Doorway Encounters of the Fourth Amendment Kind

i. Introduction

While it is generally understood among peace officers that a warrantless, nonconsensual entry into a home requires both probably cause and an exigency (or some other justification, such as an emergency, protective sweep, etc.), it is sometimes not as well understood what officers can or cannot do short of making an entry when there is no Fourth Amendment justification for doing so. This paper addresses four categories of doorway situations.

I. Shutting the door contrary to the officer's wish;

II. Coercing a person to step out of the doorway;

III. Arresting a person in the doorway; and

IV. Obtaining visual access inside from the doorway.

I. Refusing to open or remain at a door for police officers does not constitute obstructing, resisting, or disorderly conduct. The passive assertion of Fourth Amendment rights not only cannot be criminalized, but also cannot be used to support reasonable suspicion, probable cause, or guilt of a crime.

A. Overview

Officers standing on a resident's porch conversing with a resident at the doorway understand very well that they can't enter the home without Fourth Amendment justification (e.g., valid consent, a warrant, or a combination of probable cause and an exigency), but are sometimes les certain about what authority they do have short of entering the home. Can they compel the resident to remain in the doorway? Order him not to shut the door? Physically prevent him from shutting his door? If officers do have the necessary Fourth Amendment justification to enter the house, officers understand very well that they may use force in order to gain entry, but are sometimes less certain as to whether it is unlawful for a resident to refuse to facilitate the officers' entry. Can they arrest the resident who refuses to open his door for obstruction? Finally, when officers standing outside the doorway are assessing whether they have probable cause or reasonable suspicion, they are sometimes uncertain about the inferences they can make when the resident refuses to consent to the officers' entry. Could a person's act of shutting his door, in and of itself, elevate reasonable suspicion to probable cause? The answer to each of the questions, as suggested by the title of this section, is no.

Courts have ruled that:

1) A person inside of his house can cease speaking to an officer and shut the door at any time;

2) A person doesn't have to open his door for an officer, even if the officer has the lawful right to come in: the refusal to facilitate the officer's entry is not obstruction; and

3) A person's act of shutting the door when he has the right to do so, or a person's failure to open the door for the police, can't be used against the person (i.e., doesn't create reasonable suspicion or probable cause, and can't be used in trial to make inferences about person's guilt).

B. Relevant Ninth Circuit and Nevada cases

1. U.S. v. Prescott, 581 F2d 1343 (9th Cir.1978)

Defendant was convicted of being an accessory after the fact by assisting a suspected felon in order to prevent his arrest. On appeal, Defendant claimed that her refusal to let police enter her apartment without a warrant was constitutionally protected and should not have been considered as evidence of guilt. The court held that it was prejudicial error to permit the government to prove, as evidence of the offense charged, that Defendant declined to let police enter her apartment without a warrant. With respect to Defendant's assertion of Fourth Amendment rights, the court concluded that one cannot be penalized for passively asserting this right, regardless of one's motivation.

2. Sampson v. State, 122 P.3d 1255 (Nev.2005)

Willie Sampson was sentenced to multiple life sentences after a jury convicted him of several felonies and sex offenses. Sampson appealed his conviction, arguing that the district court erred by, among other things, permitting the prosecution to elicit testimony discussing Sampson's refusal to allow officers to search his home. The Nevada Supreme Court held that it is constitutional error for a prosecutor to elicit testimony on a Defendant's refusal to consent to a warrantless search to support an inference of guilt. A person has the right to invoke his Fourth Amendment rights without having his refusal used against him at trial.

C . Relevant cases from other jurisdictions

1. State v. Hatfield, 518 P.2d 389 (Kan.1974)

Officers attempted to serve a warrant on Hatfield's daughter, but she refused to unlock and unbar the doors. The doors had been locked and barred by someone other than Hatfield. Hatfield refused to assist the officers in executing the warrant against her daughter. That refusal was not obstruction.

2. City of Columbus v. Michel, 378 N.E.2d 1077 (Ohio App.1978)

Officers were dispatched to an apartment on a domestic disturbance and a fight. When they arrived at the location, they observed that the window was broken out and that there was a telephone receiver in broken glass lying on the ground directly beneath the window. A woman in the bottom apartment came out and said that she was the one who made the emergency call. The officers proceeded to the apartment, knocked several times on the door but got no response. They could hear the sound of someone walking around inside of the apartment. Upon knocking on the door, the light inside the apartment went out. The officers repeated knocking on the door and commanded that the occupant open the door all the while identifying themselves as police officers. They received no response. After approximately 7-10 minutes of knocking on the door and calling on the occupant to open the door, the officers yelled through the door that if the occupant did not open the door, they were going to kick the door in. Approximately 2 minutes later, the door was opened by one of the occupants who stepped outside. The officers explained that based upon the information they had received concerning a fight, the evidence of a broken window and the telephone receiver lying on the ground outside, and the fact that the occupant of the apartment did not answer the door, they assumed that there may have been a robbery and that the burglars had beaten the resident and that someone had been killed in the apartment. When asked why he did not open the door, the occupant, later identified as Michel, explained that he was on probation and did not want to get into trouble with the police. He was arrested for obstruct/resist.

The court held that while the officers would have been justified in breaking the door open to determine whether anyone was injured, Michel's failure to open the door was not a crime.

3. City of Middleburg Heights, 501 N.E. 2d 1226, 1230 (Ohio 1985)

"[W]e recognize…that there exists at least some limited right to resist entrance, such as locking or closing the door or physically placing one's self in the officer's way."

4. People v. Hilgenberg, 585 N.E. 2d 180 (Ill.1991)

Defendants were charged with obstruction for refusing to open the door to an officer who sought to investigate a report of underage drinking. The court held that the Defendants' inaction was not an act of physical resistance.

5. Adewale v. Whalen, 21 F. Supp. 2d 1006 (D.Minn.1998)

Officers responded to investigate a 9-1-1 hang-up call coming for an apartment. The front entrance of the building at that address had a locked security door. On the side of the door was a small window through which persons on either side of the door could see each other.

When they arrived, a person later identified as Jennifer Jefferson (another resident of the building) was in the foyer. The officers told her that they were investigating a 9-1-1 hang-up call and asked her to open the security door. She refused to open the door and asked the officers for identification. They pointed to their uniforms, badges and marked cars and repeated their request for assistance with the door. She did not open the door and continued to ask for identification. Eventually, she opened the door for them. One of the officers handcuffed Jefferson and arrested her for obstruction of justice for refusing to open the security door.

The court held that Jennifer Johnson couldn't be arrested for refusing to open the door, nor could she be arrested for refusing to open the door quickly.

6. People v. Cope, 701 N.E. 2d 165 (Ill.1998)

A restaurant owner was not guilty of obstruction based on evidence that she refused to unlock the door to the restaurant for police officers seeking to take custody of a runaway teenager who had sought refuge inside the establishment.

II. Coercing a person out of his home is an arrest, requiring both probable cause and an exigency.

A . Overview

Although exigent circumstances relieve an officer of the obligation of obtaining a warrant, they do not relieve an officer of the need to have probable cause to enter the house. An officer cannot get around the need for probable cause and an exigent circumstance by ordering the occupants of a constitutionally protected area (e.g., a home) to come outside. If an officer lacks probable cause and an exigent circumstance, the officer can neither make a nonconsensual warrantless entry, nor can he order the occupants to come outside.

Based on these principles courts have ruled that:

- Where officers surround a house, have their guns drawn, and order a person to leave his home, that person has been constructively arrested inside his home.

- Where officers circle a person's home in a helicopter and order him, using a bullhorn, to exit his house the person has been constructively arrested inside his home.

- Where officers use non-coercive methods to request a person to leave his house, the person is not constructively arrested.

B. Relevant United States Supreme Court case

Payton v. New York, 445 U.S. 573, 100 S.Ct. 1371 (1980)

The court held that police cannot make a warrantless nonconsensual entry into a suspect's home to make an arrest unless police have probable cause and an exigency. "[P]hysical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed." [1]

C. Relevant Ninth Circuit and Nevada cases

1. U.S. v. Johnson, 626 F.2d 753 (9th Cir.1980), aff'd. on other grounds, 457 U.S. 537, 102 S.Ct. 2579 (1982)

Two agents approached Johnson's doorway, drew their weapons, pointed them downward, and knocked, at first identifying themselves by fictitious names. When Johnson opened the door, the officers introduced themselves as agents and asked to talk to Johnson. Johnson told the agents to come in. The agents entered and spoke to Johnson in his bedroom. He told the agents of his involvement in the incident the agents were investigating, and the agents then placed him under arrest. The court said that regardless of the agents' belief that Johnson wasn't arrested in the bedroom, Johnson was actually arrested as he stood within his home at the doorway and was first confronted by the agents with their guns drawn. It doesn't matter that the agents didn't actually enter the house to make the arrest. "[I]t is the location of the arrested person, and not the arresting agents, that determines whether an arrest occurs within a home."[2]

[1] 445 U.S. at 585.
[2] 626 F.2d at 757.

2. U.S. v. Al-Azzawy, 784 F.2d 890 (9th Cir.1985), cert. denied, 476 U.S. 1144, 106 S.Ct. 2255 (1986)

Police officers were summoned to investigate a disturbance at a trailer park. Upon arrival, an officer made contact with a man identifying himself as Steven Williams. He advised that Riad Abed Al-Azzawy, a neighbor, had threatened to shoot him, to blow up the trailer park and to burn Williams' trailer. Williams also advised that Al-Azzawy had threatened him with a pistol the day before, and that a third party had told Williams that he had seen Al-Azzawy in possession of hand grenades and automatic weapons some days earlier. Approximately ten (10) other police officers surrounded Mr. Al-Azzawy's trailer with guns drown. An officer used a bullhorn to order All-Azzawy outside. A short time later, Mr. Al-Azzawy appeared and he was ordered to get on his knees and place his hands on his head which he did.

The court held that Al-Azzawy was arrested while inside of his trailer. The officers had made a constructive entry, and therefore needed both probable cause and an exigency. In this case, the officers had both.

3. U.S. v. Von Marschner, 849 F.2d 1477 (Table), 1988 WL 65553 (9th Cir.(Cal)) (unpublished disposition)

A DEA agent and six officers went to Von Marschner's house. They knocked loudly, and Von Marschner answered. The DEA agent identified himself and asked Von Marschner to identify himself and to step outside. After Von Marschner stepped outside, he was placed under arrest. The Ninth Circuit said that Von Marschner was not constructively arrested inside his house. At the time Von Marschner was asked to leave, a reasonable person would not conclude that he was under arrest. The circumstances in U.S. v. Azzawy,[3] and U.S. v. Johnson,[4] were more coercive. In U.S. v. Von Marschner, the police didn't surround Von Marschner's residence, nor did they order him to emerge from his home. Von Marschner was instead merely invited to step outside.

4. Walters v. State, 786 P.2d 1202 (Nev.1990), superseded by, 825 P.2d 1237 (Nev.1992)

Walters became a suspect in a murder case. Without obtaining a warrant, police had a helicopter circling Walters' home from which commands to exit the home were communicated by bullhorn. The Nevada Supreme Court, citing to U.S. v. Ali-Azzawy,[5] held that since a reasonable person wouldn't have felt free to ignore the police and remain in the house, Walters' arrest must be considered to have taken place while Walters was still inside his home. Walters was coerced to leave his home; he didn't come out voluntarily. Thus, Walters v. State clearly

[3]784 F.2d 890 (9th Cir.1985), cert. denied, 476 U.S. 1144, 106 S.Ct. 2255 (1986).
[4]626 F.2d 753 (9th Cir.1980), aff'd. on other grounds, 457 U.S. 537, 102 S.Ct. 2579 (1982).
[5]784 F.2d 890 (9th Cir.1985), cert. denied, 476 U.S. 1144, 106 S.Ct. 2255 (1986).

recognizes the principle that the Payton rule can be violated even if the police don't physically enter the home.

D. Relevant cases from other jurisdictions

1. U.S. v. McCoy, 839 F.Supp. 1442 (D.Or.1993)

Without a warrant, police surrounded defendant's house and placed a radio call to the occupants advising them that the house was surrounded and that they were to leave the house one by one. One of them, McCoy, appealed. The court held that the arrest of McCoy was unlawful saying, "Police may not order people out of a house to circumvent [Payton v. New York] unless [probable cause and] exigent circumstances are present."[6]

2. Sharrar v. Felsing, 128 F.3d 810 (3d Cir.1997)

Dispatch advised that one Patricia Gannon-Bridgen called 911 and said "I had somebody come to my apartment and beat me up. I am bleeding pretty bad." She identified her attacker as David Bridgen, the victim's ex-husband. She advised that Bridgen had left and that three (3) other people had been with him. When officers arrived at Patricia Gannon-Bridgen's apartment, she advised that she had been hit and officers saw a two inch (2") laceration on her scalp, a pool of blood on the kitchen floor, blood on a pillow in the bedroom and blood in her hair. There were no signs of a forced entry or any broken objects in the apartment. She advised that her estranged husband, David Bridgen, and three (3) others had come into the house, that they held her while David pulled a gun and hit her on the side of the head. She said that Bridgen was being investigated by the FBI for bringing drugs into town, and that he told her that he was afraid that she had gone to the FBI, and that "she wouldn't be the first body he has ever thrown in the river and that they have not found." He hit her and then they all left in his brown van.

At about the same time, a couple of officers were dispatched to David Bridgen's home to see whether the van was there. The officers encountered an individual by the name of Kim Candle, the resident of the house next door. She advised that Mr. Bridgen was at home. Dispatch confirmed that the license number of the van belonged to David Bridgen. Approximately ten (10) units responded to the address and a perimeter was set up around Mr. Bridgen's home. One officer telephoned Mr. Bridgen and told him to send everybody out one at a time with their hands on their heads, walking backwards. All four (4) men complied and were ordered to lie face down in the dirt. The four (4) men were handcuffed, frisked, and taken to the police station.

The court held that Bridgen and his friends were arrested while inside the home. The officers had made a constructive entry, and therefore needed both probable

[6]839 F.Supp. at 1444.

cause and an exigency. In this case, the officers had probable cause but lacked an exigency. There was time to get a warrant and no danger was posed by waiting for one.

3. U.S. v. Saari, 272 F.3d 804 (6th Cir.2001)

Defendant answered a knock at his door and found two police officers with guns drawn, who instructed defendant to come outside, which he did, where formal arrest was made. The court held that the officers made a constructive entry into the house.

4. U.S. v. Thomas, 430 F.3d 274 (6th Cir.2005)

Police officers' conduct outside the entry to defendant's home did not rise to the level of impermissible "constructive entry" into the home, as would violate the Fourth Amendment, although five officers and four police vehicles were present, where two officers knocked on the rear door, which was customarily used as the entrance to the home, and when defendant came to the door, he was told that investigators wanted to talk to him and asked him to come out of the residence, which he did, and there were no weapons drawn, raised voices, or coercive demands on the part of the police.

III. Threshold arrest: A person appearing in the doorway in response to a police knock at the door must voluntarily expose himself to a warrantless arrest before the police may perform a warrantless arrest at the threshold of his home.

A. Overview.

As background for this section, it is useful to review two (2) United States Supreme Court cases, which at first seem difficult to reconcile with one another when applied to the context of a person answering a knock at the door.

The first case is United States v. Santana.[7] In that case, when officers arrived at the suspect's house, she was standing in the doorway of her home. They had probable cause to arrest. Officers testified that had the suspect taken one (1) step forward, she would have been outside the doorway, and had she taken one (1) step back, she would have been inside the home. The officers left their vehicle and approached the suspect, displaying their badges and shouted "police." The suspect retreated into her home where the police followed to make a warrantless arrest.

[7] 427 U.S. 38, 96 S.Ct. 2406 (1976).

The court said that the suspect was in a public place as she stood at the threshold of her door because she was not in an area where she had any reasonable expectation of privacy. The court reasoned that "what a person knowingly exposes to the public, even in his own house or office, is not a subject of Fourth Amendment protection."[8] Since the arrest started in a public place, the officers could go in based on the hot pursuit doctrine.

The second case is Payton v. New York.[9] In the Payton case, the police, with probable cause to arrest for murder, but without an arrest warrant, broke down the defendant's apartment door and entered the apartment. The court held that the arrest was invalid because the Fourth Amendment prohibits the police from making a warrantless and nonconsensual entry into a suspect's home in order to make a routine felony arrest.

Thus, Santana addressed a person already standing in the doorway upon the officers' arrival, and Payton addressed a person inside his home with the door closed upon the officers' arrival. Neither case addressed a threshold arrest where a person is arrested in his doorway after answering a police knock at the door. In other words, if the police knock on someone's door and have probable cause to arrest the resident, can the police reach in to make an arrest under Santana (on the theory that a person standing in the doorway has no reasonable expectation of privacy), or are they precluded from arresting under Payton (on the theory that crossing the threshold requires a warrant)? While lower courts have taken somewhat different approaches to this question, the following 6-part test is a synthesis of the Ninth Circuit's position as set forth in U.S. v. VanEaton[10]and its progeny, as arguably modified by the Nevada Supreme Courts' earlier decision in Edwards v. State.[11]

A person abandons his privacy interest by opening his door from within to answer a police knock at the door and is subject to arrest if all of the following elements are satisfied:

1. The officer uses no tricks, threats, or coercion to get the suspect to answer or come to the door.[12]

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[8]427 U.S. 38 at 42, citing, Katz v. U.S., 389 U.S. 347, 351, 88 S.Ct. 507 (1967).
[9]445 U.S. 573, 100 S.Ct. 1371 (1980).
[10]49 F.3d 1423 (9t Cir.1995), cert.denied, 516 U.S. 1176, 116 S.Ct. 1271 (1996).
[11]808 P.2d 528 (Nev.1991).
[12] Note that using deception alone (i.e., not accompanied by any show of force) to get a person to answer the door is considered by most courts to be fine. However, the Ninth Circuit's decision in U.S. v. Johnson, 626 F.2d 753 (9th Cir.1980), aff'd on other grounds, 457 U.S. 537, 102 S.Ct. 2579 (1982) can't be reconciled with the rule recognized by the vast majority of courts. Here is what Professor LaFave said:

"Indeed…it would seem that even some affirmative deception in gaining the defendant's presence at the doorway would not be objectionable. There is, it would appear, even less reason to view such tactics as improper than those in which the subterfuge results in a police intrusion into the premises. United States v. Johnson is to the contrary, for there the court deemed the case to be governed by Payton because, before defendant opened the door, the federal agents

2. The officer announces his intention to arrest before crossing the threshold.

3. The suspect makes no effort to shut the door or otherwise retreat prior to the officer laying hands on him.[13]

4. The officer has probable cause to arrest.

5. The suspect more than only partially opens the door and more than only partially exposes his body, i.e., he isn't hiding from the police.[14]

6. The suspect is in the "threshold."[15]

Based on these principles courts have ruled that:

- Where an individual opens his door 10-14 inches in response to a knock, remains mostly hidden behind the door and, after seeing the

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'identif[ied] themselves by fictitious names,' meaning that 'Johnson's initial exposure to the view and the physical control of the agents was not consensual on his part.' But that conclusion is directly contrary to a substantial body of Supreme Court and lower court authority on the matter of the effectiveness of consent notwithstanding misrepresentation of identity…"(footnotes omitted) Wayne R. LaFave, 3 Search and Seizure §6.1(e) (4th ed.2004).

[13] While the case law in Nevada and the Ninth Circuit is not exactly clear on this point, Professor LaFave, citing the Nevada Supreme Court's decision in Edwards v. State, 808 P.2d 528 (Nev.1991), said that this should be the rule:

> "But if in a particular case in which there were no exigent circumstances to start with the intended arrestee at the door elects to exercise the security of the premises by not submitting to the arrest, then it is hardly unfair that the police should be required to withdraw and return another time with a warrant." Wayne R. LaFave, 3 Search and Seizure §6.1(e), p. 304 (4th ed.2004).

[14] This requirement derives from Edwards v. State. Typically, this requirement will not be an obstacle, and it only would come into play in atypical circumstances, like those considered in Edwards. In that case, Mr. Edwards only cracked the door open, hid behind it, and quickly slammed the door while exclaiming "wait a minute." Under those circumstances, and applying the test later adopted by the Ninth Circuit (i.e., U.S. v. VanEaton), it can't be said that Mr. Edwards voluntarily exposed himself to a warrantless arrest. He concealed himself to the greatest extent possible, and then immediately attempted to terminate the encounter.

[15] Just how far the threshold extends has never been clearly established in terms of feet or inches. As one court put it,

> "[courts] need not tarry over [a defendant's] exact location in relation to the doorway at the time of arrest. Courts should not be required to sort out metaphysical subtleties, such as whether the suspect was "in" the doorway rather than "at" it, or "on" the threshold rather than "by" it . . . [T]he crucial issues involve a suspect's reasonable expectation of privacy and the voluntariness of his presence in the doorway area." U.S. v. Ziegler, 136 F.Supp.2d 981, 990 (D.S.D.2001).

While it is clear that the suspect does not have to be delicately balanced exactly in the doorway for the doorway exception to apply, it is not clear whether it would apply if the suspect was more than a step or two from the door jam. And regardless of the actual distance, a person isn't in the "threshold" if the "threshold" functions as the home. See, U.S. v. Quaempts, infra.

police, quickly slams it saying "wait a minute," the doorway exception doesn't apply.

- Officers are not free to enter an open garage and contact the resident therein, as a person's garage is as much a part of his castle as the rest of his home.

- Where officers have probable cause to arrest, knock on the door, make no demands, and use no coercive techniques to bring the subject to the doorway, the person can be arrested in the doorway as long as the police first announce their attention to arrest and the subject does not retreat or otherwise resist.

B. Relevant Supreme Court cases

1. U.S. v. Santana, 427 U.S. 38, 96 S.Ct. 2406 (1976)

(A summary of this case is provided in section III(A).)

2. Payton v. New York, 445 U.S. 573, 100 S. Ct. 1371(1980)

(A summary of this case is provided in section III(A) and the Court's holding is set forth in section II(B).)

C. Relevant Ninth Circuit and Nevada Cases

1. U.S. v. Johnson, 626 F.2d 753 (9th Cir.1980), aff'd on other grounds, 457 U.S. 537, 102 S.Ct. 2579 (1982)

Two agents approached Johnson's doorway, drew their weapons, pointed them downward, and knocked, at first identifying themselves by fictitious names. When Johnson opened the door, the officers introduced themselves as agents and asked to talk to Johnson. Johnson told the agents to come in. The agents entered and spoke to Johnson in his bedroom. He told the agents of his involvement in the incident the agents were investigating, and the agents then placed him under arrest. The court said that regardless of the agents' belief that Johnson wasn't arrested in the bedroom, Johnson was actually arrested as he stood within his home at the doorway and was first confronted by the agents with their guns drawn. It doesn't matter that the agents didn't actually enter the house to make the arrest. "[I]t is the location of the arrested person, and not the arresting agents, that determines whether an arrest occurs within a home."[16]

2. Edwards v. State, 808 P.2d 528 (Nev.1991)

[16] 626 F.2d at 757.

Responding to a complaint that a man in a particular hotel room was dressed in woman's clothing and exposing himself, officers saw Mr. Edwards through a window in the front of the hotel room, and observed that he was indeed dressed in woman's clothing. Officers knocked on the door. Edwards opened the door about ten to fourteen inches, at which time the officers noticed that his penis was exposed through a hole in the front of the panties he was wearing. Edwards quickly slammed the door, and told the officers to "wait just a minute." The officers forced the door open, entered, and arrested Edwards for indecent exposure.

The Nevada Supreme Court said that the entry was unlawful because it violated the rule established by the United States Supreme Court in Payton v. New York (i.e., the Fourth Amendment prohibits police from making a warrantless nonconsensual entry into a suspect's home to make an arrest). The Nevada Supreme Court rejected the argument that Edwards committed a gross misdemeanor in a public place and was therefore subject to immediate arrest. "It is obvious from the record that Edwards remained inside the hotel room at all times and was at the least partially hidden behind the door."[17]

3. U.S. v. VanEaton, 49 F.3d 1423 (9th Cir.1995), cert. denied, 516 U.S. 1176, 116 S.Ct. 1271 (1996)

Defendant freely opened the motel room door to police, thus exposing himself to a warrantless arrest, where officers used no subterfuge, Defendant voluntarily opened the door when he saw the police through the window, no threats or force was used, and police did not enter room until after the arrest.

Thus, the VanEaton case extends U.S. v. Santana. That is, the court in Santana established that the open doorway of a private residence is not a private place but a public one, and a person already standing in that open doorway when the police arrive has no expectation of privacy. In VanEaton, the Ninth Circuit held that when a person opens the door from within his home in response to a police knock and is standing in the doorway, that person can be arrested as long as it can be fairly said that he voluntarily exposed himself to a warrantless arrest.

4. U.S. v. Albrektsen, 151 F.3d 951 (9th Cir.1998)

[17] 808 P.2d at 531. Note that this case was decided before the Ninth Circuit's decision in U.S. v. Van Eaton. A dissenting opinion in Edwards argued that the arrest was legal based on the United States Supreme Court's decision in U.S. v. Santana, using the logic which was later adopted in U.S. v. VanEaton. Thus, it is not known whether the Nevada Supreme Court would have ruled differently if (1) U.S. v. VanEaton had already been decided and (2) the officers in Edwards had announced their intention to arrest before entering and arresting Mr. Edwards. To be safe from a legal standpoint and to reconcile the Edwards and VanEaton decisions to the extent possible, officers in Nevada ought to take the position that a person does not voluntarily expose himself to a warrantless arrest by answering a police knock at the door if he only partially opens the door and only partially exposes his body, i.e., he essentially is hiding behind the door.

Albrektsen had two outstanding misdemeanor arrest warrants, and he was registered at a motel. An officer went to the motel room, primarily out of a desire to search the room for drugs. Albrektsen answered the officer's knock on the door and admitted his identity. Instead of arresting Albrektsen on the spot, the officer entered the room. Albrektsen moved away from the door because if he had not done so the officer would have knocked him down while entering. The officer wanted to see the inside of the room. The court said there was no reason to enter the room for the purpose of arresting him and that the entry was unlawful. After reviewing U.S. v. Van Eaton, the court said, "[T]he arrest of Albrektsen with a warrant could have been effected at the doorway of his motel room. It should have been, there was no need to do otherwise." [18]

5. Honeycutt v. Gillespie, 156 F.3d 1237 (9th Cir.1998) (unpublished disposition)

VanEaton's doorway exception applies even if the suspect who answers the door doesn't know that the person knocking is a police officer. Without checking to see who is at the door, a person who opens the door voluntarily exposes himself to whomever is standing at the door.

6. LaLonde v. County of Riverside, 204 F.3d 947 (9th Cir.2000) (See Note at end of this section)

Police responded to a complaint that LaLonde was causing a disturbance (loud yelling, noises, etc.). LaLonde's roommate answered the officer's knock and LaLonde walked into view. He remained inside the apartment and did not at any time reach the doorway. The officer told LaLonde that he was a suspect in the officer's disturbance investigation, and LaLonde told the officer that he (the officer) didn't know what he was talking about. The officer crossed the threshold, reached in and tried to grab LaLonde. He grabbed LaLonde's t-shirt and pursued LaLonde who retreated. The court said that even if the officer had probable cause to arrest LaLonde for disturbing the peace, he needed, but didn't have, an exigency in order to make a lawful entry to arrest LaLonde. LaLonde did not voluntarily expose himself to a warrantless arrest. The officer didn't attempt to arrest LaLonde at the doorway. While they were at the doorway, the officers sought to ask LaLonde, who was a few feet inside the apartment, some questions. The arrest took place only after the officers crossed the threshold.

7. U.S. v. Oaxaca, 233 F.3d 1154 (9th Cir.2000)

DEA agents drove to Oaxaca's house to arrest him. They didn't have an arrest warrant. When they arrived, they saw Oaxaca standing inside his attached garage. The agents walked through the door, into the garage, and placed him under arrest.

[18] 151 F. 3d at 954.

The court said that Oaxaca's garage was part of his house. "We can conceive of no reason to distinguish a garage, where people spend time, work, and store their possessions, from a den or a kitchen, where people spend time, work, and store their possessions. Simply put, a person's garage is as much a part of his castle as the rest of his home."[19]

The court said that the U.S. v. VanEaton case didn't help the government because in VanEaton the suspect was arrested while the officers were outside. In Oaxaca, the officers made the arrest inside of the garage.

8. Anderson v. City of Long Beach, 81 Fed Appx. 703 (9th Cir.2003)

Officers were talking to Deborah Anderson in the doorway. The officers were outside, and Anderson was inside in the doorway of her home. When an officer voiced his suspicion that Anderson was under the influence of drugs, Anderson backed away from her doorway and into her residence. The officers entered and arrested her. The arrest was illegal because the officers needed both probable cause to arrest and an exigency. VanEaton's doorway exception didn't apply because Anderson was not arrested in her doorway while exposed to public view; rather, the officers crossed into her home once she was already several feet inside before placing her under arrest.

9. U.S. v. Quaempts, 411 F.3d 1046 (9th Cir.2005)

Darrell Quaempts' trailer home was so small that he could open the front door while lying in his bed. His doing so one day in response to a police knock at his door resulted in his arrest. The court said U.S. v. VanEaton wasn't controlling. Quaempts was not standing in the doorway of his home. By reaching over and opening the door he did not waive his expectation of privacy.

D. Relevant cases from other jurisdictions

1. Glazer v. City of Long Beach, 210 F.Supp. 2d 1131 (C.D. CA.2000)

Barry Glazer was a suspect of an alleged burglary at the apartment complex in which he resided. Glazer answered Officer Davidson's knock at the door. The officer asked Davidson to step outside, but Glazer refused. The officer and Davidson were approximately four feet apart. Davidson then entered the apartment and grabbed Glazer. Glazer sued.

The court rejected Davidson's argument that U.S. v. VanEaton was controlling. In VanEaton, the suspect was advised that he was under arrest before the officer crossed the threshold; in Glazer, the suspect was not advised that he was under

[19] 233 F.3d at 1157.

arrest before[20] the officer crossed the threshold. The court also reviewed LaLonde v. County of Riverside, and noted that in that case the Ninth Circuit, in concluding that the arrest violated the Fourth Amendment, gave considerable weight to the fact that the officers' entry preceded the arrest and, therefore, was not covered by the doorway exception established in VanEaton.

Also, the Glazer court noted that in VanEaton, the suspect was standing at the doorway just inside the threshold whereas in Glazer the suspect was a few feet inside.

2. Strutz v. Hall, 308 F.Supp. 2d 767 (E.D.Mich.2004)

Officers responded to a noisy party. Mr. and Mrs. Strutz spoke to responding officers at the door. While doing so, the officers observed indications inside the home that underage drinking was taking place. The officers confronted Mr. and Mrs. Strutz about the apparent underage drinking and Mr. Strutz then tried to shut the door, but officers kept it open. A struggle ensued at the front door. The Strutzs sued.

The court rejected the officers' argument that their conduct was lawful under U.S. v. VanEaton. The court said that the officers could have used what they observed as basis upon which to obtain warrant, but they could not legally have overcome Mr. Strutz's attempt to shut his door. "When Mr. Strutz asserted his Fourth Amendment right to keep defendants outside his house, however, the police were obliged to obtain a warrant or identify an exigent circumstance before they could use force to overcome Mr. Strutz's effort to close the door. Consequently, the court cannot accept Defendant's argument that their warrantless entry into Plaintiffs' home was justified by Mr. Strutz's preceding decision to open the door and respond to Defendants' initial inquiries."[21]

E. Note

This section (section III) addresses doorway arrests. The law with respect to doorway detentions (Terry stops) is a different subject.

As the Ninth Circuit recently pointed out in U.S. v. Martinez:[22]

> "Certainly, the usual rules pertaining to Terry stops do not apply in homes. See United States v. Washington, 387 F.3d 1060 (9th Cir.2004) (noting that the Supreme Court 'has never expanded Terry to allow a Terry-stop at an individual's home'); United States

[20] The officer testified that he announced his intention to arrest as he reached in and grabbed the suspect's wrist. However, even if that were the case, the entry wouldn't have been lawful. To be legal the officer must announce his intention to arrest before entering.
[21] 308 F.Supp. 2d at 784.
[22] 406 F.3d 1160, 1165 (9th Cir.2005).

v. Winsor, 846 F.2d 1569, 1574 (9th Cir.1988) (en banc) (refusing to extend the principle of Terry stops to the home)."

If an officer has only reasonable suspicion (but lacks probable cause) that the person who answered the knock at the door and is standing in the doorway has committed, is committing, or is about to commit a crime, the person in the doorway cannot be legally compelled to keep his door open or to step outside, unless necessary due to clear, compelling officer safety concerns.[23]

In one jurisdiction, Idaho, the state's highest court recently overruled a prior case which had allowed a doorway detention based only on reasonable suspicion. See, State v. Maland, 103 P.3d 430, 436 (Idaho 2004), overruling State v. Manthei, 939 P.2d 556 (Idaho 1997).

Other courts have considered, but not definitely decided, whether doorway detentions might be legal. Garner v. Meoli, 19 F.Supp.2d 378 (E.D.Pa.1998).

IV. Police officers who obtain visual access to the interior of a dwelling after expressly or implicitly demanding that the door be opened thereby are conducting a "search." If a person answers the door in response to a demand (express or implied) that the door be opened, anything the officer sees is a product of an unlawful search unless the officers had probable cause and an exigency (or a warrant) prior to the door being opened.

[23] A recent case addressing this issue is U.S. v. Beaudoin. 362 F.3d 60 (1st Cir.2004), cert. denied, 543 U.S. 979 (2004). In that case, the First Circuit Court of Appeals said that the officer's detention of a motel room occupant who answered the officers' knock (i.e., the occupant was ordered to step out of the room for a pat-down) was justified because the officers were responding to a 9-1-1 anonymous call reporting a drug deal gone bad involving a death, the person answering the door only opened up the door far enough to expose his face, the officers couldn't see the person's hands and couldn't see inside the room, and officers were concerned that if there had been a murder the person in the doorway might have been the murderer and that he might well be armed and have companions in the room. The court noted that the association between drug dealing and guns is well known. Additionally, the officers heard noises from inside the room. In ruling that the command to step outside was reasonable under the circumstances, the court noted that alternatives weren't available. While officers can normally retreat, in this case that option wasn't prudent: They had reason to believe that retreat would not have been safe.

Whether the holding in U.S. v. Beaudoin would be seen as necessarily inconsistent with the Ninth Circuit's position is not absolutely clear. If officers employed by agencies within the Ninth Circuit's jurisdiction, upon contacting the occupant at the door, faced a potentially life-threatening situation, hopefully the Ninth Circuit would be forced to restate its Terry-does-not-apply-to-homes rulings and explicitly carve out an exception for officer safety. Indeed, it is highly probable that, if confronted with appropriate facts, the Ninth Circuit would do so. After all, the general rule is that a Terry stop is justified when an officer has reasonable suspicion that the suspect has committed, is committing, or is about to commit a crime; or that there is imminent danger to persons or property. Duran v. City of Douglas, 904 F.2d 1372 (9th Cir.1990). This general rule should be understood to apply even in a doorway.

A. Overview

The following factors/circumstances tend to show acquiescence rather than voluntariness:

1. The occupant answering the door did so reluctantly and only because of the officer's persistence;

2. In police uniform as opposed to in plain clothes;

3. Display of a weapon;

4. Self-identification as an officer;

5. Loud and persistent knocking;

6. An announcement that the officer "needs" to speak to the occupant, as opposed to using language conveying that the occupant does indeed have a choice in the matter (e.g., "If it's convenient, I can come back tomorrow".;

7. Using loud and authoritative voice;

8. The officer intends to remain until the occupant opens the door (i.e., will not take "no" for an answer);

9. Issuance of an express demand such as "open up";

10. Knocking on the door late at night; and

11. Knocking on windows or shining flashlight inside.

Based on these principles courts have ruled that:

- Where two officers, with guns drawn, knock on the door and announce, “Police; open the door,” and occupant complies, everything the officers see inside upon the door opening is the result of a “search.”

- A “knock and talk” with no demand made to open the door is lawful.

B. Relevant Ninth Circuit cases

1. U.S. v. Winsor, 846 F.2d 1569 (9th Cir.1988) (en banc)

Police officers pursued a suspected bank robber to a hotel and officers went room to room looking for the suspect. At each room two police officers and an FBI agent, with their guns drawn, knocked at the door and announced, "Police. Open the door." After checking all of the room on the first floor and some of the rooms on the second floor the officers arrived at the room where Stephen and Dennis Winsor were living. When the police knocked on the door and demanded that it be opened, Dennis Winsor obeyed. The police officer recognized him as the robber.

The court held that the police effected a nonconsensual search of the room when they knocked on the door and commanded that it be opened under claim of authority. The occupant did not open the door voluntarily, but instead in response of a claim of lawful authority. As such, the search could only be legal if based on probable cause.

The court also rejected the claim that the search was lawful on the basis of consent. Compliance with a police demand is not consent.

2. U.S. v. Cormier, 220 F.3d 1103 (9th Cir.), cert. denied, 531 U.S. 1174, 121 S.Ct. 11461 (2001)

Investigation revealed that Mr. Cormier, a person staying at a hotel, had an outstanding warrant. He also had an extensive criminal history and was a registered sex offender. Detective Peters decided to conduct a "knock-and-talk." Peters approached Cormier's motel room and knocked on the door. Peters never announced that she was a police officer, nor did she ever compel Mr. Cormier to open the door under the badge of authority. Detective Peters knocked only briefly before Cormier answered. Cormier voluntarily consented to Peters' entry.

The court began its analysis by citing to its decision in Davis v. United States:[24]

> Absent express orders from the person in possession against any possible trespass, there is no rule of private or public conduct which makes it illegal per se, or a condemned invasion of the person's right of privacy, for anyone openly and peaceably, at high noon, to walk up the steps and knock on the front door of any man's "castle" with the honest intent of asking questions of the occupant thereof whether the questioner be a pollster, a salesman, or an officer of the law.

[24] 327 F.2d 301 (9th Cir.1964).

The court held that the facts of this case fell under the general rule of Davis. Here, Peters knocked on the door for only a short period spanning seconds. In addition, Peters never announced that she was a police officer while knocking nor did she ever compel Cormier to open the door under the badge of authority because there was no police demand to open the door, and Peters was not unreasonably persistent in her attempt to obtain access to Cormier's motel room. There is no evidence to indicate that the encounter was anything other than consensual. The "knock-and-talk" required no legal justification.

3. Bailey v. Newland, 263 F.3d 1022 (9th Cir.), cert. denied, 535 U.S. 995, 122 S.Ct. 1556 (2002)

Officers approached a motel room to conduct a "knock-and-talk." Before either officer could knock on the door one occupant, later determined to be Anthony Cowans, left the room. The other occupant, Bailey, slammed the door shut. Cowans was detained. Another officer, Officer Phillips, began knocking on the door and identified himself as a police officer. He knocked for about one and one-half minutes to two minutes while continuing to identify himself as a police officer, but issued no commands or orders. Officer Phillips was in uniform and had his gun drawn. After some delay, Bailey opened the door and stepped out of the room. The officer looked through the doorway which had remained open and saw underneath a bed what appeared to be a handgun, drug paraphernalia, contraband and other evidence.

The court held that the officers needed a warrant or probable cause before officers could obtain visual access to the room through the use of a command under color of authority. The officers' persistence in attempting to make contact with the occupant or occupants of the room after Mr. Cowans left the room amounted to a demand to open the door, and when Officer Phillips obtained visual access to the room when Mr. Bailey complied with the officer's demand, the resulting view was a search in violation of the Fourth Amendment.

4. U.S. v. Washington, 387 F.3d 1060 (9th Cir.2004)

Reno police received a tip that 'Shane' was operating a methamphetamine laboratory in room 319 of the Comstock Hotel. At the hotel, the police were advised Shane had been evicted from room 319. The desk clerk told the police room 1524 received a large number of phone calls and there was a lot of foot traffic on the 15th floor. Three officers knocked on the door of room 1524 to question the occupant about whether he was involved in manufacturing or distributing methamphetamine. Three other officers hid a short distance down the hall; five of the six officers had their firearms visible when Ronald Washington came out of room 1524. When another person exited the room, the police refused to let him close the door, giving the officers a view inside the room. The court held that the visual search of Washington's room through the open door was unconstitutional.

5. U.S. v. Bautista, 362 F.3d 584 (9th Cir.2004)

Mrs. Bautista checked into a motel, having reserved it with a credit card. The company which booked the room called the police reporting that the credit card used to reserve the room was stolen. Officers Novasky and Thomas responded to Bautista's room. A female voice asked, "who is it?" The officers identified themselves; told the woman that they needed to speak with her; and requested that she open the door. Rather than open the door, the woman again inquired who was at the door. The officers identified themselves a second time. Again, no one opened the door. Although Officer Novasky inserted a pass key, given to him by the manager, which unlocked the door, Mrs. Bautista opened the door herself.

In these circumstances, the court held that Officer Novasky essentially stated as a practical matter "Police. Open the door." Mrs. Bautista's actions after that "demand" were not consensual. She opened the door in response to a police demand.

C. Relevant Cases from other jurisdictions

1. U.S. v. Conner, 127 F.3d 663 (8th Cir.1997)

Defendant involuntarily opened door to his hotel room pursuant to the command of entry under color of authority, and thus did not consent to open the door. Officers knocked on the door in a loud and persistent manner, continued to knock after defendant observed them through the window, then commanded defendant to "open up" the door. The officers' view of anything revealed by opening the door was an illegal search (unless the officers had both probable cause and an exigency).

2. U.S. v. Jerez, 108 F.3d 684 (7th Cir.1997)

The involuntary opening of a door to a police command can also be viewed as a "seizure." A reasonable person in position of defendants, who were staying in the motel room, would not have felt free to ignore deputy sheriffs and could conclude only that the deputies would not leave unless the door was opened, and thus defendants were seized; deputies knocked on the motel room door at 11:00 p.m. for three minutes, made commands and requests to open door, knocked for one-and-a-half to two minutes on the outside window, and shone a flashlight through a small opening in the window's drapes onto the face of one defendant as he lay in bed.

3. U.S. v. Cruz-Roman, 312 F.Supp. 2d 1355 (W.D. Wash.2004)

Officers conducted a "knock-and-talk." Officer Romero knocked on the door while the other two officers stood away from the door and out of sight of anyone who might be inside if the door were open. At this point no guns were drawn. A male voice from inside asked in Spanish who was there without opening the door. Officer Romero, who speaks Spanish, answered that it was "Dan." He did not indicate at this time that he was a police officer. The voice responded that he did not know any "Dan." Officer Romero then asked to speak to "Miguel." The voice responded that there was no one there by that name. At this point Officer Romero, as a last effort to get the occupant to open the door, stated that he was with the police and wanted to talk with the occupant of the apartment. The officer later testified that he did not believe that the door would be open without announcing his status as a police officer. At that point the door was open. Officer Romero saw Defendant Guillermo Jesus Cruz-Roman standing two or three feet inside of the threshold of the apartment. Officer Romero also saw a Mr. Bazan-Lopez standing behind and to the right of Mr. Cruz-Roman.

If an officer knocks and announces himself by saying "police," opening the door is neither consensual nor voluntary. Compliance with a police demand is not consent.[25]

In the present case, the court held that Officer Romero unlawfully searched the interior of Mr. Cruz-Roman's apartment when he convinced Mr. Cruz-Roman to open the door to his residence and saw Mr. Bazan-Lopez within. Officer Romero first attempted to get Mr. Cruz-Roman to open the door and speak with him without telling Mr. Cruz-Roman that he was a police officer. He said that his name was Dan and that he wanted to speak with Miguel. The occupant responded by saying that he did not know any Dan and that there was no one present by the name of Miguel. When it appeared that the occupant was not going to speak further or open the door voluntarily, Officer Romero called on his authority as a police officer telling the occupant that he was with the police and that he needed to speak with the occupant. Only then, did Mr. Cruz-Roman open the door. This is what Officer Romero intended to have happen by invoking his authority and this is exactly what happened. Given Mr. Cruz-Roman's reticence to open the door absent this call to authority, the court concluded that Mr. Cruz-Roman interpreted Officer Romero's statements as a police demand to which compliance was not an option. Therefore, the court held that Officer Romero conducted a "search" for Fourth Amendment purposes when he "gained visual entry into the room through the door that was open" because he identified himself as an officer and demanded to speak with the voice behind the door.

4. U.S. v. Adeyeye, 359 F.3d 457 (7th Cir.2004)

[25] citing, U.S. v. Winsor, 846 F.2d 1569, 1573 n. 3 (9th Cir.1988) (en banc).

Customs agents' use of "knock and talk" procedure to gain access to defendant in his motel room was not a seizure; agents approached motel room in the middle of the afternoon, knocked only twice, and stated at time of the second knock that they could return later if it was an inconvenient time.