

ValpoScholar

Valparaiso University Law Review

Volume 43
Number 2 Winter 2009

pp.815-869

Winter 2009

Open Doorway Arrests: Has *McClish v. Nugent* Truly Changed the Analysis?

Christopher J. Rados

Follow this and additional works at: <https://scholar.valpo.edu/vulr>



Part of the [Law Commons](#)

Recommended Citation

Christopher J. Rados, *Open Doorway Arrests: Has *McClish v. Nugent* Truly Changed the Analysis?*, 43 Val. U. L. Rev. 815 (2009).

Available at: <https://scholar.valpo.edu/vulr/vol43/iss2/9>

This Notes is brought to you for free and open access by the Valparaiso University Law School at ValpoScholar. It has been accepted for inclusion in Valparaiso University Law Review by an authorized administrator of ValpoScholar. For more information, please contact a ValpoScholar staff member at scholar@valpo.edu.



OPEN DOORWAY ARRESTS: HAS MCCLISH V. NUGENT TRULY CHANGED THE ANALYSIS?

At the very core [of the Fourth Amendment] stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion¹. . .[w]hat a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection.²

I. INTRODUCTION

Local police have probable cause to believe John Smith has been distributing illegal firearms from his residence. Smith has not been living in the area long and has been operating out of a rented apartment. The police believe Smith may know that his activities have gained their attention, and three officers quickly make their way to Smith's apartment to arrest him without a warrant. Although the officers would normally obtain a warrant to make this type of felony arrest, they are fearful that Smith may leave the area before he can be apprehended.

After the police locate Smith's apartment, they approach the doorway. Smith's apartment does not have a common area at its entrance, and nothing separates the officers from the interior of Smith's apartment except for a closed front door. One officer knocks on the door, but the officers do not announce their presence outside of the apartment. Responding to the knock, Smith opens the door to the officers and proceeds to remain standing near the doorway of his apartment. Can the police arrest him in this situation?³

The Fourth Amendment's prohibition against unreasonable searches and seizures has led to the development of several important rules regarding arrest.⁴ First, a warrantless arrest of an individual, conducted in a public place, is valid as long as the arrest is supported by probable cause.⁵ Second, police are required to obtain a warrant in order to arrest an individual who remains within the privacy of his or her own home.⁶

¹ Silverman v. United States, 365 U.S. 505, 511 (1961).

² Katz v. United States, 389 U.S. 347, 351 (1967).

³ This hypothetical is loosely based on typical warrantless doorway arrest scenarios that are examined throughout this Note.

⁴ See *infra* Part II.A (discussing the constitutionality of warrantless arrests in public places, in the doorway of the home, and within the privacy of the home).

⁵ United States v. Watson, 423 U.S. 411, 423-24 (1976).

⁶ Payton v. New York, 445 U.S. 573, 576 (1980) (holding that the Fourth Amendment prohibits police from making an entry into a suspect's home in order to make a routine felony arrest if a warrant has not been obtained and the suspect has not given consent for the police to enter).

816 VALPARAISO UNIVERSITY LAW REVIEW [Vol. 43]

Subject to only a few exceptions,⁷ police officers are not allowed to physically pass through the threshold of a doorway to conduct an arrest within the home absent a warrant, even if probable cause exists.⁸ This Note addresses whether the warrant requirement applies if police intend to arrest an individual who voluntarily opens his or her door in response to a knock by the police and remains standing in the threshold of the doorway: not quite within the privacy of the home, but not standing fully outside of the open doorway either.

A majority of the United States Circuit Courts of Appeals hold that warrantless open doorway arrests conducted under these particular circumstances are presumptively legal.⁹ Although these circuits have rejected the legality of open doorway arrests in certain instances, this does not amount to an outright rejection of the principle at hand.¹⁰ While various authors contend that judicial decisions on warrantless doorway arrests are inconsistent,¹¹ it was not until the Circuit Court of Appeals for the Eleventh Circuit's recent outlier decision in *McClish v. Nugent* in 2007 that a circuit split actually existed on this particular issue.¹²

This Note takes the position that warrantless open doorway arrests are valid under the Fourth Amendment and are consistent with Supreme Court precedent.¹³ Part II of this Note explains the constitutionality of

⁷ *Id.* at 588–89 (noting that an arrest within the home involves an invasion of the sanctity of the home, and a warrantless arrest inside the home, absent exigent circumstances such as consent, is too substantial an invasion of privacy to be allowed even when probable cause exists).

⁸ *Id.* at 589–90 (explaining that an arrest within the home is plainly subject to the warrant requirement and the existence of probable cause, alone, is insufficient to validate the arrest).

⁹ See *infra* Part II.B.1 (discussing cases in which various circuit courts have upheld warrantless open doorway arrests as constitutionally valid under the Fourth Amendment).

¹⁰ See *infra* Part II.B.2 (discussing cases in which various circuit courts have declined to uphold warrantless doorway arrests based on the fact that police fully penetrated the privacy of the home or used coercive tactics to gain entry to the home).

¹¹ See Jennifer Marino, Note, *Does Payton Apply: Absent Consent or Exigent Circumstance, Are Warrantless, In-Home Police Seizures and Arrests of Persons Seen Through an Open Door of the Home Legal?*, 2005 U. CHI. LEGAL. F. 569, 579–87 (2005) (arguing that the circuits have interpreted and applied the requirements of *Payton* differently, and the fact that different results have been reached in factually distinguishable cases has caused a circuit split on the issue of warrantless open doorway arrests); Evan B. Citron, Note, *Say Hello and Wave Goodbye: The Legitimacy of Plain View Seizures at the Threshold of the Home*, 74 FORDHAM L. REV. 2761, 2786 (2006) (contending that two conflicting views, referred to as the “voluntary exposure view” and “sanctity’ view[.]” have been adopted by the circuits in an attempt to resolve the dispute over the constitutionality of warrantless open doorway arrests).

¹² *McClish v. Nugent*, 483 F.3d 1231 (11th Cir. 2007) (holding that a warrantless open doorway arrest is a prohibited entry into the private confines of the home that violates the Fourth Amendment and the Supreme Court’s decision in *Payton*).

¹³ See *infra* Parts III.A–B.

warrantless arrests conducted in public areas and explores decisions by the United States Courts of Appeals involving open doorway arrests.¹⁴ Part III analyzes factors courts have emphasized in upholding and invalidating warrantless doorway arrests, argues that courts have consistently applied Supreme Court precedent in evaluating the validity of these arrests, and concludes that the decision of the Eleventh Circuit Court of Appeals in *McClish* represents a confused interpretation of the key aspects that must be examined in a warrantless doorway arrest case.¹⁵ Finally, Part IV proposes a standard of model reasoning that should be applied to resolve future cases involving warrantless doorway arrests based upon Fourth Amendment principles, United States Supreme Court precedent, and the decisions of the circuit courts examined throughout this Note.¹⁶

II. BACKGROUND

The Fourth Amendment affords general protection to individuals from unreasonable searches and seizures, but its protections are not absolute and can be surrendered.¹⁷ First, Part II.A outlines a general explanation of Fourth Amendment principles related to warrantless arrests conducted in public areas and explains the significance of *United States v. Watson*, a pivotal Supreme Court decision upholding the validity of such arrests.¹⁸ Second, Part II.A discusses the Supreme Court decisions of *United States v. Santana* and *Payton v. New York*, that together establish the legal scope of warrantless open doorway arrests.¹⁹ Part II.B then explains how the circuit courts have interpreted and applied the principles of *Santana* and *Payton* to resolve open doorway arrest cases.²⁰

¹⁴ See *infra* Part II.

¹⁵ See *infra* Part III.

¹⁶ See *infra* Part IV.

¹⁷ U.S. CONST. amend. IV states the following:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

By these explicit terms, the Fourth Amendment affords individuals only a right, rather than a guarantee, of protection from unreasonable searches and seizures.

¹⁸ See *infra* Part II.A.1 (discussing the protections offered to individuals by the Fourth Amendment and the general principle that probable cause, alone, is sufficient to support an arrest carried out in a public area); see also *United States v. Watson*, 423 U.S. 411 (1976).

¹⁹ See *infra* Part II.A.2 (discussing *United States v. Santana*, 427 U.S. 38 (1976)); *infra* Part II.A.3 (discussing *Payton v. New York*, 445 U.S. 573 (1980)).

²⁰ See *infra* Part II.B.1-2 (discussing cases in which various circuit courts have both upheld and invalidated warrantless doorway arrests).

818 VALPARAISO UNIVERSITY LAW REVIEW [Vol. 43]

Finally, Part II.C discusses *McClish v. Nugent*, a controversial decision which caused a circuit split regarding the validity of warrantless open doorway arrests.²¹

A. *The Fourth Amendment and Its Application To Arrest*

The Fourth Amendment protects the rights of individuals to remain secure in their persons and homes against unreasonable searches and seizures.²² The protection afforded by the Fourth Amendment stems from eighteenth-century concerns over the prevalence of arbitrary searches and seizures of property.²³ More recently, however, the protection of privacy embodied in the Fourth Amendment has been interpreted to apply primarily to the individual.²⁴ While the Supreme

²¹ See *infra* Part II.C; see also *McClish v. Nugent*, 483 F.3d 1231 (11th Cir. 2007).

²² See *supra* note 17 (quoting the text of the Fourth Amendment); see also WAYNE W. GREENHALGH, *THE FOURTH AMENDMENT HANDBOOK: A CHRONOLOGICAL SURVEY OF SUPREME COURT DECISIONS* 7 (2003) (explaining that seizure of a person has been defined both as “police use of actual force [which] achieves a restraining effect on a suspect,” and as a “‘show of force’ . . . [coupled with] an actual submission by the suspect[.]”).

²³ See Thomas K. Clancy, *What Does the Fourth Amendment Protect: Property, Privacy, or Security*, 33 WAKE. FOREST L. REV. 307, 308 (1998) (explaining that the Fourth Amendment was a creature of eighteenth-century concern for the protection of property rights against arbitrary and general searches and seizures) (citing Edward L. Barrett Jr., *Personal Rights, Property Rights, and the Fourth Amendment*, 1960 SUP. CT. REV. 60 (1960)) (tracing the developments that resulted in interpreting the Fourth Amendment to afford greater protection to property rights than to personal liberty); see also *Boyd v. United States*, 116 U.S. 617, 626–30 (1886) (reviewing the historical purposes of the Fourth Amendment).

²⁴ *Katz v. United States*, 389 U.S. 347, 351 (1967) (explaining that the Fourth Amendment protects people, not places); see also Sean M. Lewis, *The Fourth Amendment in the Hallway: Do Tenants Have a Constitutionally Protected Privacy Interest in the Locked Common Areas of Their Apartment Buildings?*, 101 MICH. L. REV. 273, 275 n.11 (2002) (explaining that the protection of privacy embodied in the Fourth Amendment is not limited to homes; it is aimed at the protection of the individual) (citing *Katz*, 389 U.S. at 351); see also Stephen Jones, *Reasonable Expectations of Privacy: Searches, Seizures, and the Concept of Fourth Amendment Standing*, 27 U. MEM. L. REV. 907, 914 (1997). Jones argues that the Supreme Court “made it clear in *Katz* that the ‘person’ provided for in the text of the Fourth Amendment extended beyond the physical body. The Fourth Amendment ‘person’ included peoples’ expectations that their activity will remain private.” *Id.* Jones explains that Justice Black framed this debate in his dissenting opinion in *Katz*:

With this decision the Court has completed, I hope, its rewriting of the Fourth Amendment, which started only recently when the Court began referring incessantly to the Fourth Amendment not so much as a law against *unreasonable* searches and seizures as one to protect an individual's privacy. By clever word juggling the Court finds it plausible to argue that language aimed specifically at searches and seizures of things that can be searched and seized may, to protect privacy, be applied to eavesdropped evidence of conversations that can neither be searched nor seized. Few things happen to an individual that do not affect his privacy in one way or another The

Court has not created an absolute rule requiring police to obtain a warrant in order to make an arrest, the Court has expressed a preference that such warrants should be obtained if possible.²⁵ However, a mere preference for obtaining arrest warrants does not require a court to invalidate an arrest simply because the police did not, or were not able to, obtain a warrant.²⁶ The central issue that must be examined in cases dealing with a Fourth Amendment challenge to warrantless arrests is whether a reasonable expectation of privacy of the individual has been violated.²⁷ After first upholding the constitutionality of warrantless

Fourth Amendment protects privacy only to the extent that it prohibits unreasonable searches and seizures of “persons, houses, papers, and effects.” No general right is created by the Amendment so as to give this Court the unlimited power to hold unconstitutional everything which affects privacy.

Id. at 914–15 n.22. (Black, J., dissenting).

²⁵ *United States v. Lefkowitz*, 285 U.S. 452, 464 (1932) (holding that the informed determinations of magistrates empowered to issue warrants as to what types of searches and seizures are permissible under the Constitution is preferred over the actions of law enforcement officers making arrests); *see also* *United States v. Ventresca*, 380 U.S. 102, 106 (1965) (stating that the informed decisions of magistrates empowered to issue warrants is preferred over the hurried actions of officers who may make arrests); *United States v. Leon*, 486 U.S. 897, 913–14 (1984) (explaining that the Court has expressed a strong preference for warrants to be obtained as a reliable safeguard against unreasonable searches and seizures under the Fourth Amendment).

²⁶ *United States v. Watson*, 423 U.S. 411, 423 (1976). The Court explicitly lent support for this principle in *Watson*:

Congress has plainly decided against conditioning warrantless arrest power on proof of exigent circumstances. Law enforcement officers may find it wise to seek arrest warrants where practicable to do so, and their judgments about probable cause may be more readily accepted where backed by a warrant issued by a magistrate. But we decline to transform this judicial preference into a constitutional rule when the judgment of the Nation and Congress has for so long been to authorize warrantless public arrests [based] on probable cause rather than to encumber criminal prosecutions with endless litigation with respect to the existence of exigent circumstances[.] . . .

Id. at 423–24 (citations omitted) (footnotes omitted); *see also* GREENHALGH, *supra* note 22, at 18 (explaining that warrantless arrests are reasonable “because that is the way it has always been done[.]”).

²⁷ *Katz*, 389 U.S. at 360 (Harlan, J., concurring) (stating that each individual has a constitutionally protected reasonable expectation of privacy under the Fourth Amendment). In his concurring opinion in *Katz*, Justice Harlan expressed the idea that the Fourth Amendment set forth a twofold requirement in determining what type of protection should be afforded to individuals. *Id.* at 361. Harlan explained “first that a person [must] have exhibited an actual (subjective) expectation of privacy and, second, that the expectation [must] be one that society is prepared to recognize as ‘reasonable.’” *Id.*; *see also* *Rakas v. Illinois*, 439 U.S. 128, 143 (1978) (explaining that the Court in *Katz* held that the capacity to claim the protection of the Fourth Amendment depends upon whether the individual who claims such protection has a legitimate expectation of privacy in the

public arrests in *United States v. Watson*, the Court later expanded upon this principle and further refined the parameters of warrantless arrests in two landmark cases, *Santana* and *Payton*.²⁸

1. Warrantless Arrests and *United States v. Watson*

In *United States v. Watson*, the Supreme Court held that warrantless felony arrests made in a public place and based on probable cause are valid.²⁹ In its opinion, the Court emphasized the fact that the existence of probable cause surrounding an arrest strongly supports the validity of such an arrest, even if a warrant has not been obtained.³⁰ The principles

invaded area); *Minnesota v. Carter*, 525 U.S. 83, 88 (1998) (explaining that the capacity to claim the protection of the Fourth Amendment depends upon whether an individual who claims the protection has a legitimate expectation of privacy). See also *Jones*, *supra* note 24, at 908. Jones explains that “[t]he concept of ‘reasonable expectations of privacy’ is at the forefront of all Fourth Amendment analysis. . . . If a defendant does not have a reasonable expectation of privacy in an area searched or an item seized [(including a person)], he does not suffer a Fourth Amendment violation.” *Id.* at 908. See generally WAYNE R. LAFAYE, 1 SEARCH AND SEIZURE § 2.1 (2007) (analyzing the *Katz* expectation of privacy test).

²⁸ See *infra* Part II.A.1, Part II.A.2, and Part II.A.3 (discussing *Watson*, *Santana*, and *Payton*, respectively).

²⁹ *Watson*, 423 U.S. at 416–24. In *Watson*, police armed with probable cause but no warrant arrested Watson in a public restaurant for possession of stolen credit cards. *Id.* at 412–13. The Court held that Watson’s warrantless arrest was valid and did not violate his Fourth Amendment rights. *Id.* at 424. In its opinion, the Court first based its holding on the fact that “[t]he cases construing the Fourth Amendment thus reflect the ancient common-law rule that a peace officer was permitted to arrest without a warrant for a misdemeanor or felony . . . if there was reasonable ground for making the arrest.” *Id.* at 418 (citations omitted). The Court next determined that “[t]he balance struck by the common law in generally authorizing felony arrests on probable cause, but without a warrant, has survived substantially intact. It appears in almost all of the States in the form of express statutory authorization.” *Id.* at 421–22. Finally, the Court expressed its belief that the preceding principles indicated that “Congress has plainly decided against conditioning warrantless arrest power on proof of exigent circumstances.” *Id.* at 423 (footnote omitted).

³⁰ *Id.* at 416–18. The Court explained that certain law enforcement officers have been statutorily authorized to make felony arrests based upon probable cause but without warrants for many years. *Id.* at 416. The Court then reasoned that there was no existing precedent indicating that a warrant was required to make a valid arrest for a felony under the Fourth Amendment; its prior decisions were actually uniformly against this principle. *Id.* at 416–17. Most importantly, the Court concluded that the necessary inquiry in these types of cases dealing with public arrest “was not whether there was a warrant or whether there was time to get one, but whether there was probable cause for the arrest.” *Id.* at 417; see also *Gerstein v. Pugh*, 420 U.S. 103, 113 (1975) (noting that the Court has never invalidated an arrest that was supported by probable cause based solely on the fact that the police officers failed to secure a warrant); *Ker v. California*, 374 U.S. 23, 34–35 (1963) (opinion of Clark, J.) (explaining that the lawfulness of an arrest without a warrant must be based upon probable cause); *Draper v. United States*, 358 U.S. 307 (1959) (stating that the crucial question in this case was whether there was probable cause for the arrest; if there was, the arrest although it was without a warrant, was lawful); OTIS H. STEPHENS &

supporting warrantless public arrests articulated by the Court in *Watson* have been reaffirmed by the Supreme Court and consistently applied by the circuit courts.³¹ After *Watson*, it was not entirely clear how far its holding could be extended and whether the warrant requirement would apply if the individual the police sought to arrest was standing in plain view in an open doorway; the Court had an opportunity to resolve these questions in *United States v. Santana*.³²

2. Warrantless Public Arrests and *United States v. Santana*

In *Santana*, the Supreme Court extended the principles of *Watson* to apply to doorway arrests, holding that the defendant's warrantless arrest was valid because she knowingly exposed herself to police officers at the

RICHARD A. GLENN, UNREASONABLE SEARCHES AND SEIZURES: RIGHTS AND LIBERTIES UNDER THE LAW 294 (2006) (stating that "[a]n officer's on-the-scene determination of probable cause provides the legal justification both for the arrest and the subsequent brief detention necessary to take the administrative steps incident to the arrest[']").

³¹ See *United States v. Abdi*, 463 F.3d 547, 557 (6th Cir. 2006) (stating that a warrantless arrest by a law enforcement officer is reasonable under the Fourth Amendment in situations where the arrest is in a public place and there is probable cause for the arrest); *United States v. Goddard*, 312 F.3d 1360, 1363 (11th Cir. 2002) (explaining that it is well-established that there is nothing in prior cases indicating that the Fourth Amendment requires a warrant for a valid felony arrest to be effectuated); *Atwater v. City of Lago Vista*, 532 U.S. 318, 362 (2001) (holding that based upon *Watson*, the existence of probable cause is a sufficient condition for arrest); *Woods v. City of Chicago*, 234 F.3d 979, 992 (7th Cir. 2000) (explaining that the Court has never elevated its judicial preference for arrest warrants to the level of a per se rule that mandates warrants for all arrests regardless of the existence of probable cause); *United States v. Bizier*, 111 F.3d 214, 216–17 (1st Cir. 1997) (holding that an officer may conduct a warrantless arrest so long as probable cause exists to believe that the suspect committed a crime); *United States v. Vaneaton*, 49 F.3d 1423, 1427 (9th Cir. 1995) (citing *Watson*, 423 U.S. at 421–24) (explaining that the Fourth Amendment is not violated by a warrantless felony arrest carried out in a public place); *New York v. Harris*, 495 U.S. 14, 18 (1990) (stating that it has long been settled that a warrantless arrest in a public place is permissible as long as the arresting officer has probable cause); *Crane v. State of Texas*, 759 F.2d 412, 424 (5th Cir. 1985) (citing *Watson*, 423 U.S. at 416–17) (noting that "there is nothing in the Court's prior cases indicating that under the Fourth Amendment a warrant is required to make a valid arrest for a felony[']"); *United States v. Bush*, 647 F.2d 357, 366 (3d Cir. 1981) (stating that it is clear that an arrest may be effected in a public place without a warrant); *United States v. Payton*, 445 U.S. 573, 580 (1980) (stating that under *Watson*, personal seizure alone does not require a warrant); *United States v. Houle*, 603 F.2d 1297, 1299 (8th Cir. 1979) (stating that a warrantless arrest in a public place does not constitute a violation of the Fourth Amendment); *United States v. Erb*, 596 F.2d 412, 419 (10th Cir. 1979) (upholding the validity of a warrantless arrest made in a public place if carried out by a police officer armed with probable cause); *United States v. Reed*, 572 F.2d 412, 419 (2d Cir. 1978) (explaining that *Watson* was the first square holding to permit a law enforcement officer to make a warrantless arrest in a public place after developing probable cause for the arrest).

³² See *infra* Part II.A.2.

822 VALPARAISO UNIVERSITY LAW REVIEW [Vol. 43]

doorway of her home—which is a public place.³³ In examining the circumstances of the arrest, the Court explained that the first and most important question to decide was whether Santana was present in a public place at the time of the arrest.³⁴ The Court determined that because Santana had been standing at the doorway of her home when she was arrested, “[s]he was not in an area where she had any expectation of privacy.”³⁵ The Court emphasized that Santana’s warrantless arrest was valid because she had been standing in the doorway of her home—a public place—and in doing so she voluntarily exposed herself to public view before the police arrested her.³⁶

The *Santana* decision stands for two important principles in the context of warrantless doorway arrests: first, consistent with *Watson*,

³³ United States v. Santana, 427 U.S. 38, 42 (1976). In *Santana*, the police had received information that Dominga Santana was involved in a drug purchase with an undercover agent. *Id.* at 39-40. The police, with probable cause, approached Santana’s house and observed her standing in the open doorway of her home. *Id.* at 40. Santana saw the police and attempted to run into her home to escape from the officers, and the officers followed her through the open doorway and caught her in the vestibule of her home. *Id.* The Court held that Santana’s warrantless arrest was valid because she had knowingly exposed herself to police officers in the doorway of her home, which is a public place. *Id.* at 42.

³⁴ *Id.* According to the Court, Santana was standing directly in the doorway when the police arrived; one step forward would have put her outside the home, and one step backward would have put her inside her home. *Id.* at 40 n.1. In distinguishing between public and private areas in relation to the home, the Court explained that “[w]hile it may be true that under the common law of property the threshold of one’s dwelling is ‘private,’ as is the yard surrounding the house, it is nonetheless clear that under the cases interpreting the Fourth Amendment Santana was in a ‘public’ place.” *Id.* at 42; *see also* 5 AM. JUR. 2d *Arrest* § 97 (2007) (explaining that the doorway is considered to be a public place for purposes of warrantless arrest).

³⁵ *Santana*, 427 U.S. at 42. The Court explained that based on the fact that Santana was standing in an open doorway, which is a public place, “[s]he was not merely visible to the public[,] but was exposed to public view, speech, hearing, and touch as if she had been standing completely outside her house.” *Id.* (citing *Hester v. United States*, 265 U.S. 57, 59 (1924) (stating that “the special protection accorded by the Fourth Amendment to the people in their ‘persons, houses, papers, and effects,’ is not extended to the open fields[]”). The Court then explained that because Santana had knowingly exposed herself to the public in this manner, she could not claim a Fourth Amendment expectation of privacy. *Id.* (citing *Katz v. United States*, 389 U.S. 347, 351 (1967) (holding that “[w]hat a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection[]”). The Court stated that based upon both of these factors, Santana had not been “in an area where she had any [reasonable] expectation of privacy.” *Santana*, 427 U.S. at 42. Therefore, the Court concluded that Santana’s arrest was constitutionally valid because the police, in making the arrest, “merely intended to perform a function which [the Court had] approved [of] in *Watson*.” *Id.* at 42.

³⁶ *Id.* The Court explained that because Defendant Santana was knowingly standing in the doorway of her home which is considered a public place, she was not in an area in which she could claim any reasonable expectation of privacy under the Fourth Amendment. *Id.*

when a person stands in the doorway of his or her home, that person will be deemed to be in a public place for purposes of arrest.³⁷ Second, as long as probable cause exists for such an arrest to be made, the arrest cannot be deemed invalid because a person knowingly standing in a public place has surrendered any expectation of privacy under the Fourth Amendment.³⁸ Even after *Santana*, however, the scope of warrantless doorway arrests did not become entirely clear until the Supreme Court decided *Payton v. New York* four years later.

3. Warrantless Private Arrests and *Payton v. New York*

In *Payton*, the Court limited the scope of its holding in *Santana* by invalidating warrantless arrests that occurred beyond the threshold of the open doorway of the home.³⁹ The *Payton* decision was based upon the Court's examination of two related cases, both of which addressed the legality of arrests carried out after police made actual entries into the privacy of the home.⁴⁰ Based upon both sets of facts, the Supreme Court held that the Fourth Amendment prohibits police from making a warrantless and non-consensual entry into a suspect's home in order to make a routine felony arrest.⁴¹

The Court stressed that in both cases the police made their seizures after walking through the doorway and into the physical vicinity of the

³⁷ See *supra* note 35 and accompanying text.

³⁸ See *supra* note 36 and accompanying text.

³⁹ *United States v. Payton*, 445 U.S. 573, 590 (1980) (holding that the Fourth Amendment has drawn a firm line at the entrance to the house, and, absent exigent circumstances, the threshold of the doorway may not reasonably be crossed to make an arrest unless a warrant has first been obtained).

⁴⁰ *Id.* at 574. In the first case, *Payton v. New York*, the police had gathered evidence sufficient to establish probable cause to arrest defendant Payton for his connection with a recent murder. *Id.* at 576. The police had not obtained a warrant and went to Payton's apartment intending to arrest him. *Id.* Payton did not respond to repeated knocks on the door and the police proceeded to use crowbars to break open the door and enter the vicinity of the apartment. *Id.* Although Payton was not present at the apartment, the police seized a shotgun casing that was later used at Payton's murder trial. *Id.* at 576-77. In the second case, *Riddick v. New York*, police went to the apartment of defendant Riddick to arrest him for armed robbery though they had not first obtained a warrant. *Id.* at 578. The police knocked on the door of Riddick's home in mid-day, and Riddick's son answered the door. *Id.* Through the open doorway of the home, the police were able to see Riddick sitting in a bed covered by a sheet. *Id.* The police subsequently entered Riddick's apartment and placed him under arrest. *Id.*

⁴¹ *Id.* at 576. In its conclusion, the Court relied on a basic reading of the text of the Fourth Amendment, stating that "[i]t is a 'basic principle of Fourth Amendment law' that searches and seizures inside a home without a warrant are presumptively unreasonable." *Id.* at 586. The Court then ultimately held that a warrantless arrest inside the home, absent exigent circumstances such as consent, is an unlawful invasion of an individual's right to privacy that cannot be allowed even when probable cause exists. *Id.* at 588-89.

defendant's home, an obvious infringement past the threshold of the doorway.⁴² In addition, the warrantless arrests made in *Payton* fell beyond the scope of the types of arrests that had been previously upheld in *Watson*.⁴³ These factors led the Court to ultimately conclude that a warrantless entry into the privacy of the home is presumptively unreasonable and a violation of the Fourth Amendment.⁴⁴

In sum, *Santana* holds that a doorway is a public place and that an individual knowingly and voluntarily standing in such an area has no reasonable expectation of privacy under the Fourth Amendment.⁴⁵ *Payton* establishes the doorway as the threshold that distinguishes the public from the private area of the home, and holds that an individual who remains firmly within his home cannot be lawfully arrested without a warrant, absent exigent circumstances.⁴⁶ By remaining within one's

⁴² *Id.* at 589. The Court explained that while the Fourth Amendment protects the privacy of an individual in a wide variety of settings, the zone of its protection is most clearly defined by the unambiguous physical dimensions of an individual's home. *Id.* The Court found strong support for this principle in its textual interpretation of the Fourth Amendment, stating that "[a]t the very core [of the Fourth Amendment] stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion." *Id.* at 589-90 (quoting *Silverman v. United States*, 365 U.S. 505, 511 (1961)).

⁴³ *Payton*, 445 U.S. at 598-99. The Court stated that while its decision in *Watson* regarding the validity of a public arrest "was supported by cases directly in point and by the unanimous views of the commentators," it had not located any "direct authority supporting forcible entries into a home to make a routine arrest" nor had it found any scholarly opinions supporting this view. *Id.* at 598.

⁴⁴ *Id.* at 590. The Court held that "[i]n terms that apply equally to seizures of property and to seizures of persons, the Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant." *Id.*

⁴⁵ *See supra* note 36 (explaining that because the defendant *Santana* was knowingly standing in the doorway of her home, which is considered a public place, she was not in an area in which she could claim any reasonable expectation of privacy under the Fourth Amendment).

⁴⁶ *See supra* note 44 (explaining the Court's holding in *Payton*). The term exigent circumstances has been defined as "[a] situation in which a police officer must take immediate action to effectively make an arrest, search, or seizure for which probable cause exists, and thus may do so without first obtaining a warrant." BLACK'S LAW DICTIONARY 260 (8th ed. 2004); *see also* *Katz v. United States*, 389 U.S. 347, 357 (1967) (holding that exigent circumstances combined with probable cause may excuse police officers from complying with the warrant requirement) (quoting *Agnello v. United States*, 269 U.S. 20, 33 (1925)); *McClish v. Nugent*, 483 F.3d 1231, 1240-41 (11th Cir. 2007) (citing, as examples of exigent circumstances, cases involving the pursuit of a fleeing suspect, putting out a fire in a burning building, breaking up a violent fight, or attending to the victim of a stabbing). Notably, however, a clear definition of exigent circumstances was absent from the Court's opinion in *Payton*. *See also* *Warrantless Entry to Arrest in Suspect's Home: Payton v. New York*, 94 HARV. L. REV. 178, 185-86 (1980) (explaining that a flaw in the *Payton* decision is that the Court failed to define exigent circumstances, and because exigent circumstances can mean different things to different people, *Payton* should be read as allowing warrantless arrests

home, which is clearly beyond the threshold of the doorway, an individual retains an expectation of privacy under the Fourth Amendment that cannot be infringed upon.⁴⁷

B. Decisions of the United States Courts of Appeals Regarding Warrantless Open Doorway Arrests

1. Major Decisions Upholding Warrantless Open Doorway Arrests

Almost all of the circuits have addressed the issue of warrantless open doorway arrests since *Santana* and *Payton*.⁴⁸ Specific decisions of the Fifth, Ninth, and Tenth Circuit Courts of Appeals tend to provide the most direct support for the constitutional validity of such arrests.⁴⁹ Cases decided by other Courts of Appeals also lend support to the notion that warrantless doorway arrests are generally upheld.⁵⁰ To

only in situations “that police reasonably believe must be made immediately to avert loss of life, harm to the innocent, destruction of evidence, or flight of a suspect[.]”.

⁴⁷ *Payton*, 445 U.S. at 588–89 (explaining that an arrest within the home involves an invasion of the sanctity of the home, and a warrantless arrest inside the home, absent exigent circumstances such as consent, is too substantial an invasion of privacy to be allowed even when probable cause exists); *see also Katz*, 389 U.S. at 360 (Harlan, J., concurring) (stating that each individual has a reasonable expectation of privacy under the Fourth Amendment).

⁴⁸ *See* discussion *infra* Parts II.B.1–2.

⁴⁹ *See infra* Part II.B.1.a (discussing *United States v. Carrion*, 809 F.2d 1120 (5th Cir. 1987)); *infra* Part II.B.1.b (discussing *United States v. Vaneaton*, 49 F.3d 1423 (9th Cir. 1995)); *infra* Part II.B.1.c (discussing *McKinnon v. Carr*, 103 F.3d 934 (10th Cir. 1996)).

⁵⁰ *See United States v. Gori*, 230 F.3d 44, 54 (2d Cir. 2000) (explaining that no individual in a place open to public view can expect privacy in that place and at that time, whether he is at the threshold of the doorway, in a vestibule of the home, or at the far end of an exposed interior room). The *Gori* court noted that “[o]nce a door is voluntarily opened by an occupant in response to a knock by someone invited by an occupant, the Fourth Amendment’s protection of the home is not abrogated so long as the officer’s conduct was reasonable under the circumstances.” *Id.* The *Gori* court then stated that a person who opens the door to a dwelling in response to a knock opens to view whatever can be seen by the invitee, and those inside can no longer maintain any heightened expectation of privacy. *Id.* The court finally explained that “[t]he idea that *Santana* turns on the defendant’s location is, . . . ‘unsound from the standpoint of both principle and pragmatism[.]’” *Id.* (quoting WAYNE R. LAFAVE, 3 SEARCH AND SEIZURE § 6.1(e) at 256–57 (1996)); *see also Knight v. Jacobson*, 300 F.3d 1272, 1277 (11th Cir. 2002) (holding that *Payton* does not prevent police from telling a suspect to step outside his home and then arresting him without a warrant because the officer never crosses “the firm line at the entrance to the house” in effecting the arrest); *United States v. Berkowitz*, 927 F.2d 1376, 1386 (7th Cir. 1991) (explaining that courts have generally upheld arrests “where the police go to a person’s home without a warrant, knock on the door, announce from outside the home the person is under arrest when he opens the door to answer, and the person acquiesces to the arrest[.]”); *Duncan v. Storie*, 869 F.2d 1100, 1102 (8th Cir. 1989) (stating that “it [is] unwise to become preoccupied with the exact location of the individual in relation to the doorway. . . . [Because] the crucial issues involve the individual’s reasonable expectation of privacy and

highlight these principles, decisions of the Fifth, Ninth, and Tenth Circuit Courts of Appeals are discussed next.

a. *United States v. Carrion*

In *Carrion*, the Fifth Circuit Court of Appeals held that the defendant's doorway arrest, which took place in the doorway of the defendant's hotel room after he voluntarily opened the door, was valid and did not violate the warrant requirement implemented in *Payton*.⁵¹ In its reasoning, the court relied heavily on its previous decision in *United States v. Mason*.⁵² Notably, the Fifth Circuit Court of Appeals explained that the *Mason* opinion gave no exact specification of the Defendant Mason's location in the doorway at the time of his arrest.⁵³ The court concluded that based on its previous decision in *Mason*, the defendant's arrest in *Carrion* was valid under the Fourth Amendment.⁵⁴ The Fifth Circuit Court of Appeals has relied on *Carrion* in rendering subsequent decisions involving similar instances of warrantless doorway arrests.⁵⁵

whether that individual came to the doorway voluntarily["); *McKinney v. George*, 726 F.2d 1183, 1188 (7th Cir. 1984) (holding that the police did not cross the threshold of defendant's apartment because after the defendant opened his door to their knock, the police told him to come along with them and he voluntarily complied).

⁵¹ *Carrion*, 809 F.2d at 1128. In *Carrion*, defendants Carrion and Solmor were involved in a drug sale with undercover DEA officers. *Id.* at 1122-23. A purchase had been arranged between Carrion and one of the agents, and Carrion was arrested after the transaction. *Id.* at 1123. After Carrion's arrest, the agents located Solmor in a hotel room. *Id.* One of the agents identified himself to a hotel housekeeping employee and asked the housekeeper to knock on the door of Solmor's room to see if anyone was present. *Id.* The employee knocked, stated he was housekeeping, and Solmor opened the door. *Id.* The agents drew their weapons, and ordered Solmor to raise his hands. *Id.* Solmor then surrendered to the police and was subsequently arrested although the DEA agents had not first obtained a warrant. *Id.*

⁵² *United States v. Mason*, 661 F.2d 45 (5th Cir. 1981). In *Mason*, the defendant voluntarily came to the front door of his house as law enforcement agents approached. *Id.* at 47. Although the agents did not have an arrest warrant, the court held that the defendant's arrest at his door was valid. *Id.* Citing *Santana* as controlling precedent, the court explained that such a warrantless arrest was consistent with the Fourth Amendment because Mason was in a public place at the time of arrest and thus had no reasonable expectation of privacy. *Id.*

⁵³ *Carrion*, 809 F.2d at 1128 n.9 (stressing that "[b]y declining to require any such exact showing [of the defendant's exact location], the *Mason* Court, it seems clear, regarded Mason's location at the open front door as a public place even if his feet were planted slightly back of the door frame[").

⁵⁴ *Id.* at 1128 (stating that based upon the reasoning of *Mason*, Solmor's arrest was valid because he had no protected expectation of privacy while he stood in the doorway of the hotel room and the arrest was effected before the DEA agents actually entered the hotel room).

⁵⁵ See *Pulliam v. City of Hornlake, Mississippi*, 1994 WL 442316, at *2 (5th Cir. 1994) (holding that although the defendant was only at her door as a result of a knock from the

b. *United States v. Vaneaton*

Similarly, in *Vaneaton*, the Ninth Circuit Court of Appeals held that the defendant's warrantless doorway arrest, which occurred after the defendant voluntarily opened his door to police officers standing outside of his motel room, was proper under the Fourth Amendment because the zone of privacy sought to be protected by *Payton* was not implicated.⁵⁶ The court explained that the question in *Vaneaton* was not whether the defendant was actually standing inside or outside of the threshold of his motel room at the time of his arrest, "but whether he 'voluntarily exposed himself to warrantless arrest' by freely opening the door of his motel room to the police."⁵⁷ The Ninth Circuit Court of Appeals concluded that because Vaneaton opened the door after he saw the

police, she was still in a public place and could be considered to be in a public place for purposes of warrantless arrest, even if she was standing slightly back from the door frame); *United States v. Ervin*, 907 F.2d 1534, 1539 (5th Cir. 1990) (explaining that because the defendant responded voluntarily to a border patrol agent's knock on the defendant's motel room door, no Fourth Amendment scrutiny was triggered regarding the subsequent arrest); *United States v. Bustamante-Saenz*, 894 F.2d 114, 118 (5th Cir. 1990) (holding that because the police did not enter the defendant's home in order to arrest him, but instead waited to arrest the defendant until he emerged from his house, his arrest did not violate the Fourth Amendment).

⁵⁶ *United States v. Vaneaton*, 49 F.3d 1423, 1427 (9th Cir. 1995). In *Vaneaton*, the police were investigating the activities of Jack Vaneaton, a burglar who had been operating in various counties in Oregon. *Id.* at 1424. During their investigation of Vaneaton's possession of stolen property, the police learned that Vaneaton was staying in a nearby motel for the night. *Id.* at 1425. Armed with probable cause, the police went to Vaneaton's hotel room seeking to arrest him for receiving stolen property. *Id.* The police knocked on Vaneaton's door but made no demands of Vaneaton to open the door. *Id.* Vaneaton opened the curtains of a window, saw that the police were outside, and proceeded to open the doorway of his room. *Id.* As Vaneaton stood at the doorway, but was just inside the threshold of the room, the police advised Vaneaton that he was under arrest. *Id.* Significantly, the police did not enter past the threshold of the doorway before advising Vaneaton that he was under arrest. *Id.* See also *supra* note 44 (explaining that in *Payton*, the Court held that the Fourth Amendment has drawn a firm line at the entrance of the house that may not reasonably be crossed without a warrant).

⁵⁷ *Vaneaton*, 49 F.3d at 1426. The court explained that the question presented in *Vaneaton* was not based only upon whether the defendant was standing inside or outside of the threshold of the doorway, but rather "whether [Vaneaton had] 'voluntarily exposed himself to warrantless arrest' by freely opening the door of his motel room to the police. If [Vaneaton had] exposed himself [in this manner], the presumption created by *Payton* is overcome." *Id.* (citation omitted). In formulating this principle, the *Vaneaton* court relied heavily on the reasoning of a previous, related decision. *Id.* (citing *United States v. Johnson*, 626 F.2d 753 (9th Cir. 1980)). In *Johnson*, the suspect's warrantless open doorway arrest had been held invalid because the arresting officers had used coercive tactics and misrepresented their identities in order to force the suspect to open his door. *Johnson*, 626 F.2d at 757. The *Johnson* court explained, "it cannot be said that Johnson voluntarily exposed himself to warrantless arrest by opening his door to agents who misrepresented their identities[]" because Johnson's exposure was not consensual on his part. *Id.*

police through a window, he exposed himself to warrantless arrest in a public place and his arrest did not violate the Fourth Amendment.⁵⁸ Though it was not the first case decided by the Ninth Circuit on this issue, the position articulated by the court in *Vaneaton* represents the general position of the Ninth Circuit Court of Appeals on warrantless open doorway arrests.⁵⁹

⁵⁸ *Vaneaton*, 49 F.3d at 1427. The court explained that “implicit in *Johnson* is [the] approval of the warrantless arrest of a suspect who voluntarily opens the door of his dwelling in response to a noncoercive knock by the police.” *Id.* at 1426. By opening the doorway in such a manner, Vaneaton’s arrest was valid because warrantless arrests carried out in public places do not violate the Fourth Amendment. *Id.* at 1427. The court went on and concluded that Vaneaton’s case did not resemble the types of in-home invasions or intrusions that *Payton* attempted to protect, and that “[k]nocking on a door to attempt to contact a person inside is a common event and hardly a hallmark of a police state[.]” *Id.*

⁵⁹ See *United States v. Crapser*, 472 F.3d 1141, 1149 (9th Cir. 2007) (holding that when the defendant opened his motel room door and came outside in response to a non-coercive knock by police, he surrendered his heightened expectation of privacy and the Fourth Amendment protections that go along with it including the right not to be detained based on reasonable suspicion); *Honeycutt v. Gillespie*, 1998 WL 391470, at *1 (9th Cir. 1998) (holding that the warrantless arrest of defendant, made after she opened her doorway without first checking who was behind the door, was reasonable because the doorway of a house is a public place for Fourth Amendment purposes and the defendant had thus voluntarily exposed herself to whoever was standing behind the door); *United States v. Albrektsen*, 151 F.3d 951, 954 (9th Cir. 1998) (holding that although the police entry into defendant’s motel room to perform a search violated the defendant’s privacy interest, the police could and should have arrested the defendant at the threshold of the doorway); *United States v. Camacho*, 1996 WL 419700, at *1 (9th Cir. 1996) (holding that the defendant’s warrantless arrest was permissible because by opening the door to his room, the defendant had exposed himself in a public area); *Fredericks v. Wright*, 1995 WL 23651, at *2 (9th Cir. 1995) (holding that it is not a Fourth Amendment violation for government officers to knock on an individual’s door and arrest the individual when the door is opened, even if the individual is still standing in the doorway); *United States v. Walsh*, 1993 WL 326382, at *1 (9th Cir. 1993) (explaining that the defendant, who was standing in the doorway of a warehouse in plain view as police officers approached to arrest her, was sufficiently in a public place that her arrest did not violate the Fourth Amendment); *United States v. Hoyos*, 892 F.2d 1387, 1394 (9th Cir. 1989) (holding that individuals who voluntarily look over their backyard fence or gate and expose themselves to public view of anyone on the street cannot be said to be in an area where they have a reasonable expectation of privacy, and because defendant engaged in such actions his warrantless arrest did not violate the Fourth Amendment); *United States v. Von Marschner*, 1988 WL 65553, at *2 (9th Cir. 1988) (holding that because the police did not surround the defendant’s residence, confront him with weapons drawn, or order him to emerge from the home, but instead invited him outside after knocking on his door, the defendant’s arrest did not violate the Fourth Amendment because he could not have reasonably believed that he was arrested while still inside his home); *United States v. Whitten*, 706 F.2d 1000, 1015 (9th Cir. 1983) (holding that a doorway is a public place and thus no warrant was required when DEA agents knocked on defendant’s door and immediately arrested him when he opened the door); *United States v. Botero*, 589 F.2d 430, 432 (9th Cir. 1978) (holding that because the door to defendant’s apartment was opened in response to a police officer’s

c. *McKinnon v. Carr*

Likewise, in *McKinnon*, the Tenth Circuit Court of Appeals upheld the validity of a warrantless open doorway arrest that occurred after police, armed with probable cause, came to the defendant's home, knocked on the door and identified themselves, and the defendant voluntarily opened his door.⁶⁰ In its decision, the Tenth Circuit Court of Appeals strongly relied on the principles of *Santana* to establish that the defendant McKinnon had no reasonable expectation of privacy at the time of his arrest.⁶¹ The court explained that although McKinnon attempted to rely on *Payton* to argue that the arrest violated his Fourth Amendment right to privacy, the facts at hand made McKinnon's case clearly distinguishable because McKinnon was arrested *at* the doorway of his home after voluntarily exposing himself to arresting officers (while the defendants in *Payton* were arrested *beyond* the threshold of the doorway after remaining firmly inside their homes).⁶²

2. Major Decisions Invalidating Warrantless Doorway Arrests

While this Note has shown that the circuit courts have, in many instances, upheld warrantless doorway arrests, the circuit courts have also invalidated these types of arrests in certain situations. *Sparing v. Village of Olympia Fields*⁶³ and *United States v. Morgan*⁶⁴ are two important

knock and he was placed under arrest at that time, the issue of a warrantless entry into the apartment was not before the court).

⁶⁰ *McKinnon v. Carr*, 103 F.3d 934, 935 (10th Cir. 1996). In *McKinnon*, the officers had probable cause to arrest McKinnon based on evidence that he raped a woman. *Id.* The officers did not threaten McKinnon with violence and asked McKinnon to identify himself, which he did. *Id.* One of the officers told McKinnon that he was under arrest for rape, and McKinnon was then allowed to dress himself before the arrest was actually made. *Id.* The Tenth Circuit Court of Appeals held that because the defendant was standing within the threshold of the doorway in an area open to public view, his warrantless arrest was valid under the Fourth Amendment because he could no longer claim a valid expectation of privacy at that time.

⁶¹ *Id.* The court explained that as in *Santana*, McKinnon "was visible, standing in the threshold of his doorway, open to public view. He was in a place sufficiently public that he had no legitimate expectation of privacy." *Id.* The court emphasized the fact that McKinnon had voluntarily opened the door and acknowledged the authority of the officers by asking them if he could dress before the arrest was effected. *Id.* at 936. *See also supra* note 36 (explaining that because the defendant Santana was knowingly standing in the doorway of her home, a public place, she was therefore not in an area in which she had any reasonable expectation of privacy under the Fourth Amendment).

⁶² *McKinnon*, 103 F.3d at 936. The court stated that "*Payton* contains language that describes the Fourth Amendment as drawing a firm line at the entrance to one's house, but, on its facts, it has no application to a doorway arrest made in the circumstances of the present case." *Id.*

⁶³ *Sparing v. Village of Olympia Fields*, 266 F.3d 684 (7th Cir. 2001).

830 VALPARAISO UNIVERSITY LAW REVIEW [Vol. 43]

cases in which the Sixth and Seventh Circuits concluded that warrantless doorway arrests constitute violations of the Fourth Amendment, and these cases are discussed in turn.

a. *Sparing v. Village of Olympia Fields*

In *Sparing*, the Seventh Circuit Court of Appeals held that the defendant's warrantless arrest was invalid because the arresting officer walked directly into Defendant Sparing's home to make the arrest without first obtaining Sparing's consent.⁶⁵ The Seventh Circuit Court of Appeals determined that the circumstances of the arrest in *Sparing* were distinguishable from both *Santana*⁶⁶ and a previous decision rendered by the Seventh Circuit Court of Appeals in *United States v. Berkowitz*.⁶⁷ In

⁶⁴ *United States v. Morgan*, 743 F.2d 1158 (6th Cir. 1984).

⁶⁵ *Sparing*, 266 F.3d at 690-91. In *Sparing*, the defendant was involved in a workplace extortion scheme with one of his co-workers. *Id.* at 685. Sparing and his co-worker had filed a police report alleging that another co-worker had stolen files from the office and forged two checks. *Id.* After the police were alerted to the existence of the scheme, an officer went to Sparing's house and knocked on his door. *Id.* at 687. Sparing opened the door and stood in the doorway, but was still standing behind his closed screen door when the officer advised Sparing that he was under arrest. *Id.* Sparing asked the officer if he had a warrant, and after the officer relayed that he did not, Sparing walked away from the doorway and further into his home. *Id.* The officer then opened the screen door, entered Sparing's residence, and took several steps into the home to arrest him. *Id.* The Seventh Circuit Court of Appeals ultimately concluded that because the defendant's arrest was not made at the doorway or the threshold of the doorway but instead was conducted after the police non-consensually walked into his home after opening a closed screen door, the arrest violated the defendant's Fourth Amendment right of privacy. *Id.* at 690-91.

⁶⁶ *Id.* at 689. The court explained that a *Santana*-type analysis would apply in situations where "the individual is not voluntarily standing in an open doorway, but answers a knock at the door, standing by a 'fraction of an inch' behind an open doorway[.]" *Id.* Although Sparing had answered a knock at his doorway, he was still behind a closed screen door at the time of his arrest. *Id.* at 689-90. This vital fact led the Seventh Circuit Court of Appeals to determine that that a *Santana* analysis would not apply in Sparing's case. *Id.*

⁶⁷ *United States v. Berkowitz*, 927 F.2d 1376 (7th Cir. 1991). In *Berkowitz*, the defendant, for whom probable cause existed to make an arrest, was told that he was under arrest as soon as he opened the door to the police. *Id.* at 1380. The defendant then acquiesced to the authority of the officers, and the officers entered his home to complete the arrest. *Id.* The court held that when a person submits to an arrest at his doorway, he "has forfeited the privacy of his home to a certain extent." *Id.* at 1387. The court explained that "[a] person who has submitted to the police's authority and stands waiting for the police to take him away can hardly complain when the police enter his home briefly to complete the arrest." *Id.* The *Sparing* court noted that in accordance with *Berkowitz*, "when an individual voluntarily stands behind an open doorway—fractions of an inch 'inside the home'—ordinarily, for purposes of the Fourth Amendment, she stands outside, in a public place." *Sparing*, 266 F.3d at 689. However, the *Sparing* court then clarified that its ultimate holding in *Berkowitz* was as follows:

[I]f the police go to an individual's home without a warrant, knock on the door, announce from outside the home that the individual is

declining to uphold Sparing's arrest, the court reasoned that the facts of the case put the decision beyond the scope of *Santana*, *Berkowitz*, and *Watson*.⁶⁸ The court explained that because Sparing was standing behind a closed screen door at his doorway, he was not yet in a public place and thus did not "surrender [any] reasonable expectations of privacy in [his] home[.]"⁶⁹ As the Court of Appeals for the Seventh Circuit indicated in *Sparing*, the circuit courts are reluctant to uphold the validity of warrantless doorway arrests in situations where police make an explicit entry past the threshold of the doorway and walk into the private confines of a home to carry out an arrest.⁷⁰ The Sixth Circuit Court of

under arrest when she opens the door to answer, and the individual acquiesces to a slight entry to complete the arrest, [then] the entry is reasonable under the Fourth Amendment and consistent with *Payton*.

Id. at 690 (footnote omitted).

⁶⁸ *Id.* at 689. The most critical fact here, according to the Seventh Circuit Court of Appeals, was that Sparing's arrest was not conducted at the doorway or even at the threshold of the doorway; Sparing stood inside his home behind his closed screen door, and the officer opened this door and walked into Sparing's home in order to arrest him. *Id.* at 690-91. Therefore, Sparing was not in a public place as the defendant in *Watson* was, was not voluntarily within an open doorway as in *Santana*, and was not answering a knock at the door while standing fractions of an inch behind an open doorway as the defendant in *Berkowitz* was. *Id.* at 690. Because Sparing clearly stood behind his screen door and remained inside his home, he did not surrender any reasonable expectation of privacy guaranteed by the Fourth Amendment. *Id.*

⁶⁹ *Id.* at 690. The court reasoned that unlike the situation in *Santana*, Sparing "was not exposed to 'public view, speech, hearing, and touch' as if he were standing outside, in a public place (voluntarily or otherwise)." *Id.* Therefore, because the police had not obtained a warrant for Sparing's arrest, the Court decided to apply the principles of *Payton* and held that Sparing had not surrendered any reasonable expectation or privacy because he had remained within his home. *Id.* The Seventh Circuit Court of Appeals concluded by indicating that Sparing's arrest could have been legally performed only if Sparing had "opened his screen door, and [either] stepped [slightly] outside of his home or acquiesced to a slight entry to complete the arrest." *Id.*

⁷⁰ See *United States v. Flowers*, 336 F.3d 1222, 1227-28 (10th Cir. 2003) (holding that although the defendant put his arm and hand outside his house by extending them through a panel opening after the police knocked on his door, the rest of his body did not cross the threshold of the doorway and his doorway was not open to public view; thus the officers violated his Fourth Amendment rights by entering through the doorway and into the defendant's living room to effectuate the arrest); *Loria v. Gorman*, 306 F.3d 1271, 1286 (2d Cir. 2002) (holding that because the defendant was attempting to limit his exposure to police officers by closing an open door and defendant was at least a door's width inside his house when he attempted to close the door, the police violated his Fourth Amendment rights by pushing the door open and taking two steps into the house to arrest the defendant); *United States v. Oaxaca*, 233 F.3d 1154, 1158 (9th Cir. 2000) (explaining that the defendant's arrest, which occurred after the police crossed the threshold of and walked directly into his open garage, violated defendant's Fourth Amendment right to privacy because the garage is considered to be a private area of the home); *LaLonde v. County of Riverside*, 204 F.3d 947, 955 (9th Cir. 2000) (holding that because defendant's arrest occurred after the police crossed the threshold of the doorway and walked into the

Appeals rendered a similar decision in *United States v. Morgan*, which is discussed next.

b. United States v. Morgan

In *Morgan*, the Sixth Circuit Court of Appeals held that the defendant's warrantless arrest at the doorway of his home violated his Fourth Amendment rights because the police officers employed coercive tactics which essentially forced the defendant to emerge from his home.⁷¹ Relying partly on the decision by the Ninth Circuit Court of Appeals in *United States v. Johnson*,⁷² the Sixth Circuit Court of Appeals explained that Morgan did not voluntarily expose himself to a warrantless arrest by appearing at the doorway.⁷³ The court reasoned that although there had not been a direct entry into Morgan's home by police prior to the

defendant's apartment, the case did not fall under the doorway exception and was a violation of the defendant's Fourth Amendment right of privacy); *Garrison v. City of Cushing*, 1993 WL 332284, at *3 (10th Cir. 1993) (holding that because the defendant was standing four to five feet within his house behind a closed screen door, he was not in a public realm and therefore the subsequent police entry into the home to arrest the defendant violated his Fourth Amendment rights); *United States v. Driver*, 776 F.2d 807, 809-10 (9th Cir. 1985) (holding that because DEA agents entered a private warehouse, climbed a flight of stairs to an office area, and opened a private office without knocking, the subsequent warrantless arrest of the defendant while she stood inside the office area violated her Fourth Amendment right to privacy).

⁷¹ *United States v. Morgan*, 743 F.2d 1158, 1166 (6th Cir. 1984). In *Morgan*, the police received a complaint that the defendant Morgan and several others had been target shooting with automatic weapons inside of a public park. *Id.* at 1160. An officer responded to the complaint and advised the group of men to leave the park. *Id.* After Morgan and the others left in Morgan's car, an unidentified observer approached the officer and alerted him to the fact that the men were armed with automatic weapons and should be considered dangerous. *Id.* A group of officers located Morgan's car and followed it to the home of his mother. *Id.* At this point, a squad of police officers surrounded the Morgan home. *Id.* at 1161. The officers then flooded the house with spotlights and summoned Morgan from the home with the blaring call of a bullhorn. *Id.* Morgan came to the front door of the home with a pistol in his hand, and was subsequently arrested after the police ordered him to put down the gun and come outside. *Id.*

⁷² 626 F.2d 753 (9th Cir. 1980). In *Johnson*, the suspect's warrantless open doorway arrest was held invalid because the arresting officers used coercive tactics and misrepresented their identities in order to force the suspect to open his door. *Id.* at 757. The *Johnson* court explained that it could not be said that Johnson "voluntarily exposed himself to warrantless arrest by opening his door to agents who misrepresented their identities[]" because Johnson's exposure was not consensual on his part. *Id.*

⁷³ *Morgan*, 743 F.2d at 1166. The court explained that it was an undisputed fact that "Morgan was peacefully residing in his mother's home until he was aroused by the police activities occurring outside." *Id.* The court emphasized that Morgan came to the doorway "only because of the coercive police behavior taking place outside of the house." *Id.* Therefore, the important consideration in this case was the "location of the arrested person, and not the arresting agent[]" in determining whether the arrest occurred within the privacy of the home. *Id.*

arrest, the coercive tactics used by police resulted in a “constructive entry [which] accomplished the same thing[.]”⁷⁴ Therefore, the court concluded that upholding Morgan’s arrest would undermine the protections emphasized in *Payton*.⁷⁵ As the Sixth Circuit Court of Appeals indicated in *Morgan*, the circuit courts are reluctant to uphold warrantless doorway arrests in situations where police use coercive tactics to either gain entry to a home or force a defendant to come to the doorway, because in those situations a defendant’s exposure at the doorway is not voluntary.⁷⁶ With the aforementioned principles in mind, the decision of the Eleventh Circuit Court of Appeals in *McClish v. Nugent* will now be discussed.

⁷⁴ *Id.* The court explained that the coercive tactics used by the police to force Morgan out of the home rose to the level of what could be considered an actual entry into the privacy of the home to conduct the arrest. *Id.* In a subsequent decision, the Sixth Circuit Court of Appeals clarified that a “‘constructive entry’ [was] when the police, while not entering the house, deploy overbearing tactics that essentially force the individual out of the home.” *United States v. Thomas*, 430 F.3d 274, 277 (6th Cir. 2005). The *Thomas* court also explained that “coercive police conduct [refers to] ‘such a show of authority that [the] Defendant reasonably believe[s] he ha[s] no choice but to comply[.]’ with the requests of police. *Id.* (citing *United States v. Saari*, 272 F.3d 804, 809 (6th Cir. 2001)).

⁷⁵ *Morgan*, 743 F.2d at 1166. The court explained that the warrantless arrest of Morgan, who stood in the doorway of a private home not out of his own free will but instead in response to coercive police conduct, violated his Fourth Amendment rights. *Id.*; see also *United States v. Payton*, 445 U.S. 573, 590 (1980) (explaining that the Fourth Amendment has drawn a firm line at the entrance of the house that may not reasonably be crossed without a warrant in the absence of exigent circumstances).

⁷⁶ See *Fisher v. City of San Jose*, 509 F.3d 952, 956–65 (9th Cir. 2007) (holding that although the defendant eventually emerged from his apartment after the police turned off the electrical power to his residence, set off a flash-bang device, threw tear gas into his apartment, and set off a bullhorn to summon him, he had clearly succumbed to police coercion in doing so and his warrantless arrest violated the Fourth Amendment); *Hadley v. Williams*, 368 F.3d 747, 749–50 (7th Cir. 2004) (holding that because police used fraud and coercive tactics in order to gain entry into the home to arrest the defendant, such an arrest left the issue of whether the defendant actually consented to the entry to be determined by the trier of fact); *Saari*, 272 F.3d at 809 (holding that because the officers summoned the defendant from the home with their weapons drawn and pointed at him after knocking on the door, they “acted with such a show of authority that [the] Defendant reasonably believed he had no choice but to comply[.]”; therefore, the warrantless arrest violated the defendant’s Fourth Amendment rights) (footnote omitted); *United States v. Al-Azzawy*, 784 F.2d 890, 893 (9th Cir. 1985) (holding that because the defendant was inside his trailer at the time he was surrounded by armed officers and because the defendant did not voluntarily expose himself to their view outside his trailer, the fact that he emerged under circumstances of extreme coercion amounted to a constructive entry and violated defendant’s Fourth Amendment rights); see also Tracy Maclin, *Seeing the Constitution from the Backseat of a Police Squad Car*, 70 BOSTON U. L. REV. 543, 578 at n.117 (1990) (arguing that “[c]oercive police behavior outside a home which results in the removal or arrest of a legitimate occupant violates the [F]ourth [A]mendment just as actual entry to accomplish the same result does[.]”).

C. *McClish v. Nugent and the Circuit Split on Warrantless Open Doorway Arrests*

In *McClish*, the Eleventh Circuit Court of Appeals held that the defendant's warrantless open doorway arrest was a violation of his Fourth Amendment right of privacy and was contrary to the principles established in *Payton*.⁷⁷ In support of its decision, the court relied heavily on the actual location of the defendant at the time of arrest, finding that McClish remained firmly inside his trailer home at the time of arrest despite the fact that he stood near the doorway.⁷⁸ The court gave no weight to the fact that McClish voluntarily opened the door to the police officers before the arrest was made.⁷⁹ Indeed, the court declined to apply a *Santana* analysis⁸⁰ to the facts of the case and instead held that

⁷⁷ *McClish v. Nugent*, 483 F.3d 1231, 1248 (11th Cir. 2007). In *McClish*, the police received complaints that defendant McClish had been harassing his neighbors in a trailer park. *Id.* at 1233. Upon investigating the incident and observing McClish's behavior, the responding officer concluded that he had probable cause to arrest McClish for aggravated stalking. *Id.* at 1234. A group of police officers returned to the trailer park that night and sought to effectuate a warrantless arrest on McClish. *Id.* at 1235. The officers drove through an electronic gate in front of McClish's trailer and proceeded to the front door of the home. *Id.* The officers knocked on the door and McClish went to the door and voluntarily opened it. *Id.* at 1235-36. Then, one of the officers reached into the house through the open door, grabbed McClish as he stood near the doorway, and pulled him out onto the trailer's porch to carry out the arrest. *Id.* See also *supra* note 44 (explaining that the Fourth Amendment has drawn a firm line at the entrance of the house that may not reasonably be crossed without a warrant).

⁷⁸ *McClish*, 483 F.3d at 1245 (stressing that because McClish lived in a trailer, which does not have all of the amenities of a larger house such as a "definable chamber between the outer door and the interior of the dwelling[.]" McClish was already firmly planted within the privacy of his home when he voluntarily opened his door to the officers and stood behind the door); see also *United States v. Quaempts*, 411 F.3d 1046, 1048 (9th Cir. 2005) (holding that because the defendant lived in a trailer so small that he was able to open his door to police while remaining in his bed, the defendant was not in a public place and did not abandon his expectation of privacy under the Fourth Amendment).

⁷⁹ *McClish*, 483 F.3d at 1247. The court explained that while "[i]t is surely true that an individual who opens the door to his home may provide an officer with a basis for finding probable cause[.] . . . this is quite distinct from creating, all in itself, a *right of entry* to seize a person from his home without a warrant." *Id.* The court emphasized that "McClish did not completely surrender or forfeit every reasonable expectation of privacy when he opened the door, including, most notably, the right to be secure within his home from a warrantless arrest." *Id.* (citing *United States v. McCraw*, 920 F.2d 224, 228 (4th Cir. 1990) (holding that "a person does not surrender his expectation of privacy nor consent to the officers' entry by [partially opening the door to determine the identity of officers knocking on the door], and that his arrest inside his room under such circumstances is contrary to the [F]ourth [A]mendment").

⁸⁰ See *supra* note 36 (explaining that in *Santana*, because the defendant was knowingly standing in the doorway of her home which is considered a public place, she was not in an area in which she could claim a reasonable expectation of privacy under the Fourth Amendment).

McClish's arrest involved a warrantless intrusion into the home that was held unconstitutional in *Payton*.⁸¹

Judge Anderson filed a special concurring opinion in *McClish* in which he agreed with the majority in aspects of the case not relevant to the scope of this Note, but strongly dissented from the majority's holding that McClish's arrest violated his Fourth Amendment rights.⁸² Judge Anderson argued that *Santana*, rather than *Payton*, should have been applied as controlling precedent because *Payton* was not decided as a doorway arrest case.⁸³ In addition, Judge Anderson reasoned that by choosing to apply the dicta in *Payton*⁸⁴ rather than the holding of *Santana*,⁸⁵ the majority opinion was, in essence, arguing that *Payton* overruled *Santana*.⁸⁶ Judge Anderson argued that this fact alone was enough to reject the majority's reasoning in *McClish*.⁸⁷

⁸¹ *McClish*, 483 F.3d at 1247-48. The court explained that because "warrantless intrusions beyond the 'zone of privacy' delimited by the threshold are presumptively unreasonable[]" the fact that the arresting officer "reached across the threshold of the home and grabbed McClish without warning[]" is what caused the arrest to violate McClish's Fourth Amendment rights. *Id.* at 1247-48 & n.16; *see supra* note 44 (holding that the Fourth Amendment has drawn a firm line at the entrance to the house and absent exigent circumstances, the threshold of the doorway may not reasonably be crossed to make an arrest unless a warrant has first been obtained).

⁸² *McClish*, 483 F.3d at 1253.

⁸³ *Id.* at 1253-54. The concurring opinion reasoned that McClish's case was "legally indistinguishable from *Santana*[]" based on the fact that McClish voluntarily opened the door in response to a knock by police, and thus "[k]nowingly expose[d] both himself and the immediate area behind his threshold to public view." *Id.* Therefore, McClish could no longer claim an expectation of privacy under the Fourth Amendment once he opened his door, and the police needed only probable cause rather than a warrant to arrest him. *Id.* at 1254. The concurrence then explained that *Payton*, as applied here by the majority, "was not a doorway arrest case[]" but rather had decided the narrow issue of "simply 'whether and under what circumstances an officer may enter [into the interior of] a suspect's home to make a warrantless arrest.'" *Id.*

⁸⁴ *Id.* at 1255 (explaining that in *Payton*, the Court said nothing about the constitutionality of arrests occurring at an open doorway and did not determine any type of rule to apply in such scenarios; the *Payton* decision simply used the term threshold to generally refer to the entrance to the home).

⁸⁵ *See supra* note 33 (upholding *Santana*'s warrantless arrest because she had knowingly exposed herself to police officers in the doorway of her home — which is a public place).

⁸⁶ *McClish*, 483 F.3d at 1255-56. The concurrence explained that such a conclusion would be unwarranted because the Court "does not overrule precedents *sub silentio*[]" and in the *Payton* decision itself, "the Court actually cited *Santana*, without overruling or even questioning it[]" in a string cite of public arrest cases. *Id.* at 1256.

⁸⁷ *Id.* at 1256 n.5 (explaining that because the Court in *Santana* said that arrests on the threshold without a warrant are legal and "common sense tells us that an officer conducting an arrest at the literal threshold would necessarily cross the plane of the door in a great many threshold arrests[]" the majority opinion is clearly inconsistent with *Santana*'s holding).

III. ANALYSIS

Although the circuit courts have upheld warrantless doorway arrests under certain circumstances and invalidated them in others, these decisions, aside from *McClish*, are ultimately consistent with existing Supreme Court precedent.⁸⁸ Part III.A analyzes decisions by the Circuit Courts of Appeals in which warrantless doorway arrests have been upheld, explains the factors that these courts have found to be important in analyzing the validity of open doorway arrests, and argues that these decisions are consistent with Supreme Court precedent established by *Santana*, *Payton*, and earlier cases.⁸⁹ Then, Part III.B analyzes decisions by Circuit Courts of Appeals in which warrantless doorway arrests have been invalidated and argues that these cases also represent a consistent application of either *Santana* or *Payton* as dictated by the circumstances of the particular case.⁹⁰ Finally, Part III.C analyzes the decision of the Eleventh Circuit Court of Appeals in *McClish* and argues that it was not only incorrect, but that it abandoned existing precedent on the issue of warrantless doorway arrests and was based upon flawed reasoning by the majority.⁹¹

A. *Key Factors of Decisions by Circuit Courts of Appeals Upholding Warrantless Doorway Arrests*

In upholding warrantless doorway arrests, the circuit courts have emphasized two important points: (1) warrantless arrests can be lawfully conducted at the threshold of the doorway because it is a public place, and (2) once an individual opens the doorway of his home, that individual surrenders his reasonable expectation of privacy under the Fourth Amendment.⁹² The key aspect of all these judicial decisions is that those circuit courts which have upheld the validity of warrantless open doorway arrests have been able to properly distinguish the Supreme Court's holding in *Santana* from its holding in *Payton*.⁹³

⁸⁸ See *supra* Parts II.B.1-2 (examining decisions by Circuit Courts of Appeals involving warrantless doorway arrests).

⁸⁹ See *infra* Part III.A.

⁹⁰ See *infra* Part III.B; see also *supra* note 36 (discussing the *Santana* principle); *supra* note 44 (discussing the *Payton* principle).

⁹¹ See *infra* Part III.C.

⁹² See *infra* Parts III.A.1-2.

⁹³ See *supra* note 36 (holding that because the defendant *Santana* was knowingly standing in the doorway of her home which is considered a public place, she was not in an area in which she could claim any reasonable expectation of privacy under the Fourth Amendment); *supra* note 44 (holding that the Fourth Amendment has drawn a firm line at the entrance of the home which cannot reasonably be crossed without a warrant if exigent circumstances do not exist).

1. The Warrant Requirement Does Not Apply to Arrests Made at the Doorway's Threshold

According to the Supreme Court's decision in *Santana*, which has never been overruled, the doorway of a home is considered to be a public place.⁹⁴ Although *Payton* stands for the principle that the Fourth Amendment draws a firm line at the entrance of the home that may not be crossed absent a warrant or other exigent circumstances, the circuit courts have determined that arrests conducted at the doorway do not violate *Payton*.⁹⁵ In such cases, police or other law enforcement officers do not cross the threshold of the doorway and make an actual entry into the privacy of the home to make the arrest; rather, the arrests are conducted after the defendants expose themselves to police officers by standing in the public area of the doorway.⁹⁶

⁹⁴ See *supra* note 36 (explaining that a doorway is a public place and that by exposing herself in such an area, the defendant Santana could lawfully be subjected to warrantless arrest). See also 5 AM. JUR. 2D *Arrest* § 97 (2007) (noting that the doorway of the home is considered to be a public place for purposes of warrantless arrest).

⁹⁵ *Payton v. New York*, 445 U.S. 573 (1980). For a discussion of cases in which warrantless doorway arrests have been upheld as valid, see *supra* notes 55 and 59 and accompanying text. See also *United States v. Berkowitz*, 927 F.2d 1376, 1386 (7th Cir. 1991) (explaining that courts have generally upheld arrests "where the police go to a person's home without a warrant, knock on the door, announce from outside the home the person is under arrest when he opens the door to answer, and the person acquiesces to the arrest[']").

⁹⁶ See *Honeycutt v. Gillespie*, 1998 WL 391470, at *1 (9th Cir. 1998) (explaining that the defendant was arrested in the doorway of her home which is a public place); *United States v. Camacho*, 1996 WL 419700, at *1 (9th Cir. 1996) (explaining that the defendant opened the doorway of his hotel room to police officers and was subsequently arrested after doing so); *United States v. Vaneaton*, 49 F.3d 1423, 1425 (9th Cir. 1995) (explaining that as the defendant Vaneaton stood at the doorway, the police advised Vaneaton that he was under arrest and did not enter past the threshold of the doorway before fully effecting the arrest); *Fredericks v. Wright*, 1995 WL 23651, at *2 (9th Cir. 1995) (explaining that according to statements made by the defendant, the arresting officer did not step into the home to arrest the defendant but rather informed the defendant that he was under arrest and asked the defendant to step outside); *Pulliam v. City of Hornlake, Mississippi*, 1994 WL 442316, at *2 (5th Cir. 1994) (explaining that the defendant had placed herself at the doorway in response to the officers knock, and therefore was arrested in a public place); *United States v. Walsh*, 1993 WL 326382, at *1 (9th Cir. 1993) (explaining that the defendant was standing in the doorway of a warehouse in plain view as the officers approached to arrest him); *United States v. Carrion*, 809 F.2d 1120, 1123 (5th Cir. 1987) (explaining that as the defendant opened the door, the police drew their weapons, ordered the defendant to raise his hands, and placed him under arrest); *United States v. Whitten*, 706 F.2d 1000, 1015 (9th Cir. 1983) (explaining that as the defendant answered the door, he was immediately placed under arrest and handcuffed); *United States v. Botero*, 589 F.2d 430, 432 (9th Cir. 1978) (stating that the door was opened by the defendant in response to an officer's knock, and the defendant was placed under arrest at the time; the officers were therefore not required to enter the apartment to place the defendant under arrest).

When an individual stands or exposes himself or herself within the doorway, he or she is no longer located within the privacy of the home and can, consistent with precedent set forth in the Supreme Court's decision in *Santana*, be subjected to a valid warrantless arrest under the Fourth Amendment.⁹⁷ Significantly, the Supreme Court's decision in *Payton* has absolutely no application in these circumstances; when an arrest occurs at the doorway, the issue of a warrantless entry into the home does not actually arise.⁹⁸

The issue surrounding warrantless doorway arrests is more aptly based upon forming a precise definition of what constitutes the threshold of the doorway. No Court of Appeals has set forth such a definition, nor has any decision by the Court of Appeals precisely defined the exact location in which a defendant must be standing at the time of the warrantless arrest for the arrest to be valid.⁹⁹ Because of this ambiguity, law enforcement officers are faced with difficult choices that are further complicated by the *McClish* decision when they attempt to make a warrantless arrest.¹⁰⁰ However, as discussed in Part II.A.2, the circuit courts have identified another factor—the defendant's voluntary exposure to arresting officers—which allows for a more determinative method of analysis through Fourth Amendment principles.¹⁰¹

⁹⁷ See *supra* note 33 and accompanying text. See also *United States v. Gori*, 230 F.3d 44, 54 (2d Cir. 2000) (noting that a person who opens the door to a dwelling in response to a knock by an invitee opens to view whatever can be seen by a nosy neighbor or an observant police officer and such a person exhibits no actual expectation of privacy after doing so); *LAFAVE*, *supra* note 50, at 258 (noting that “[p]ermitting the police to make a warrantless arrest of a person who answers the door . . . makes great sense simply because it can be expected that in the vast majority of such confrontations the person will submit to the police[.]”).

⁹⁸ See *supra* note 41 (explaining that a warrantless arrest made within the privacy of the home constitutes an unlawful invasion of an individual's right to privacy under the Fourth Amendment). See also *Gori*, 230 F.3d at 51 (explaining that *Payton* does not hold or suggest that the home is a sanctuary from reasonable police investigation; rather, *Payton* protects an individual's privacy interest, even within the home, only in terms of what the individual has not knowingly exposed to public view) (citing *United States v. Santana*, 427 U.S. 38, 42 (1976)).

⁹⁹ See *supra* Part II.B.

¹⁰⁰ *McClish v. Nugent*, 483 F.3d 1231, 1248 (11th Cir. 2007) (holding that a warrantless open doorway arrest is a prohibited entry into the private confines of the home which violates the Fourth Amendment and the Supreme Court's decision in *Payton*).

¹⁰¹ See *infra* Part III.A.2 (explaining that the circuit courts have held that once an individual opens the doorway to his home, that individual surrenders his reasonable expectation of privacy under the Fourth Amendment).

2. An Individual Surrenders His Reasonable Expectation of Privacy by Voluntarily Opening the Door of the Home

In analyzing an individual's reasonable expectation of privacy under the Fourth Amendment, it is important to keep in mind that the Fourth Amendment protects people rather than places.¹⁰² Furthermore, in the context of warrantless doorway arrests, the protections offered by the Fourth Amendment do not apply to what an individual knowingly exposes to the public.¹⁰³ The circuit courts, in addition to relying on *Santana's* holding that a doorway is a public place, have emphasized that the individual's reasonable expectation of privacy is an important factor that must be evaluated in determining the validity of a warrantless doorway arrest.¹⁰⁴

For example, in *Vaneaton*, the Ninth Circuit Court of Appeals specifically stated that the main issue in the case was not whether the defendant was standing inside or outside the threshold of the doorway at the time of arrest, but whether the defendant "had voluntarily exposed himself to warrantless arrest by freely opening the door of his motel room to police."¹⁰⁵ Similarly, the Tenth Circuit Court of Appeals based its decision to uphold the defendant's warrantless arrest in *McKinnon* on the fact that the defendant, by voluntarily opening the door of his home to police and standing at the doorway, "had no legitimate expectation of privacy."¹⁰⁶ In *United States v. Gori*, the Second Circuit Court of Appeals upheld the defendant's warrantless doorway arrest in similar circumstances and even went so far as to suggest that "[n]o one in a place open[] to public view can expect privacy in that place and at that time, whether [he] is on the threshold [of the doorway], in a vestibule [of the home,] or at the far end of an exposed interior room."¹⁰⁷

¹⁰² See *supra* note 24 (explaining that the Fourth Amendment protects people, not places).

¹⁰³ See *supra* note 35 (explaining that the Supreme Court held in *Katz* that "[w]hat a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection[]").

¹⁰⁴ See *infra* notes 105–07 and accompanying text (discussing principles supporting the validity of warrantless doorway arrests in *Vaneaton*, *McKinnon*, and *Gori*); see also *supra* note 36 (explaining the *Santana* principle).

¹⁰⁵ See *supra* note 57 (explaining that if the defendant *Vaneaton* had voluntarily exposed himself to the police by opening the door of his motel room, the presumption of *Payton* would be overcome).

¹⁰⁶ *McKinnon v. Carr*, 103 F.3d 934, 935 (10th Cir. 1996). The court explained that based on *Santana*, *McKinnon's* warrantless doorway arrest was valid under the Fourth Amendment because he had voluntarily opened the door and exposed himself to public view. *Id.*

¹⁰⁷ *United States v. Gori*, 230 F.3d 44, 54 (2d Cir. 2000). The court also noted that once an individual voluntarily opens the door of his home to whoever is standing outside, that

The circuit courts have continually placed less emphasis on the precise location of the defendant in the doorway during the course of arrest and have instead relied more heavily on the individual's reasonable expectation of privacy at the time of the arrest.¹⁰⁸ This analysis of doorway arrests correctly implicates the right of privacy that the Fourth Amendment protects, namely that of the individual himself.¹⁰⁹ Therefore, by remaining within his home and not answering the door, an individual in this type of situation fully retains his reasonable expectation of privacy under the Fourth Amendment because the principles of *Santana* and *Payton* have not yet been implicated.¹¹⁰

Because the Fourth Amendment protects people rather than places, it is not until an individual decides to open the doorway of the home to police, and expose himself to public view, that the Fourth Amendment is relevant to the analysis.¹¹¹ At this point the individual has knowingly abrogated his reasonable expectation of privacy and can be subjected to a lawful warrantless arrest.¹¹² It is important to note that the individuals arrested in these types of situations are not merely individuals who simply come to the doorway and open the door to police standing outside; the principles governing warrantless doorway arrests apply

individual "exhibit[s] no actual expectation of privacy and therefore lose[s] the heightened constitutional protection that might flow from such an expectation." *Id.*

¹⁰⁸ See discussion *supra* Part III.A.2 (arguing that an individual's reasonable expectation of privacy is the determinative factor that must be analyzed in a warrantless doorway arrest case); see also *supra* note 55 (explaining that because the defendant in *Pullian* voluntarily opened the doorway to police, his arrest would have been valid even if his feet were planted slightly back from the door frame); *supra* note 50 (explaining that the Eighth Circuit Court of Appeals stated in *Duncan* that the crucial issue in warrantless doorway arrest cases "involve[s] the individual's reasonable expectation of privacy and whether that individual came to the doorway voluntarily["); *supra* note 67 (noting that in *Berkowitz*, the Seventh Circuit Court of Appeals stated that an individual who voluntarily opens the door and stands there waiting for the police to arrest him cannot complain if the police briefly enter the home to complete the arrest).

¹⁰⁹ See *Katz v. United States*, 389 U.S. 347, 351 (1967) (explaining that the protections offered by the Fourth Amendment have been held to apply to people rather than places); Lewis, *supra* note 24 (arguing that the protection of privacy embodied in the Fourth Amendment is aimed at the protection of the individual rather than the home).

¹¹⁰ See *supra* note 36 (explaining the *Santana* principle); *supra* note 44 (explaining the *Payton* principle).

¹¹¹ See *supra* note 35 (explaining that the Supreme Court held in *Katz* that "[w]hat a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection[").

¹¹² See *supra* note 36 (explaining the *Santana* principle); see also LAFAVE, *supra* note 27, at 384 (arguing that the home is generally held to be an area in which an individual can maintain an expectation of "privacy, but objects, activities, or statements that he exposes to the 'plain view' of outsiders are not 'protected' because no intention to keep them to himself has been exhibited[").

only to individuals for whom probable cause exists to make a felony arrest.¹¹³

B. Consistent Application of the Principles of Santana and Payton

The circuit courts decline to uphold warrantless doorway arrests in two types of situations. The first situation occurs when police or other law enforcement officers make an actual, explicit entry past the threshold of the doorway and walk into the home to make the arrest.¹¹⁴ The second situation occurs when police or other law enforcement officers make a constructive entry into the home or employ coercive tactics to force an individual to come to the doorway of the home for purposes of arrest.¹¹⁵ Cases involving actual police entry into the home or coercive police tactics designed to force an individual to the doorway simply cannot stand under the rules set forth in both *Santana* and *Payton* because these situations constitute violations of the protections afforded by the Fourth Amendment.¹¹⁶

1. Rejecting the Validity of Doorway Arrests That Involve Actual Entry into the Home Is Consistent With *Payton*

Payton stands for the principle that a warrantless entry past the threshold of the doorway and into the privacy of the home to make an arrest is prohibited by the Fourth Amendment.¹¹⁷ Although the circuit courts have sometimes declined to uphold what at first glance might seem like a warrantless doorway arrest, a closer examination of the facts of such cases shows these arrests merely implicated the doorway; in these situations, the arrests were actually conducted within the privacy of the home and were properly invalidated consistent with *Payton*.¹¹⁸

¹¹³ See *supra* note 29 (explaining that the Fourth Amendment permits warrantless arrests in public places where a police officer has probable cause to believe a felony has occurred).

¹¹⁴ See discussion *supra* Part II.B.2.a (surveying cases in which warrantless doorway arrests were held to violate the Fourth Amendment because the police clearly entered past the threshold of the doorway and into the home to conduct the arrest).

¹¹⁵ See discussion *supra* Part II.B.2.b (surveying cases in which warrantless doorway arrests were held to violate the Fourth Amendment because police employed coercive tactics which forced the defendants to expose themselves in the threshold of the doorway for purposes of arrest); see also *United States v. Morgan*, 743 F.2d 1158, 1166 (6th Cir. 1984) (defining a constructive entry as a situation where police, while not entering the home, deploy overbearing tactics that essentially force an individual out of the home in violation of the individual's reasonable expectation of privacy under the Fourth Amendment).

¹¹⁶ See *infra* Parts III.B.1-2.

¹¹⁷ See *supra* note 44 (explaining the *Payton* principle).

¹¹⁸ See discussion *infra* Part III.B.1.

For example, in *Sparing*, the Seventh Circuit Court of Appeals invalidated the defendant's arrest because although the arrest involved the doorway, it had not actually been conducted at the doorway or even at the threshold of the doorway.¹¹⁹ Instead, while the defendant stood inside his home behind a fully closed screen door, an officer opened this door and walked directly into the home in order to arrest the defendant.¹²⁰ Similarly, in *LaLonde v. County of Riverside*, the Ninth Circuit Court of Appeals held that because police walked through the threshold of the doorway and into the defendant's apartment in order to make the arrest, the defendant's Fourth Amendment right of privacy was violated.¹²¹ In addition, the Tenth Circuit Court of Appeals declined to uphold the defendant's warrantless arrest in *Garrison v. City of Cushing* because the defendant was standing four to five feet within his house behind a closed screen door, and the police entered well beyond the threshold of the doorway to carry out the arrest.¹²²

These cases did not involve open doorway arrests; rather, they involved law enforcement officers actually entering into the private confines of an individual's home absent consent—something that is clearly forbidden by the Fourth Amendment.¹²³ The circuit courts that have addressed “actual entry” cases note the existence of a common but vital principle that is crucial to the analysis of open doorway arrests: the zone of privacy that *Payton* sought to protect lies beyond the threshold of

¹¹⁹ *Sparing v. Village of Olympia Fields*, 266 F.3d 684, 690–91 (7th Cir. 2001) (holding that because the defendant's arrest was not made at the doorway or the threshold of the doorway but instead was conducted after the police non-consensually walked into his home, the arrest violated the defendant's Fourth Amendment right of privacy); see also *supra* note 65 (discussing *Sparing*).

¹²⁰ *Id.* at 690–91 (explaining that Defendant *Sparing* stood inside his home behind a fully closed screen door, and the arresting officer opened the door and walked directly into *Sparing's* home in order to arrest him). The Seventh Circuit Court of Appeals held that here, because *Sparing* stood behind his closed screen door and thus did not surrender any reasonable expectation of privacy, the arresting officer violated his Fourth Amendment rights by opening the screen door and walking into the home to arrest *Sparing*. *Id.* at 690.

¹²¹ See *supra* note 70 (holding that because the defendant's arrest in *LaLonde* occurred after the police crossed the threshold of the doorway and walked into the defendant's apartment, the case did not fall under the doorway exception and was a violation of the defendant's Fourth Amendment right of privacy).

¹²² See *supra* note 70 (holding that because the defendant in *Garrison* was standing four to five feet within his house behind a closed screen door, he was not in a public area; therefore, his Fourth Amendment rights were violated by the subsequent police entry into his home for purposes of arrest).

¹²³ See *supra* Part II.B.2.a (noting that the circuit courts have invalidated warrantless doorway arrests that occurred after arresting officers walked into the home to make the arrest, because each defendant, by remaining within the confines of his home, did not surrender his reasonable expectation of privacy under the Fourth Amendment).

the doorway and can seemingly only be breached when an arresting officer places his entire person within the home to make the arrest.¹²⁴

2. Rejecting the Validity of Doorway Arrests Involving Coercive Police Tactics Is Consistent With *Santana*

The *Santana* decision clearly states that the threshold of the doorway is a public place, and an individual who knowingly exposes himself to public view in such an area may be subjected to warrantless arrest.¹²⁵ Although circuit courts have invalidated warrantless arrests made while the defendant was standing in the threshold of the doorway, decisions in these types of cases have been based upon a finding that the defendant's exposure to the public was not truly voluntary.¹²⁶

For example, in *Morgan*, the Sixth Circuit Court of Appeals invalidated the defendant's warrantless doorway arrest because the defendant came to the doorway "only because of the coercive police behavior taking place outside of the house."¹²⁷ Similarly, in *United States v. Saari*, the Sixth Circuit Court of Appeals again invalidated the defendant's warrantless doorway arrest, holding that the coercive activities of police officers outside of the defendant's home amounted to a constructive entry and in-home arrest.¹²⁸ Finally, in *Fisher v. City of San Jose*, the Ninth Circuit Court of Appeals declined to uphold the defendant's warrantless arrest because the defendant was subjected to

¹²⁴ See *supra* note 70 (surveying various circuit court decisions in which the defendants' warrantless arrests were invalidated due to actual entries into the home by arresting officers). If these decisions are examined carefully, each defendant's warrantless arrest was invalidated because the arresting officer physically placed his entire person past the threshold of the doorway and within the home or residence to make the arrest. See, e.g., *Loria v. Gorman*, 306 F.3d 1271, 1286 (2d Cir. 2002) (holding the defendant's warrantless arrest invalid because the police pushed the defendant's door open and took two steps into the house to arrest the defendant).

¹²⁵ See *supra* note 36 (discussing the *Santana* principle).

¹²⁶ See *infra* text accompanying notes 127-29 (citing cases in which the circuit courts have invalidated warrantless doorway arrests because the coercive tactics employed by arresting officers forced the defendant to expose himself at the doorway of the home).

¹²⁷ See *supra* note 74 (holding that the coercive tactics employed by the police in *Morgan* to force the defendant out of the home, involving the use of floodlights and a bullhorn, amounted to a "constructive entry" because the defendant's exposure to the officers was involuntary).

¹²⁸ See *supra* note 76 (holding that because the officers in *Saari* summoned the defendant from his home with their weapons drawn and pointed at him after knocking on the door, they "acted with such a show of authority that [the] Defendant reasonably believed he had no choice but to comply[]"; therefore, the defendant's warrantless arrest violated his Fourth Amendment rights).

police coercion while still inside his home and emerged at the doorway only because of the tactics employed by the police.¹²⁹

Although the defendants in each of these cases came to the doorway after police announced their presence at the home, the arrests were correctly deemed invalid under the Fourth Amendment because the exposure to public view by the defendants was not voluntary.¹³⁰ Instead, the coercion employed by police officers made each defendant believe he had no choice but to surrender to the officers by appearing at the threshold of the doorway or actually emerging from the home.¹³¹ Consistent with Supreme Court precedent in *Santana*, these types of warrantless arrests were properly invalidated. Specifically, in cases involving police coercion, the defendant has not voluntarily exposed himself to public view and therefore maintains a reasonable expectation of privacy under the Fourth Amendment.¹³²

3. Different Facts Surrounding an Arrest Does Not Mean a New Standard Has Been Created

This Note argues that the circuit courts have found that *Santana* and *Payton* are able to co-exist because they apply to entirely different types of arrests.¹³³ Additionally, although this Note urges that a circuit split on the issue of warrantless doorway arrests did not truly exist until the

¹²⁹ See *supra* note 76 (holding that although the defendant in *Fisher* eventually emerged from his apartment after the police turned off the electrical power to his residence, set off a “flash-bang” device, threw CS gas into his apartment, and set off a bullhorn to summon him, he had clearly succumbed to the police coercion in doing so and his warrantless arrest violated the Fourth Amendment).

¹³⁰ See *supra* notes 127–29 and accompanying text; see also *LAFAVE*, *supra* note 50, at 260 (explaining that if the defendant’s warrantless arrest at the door was brought about by coercive tactics employed by arresting officers, “then the warrantless arrest there is quite properly characterized as illegal[]”).

¹³¹ See, e.g., *United States v. Morgan*, 743 F.2d 1158, 1161 (6th Cir. 1984). (explaining that the officers had flooded the defendant’s house with spotlights and summoned the defendant Morgan from the home with the blaring call of a bullhorn); *Saari*, 272 F.2d at 806–07 (explaining that the arresting officers surrounded the doorway of the defendant’s apartment with their weapons drawn and ordered him to emerge); *Fisher v. City of San Jose*, 509 F.3d 952, 956–65 (9th Cir. 2007) (explaining that the arresting officers turned off the power to the defendant’s apartment, set off a “flash-bang” device, threw CS gas into his apartment, and set off a bullhorn in an attempt to force the defendant to emerge from his apartment).

¹³² See *supra* note 33 (holding that Defendant *Santana*’s warrantless arrest was valid under the Fourth Amendment because the defendant knowingly exposed herself to police officers in the doorway of her home, which is a public place); see also *supra* note 35 (explaining that the Court held in *Katz* that “[w]hat a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection[]”).

¹³³ See *supra* Parts III.A–B.

McClish decision, other authors have contended that the circuit courts have applied *Payton* differently in certain situations and that two major views have emerged regarding warrantless doorway arrests.¹³⁴ Both of these arguments, however, fail to recognize that: (1) *Payton* does not truly apply to the doorway arrest scenario, and (2) circuit court decisions in which warrantless arrests have been invalidated involved the existence of either non-consensual entries into the home or coercive police tactics surrounding the arrest.¹³⁵

The suggestion that the circuit courts have interpreted the requirements of *Payton* differently is flawed and based only on a confused interpretation of judicial decisions involving warrantless doorway arrests.¹³⁶ *Payton* has no implication whatsoever in the doorway arrest scenario; *Payton* merely held that arrests carried out within the home, absent consent or acquiescence to the authority of the arresting officers, violate the Fourth Amendment.¹³⁷ Ultimately, if the circuit court decisions are read carefully, the cases in which *Payton* has been applied to invalidate warrantless arrests have involved factual distinctions that put the cases beyond the simple doorway arrest scenario resolved by *Santana* because actual entries into the privacy of the home were made.¹³⁸ The simple fact that certain decisions have invalidated arrests due to actual entries into the home and certain decisions have upheld arrests due to the voluntary exposure of the defendant at the threshold of the doorway does not implicate a circuit split, and it is incorrect to suggest that such a circuit split occurred before the *McClish* decision.¹³⁹

¹³⁴ Marino, *supra* note 11, at 579–87 (arguing that the circuit courts have interpreted and applied the requirements of *Payton* differently which has led to a circuit split on the issue of warrantless open doorway arrests); Citron, *supra* note 11, at 2786 (contending that two conflicting views have been adopted by the circuits in an attempt to resolve the dispute over the constitutionality of warrantless open doorway arrests).

¹³⁵ See *supra* Part III.B.1 (arguing that the circuit courts have consistently applied *Payton* to invalidate warrantless arrests that implicated the doorway of the home but involved actual, non-consensual entry into the home to make the arrests); *supra* Part III.B.2 (arguing that the circuit courts have consistently applied *Santana* to invalidate warrantless arrests in which the defendant exposed himself in the threshold of the doorway, but such exposure was not voluntary on the part of the defendant).

¹³⁶ Marino, *supra* note 11, at 579–87 (arguing that the circuit courts have interpreted the requirements of *Payton* differently leading to a circuit split on the issue of warrantless open doorway arrests).

¹³⁷ See *supra* note 44 (explaining the *Payton* principle).

¹³⁸ See *supra* note 70 for cases in which the circuits have invalidated warrantless arrests because they occurred after the arresting officers made a non-consensual entry into the home. See *supra* note 36 (explaining the *Santana* principle).

¹³⁹ See *supra* Part III.B (arguing that *Payton* has been consistently applied by the circuit courts to invalidate warrantless arrests involving non-consensual entry into the privacy of

Next, case law does not adequately support the suggestion that the circuits are in dispute over arrests conducted at the threshold of the doorway.¹⁴⁰ While the circuits have adopted two different views to resolve such cases involving arrests conducted at the threshold of the doorway, each view is merely, at its core, a proper application of either *Payton* or *Santana* as the facts and circumstances of each case dictate.¹⁴¹ No disagreement actually exists among the circuits because *Santana* and *Payton* apply to entirely different scenarios of warrantless arrest and their principles are not at odds.

Santana is the sole Supreme Court decision that governs doorway arrests and is applied to uphold such an arrest only if the defendant's exposure to police is voluntary and the arrest occurs in the threshold of the doorway.¹⁴² *Payton* has no bearing upon the doorway arrest scenario and operates to invalidate a warrantless arrest that takes place when arresting officers make a full entry beyond the threshold of the doorway and into the privacy of the home absent consent or other exigent circumstances.¹⁴³ The confusion on this issue stems from the fact that in any "actual entry" scenario of warrantless arrest governed by *Payton* (where the arrest occurs inside the home), the doorway is necessarily implicated in the course of the arrest, *even when the arrest takes place well beyond the doorway and within the privacy of the home.*

the home). *But see* Marino, *supra* note 11 at 579-87 (arguing that the circuit courts have interpreted and applied the principles of *Payton* differently which has caused a circuit split on the issue of warrantless open doorway arrests).

¹⁴⁰ Citron, *supra* note 11, at 2786 (contending that the circuits are in dispute over deciding cases involving warrantless doorway arrests and two conflicting views, referred to as the "voluntary exposure view[]" and "sanctity view," have been adopted by the circuits in an attempt to resolve such cases).

¹⁴¹ *Id.* at 2786 (explaining that the "voluntary exposure view" refers to the position that plain view seizures at the threshold of the doorway do not constitute Fourth Amendment violations because the threshold of the doorway is a public place, and an individual in a public place cannot claim any legitimate expectation of privacy); *id.* at 2796 (explaining that the "sanctity view[]" refers to the position that a person who opens his door in response to the knock of a police officer does not surrender his privacy interest such that an officer may conduct a plain view seizure at the threshold).

¹⁴² See *supra* Part II.A.2 (discussing the *Santana* decision); *supra* note 36 (explaining the *Santana* principle).

¹⁴³ See *supra* Part II.A.3 (discussing the *Payton* decision); *supra* note 44 (explaining the *Payton* principle).

C. *The Decision by the Eleventh Circuit Court of Appeals in McClish v. Nugent Abandoned Both Existing United States Supreme Court and Courts of Appeals Precedent*

In *McClish*, the Eleventh Circuit Court of Appeals declined to uphold a warrantless doorway arrest.¹⁴⁴ This decision was inconsistent with the principles set forth in *Santana*, *Payton*, and other circuit cases addressing this issue.¹⁴⁵ Because an actual entry into the home was not made and no coercive tactics were used by police to force the defendant to open his door, Part III.C.1 explains why *McClish* was incorrectly decided and the defendant's warrantless arrest should have been upheld as valid under *Santana* and other cases decided by the Courts of Appeals.

1. *The Eleventh Circuit Disregards Both the Public Place and Voluntary Exposure Principles of Santana*

In declining to uphold defendant McClish's warrantless doorway arrest, the Eleventh Circuit Court of Appeals ignored the principles explained in *Santana* governing such arrests.¹⁴⁶ First, the court refused to recognize that the threshold of the doorway is a public place and an area in which a warrantless arrest is permissible under the Fourth Amendment.¹⁴⁷ In *McClish*, the defendant voluntarily opened his door in response to a knock from the arresting officers and the record supports a finding that the defendant remained within the general area of the doorway after he opened the door.¹⁴⁸ However, merely because McClish

¹⁴⁴ See *supra* note 100 (holding that a warrantless open doorway arrest is a prohibited entry into the private confines of the home which violates the Fourth Amendment and the Supreme Court's decision in *Payton*).

¹⁴⁵ See *infra* Part III.C.1 (arguing that the decision by the Eleventh Circuit Court of Appeals in *McClish* disregards the public place and voluntary exposure principles that formed the basis of the Supreme Court's decision regarding warrantless open doorway arrests in *Santana*); *supra* Part III.C.2 (arguing that the decision by the Eleventh Circuit Court of Appeals in *McClish* misinterprets the protections emphasized in *Payton*, namely that *Payton* only protects an individual's right of privacy in terms of what he or she has not knowingly exposed to public view).

¹⁴⁶ See *supra* note 36 (discussing the *Santana* principle).

¹⁴⁷ See *supra* note 78 (explaining the manner in which the Eleventh Circuit Court of Appeals interpreted the facts surrounding the warrantless arrest of the Defendant McClish and arguing that McClish was standing within the privacy of his home at the time of his arrest).

¹⁴⁸ See *id.* at 1235. The facts, taken most favorably to the defendant, state that McClish "went to the door, and opened it[]" after he heard a knock from the police. *Id.* The arresting officer "was standing on the porch, directly in front of the open door," and he "reached into the house, [and] grabbed [McClish][.]" *Id.* at 1235-36. It would therefore seem logical that McClish, by opening the door, must have been within the general vicinity of the doorway at this time.

lived in a trailer, the Eleventh Circuit Court of Appeals refused to acknowledge that McClish was actually standing in the threshold of the doorway.¹⁴⁹

Even though McClish averred that he had been standing completely inside his home at the time of his arrest, the idea that one could open a door and not be near the threshold of the doorway simply defies logic.¹⁵⁰ In spite of this, based on an erroneous finding that no threshold of the doorway apparently existed in McClish's trailer, the Eleventh Circuit Court of Appeals invalidated McClish's arrest on the grounds that McClish had not been in a public place at the time of the warrantless arrest.¹⁵¹ Such reasoning is clearly contrary to *Santana* because it completely disregards the Supreme Court's holding that the threshold of the doorway is considered a public area for purposes of arrest under the Fourth Amendment.¹⁵² The decision of the Eleventh Circuit Court of Appeals also draws an arbitrary distinction between trailer homes and other types of residences for purposes of warrantless doorway arrest. Apparently, a clearly delineated threshold of the doorway is only present in certain types (or sizes) of dwellings.¹⁵³ However, courts are not architects, and it should not be the task of a court to determine

¹⁴⁹ *Id.* at 1245. The court emphasized the fact that because McClish lived in a trailer, which does not have all "the amenities of a larger house, such as a definable chamber between the outer door and the interior of the dwelling[...]" McClish was already "firmly planted" within the privacy of his home when he voluntarily opened his door to the officers and stood behind the door. *Id.* Based upon this reasoning, the Eleventh Circuit Court of Appeals impliedly held that a definable threshold of the doorway does not exist based on the mere fact that the defendant McClish lived in a trailer. This erroneous finding allowed the Eleventh Circuit Court of Appeals to reason that because no threshold existed in McClish's trailer, he had actually been "standing firmly *inside* the living room of his home" at the time of his arrest. *Id.* Thus, by simply opening the door and standing in the doorway, the Eleventh Circuit Court of Appeals concluded that an individual actually remains in the living room and privacy of his trailer rather than in the public area of the doorway's threshold. *Id.*

¹⁵⁰ *Id.* at 1236. The facts indicate that "McClish unambiguously stated that [he] had been standing completely inside the home at the time[]" of his arrest. *Id.* The author of this Note contends that it would not be possible for a person to be able to fully open a door and still remain within the privacy of his home. By opening the door, a person would necessarily have to be within the area of the doorway or he would not be able to grab hold of the doorknob and pull the door open.

¹⁵¹ *Id.* at 1248 (holding that a warrantless open doorway arrest is a prohibited entry into the private confines of the home which violates the Fourth Amendment and the Supreme Court's decision in *Payton*).

¹⁵² See *supra* note 33 (holding that the defendant Santana's warrantless arrest was valid because she knowingly exposed herself to police officers in the doorway of her home, which is a public place).

¹⁵³ *McClish v. Nugent*, 483 F.3d 1231, 1245 (11th Cir. 2007) (stressing that the Defendant McClish's trailer did not have "a definable chamber between the outer door and the interior of the dwelling[...]"); see also *supra* note 149 and accompanying text.

precisely whether a threshold can be found to exist in a particular type of residence.¹⁵⁴

More importantly, the opinion of the Eleventh Circuit Court of Appeals gives no weight to the fact that McClish had *voluntarily opened the door to police*, which was the *key factor* the Supreme Court had relied on in upholding the validity of the defendant's arrest in *Santana*.¹⁵⁵ The police did not use coercive tactics to force McClish to open his door and no constructive entry was made; McClish simply heard a knock at the door and opened it.¹⁵⁶ By invalidating McClish's warrantless open doorway arrest, the Eleventh Circuit Court of Appeals did not merely ignore the principles of *Santana* that it should have applied to uphold the arrest; it went directly against those principles and blatantly misconstrued decisions of the Circuit Courts of Appeals to support its erroneous holding.¹⁵⁷ Furthermore, the court engaged in a lengthy

¹⁵⁴ See LAFAVE, *supra* note 50, at 257. LaFave argues that the idea that a suspect cannot be subjected to a warrantless arrest while standing at the threshold of the doorway is unsound because "it means that whether a particular warrantless arrest turns out to be lawful . . . often depend[s] upon nothing more than whether the arresting officer had the prescience to testify that the defendant was 'in' the doorway rather than 'at' it, or 'on' the threshold rather than 'by' it." *Id.* LaFave also notes that "even if courts could be expected to sort out the 'in'-'at' and 'on'-'by' distinctions on a regular basis, one cannot help but wonder why that burden should be imposed upon them." *Id.*

¹⁵⁵ *McClish*, 483 F.3d at 1247 (emphasizing that "McClish did not completely surrender or forfeit every reasonable expectation of privacy when he opened the door, including, most notably, the right to be secure within his home from a warrantless arrest[]"). *But see supra* note 35 (noting that because *Santana* had knowingly exposed herself to the public in the doorway of her home, she no longer had a reasonable expectation of privacy under the Fourth Amendment). See also *McClish*, 483 F.3d at 1256 n.5 (Anderson, J., concurring) (explaining that because the Court in *Santana* said that arrests on the threshold of the doorway without a warrant are legal and "common sense tells us that an officer conducting an arrest at the literal threshold [of the doorway] would necessarily cross the plane of the door in a great many threshold arrests[][,] the majority opinion is clearly inconsistent with *Santana*); *supra* note 36 (explaining the *Santana* principle).

¹⁵⁶ *Id.* at 1235 n.7 (explaining that an affidavit had stated that McClish simply opened the door following the knock of police, while McClish had stated at a deposition that he asked who was at the door and opened it after the police announced their presence).

¹⁵⁷ *Id.* at 1248. In reasoning that McClish had not surrendered his reasonable expectation of privacy by voluntarily opening his door to police, the Eleventh Circuit Court of Appeals relied on *United States v. McCraw*, in which the Fourth Circuit Court of Appeals held "that a person does not surrender his expectation of privacy nor consent to the officers' entry by [partially] [opening the door] [to determine the identity of officers knocking on the door], and [the defendant's] arrest inside his room under such circumstances is contrary to the [F]ourth [A]mendment and . . . *Payton*." *Id.* at 1247 (citing *United States v. McCraw*, 920 F.2d 224, 228 (4th Cir. 1990) (emphasis added)). However, the Eleventh Circuit Court of Appeals blatantly misconstrued the holding of the Court of Appeals for the Fourth Circuit by explaining that *McCraw* simply held that "a person does not surrender his expectation of privacy nor consent to the officers' entry by [opening the door,] and [the defendant's] arrest inside his room under such circumstances is contrary to the [f]ourth [a]mendment and . . .

850 VALPARAISO UNIVERSITY LAW REVIEW [Vol. 43]

discussion attempting to determine McClish's precise location in the doorway even though the circuit courts have consistently determined that this factor has little bearing on the validity of the arrest if the individual has already surrendered his reasonable expectation of privacy.¹⁵⁸

Because it disregards the scope of Fourth Amendment protections linked to an individual's reasonable expectation of privacy, the decision of the Eleventh Circuit in *McClish* represents a confused analysis of the issues at stake in warrantless doorway arrest cases.¹⁵⁹ The facts of *McClish* make it apparent that the decision simply called for an application of the principles of *Santana* because an individual who knowingly stands in the doorway is no longer in an area where he can maintain a reasonable expectation of privacy.¹⁶⁰ The Eleventh Circuit Court of Appeals, however, did not see it that way.

2. The *McClish* Decision Misinterprets the Protections That *Payton* Actually Emphasized

The Eleventh Circuit Court of Appeals also errantly justified its decision to invalidate McClish's warrantless arrest by emphasizing that

Payton." *McClish*, 483 F.3d at 1247 (citing *McCraw*, 920 F.2d at 228) (emphasis added). The facts of *McCraw* clearly indicate that the defendant did not fully open his door to arresting officers as McClish had done. See *McCraw*, 920 F.2d at 226 (explaining that the defendant heard a knock at the door, opened the door "about halfway while standing inside his room[...]" and then "attempted to close the door[]" when he saw the arresting officers). But see *McClish*, 483 F.3d at 1235 (stating that McClish himself "averred that [the arresting officer] was standing on the porch, directly in front of the open door," after McClish had opened it). Because McClish had fully opened his door to arresting officers and made no attempt to close the door when he saw them at his doorway, any reliance on *McCraw* by the Eleventh Circuit Court of Appeals is not only unpersuasive but simply incorrect.

¹⁵⁸ See *supra* Part III.A.2 (discussing various cases in which the circuit courts have held that the arrested individual's precise location in the doorway is not the dispositive issue to be examined in warrantless doorway arrest cases); see also *McClish*, 483 F.3d at 1263-64 (Anderson, J., concurring) (arguing that the issue at stake in *McClish* and similar cases is not the specific location of the arrested individual in the doorway, but whether the arresting officers violated the suspect's reasonable expectation of privacy in making the arrest).

¹⁵⁹ See *supra* Part III.A (arguing that the circuit courts have found the important issues in warrantless doorway arrest cases to be: (1) the threshold of the doorway is a public place and therefore an area in which a valid warrantless arrest can be made, and (2) once an individual opens the doorway to his home, that individual surrenders his reasonable expectation of privacy under the Fourth Amendment).

¹⁶⁰ See *supra* note 36 (discussing the *Santana* principle); see also *McClish*, 483 F.3d at 1253-54 (Anderson, J., concurring) (arguing that McClish's case was "legally indistinguishable from *Santana*[]" based on the fact that McClish voluntarily opened the door in response to a knock by police, and thus "'knowingly expose[d]' both himself and the immediate area behind his threshold to public view[]").

police made an actual entry into McClish's trailer.¹⁶¹ The facts of *McClish* indicate that no such entry was made, and the Eleventh Circuit Court of Appeals was able to conclude only that an actual entry occurred because it refused to recognize that a clearly delineated threshold of the doorway exists within a trailer home.¹⁶² Furthermore, even though the arresting officer in *McClish* reached into the open doorway to grab hold of the defendant and complete the arrest, these actions did not rise to the types of in-home entries and invasions of privacy that *Payton* serves to protect.¹⁶³

This principle is clear because the circuit courts have interpreted the zone of privacy sought to be protected by *Payton* to extend beyond the threshold of the doorway itself by continuously holding that the threshold can be breached only when an arresting officer physically places his entire person within the home.¹⁶⁴ It is apparent that after

¹⁶¹ *Id.* at 1235-36. The court explained that after McClish voluntarily opened the door to the police, one of the officers reached into the house through the open door, grabbed McClish as he stood in the doorway, and pulled him out onto the trailer's porch to effect the arrest. *Id.* The Eleventh Circuit Court of Appeals found that this amounted to an actual entry into the home which violated the principles of *Payton*. *Id.* at 1248.

¹⁶² *Id.* at 1245 (stressing the fact that because McClish lived in a trailer, which does not have "all of the amenities of a larger house, such as a definable chamber between the outer door and the interior of the dwelling[...]" McClish was already "firmly planted" within the privacy of his home when he voluntarily opened his door to the officers and stood behind the door).

¹⁶³ *See supra* note 41 (explaining the Supreme Court in *Payton* held that a warrantless arrest inside the home, absent exigent circumstances such as consent, is an unlawful invasion of an individual's right to privacy that cannot be allowed even when probable cause exists); *supra* note 98 (explaining that *Payton* does not hold or suggest that the home is a sanctuary from reasonable police investigation; rather, *Payton* protects an individual's privacy interest, even within the home, only in terms of what the individual has not knowingly exposed to public view); *McClish*, 483 F.3d at 1254 (Anderson, J., concurring) (explaining that *Payton*, unlike *Santana*, "was not a doorway arrest case[]" but decided only the narrow issue of when and under what circumstances an officer may enter the interior of a suspect's home to make a warrantless arrest); *see also* LAFAVE, *supra* note 50, at 257 (suggesting that based upon *Payton*, if a warrantless arrest at the doorway can be accomplished without entry into the home, then "it should be deemed lawful notwithstanding the absence of a warrant, *even if* the arrestee was just inside rather than on the threshold at that time[]").

¹⁶⁴ *See supra* note 70 (discussing cases in which courts have deemed warrantless doorway arrests invalid because the arresting officers explicitly walked past the threshold of the doorway and into the privacy of the home to make the arrests); *see also* Sparing v. Village of Olympia Fields, 266 F.3d 684, 690-91 (7th Cir. 2001) (holding that because the defendant's arrest was not made at the doorway or threshold of the doorway but was actually conducted after the police walked into his home without his consent, the arrest violated the defendant's Fourth Amendment right of privacy); *McClish*, 483 F.3d at 1254 (Anderson, J., concurring) (stressing that in *Payton*, the arresting officers penetrated well into the interior of the defendant's home by doing more than simply reaching through an open door as the arresting officers had done in *McClish*).

probable cause exists for an individual's arrest and he has voluntarily opened his doorway to police, the arresting officer does not violate *Payton* by simply reaching into an open doorway and grabbing hold of the individual.¹⁶⁵ In this situation, the arresting officer's entire person has by no means intruded past the threshold of the doorway, and the rule of *Payton* has no authoritative bearing upon the validity of the arrest.¹⁶⁶ In the end, the Eleventh Circuit Court of Appeals improperly relied on the principles of *Payton* and distorted the facts of the case to uphold the defendant's warrantless doorway arrest in *McClish*.

IV. CONTRIBUTION

This Note argues that circuit courts have consistently applied Supreme Court precedent to resolve warrantless doorway arrest cases and the conflict among the circuits on this issue did not arise until the *McClish* decision.¹⁶⁷ *McClish* was improperly decided, and the confused reasoning of the Eleventh Circuit Court of Appeals could lead to further misapplication of the principles of *Santana* and *Payton*.¹⁶⁸ However, a more explicitly defined standard will help properly resolve future cases dealing with warrantless doorway arrests. This suggested model

¹⁶⁵ See *supra* note 35 (explaining that what a person knowingly exposes to the public, even in his own house or office, is not a subject of Fourth Amendment protection); see also *McClish*, 483 F.3d at 1257 (Anderson, J., concurring) (arguing that "[t]he *Santana* rule is consistent with *Payton*'s privacy-protection rationale[]" because "*Santana* simply says that when a suspect has voluntarily relinquished the privacy of the home in the doorway area, the *Payton* concern for the privacy of the home is not present and the public arrest rule of *Watson* applies[]"); LAFAVE, *supra* note 50, at 258 (suggesting that if the arrestee, after opening the door to arresting officers, does not retreat from the door and "the police officer merely reaches in [the home] to manifest the fact of arrest, such a de minimis breaking of the vertical plane above the threshold should not itself make the warrantless arrest unlawful[]"); *supra* note 33 (holding that the doorway of a home is a public place, and that a warrantless arrest made at the doorway after a defendant has voluntarily exposed herself to public view is valid under the Fourth Amendment).

¹⁶⁶ See *supra* note 44 (stating the *Payton* principle); see also *McClish*, 483 F.3d at 1257 (Anderson, J., concurring) (emphasizing that if a suspect chooses to open the door to arresting officers, "the officers do not offend the rationale of *Payton* by simply reaching in and grabbing him[];]" the rule of *Santana* allows police to seize a suspect who is standing "within reach of the officer standing at the threshold [of the doorway] because the officer does not thereby intrude further on the suspect's privacy than what the suspect had voluntarily relinquished[]" by opening the door).

¹⁶⁷ See *supra* Parts III.A-B (arguing that the circuit courts have consistently applied Supreme Court precedent to resolve warrantless doorway arrest cases and that the *Santana* and *Payton* decisions can easily co-exist because they speak to entirely different scenarios of warrantless arrest).

¹⁶⁸ See *supra* Part III.C (arguing that the decision by the Eleventh Circuit Court of Appeals in *McClish* abandoned existing precedent on the issue of warrantless doorway arrests and was based upon flawed reasoning by the majority).

approach, taking aspects from the *Santana* and *Payton* decisions as well as from other cases discussed in this Note decided by the Courts of Appeals, will curtail virtually any ambiguities surrounding these arrests through a firm and easy-to-apply standard.

Part IV.A proposes a standard of model judicial reasoning that should be applied to cases dealing with warrantless doorway arrests and emphasizes that the voluntary exposure of the defendant to arresting officers should be the sole determinative factor in resolving these types of cases.¹⁶⁹ Then, Part IV.B addresses how the model standard addresses the use of coercive police activity in warrantless doorway arrest cases and explains why the precise location of the defendant in the doorway at the time of his arrest should have absolutely no bearing on its validity.¹⁷⁰

A. *The Proposed Model Standard*

Based on the historical protections emphasized by the Fourth Amendment, Supreme Court precedent, and decisions by the Circuit Courts of Appeals regarding warrantless doorway arrests, the validity of a warrantless doorway arrest should hinge solely upon the following determination: *whether the arrested individual surrendered his reasonable expectation of privacy by opening his door and voluntarily exposing his person to police officers standing outside.*¹⁷¹ If the arrested individual has opened the door to his dwelling in any way and surrendered his reasonable expectation of privacy by voluntarily exposing his person to police officers standing outside, this model approach operates to uphold all instances of warrantless arrest regardless of the precise location of the

¹⁶⁹ See *infra* Part IV.A.

¹⁷⁰ See *infra* Parts IV.B.1-2.

¹⁷¹ In order for a warrantless doorway arrest to be upheld under the voluntary exposure test, the suspect himself must, in almost all cases, be the individual that opens the door to the arresting officers. Consistent with the Supreme Court's decision in *Payton*, if another individual within the home opens the door and the suspect can be seen inside the home but does not come to the door, a warrantless arrest cannot be carried out because the suspect himself did not voluntarily expose himself to the arresting officers in the doorway. See *supra* notes 40-44 (explaining that in *Riddick*, the companion case to *Payton*, the defendant's warrantless arrest was invalidated based upon principles of actual entry after the defendant's son opened the door to arresting officers, the officers saw the defendant in bed covered by a sheet through the open doorway, and the officers subsequently entered the home and arrested him). The sole exception to this scenario is laid out by LaFave in his Fourth Amendment treatise: in a situation where the arresting officer knocks on the door, another occupant of the home answers the door, the occupant is told of the officer's intention to arrest the defendant who is inside the home, the occupant informs the defendant of the officer's intention, and the defendant still comes to the door to meet the arresting officer, his arrest would be valid under the Fourth Amendment and standard of model reasoning proposed in this Note. See LAFAVE, *supra* note 50, at 259 (emphasis added).

individual in the doorway at the time of the arrest or the manner in which the door was opened.¹⁷² Warrantless arrests have historically been deemed to implicate “right of privacy” issues rather than arbitrary precise location issues, and this model approach emphasizes the former, rather than the latter, factor as determinative.¹⁷³

Although this model approach proposes a controversial standard of analysis, its focus on principles of voluntary exposure flows directly from the Fourth Amendment’s emphasis on protecting each individual’s right to a reasonable expectation of privacy.¹⁷⁴ This protection is not absolute, however, and can easily be surrendered because it applies to individuals rather than specific places.¹⁷⁵ In other words, the reasonable expectation of privacy does not protect an individual simply because his body remains in a certain place, like a home; it protects such an individual if he has not taken an action that is inconsistent with maintaining the privacy of his person, like exposing himself to public view by voluntarily opening a door.

It is clearly reasonable for an individual to maintain an expectation of privacy if he remains within his home and does not respond to a knock at his door, no matter who might be outside. By not opening the door, the individual has acted in a manner consistent with maintaining

¹⁷² The model standard draws no distinction between situations in which the individual partially opens the door to see who is outside, quickly opens and closes the door after he sees the arresting officers, or fully opens the door with blatant disregard for whoever stands outside because in all of these instances, the individual has engaged in behavior inconsistent with a desire for the privacy of his person to remain undisturbed. *See supra* note 35 (explaining that the Supreme Court held in *Katz* that what a person knowingly exposes to public view, even within his own home, is not subject to the protections offered by the Fourth Amendment).

¹⁷³ *See supra* note 109 (explaining that historically, the protections of privacy embodied by the Fourth Amendment have been held to apply to people rather than places, and hence protect the individual himself rather than his home).

¹⁷⁴ *See supra* note 27 (explaining that each individual has a constitutionally protected reasonable expectation of privacy under the Fourth Amendment, and stating that the Court in *Katz* held that capacity to claim the protection of the Fourth Amendment depends upon whether the individual who claims such protection has a legitimate expectation of privacy in the invaded area); *see also* Lewis, *supra* note 24 (explaining that the protection of privacy embodied in the Fourth Amendment is not limited to homes; it is aimed at the protection of the individual); Jones, *supra* note 27 (stating that the concept of “reasonable expectation of privacy” is the starting point for Fourth Amendment analysis).

¹⁷⁵ *See supra* note 24 (explaining that the Court held in *Katz* that the Fourth Amendment protects people rather than places); *see also supra* note 17 (citing the text of the Fourth Amendment). It should be noted that because the Fourth Amendment itself refers to protecting a “right” of people to remain secure from unreasonable seizures in their persons and homes, the use of the word “right” indicates that the privacy interest can be forfeited.

his right of privacy under the Fourth Amendment.¹⁷⁶ However, by freely opening the door to police standing outside, the individual can no longer maintain a right of privacy.¹⁷⁷

B. Other Important Aspects Addressed by the Proposed Model Standard

In order for the model standard proposed in this Note to have any practical implications, courts addressing the validity of these types of arrests must look more closely at the circumstances surrounding each arrest. Courts must place a much heavier emphasis on determining whether arresting officers used coercive tactics to force the defendant to appear at his doorway because only in such instances would a defendant's exposure be involuntary.¹⁷⁸ No emphasis, however, needs to be placed on the defendant's precise location in the doorway at the time of his arrest because such issues are truly extraneous to the warrantless doorway arrest scenario.¹⁷⁹

1. Coercive Police Activity Taking Place at the Time of the Arrest

A key factor that must play a role in determining the validity of an arrest under the voluntary exposure analysis is the presence of coercive police activity at the time of the arrest. If an individual is forced to expose himself to police maintaining a presence outside of his home based on the belief that he must submit to their authority, the individual has not surrendered his reasonable expectation of privacy because his exposure to the police was not voluntary.¹⁸⁰ However, because voluntary exposure operates as the defining principle in this model approach, a more specific definition of "coercive police conduct" must be set forth to ensure that the arrested individual truly opened the door to police out of his own free will.¹⁸¹

¹⁷⁶ See LAFAVE, *supra* note 50, at 258–59 (explaining that if in a particular case in which no exigent circumstances exist and the intended arrestee does not answer the door but instead "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[]").

¹⁷⁷ See *supra* note 35 (holding that what a person knowingly exposes to the public, even in his own house or office, is not subject to Fourth Amendment protection).

¹⁷⁸ See *infra* Part IV.B.1.

¹⁷⁹ See *infra* Part IV.B.2.

¹⁸⁰ See *supra* Part III.B.2 (discussing warrantless doorway arrests involving coercive tactics by police and arguing that in these types of situations, the exposure of the defendant to police is not truly voluntary).

¹⁸¹ See *supra* note 74 (explaining that "coercive police conduct" refers to such a show of authority that the defendant reasonably believes that he has no choice but to comply with the requests of police).

In this model approach, “coercive activity” by arresting officers includes behavior identified in circuit court decisions examined earlier in this Note¹⁸² as well as misrepresentation of the identities of the officers to the suspect, verbal threats made by the officers to the suspect, maintaining a continued, visible police presence outside of the residence until the suspect opens his door, and similar attempts at coercion and deception. The focus underlying whether behavior of police qualifies as coercive activity centers around whether the suspect reasonably believed that he had no reasonable choice but to open his door and expose himself to arresting officers.

2. The Precise Location of the Defendant at the Time of the Arrest

Based on this model approach, if courts faced with determining the constitutionality of warrantless doorway arrests base their analysis on principles of voluntary exposure, they must ignore the precise location of the defendant at the time of the arrest. One would have to be somewhat near the doorway to be able to successfully open a door anyway, and factoring the location of the defendant into the analysis only serves to create ambiguities and obscure line-drawing scenarios for courts. It would be virtually impossible to create a workable standard to define the precise area of the threshold of the doorway in different types of residences, and using this type of standard would inevitably lead to conflicts as to whether the defendant was actually in the doorway, a step back from the doorway, or somehow “firmly planted inside” the home after opening the door at the time of the arrest.¹⁸³

By ignoring the location of the defendant at the time of the arrest, it will be easier for courts to distinguish doorway arrests from in-home arrests based solely on the voluntary exposure principle. Because the facts of warrantless doorway arrest cases will never be identical, it does not make sense to base the analysis on an arbitrary factor such as the actual location of the defendant which will invariably differ on a case-by-case basis. Hence, the most logical working standard revolves around

¹⁸² See *supra* note 131 (discussing examples of police coercion, such as flooding the defendant’s house with spotlights and summoning the defendant from the home with the blaring call of a bullhorn, surrounding the doorway of the defendant’s residence and ordering him to emerge with weapons drawn, turning off the power to the defendant’s residence, setting off a “flash-bang” device at the defendant’s residence, and throwing tear gas into a defendant’s residence).

¹⁸³ See *supra* note 78 (explaining that because the defendant McClish’s residence did not have “the amenities of a larger house, such as a definable chamber between the outer door and the interior of the dwelling[,]” McClish was already “firmly planted” within the privacy of his home when he voluntarily opened his door to police and stood behind the door).

the suggested model approach of voluntary exposure. Not only does the model approach find an appropriate basis in Fourth Amendment jurisprudence because it protects the rights of individuals rather than particular locations, the model approach is also conducive to analysis in almost every type of situation due to its clear and simple standards.¹⁸⁴

V. CONCLUSION

Flash back to John Smith's warrantless arrest at his apartment. After Smith opens the door, the officers advise him that he is under arrest and one of the officers grabs Smith's arm to handcuff him and carry out the arrest. Under the decision of the Eleventh Circuit Court of Appeals in *McClish*, the police would be violating Smith's Fourth Amendment rights by arresting him even though he voluntarily opened his door to the officers and stood at the doorway. The Eleventh Circuit Court of Appeals would preoccupy itself with determining the precise location of Smith at the time of his arrest and would reason that although Smith opened the door to the arresting officers, he was still within the privacy of his home at that time. Applying the model reasoning suggested in this Note, however, Smith's arrest would be upheld regardless of whether he stood at, near, on, or slightly behind the threshold of the doorway. Because Smith voluntarily opened his door to the arresting officers who maintained a brief, non-coercive presence outside of his apartment and did not enter past the threshold and into Smith's apartment to make the arrest, the officers did not violate Smith's right of privacy under the Fourth Amendment.

This Note has clarified that warrantless open doorway arrests are constitutionally valid and ultimately consistent with Fourth Amendment principles and Supreme Court precedent. In line with the existing standards set forth in both the *Santana* and *Payton* decisions, these types of arrests should only be found invalid in two instances: (1) if arresting officers enter beyond the threshold and into the privacy of the home to make the arrest absent consent from the suspect, and (2) if arresting officers employ coercive tactics that force the suspect to involuntarily expose himself at the doorway.

Although it may seem that prior to *McClish*, decisions by the Circuit Courts of Appeals dealing with warrantless doorway arrests were based on an unclear standard, this is simply untrue. The principles of *Santana*

¹⁸⁴ See *supra* note 24 (explaining the *Katz* Court held that the Fourth Amendment protects people rather than places); see also Lewis, *supra* note 24 (explaining that the protection of privacy embodied in the Fourth Amendment is not limited to homes; it is aimed at the protection of the individual).

858 VALPARAISO UNIVERSITY LAW REVIEW [Vol. 43]

and *Payton* are distinct and have been consistently applied by the circuit courts either to uphold or invalidate warrantless arrests regardless of whether the courts expressly relied on these principles.¹⁸⁵ Although the *McClish* decision resulted in a circuit split on the constitutionality of warrantless doorway arrests, it was incorrectly decided by the Eleventh Circuit Court of Appeals. Because the arrest at issue in *McClish* did not implicate the protections emphasized in *Payton*, the arrest should have been upheld consistent with the principles in *Santana*.¹⁸⁶

This Note has ultimately maintained the view that *McClish* is a unique and improperly reasoned decision on the issue of warrantless open doorway arrests. Courts faced with resolving cases dealing with these types of arrests must be cautious not to rely on the reasoning set forth by the Eleventh Circuit Court of Appeals because it would be irrational to expect judges to apply an arbitrary standard of analysis that defies precedent established by both the Supreme Court and the Circuit Courts of Appeals. Instead, to ensure consistency among the circuits, courts that address the constitutionality of warrantless doorway arrests should either apply the distinct principles of *Santana* and *Payton*, or apply a more explicitly defined standard such as the model standard proposed in this Note.

Christopher J. Rados*

¹⁸⁵ See *supra* Part III.A (explaining that the circuit courts have upheld warrantless doorway arrest cases based on the Supreme Court's holding that the threshold of the doorway is a public place and therefore an area in which a valid warrantless arrest can be made, and that once an individual opens the doorway to his home, that individual surrenders his reasonable expectation of privacy under the Fourth Amendment); *supra* Part III.B (arguing that although the circuit courts have declined to uphold warrantless doorway arrests in certain cases, the decisions have been consistent with *Santana* and *Payton* because the cases involved either the use of coercive police tactics to force the defendant to involuntarily come to the doorway, or actual entry by arresting officers past the threshold of the doorway and into the privacy of the home to make the arrest).

¹⁸⁶ See *supra* Part III.C.1 (arguing that the decision by the Eleventh Circuit Court of Appeals in *McClish* disregards both the public place and voluntary exposure principles that formed the basis of the Supreme Court's decision regarding warrantless open doorway arrests in *Santana*); *supra* Part III.C.2 (arguing that the *McClish* decision misinterprets the protections that had originally been emphasized in *Payton*).

* J.D. Candidate, Valparaiso University School of Law (2009); B.A., Political Science, Miami University (2006); B.A., History, Miami University (2006).