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Single Arrest Warrant Used in 2 Places

Judge Bars Drug Evidence Seized in Third Party's Home

By Alan Kohn

Federal agents unable to find a criminal suspect at a specific address and who continue their search at a different place must obtain judicial approval to execute their warrant in their second effort, a federal judge has ruled in suppressing narcotics found in the subsequent raid.

Because the government had not followed the procedure in the second search when agents broke into a Riverdale apartment almost six months ago, ruled Judge Robert W. Sweet, it could not use at trial a quantity of drugs discovered there.

Attempted Murder Charge

Judge Sweet's decision occurred on a motion to suppress evidence seized in an apartment occupied by Abdullah Nezaj at 4601 Henry Hudson Parkway, Riverdale. He is charged with attempted murder of a federal agent, use of a firearm in a crime of violence and possession of heroin with intent to distribute.

The defendant is charged with shooting and seriously injuring one of the agents after they broke into his apartment Feb. 6, seeking a suspect for whom they had an arrest warrant at a Brooklyn address. They had been told that the suspect was staying in Riverdale. The suspect was not found.

Mr. Nezaj, the defendant, escaped from his apartment to one next door and surrendered several hours later after negotiations by telephone. Later in the day, police discovered a quantity of heroin in the apartment, obtained a search warrant and seized the narcotics.

Suppression Motion Granted

Judge Sweet granted the defense motion to suppress the evidence, noting withholding of the evidence would "seriously undermine" the narcotics charge but have "little effect" on the counts alleging attempted murder and use of a firearm in a crime of violence.

His findings were contained in a twenty-five-page opinion in *U.S. v. Nezaj*, 87-Cr-142, handed down July 23 in the U.S. District Court for the Southern District of New York.

The government claimed that under *Payton v. New York*, 445 U.S. 573 (1980), an arrest warrant for one

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Suppression Ruling

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address can be executed without further judicial approval at any address at which agents subsequently come to believe is the suspect's residence.

Judge Sweet, however, found the case was covered by *Steagald v. U.S.*, 451 U.S. 204 (1981), in which the U.S. Supreme Court ruled that police officers, exercising their discretion, cannot enter dwellings of third parties in search of persons known to be felons.

Risk Too Great

Without "interposing" a judicial determination of probable cause between the officer and entrance into a dwelling of a "presumed innocent third party," Judge Sweet stated, "the risk of unlawful intrusion is too great for the Fourth Amendment to countenance.

"If this is the goal that is driving the *Steagald* rule, then it necessarily must also be a rule that it is the magistrate, *not* the police officer, who must decide whether probable cause exists that a particular dwelling is a particular felon's residence."

The judge pointed out that when the federal agents arrived at Mr. Nezaj's apartment early in the morning, they made two telephone calls in an attempt to obtain a key to the dwelling before breaking in.

He noted the government did not dispute that if the original entrance into the apartment was illegal, the items seized were the fruits of an illegal entry which must be suppressed.

Judge Sweet stated that requiring judicial approval did not place a "burdensome requirement" on the government, since federal procedure allows for telephonic warrants based on oral testimony.

The government was represented on the motion by Assistant U.S. Attorney Deirdre M. Daly. Mr. Nezaj's lawyer was Joseph R. Benfante.