



1994

Recent Developments: Carroll v. State: Police May Make Warrantless Entries into Homes to Investigate Burglaries under the Exigent Circumstances Exception to the Warrant Requirement of the Fourth Amendment

Kimberley S. Wright Jones

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Recommended Citation

Wright Jones, Kimberley S. (1994) "Recent Developments: Carroll v. State: Police May Make Warrantless Entries into Homes to Investigate Burglaries under the Exigent Circumstances Exception to the Warrant Requirement of the Fourth Amendment," *University of Baltimore Law Forum*: Vol. 25 : No. 2 , Article 13.

Available at: <http://scholarworks.law.ubalt.edu/lf/vol25/iss2/13>

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Carroll v. State:

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In *Carroll v. State*, 335 Md. 723, 646 A.2d 376 (1994), the Court of Appeals of Maryland held that police need probable cause to believe that a burglary is either in progress or has recently been committed to enter a home without a warrant, to search for intruders and to protect an occupant's property. In so ruling, the court extended the State's scope of the exigency exception to the warrant requirement under the Fourth Amendment.

In July of 1992, Joe Hudson ("Hudson") escaped from a Carroll County detention center. Deputy First Class Mark Gonder ("Gonder") and Detectives Lust and Prise of the Carroll County Sheriff's Department went to an apartment complex in Eldersburg, Maryland in search of Hudson. A resident of the complex, Terry Lynn Penn ("Penn"), told Gonder that Hudson had been there the night before but was no longer there. Penn then allowed the officers to search the residence of Petitioner Mike Carroll ("Petitioner"). Before entering the residence, Gonder noticed an open screen door, a front door which was ajar, and a broken front door window. The outward appearance of the apartment prompted Gonder to ask Penn if the basement apartment was secured. Penn informed the officer that the apartment had been secured and that Petitioner would not be home until July 25th or July 26th. The officers then returned to Petitioner's apartment. Gonder entered,

announced his presence, and discovered marijuana plants, which were in plain view. Upon finding that the apartment was unoccupied, the officers did not disturb the evidence. Rather the officers secured the apartment and left the premises to obtain a search and seizure warrant from a magistrate of the Circuit Court for Carroll County. The officers executed the warrant at 4:00 p.m. on July 24, 1992 and seized the contraband.

On August 27, 1992, Petitioner was indicted in the Circuit Court for Carroll County on the following charges: manufacturing a controlled dangerous substance; possession of a controlled dangerous substance with intent to distribute; maintaining a common nuisance; and possession of a controlled dangerous substance and drug paraphernalia in violation of Maryland Annotated Code Art. 27, §§ 286, 287, 287A (1957, 1992 Repl. Vol.). The State alleged that the officers "had probable cause to believe that a burglary was in progress or had recently been committed and that exigent circumstances justified their initial warrantless entry."

Conversely, Petitioner claimed the officers violated his Fourth Amendment rights because "the initial warrantless entry did not fall within any of the recognized exceptions to the warrant requirement." Accordingly, Petitioner filed a timely motion to suppress the evidence seized from his residence. The trial court granted Petitioner's

motion. On appeal, the Court of Special Appeals of Maryland reversed the trial court's decision and remanded the case for further proceedings. Thereafter, the Court of Appeals of Maryland granted certiorari to decide whether the evidence should have been suppressed. Upon review, the court of appeals affirmed the finding of the court of special appeals.

The court began its analysis by discussing the legality of the initial warrantless entry and the validity of the warrant. The court first established that the State bore the burden of proving that the initial warrantless search was justified by exigent circumstances and that such circumstances did, in fact, exist. *Carroll*, 335 Md. at 728, 646 A.2d at 379. After reviewing general Fourth Amendment principles, the court turned its attention to the exigent circumstances exception. It explained that this exception applies when "there is a compelling need for official action and no time to secure a warrant." *Id.* at 729, 646 A.2d at 380 (quoting *Michigan v. Tyler*, 436 U.S. 499, 509 (1978)).

Because the court noted that this was a case of first impression, the court looked to various state and federal decisions to resolve the issue before it. Of these decisions, the most persuasive were rendered by the Massachusetts and Montana courts. There, the courts permitted warrantless burglary investigations to protect both occupants and property, and to

apprehend suspects. *Id.* at 732-33, 646 A.2d at 381. After reaching a similar conclusion, the Court of Appeals of Maryland supported its ruling by suggesting that to require officers to leave the scene of a crime to secure a warrant during emergent situations would be futile. Such a requirement would allow intruders the opportunity to "complete their crimes undisturbed." *Id.* at 734, 646 A.2d at 382.

In expanding the scope of the exigency exception to the Fourth Amendment warrant requirement in Maryland, the court noted two specific restrictions. First, police must weigh the need to investigate against the risk of the "serious invasions of privacy such entries and searches entail." *Id.* at 734, 646 A.2d at 382. Second, the Court warned against using the "[r]ationale of protecting private property . . . as a subterfuge to seek out evidence of criminal conduct." *Id.* at 734, 646 A.2d at 382 (citing *People v. Gardner*, 459 N.E.2d 676 (Ill. App. Ct. 1984)).

In reaching its decision, the court also considered whether the facts supported the officers' reasonable beliefs at the time of the warrantless entry. More specifically, the court addressed whether the officers had probable cause to believe that either a housebreak occurred or that an intruder was on the premises. *Id.* at 735, 646 A.2d at 382. Next, the court conducted its "own constitutional appraisal" of the facts of the case before it. *Id.* at 736, 646 A.2d at

383. In so doing, the court observed that the appearance of a "forced entry" compounded by information that an escaped convict had been in the area created a "compelling" need for the officers to investigate. *Id.* at 738-39, 646 A.2d at 384. Furthermore, the court was convinced that the "presence or absence of suspects within Petitioner's apartment could not be ascertained without entering the premises." *Id.* at 739, 646 A.2d at 384 (citing *State v. Bakke*, 723 P.2d 534 (Wash. Ct. App. 1986)). Hence, the court found that the initial entry was lawful based upon exigent circumstances and the officer's "observations were proper grounds for a search warrant under the plain view doctrine." *Carroll*, 335 Md. at 740, 646 A.2d at 385 (citing *Horton v. California*, 496 U.S. 128 (1990)). The court further determined that the officers entered the premises for the sole purpose of investigating a burglary. Furthermore, proper procedures were followed upon entrance. Specifically, the entering officer announced his presence and observed contraband in plain view. The evidence was left "undisturbed," while the sheriffs left the premises to secure a search warrant based upon their initial observations. *Carroll*, 335 Md. at 740, 646 A.2d at 385.

In his dissent, Judge Bell with whom Judge Eldridge joined, asserted that the initial entry into Petitioner's home was based upon speculation rather than probable cause. Because

the officers were told that the escapee was no longer on the premises, the dissent was unpersuaded by a hot pursuit theory. *Id.* at 746 n.2, 646 A.2d at 388 n.2. Essentially, the dissent was not convinced that there were exigent circumstances to justify the warrantless entry into Petitioner's home. Specifically, Judge Bell pointed out that because the Petitioner was not in his apartment the need to assist the occupant was also unwarranted. *Id.* at 746-47, 646 A.2d at 388.

Moreover, the dissenting opinion specifically determined that the "temporal context" of the circumstances of

the case was inconsistent with exigency. *Id.* at 747, 646 A.2d at 388. As a result, Judge Bell maintained that it was "difficult to conceive of what legitimate inferences could be drawn which would have permitted entry." *Id.* at 747, 646 A.2d at 388. The dissent further noted that once property is stolen, the need to protect it is unnecessary. *Id.* at 748, 646 A.2d at 388. In short, the only valid option was "to secure the premises . . . so that no additional property would be taken. That could have been accomplished without entering the premises." *Id.* at 748, 646 A.2d at 389. An overriding concern of the dissent was that

the majority opinion neutralized the "emergent nature of exigency" thus making "the exception . . . the rule." *Id.* at 748, 646 A.2d at 389.

Significantly, *Carroll v. State* sets a new and controversial precedent in Maryland regarding the exigent circumstances exception to the warrant requirement of the Fourth Amendment. By expanding the exigency exception to include legitimate burglary investigations, law enforcement officers are provided greater latitude to protect the safety and property of Maryland residents.

- Kimberley S. Wright Jones

