



Jul 17, 2019

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Watson v. Pearson: Qualified Immunity and Curtilage Searches

The U.S. Sixth Circuit Court of Appeals, with jurisdiction over Ohio, Michigan, Kentucky, and Tennessee, recently held in [Watson v. Pearson](#) that qualified immunity does not protect law enforcement officers from liability for warrantless searches of curtilage that violate the Fourth Amendment. Curtilage is the exterior surroundings of a home, which are treated as the home itself for Fourth Amendment purposes. The Sixth Circuit denied qualified immunity to these officers even though it had not expressly held that entry to the side and rear yards were entry to curtilage until *Morgan v. Fairfield County*, 903 F.3d 553 (6th Cir.), decided in September 2018.

In *Watson*, law enforcement officers attempted to serve a civil levy on the plaintiff at his last known address. The officers knocked at the front door for 20 minutes before Watson answered. He stated that the home “belonged” to his girlfriend, that she was still inside, and that he did not have his keys so he couldn’t get back inside. The officers then advised Watson that he was free to leave. But instead of leaving, the officers continued to knock on the door, turned the knob, and walked around the house looking for items that could be levied. During this investigation, the officers smelled marijuana coming from a vent and saw marijuana cigarettes sitting in the yard. The officers used that evidence to obtain a search warrant for the home and found evidence of the sale and use of marijuana. Watson succeeded in having the evidence suppressed, as the fruit of an unconstitutional search, in his criminal case. He then filed a civil action for damages under 42 U.S.C. §1983. The federal district court agreed that Watson’s Fourth Amendment right to be free from unreasonable search was violated but granted summary judgment to the officers on the grounds of qualified immunity.

The doctrine of qualified immunity protects government officials from civil liability so long as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person should have known. *Harlow v. Fitzgerald*, 457 U.S. 800, 818

(1982). To determine if an officer is entitled to qualified immunity, courts evaluate two independent prongs: (1) whether the officer's conduct violated a constitutional right; and (2) whether that right was clearly established at the time of the accident. *Id.* at 232.

The Sixth Circuit first held that the officers' conduct violated Watson's Fourth Amendment rights because it was a warrantless search of Watson's curtilage. Warrantless searches are per se unreasonable except in a few limited circumstances—including the "knock and talk" exception. Here, the officers followed this lawful exception by entering the curtilage of the home to knock on the front door (although they likely violated it by knocking for nearly 20 minutes). The officers argued they had a right to enter the side yard after talking with Watson because his statement that his girlfriend owned the home demonstrated his intent to abandon his privacy interest in the house. The Court rejected that argument because the abandonment exception does not apply to a residence that has been left unattended for only a short period of time. Moreover, Supreme Court precedent holds that overnight guests have a legitimate expectation of privacy where they are staying. The Court found Watson's declaration that he had a key and that his girlfriend was still inside sufficient to extend that protection to him and determined that "no officer could have reasonably believed that Watson had disclaimed his privacy interest in the residence or that the residence was abandoned."

Second, the Sixth Circuit found that under existing Supreme Court precedent at the time of the event—December 2013—the officers should have known that entering the curtilage of the home beyond knocking on the front door was a violation. In March 2013, the Supreme Court established that a police officer without a warrant is limited to an "approach [to] the home by the front path, a prompt knock, a [brief wait] to be received, and then (absent an invitation to linger longer) departure." *Florida v. Jardines*, 569 U.S. 1 (2013). The officers relied on pre-*Jardines* Sixth Circuit decisions (*Hardesty v. Hamburg Twp.*, 461 F.3d 646 (6th Cir. 2006) and *Turk v. Comerford*, 488 F.Appx. 933 (6th Cir. 2012), which held that an officer could proceed to the rear of a home and knock on the back door if the officer had reason to believe someone was inside the house.

Although the Sixth Circuit did not expressly repudiate these cases until *Morgan* in September 2018, and the facts of *Jardines* itself did not involve entry to the side or rear yard, the *Watson* Court found that the officers should have known they were barred from deviating from the front path to enter the side and rear yard curtilage at all, let alone to engage in a search. The court held the officers therefore were not entitled to qualified immunity.

Implications

Law enforcement agencies should train all officers that when conducting a “knock-and-talk,” they are strictly limited to approaching the front door, knocking briefly, and leaving if no one answers. Entry to any other part of the property requires either consent, a warrant, or a bona fide exception to the warrant requirement. In the *Morgan* case from September 2018 and again here, the Sixth Circuit has now made it abundantly clear that the holding of *Jardines* prohibits warrantless entry onto the side or rear curtilage of a residence. At the very least, violation of this rule will result in suppression of evidence gathered as a result of the violation.

Law enforcement agencies also should recognize and alert their officers that each individual officer may be personally financially liable for an improper, warrantless entry to the curtilage of a residence.

Lastly, the *Watson* decision suggests that the court expects local agencies to apply case law proactively. The *Watson* court expected these officers to have inferred from *Jardines*—a case about an officer lingering with a drug-sniffing dog on the front porch of an unoccupied home—that Sixth Circuit precedents authorizing officers to enter a rear yard to make contact with a person they believed to be home, were no longer good law. Agencies should consider whether their training programs are up to this task.

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