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When Does the Emergency Aid Exception Permit an Officer's Warrantless Entry of a Home?

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Case at a Glance

The "emergency aid doctrine" permits police officers to make warrantless entries and searches when they reasonably believe a person within is in need of immediate aid. The need to protect life or avoid serious injury justifies what otherwise would be an illegal entry. Relying on the emergency aid doctrine, police officers in Utah entered a home after seeing a struggle between four adults and a juvenile who struck one of the adults.

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by Jay E. Grenig

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ISSUES

Does the emergency aid exception to the Fourth Amendment's warrant requirement turn on an officer's subjective motivation for entering a home?

Was the gravity of the "emergency" or "exigency" in this case sufficient to justify the officers' entry into the home without a warrant to stop a fight?

FACTS

Around 3:00 the morning of July 23, 2001, four Brigham City police officers arrived at a local residence in response to a complaint about a loud party. When the officers assembled at the curb in front of the house, they did not hear a party but heard a commotion that "sounded like ... an altercation occurring, some kind of fight." They heard "thumping," people yelling "stop, stop," and someone saying, "Get off of me."

The officers walked up to the house and looked through the front window to determine what was going on. They saw a beer bottle on the ledge of the front window but could see nothing inside. Leaving one officer at the front door, the other three officers walked to the corner of the house and down the drive to the backyard fence "to investigate where [the fight] was coming from." Peering into the backyard through the fence, the officers saw two teenage males drinking beer. They heard one of the teenagers say, "He's had too much to drink." The officers saw no fight in the backyard but could still hear it and "[i]t was just as severe as when [they] arrived and was still ongoing."

"[C]oncerned about the ongoing fight," the officers entered the backyard. While one of them secured the two teenagers, the other two officers walked to the back of the house to investigate. Through a window, the officers saw four adults trying to restrain a teenager against a refrigerator. The teenager's hands were doubled into fists and he was "twisting and turning and writhing" in an effort to break free from the grasp of the adults. The adults were yelling at the teenager to "calm down,"

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"obscenities [were] flying," and threats were being made.

The two officers walked past a second window to an open backdoor. The screen door was shut. After reaching the door, an officer saw the teenager wrest a hand free and "land a punch squarely on the face" of one of the adults, drawing blood. At that point, the officer opened the screen door and yelled, "Police." Because it was so loud and tumultuous in the house, no one heard a word. The officers then entered the kitchen. An officer yelled as loudly as he could. At that point, some of the occupants began to realize the police were there and the fight dissipated. The officers stepped between the combatants and handcuffed the teenager.

When an officer asked the adult assault victim if he needed assistance, the adults in the house "immediately turned and became verbally hostile," demanding that the officers leave. The situation deteriorated further, and the adults were arrested for disorderly conduct, intoxication, and contributing to the delinquency of a minor.

The adult occupants of the house moved to suppress the evidence of alcohol consumption found inside the home, arguing that the officers' entry had violated their Fourth Amendment rights. The trial court granted the motion to suppress, ruling that no exigent circumstances existed justifying the officers' entry into the residence. The trial court ruled the officers should have knocked on the door before entering.

On appeal, the Utah Court of Appeals affirmed the trial court's decision. *Brigham City v. Stuart,* 57 P.3d 1111 (Utah App. 2002). In a 2-1 decision, the majority held that nothing in the findings indicated that "the altercation posed an immediate serious threat or created a threat of escalating violence." The dissenting judge observed that it "is nonsensical to require officers, charged with keeping the peace, to witness this degree of violence and take no action until they see it escalate further."

Affirming the Utah Court of Appeals, a divided Utah Supreme Court held that the officers' warrantless entry into the home was not justified under the emergency aid doctrine or under exigent circumstances. *Brigham City v. Stuart,* 122 P.3d 506 (Utah 2005). The court distinguished the two exceptions, reasoning that emergency aid applies when officers are motivated by a "caretaking" function and that the exigent circumstances exception applies when officers "pursu[e] a law enforcement mission."

The Utah court held that emergency aid is justified if (1) police have an objectively reasonable basis to believe that an emergency exists and believe there is an immediate need for their assistance for the protection of life; (2) the search is not primarily motivated by intent to arrest and seize evidence; and (3) there is some reasonable basis to associate the emergency with the area or place to be searched. According to the court, the officers failed part one of the test because the fight had not yet resulted in serious bodily injury. The court also held the officers failed part two of the test because they were not subjectively motivated by the need to render medical assistance.

A majority of the Utah Supreme Court held the harm that had been inflicted was insufficient to apply the exigent circumstances exception. The majority concluded the officers should have knocked if they desired to enter the home.

The city then sought review of the Utah Supreme Court's decision by the U.S. Supreme Court. The Supreme Court granted the city's petition for a writ of certiorari. 126 S.Ct. 979 (2006).

Case Analysis

The Fourth Amendment protects persons from unreasonable searches and seizures. Warrantless searches are unreasonable but for a limited set of exceptions. The U.S. Supreme Court has recognized that a warrantless intrusion does not violate the Fourth Amendment "'when the exigencies of the situation' make the needs of law enforcement so compelling that the warrantless search is objectively reasonable." *Mincey v. Arizona,* 437 U.S. 385, 393-94 (1978). The Supreme Court has identified several exigencies justifying warrantless intrusion, including hot pursuit, imminent destruction of evidence, and emergency aid.

The "exigent circumstances" doctrine justifies entry into premises when there is probable cause to enter for a law-enforcement purpose but to await a warrant will either cause the loss of evidence sought or injury to persons or property.

The emergency aid doctrine permits police officers, in their community-caretaking function, to make warrantless entries and searches when they reasonably believe that a person within is in need of immediate aid because the need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency. *Mincey v. Arizona,* 437 U.S. 385, 392 (1978). The emergency circumstances doctrine is viewed by some as independent from exigent circumstances, and by others as a subcategory of the exigent circumstances doctrine.

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The rationale for the emergency aid doctrine is that because officers who act under the doctrine are not conducting a law enforcement mission, the officers may do so without either obtaining a warrant or demonstrating the presence of probable cause or exigent circumstances. The doctrine attempts to strike a balance between the rights protected by the Fourth Amendment and the interests of government to access a dwelling to safeguard the well-being of citizens.

Under *Mincey*, emergency aid intervention is justified (1) when the risk to safety or health is life threatening, (2) when someone has suffered a serious injury and is in need of immediate aid, and (3) when necessary to prevent serious injury. *Mincey*, 437 U.S. at 392-93. Pointing out that the Supreme Court has not defined "serious injury," the city contends that the term is widely understood to mean an injury that results in protracted loss or impairment of the function of any body member or organ include broken noses, broken jaws, dangerous eye injuries, and knocked-out teeth.

It is the city's position that emergency aid entries should be judged against an objective standard of reasonableness. The city argues that an officer's subjective motives are irrelevant in determining whether emergency aid is objectively reasonable, relying on *Graham v. Connor*, 490 U.S. 386, 397 (1989) (holding that the question is whether the officers' actions are "objectively reasonable" in light of the facts and circumstances confronting them, without regard to their underlying motive or intent). The city says the Supreme Court has examined purpose only in suspicionless programmatic searches, not searches that arise from, and must be justified by, individualized suspicion.

Disagreeing with the city, Stuart argues that evaluating law enforcement's subjective intentions is an integral part of Fourth Amendment protections against warrantless entries into a home and equally serves the needs of law enforcement and citizens. Stuart suggests that the subjective standard inquires whether the law enforcement officer was motivated primarily by a desire to save lives and property.

According to the city, a warrantless entry to stop a fight in progress is justified by the government's legitimate and substantial interests in protecting the public from harm and in preventing crimes of violence. It says that emergency aid is justified by the need to protect and preserve life, to administer medical aid for a serious injury, and to prevent serious injury. The city claims any physical altercation involving adults, or even teenagers, creates a real and substantial risk that serious injury may result. While serious injuries do not inevitably result, the city states the risk is real and substantial and justifies emergency aid intervention to prevent them. In the face of these inherent risks, the city declares that the Fourth Amendment does not require an officer "to simply shrug his shoulders" and allow the violence to continue.

The city argues that police officers are justified in entering a home to stop ongoing crimes of violence. In these cases, the city contends that the government's interest in protecting others from harm converges with its interest in stopping and preventing crime. It says that the right and duty of police to intervene in the face of violence was well-entrenched in the common law at the time of the framing of our Constitution.

According to Stuart, a minor misdemeanor does not rise to the level enunciated by the Supreme Court in *Mincey* as forming a basis for using the emergency aid exception to enter a home without a warrant. Declaring that the applicable factors are whether somebody is in need of immediate aid or whether evidence would be lost, removed, or destroyed, Stuart asserts that the situation has to be more serious than a minor altercation.

In *Welsh v. Wisconsin*, 466 U.S. 740 (1984), the Supreme Court held that the gravity of the offense is relevant in determining whether an exigency justifies a warrantless entry. The Court in *Welsh* concluded that Wisconsin's driving while intoxicated offense was not of sufficient gravity to justify a warrantless entry because it was only a minor offense under state law. Courts have disagreed on the application of *Welsh*. Some courts have suggested that *Welsh* forecloses application of the circumstances exception for misdemeanor offenses. See, e.g., *Greiner v. City of Champlin*, 27 F.3d 1346, 1353 (1994) (concluding that Welsh "casts serious doubt on the question of whether a warrantless home arrest for a misdemeanor will ever be deemed reasonable"); *Reardon v. Wroan*, 811 F.2d 1025, 1028 (7th Cir. 1987) (concluding that *Welsh* holds "that, at a minimum, exigent circumstances do not exist when the underlying offense is minor, typically a misdemeanor"). Other courts have concluded that *Welsh* does not foreclose entries based on misdemeanor offenses, particularly where the offense involves violence or a risk of harm to others. See, e.g., *Joyce v. Town of Tewksbury*, 112 F.3d 19, 22 (1st Cir. 1997) (holding that misdemeanor classification of assault "does not reduce it to a 'minor offense'" under *Welsh*).

The city argues that the officers' entry into the home was reasonable

under the Fourth Amendment. It points out that arriving at the front curb, the officers heard an altercation occurring, they heard some thumping, and they heard people yelling. The city says the altercation continued with no drop in intensity as the officers investigated first from the front window, then from the driveway, and finally from the backdoor. The city claims the officers' warrantless entry into the home was justified by the need to quell the ongoing violence and to prevent further harm to those inside. Because the altercation was in the kitchen, the city suggests the officer could reasonably believe that a knife could be pulled from a nearby kitchen drawer, elevating the potential severity of physical harm that a participant in the fight—or an innocent bystander—could suffer.

Pointing out that the officers stood outside the home, and only misdemeanor offenses, and no assault offenses, were charged, Stuart says the requisite level of necessity was not reached to permit entering a home under *Mincey*. Stuart declares there was no immediate need for help, and there was no likelihood that any evidence would be lost, removed, or destroyed.

SIGNIFICANCE

The Supreme Court is asked to decide a question it left unresolved in *Mincey v. Arizona,* 437 U.S. 385 (1978): the standard by which emergency aid entries should be judged. Courts are deeply divided on this issue. Some courts strictly adhere to the objective standard traditionally applied in Fourth Amendment cases. Other courts apply a subjective standard test, examining an officer's motivations for taking action. The Supreme Court is also faced with an issue that has troubled lower courts since *Welsh v. Wisconsin,* 466 U.S. 740 (1984): how serious must the harm or wrongdoing be to justify a warrantless entry?

Three circuits have agreed with the Utah Supreme Court, holding that because emergency aid intrusions are justified upon a showing of reasonable suspicion, rather than probable cause, examination of an officer's subjective motives is appropriate to safeguard against pretextual searches. *United States v. Thomas,* 372 F.3d 1173, 1177 (10th Cir. 2004); *United States v. Cervantes,* 219 F.3d 882, 889-90 (9th Cir. 2000), *cert. denied,* 532 U.S. 912 (2001); *United States v. Borchardt,* 809 F.2d 1115, 1117 (5th Cir. 1987). See also *State v. Fisher,* 686 P.2d 750, 759-61 (Ariz.), *cert. denied,* 469 U.S. 1066 (1984); *People v. Ray,* 981 P.2d 928, 932-39 (Cal. 1999), *cert. denied,* 528 U.S. 1187 (2000); *State v. Drennan,* 101 P.3d 1218, 1231-32 (Kan. 2004); *State v. Plant,* 461 N.W.2d 253, 262-63 (Neb. 1990); *State v. Ryon,* 108 P.3d 1032, 1046 (N.M. 2005); *People v. Mitchell,* 347 N.E.2d 607 (N.Y. 1976) *People v. Mitchell,* 347 N.E.2d 607 (N.Y. 1976); *Lubenow v. North Dakota State Hwy. Comm'r,* 438 N.W.2d 528, 531-33 (N.D. 1989); *State v. Heumiller,* 317 N.W.2d 126, 129 (S.D. 1982); *State v. Mountford,* 769 A.2d 769 A.2d 639, 645 (Vt. 2000); *State v. Kinzy,* 5 P.3d 668, 675-78 (Wash. 2000) (en banc), *cert. denied,* 531 U.S. 1104 (2001); *State v. Boggess,* 340 N.W.2d 516, 521-22 (Wis. 1983).

Two circuits have applied the objective standard in emergency entry cases. *In re United States v. Chipps,* 410 F.3d 438, 442 (8th Cir. 2005); Sealed Case 96-3167, 153 F.3d 759, 766 (D.C. Cir. 1998). See also *Wofford v. State,* 952 S.W.2d 646, 651 (Ark. 1997); *People v. Hebert,* 46 P.3d 473, 478-80 (Colo. 2002) (en banc); *State v. Blades,* 626 A.2d 273, 278 (Conn. 1993); *State v. Carlson,* 548 N.W.2d 138, 141-42 (Iowa 1996); *State v. Othoudt,* 482 N.W.2d 218, 223 (Minn. 1992); *State v. Scott,* 471 S.E.2d 605, 613-15 (N.C. 1996).

Following the Supreme Court's decision in *Welsh v. Wisconsin,* 466 U.S. 740 (1984), courts have been divided as to the gravity of the "emergency" or "exigency" that must exist to justify a warrantless search. Some cases have suggested that an emergency aid entry is justified whenever a person's safety or health is in danger. Other cases suggest a more demanding standard, permitting entry to prevent serious injury or harm.

The Supreme Court should resolve these conflicts among the courts in deciding this case. In addition, with a new chief justice and a new justice on the Supreme Court, this term, this case may provide insight on how the Court will approach search and seizure cases.

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