

THERE'S NO PLACE LIKE HOME

Warrantless reach over the door threshold leads to unlawful arrest



A deputy responded to a disturbance call at an apartment complex and learned that the two persons who had been arguing in the parking lot had gone into a particular apartment. The deputy knocked on the apartment door and Moore came to the door wearing only a towel. The deputy could see two women inside the apartment, one naked and the other one clothed and scowling.

The deputy asked Moore whether he was involved in the parking lot disturbance. Moore replied that he knew nothing of it. The deputy asked for Moore's name and identification. Moore refused to identify himself. The deputy told Moore to turn around and place his hands behind his back. The deputy reached across the threshold of the doorway and handcuffed Moore. As they walked to the patrol car, the towel fell. Moore sued, alleging an unlawful arrest and intentional infliction of emotional distress.

The deputy asked the court to apply qualified immunity for the arrest and to dismiss the lawsuit. The deputy argued that he was conducting a lawful Terry stop at the doorway, based on reasonable suspicion that Moore was involved in the parking lot breach of the peace. The deputy further asserted that the reasonable suspicion was bolstered upon finding a naked woman, a barely clad Moore and a scowling woman, suggesting that a woman had just caught her partner in an act of infidelity.

Moore's arrest for "resisting an officer without violence" (refusing to identify himself) could only be lawful if the deputy had a lawful basis to demand Moore's identity and a lawful basis to enter the home. The court began its decision by quoting Dorothy (Wizard of Oz): "There's no place like home," particularly when weighing Fourth Amendment issues.

If there was any question about whether it was lawful to reach across the threshold without a warrant, consent or exigent circumstances, this case puts the uncertainty to rest. Judge Proctor wrote that the deputy "could not have lawfully executed a Terry stop in this case, at least while Moore was inside his home ... Moore, standing inside his home, was free to decide not to answer the Deputy's questions ... It was unlawful for [the deputy] to have arrested Moore."

The court of appeals upheld the trial court's decision to grant qualified immunity to the deputy. However, the court was divided on whether the law was clearly decided at the time Moore's

arrest. The court held that it was not—at the time of the arrest—clearly established that reaching across the threshold of a home to conduct the equivalent of a Terry investigation, without consent, warrant or exigent circumstances, violated the Constitution.

The Supreme Court has often reminded us that the physical entry of the home is the chief evil against which the [Fourth Amendment] is directed. As the Court noted in this case, “the Fourth Amendment ‘draw[s] a firm line at the entrance to the house.’ ... But make no mistake: in the absence of these stringent circumstances, for the purpose of arresting a person without a warrant, ‘any physical invasion of the structure of the home, by even a fraction of an inch,’ [is] too much.” *Moore v. Pederson*, 2015 WL 5973304 (11th Cir. 2015)

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