**CON. CRIM 12/17**

**CHAPTER 3, SECTION 5**

**United States v. Watson**

**423 U.S 411 (1976)**

**White, J.**

**FACTS:** On August 17, 1972, **a reliable informant alerted a postal inspector that Watson (defendant) had a stolen credit card.** The informant gave the card to the inspector and agreed to set up a meeting with Watson. **During the meeting, the informant signaled that Watson had more stolen cards.** Postal Inspectors arrested Watson, read his rights as required by *Miranda v. Arizona*, 384 U.S. 436 (1966), and asked to search his car. Watson said, "go ahead," and repeated that officers could "go ahead" with the search even after an officer told him that anything found in the car would "go against" Watson. **Watson gave officers the keys to the car, and officers found two stolen credit cards inside the car.** Watson was charged with possessing stolen mail. **Before trial, Watson moved to suppress the evidence found in the car.** **He claimed that the warrantless arrest was invalid** and that his consent to search the car was involuntary and ineffective because he was not informed that he could withhold consent. The trial court denied the motion, and Watson was convicted. **The appellate court reversed, holding that the warrantless arrest of Watson was unconstitutional and that Watson's consent to search the car was coerced and thus invalid.** The United States Supreme Court granted certiorari.

**ISSUE:** Does a warrantless arrest violate the Fourth Amendment if there is probable cause to believe that the person has committed a felony?

**HOLDING:** No. Police may arrest a suspect without a warrant if there is probable cause to believe the suspect committed a felony.

**REASONING: The United States Code expressly authorizes postal inspectors to make warrantless arrests if there are “reasonable grounds” for believing the suspect committed a felony. This same authority has been granted to various groups of officers of the federal government, such as the U.S. Marshals and FBI agents.** This demonstrates that Congress has deemed these types of warrantless arrests reasonable under the Fourth Amendment. The judgment of Congress on matters of constitutionality is given great deference. Moreover, **case law reflects the longstanding common-law rule regarding the validity of warrantless arrests for suspected felons.** In this case, **there was probable cause for the postal inspector and his subordinate officers to believe that Watson had committed a felony.** Accordingly, Watson’s arrest was constitutional. Moreover, **because Watson's arrest was constitutional, his consent to search the car did not result from an illegal arrest. Nor do the circumstances here indicate that Watson's consent was the product of coercion.** Although Watson was under arrest when he consented, **he gave consent on a public street and not while confined at the police station.** Additionally, he was given *Miranda* warnings, and he was told that anything found in the car could be used against him. Watson still told officers to "go ahead" with the search. **Although Watson may not have known that he could withhold consent, this is not controlling, because he was not mentally incompetent, incapable of making a free choice, or otherwise a "newcomer to the law."**

**DISPOSITION:** Watson's consent to the search was not illegally coerced. The appellate court's judgment is reversed.

**CONCURRENCE (POWELL, J):** In this case, the Court specifically holds for the first time that the Fourth Amendment allows officers to make a warrantless arrest in a public place, even if the officers had a sufficient opportunity to first obtain a warrant after developing probable cause. In the warrantless-search context, the Court has previously held that an officer's probable cause to search a private place does not excuse the officer's unexplained failure to obtain a warrant before conducting the search. Although it may seem that arrests and searches should be subject to the same warrant requirements, warrantless felony arrests have historically been allowed, and law-enforcement agencies have developed their procedural requirements for arrests and investigations around the understanding that warrantless arrests based on probable cause are proper. Requiring a warrant or exigent circumstances for a felony arrest would pose a serious burden on law enforcement. The Court's holding is therefore proper, even though it treats warrantless arrests and warrantless searches differently. In any event, even if Watson's arrest was unconstitutional, his consent to search the vehicle was so clearly voluntary and the product of free will that it disposes of this case.

**DISSENT (MARSHALL, J):** The officers present during Watson’s meeting with the informant had probable cause to believe a felony was being committed in their presence; therefore, the arrest was valid under the exigent-circumstances doctrine. In other words, the probable cause developed during the meeting with the informant was an independent, sufficient basis for arrest. The appellate court's decision should be reversed on this basis alone and remanded for further proceedings, including a more detailed examination of whether Watson could voluntarily give consent to search the car while in custody. However, the Court goes far beyond the question presented by this case to issue a rule that is contrary to the current interpretation of the Fourth Amendment. Requiring a warrant for an arrest absent exigent circumstances protects sacred individual rights without impeding legitimate governmental interests in law enforcement.

**United States v. Robinson**

**414 U.S 218 (1973)**

**Rehnquist, J.**

**FACTS:** Robinson (defendant) was arrested for driving with an expired license. The arresting officer proceeded to search Robinson and during the pat-down, he felt something in Robinson’s breast pocket. After removing the object, the officer discovered it was a cigarette packet and upon opening the packet, the officer discovered capsules of heroin. The heroin was introduced as evidence at trial and Robinson was convicted. The court of appeals disagreed with the admission of the heroin holding that a search incident to arrest is only permissible if the officer seeks evidence related to the crime or if the officer undertakes a protective search to ensure the arrestee is not armed. Since no evidence of Robinson driving with an expired license would be found on his person, the court of appeals held that only a search for weapons was justified and the officer testified that he knew the object was not a weapon.

**ISSUE:** During a lawful arrest, is it reasonable to conduct a full search of the person being arrested?

**HOLDING:** Yes. The authority to search an arrestee arises when the police make a custodial arrest.

**REASONING:** The police must ensure their own safety by checking for weapons, and they must preserve the integrity of the case by ensuring the arrestee does not have any evidence on his person that he may destroy. The precedent of the Court does not require a case-by-case determination to establish whether the arrestee likely possessed evidence related to the crime or whether he was likely to have been armed. Therefore, under the Fourth Amendment, it is reasonable to search a person under custodial arrest and the search and seizure of the heroin capsules was constitutional.

**DISPOSITION:** The judgment of the court of appeals is reversed.

**DISSENT (MARSHALL, J):** The officer’s search of Robinson went far beyond that reasonably necessary to ensure his safety and to ensure the preservation of evidence. The precedent of the Court is that the reasonableness of a search must be determined on a case-by-case basis and the scope of the search must be justified by the surrounding circumstances; the lawful invasion of an individual’s privacy does not automatically mean that further invasion is permissible absent a valid warrant. A search incident to arrest must be justified by the need to preserve evidence or to ensure officer safety. While the pat-down of Robinson’s coat was reasonable to ensure he was not armed, the removal of the cigarette packet was unreasonable because the officer had no reason to believe, nor did he believe, that the packet was a weapon and no evidence of Robinson driving with an expired license would be found on his person. Furthermore, the search of the cigarette packet was unreasonable because even assuming it contained a weapon, once it was no longer in Robinson’s possession, it no longer posed a risk. Therefore, the heroin should have been inadmissible at trial because of the unconstitutional search and seizure.

**Whren v. United States**

**517 U.S 806 (1996)**

**Scalia, J.**

**FACTS:** Plainclothes police officers pulled over a car for traffic violations after witnessing the driver make a turn without signaling and then speed down the road. Prior to observing these traffic violations, the police observed the two men in the car from a distance and became suspicious that a drug deal was taking place. Whren (defendant) was a passenger in the car and when the police approached the car they observed plastic bags of cocaine in Whren’s hands. Whren and the driver were arrested for illegal drug possession and convicted in federal court after the trial judge, over Whren’s objections, permitted the cocaine to be introduced into evidence. The court of appeals affirmed the convictions.

**ISSUE:** When an officer has probable cause to believe a traffic violation has occurred, is the Fourth Amendment violated if his primary reason for pulling over and detaining the motorist is not to enforce the traffic laws?

**HOLDING:** No. When there is probable cause that a traffic offense has occurred, the officer’s subjective motives for detaining the motorist do not invalidate the officer’s actions under the Fourth Amendment.

**REASONING:** If the defendant believes he has been targeted by the police because of his race, as Whren suggests, his remedy lies in the Equal Protection Clause, not the Fourth Amendment. **Here, the driver of the car committed a traffic offense and the officers were entitled to pull the car over regardless of whether or not a reasonable officer who had not observed the suspicious activity would have taken the time or chosen to do so based solely on the traffic offenses.** Such a “reasonable officer” standard is ineffective because it will differ from jurisdiction to jurisdiction depending on the specific policies in place. Whren further argues that a balancing test should be applied and that the confusion and anxiety to motorists caused by traffic enforcement by plainclothes police officers for minor infractions outweighs the minimal traffic safety interest of the state, and as such, it was unreasonable and unconstitutional for the officers to pull over the car. However, a balancing test need only be applied where a search or seizure is conducted in an extraordinary manner and this was not the case here. Therefore, the detention of the car was reasonable under the Fourth Amendment and the judgment is affirmed.

**Atwater v. City of Lago Vista**

**532 U.S. 318 (2001)**

**Souter, J.**

**FACTS:** In March 1997, Gail Atwater (plaintiff) was pulled over for driving without a seatbelt and for failing to secure her two children in the front seat. Each violation is a misdemeanor carrying a fine of $25 to $50. Pursuant to Texas law, the officer arrested Atwater instead of issuing a citation. Atwater was booked into jail, brought before a magistrate, and released on bond. Atwater sued the officer, the police chief, and City of Lago Vista (defendants) under 42 U.S.C. § 1983 claiming that the arrest was an unreasonable seizure under the Fourth Amendment.

**ISSUE:** Does a warrantless arrest for a minor offense violate the Fourth Amendment?

**HOLDING:** No. The Fourth Amendment does not prohibit warrantless arrests for minor offenses.

**REASONING: It is unclear whether the Framers of the amendment intended to prohibit warrantless arrests for misdemeanors that did not constitute a breach of the peace.** The laws and legal commentary at common law indicate disagreement about the power. Further, **the widespread practice from the common law era to date has been to permit such arrests.** Atwater urges the creation of a new rule forbidding warrantless arrests for non-jailable offenses absent a “compelling need for immediate detention.” While such a rule would be fair in this case, it would be difficult for government officers to implement in practice and likely lead to increased litigation. Arresting officers may not know the specific penalty for every given offense and may not be able to discern the necessary facts. For example, an officer making a drug arrest may not know the exact weight of the drugs in question. The same can be said of traffic offenses. **The goals of the Fourth Amendment are best advanced with simple rules that are easy to administer.** **An officer with probable cause to believe any crime has been committed in his presence may arrest the suspect without violating the Fourth Amendment.** In this case, the officer had probable cause to believe Atwater had violated the seatbelt laws in his presence. Therefore, the arrest was constitutional.

**DISSENT (O’CONNOR, J):** The majority rule authorizing custodial arrest where there is probable cause to believe a non-jailable offense has been committed **is contrary to the Fourth Amendment prohibition against unreasonable searches and seizures.** Since history is inconclusive, the question must be whether such seizures are reasonable. Even a short seizure is a very serious intrusion of privacy. While there may be legitimate government interests that may justify that intrusion in cases involving minor offenses, the officer should only make a custodial arrest in such cases if “specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [the additional] intrusion.” The Court acknowledges that no government interest in this case justified the intrusion Atwater experienced. The arrest was therefore unreasonable in violation of the Fourth Amendment. Further, the Court’s rule sets a dangerous precedent allowing not only arrests, but also searches incident to arrest, wherever probable cause exists to believe a fine-only offense has been committed, no matter how unreasonable.

**Maryland v. King**

**569 U.S. 435 (2013)**

**Kennedy, J.**

**FACTS:** In 2003, a man broke into the victim's house and raped her. Police were unable to determine the man's identity from the woman's description, but police were able to get the man's DNA. In 2009, Alonzo King was arrested for an unrelated assault. During booking, as was standard practice for serious offenses under Maryland law, the police used a cotton swab to take a DNA sample from the inside of King's cheek. The DNA was run through a law enforcement database, and officers found that it matched the DNA of the perpetrator from the 2003 rape. The state court admitted the DNA evidence and convicted King of the rape. The Court of Appeals of Maryland reversed, holding that the cotton-swab procedure constituted an unreasonable search and seizure under the Fourth Amendment. The United States Supreme Court granted certiorari.

**ISSUE:** When officers make an arrest for a serious offense that is supported by probable cause and bring the suspect to the station to be detained in custody, is taking and analyzing a cheek swab of the arrestee's DNA a legitimate police-booking procedure that is reasonable under the Fourth Amendment?

**HOLDING:** Yes. Even when a warrantless search is legal, the search still must be reasonable in its scope.

**HOLDING:** To be reasonable, the warrantless search must further a legitimate government interest that outweighs the search's intrusion upon the searched individual's privacy. When officers make an arrest for a serious offense that is supported by probable cause and bring the suspect to the station to be detained, taking and analyzing a cheek swab of the arrestee's DNA is a legitimate and reasonable police-booking procedure under the Fourth Amendment. DNA sampling is simply the 21st century version of fingerprinting, a well-established booking practice, and is much more accurate. The legitimate government interests in taking a DNA sample at booking are: accurate identification, ensuring the safety of law enforcement staff, determining with more accuracy whether and to what extent bail should be offered, and potentially freeing a person who has been wrongfully convicted of an arrestee's prior crime. In contrast, a cheek swab's intrusion to an arrestee, particularly incrementally above fingerprinting, is minimal. A DNA swab is easy, painless, and very quick. Moreover, an arrestee's expectation of privacy once in custody is severely reduced. In sum, the legitimate government interests outlined above, combined with the incredible accuracy of DNA sampling, outweigh any additional intrusion taking a DNA sample places on arrestees. As a result, DNA sampling from a suspect's cheek with a cotton swab during booking is reasonable under the Fourth Amendment. The DNA swabbing of King in this case was constitutional. The Court of Appeals of Maryland is reversed.

**DISSENT (Scalia, J):** Under the Fourth Amendment, a search of an individual without reasonable suspicion that the individual committed the crime is not constitutional, unless it falls into the category of a special-needs search. In no cases, however, has the Court condoned a suspicionless search for the purpose of crime detection. The majority claims that the primary purpose of the DNA sampling is not crime solving. However, that premise does not hold up. The majority lists several government interests that are not crime solving, but there can be no doubt that crime solving is the true underlying purpose of DNA sampling. The majority thus engages in a reasonableness inquiry that it should not even have reached, because a suspicionless DNA search was not a special-needs search from the outset. Law enforcement's DNA sampling of King was an unconstitutional search. And, in addition to being legally flawed, this decision could have far-reaching and unwanted policy implications.

**Mitchell v. Wisconson**

**588 U.S. \_\_ (2019)**

**Alito, J.**

**FACTS: A witness reported that Gerald Mitchell (defendant) was driving drunk to police.** Officers found Mitchell slurring and stumbling. A portable breathalyzer registered his blood-alcohol content (BAC) at **triple the legal limit**. Police transported Mitchell to the station to administer an evidence-grade breathalyzer, **but Mitchell had become too lethargic.** **Officers transported Mitchell to the hospital, but he passed out on the way.** **An officer read Mitchell the standard prefatory statement required before administering blood tests in Wisconsin, heard no reply, and directed hospital staff to draw a blood sample.** The test showed that Mitchell’s blood-alcohol level remained almost triple the legal limit 90 minutes after his arrest. **The trial court admitted the blood-test evidence over Mitchell’s objection, and the jury convicted him.** Mitchell appealed on the ground that the blood test constituted an unreasonable search without a warrant in violation of the Fourth Amendment. The Wisconsin Supreme Court affirmed his conviction, but the United States Supreme Court granted review.

**ISSUE:** May police almost always obtain warrantless blood tests of an unconscious drunk-driving suspect?

**HOLDING:** Yes. Police may almost always obtain warrantless blood tests of an unconscious drunk-driving suspect.

**REASONING:** The Fourth Amendment protects against unreasonable searches and seizures. Because a blood test is a search for incriminating evidence, it requires a warrant or consent. Exceptions apply under the exigent-circumstances rule and for searches performed incident to arrest. **The exigent circumstances rule almost always allows warrantless blood testing of unconscious drivers.** Enforcing drunk-driving laws depends on administering blood testing if a breath test is impossible. Police often deal with circumstances that take priority over obtaining a warrant. An unconscious driver is usually taken to the hospital and blood-tested for diagnostic purposes anyway. Like most states, Wisconsin has an implied-consent law that deems drivers to have consented to testing if police suspect impaired driving. Police must read a standard statement explaining the right to withdraw consent for blood testing. Unconscious drivers are considered to have not withdrawn that consent. The Court held that blood testing does not violate constitutional rights against self-incrimination in *Schmerber v. California*, 384 U.S. 757 (1966). The Court also upheld warrantless breath testing of conscious drunk-driving suspects incident to arrest, but not more intrusive blood testing in*Birchfield v. North Dakota*, 136 S. Ct. 2160 (2016). The Court confirmed that the exigent-circumstances rule allows warrantless blood testing if justified by pressing circumstances coupled with the fleeting nature of blood-alcohol evidencein *Missouri v. McNeely,*569 U.S. 141 (2013). Blood-alcohol testing is necessary to enforce life-saving laws. BAC evidence literally disappears by the minute as the body processes it. Exigency exists if BAC evidence is dissipating and some other circumstance creates a pressing need. An unconscious drunk-driving suspect presents a compelling need. Here, Mitchell’s stupor eliminated any reasonable opportunity for police to perform a breath test using evidence-grade equipment. Police transported him quickly to the station, but his condition made breath testing impossible. Mitchell passing out created not just a compelling need but a medical emergency, making it reasonable to take him to the hospital and request blood testing without the delay of getting a warrant. However, in rare cases, a driver may be able to show that police would not have obtained a blood sample unless they were seeking BAC evidence and that no pressing need made it unreasonable to obtain a warrant beforehand. Because the trial court did not give Mitchell an opportunity to make that showing, the Court remands to allow him to attempt to do so.

**CONCURRENCE (Thomas, J.):** The plurality adopts a rule too difficult to apply. Dissipation of blood-alcohol evidence alone is an exigent circumstance that justifies warrantless blood-testing, without showing an additional compelling need.

**DISSENT (SOTOMAYOR, J):** Wisconsin did not raise or brief the exigent-circumstances argument. This Court should not volunteer grounds that Wisconsin affirmatively waived. Unconsciousness does not necessarily mean police cannot get a warrant in time to obtain blood-alcohol evidence before it dissipates. Today police can request warrants electronically, and judges can issue them in five to fifteen minutes. The Fourth Amendment requires police to get a warrant before drawing blood from an unconscious drunk-driving suspect.

**DISSENT (GOURSUCH, J):** The Court should not have reviewed this case because it did not properly present the exigent-circumstances question.

**CHAPTER 3, SECTION 6**

**Payton v. New York**

**445 U.S. 573 (1980)**

**Stevens, J.**

**FACTS:** Police believed they had probable cause that Payton (defendant) was guilty of murder. Without obtaining a warrant, the police went to his apartment at 7:30 in the morning to arrest him. When he did not answer the door, they broke into the home. Payton was not at home but the police found a gun shell casing in plain view that was entered into evidence at trial over Payton’s objections. The trial judge held the evidence admissible because the police were authorized to break into Payton’s home under New York law. In the companion case, Riddick was arrested for armed robbery. Without a warrant, the police went to his home at noon to arrest him. Riddick’s 3-year old son answered the door and, before Riddick invited the police in, they entered the home, arrested him and seized drugs they found in a dresser. The trial judge upheld the entry into the home and the search incident to arrest as permissible under New York law.

**ISSUE:** Can the police enter a suspect’s home without a warrant to make a routine felony arrest?

**HOLDING:** No. The Fourth Amendment, incorporated to the states through the Fourteenth Amendment, prohibits unreasonable searches and seizures of tangible things, as well as people.

**REASONING:** Such indiscriminate searches and abuses of police authority were the driving force behind the protections offered by the Fourth Amendment. **Not only is there is no firm common-law rule that a warrantless arrest in one’s home is permissible, but there is no clear consensus among the states as to the legality of warrantless arrests in a suspect’s own home, and congress has never determined that entering a private home for the purpose of arresting the owner without a warrant is reasonable.** **Therefore, it is presumptively unreasonable for the police to enter a home without a warrant for the purpose of searching the premises and seizing certain items.** Likewise, it is unreasonable for the police to enter a home without a warrant for the purpose of arresting the owner. As a result, the warrantless entry into Payton’s home, the warrantless entry and arrest in Riddick’s home, and the accompanying searches and seizure, are a clear violation of the Fourth Amendment right to privacy and are unconstitutional. Accordingly, the judgments of both cases are reversed and both cases are remanded.

**Chimel v. California**

**395 U.S. 752 (1969)**

**Stewart, J.**

**FACTS:** Pursuant to a valid arrest warrant, the police went to Chimel’s (defendant) home to arrest him for the burglary of a coin shop. Chimel’s wife let the police inside and when Chimel returned home they arrested him. Without a search warrant and without permission, the police then conducted a complete search of Chimel’s home. The police instructed Chimel’s wife to remove items from drawers and eventually the police found and seized a number of coins, medals and tokens. Over Chimel’s objection, these items were introduced at trial. The appellate courts affirmed the decision holding that the search of Chimel’s home was valid as a search incident to a lawful arrest.

**ISSUE:** Is a warrantless search of an entire home permissible when the search is incident to a lawful arrest that takes place in the home?

**HOLDING:** No. A warrantless search incident to a lawful arrest can only cover the area in possession or control of the person being arrested.

**REASONING:** When an arrest occurs, it is reasonable for the police to search the person being arrested to insure he is not armed and to ensure no evidence is destroyed. This rule is easily extended to include a search of the area that the person under arrest may access. However, a search of the area outside of the suspect’s immediate control cannot be similarly justified and is therefore not reasonable. The warrantless search of private homes was what the Fourth Amendment requirements of warrants and probable cause were intended to prevent. Furthermore, allowing warrantless searches of an entire home would encourage the police to make all arrests in suspects’ homes since they could then legally undertake a search even where probable cause is lacking. Because the coins introduced at trial were not found in an area under Chimel’s immediate control, the search and seizure was unconstitutional and the conviction is overturned.

**DISSENT (White, J.):** There is no need to overrule earlier precedent and hold that searches of entire homes incident to arrest are per-se unreasonable. Rather, an arrest creates exigent circumstances allowing for a warrantless search when there is probable cause to believe that delay would result in the destruction of evidence. In this case, if the police had not immediately searched the home for the coins, Chimel’s wife would have likely removed the coins from the home in the time it took the police to secure a search warrant. Therefore, the search was reasonable.

**Kentucky v. King**

**563 U.S. 452 (2011)**

**Alito, J.**

**FACTS:** During a drug sting operation at a Lexington, Kentucky, apartment complex, police officers mistakenly went to the wrong apartment to arrest a suspect who had purchased crack cocaine. After smelling burnt marijuana emanating from the apartment, the officers knocked loudly on the door and announced their presence. After hearing the apartment’s occupants hurriedly moving around inside and on the belief that evidence might be destroyed, officers kicked down the apartment door and took three individuals into custody, including Hollis King (defendant). King and the others were charged with various drug-related offenses unrelated to the original operation. Prior to trial, King filed a motion to suppress the evidence seized at his apartment, arguing that the contraband was obtained in violation of the Fourth Amendment. The trial court denied King’s motion and held that the “exigent circumstances” rule to the Fourth Amendment justified the officers’ warrantless entry into the apartment. The Kentucky Supreme Court reversed, noting that the “exigent circumstances” rule did not apply because the police officers’ conduct impermissibly created the exigency which led to entry into the apartment. The U.S. Supreme Court granted certiorari to review.

**ISSUE:** Does exigent circumstances exception to the Fourth Amendment's warrant requirement apply to an officer-created exigency if the exigency does not arise from the officer's unreasonable or unconstitutional conduct?

**HOLDING:** Yes. The exigent circumstances exception to the Fourth Amendment's warrant requirement applies to an officer-created exigency if the exigency does not arise from the officer's unreasonable or unconstitutional conduct.

**REASONING:** Under the exigent circumstances doctrine, officers may enter a home without a warrant to deliver emergency aid to an individual, pursue a fleeing suspect, or to prevent the imminent destruction of evidence. A prerequisite to gaining entry into a residence without a warrant under the doctrine is that the officers must have probable cause to believe that dangerous or suspicious activity is currently taking place. Some courts criticize the doctrine and note that law enforcement may create the “urgent” circumstances, or exigency, in order to gain entry into a residence without a warrant. Here, King argues that the officers created the exigency by requesting entry into the apartment after they forcefully banged on the door and yelled that law enforcement was outside. However, an officer is free to knock on a door as is any other private citizen. A rule that would dictate to police officers how forcefully to knock on a door and how loudly to announce their presence is unreasonable. The court below assumed, without deciding, that the officers did not engage in or threaten unconstitutional conduct before entering King's apartment, and that exigent circumstances existed in this case. Those questions, however, must be answered on remand. The judgment of the Kentucky Supreme Court is reversed and the matter is remanded for further proceedings consistent with the opinion.

**DISSENT (Ginsburg, J):** The Court mistakenly finds that law enforcement did not create the exigency which led to their entry into the apartment. Circumstances are “exigent” when there is imminent risk of death or serious injury, or danger that evidence will be immediately destroyed. The exigency must exist when the police come on the scene, not subsequent to their arrival. The police may not, by their conduct, create the exigency allowing for warrantless entry into a residence. Here, there was little risk that drug-related evidence would have been destroyed had the police obtained a warrant prior to knocking on the apartment door. There is nothing in the record to suggest that King and the other occupants were concerned that the police were nearby and that they should destroy evidence.