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COURT OF APPEALS

STATE OF NEW YORK

PEOPLE,

Respondent,

-against-

NO. 82

SEAN GARVIN,

Appellant.

20 Eagle Street
Albany, New York
September 13, 2017

Before:

CHIEF JUDGE JANET DIFIORE
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE LESLIE E. STEIN
ASSOCIATE JUDGE EUGENE M. FAHEY
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE ROWAN D. WILSON
ASSOCIATE JUDGE PAUL FEINMAN

Appearances:

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Official Court Transcriber



1 CHIEF JUDGE DIFIORE: Number 82, the People of
2 the State of New York v. Sean Garvin.

3 Counsel?

4 MS. LINN: Good afternoon, Your Honors.

5 Tammy Linn for - - - of Appellate Advocates for
6 appellant Shawn Garvin. I'd like to reserve one minute for
7 rebuttal, please.

8 CHIEF JUDGE DIFIORE: One minute?

9 MS. LINN: Yes, please.

10 CHIEF JUDGE DIFIORE: You may.

11 MS. LINN: Thank you, Your Honor.

12 CHIEF JUDGE DIFIORE: You're welcome.

13 MS. LINN: There are four sound policy reasons
14 for applying Payton to preplanned warrantless doorway
15 arrests.

16 First, it would close the loophole to Harris in
17 which this court recognized that police have an incentive
18 to violate Payton in order to question suspects without
19 counsel.

20 Second, treating someone who opens the door the
21 same as someone who invites the police inside would equate
22 a submission to authority with consent, which is
23 inconsistent with this court's decision in Gonzales.

24 Third, and similarly, we shouldn't protect the
25 Fourth Amendment rights of those who are willing to ignore



1 the - - - of only those who are willing to ignore the
2 police or close the door in an officer's face.

3 And forth, assessing the purpose of an intrusion
4 serves the Fourth Amendment goal of preventing unreasonable
5 searches and seizures and is fairer than hinging
6 Constitutional rights on the definition of a doorway.

7 CHIEF JUDGE DIFIORE: Is it unreasonable for the
8 police to approach someone's door, knock on the door, and
9 wait for them to open the door, and - - -

10 MS. LINN: It's not unreasonable to approach a
11 knock on the door just the way that any civilian could do,
12 approach a house. It is unreasonable if the purpose is to
13 get someone to open the door where they're almost always
14 going to submit to authority. They see a police officer
15 outside, they're going to open the door, and then they're
16 subject to arrest just by that sheer fact alone.

17 JUDGE GARCIA: So if you have probable cause, you
18 can't knock on the door; that would be the rule?

19 MS. LINN: You can knock on the door, but I
20 guess, you shouldn't go to and arrest them without a
21 warrant under the rule that I'm asking for.

22 JUDGE GARCIA: In terms of the Harris analysis,
23 it seems to me it would be extending that analysis a bit
24 farther because Harris was concerned on a State
25 Constitutional ground with going inside this house or



1 apartment without a warrant, you get a statement, sorry,
2 the arrest is bad on the Fourth Amendment, but we get to
3 keep the statement. But here, I mean, if they wait outside
4 the house till he comes out with the same intent, you
5 wouldn't suppress the statement, right?

6 MS. LINN: Yeah, you can have a public arrest, so
7 the police could certainly go outside and - - - or come to
8 someone's house and just wait outside for him to enter, but
9 Harris wasn't only about going inside the home. Harris was
10 about preventing police from trying to avoid the right to
11 counsel attaching. That is the underlying - - -

12 JUDGE GARCIA: You could do that by waiting
13 outside the house, right?

14 MS. LINN: You could. And they're certainly free
15 to do that. I'm just arguing that they shouldn't be able
16 to go and essentially coerce someone to come outside.

17 JUDGE GARCIA: But it's kind of a bootstrap
18 argument, in a way, right, because Harris found a Payton
19 violation. There was no question in Harris - - - the
20 Harris application of Payton was the Payton violation was
21 found by the Supreme Court and then we were applying
22 attenuation in Harris, so you already had it. So the
23 question really for us here is, is there a Payton violation
24 because if being on the doorstep is kind of like being
25 outside on the porch or being on the sidewalk waiting,



1 there really is no Harris issue, right?

2 MS. LINN: I think that the rela - - - the facts
3 of the case really show that it's kind of a combined
4 problem. What happened here is that the police could have
5 very well sat outside Mr. Garvin's apartment and waited for
6 him to leave, but instead, they went and got him to come
7 outside just so that they could coordinate the timing of
8 his arrest with tricking his girlfriend to come to the
9 precinct and then use her presence there against him to
10 coerce his confession. So that's the problem - - -

11 JUDGE GARCIA: Are you making a State
12 Constitutional argument?

13 MS. LINN: I'm sorry?

14 JUDGE GARCIA: Are you making a State
15 Constitutional argument, or just a federal argument?

16 MS. LINN: I'm - - - both. I'm saying that - - -

17 JUDGE GARCIA: And that was - - - you did that
18 below?

19 MS. LINN: I don't believe that Alleyne had been
20 decided below, but I know that defense counsel at the - - -
21 so I'm asking this court to adopt the rule in Alleyne,
22 which - - -

23 JUDGE GARCIA: But that's a federal rule, right?

24 MS. LINN: Which is a federal rule.

25 JUDGE STEIN: And - - - and in - - - in - - - we



1 recently, in Spencer, just relied on Reynoso, right? And -
2 - - and so why - - - why would we now change course based
3 on Alleyne and - - - which is certainly not universally
4 accepted even in the federal courts.

5 MS. LINN: Sure, Your Honor. Well, two things,
6 first of all, Spencer didn't seem to discuss Reynoso; it
7 just said there was record support for the lower court's
8 finding that this was a threshold or a not a violation of
9 Payton.

10 JUDGE STEIN: Well I think impli - - -

11 MS. LINN: Implicitly - - -

12 JUDGE STEIN: -- implicitly - - -

13 MS. LINN: -- yes, it's following - - -

14 JUDGE STEIN: Right?

15 MS. LINN: -- Reynoso, but I also don't think
16 they need to overrule Reynoso to follow Alleyne, because
17 Reynoso was really about whether the doorway itself was
18 part of the home. It was a question about the physical
19 aspects of the home, and I'm saying that you should be
20 looking at the purpose of why the police went to the home,
21 if it was to violate Payton and circumvent the right to
22 counsel.

23 JUDGE FEINMAN: Well, the - - -

24 MS. LINN: So in that sense, it's - - -

25 JUDGE FEINMAN: What's the evidence in this



1 record with the findings of fact made by the Appellate
2 Division that that's what they went there; we're going to
3 violate Payton?

4 MS. LINN: The Appellate Division, I don't
5 believe, addressed that. The lower court - - - defense
6 counsel argued that the police went to violate Payton to
7 circumvent the right to counsel; that Mr. Garvin never left
8 his home. That - - -

9 JUDGE STEIN: I thought they were looking for his
10 girlfriend when they went there.

11 MS. LINN: They initially asked for his
12 girlfriend, but they - - -

13 JUDGE STEIN: And then - - - and then when she
14 wasn't there, they left.

15 MS. LINN: But they also testified that they went
16 there to arrest him.

17 JUDGE GARCIA: So we - - -

18 JUDGE RIVERA: Wasn't that the directive?

19 MS. LINN: The - - - yes. They were directed
20 there to - - -

21 JUDGE RIVERA: That was the instruction; go to
22 that - - -

23 MS. LINN: -- arrest - - -

24 JUDGE RIVERA: -- house and arrest him.

25 MS. LINN: Absolutely.



1 JUDGE RIVERA: And they're shown the picture of
2 the - - -

3 JUDGE FEINMAN: I mean, that's after they - - -

4 JUDGE RIVERA: -- of the defendant. Did they not
5 show the picture of the defendant?

6 MS. LINN: Absolutely.

7 JUDGE RIVERA: Thank you.

8 JUDGE WILSON: So they could - - -

9 MS. LINN: Yeah, that was the sole reason for
10 that.

11 JUDGE WILSON: They could circumvent the right to
12 counsel the same way by waiting on the street, right? So I
13 take it that your argument is they wouldn't actually do
14 that because it's so much more efficient to go knock on the
15 door then wait on the street for hours and hours, which
16 would force them to get a warrant.

17 MS. LINN: Yes.

18 JUDGE WILSON: Is that what you're saying?

19 MS. LINN: Yes, they'd have a lot harder time.

20 JUDGE WILSON: So doesn't your rule then, sort
21 of, force the factual disputes that occur about was
22 somebody inside their door or on the threshold or just
23 outside or they stuck their head outside or whatever, that
24 dispute that were getting, we've gotten in lots of cases to
25 - - - I think your rule said whether this was a planned



1 arrest, so now there's going to be factual disputes about
2 whether it was preplanned or not planned, right, and - - -
3 and whether, of course, there's exigent circumstances
4 because I assume your rule would say if there's exigent
5 circumstances they can go in.

6 MS. LINN: Yes. Exigent circumstances would
7 certainly justify - - -

8 JUDGE WILSON: Well, are we going to just have a
9 different set of fact disputes?

10 MS. LINN: I think it's kind of unavoidable.
11 Suppression hearings often turn, or always turn on - - -

12 JUDGE WILSON: So why is - - -

13 MS. LINN: -- or always turn on the facts.

14 JUDGE WILSON: Why is your rule better?

15 MS. LINN: I think it's because of the policy
16 reasons that I laid out, because of Harris, because of the
17 facts showing that this was an attempt to try to get around
18 the right to counsel in question - - -

19 JUDGE FAHEY: But I guess the difficulty is where
20 is the line. That's really the difficulty Judge - - -
21 Judge Wilson just hit at. I mean, what - - - what - - -
22 what's our basis for drawing the line a foot here or a foot
23 there?

24 MS. LINN: Well, it - - - so I was going to move
25 to that and say it's also - - - it seems to be more in line



1 with the purpose of the Fourth Amendment to prevent
2 unreasonable searches and seizures to look at the purpose
3 of what the police were doing than to focus on whether
4 someone was on their door sill, or out - - - right in front
5 of it or right behind of it - - - behind it, and still
6 inside their home.

7 And in fact, the arresting officer testified here
8 that both he and my client were on - the in the doorway,
9 which was physically impossible. And he said that my
10 client and others who were indisputably inside the
11 apartment - - -

12 JUDGE FAHEY: So what - - -

13 MS. LINN: -- were at the doorway.

14 JUDGE FAHEY: So what - - - what is the actual,
15 factual finding by the Appellate Division? Because the
16 Supreme Court says he's outside. All right? Clearly, I
17 don't think when you read the Appellate Division decision
18 that's what they're saying. So what is the factual finding
19 as to where the defendant is, where the police is, at the
20 time he is arrested?

21 MS. LINN: I believe that the Appellate Division
22 found that a doorway arrest was fine, and that he was in
23 his doorway. But this court isn't bound by the Appellate
24 Division's factual determination.

25 JUDGE FAHEY: Well - - - really? We're not bound



1 by their factual findings?

2 MS. LINN: If we look back to the record, whether
3 there's factual support for their determination, and here
4 there was no factual support to say that Mr. Garvin ever
5 stepped beyond his threshold. Because of the ambiguity in
6 the arresting officer's testimony about whether he was
7 actually on his doorstep or beyond it, I don't think that
8 there is any record support to show that he wasn't actually
9 in his - - - inside his apartment.

10 CHIEF JUDGE DIFIORE: Thank you, Ms. Linn.

11 MS. LINN: Thank you, Your Honor.

12 CHIEF JUDGE DIFIORE: Ms. Fenn?

13 MS. FENN: Good afternoon. Danielle Fenn for
14 respondent. May it please the court.

15 Here, defendant's threshold arrest was proper and
16 complied with Payton.

17 JUDGE RIVERA: So - - - so when the officer is
18 instructed to go to the address and arrest the defendant,
19 was - - - was that an instruction to wait outside until the
20 defendant comes out? What - what exactly did that mean?

21 MS. FENN: The testimony was the Detective Schurr
22 told the detective, the arresting detective, Detective
23 Weatherl, to go arrest defendant.

24 JUDGE RIVERA: Yeah.

25 MS. FENN: So the - - -



1 JUDGE RIVERA: But given there's no arrest
2 warned, what did that mean?

3 MS. FENN: The direction was to arrest him. They
4 decided to then enter the house and make a warrantless
5 arrest, which complied with both this court's ruling in
6 Reynoso and the Supreme Court cases.

7 JUDGE FAHEY: Well, you just said "enter the
8 house". Did they actually enter the house?

9 MS. FENN: They entered the - - - the front door.
10 They never entered the apartment. They entered the front
11 door, and there was a vestibule and a hallway. They
12 proceeded up the hallway. The defendant was the second-
13 floor apartment, and they knocked on the door.

14 JUDGE FAHEY: Well, wasn't that the basis of the
15 dissent, the Appellate Division, that they didn't have the
16 authority? There is a two-story house, or a two-apartment
17 house, right? It's like a double. And so the question for
18 us is, I suppose, is the doorway in a two-story, double
19 home the same as a porch in a single home?

20 MS. FENN: No, Your Honor. And fir - - - first,
21 this - - - you're correct. That was the issue that the
22 dissenting judge had.

23 JUDGE FAHEY: Um-hum.

24 MS. FENN: This claim is unpreserved. Defendant
25 never argued this below. He never said that - - -



1 JUDGE FAHEY: But you see - - - you see the
2 problem with the language. It - - - there's - - - it's
3 difficult to distinguish phrases like "in the doorway",
4 "inside the doorway", "at the doorway". One could argue
5 that they each mean different things.

6 MS. FENN: Yes, Your Honor. And this - - - in
7 this case, there is two issues. The dissent in the
8 Appellate Division had an issue with the initial entry in
9 the front door of the two-family house. And then there's
10 the issue of the threshold arrest. The testimony about
11 that - - -

12 JUDGE FAHEY: The way I understood the dissent
13 issue she is saying you shouldn't have been in the house at
14 all. You have no right to be in the house at all.

15 MS. FENN: Yes. The dissent found a problem with
16 that initial entry through the front door before they got
17 through the vestibule and then up the staircase.

18 First, this claim is unpreserved. And moreover,
19 defendant failed to show a legitimate expectation of
20 privacy in that area that he's now challenging the
21 vestibule and the - - - the staircase outside his
22 apartment.

23 JUDGE RIVERA: How is that - - - it's a two-
24 family house.

25 MS. FENN: Yes.



1 JUDGE RIVERA: How - - - how - - - how would he
2 not have some privacy interest in the staircase leading up
3 to his apartment door?

4 MS. FENN: Defendant did not establish that was
5 this legitimate expectation of privacy. First of all, he
6 didn't have exclusive control. It was shared with the
7 first-floor tenant. And there's no testimony of personal
8 items in the hallway or - - -

9 JUDGE RIVERA: But the first-floor tenant was not
10 home, correct?

11 MS. FENN: There - - - there was a testimony - -
12 -

13 JUDGE RIVERA: Only because the officers - - -

14 MS. FENN: - - - it wasn't clear.

15 JUDGE RIVERA: -- don't even remember how they
16 got in, correct?

17 MS. FENN: It wasn't clear. The testimony - - -

18 JUDGE RIVERA: Okay. So there's - - - so there's
19 not consent from that first-floor tenant, right, to go up
20 the - - -

21 MS. FENN: No.

22 JUDGE RIVERA: -- staircase and come in the house
23 - - -

24 MS. FENN: No.

25 JUDGE RIVERA: -- and do all of this, correct?



1 MS. FENN: Not at all, Your Honor. There is no
2 real testimony about whether they talked to her or not.
3 The detective said - - -

4 JUDGE RIVERA: So then behind that front - - -
5 that very front door that the officers don't understand why
6 it's miraculously opened or can't remember, can't recall,
7 behind that is that private - - - the private home of the
8 people who live in this two-family home?

9 MS. FENN: No, Your Honor. This defendant's had
10 - - -

11 JUDGE RIVERA: What if it's an official two-
12 family - - - a formal two-family home under the law, but
13 they use it like a one family?

14 MS. FENN: The defendant's living space where he
15 has a legitimate expectation of privacy that the Fourth
16 Amendment protects is his home, and that's his apartment.

17 JUDGE WILSON: What if it's somebody's mother-in-
18 law, or somebody's adult daughter? Does it ma - - - are we
19 going to have to investigate who lives in it to determine
20 whether there is an expectation of privacy?

21 MS. FENN: No, Your Honor. For this issue about
22 the vestibule and the staircase, this defendant, there's
23 evidence does not show that he has an expectation of
24 privacy - - -

25 JUDGE STEIN: Whose burden of proof is it on that



1 issue?

2 MS. FENN: It's the People's burden to go forward
3 with the legality of police conduct, but it's the
4 defendant's burden to show that he has a legitimate
5 expectation of privacy in whichever area.

6 CHIEF JUDGE DIFIORE: Did he make - - - did the
7 defendant make any specific allegations as to his privacy
8 interest in what you call the vestibule or the hallway?

9 MS. FENN: No, Your Honor. He did not at the
10 hearing, and - - - and the evidence really - - -

11 JUDGE RIVERA: Well isn't the point - - - isn't
12 the point whether that's - - - that is obvious and inherent
13 in the fact that it's a two-family house, that behind the
14 front door to get in the building is the private space of
15 these inhabitants?

16 MS. FENN: No Your Honor. In this case, the
17 protected Fourth Amendment area is the home, the apartment.
18 Here, this vestibule was someplace where he didn't have
19 excuses - - -

20 JUDGE RIVERA: Okay. So if I'm walking down the
21 street and someone has her front door open, I can just go
22 up and down the staircase?

23 MS. FENN: In this case, the - - - the issue
24 isn't whether anyone can enter. It seems like they were
25 able to enter. The - - -the testimony is a little unclear



1 how the police got in.

2 JUDGE RIVERA: Well, yes, they don't remember. I
3 understand that, yeah.

4 MS. FENN: They - - - he said they don't
5 remember. But there's no ability to - - -

6 JUDGE RIVERA: Which must mean they don't have
7 consent, right? They don't remember anyone giving them
8 consent or saying please go up the staircase, so - - -

9 MS. FENN: That's correct.

10 JUDGE RIVERA: -- if they were (indiscernible) to
11 me.

12 MS. FENN: That's correct, there's no testimony.

13 JUDGE WILSON: What's wrong with the rule that
14 says you have to get a warrant?

15 MS. FENN: I'm sorry?

16 JUDGE WILSON: What's wrong with the rule
17 proposed by counsel that says if this is not an exigent
18 circumstance and it is a preplanned arrest, you should go
19 get a warrant?

20 MS. FENN: In this case - - -

21 JUDGE WILSON: I'm not asking about this case.
22 Generally, what's - - - what would be wrong with a rule
23 like that?

24 MS. FENN: In generally, the court, courts, this
25 Court, the Supreme Court has said that these threshold



1 arrests are - - - comply with the Fourth Amendment. In
2 this case, the police could have gotten a warrant. It
3 could have taken an extra amount of time. There were
4 exigent circumstances and they needed to act quickly. And
5 in fact - - -

6 JUDGE WILSON: What - - - what were the exigent
7 circumstances and where is that in the record?

8 MS. FENN: It's supported by the record, first of
9 all, there's - - - there are several factors. There is the
10 gravity of the offense. There was a strong showing of
11 probable cause. And there was an increasing danger that
12 defendant might flee or destroy evidence.

13 JUDGE FEINMAN: Well, neither the Supreme Court
14 nor the Appellate Division actually made a finding of
15 exigent circumstances, did they?

16 MS. FENN: That's correct. The - - - the Supreme
17 Court said that - - -

18 JUDGE FEINMAN: If I could just take you to a
19 different issue. So when you - - - let's - - - let's say
20 we have to decide this based on what happens when they get
21 upstairs at that threshold.

22 At what point is he under arrest? Is he under
23 arrest when the police say we're here to arrest you? Is he
24 under arrest when the cops put - - - when the police
25 officers put the cuffs on him? At what point is he under



1 arrest; when he turns around, because he turns around and
2 submits?

3 MS. FENN: In this case, it's such a short period
4 of time. The testimony is that the detective knocked on
5 the door, defendant opened it. He said, you're under
6 arrest, and then turned around and put his handcuffs on.
7 At that point, he of course, wasn't free to leave, and he
8 submitted - - - he knowingly submitted to the police
9 authority at that point.

10 JUDGE FEINMAN: Is it when - - - so you're saying
11 is when he puts the - - - the cuffs on, when the arresting
12 officer puts the cuffs on?

13 MS. FENN: Or when he says you're under arrest at
14 that point.

15 JUDGE FEINMAN: You're under arrest. So when he
16 says you're under arrest, where is the defendant on this
17 record as the findings of facts are made by the Appellate
18 Division?

19 MS. FENN: The testimony is that it was a
20 doorway, a threshold arrest.

21 JUDGE FEINMAN: What did the Appellate Division
22 find as to where - - - what can we read from their decision
23 as to where he is standing?

24 MS. FENN: In the doorway.

25 JUDGE STEIN: Didn't they say outside - - -



1 CHIEF JUDGE DIFIORE: More important to my mind,
2 where was the police officer?

3 MS. FENN: He was always in the hallway. The
4 testimony was consistent that he was always in the hallway.
5 Defendant was in the doorway, the threshold. And the
6 police complied with Payton and never entered the
7 apartment.

8 CHIEF JUDGE DIFIORE: Thank you, counsel.

9 MS. FENN: Thank you.

10 CHIEF JUDGE DIFIORE: Counsel?

11 MS. LINN: I'm going to try to run through a few
12 things very quickly.

13 As for the initial entry issue is absolutely
14 preserved. Defense counsel urged the suppression - - - the
15 hearing court to look very carefully at how the police
16 entered the building at the outset; that they couldn't
17 remember whether they were buzzed in or spoke to anyone. I
18 believe that was more than enough to bring the issue to the
19 court's attention.

20 As for the privacy of the stairwell, a subjective
21 expectation of privacy, it's true that the defense has the
22 general burden of coming forward to show that, but societal
23 norms are always relevant as well. The Supreme Court has
24 said that - - -

25 JUDGE STEIN: How - - - how is this



1 distinguishable from Hansen?

2 MS. LINN: I think in Hansen, there was actually
3 testimony that the door to the two-family home was left
4 unlocked, and that people were free to come and go as they
5 pleased. So I think that was a little bit different.

6 Here, there was nothing like that. And so we
7 actually have no idea whether the front door was locked,
8 because the police officer couldn't remember.

9 JUDGE FEINMAN: So it's a - - - let me just ask
10 you this. If we focus on where the - - - the police are,
11 as the Chief Judge's question to the prosecution asked,
12 don't you lose?

13 MS. LINN: If we focus on where the police are?

14 JUDGE FEINMAN: Um-hum.

15 MS. LINN: Well first of all, with all due
16 respect - - -

17 JUDGE FEINMAN: I mean I understand that Alleyne
18 focuses on where the defendant is, but if you focus on
19 where the police is - - - are and the state cases - - -

20 MS. LINN: I would say - - -

21 JUDGE FEINMAN: -- how - - - how do you win?

22 MS. LINN: I would say it's not really the
23 location of the defendant that matters, and that's not how
24 I read Alleyne. I read Alleyne as saying that when the
25 police go to someone's home with the intention of,



1 essentially, coercing them to come outside, may not have
2 dragged them out, may not have use a bullhorn like some of
3 the cases, but it's a show of authority that someone
4 submits to. They open their door, and like she said, he's
5 under arrest the minute that he opens the door.

6 JUDGE STEIN: So - - - so now it's their
7 intention. It's not whether they actually did coerce or -
8 - -

9 MS. LINN: Whether the purpose was to go and make
10 a pre-planned warrantless arrest, especially if the
11 surrounding factors look like it's intended to - - -

12 JUDGE RIVERA: So if - - - if they get to the
13 door and say - - - you're under arrest, he steps back, he
14 closes the door. Could he have done that?

15 MS. LINN: No.

16 JUDGE RIVERA: Would that have given them exigent
17 circumstances to now go in?

18 MS. LINN: It seems like they would be able to go
19 in because he's under arrest and they have every right to
20 follow him.

21 JUDGE RIVERA: Okay. So is there anything he
22 could've done once they get to the door - - - let's say
23 they're at the bottom of the staircase. Put - - - forget
24 that they're in front of the door. At the bottom of the
25 staircase they callout. He opens the door, and they say



1 you're under arrest.

2 MS. LINN: There's nothing he could've done. He
3 would've been ignoring a direct order that he was under
4 arrest. He would've just been in more trouble resisting
5 arrest, perhaps.

6 CHIEF JUDGE DIFIORE: He couldn't have stepped
7 back and closed the door? He couldn't have stepped back
8 and close the door?

9 MS. LINN: He could have, but he would've been
10 resisting arrest at that point, so I don't - - -

11 CHIEF JUDGE DIFIORE: Resisting arrest?

12 MS. LINN: Wouldn't he? If he was told he was
13 under arrest and then he slams the door in the officer's
14 face and says I'm not coming with you. It doesn't seem
15 like it would go well for him.

16 JUDGE FEINMAN: Okay. You need something
17 physical; don't you?

18 MS. LINN: Sorry?

19 JUDGE RIVERA: Well, under our case law, would
20 that have presented, perhaps, exigent circumstances for the
21 police to act if they don't know if he's going to try to
22 escape?

23 MS. LINN: I think it seems like it very well
24 could have, and so he is really at a Catch-22 up at that
25 point and I mean that's - - - that's part of the problem.



1 You don't want to encourage people to have to shut the door
2 in a police officer's face, and those are the only people
3 who get protected.

4 The - - - as Judge DiFiore mentioned before, the
5 police have every right to approach someone stopped to talk
6 to them even if they have probable cause, if they want to
7 continue their investigation, we should encourage people to
8 try to cooperate. And this rule, the rule I'm proposing
9 encourages people to cooperate. I also want to very pre -
10 - - I know amount of time, but I just wanted to address a
11 couple of other things if that's okay that my co - - -

12 CHIEF JUDGE DIFIORE: Quickly.

13 MS. LINN: -- opposing counsel brought up.

14 The Supreme Court has never approved a threshold
15 arrest like this. The only case that addresses it is
16 Santana. That was a hot-pursuit case. It was completely
17 different. She was standing in her doorway when the police
18 arrived, holding something that they thought was drugs,
19 based on her previous criminal activity. There also was no
20 exigency here.

21 JUDGE STEIN: Although - - - although Kentucky v.
22 King certainly suggests that the Supreme Court would
23 sanction this.

24 MS. LINN: Kentucky v. King says that you can
25 knock, but it doesn't seem - - -



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JUDGE STEIN: It says you can knock, and it says that - - - that - - - that the home, the person who lives there has every right to ignore it, and - - - and every right to stand on - - - on their Constitutional rights.

MS. LINN: Well you do definitely have a right to ignore it, I'm just saying we don't want people to ignore the police when they knock. And it goes - - -

CHIEF JUDGE DIFIORE: Thank you counsel.

MS. LINN: Thank you, Your Honor.

CHIEF JUDGE DIFIORE: You're welcome.

(Court is adjourned)



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C E R T I F I C A T I O N

I, Gina Gattone, certify that the foregoing transcript of proceedings in the Court of Appeals of People v. Sean Garvin, No. 82 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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