

The State of South Carolina



Office of the Attorney General

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December 20, 1988

D. M. Bridges, Chief
Greenville Police Department
4 McGee Street
Greenville, South Carolina 29601

Dear Chief Bridges:

In a letter to this Office you questioned whether an arrest warrant is a sufficient basis to search a residence for the individual named in the arrest warrant or is a search warrant also necessary.

Generally, the Fourth Amendment makes warrantless entries into an individual's home presumptively unreasonable. Mincey v. Arizona, 437 U.S. 385, 390 (1978). Therefore, in most instances, a warrant is necessary to enter an individual's home. Of course, exigent circumstances may justify an exception to the requirement for a warrant. Coolidge v. New Hampshire, 403 U.S. 443, 474-475 (1971). For instance, the reasonable belief that evidence of a serious crime will be destroyed before a warrant can be obtained is a factor in determining sufficient exigency to justify a warrantless entry. Ker v. California, 374 U.S. 23, 40-41 (1963). Of course, consent may be given to make a search. However, if consent is relied on to validate an arrest, such consent must be fully and voluntarily given. Bumper v. North Carolina, 391 U.S. 543, 548 (1968).

As to the warrant requirement, in Payton v. New York, 445 U.S. 573 at 603 (1980) the United States Supreme Court held that

...an arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within.

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However, in Steagald v. United States, 451 U.S. 204 (1981) the Court further determined that an arrest warrant alone is an insufficient basis for searching a third party's home for the suspect named in the arrest warrant. Therefore, a search warrant is necessary to search for a person for whom an arrest warrant exists if the search is made in the residence of a third party. Citing such decisions in United States v. De Parias, 805 F.2d 1447 (1986) the Eleventh Circuit Court of Appeals determined that an arrest warrant authorized entry into an apartment where there was a reasonable belief that individuals named in the arrest warrant resided in that particular apartment.

Therefore, an officer may enter a residence in search of a suspect for whom he has an arrest warrant if the officer reasonably believes the suspect resides within. However, even if the officer has an arrest warrant, it is necessary to obtain a search warrant before entering the residence of a third party not named in the arrest warrant.

If there is anything further, please advise.

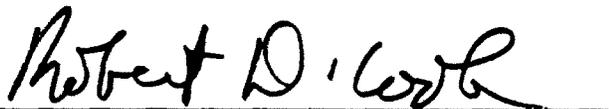
Sincerely,



Charles H. Richardson
Assistant Attorney General

CHR:sds

REVIEWED AND APPROVED BY:



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EXECUTIVE ASSISTANT FOR OPINIONS