, they did not obtain a search warrant for the incriminating evidence before they arrested Stone. J.A. 8, 9.

Here, officers had an arrest warrant for Boudreaux in January 2018 for assault and drug charges. J.A. 17. Based on the information provided by an informant about where Boudreaux was residing and his vehicle description, officers followed up on the lead and believed they found Boudreaux's place of residence and vehicle.

J.A. 19. However, officers research indicated the home records were for Issa Stone and the truck belonged to Jefferson Pearce making this residence a third-party home. J.A. 19. Without exigent circumstances or consent, officers entered Stone's home when they heard music coming from inside but no response to the knock on the door. J.A. 21. Once inside, officers continued to search Stone's home doing a protective sweep looking for Boudreaux. J.A. 22. Recognizing there were no dangers present and without obtaining a search warrant, officers continued to probe in Stone's bedroom closet and under her mattress finding marijuana remnants and a SIG semi-automatic pistol. J.A. 22. Though Stone consented to officers entering her room to obtain her ID from her wallet, the wallet was in plain view on top of the dresser. J.A. 16. With only an arrest warrant, this intrusion was not justified and unreasonable. *Stover*, 474 F.3d at 911; *Steagald*, 451 U.S. at 222. Moreover, there were no exigent circumstances and Stone's consent was for a limited purpose. *Johnson*, 333 U.S. at 14; *Vasquez-Algarin*, 821 F.3d at 473; *Veal*, 453 F.3d at 166; *Steagald*, 451 U.S. at 213.

Without a search warrant for a third-party home, the evidence found during the search constituted an unreasonable search of the home in violation of the Fourth Amendment. U.S. CONST. amend IV.

B. Officers lacked probable cause for both the residence and presence prongs of the *Payton* test.

To determine whether probable cause existed when agents entered the petitioner's home, *Payton* provides a two-part test. *Payton*, 445 U.S. at 603. The

defense will explore the answer in two parts: 1) no probable cause for residence 2) no probable cause for presence.

1. Officers did not have probable cause for residence.

Payton holds an arrest warrant founded on probable provides limited authority to enter the home where the suspect lives. *Payton*, 445 U.S. at 603. Thus, the arrest target must be present at his own residence. *Id.*

In the 9th circuit case of *United States v. Gorman*, the court reached a conclusion that without probable cause, consent, exigency, or a search warrant, the officers' entry into a third-party home was illegal. *Gorman*, 314 F.3d at 1108. In this case, a citizen informed officers Gorman was stealing mail; other witnesses mentioned Gorman was staying with his girlfriend. *Id.* at 1107. Officers arrived to arrest Gorman at his associate's home at 4:30 am, saw a Volkswagen parked outside the residence, and kept surveillance for an hour but did not see Gorman go in or out. *Id.* During the arrest, officers found mailbox keys and checks issued to other people but did not have a search warrant. *Id.* at 1108. The 9th circuit held in *Gorman* an arrest warrant provides the necessary basis for an arrest but there must also be a reason to believe the suspect is inside the residence for the arrest. *Id.* at 1111. Similarly, officers in Stone's case relied on vague information given by the informant that there was a white truck and a fancy house in the Deerfield neighborhood where Boudreaux resided. J.A. 18. Officers identified a white truck outside the residence, but it did not match the model of the truck given by the informant nor did they see Boudreaux enter and exit the home. J.A. 26. Stone did not give consent and officers

entered the home finding marijuana remnants and a firearm without a search warrant. J.A. 14, 22. The holding of the *Gorman* case parallels Stone's case and if the court in *Gorman* reasoned with the petitioner, then this Court should also follow the same holding.

Here, officers were executing the arrest warrant of Boudreaux at 401 West Deerfield Court on August 11, 2018. J.A. 8. A confidential informant tipped officers Boudreaux was staying at "a big house in this fancy neighborhood" called Deerfield, a rather vague statement. J.A. 18, 25. The informant also mentioned Boudreaux was driving a white GMC pickup truck. J.A. 18. Officers then drove around the Deerfield neighborhood and located a house with a white Ford pickup truck outside, without noticing the different model. J.A. 19, 26. When they ran the plates on the truck it was registered to Jefferson Pearce; the home was owned by Issa Stone, both names unassociated with Boudreaux. J.A. 19. Further, the officers showed a photo of Boudreaux to a neighbor who believed the person in the photo was the same person he saw who pulled up in the white truck earlier in the morning. J.A. 20. The neighbor admitted the man was not facing him and he did not get a good look at the African American man. J.A. 20. These facts known to the officers are bare conclusions and are not sufficient to establish the residence of Boudreaux. *Gates*, 462 U.S. at 239. *Payton* emphasizes the Fourth Amendment draws a firm line to the entrance of the home to protect the individual from unreasonable intrusion. *Payton*, 445 U.S. at 590.

Therefore, the residence prong of the *Payton* test was not attained.

2. Officers did not have probable cause for presence.

In *Payton*, an arrest warrant founded on probable cause provides limited authority to enter the home when the suspect is present within the residence. *Payton*, 445 U.S. at 603.

The third circuit of *United States v. Vasquez-Algarin* court held to apprehend a suspect at a third-party home with belief the suspect resides at the address, there must be probable cause before forcing entry into a private residence. *Vasquez-Algarin*, 821 F.3d at 469. In this case, officers had an arrest warrant for Rivera and received information from other officers and informants where Rivera was residing. *Id.* At the address, they knocked and after hearing much movement inside, they forcibly entered the home. *Id.* at 470. Rivera was not present but Vasquez–Algarin was along with sandwich baggies, a razor blade, and powder cocaine. *Id.* Officers obtained a search warrant and discovered ammunition, black bands, and keys to a stolen Mazda. *Id.* The court reasoned officers did not have probable cause because of the lack of verification of statements by fellow officers. *Id.* at 482. Comparatively to Stone’s case, officers had an arrest warrant for Boudreaux and attempted to corroborate information about the residence from fellow officers, the arrest warrant, and the informant but were unsuccessful. J.A. 18, 19, 20. Upon hearing music from within the residence, officers entered Stone’s home forcibly. J.A. 18, 21. The officers found controlled substances and a firearm arresting Stone. J.A. 22.

Here, to fulfil the presence prong, officers sent ACPD patrol officers to verify the presence of the white truck after midnight. J.A. 20. Though the truck was still

parked outside the home, they were not able to confirm the plate numbers due to the multiple cars parked around it. J.A. 20. Yet, Officer Nguyen claims they “felt confident” it was the same truck. J.A. 20. The next morning, around 10 a.m., officers arrived at the big house in Deerfield and knocked on the door hearing loud music. J.A. 20. No one opened the door and officers decided to forcibly enter the home believing Boudreaux was present as most people are on a Saturday morning. J.A. 21, 29. The presence of a truck nor loud music were insufficient to establish presence. *Magluta*, 44 F.3d at 1535; *Vasquez-Algarin*, 821 F.3d at 480. Moreover, there were no exigent circumstances of Stone fleeing the home nor did Stone give consent to enter the home. *Johnson*, 333 U.S. at 14; *Vasquez-Algarin*, 821 F.3d at 473; *Veal*, 453 F.3d at 166; *Steagald*, 451 U.S. at 213. With their mere suspicions and uncorroborated facts, officers were not able to support probable cause of presence. *Vasquez-Algarin*, 821 F.3d at 480.

Examining the totality of circumstances, law enforcement officers did not establish probable cause for both the residence and presence prongs of the *Payton* test.

C. Even if the reasonable belief standard is applied, the level of certainty required would not be met due to the totality of circumstances.

There is presently no controlling rule because the Supreme Court has not clarified the meaning of the phrase “reason to believe” of the *Payton* holding. This has become a point of contention within the circuit courts about the correct interpretation; many circuit courts favor reasonable belief examining the facts and

circumstances within the knowledge, reasonableness, and commonsense of the officers. *E.g.*, *Magluta*, 44 F.3d at 1535. This level of certainty claims officers do not need a search warrant to enter the home when they have an arrest warrant. *Route*, 104 F.3d at 62.

The rule in *Payton* is still desirable to justify the absence of reasonable belief for presence and residence when agents entered the petitioner's home. *Payton*, 445 U.S. at 603. The defense will explore the answer in two parts: 1) no reasonable belief for residence 2) no reasonable belief for presence.

1. Officers did not have reasonable belief for residence.

In *Payton*, an arrest warrant issued by probable cause implicitly carries with it the limited authority to enter the dwelling in which the suspect lives. *Payton*, 445 U.S. at 603. A dwelling is where the suspect “possesses common authority over, or some other significant relationship to” the residence. *United States v. Risse*, 83 F.3d 212, 217 (8th Cir. 1996).

The case analogy of *Valdez v. McPheters* is instructive for the residence prong of the *Payton* test for the reasonable belief standard. It holds the standard of knowledge required for whether the suspect resides at the house should be governed by reasonable belief because the two prongs of *Payton* should be governed by the same standard. *McPheters*, 172 F.3d at 1225. In this case, Officers McPheters and Littlewhiteman arrived at the home of Rossana Valdez to arrest her son Raymond Valdez for burglary and theft. *Id.* at 1223. Officer Littlewhiteman had gathered multiple facts about where Valdez lived through Valdez himself, an associate of

Valdez identifying his truck, other officers, and his lifestyle. *Id.* at 1223. It is uncertain whether officers were given consent to enter the residence, but officers were unable to find Valdez and left. In *Valdez*, the court reasoned requiring a suspect to reside at the residence would never satisfy the *Payton* test as criminals often move residences and officers could never have actual knowledge. *Id.* at 1225. Similarly, officers in the Stone's case gathered multiple facts from the informant, neighbors, and identified a truck thought to be Boudreaux's claiming these factors satisfied the residence prong. J.A. 17, 19, 20. However, while relying on the characteristics of criminals, they entered a mistaken third-party home. J.A. 29.

Here, there are several factors demonstrating though officers took reasonable steps to verify the residence as Boudreaux's, they were imprudent. The informant claimed Boudreaux was staying in "a big house in this fancy neighborhood." J.A. 18. Though officers tried to check the addresses on the arrest warrant, they only visited the address at 1118 Seaborn St. in Alamo City not the one listed as Boudreaux's mother's home. J.A. 18, 28. The informant described a white GMC pickup truck but instead officers found a white Ford truck. J.A. 18, 26. Jefferson Pearce owned the truck and Issa Stone owned the home. J.A. 19. Moreover, the neighbor saw a large African American man in a hoodie who was facing away from him and confirmed the man as Boudreaux from a mugshot photo. J.A. 20, 28. Many factors are inapposite one another. Though the names on the home and truck did not have a significant relationship to Boudreaux, officers did not further investigate this thinking criminals often change vehicles and homes. *See McPheters*, 172 F.3d at

1225; *see also Risse*, 83 F.3d at 217. Relying on the lifestyle of criminals, officers will never have to be certain in their findings and this could lead to unreasonable searches. *McPheters*, 172 F.3d at 1225; U.S. CONST. amend IV.

Thus, there was not sufficient evidence to reasonably believe Boudreaux resided at the address.

2. Officers did not have reasonable belief for presence.

In *Payton*, an arrest warrant issued on probable cause provided limited entry into the residence when there is reason to believe the suspect is within. *Payton*, 445 U.S. at 603. For the presence prong, officers can consider the presence of a vehicle, time of the day, and operation of lights or other electrical devices. *Magluta*, 44 F.3d at 1535; *Route*, 104 F.3d at 62. It is not required the officers witness the suspect on the premise. *Magluta*, 44 F.3d at 1535.

The case analogy of *United States v. Magluta* sheds light on the reasonable belief for presence. In *Magluta*, the court held for officers to execute an arrest warrant, the agents' knowledge must warrant a reasonable belief of the suspect's residence and presence. *Magluta*, 44 F.3d at 1535. Officers had arrest warrants for Magluta and Lorenzo for possessing and distributing cocaine. *Id.* at 1531. An informant provided the location of Magluta's residence. *Id.* at 1532. Officers visited the house and asked the guard to identify the suspects through photos; the guard with uncertainty noted a man who looked like Magluta lived at the home. *Id.* at 1532, 1533. Officers also saw a gold Honda at the residence they thought they saw Lorenzo driving. *Id.* Based on this information, officers approached the residence

and two men hastened inside causing officers to enter and perform a protective sweep. *Id.* at 1533. While capturing both Lorenzo and Magluta, officers saw some papers, a safe, and a box with currency in plain view for which they later obtained a search warrant. *Id.* The third court in *Magluta* reasoned the presence of a vehicle along with other facts supports the belief Magluta was at home at the time of entry, despite conflicting testimony from the guard. *Id.* at 1535. Similarly, in Stone's case, officers had an arrest warrant for Boudreaux and received information from the informant about Boudreaux's residence. J.A. 18. The neighbor in Stone's case was also not certain but thought an African American who looked like Boudreaux entered the Stone's home and drove the car described by the informant. J.A. 20. However, there were no exigent circumstances in Stone's case of a hot pursuit; rather officers knocked, heard music, and forcibly entered the home. J.A. 21. During the search for Boudreaux, officers performed a sweep of the home and uncovered incriminating evidence of marijuana and a firearm without a search warrant. J.A. 22.

Here, officers attempted to corroborate the gathered uncertain facts by sending ACPD officers to drive by the residence at midnight to verify the presence of the white truck; however, they were not able to verify the license plates. J.A. 20. The next day around 10 a.m. on Saturday morning, officers arrived at the house and heard music coming from the house. J.A. 21. Twice they knocked but there was no response making them forcibly enter the home. J.A. 21. Officer Nguyen later claimed this is usually when criminals are home after partying on the weekend. J.A.

29. Notably, there were no exigent circumstances present for the forced entry. *Johnson*, 333 U.S. at 14; *Vasquez-Algarin*, 821 F.3d at 473; *Veal*, 453 F.3d at 166; *Steagald*, 451 U.S. at 213. Based on the presence of a truck, the time of the day, and the sound of music, officers reasoned Boudreaux was present at 401 West Deerfield Court; yet a reasonable officer would have taken these facts and determined when viewed in totality, theirs was a mere suspicion rather than reasonable belief. *Vasquez-Algarin*, 821 F.3d at 480.

In summary, even if the officers used the reasonable belief standard indicated by *Payton's* two-part test, this was not satisfied by the totality of circumstances. *Payton*, 445 U.S. at 603. Therefore, the search of the residence was unreasonable and violated Stone's Fourth Amendment rights.

CONCLUSION

For the foregoing reasons, Stone prays this Court reverse the lower court's judgment, which declined to find the entry into her home unconstitutional. U.S. CONST. amend IV.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Undersigned counsel for Petitioner certifies that this brief has been prepared and served upon all opposing counsel in compliance with the Rules of the Supreme Court of the United States by certified mail on the 6th day of March 2022 to:

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