

**CITY COURT OF NEW YORK  
CITY OF WATERTOWN**

People v. Saldana<sup>1</sup>  
(decided December 7, 2009)

Jason Saldana was arrested two days after the Watertown City Fire Department and the Watertown Police Department found evidence of a marijuana growing operation in his home.<sup>2</sup> At trial, Mr. Saldana sought to suppress the marijuana cultivation evidence on the basis that the police obtained the evidence without a warrant absent any emergency exceptions to the warrant requirement, therefore violating the Fourth Amendment of the United States Constitution<sup>3</sup> and article I, section 12 of the New York State Constitution.<sup>4</sup> The trial court granted the motion and dismissed the indictment because the police's warrantless search and seizure did not satisfy any of the emergency exceptions to the Fourth Amendment and the evidence obtained was not subject to the inevitable discovery doctrine due to the nature of the seizure.<sup>5</sup>

In the early evening of August 30, 2009, a fire broke out at the residential unit owned by the defendant, Jason Saldana.<sup>6</sup> The Watertown Fire Department and Watertown Police Department Officer Frederick March responded to the call.<sup>7</sup> The fire department extinguished the fire and, while performing the usual search of the resi-

---

<sup>1</sup> No. 43564, 2009 WL 4667446 (N.Y. City Ct. Dec. 7, 2009).

<sup>2</sup> *Id.* at \*1.

<sup>3</sup> The Fourth Amendment states, in pertinent part: "The right of the people to be secure in their persons, house, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause . . . ." U.S. CONST. amend. IV.

<sup>4</sup> The New York Constitution states, in pertinent part: "The right of the people to be secure in their persons, house, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause . . . ." N.Y. CONST. art. I, § 12.

<sup>5</sup> *Saldana*, 2009 WL 4667446, at \*2, 5.

<sup>6</sup> *Id.* at \*1.

<sup>7</sup> *Id.*

dence for victims or signs of arson, came upon a marijuana cultivation operation.<sup>8</sup> The fire department notified Officer March that it discovered something on the third floor.<sup>9</sup> Officer March was brought up to the location of the fire and observed in plain view, a marijuana growing operation containing fifteen marijuana plants.<sup>10</sup>

Officer March returned downstairs and questioned Saldana about what was in the attic.<sup>11</sup> Saldana initially claimed “he was growing pumpkins and vegetables.”<sup>12</sup> Approximately an hour and a half after Officer March responded to the scene, Saldana admitted to cultivating marijuana in a supporting deposition and gave “the police permission to search [the] house and collect the marijuana.”<sup>13</sup> After this supporting deposition was obtained, another officer arrived and collected the contraband as evidence.<sup>14</sup> Subsequently, Saldana was charged with marijuana cultivation.<sup>15</sup>

During preliminary proceedings, Saldana filed a motion arguing that the indictment should be dismissed because the officer’s entry and search of his residence was illegal and therefore all evidence seized should be suppressed.<sup>16</sup> In response, the People filed an affidavit “stating that the search was lawful under either the emergency or inevitable discovery exceptions to [the] federal and state warrant requirements.”<sup>17</sup>

The central issue at trial regarded Officer March’s warrantless search of Saldana’s home.<sup>18</sup> The city court first analyzed whether the search of Saldana’s home by Officer March fell into one of the vari-

---

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Saldana*, 2009 WL 4667446, at \*1.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Saldana*, 2009 WL 4667446, at \*1.

<sup>16</sup> *Id.* Additionally, Saldana contested the constitutionality of the supporting deposition that he gave to Officer March. *Id.* at \*1 n.2. However, the City Court of New York decided not to consider the issue of whether the consent was valid. *Id.* For a more in depth analysis of the issue of retroactive consent and how it impacts the legality of a warrantless search, see Kimberly J. Winbush, Annotation, *Effect of Retroactive Consent on Legality of Otherwise Unlawful Search and Seizure*, 76 A.L.R.5th 563 (2004).

<sup>17</sup> *Saldana*, 2009 WL 4667446, at \*1.

<sup>18</sup> *Id.*

2011] *EMERGENCY EXCEPTION TO FOURTH AMENDMENT* 687

ous emergency exceptions to the warrant requirement.<sup>19</sup> Explaining that emergency exceptions have been used “when public safety concerns eclipse those of privacy,” the judge concluded that the search of Saldana’s residence did not fall into the exceptions for two reasons.<sup>20</sup> First, no emergency situation existed at the time the officer entered Saldana’s home.<sup>21</sup> Second, the officer’s “apparent intent was to investigate a crime, not to provide emergency services.”<sup>22</sup> The judge referred to the officer’s testimony to show this intent and state of mind: “I was advised by City Fire that there was something I should see in the attic. I was advised that it look [sic] like they were growing something in the attic, which was a bedroom.”<sup>23</sup>

Subsequently, the judge analyzed the People’s second argument that “even if Officer March’s search wasn’t properly sanctioned, the marijuana plants should be admitted pursuant to the inevitable discovery doctrine.”<sup>24</sup> Upon reviewing the inevitable discovery doctrine, the judge held that the state did not meet the burden required for the marijuana plants to be submitted as evidence into trial.<sup>25</sup>

---

<sup>19</sup> *Id.* at \*2.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* (“Officer March entered Mr. Saldana’s home after the fire was put out.”) (internal quotation marks omitted).

<sup>22</sup> *Saldana*, 2009 WL 4667446, at \*3.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at \*4.

<sup>25</sup> *Id.* at \*4-5. The New York Court of Appeals has stated that under the inevitable discovery doctrine:

[E]vidence obtained as a result of information derived from an unlawful search or other illegal police conduct is not inadmissible under the fruit of the poisonous tree doctrine where the normal course of police investigation would, in any case, even absent the illicit conduct, have inevitably led to such evidence.

*People v. Fitzpatrick*, 300 N.E.2d 139, 141 (N.Y. 1973). *Saldana* cited to the leading precedent on inevitable discovery in New York, *People v. Stith*, 506 N.E.2d 911 (N.Y. 1987), to reference the distinction between primary and secondary evidence. *Saldana*, 2009 WL 4667446, at \*4. *Stith* held that the inevitable discovery doctrine could only be applied to secondary evidence. *Stith*, 506 N.E.2d at 914. The limitation of applying the inevitable discovery doctrine only to secondary evidence illustrates the seminal difference between the application of this doctrine under New York and federal law. For further extrapolation of this doctrine as applied to *People v. Saldana*, see Ara Ayvazian, *City Court of New York, City of Watertown, People v. Saldana*, 27 Touro L. Rev. 631 (2011). See also *United States v. Pimentel*, 810 F.2d 366, 368 (2d Cir. 1987); cf. *Nix v. Williams*, 467 U.S. 431, 446 (1984) (holding that the “[e]xclusion of physical evidence that would inevitably have been discovered adds nothing to either the integrity or fairness of a criminal trial;” thus the Court held

After analyzing the warrant requirements under both the United States and New York Constitutions, the emergency exceptions thereto, and the inevitable discovery doctrine, the court held that the warrantless search by Officer March was illegal and that the evidence of marijuana cultivation was inadmissible.<sup>26</sup> As a result of the court's decision, Saldana's motion to dismiss was granted.<sup>27</sup>

The genesis of scrutiny surrounding post-fire emergency exceptions to the warrant requirements is seen in the Supreme Court decision, *Michigan v. Tyler*.<sup>28</sup> *Tyler* is the landmark authority on post-fire searches and the seminal decision listing guidelines necessary to be followed for a legal search and seizure.<sup>29</sup> In *Tyler*, approximately three hours after a fire broke out and while the fire department was watering down the smoldering embers, the fire chief arrived to determine the cause of the fire.<sup>30</sup> The chief was informed that two containers of flammable liquid had been found at the scene, and he communicated the information to the police based on his suspicion of arson.<sup>31</sup> The police and the chief took photographs of the scene, but returned to investigate the arson five hours later, after the fire was extinguished and the firefighters had left.<sup>32</sup> During this second investigation they uncovered evidence suggestive of a fuse trail.<sup>33</sup> Three weeks later, a Michigan State policeman returned to investigate and found a piece of fuse and further evidence suggesting arson as the cause of the fire.<sup>34</sup> The defendants were consequently arrested and convicted of conspiracy to burn real property.<sup>35</sup>

---

there was no need to distinguish between primary and secondary evidence). For more detail on the differences between primary and secondary evidence, see Jessica Forbes, Note, *The Inevitable Discovery Exception, Primary Evidence, and the Emasculation of the Fourth Amendment*, 55 *FORDHAM L. REV.* 1221 (1987).

<sup>26</sup> *Saldana*, 2009 WL 4667446, at \*1.

<sup>27</sup> *Id.* at \*5. Therefore, the court ruled that the second-hand discovery and resulting search and seizure of a marijuana growing operation occurring as a result of a warrantless search, when no emergency exception continued to exist, infringed on a person's Fourth Amendment and New York Constitutional rights.

<sup>28</sup> 436 U.S. 499 (1978).

<sup>29</sup> *Id.* at 507-08.

<sup>30</sup> *Id.* at 501.

<sup>31</sup> *Id.* at 501-02.

<sup>32</sup> *Id.* at 502.

<sup>33</sup> *Tyler*, 436 U.S. at 502.

<sup>34</sup> *Id.* at 503. The Court noted that all the entries and seizures were made without warrants or the consent of the defendants. *Id.* at 502-03.

<sup>35</sup> *Id.* at 501.

2011] *EMERGENCY EXCEPTION TO FOURTH AMENDMENT* 689

The Supreme Court faced numerous issues involving the warrantless searches and seizures that occurred at the premises after the emergency ended. The Court determined that victims of a fire maintain a reasonable expectation of privacy even after a fire occurs in their home.<sup>36</sup> The Court reasoned that even after a fire has taken place in a home, residents and their personal belongings continue to live and remain on the property.<sup>37</sup>

Furthermore, the Court made a requirement for post-fire investigations, stating: “[e]ven though a fire victim’s privacy must normally yield to the vital 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” by issuing a warrant based on reasonable cause.<sup>38</sup>

Under prior case law, the Court stated that the “basic purpose of this Amendment . . . is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials.”<sup>39</sup> However, the Court in *Tyler* recognized that there were certain situations in which a warrantless entry “may be legal when there is compelling need for official action and no time to secure a warrant.”<sup>40</sup>

---

<sup>36</sup> *Id.* at 505.

<sup>37</sup> *Tyler*, 436 U.S. at 505 (“[The argument] that innocent fire victims inevitably have no protectible [sic] expectations of privacy in whatever remains of their property -- is contrary to common experience.”).

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 . . . . Searches for administrative purposes, like searches for evidence of crime, are encompassed by the Fourth Amendment. And, under that Amendment, “[O]ne 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.”

*Id.* at 506 (quoting *Camara v. Municipal Court*, 387 U.S. 523, 528-29 (1967)).

<sup>38</sup> *Id.* at 507-08. “[O]fficial entries to investigate the cause of a fire must adhere to the warrant procedures of the Fourth Amendment.” *Id.* at 508. See *See v. City of Seattle*, 387 U.S. 541, 544-45 (1967).

<sup>39</sup> *Camara*, 387 U.S. at 528.

<sup>40</sup> *Tyler*, 436 U.S. at 509. See, e.g., *Warden v. Hayden*, 387 U.S. 294 (1967) (hot pursuit); *Ker v. California*, 374 U.S. 23 (1963) (prevent destruction of evidence); *United States v. Urban*, 710 F.2d 276 (6th Cir. 1983) (presence of explosive chemicals justified warrantless investigation); *United States v. Francis*, 327 F.3d 729 (8th Cir. 2003) (methamphetamine lab

These “emergency exceptions” are used to circumvent Fourth Amendment warrant requirements.<sup>41</sup> The Court concluded that warrantless entries by firefighters during a fire are neither arbitrary invasions nor unconstitutional, and that “once in a building for this purpose, firefighters may seize evidence of arson that is in plain view.”<sup>42</sup> As a result, the Court held that the defendants’ constitutional rights “were not violated by the entry of the firemen to extinguish the fire . . . [or by the] removal of the two plastic containers of flammable liquid.”<sup>43</sup>

A warrant is not required in order to investigate a fire once the last flame has been extinguished.<sup>44</sup> The Court held that “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,” as time is needed afterward to preserve evidence or seek out continuing dangers.<sup>45</sup> Furthermore, the Court reasoned that “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.”<sup>46</sup>

Applying its reasoning, the Court viewed the re-entry of the fire chief and the police approximately five hours after the fire had been put out as a continuation of the constitutional warrantless entry made earlier when the fire was being extinguished.<sup>47</sup> However, the

---

was exigent circumstance); *see also* *South Dakota v. Opperman*, 428 U.S. 364, 375 (1976) (“Whether a search and seizure is unreasonable within the meaning of the Fourth Amendment depends upon the facts and circumstances of each case . . . .” (quoting *Cooper v. California*, 386 U.S. 58, 59 (1967))).

<sup>41</sup> *Saldana*, 2009 WL 4667446, at \*2.

<sup>42</sup> *Tyler*, 436 U.S. at 509 (“A burning building clearly presents an exigency of sufficient proportions to render a warrantless entry ‘reasonable.’ . . . [I]t would defy reason to suppose that firemen must secure a warrant or consent before entering a building structure to put out the blaze.”); *Coolidge v. New Hampshire*, 403 U.S. 443, 465-66 (1971) (“Where the initial intrusion that brings the police within plain view of such an article is supported, not by a warrant, but by one of the recognized exceptions to the warrant requirement, the seizure is also legitimate.”).

<sup>43</sup> *Tyler*, 436 U.S. at 509.

<sup>44</sup> *Id.* at 509-10 (stating an opposite view “of the firefighting function is unrealistically narrow, however. Fire officials are charged not only with extinguishing fires, but with finding their causes”).

<sup>45</sup> *Id.* at 510 (“Immediate investigation may also be necessary to preserve evidence from intentional or accidental destruction.”). The Court further recognized that the roles of firefighters in different circumstances vary. *Id.* at n.6.

<sup>46</sup> *Id.* at 510.

<sup>47</sup> *Tyler*, 436 U.S. at 511.

2011] *EMERGENCY EXCEPTION TO FOURTH AMENDMENT* 691

entries that occurred three weeks later were “clearly detached from the initial exigency and warrantless entry.”<sup>48</sup> The Court concluded that all the evidence obtained from these unconstitutional searches was inadmissible.<sup>49</sup> The general guideline established by *Tyler* is that “an entry to fight a fire requires no warrant, and that once in the building, officials may remain there for a reasonable time to investigate the cause of the blaze. Thereafter, additional entries to investigate . . . must be made pursuant to the warrant procedures governing administrative searches.”<sup>50</sup>

The Supreme Court has held that in emergency situations police “may seize any evidence that is in plain view during the course of their legitimate emergency . . . .”<sup>51</sup> However, what is at issue is whether the situation qualifies as an emergency, as shown by the Supreme Court decisions in *Mincey v. Arizona*<sup>52</sup> and *Michigan v. Clifford*.<sup>53</sup> In *Mincey*, the Court stated that even though police did have the right to respond to emergency situations, warrantless entries were only reasonable when the officers believed someone’s life or limb was in jeopardy.<sup>54</sup> Although the police officers were investigating a murder in *Mincey*, a warrant was required because no emergency sit-

---

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* at 511. Justice Stevens concurred with the majority opinion: “In this case, there obviously was a special enforcement need justifying the initial entry to extinguish the fire, and I agree that the search on the morning after the fire was a continuation of that entirely legal entry.” *Id.* at 514 n.3 (Stevens, J., concurring). Justice White, with whom Justice Marshall agreed, stated: “The fact that the firemen were willing to leave demonstrates that the exigent circumstances justifying their original warrantless entry were no longer present.” *Tyler*, 436 U.S. at 515 (White, J., dissenting). Furthermore, Justice White pointed out that the subsequent entries by the chief and police were for the purpose of gathering evidence of a crime. *Id.* at 516. These searches were not in the scope of the original entry and therefore should have required a warrant. “[S]earches for criminal evidence are of special significance under the Fourth Amendment.” *Id.* See also *Camara*, 387 U.S. at 534-35. Also dissenting, Justice Rehnquist stated that all the entries made were “reasonable” and therefore did not violate the defendants’ Fourth Amendment rights. *Tyler*, 436 U.S. at 516-17 (Rehnquist, J., dissenting). Justice Rehnquist’s reasoning was based on the fact that the premises had obtained substantial damage and could not have been used in its post-fire condition. *Id.* at 517.

<sup>51</sup> *Mincey v. Arizona*, 437 U.S. 385, 393 (1978) (citing *Tyler*, 436 U.S. at 509; *Coolidge*, 403 U.S. at 465).

<sup>52</sup> 437 U.S. 385.

<sup>53</sup> 464 U.S. 287 (1984).

<sup>54</sup> *Mincey*, 437 U.S. at 392-93 (citing *Wayne v. United States*, 318 F.2d 205, 212 (D.C. Cir. 1963)).

uation existed to preserve life, limb, or evidence.<sup>55</sup> In *Clifford*, the Supreme Court attempted to clarify its opinion in *Tyler*.<sup>56</sup> Although both *Clifford* and *Tyler* encompass officials performing a post-fire arson investigation, the Court focused on the post-fire search in regard to a criminal investigation.<sup>57</sup> The Court held that a search warrant was necessary for any post-fire criminal investigation because it exceeded the scope of the emergency exceptions.<sup>58</sup> However, “[i]f evidence of criminal activity is discovered during the course of a valid . . . search, it may be seized under the ‘plain view’ doctrine.”<sup>59</sup> Therefore, under federal law “[a]n object that comes into view during such a search may be preserved without a warrant.”<sup>60</sup>

*Brigham City v. Stuart*<sup>61</sup> illustrates the seminal difference between federal law and New York law in regard to the Fourth Amendment.<sup>62</sup> In *Brigham*, officers responded to a noise complaint and witnessed an altercation among party-goers inside a residence.<sup>63</sup> The officers yelled from outside that they were present, and upon observing no response, entered the home.<sup>64</sup> As a result, three adults were charged with disorderly conduct, intoxication, and contributing to the delinquency of a minor.<sup>65</sup> The Court faced the issue of whether the officers’ warrantless entry into the home was a violation of the defendants’ Fourth Amendment rights.<sup>66</sup> Holding that it was not, the Court revisited its prior cases, stating: “law enforcement officers may make a warrantless entry onto private property to fight a fire and investigate its cause, to prevent the imminent destruction of evidence, or to engage in ‘hot pursuit’ of a fleeing suspect.”<sup>67</sup> Along with those

---

<sup>55</sup> *Id.* at 393-94 (“There was no indication that evidence would be lost, destroyed, or removed during the time required to obtain a search warrant.”).

<sup>56</sup> *Clifford*, 464 U.S. at 289 (“We granted certiorari to clarify doubt that appears to exist as to the application of our decision in *Tyler*.” (citing *Michigan v. Clifford*, 459 U.S. 1168 (1983) (writ of certiorari))).

<sup>57</sup> *Id.* at 294.

<sup>58</sup> *Id.* at 294-95.

<sup>59</sup> *Id.* at 294 (citing *Coolidge*, 403 U.S. at 465).

<sup>60</sup> *Id.* at 295 n.6.

<sup>61</sup> 547 U.S. 398 (2006).

<sup>62</sup> *See Saldana*, 2009 WL 4667446, at \*3 n.6.

<sup>63</sup> *Brigham*, 547 U.S. at 400-01.

<sup>64</sup> *Id.* at 401.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.* at 400.

<sup>67</sup> *Id.* at 403, 406 (citing *Tyler*, 436 U.S. at 509; *Ker*, 374 U.S. at 40; *United States v. San-*



2011] *EMERGENCY EXCEPTION TO FOURTH AMENDMENT* 693

emergency exceptions, the exigency to assist a person who is seriously injured or threatened also justifies warrantless conduct.<sup>68</sup> The defendants argued that the officers' entry into the home was motivated to make arrests, rather than quell violence, and that searches under the emergency exceptions to the Fourth Amendment "may not be 'primarily motivated by intent to arrest and seize evidence.'" <sup>69</sup> The Court rejected that argument, stating that: "An action is reasonable under the Fourth Amendment, regardless of the individual officer's state of mind, as long as the circumstances, viewed *objectively*, justify the action."<sup>70</sup> Therefore, the motivation or intent of the officers was irrelevant:

Our prior cases make clear that the subjective motivations of the individual officers . . . have no bearing on whether a particular seizure is unreasonable under the Fourth Amendment. It 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.<sup>71</sup>

Thus, when searching a premises or seizing evidence, the Supreme Court has made clear that the subjective intentions or motivations of the official conducting the search does not make a search illegal.<sup>72</sup>

The circuit courts have heard numerous emergency exception

---

tana, 427 U.S. 38, 42 (1976)).

<sup>68</sup> *Brigham*, 547 U.S. at 403. More recently, in *Michigan v. Fisher*, 130 S. Ct. 546, 549 (2009) (per curiam), the Supreme Court held that "Officers do not need ironclad proof of 'a likely serious, life-threatening' injury to invoke the emergency aid exception." Instead, the touchstone of the Fourth Amendment is reasonableness, and it sufficed to invoke the emergency exception doctrine because the officers reasonably believed the defendant had hurt himself. *Id.* at 548-49.

<sup>69</sup> *Brigham*, 547 U.S. at 404 (citing *Brigham City v. Stuart*, 122 P.3d 506, 513 (Utah 2005)).

<sup>70</sup> *Id.* at 403 (quoting *Scott v. United States*, 436 U.S. 128, 138 (1978)) (internal quotation marks omitted). See, e.g., *Bond v. United States*, 529 U.S. 334, 338 n.2 (2000); *Whren v. United States*, 517 U.S. 806, 813 (1996).

<sup>71</sup> *Brigham*, 547 U.S. at 404-05 (quoting *Graham v. Connor*, 490 U.S. 386, 397 (1989)) (internal quotation marks omitted).

<sup>72</sup> *Id.* at 404.

cases, which are important to the current jurisprudence of alleged Fourth Amendment violations. Prior to *Tyler*, in *United States v. Brand*,<sup>73</sup> the circuit court opined on the warrantless entry of officers subsequent to an emergency situation.<sup>74</sup> In *Brand*, the defendant overdosed and was in need of medical treatment.<sup>75</sup> An ambulance and a police officer were dispatched to the scene, entered the defendant's home, and discovered evidence of drug paraphernalia.<sup>76</sup> The officer then called for backup, who arrived after the defendant had been placed in the ambulance and the medical emergency had passed.<sup>77</sup> The court faced the issue of whether the backup officers' warrantless entry into the defendant's home was a violation of his Fourth Amendment rights.<sup>78</sup> Although the medical emergency subsided, the court viewed that the medical personnel initially legally invaded the privacy interest of the defendant, and therefore additional officials or investigators were able to join the "search" as long as the subsequent entries were confined to the scope of the original invasion.<sup>79</sup> The items found during the initial intrusion were in plain view and the additional officers confined themselves to the area in which the original legal warrantless search occurred; therefore, the seizure of evidence was legal and admissible.<sup>80</sup>

However, two years after *Brand*, the Ninth Circuit, in *United States v. Hoffman*,<sup>81</sup> determined that once the emergency situation ended, so have the rights of officials or investigators to freely search a person's home.<sup>82</sup> In *Hoffman*, once a fire was under control, the firefighters followed routine procedure and removed the defendant's smoldering mattress, under which they discovered a sawed-off shotgun.<sup>83</sup> Approximately thirty minutes after the fire was extinguished, a police officer arrived at the scene and was informed about the wea-

---

<sup>73</sup> 556 F.3d 1312 (5th Cir. 1977).

<sup>74</sup> *Id.* at 1317.

<sup>75</sup> *Id.* at 1314.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.* at 1314, 1317 n.8.

<sup>78</sup> *Brand*, 556 F.2d at 1317.

<sup>79</sup> *Id.* at 1317-19 n.9. *See, e.g., Green*, 474 F.2d at 1390.

<sup>80</sup> *Brand*, 556 F.2d at 1318-19.

<sup>81</sup> 607 F.2d 280 (9th Cir. 1979).

<sup>82</sup> *Id.* at 283.

<sup>83</sup> *Id.* at 282.

2011] *EMERGENCY EXCEPTION TO FOURTH AMENDMENT* 695

pon.<sup>84</sup> As a result, the police officer entered the premises and seized the gun.<sup>85</sup> The court reasoned that “[a]bsent exigent circumstances giving [the officer] a right to be in the trailer, the plain view observation of the shotgun would be tainted by the officer’s unlawful presence and the shotgun would be rendered inadmissible as the ‘fruit’ of the illegal entry.”<sup>86</sup> Although the court, citing *Tyler*, recognized the rights of firefighters to enter a burning building without a warrant and remain there for a reasonable time after the fire was extinguished, the majority found the emergency exception doctrine inapplicable.<sup>87</sup> The fire had been extinguished and “[t]he mere fact that a fire has occurred does not give police officers Carte blanche to enter one’s home, even when armed with probable cause to suspect that evidence of a crime may be within the premises.”<sup>88</sup> The court explained its rejection of the exception, stating that the “gun was not a fire hazard nor, with firemen securing the trailer and with appellant confined . . . , was there any necessity to seize the weapon in order to protect it from destruction.”<sup>89</sup>

Distinguishing *Brand*, the court held that the officer exceeded the scope of the initial search: the officer “did not enter the trailer to aid in extinguishing the blaze or to investigate its cause. His only purpose . . . was to seize evidence of an unrelated federal crime.”<sup>90</sup> The mere fact that the officer physically confined himself to the defendant’s trailer where the firefighters had been, did not control the Fourth Amendment inquiry.<sup>91</sup> “[N]o citizen should reasonably expect that, because a fire has occurred in his home, and certain few officials may enter, any sort of public officer may thereafter invade his home for purposes unrelated to the initial intrusion.”<sup>92</sup>

In *United States v. Parr*,<sup>93</sup> the Eleventh Circuit applied the reasoning from *Tyler* to a non-arson case. The circuit court faced a

---

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Hoffman*, 607 F.2d at 283 (citing *Wong Sun v. United States*, 371 U.S. 471, 484-87 (1963); *United States v. Dugger*, 603 F.2d 97, 98 (9th Cir. 1979)).

<sup>87</sup> *Hoffman*, 607 F.2d at 283 (citing *Tyler*, 436 U.S. at 509).

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.* at 284.

<sup>91</sup> *Id.*

<sup>92</sup> *Hoffman*, 607 F.2d at 285.

<sup>93</sup> 716 F.2d 796 (11th Cir. 1983).

case involving the post-fire investigation summoning of a police officer to seize evidence.<sup>94</sup> In *Parr*, after the fire department extinguished a fire at the defendant's home, they performed a routine sweep of the house for salvageable property and noticed counterfeit bills in the kitchen.<sup>95</sup> The fire marshal contacted the police, who responded to the scene, counted the money, and eventually seized the evidence.<sup>96</sup> The court considered whether fire officials had the ability to freely search the home in order to salvage valuables for the victim of the fire, and held that when firefighters were engaged in a purpose that was not clearly defined as one of their core duties, "searches of a burned dwelling . . . after the fire has been extinguished, do not fall within the exigent circumstances created by the fire and thus are unlawful in the absence of a warrant."<sup>97</sup> Therefore a warrant is necessary for any search not related to the core duties of firefighters.<sup>98</sup>

When determining the constitutionality of a search and seizure, it is also important to consider state law. The primary New York State authority for the emergency exceptions to warrant requirements comes from the leading New York Court of Appeals case, *People v. Mitchell*.<sup>99</sup> In *Mitchell*, a resident of a hotel called the police asking for assistance in locating a missing maid.<sup>100</sup> After searching most of the hotel, the police arrived at the hotel room of the defendant, who stated that he did not know where the maid was and consented to a search of his room.<sup>101</sup> The officers took a quick glance of the room and departed the scene.<sup>102</sup> However, a few hours later, a detective of the New York City Homicide Squad arrived at the hotel, obtained a management passkey, accessed the defendant's

---

<sup>94</sup> *Id.* at 801.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Id.* at 810, 812.

<sup>98</sup> *Parr*, 716 F.2d at 812. The court further concluded that the ease of proceeding without a warrant did not render a search legal, because the necessity of warrants in these situations protects the privacy interests of individuals. *Id.* at 812 n.18 ("The mere fact that law enforcement may be made more efficient can never by itself justify disregard of the Fourth Amendment. The investigation of crime would always be simplified if warrants were unnecessary." (quoting *Mincey*, 437 U.S. at 393)).

<sup>99</sup> 347 N.E.2d 607 (N.Y. 1976).

<sup>100</sup> *Id.* at 608.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

2011] *EMERGENCY EXCEPTION TO FOURTH AMENDMENT* 697

room, and discovered bloodstains on the bedding, and eventually, the mutilated body.<sup>103</sup>

The defendant claimed that the detective's entry into his room was a violation of his Fourth Amendment rights because the officer did not have a warrant or probable cause.<sup>104</sup> The court set the standard for applying the emergency exception doctrine, stating: first, that "[t]he police must have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property."<sup>105</sup> Second, that "[t]he search must not be primarily motivated by intent to arrest and seize evidence."<sup>106</sup> Lastly, that "[t]here must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched."<sup>107</sup> Applying these guidelines, the court held that the warrantless entry and search by the detective was not a Fourth Amendment violation because: the primary intent was to find the maid, the emergency situation of a missing person was justified, and the detective had a reasonable basis to search the immediate location of where the maid went missing, which included the defendant's room.<sup>108</sup>

In its first case dealing with post-fire warrantless search and seizures, the New York Court of Appeals decided *People v. Calhoun*<sup>109</sup> based on the Supreme Court's holding in *Tyler*. In *Calhoun*, after firefighters were unable to determine if a fire was completely extinguished, they sought the assistance of fire investigators to aid them in a final search.<sup>110</sup> Four hours later, the investigators inspected the residence for any signs of arson and soon discovered burn pat-

---

<sup>103</sup> *Id.* at 608-09.

<sup>104</sup> *Mitchell*, 347 N.E.2d at 609.

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *Id.* (citing Edward G. Mascolo, *The Emergency Doctrine Exception to the Warrant Requirement Under the Fourth Amendment*, 22 BUFF. L. REV. 419, 425-29 (1973)).

<sup>108</sup> *Mitchell*, 347 N.E.2d at 609-11 ("The search of defendant's room was not interdicted by the Fourth Amendment because it was triggered in response to an emergency situation and was not motivated by the intent to apprehend . . . or to seize evidence."). However, the court did note that warrantless searches will still be closely scrutinized for any constitutional infractions and that the "reasonableness" of the search is the benchmark of the Fourth Amendment. *Id.* at 611 (citing *People v. Martinez*, 339 N.E.2d 162, 167 (N.Y. 1975)).

<sup>109</sup> 402 N.E.2d 1145 (N.Y. 1980).

<sup>110</sup> *Id.* at 1146.

terns caused by a liquid accelerant.<sup>111</sup> The Court of Appeals faced the issue of whether the warrantless search by fire investigators, after the fire had already been extinguished, was constitutional.<sup>112</sup> Although the court noted that the rights of citizens are not diminished “simply because one’s home has been ravaged by fire,” the court found that the entry by the fire investigators satisfied *Mitchell*’s emergency exception guidelines.<sup>113</sup> The emergency exception “sanctions warrantless searches and seizures in circumstances . . . [with the] threat of destruction or removal of contraband or other evidence of criminality.”<sup>114</sup> Although the fire had died out, the chance that a hidden danger still existed was apparent.<sup>115</sup> Looking at the intent of the fire investigators, the court stated that their duties were to examine fires with an undetermined origin.<sup>116</sup> The investigators were not told in advance that arson was the cause of the blaze, which negated any motive to seize evidence and satisfied the second *Mitchell* element.<sup>117</sup> Finally, the court, relying on *Tyler*, held that the investigators’ entry four hours after the firefighters had extinguished the fire was another part of the overall mission to fight a fire.<sup>118</sup>

The New York Court of Appeals has never applied the ideology implemented in *Brigham* on the question of intent during a search.<sup>119</sup> For this reason the federal and New York State laws on

<sup>111</sup> *Id.* at 1146-47.

<sup>112</sup> *Id.* at 1148.

<sup>113</sup> *Id.* at 1147-48.

<sup>114</sup> *Calhoun*, 402 N.E.2d at 1148.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.* at 1148-49.

<sup>117</sup> *Id.* at 1149 (“Thus, had there been a finding that the visit to the premises was motivated instead primarily by an intent to gather support for an arson prosecution, the warrantless intrusion might well have exceeded the bounds of the emergency exception and trespassed on the constitutional guarantee.”). See *Mitchell*, 347 N.E.2d at 609.

<sup>118</sup> *Calhoun*, 402 N.E.2d at 1150.

In the circumstances of this case, we hold that the warrantless search of the defendant’s residential apartment by two fire marshals in the aftermath of a fire whose cause they were intent on discovering did not abuse the proscriptions of either the Fourth Amendment to the Federal Constitution or the comparable protection to be found in section 12 of article I of our State Constitution.

*Id.* at 1146.

<sup>119</sup> *Saldana*, 2009 WL 4667446, at \*3 n.6 (“The Court of Appeals has not yet decided whether to adopt *Brigham City*’s holding or to retain *Mitchell*’s stricter standard.”). See *People v. Dallas*, 865 N.E.2d 1, 1 (N.Y. 2007).

2011] *EMERGENCY EXCEPTION TO FOURTH AMENDMENT* 699

warrantless searches differ. Prior to the Supreme Court's decision of *Brigham*, the New York Court of Appeals, in *People v. Knapp*,<sup>120</sup> was faced with the issue of whether a warrantless search of the defendant's home by police officers violated his constitutional rights.<sup>121</sup> Although no fire existed in *Knapp*, the court still reviewed the emergency exception doctrine.<sup>122</sup> Juxtaposing the New York and United States Constitutions, the court stated: "we start with the reminder that our Constitutions accord special protection to a person's expectation of privacy in his own home."<sup>123</sup> The purpose of the emergency doctrine is to justify an exigent circumstance where it would be "impossible to obtain a warrant in sufficient time to preserve evidence or contraband threatened with removal or destruction."<sup>124</sup> On this premise, the court in *Knapp* reasoned that no emergency situation existed where drugs were recovered after the emergency subsided, and therefore the search was illegal.<sup>125</sup> In circumstances where drugs are recovered after an emergency situation the court stated that the warrantless seizure was unconstitutional:

The constitutional protections do not hinge upon whether drugs or other contraband are capable of easy removal or destruction. Absent any showing that they were self-destructible . . . , the fact that they were beyond the reach of any destructive agency, human or mechanical, ruled out any inherent exigency.<sup>126</sup>

The court was not sympathetic to the People's argument that the further entries by law enforcement personnel were a continuation of the initial legal entry.<sup>127</sup> "There was therefore no excuse for proceeding without a warrant, unless it was the personal impatience or inconvenience of the police, considerations which never may be permitted to

---

<sup>120</sup> 422 N.E.2d 531 (1981).

<sup>121</sup> *Id.* at 532 ("[W]e are called upon to decide whether the warrantless search of defendant's home, conducted at the time of his arrest, was reasonable within the meaning of our Constitutions.") (citations omitted).

<sup>122</sup> *Id.* at 534.

<sup>123</sup> *Id.* at 533.

<sup>124</sup> *Id.* at 534-35 (quoting *People v. Vaccaro*, 348 N.E.2d 886, 889 (1976)) (internal quotation marks omitted).

<sup>125</sup> *Knapp*, 422 N.E.2d at 535.

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

outweigh the constitutional interests at stake.”<sup>128</sup>

As present case law stands, the New York Court of Appeals still reads article I, section 12 (New York’s equivalent of the Fourth Amendment) with the three guidelines applied in *Mitchell*.<sup>129</sup> In *People v. Molnar*,<sup>130</sup> the New York Court of Appeals permitted evidence at trial that had been seized pursuant to the emergency exception.<sup>131</sup> In this case the emergency exception applied to the uncovering of a murder victim’s body.<sup>132</sup> The court in *Molnar* held that the officers had a reasonable belief that: an emergency existed; the search was not motivated by an intent to arrest or seize evidence; and there was a reasonable basis to believe the emergency existed in the place where the search was conducted.<sup>133</sup> The majority touched upon the issue of intent and stated that “even if the possibility of the involvement of criminal agency was present in the minds of the searching officers, this contingency was not the primary motivation for the search . . . .”<sup>134</sup> Therefore, the New York Court of Appeals reaffirmed that intent is essential to a determination of whether a warrantless search is constitutional.<sup>135</sup>

In its first and most recent Fourth Amendment review since the Supreme Court’s holding in *Brigham*, the New York Court of Appeals, in *People v. Dallas*,<sup>136</sup> faced the issue of whether a search of the defendant’s apartment was properly conducted under the emergency doctrine.<sup>137</sup> In its brief opinion, the court restated the three elements of the emergency doctrine formulated in *Mitchell*<sup>138</sup> and stated: “[w]e have no occasion to consider whether our holding in *Mitchell* should be modified in light of the Supreme Court’s decision in *Brigham City v. Stuart*.”<sup>139</sup> Thus, the court recognized the difference that *Brigham* brought to the emergency exception doctrine.

---

<sup>128</sup> *Id.* (citing *Steagald v. United States*, 451 U.S. 204, 222 (1981)).

<sup>129</sup> *See Dallas*, 865 N.E.2d at 1.

<sup>130</sup> 774 N.E.2d 738 (N.Y. 2002).

<sup>131</sup> *Id.* at 738.

<sup>132</sup> *Id.*

<sup>133</sup> *Id.* at 740-43.

<sup>134</sup> *Molnar*, 774 N.E.2d at 741 n.4.

<sup>135</sup> *Id.*

<sup>136</sup> 865 N.E.2d 1.

<sup>137</sup> *Id.* at 1.

<sup>138</sup> *Id.* (citing *Mitchell*, 347 N.E.2d at 609).

<sup>139</sup> *Id.* *See Brigham*, 547 U.S. at 404.



2011] *EMERGENCY EXCEPTION TO FOURTH AMENDMENT* 701

However, a recent appellate division dissent in *People v. Edwards*,<sup>140</sup> which resulted in a three-to-two decision, the dissent touched upon the Supreme Court's ruling in *Brigham*.<sup>141</sup> Justices Scudder and Peradotto dissented, stating: "The validity of police conduct is not measured by the subjective intentions of the law enforcement officers . . . . Rather, it is measured by the objective circumstances, determined pursuant to a reasonable person standard."<sup>142</sup>

In *People v. Guins*,<sup>143</sup> long before the holding *Brigham*, the appellate division reaffirmed the question of intent during a warrantless search.<sup>144</sup> In *Guins*, the court faced the issue of "whether evidence seized by the police, without a warrant, from defendant's apartment following a fire, should have been suppressed."<sup>145</sup> The fire department and fire investigator responded to a fire, entered the apartment to search for damage, and found a security box surrounded by empty glassine envelopes.<sup>146</sup> Shortly thereafter, the police arrived to inspect "some alleged drug paraphernalia and some possible contraband in the closet" that the fire investigator had brought to the police's attention.<sup>147</sup> The police removed the security box, opened it, and discovered three kilograms of cocaine.<sup>148</sup> The court held that the search and seizure by the police was unconstitutional, and stated: "The fact that defendant was a victim of a fire of unknown origin did not diminish her right of privacy in her home."<sup>149</sup> Furthermore, it was deemed unconstitutional because the police's intent when entering the defendant's apartment was to seize evidence of a crime.<sup>150</sup> The emergency exception doctrine did not justify the entrance of the police officer, as "[t]he police had ample time to seek a warrant if they wanted to seize the security box."<sup>151</sup> Therefore, when evidence

<sup>140</sup> 884 N.Y.S.2d 528 (App. Div. 4th Dep't 2009).

<sup>141</sup> *Id.* at 533 (Scudder, J. & Peradotto, J., dissenting).

<sup>142</sup> *Id.*

<sup>143</sup> 569 N.Y.S.2d 541 (App. Div. 4th Dep't 1991).

<sup>144</sup> *Id.* at 541.

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> *Id.* at 542 (internal quotations omitted).

<sup>148</sup> *Guins*, 569 N.Y.S.2d at 542.

<sup>149</sup> *Id.* at 542-44.

<sup>150</sup> *Id.* at 543. *Cf. Mitchell*, 347 N.E.2d at 609 ("The search must not be primarily motivated by intent to arrest and seize evidence.").

<sup>151</sup> *Guins*, 569 N.Y.S.2d at 543. *Cf. People v. Stevens*, 871 N.Y.S.2d 525, 527 (App. Div. 4th Dep't 2008) (finding officers were not motivated by intent to seize evidence).

of a crime is found by firefighters, a warrantless entry by another law enforcement officer cannot be motivated by the intent to seize that particular evidence.<sup>152</sup>

In *People v. Crawford*,<sup>153</sup> the court held contrary to the opinion in *Guins*, and showed how a non-fire official's motive to search a premise was not in violation of the emergency exception guidelines.<sup>154</sup> In *Crawford*, after firefighters forcibly entered the defendant's apartment to fight a fire, a police officer on the scene checked for property damage, observed bags filled with crack cocaine in plain view, and seized the evidence.<sup>155</sup> Unlike *Guins*, the court found that the warrantless entry and seizure by the police met the requirements of the emergency exception because the firefighters "did not inform the police" officer of the criminal contraband.<sup>156</sup> Because the officer entered the premises without the intent to seize evidence of a crime, and the evidence that was seized was in plain view, it was not suppressed.<sup>157</sup>

In *People v. Christianson*,<sup>158</sup> the court established a definitive answer as to when a search warrant is required subsequent to a fire.<sup>159</sup> In *Christianson*, after a furnace fire was extinguished, the smoke cleared, and the cause of the fire known, the fire chief proceeded to investigate a boarded up section of the defendant's mobile home.<sup>160</sup> The chief contacted the police, reported the questionable barricade, and entered the defendant's home with the police to view the locked interior room.<sup>161</sup> The police noticed a small amount of marijuana in the defendant's living area and demanded that he unlock the interior room, revealing a marijuana growing operation.<sup>162</sup> The court in *Christianson*, citing *Guins*, held that the officer's warrantless entry and subsequent seizure of the marijuana was illegal and the emergen-

---

<sup>152</sup> *Guins*, 569 N.Y.S.2d at 543.

<sup>153</sup> 747 N.Y.S.2d 618 (App. Div. 4th Dep't 2002).

<sup>154</sup> *Id.* at 619.

<sup>155</sup> *Id.* at 618-19.

<sup>156</sup> *Id.* at 619.

<sup>157</sup> *Id.* at 618-19. See *People v. Brown*, 749 N.E.2d 170, 176-78 (N.Y. 2001), for the New York Court of Appeals' analysis on the plain view doctrine.

<sup>158</sup> 869 N.Y.S.2d 723 (App. Div. 4th Dep't 2008).

<sup>159</sup> *Id.* at 724.

<sup>160</sup> *Id.* at 723-24.

<sup>161</sup> *Id.* at 724.

<sup>162</sup> *Id.*

2011] *EMERGENCY EXCEPTION TO FOURTH AMENDMENT* 703

cy exception inapplicable, because: the fire had already been extinguished, the home had been ventilated, and the purpose of the officer's presence was to investigate the safety concerns exhibited by the boarded room.<sup>163</sup> Simply put, the duties of the firefighters had been completed, therefore, the emergency exception did not apply and the further entry and search by the officer was subject to a search warrant.<sup>164</sup>

Each case cited by the *Saldana* court conveyed that warrantless searches are per se unreasonable.<sup>165</sup> The court cited to the United States Supreme Court in *Tyler* to elucidate what the emergency exceptions to the Fourth Amendment entailed.<sup>166</sup> Although the *Saldana* court cited to federal cases, it is clear the court followed state law in determining that Officer March's entry was illegal. Implicitly, the court used New York precedent, among them *Mitchell*, to list the three requirements of the emergency exception.<sup>167</sup> Although the facts of each case were slightly different than the facts in *Saldana*, the court reasoned that Officer March's warrantless entry into Saldana's home was a violation of the Fourth Amendment.<sup>168</sup> The court determined that the officer's entry went beyond the scope of the emergency exception, and therefore required a warrant in order to seize the marijuana plants.<sup>169</sup>

New York and the federal government are not the only courts facing post-fire issues; in fact, other states have faced analogous circumstances.<sup>170</sup> However, when looking to New York cases, it is im-

<sup>163</sup> *Christianson*, 869 N.Y.S.2d at 724. The court held that the safety concerns did not fall within the scope of the emergency exception and did not pose a safety hazard to the defendant. *Id.* See *Guins*, 569 N.Y.S.2d at 543; see generally *Molnar*, 774 N.E.2d at 741; *Mitchell*, 347 N.E.2d at 609.

<sup>164</sup> *Christianson*, 869 N.Y.S.2d at 725.

<sup>165</sup> See *Mincey*, 437 U.S. at 390 (noting "searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment" (quoting *Katz v. United States*, 389 U.S. 347, 357 (1967))); *Calhoun*, 402 N.E.2d at 1147 (finding that "a warrantless intrusion by a government official is presumptively unreasonable" (citing *Vale v. Louisiana*, 399 U.S. 30, 34 (1970))).

<sup>166</sup> *Saldana*, 2009 WL 4667446, at \*2 (citing *Tyler*, 436 U.S. at 511).

<sup>167</sup> *Id.* (citing *Mitchell*, 347 N.E.2d at 609).

<sup>168</sup> *Id.* at \*1, 2.

<sup>169</sup> *Id.*

<sup>170</sup> See *Washington v. Bell*, 737 P.2d 254 (Wash. 1987). In *Bell*, police officers seized material from a marijuana growing operation without a warrant after it had been discovered by firefighters during the extinguishing of a fire. *Id.* at 255. The Supreme Court of Washington held that the seizure did not violate the Fourth Amendment. *Id.* at 255-56; see also

portant to note that the facts in *Saldana* are of first impression in New York's court system. In the post-fire warrantless search cases which New York has decided, the courts have frequently held that once the fire has been extinguished, the emergency exception ceases, and all further entries require a warrant.<sup>171</sup> *Saldana* relied on New York precedent; however, the New York Court of Appeals has never decided whether the *Mitchell* guidelines survive the Supreme Court's recent abrogation of the intent requirement in *Brigham*. Until this review occurs, future cases will surely question the *Mitchell* guidelines.<sup>172</sup>

When comparing the merits of the arguments posed by the majority and the dissenting opinions in *Tyler*, it is clear that the issue of whether a warrantless search of a house post-fire is constitutional is one which will continue to test the court system. The majority did not clarify what exactly is considered a reasonable time for officials to remain after a fire has been extinguished. Furthermore, the Court

---

Connecticut v. Eady, 733 A.2d 112 (Conn. 1999). In *Eady*, firefighters responded to a fire and while performing routine firefighter duties, discovered marijuana. *Id.* at 115. The firefighters conveyed the discovery to police officers at the scene. *Id.* The police officers entered and seized the marijuana without a warrant. *Id.* The high court of Connecticut concluded that the seizure was valid under the Fourth Amendment. *Id.* at 123. *See also* *Mazen v. Seidel*, 940 P.2d 924, 930 (Ariz. 1997) (holding that the entry by police to seize evidence of a growing operation discovered during routine firefighter procedure was lawful under the Fourth Amendment). *But see* *People v. Dajnowicz*, 204 N.W.2d 281, 286 (Mich. 1972) (holding that the police entry to seize evidence discovered by firefighters was a violation of the defendant's Constitutional rights).

<sup>171</sup> *E.g.*, *Guins*, 569 N.Y.S.2d at 553; *Christianson*, 869 N.Y.S.2d at 724.

<sup>172</sup> *See* *People v. Rodriguez*, 907 N.Y.S.2d 294, 297-98 (App. Div. 2d Dep't 2010). Here, the Second Department held:

[T]he decision in *Brigham City* created a conflict between the Fourth Amendment and New York law. However, since we find that the police in this case were presented with an emergency under both the *Mitchell* test and the rule adopted by the United States Supreme Court in *Brigham City*, we need not reach the issue of whether the New York Constitution requires retention of the 'subjective motivation' prong of the *Mitchell* test.

*Id.* at 297. *See also* *People v. Leggett*, 904 N.Y.S.2d 773, 774 (App. Div. 2d Dep't 2010) ("[I]n light of the United States Supreme Court's determination in *Brigham City v. Stuart* that '[t]he officer's subjective motivation is irrelevant' to *Fourth Amendment* analysis, an inquiry into the subjective motivations of the police is no longer necessary in determining whether that amendment was violated.") (citation omitted); *see also* *People v. Desmarat*, 833 N.Y.S.2d 559, 561 (App. Div. 2d Dep't 2007) ("Regardless of whether the New York State Constitution requires retention of the *Mitchell* standard, an issue we need not reach here, we find that, under the circumstances, the police were presented with an emergency situation under both the *Mitchell* rule and the *Brigham City* rule.") (citations omitted).

2011] *EMERGENCY EXCEPTION TO FOURTH AMENDMENT* 705

in *Tyler* did not consider the issue of whether the police should have obtained a warrant during the first entry into the burned premises because they were a member of a different law enforcement agency.

Given the Supreme Court's holding, it is apparent that the New York City Court of Watertown did not properly apply the *Tyler* decision when deciding *Saldana*. The decision reached in *Saldana* is inconsistent with the reasoning in *Tyler*. *Tyler* and *Saldana* have two distinct fact patterns. Because the decision in *Tyler* is devoid of whether the police's initial entry into the furniture store was a violation of the defendants' Fourth Amendment rights, the court in *Saldana* should have mentioned that this vital issue was not considered by the Supreme Court. The Court in *Tyler* held that the fire chief and police's entry onto the burned property five hours after the fire had been extinguished was constitutional. Therefore, if the court in *Saldana* correctly applied the reasoning and holding of the Supreme Court, it would have found that Officer March's initial entry into *Saldana*'s house was not a Fourth Amendment violation.<sup>173</sup>

In *Saldana*, no emergency existed at the time of Officer March's entry. The facts clearly show that the fire had been put out prior to the officer gaining entrance into the defendant's attic.<sup>174</sup> It was explicitly clear in *Tyler*'s progeny, *Clifford*, that further post-fire entries to investigate must be made pursuant to a search warrant. Justice White's dissent in *Tyler*, clearly proposed this premise six years earlier when he stated: "The state courts found that at the time of the first re-entry a criminal investigation was under way and that the purpose of the officers in re-entering was to gather evidence of crime. Unless we are to ignore these findings, a warrant was necessary."<sup>175</sup> Unlike *Parr*, the emergency had already subsided when the officer entered the defendant's living quarters, and the mere fact that the fire had existed did not create an ongoing emergency. Officer March's seizure of the marijuana should have been pursuant to a search warrant, evidenced by the Court's holding in *Mincey*. Furthermore, the reasoning in *Tyler*, that evidence can be seized as long as the warrantless entry is determined to be constitutional, is not applicable to New

---

<sup>173</sup> The better case to have used would have been *Clifford*, 464 U.S. at 293 (stating that post-fire investigations of a person's residence requires a search warrant absent emergency exceptions).

<sup>174</sup> *Saldana*, 2009 WL 4667446, at \*1.

<sup>175</sup> *Tyler*, 436 U.S. at 516 (White, J., dissenting).

York State law. Under New York General Municipal Law, firefighters do not have the authority to seize evidence or partake in any criminal investigation.<sup>176</sup>

Although the New York Court of Appeals has yet to apply the reasoning of *Brigham*, the decision in *Saldana* would most likely have resulted in the same outcome. As *Mitchell* provided, there are three guidelines to the application of the emergency exception. The facts in *Saldana* reveal that Officer March was motivated to seize evidence of criminality when he entered Saldana's residence. However, even without the second element of the *Mitchell* guidelines (officer's motivation to enter) the emergency exception would still not have applied because it is clear that there was no threat of removal or destruction of the defendant's fifteen marijuana plants. Therefore, there was no threat of destruction of the evidence like *Guins* and *Knapp*; Officer March had no excuse for proceeding without a warrant. Furthermore, juxtaposing *Calhoun*, Officer March's entry was not in furtherance of the firefighter's duties and therefore the court correctly distinguished *Calhoun* from the facts in *Saldana*.

One could argue that Officer March was only told that "they were growing something in the attic" and, due to this broad statement, he feared that an emergency existed.<sup>177</sup> It seems that the state's position was that the nature of what was told to Officer March could have been construed to rise to the level of an emergency. However, this theory stretches into the realm of hypotheticals; it would be irrational to decide law on the People's optimistic forecast that a potential danger exists.

When looking to cases not cited by the court in *Saldana*, the conclusion that a warrant is necessary for post-fire investigations is clear. Like *Hoffman*, Officer March did not enter the defendant's home while an emergency was present. Furthermore, the reasoning in *Saldana* is akin to *Hoffman*: "The mere fact that a fire has occurred does not give police officers Carte blanche to enter one's home, even when armed with probable cause to suspect that evidence of a crime may be within the premises."<sup>178</sup>

Therefore, *Saldana*'s holding is proper when based on either

---

<sup>176</sup> N.Y. GEN. MUN. LAW § 209-c (McKinney 2010) ("Investigations of crimes and apprehension of criminals are not firemanic duties . . .").

<sup>177</sup> *Saldana*, 2009 WL 4667446, at \*1.

<sup>178</sup> *Hoffman*, 607 F.2d at 283.

2011] *EMERGENCY EXCEPTION TO FOURTH AMENDMENT* 707

the three guidelines in *Mitchell* or the abrogation of intent in *Brigham*. This ruling will inevitably be used to support the proposition that law enforcement, in the absence of exigent circumstances, must obtain a valid warrant to seize evidence of a crime, even though the item was primarily discovered in plain view during a lawful warrantless post-fire investigation by a separate public official.

*Ara K. Ayvazian*\*

---

\* J.D. Candidate 2012, Touro College Jacob D. Fuchsberg School of Law; B.S. 2007, Ithaca College. I would like to thank all the people that have made a difference in my life, especially, my father, mother, and two brothers. Additionally, I would like to thank Professor Eileen Kaufman and Professor Gary Shaw for their exceptional insight and advice throughout the writing of this recent case. For the author's more in-depth constitutional analysis of *Saldana's* judgment in regard to the inevitable discovery doctrine, see Ara Ayvazian, *City Court of New York, City of Watertown, People v. Saldana*, 27 Touro L. Rev. 631 (2011).