

U.S. Supreme Court**MICHIGAN v. TYLER, 436 U.S. 499 (1978)****436 U.S. 499****MICHIGAN v. TYLER ET AL.****CERTIORARI TO THE SUPREME COURT OF MICHIGAN****No. 76-1608.****Argued January 10, 1978****Decided May 31, 1978**

Shortly before midnight on January 21, 1970, a fire broke out in respondents' furniture store, to which the local fire department responded. When the fire chief arrived at about 2 a. m., as the smoldering embers were being doused, the discovery of plastic containers of flammable liquid was reported to him, and after he had entered the building to examine the containers, he summoned a police detective to investigate possible arson. The detective took several pictures but ceased further investigation because of the smoke and steam. By 4 a. m. the fire had been extinguished and the firefighters departed. The fire chief and detective removed the containers and left. At 8 a. m. the chief and his assistant returned for a cursory examination of the building. About an hour later the assistant and the detective made another examination and removed pieces of evidence. On February 16 a member of the state police arson section took photographs at the store and made an inspection, which was followed by several other visits, at which time additional evidence and information were obtained.

Respondents were subsequently charged with conspiracy to burn real property and other offenses. Evidence secured from the building and the testimony of the arson specialist were used at respondents' trial, which resulted in their convictions, notwithstanding their objections that no warrants or consent had been obtained for entries and inspection of the building and seizure of evidentiary items. The State Supreme Court reversed respondents' convictions and remanded the case for a new trial, concluding that "[once] the blaze [has been] extinguished and the firefighters have left the premises, a warrant is required to re-enter and search the premises, unless there is consent or the premises have been abandoned." Held:

1. Official entries to investigate the cause of a fire must adhere to the warrant procedures of the Fourth Amendment as made applicable to the States by the Fourteenth Amendment. Since all the entries in this case were "without proper consent" and were not "authorized by a valid search warrant," each one is illegal unless it falls within one of the "certain carefully defined classes of cases" for which warrants are not mandatory. *Camara v. Municipal Court*, 387 U.S. 523, 528-529. Pp. 504-509.

(a) There is no diminution in a person's reasonable expectation of privacy or in the protection of the Fourth Amendment simply because [436 U.S. 499, 500] the official conducting the search is a firefighter rather than a policeman, or because his purpose is to ascertain the cause of a fire rather than to look for evidence of a crime. Searches for administrative purposes, like searches for evidence of crime, are encompassed by the Fourth Amendment. The showing of probable cause necessary to secure a warrant may vary with the object and intrusiveness of the search, but the necessity for the warrant persists. Pp. 505-506.

(b) To secure a warrant to investigate the cause of a fire, an official must show more than the bare fact that a fire occurred. The magistrate's duty is to assure that the proposed search will be reasonable, a determination that requires inquiry into the need for the intrusion, on the one hand, and the threat of disruption to the occupant, on the other. Pp. 506-508.

2. A burning building clearly presents an exigency of sufficient proportions to render a warrantless entry "reasonable," and, once in the building to extinguish a blaze, and for a reasonable time thereafter, firefighters may seize evidence of arson that is in plain view and investigate the causes of the fire. Thus no Fourth and Fourteenth Amendment violations were committed by the firemen's entry to extinguish the blaze at respondents' store, nor by the fire chief's removal of the plastic containers. P. 509.

3. On the facts of this case, moreover, no warrant was necessary for the morning re-entries of the building and seizure of evidence on January 22 after the 4 a. m. departure of the fire chief and other personnel since these were a continuation of the first entry, which was temporarily interrupted by poor visibility. Pp. 510-511.

4. The post-January 22 entries were clearly detached from the initial exigency, and since these entries were made without warrants and without consent, they violated the Fourth and Fourteenth Amendments. Evidence obtained from such entries must be excluded at respondents' retrial P. 511.

399 Mich. 564, 250 N. W. 2d 467, affirmed.

STEWART, J., delivered the opinion of the Court, in which BURGER, C. J., and POWELL, J., joined; in all but Part IV-A of which WHITE and MARSHALL, JJ., joined; in Parts I, III, and IV of which STEVENS, J., joined; and in Parts I, III, and IV-A of which BLACKMUN, J., joined. STEVENS, J., filed an opinion concurring in part and concurring in the judgment, post, p. 512. WHITE, J., filed an opinion concurring in part and dissenting in part, in which MARSHALL, J., joined, post, p. 514. REHNQUIST, J., filed a dissenting opinion, post, p. 516. BRENNAN, J., took no part in the consideration or decision of the case. [436 U.S. 499, 501]

Jeffrey Butler argued the cause pro hac vice for petitioner. With him on the brief was L. Brooks Patterson.

Jesse R. Bacalis argued the cause and filed a brief for respondents.

MR. JUSTICE STEWART delivered the opinion of the Court.

The respondents, Loren Tyler and Robert Tompkins, were convicted in a Michigan trial court of conspiracy to burn real property in violation of Mich. Comp. Laws 750.157a (1970).¹ Various pieces of physical evidence and testimony based on personal observation, all obtained through unconsented and warrantless entries by police and fire officials onto the burned premises, were admitted into evidence at the respondents' trial.

On appeal, the Michigan Supreme Court reversed the convictions, holding that "the warrantless searches were unconstitutional and that the evidence obtained was therefore inadmissible." 399 Mich. 564, 584, 250 N. W. 2d 467, 477 (1977). We granted certiorari to consider the applicability of the Fourth and Fourteenth Amendments to official entries onto fire-damaged premises. 434 U.S. 814.

I

Shortly before midnight on January 21, 1970, a fire broke out at Tyler's Auction, a furniture store in Oakland County, Mich. The building was leased to respondent Loren Tyler, who conducted the business in association with respondent Robert Tompkins. According to the trial testimony of various witnesses, the fire department responded to the fire and was "just watering down smoldering embers" when Fire Chief See arrived on the scene around 2 a.m. It was Chief See's responsibility "to determine the cause and make out all reports." Chief See was met by Lt. Lawson, who informed him that two [436 U.S. 499, 502] plastic containers of flammable liquid had been found in the building. Using portable lights, they entered the gutted store, which was filled with smoke and steam, to examine the containers. Concluding that the fire "could possibly have been an arson," Chief See called Police Detective Webb, who arrived around 3:30 a. m. Detective Webb took several pictures of the containers and of the interior of the store, but finally abandoned his efforts because of the smoke and steam. Chief See briefly "[l]ooked throughout the rest of the building to see if there was any further evidence, to determine what the cause of the fire was." By 4 a.m. The fire had been extinguished and the firefighters departed. See and Webb took the two containers to the fire station, where they were turned over to Webb for safekeeping. There was neither consent nor a warrant for any of these entries into the building, nor for the removal of the containers. The respondents challenged the introduction of these containers at trial, but abandoned their objection in the State Supreme Court. 399 Mich., at 570, 250 N. W. 2d, at 470.

Four hours after he had left Tyler's Auction, Chief See returned with Assistant Chief Somerville, whose job was to determine the "origin of all fires that occur within the Township." The fire had been extinguished and the building was empty. After a cursory examination they left, and Somerville returned with Detective Webb around 9 a.m. In Webb's words, they discovered suspicious "burn marks in the carpet, which [Webb] could not see earlier that morning, because of the heat, steam, and the darkness." They also found "pieces of tape, with burn marks, on the stairway." After leaving the building to obtain tools, they returned and removed pieces of the carpet and sections of the stairs to preserve these bits of evidence suggestive of a fuse trial. Somerville also searched through the rubble "looking for any other signs or evidence that showed how this fire was caused." Again, there was neither consent

nor a warrant for these entries and seizures. [436 U.S. 499, 503] Both at trial and on appeal, the respondents objected to the introduction of evidence thereby obtained.

On February 16 Sergeant Hoffman of the Michigan State Police Arson Section returned to Tyler's Auction to take photographs.² During this visit or during another at about the same time, he checked the circuit breakers, had someone inspect the furnace, and had a television repairman examine the remains of several television sets found in the ashes. He also found a piece of fuse. Over the course of his several visits, Hoffman secured physical evidence and formed opinions that played a substantial role at trial in establishing arson as the cause of the fire and in refuting the respondents' testimony about what furniture had been lost. His entries into the building were without warrants or Tyler's consent, and were for the sole purpose "of making an investigation and seizing evidence." At the trial, respondents' attorney objected to the admission of physical evidence obtained during these visits, and also moved to strike all of Hoffman's testimony "because it was got in an illegal manner."³

The Michigan Supreme Court held that with only a few exceptions, any entry onto fire-damaged private property by fire or police officials is subject to the warrant requirements of the Fourth and Fourteenth Amendments. "[Once] the blaze [has been] extinguished and the firefighters have left the premises, a warrant is required to reenter and search the premises, unless there is consent or the premises have been abandoned." 399 Mich., at 583, 250 N. W. 2d, at 477. Applying [436 U.S. 499, 504] this principle, the court ruled that the series of warrantless entries that began after the blaze had been extinguished at 4 a. m. on January 22 violated the Fourth and Fourteenth Amendments.⁴ It found that the "record does not factually support a conclusion that Tyler had abandoned the fire-damaged premises" and accepted the lower court's finding that "[c]onsent for the numerous searches was never obtained from defendant Tyler." *Id.*, at 583, 570-571, 250 N. W. 2d, at 476, 470. Accordingly, the court reversed the respondents' convictions and ordered a new trial.

II

The decisions of this Court firmly establish that the Fourth Amendment extends beyond the paradigmatic entry into a private dwelling by a law enforcement officer in search of the fruits or instrumentalities of crime. As this Court stated in *Camara v. Municipal Court*, 387 U.S. 523, 528, the "basic purpose of this Amendment . . . is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials." The officials may be health, fire, or building inspectors. Their purpose may be to locate and abate a suspected public nuisance, or simply to perform a routine periodic inspection. The privacy that is invaded may be [436 U.S. 499, 505] sheltered by the walls of a warehouse or other commercial establishment not open to the public. See *v. Seattle*, 387 U.S. 541; *Marshall v. Barlow's Inc.*, ante, at 311-313. These deviations from the typical police search are thus clearly within the protection of the Fourth Amendment.

The petitioner argues, however, that an entry to investigate the cause of a recent fire is outside that protection because no individual privacy interests are threatened. If the occupant of the premises set the blaze, then, in the words of the petitioner's brief, his "actions show that he has no expectation of privacy" because "he has abandoned those premises within the meaning of the Fourth Amendment." And if the fire had other causes, "the occupants of the premises are treated as victims by police and fire officials." In the petitioner's view, "[t]he likelihood that they will be aggrieved by a possible intrusion into what little remains of their privacy in badly burned premises is negligible."

This argument is not persuasive. For even if the petitioner's contention that arson establishes abandonment be accepted, its second proposition - that innocent fire victims inevitably have no protectible expectations of privacy in whatever remains of their property - is contrary to common experience. People may go on living in their homes or working in their offices after a fire. Even when that is impossible, private effects often remain on the fire-damaged premises. The petitioner may be correct in the view that most innocent fire victims are treated courteously and welcome inspections of their property to ascertain the origin of the blaze, but "even if true, [this contention] is irrelevant to the question whether the . . . inspection is reasonable within the meaning of the Fourth Amendment." *Camara*, supra, at 536. Once it is recognized that innocent fire victims retain the protection of the Fourth Amendment, the rest

of the petitioner's argument unravels. For it is, of course, impossible to justify a warrantless search on the ground of abandonment by arson [436 U.S. 499, 506] when that arson has not yet been proved, and a conviction cannot be used ex post facto to validate the introduction of evidence used to secure that same conviction.

Thus, there is no diminution in a person's reasonable expectation of privacy nor in the protection of the Fourth Amendment simply because the official conducting the search wears the uniform of a firefighter rather than a policeman, or because his purpose is to ascertain the cause of a fire rather than to look for evidence of a crime, or because the fire might have been started deliberately. Searches for administrative purposes, like searches for evidence of crime, are encompassed by the Fourth Amendment. And under that Amendment, "one governing principle, justified by history and by current experience, has consistently been followed: except in certain carefully defined classes of cases, a search of private property without proper consent is 'unreasonable' unless it has been authorized by a valid search warrant." *Camara*, supra, at 528-529. The showing of probable cause necessary to secure a warrant may vary with the object and intrusiveness of the search,⁵ but the necessity for the warrant persists.

The petitioner argues that no purpose would be served by requiring warrants to investigate the cause of a fire. This argument is grounded on the premise that the only fact that need be shown to justify an investigatory search is that a fire of undetermined origin has occurred on those premises. The [436 U.S. 499, 507] petitioner contends that this consideration distinguishes this case from *Camara*, which concerned the necessity for warrants to conduct routine building inspections. Whereas the occupant of premises subjected to an unexpected building inspection may have no way of knowing the purpose or lawfulness of the entry, it is argued that the occupant of burned premises can hardly question the factual basis for fire officials' wanting access to his property. And whereas a magistrate performs the significant function of assuring that an agency's decision to conduct a routine inspection of a particular dwelling conforms with reasonable legislative or administrative standards, he can do little more than rubberstamp an application to search fire-damaged premises for the cause of the blaze. In short, where the justification for the search is as simple and as obvious to everyone as the fact of a recent fire, a magistrate's review would be a time-consuming formality of negligible protection to the occupant.

The petitioner's argument fails primarily because it is built on a faulty premise. To secure a warrant to investigate the cause of a fire, an official must show more than the bare fact that a fire has occurred. The magistrate's duty is to assure that the proposed search will be reasonable, a determination that requires inquiry into the need for the intrusion on the one hand, and the threat of disruption to the occupant on the other. For routine building inspections, a reasonable balance between these competing concerns is usually achieved by broad legislative or administrative guidelines specifying the purpose, frequency, scope, and manner of conducting the inspections. In the context of investigatory fire searches, which are not programmatic but are responsive to individual events, a more particularized inquiry may be necessary. The number of prior entries, the scope of the search, the time of day when it is proposed to be made, the lapse of time since the fire, the continued use of the building, and the owner's efforts to secure it against intruders might all be relevant factors. Even though a fire victim's privacy must normally yield to the vital [436 U.S. 499, 508] social objective of

ascertaining the cause of the fire, the magistrate can perform the important function of preventing harassment by keeping that invasion to a minimum. See *See v. Seattle*, 387 U.S., at 544-545; *United States v. Chadwick*, 433 U.S. 1, 9; *Marshall v. Barlow's Inc.*, ante, at 323.

In addition, even if fire victims can be deemed aware of the factual justification for investigatory searches, it does not follow that they will also recognize the legal authority for such searches. As the Court stated in *Camara*, "when the inspector demands entry [without a warrant], the occupant has no way of knowing whether enforcement of the municipal code involved requires inspection of his premises, no way of knowing the lawful limits of the inspector's power to search, and no way of knowing whether the inspector himself is acting under proper authorization." 387 U.S., at 532. Thus, a major function of the warrant is to provide the property owner with sufficient information to reassure him of the entry's legality. See *United States v. Chadwick*, supra, at 9.

In short, the warrant requirement provides significant protection for fire victims in this context, just as it does for property owners faced with routine building inspections. As a general matter, then, official entries to investigate the cause of a fire must adhere to the warrant procedures of the Fourth Amendment. In the words of the Michigan Supreme Court: "Where the cause [of the fire] is undetermined, and the purpose of the investigation is to determine the cause and to prevent such fires from occurring or recurring, a . . . search may be conducted pursuant to a warrant issued in accordance with reasonable legislative or administrative standards or, absent their promulgation, judicially prescribed standards; if evidence of wrongdoing is discovered, it may, of course, be used to establish probable cause for the issuance of a criminal investigative search warrant or in prosecution." But "[i]f the authorities are seeking evidence to be used in a criminal prosecution, the usual standard [of probable cause] will apply." 399 Mich., at 584, 250 N. W. 2d, at 477. Since all [436 U.S. 499, 509] the entries in this case were "without proper consent" and were not "authorized by a valid search warrant," each one is illegal unless it falls within one of the "certain carefully defined classes of cases" for which warrants are not mandatory. *Camara*, 387 U.S., at 528-529.

III

Our decisions have recognized that a warrantless entry by criminal law enforcement officials may be legal when there is compelling need for official action and no time to secure a warrant. *Warden v. Hayden*, 387 U.S. 294 (warrantless entry of house by police in hot pursuit of armed robber); *Ker v. California*, 374 U.S. 23 (warrantless and unannounced entry of dwelling by police to prevent imminent destruction of evidence). Similarly, in the regulatory field, our cases have recognized the importance of "prompt inspections, even without a warrant, . . . in emergency situations." *Camara*, supra, at 539, citing *North American Cold Storage Co. v. Chicago*, 211 U.S. 306 (seizure of unwholesome food); *Jacobson v. Massachusetts*, 197 U.S. 11 (compulsory smallpox vaccination); *Compagnie Francaise v. Board of Health*, 186 U.S. 380 (health quarantine).

A burning building clearly presents an exigency of sufficient proportions to render a warrantless entry "reasonable." Indeed, it would defy reason to suppose that firemen must secure a warrant or consent before entering a burning structure to put out the blaze. And once in a building for this purpose, firefighters may seize evidence of arson that is in plain view. *Coolidge v. New Hampshire*, 403 U.S. 443, 465-466.

Thus, the Fourth and Fourteenth Amendments were not violated by the entry of the firemen to extinguish the fire at Tyler's Auction, nor by Chief See's removal of the two plastic containers of flammable liquid found on the floor of one of the showrooms.

Although the Michigan Supreme Court appears to have accepted this principle, its opinion may be read as holding that [436 U.S. 499, 510] the exigency justifying a warrantless entry to fight a fire ends, and the need to get a warrant begins, with the dousing of the last flame. 399 Mich., at 579, 250 N. W. 2d, at 475. We think this view of the firefighting function is unrealistically narrow, however. Fire officials are charged not only with extinguishing fires, but with finding their causes. Prompt determination of the fire's origin may be necessary to prevent its recurrence, as through the detection of continuing dangers such as faulty wiring or a defective furnace. Immediate investigation may also be necessary to preserve evidence from intentional or accidental destruction. And, of course, the sooner the officials complete their duties, the less will be their subsequent interference with the privacy and the recovery efforts of the victims. For these reasons, officials need no warrant to remain in a building for a reasonable time to investigate the cause of a blaze after it has been extinguished.⁶ And if the warrantless entry to put out the fire and determine its cause is constitutional, the warrantless seizure of evidence while inspecting the premises for these purposes also is constitutional.