

MICHIGAN v. TYLER

U.S. Supreme Court

May 31, 1978

436 U.S. 499

(Here, in a 7-1 decision, with one justice not participating, the Supreme Court says fire fighters, and/or police and arson investigators, may seize arson evidence at a fire without warrant or consent, on the basis of exigent circumstances and/or plain view. The seizures, however, must occur during the fire fighting operation or soon after the flames have been extinguished. Subsequent re-entries to search must be based on a search warrant or consent.)

A fire breaks out in defendant's furniture store shortly before midnight and the fire department responds and is "just watering down smoldering embers" when the fire chief arrives at 2:00 a.m. He is informed by his assistant that two plastic containers of flammable liquid had been found in the building.

The two then use portable lights and enter the gutted store, which was still filled with smoke and steam, to examine the containers. (No warrant or consent.)

The chief concludes there is an arson possibility and he calls a police detective who arrives about 3:30 a.m. The detective takes some photos and he and the chief look around briefly. The steam and smoke make it impossible, however, and they and the fire fighters leave at 4:00 a.m.

At 8:00 a.m. the chief and his assistant return and look around briefly. The assistant and the detective return at 9:00 a.m. They find evidence not previously visible, due to the smoke and steam, burned carpet and tape, and remove those items in a brief search. (Still no warrant or consent.)

On three subsequent occasions, four days after the fire, seven days after the fire, and twenty-five days after the fire, other investigators, without warrant or

consent, return to the scene, search and remove arson evidence.

The defense objects to the admission of all the evidence, but the defendants are convicted. The Michigan Court of Appeals agrees, but the Michigan Supreme Court reverses the conviction and orders a new trial, holding that all entries after the fire was extinguished at 4:00 a.m. were unconstitutional, without warrant or consent.

The Supreme Court affirms the Michigan Supreme Court's decision as to all re-entries after the 9:00 a.m. search, those four days, seven days, and twenty-five days after the fire, but permits the use of the evidence found during the fighting of the fire and through the 9:00 a.m. search.

"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, fire fighters may seize evidence of arson that is in plain view."

Furthermore, the Court said, *"... 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."*

Here, the Court noted, the 8:00 a.m. and 9:00 a.m. searches were mere continuations of the initial search, put off necessarily by darkness, smoke and steam.

(Bottom line? Perhaps the best way to put it is that seizures which are done simultaneously or contemporaneously with the fire itself are O.K. Those done later must have a warrant or consent to support them.)