

Legal Digest

The Emergency Aid Exception to the Fourth Amendment's Warrant Requirement

By MICHAEL T. PETTRY, J.D.

From a structure billowing smoke to a desperate cry for help from within a home, officers routinely confront a variety of situations that require them to act swiftly and decisively. Unlike the more traditional functions of law enforcement that generally afford officers adequate time to investigate crime and develop the appropriate legal justification before arresting a perpetrator or

conducting a search, emergency situations do not allow them the opportunity to wait. In such instances, officers must make split-second decisions as to whether they should intervene to assist someone in immediate danger or prevent a potentially violent situation from escalating.

To this end, the author will address the authority of law enforcement officers to act

without warrants in situations normally requiring them but presenting exigent circumstances that prohibit investigators from proceeding as deliberately as usual. This discussion will address the circumstances giving rise to this authority and limitations on how far the officer can proceed without securing a warrant, incorporating Supreme Court treatment of this issue.



Objective Reasonableness

The need for law enforcement to intervene in the face of a crisis without the requirement of judicial oversight has long been recognized by the judiciary. As Chief Justice (then Judge) Burger noted in *Wayne v. United States*:

[A] warrant is not required to break down a door to enter a burning home to rescue occupants or extinguish a fire, to prevent a shooting or to bring emergency aid to an injured person. The need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency. Fires or dead bodies are reported to police by cranks where no fires or bodies are to be found. Acting in response to reports of “dead bodies,” the police may find the “bodies” to be common drunks, diabetics in shock, or distressed cardiac patients. But the business of policemen and firemen is to act, not to speculate or meditate on whether the report is correct. People could well die in emergencies if police tried to act with the calm deliberation associated with the judicial process. Even the apparently dead often are saved by swift police response. A myriad of circumstances could fall

within the terms “exigent circumstances”...e.g., smoke coming out a window or under a door, the sound of gunfire in a house, threats from the inside to shoot through the door at police, reasonable grounds to believe an injured or seriously ill person is being held within.¹

More recently, noted Fourth Amendment scholar Wayne R. LaFare wrote: “[B]y design or default, the police are also expected to reduce the opportunities for the commission of some crimes through preventive patrol and other measures, aid individuals who are in danger of physical harm, assist those who cannot care for themselves, resolve conflict, create and maintain a feeling of security in the community, and provide other services on an emergency basis.”²

In the event officers must enter an area where an individual has a reasonable expectation of privacy, the Fourth Amendment’s protection against “unreasonable searches and seizures” is inevitably implicated.³ As the Supreme Court held in the landmark case of *Katz v. United States*,⁴ only “reasonable” searches are permitted under the Fourth Amendment, and, in the absence of one of the judicially recognized exceptions to the warrant requirement, searches conducted without a warrant are, per se, unreasonable. If the government enters an individual’s home without having previously secured a warrant, the entry will be considered “presumptively unreasonable.”⁵

In spite of the presumption that a police officer’s entry without a warrant into a home is

“**The need for law enforcement to intervene in the face of a crisis without the requirement of judicial oversight has long been recognized by the judiciary.**”



Special Agent Pettry is a legal instructor at the FBI Academy.

unlawful, both state and federal courts consistently have held that various situations exist that because of their nature permit a warrantless search.⁶ Included among the judicially recognized exceptions to the Fourth Amendment's warrant requirement is the exigent circumstances exception. The United States Court of Appeals for the Sixth Circuit in *United States v. Williams* described this exception as including "situations where real immediate and serious consequences will certainly occur if a police officer postpones action to obtain a warrant."⁷ Examples of this exception are warrantless entries onto private property to fight fire and investigate its cause,⁸ to prevent the imminent destruction of evidence,⁹ and to engage in "hot pursuit" of a fleeing subject.¹⁰

In recognition of the need for police officers to respond appropriately to emergency situations, the Supreme Court noted in its decision in *Mincey v. Arizona* that "the Fourth Amendment does not bar police officers from making warrantless entries and searches when they reasonably believe that a person within [a private residence] is in need of immediate aid."¹¹ Although the holding in *Mincey* was limited to the question of whether there existed a "crime scene exception" to the Fourth Amendment's warrant requirement—in other words,

the extent to which law enforcement can act without a warrant once the emergency is over—its language has been used by courts to clarify the circumstances under which officers can make warrantless entries and conduct searches in emergency situations.

**“
...officers have the authority to make warrantless entries into...areas protected by the Fourth Amendment to resolve emergency situations provided they have an objectively reasonable basis to do so.
”**

In 2006, the Supreme Court specifically addressed the emergency aid exception in *Brigham City v. Stuart*.¹² During the 2009-2010 term, the Supreme Court again addressed this exception in *Michigan v. Fisher*.¹³ These decisions provide significant clarification of the legal basis upon which officers rendering emergency aid to others can make warrantless entries into homes and other areas protected by the Fourth Amendment.

The specific issue addressed by the Supreme Court

in *Brigham City* was whether “police may enter a home without a warrant when they have an objectively reasonable basis for believing that an occupant is seriously injured or imminently threatened with such injury.”¹⁴ In this case, officers responded in the early morning hours to a call regarding a loud party at a residence. Officers approached the residence after hearing shouting from inside. As they approached the home, the officers also observed two juveniles drinking beer in the backyard. From their vantage point in the backyard, the officers observed an altercation taking place inside of the home through a screen door and windows. At the time they looked into the home, the officers observed several adults attempting to restrain a juvenile.¹⁵ The young person managed to break free of the adults’ grasp and struck one of them in the face with his fist.¹⁶ The victim of the blow proceeded to spit blood into a nearby sink as the other adults tried to restrain the juvenile by “pressing him up against a refrigerator with such force that the refrigerator began moving across the floor.”¹⁷ At this point, one of the responding officers opened the screen door and announced the officers’ presence. Because of the chaos unfolding inside of the home, none of the occupants responded, and the officers entered the kitchen,

where they again announced their presence.¹⁸ The altercation ended shortly after the occupants discovered that the police had entered the home. Once inside, the officers arrested Stuart and several other occupants for contributing to the delinquency of a minor, disorderly conduct, and intoxication.

Prior to trial, the defendants filed a motion to suppress all evidence, claiming that the officers' warrantless entry into the home violated the Fourth Amendment.¹⁹ The trial court agreed that the evidence should be suppressed. The Utah Court of Appeals and the Utah Supreme Court upheld this decision.²⁰ The city appealed these rulings to the U.S. Supreme Court, which agreed to hear the case to provide much-needed guidance as to what Fourth Amendment standard should govern law enforcement officers' warrantless entries to protected areas under the "emergency aid" exception.

In its unanimous decision reversing the ruling of the Utah Supreme Court, the Supreme Court recognized that "[o]ne exigency obviating the requirement of a warrant is the need to assist persons who are seriously injured or threatened with such injury."²¹ The Court further added that "[t]he need to protect or preserve life or avoid serious injury is justification

for what would be otherwise illegal absent an exigency or emergency."²²

Although the defendant in this case, Stuart conceded that the Fourth Amendment permits officers to take appropriate action to respond to an emergency situation. He urged the Court to uphold the lower court's ruling that the officers' actions were unreasonable for other reasons. First, Stuart argued that the officers' actions should be viewed as unreasonable as their true



© Mark C. Ide

intent in entering the home was to effect an arrest rather than to render emergency assistance.²³ The Supreme Court expressly rejected Stuart's argument, citing well-established Fourth Amendment principles that stand for the proposition that the appropriate focus in evaluating an officer's actions is deciding whether the specific actions in

question are reasonable as opposed to focusing on the subjective motivations of the officer. According to the Court, "the issue is not his state of mind, but the objective effect of his actions."²⁴ An officer's subjective motivation or intention is irrelevant in such instances.²⁵ In applying this principle to the facts in *Brigham City*, the Court stated that "[i]t therefore does not matter here—even if their subjective motives could be so neatly unraveled—whether the officers entered the kitchen to arrest respondents and gather evidence against them or to assist the injured and prevent further violence."²⁶

The Court also rejected Stuart's contention that the altercation the officers observed was not serious enough to justify their warrantless entry into the home. In support of his argument, Stuart attempted to draw an analogy between the facts in this case and those in *Welsh v. Wisconsin*, where the Supreme Court held that "an important factor to be considered when determining whether any exigency exists is the gravity of the underlying offense for which the arrest is being made."²⁷ In *Welsh*, the Supreme Court held that the officers' warrantless entry into a home to arrest a suspect for driving under the influence was not justified because the only "potential



emergency” confronting the officers was the need to preserve evidence (the suspect’s blood alcohol level). In finding that the officers’ actions violated the Fourth Amendment, the Court noted that “[b]efore agents of the government may invade the sanctity of the home, the burden is on the government to demonstrate exigent circumstances that overcome the presumption of unreasonableness that attaches to all warrantless home entries.”²⁸

What made *Brigham City* different, according to the Court, was the fact that “the officers were confronted with ongoing violence within the home.”²⁹ It was this key distinction between the cases that served to make the officers’ actions reasonable. Rather than simply trying to procure evidence for eventual use at trial, the officers in *Brigham City* faced a situation that presented a very real risk of serious injury to those involved. As the Court noted, “the officers had an objectively reasonable basis for believing both that the injured adult might need help and that the violence in the kitchen was just the beginning. Nothing in the Fourth Amendment required them to wait until another blow rendered someone ‘unconscious’ or ‘semiconscious’ or worse before entering.”³⁰ In language that plainly describes the realities confronted by law

enforcement officers, the Court further noted that “[t]he role of a peace officer includes preventing violence and restoring order, not simply rendering first aid to casualties; an officer is not like a boxing (or hockey) referee, poised to stop a bout only if it becomes too one-sided.”³¹

“
Included among the
judicially recognized
exceptions to the Fourth
Amendment’s warrant
requirement is the
exigent circumstances
exception.
”

In addition to finding that the officers’ entry into the home was reasonable, the Court also found their *manner* of entry appropriate under the circumstances. After witnessing the assault, one of the officers opened the screen door to the home and yelled “police.”³² When there was no response, the officer then stepped into the kitchen and again announced his presence. Only then did the melee begin to subside. In reaching its determination that the officers’ entry into the home was reasonable and did not violate the Fourth Amendment’s

“knock and announce” rule, the Court noted that the officer’s announcement of his presence may have been the only option given the noise and chaos within the home. Under these circumstances, once they had announced their presence, the officers were permitted to enter the home as “it would serve no purpose to require them to stand dumbly at the door awaiting a response while those within brawled on, oblivious to their presence.”³³

In its 2009 term, the Supreme Court decided *Fisher*, which, like *Brigham City*, involved officers’ entry into a residence without a warrant to respond to an emergency situation. In *Fisher*, local police responded to a disturbance call and, as they approached the area, were met by a couple who directed them to a residence where a man was “going crazy.”³⁴ Upon their arrival at the home, the officers found a pickup truck in the driveway with front-end damage and damaged fence posts along the side of the property.³⁵ The officers further noted that several of the home’s windows were broken and that there was blood on the hood of the pickup, the clothes inside of it, and one of the doors to the house.³⁶ Through a window, the officers observed Fisher screaming and throwing things inside of the house.³⁷

The officers knocked on the door, but Fisher refused to answer. After noticing a cut on his hand, the officers inquired if he needed medical attention. Fisher ignored the officers' questions and demanded that they obtain a search warrant. One of the officers then pushed the front door partially open and entered the home. Upon observing Fisher pointing a gun at him, the officer retreated from the residence.

Subsequent to the incident at the home, Fisher was charged in state court with assault with a dangerous weapon and possession of a firearm during the commission of a felony.³⁸ Prior to trial, Fisher filed a motion to suppress the officer's observation that he possessed a firearm, claiming that the officer's entry into the home violated the Fourth Amendment.³⁹ The trial court agreed with Fisher. This decision was affirmed by the Michigan Court of Appeals on grounds that the situation the officers encountered at the home "did not rise to a level of emergency justifying the warrantless intrusion into a residence."⁴⁰ The Court acknowledged that "there was evidence an injured person was on the premises," but based its decision to affirm the lower court's ruling on the fact that "the mere drops of blood did not signal a likely serious, life-threatening injury."⁴¹

The U.S. Supreme Court, in a *per curiam* opinion, reversed the Michigan Court of Appeals' decision, finding that the state court's rulings were contrary to a long line of relevant Fourth Amendment cases, particularly *Brigham City*.⁴² As discussed earlier, the Court in *Brigham City* held that the officers' warrantless entry into a home was reasonable under the Fourth Amendment as they



© Mark C. Ide

had an objectively reasonable basis for believing that a person located therein needed immediate assistance. In applying this standard to the facts presented in *Fisher*, the Court found that the emergency aid exception permitted the officers to enter the home even if they did not have "ironclad proof" of a life-threatening situation.⁴³ What was important was whether the officers' actions were objectively reasonable based upon

the facts known to them *at the time* and not a "hindsight determination that there was in fact no emergency."⁴⁴ The Court concluded that "it was reasonable to believe that Fisher had hurt himself (albeit nonfatally) and needed treatment that in his rage he was unable to provide, or that Fisher was about to hurt, or had already hurt, someone else."⁴⁵

Limitations on Authority

As the *Fisher* and *Brigham City* decisions both illustrate, law enforcement officers have the authority to make warrantless entries into residences and other areas protected by the Fourth Amendment to resolve emergency situations provided they have an objectively reasonable basis to do so. However, once the emergency situation has been addressed, their ability to conduct further investigation may be limited. As noted, "[O]nce the exigent circumstances have been extinguished and the purpose of the scene's examination has evolved into one in which evidence to be used in a criminal proceeding is being sought, the warrant requirement of the Fourth Amendment is reestablished and must be scrupulously honored."⁴⁶

Conclusion

Although courts have long recognized the existence of an



exigent circumstance exception to the Fourth Amendment's warrant requirement, the Supreme Court's decisions in *Brigham City* and *Fisher* provide much-needed guidance to officers who routinely confront situations, such as those present in these two cases. Reliance on an objective reasonableness standard allows for scrutiny based on the facts and circumstances confronting law enforcement at the time, as opposed to guesswork regarding the officers' intentions and consideration of information learned after the fact.

The legal standard set forth by the Court in these cases enables officers to make on-the-spot decisions as to whether they should enter a home or other dwelling to resolve an emergency situation. Because the government has the burden of justifying warrantless searches and seizures occurring under this exception, officers need to fully articulate the specific facts and circumstances known to them at the time they acted. This is essential because the courts use an examination of the totality of the circumstances to determine whether officers had reasonable grounds to act.⁴⁷ ♦

Endnotes

¹ 318 F.2d 205, 212; 115 U.S. App.D.C. 234, 241 (D.C. Cir. 1963).

² Wayne R. LaFare, 3 *Search and Seizure: A Treatise on the Fourth Amendment* § 6.6 (4th ed.) (quotations omitted).

³ U.S. Const. amend. IV.

⁴ 389 U.S. 347, 357 (1967).

⁵ *Payton v. New York*, 445 U.S. 573, 586 (1980).

⁶ See, e.g., *Blake v. State*, 954 A.2d 315 (Del. 2008); *State v. Cline*, 696 S.E. 2d 554 (N.C. App. 2010); *United States v. Porter*, 594 F.3d 1251 (10th Cir. 2010).

⁷ 354 F.3d 497, 503 (6th Cir. 2003) (internal quotations omitted).

⁸ *Michigan v. Tyler*, 436 U.S. 499, 509 (1978).

⁹ *Ker v. California*, 374 U.S. 23, 40 (1963).

¹⁰ *United States v. Santana*, 427 U.S. 38, 42 (1976).

“Reliance on an objective reasonableness standard allows for scrutiny based on the facts and circumstances confronting law enforcement at the time....”

¹¹ 437 U.S. 385, 392 (1978).

¹² 547 U.S. 398 (2006); see, e.g., *United States v. Holloway*, 290 F.3d 1331, 1337 (11th Cir. 2002); *State v. Frankel*, 179 N.J. 586 A.2d 561 (2004), cert. denied; 543 U.S. 876, 125 S. Ct. 108, 160 L.Ed. 2d 128 (2004).

¹³ 130 S. Ct. 546 (2009).

¹⁴ 547 U.S. 400 (2006).

¹⁵ *Id.* at 401.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 401-402; *Brigham City v. Stuart*, 122 P.3d 506 (Utah, Feb. 18, 2005);

Brigham City v. Stuart, 57 P.3d 1111 (Utah App. 2002).

²¹ *Id.* at 403.

²² *Id.* at 403 (quoting *Mincey*, supra, at 392).

²³ *Id.* at 404.

²⁴ *Id.* at 404 (quoting *Whren v. United States*, 517 U.S. 806 (1996)).

²⁵ See *Bond v. United States*, 529 U.S. 334, 338 n. 2 (2000).

²⁶ *Id.* at 405.

²⁷ *Id.* at 405 (quoting *Welsh v. Wisconsin*, 466 U.S. 740, 753 (1984)).

²⁸ *Welsh* at 750.

²⁹ *Id.*

³⁰ *Id.* at 406.

³¹ *Id.*

³² *Id.*

³³ *Id.* at 407.

³⁴ *Fisher* at 547.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.* at 549.

⁴¹ *Id.* The Michigan Supreme Court agreed to hear the case, but, after hearing oral argument, vacated its order and let the lower court's ruling stand.

⁴² *Id.* at 548.

⁴³ *Fisher* at 549 (internal quotations omitted).

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Lucy Ann Hoover, “Law Enforcement Response at a Crisis Scene: Protecting Lives and Preserving the Admissibility of Evidence,” *FBI Law Enforcement Bulletin*, April 2006, p. 30.

⁴⁷ See, *United States v. Najjar*, 451 F.3d 710 (10th Cir. 2006).

Law enforcement officers of other than federal jurisdiction who are interested in this article should consult their legal advisors. Some police procedures ruled permissible under federal constitutional law are of questionable legality under state law or are not permitted at all.