

## COURT OF APPEALS OF NEW YORK

People v. McBride<sup>1</sup>  
(decided April 29, 2010)

Norman McBride was arrested for his involvement in a gunpoint robbery.<sup>2</sup> A grand jury indicted McBride for robbery in the first degree, robbery in the second degree, and “other related charges stemming from [the] incident.”<sup>3</sup> Before McBride pleaded guilty to attempted robbery in the second degree, he filed a motion to suppress evidence obtained at his home during his arrest.<sup>4</sup> The Supreme Court, New York County, conducted a pretrial hearing to determine whether McBride’s constitutional right against unlawful searches and seizures under the United States Constitution<sup>5</sup> and the New York State Constitution<sup>6</sup> were violated when police entered his home without a warrant.<sup>7</sup> The trial court denied McBride’s suppression motion and McBride was sentenced on his guilty plea.<sup>8</sup> McBride appealed the decision to the Appellate Division, First Department,

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<sup>1</sup> 928 N.E.2d 1027 (N.Y. 2010).

<sup>2</sup> *Id.* at 1029.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> The Fourth Amendment to the United States Constitution states, in pertinent part: “The right of the people to be secure in their persons . . . against unreasonable searches and seizures, shall not be violated. . . .”

<sup>6</sup> Article I, section 12 of the New York Constitution states, in pertinent part: “The right of the people to be secure in their persons . . . against unreasonable searches and seizures, shall not be violated. . . .”

<sup>7</sup> *McBride*, 928 N.E.2d at 1029. The court also addressed “whether the police unlawfully . . . seized physical evidence in [the defendant’s] home, whether the defendant’s lineup was unduly suggestive, and whether the statements taken from defendant by the police violated defendant’s *Miranda* rights.” *Id.* The court determined that the seizure of evidence was proper because the warrantless entry was lawful and the evidence was in plain view, the defendant’s lineup was not unduly suggestive, and there was no violation of the defendant’s *Miranda* rights because he knowingly waived those rights. *Id.* at 1031-32.

<sup>8</sup> *Id.* at 1029.

which upheld both the conviction and the sentence.<sup>9</sup> On further appeal, the New York Court of Appeals determined that exigent circumstances rendered the warrantless search lawful, and affirmed the decision.<sup>10</sup>

“[O]n March 22, 2004, Detective Shaska of the New York City Police Department went to . . . investigate a gunpoint robbery” at a restaurant in Manhattan that occurred the day before.<sup>11</sup> While at the restaurant, Shaska interviewed Mangual, an employee who saw McBride and two other men walk into the restaurant before the robbery occurred.<sup>12</sup> “Moments later, Mangual saw” McBride reveal a gun and “direct the restaurant manager to the” safe, from which McBride took money and thereafter fled with the other two men.<sup>13</sup>

Along with the detailed summary of events gathered from Mangual, Shaska obtained a list of former employees of the restaurant, which contained the defendant’s name.<sup>14</sup> Shaska learned that McBride had a criminal record and that he was on parole.<sup>15</sup> She contacted the parole officer to obtain McBride’s address and later that night went to McBride’s apartment with four police officers, including Detective Santeufemia.<sup>16</sup> While approaching the front door, the officers heard voices from inside the apartment and proceeded to knock on the door while identifying themselves, but there was no response.<sup>17</sup> McBride had instructed Leona Mitchell, a young woman in McBride’s apartment, to ignore the police officers’ requests.<sup>18</sup> After a few minutes, one officer used the intercom system to call the apartment, in which a person “believed to be male answered.”<sup>19</sup> At the same time, Shaska and another officer accessed a fire escape that enabled them to peer through a window of the apartment.<sup>20</sup> Spotting a man lying on the floor, “Shaska or her

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

<sup>10</sup> *McBride*, 928 N.E.2d at 1029.

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

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

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

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

<sup>15</sup> *McBride*, 928 N.E.2d at 1029.

<sup>16</sup> *Id.* at 1030.

<sup>17</sup> *Id.*

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

<sup>19</sup> *Id.*

<sup>20</sup> *McBride*, 928 N.E.2d at 1030.

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partner knocked on the window,” with guns drawn, and stated that they were from the police department.<sup>21</sup> Shortly after, Shaska observed Mitchell run towards the front door, where Santeufemia remained.<sup>22</sup> Mitchell answered the front door crying and hyperventilating.<sup>23</sup> Santeufemia attempted to calm Mitchell, who did not respond to his questions.<sup>24</sup> Because of her condition, Santeufemia “believe[d] that she was facing a life-threatening situation” and “decided to enter [McBride’s] apartment to investigate.”<sup>25</sup> While in the apartment, he saw McBride and handcuffed him.<sup>26</sup>

The lower court rejected the defendant’s argument that the conduct of the police at the apartment created exigent circumstances by frightening Mitchell and causing her to become distressed.<sup>27</sup> The New York Court of Appeals acknowledged that although the warrantless entry was lawful, “it would have been more prudent if the police obtained a warrant for defendant’s arrest before going to his home.”<sup>28</sup> Although three days elapsed between the identification of McBride as the gunman and his subsequent arrest, exigent circumstances justified the warrantless entry.<sup>29</sup>

In determining whether the warrantless entry was justified by exigent circumstances, the New York Court of Appeals used an objective approach adopted by the federal courts, which is comprised of a six-factor test:

- (1) the gravity or violent nature of the offense with which the suspect is to be charged;
- (2) whether the suspect is reasonably believed to be armed;
- (3) a clear showing of probable cause . . . to believe that the suspect committed the crime;
- (4) strong reason to believe that the suspect is in the premises being entered;
- (5) a likelihood that the suspect will escape if

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<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

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

<sup>24</sup> *Id.*

<sup>25</sup> *McBride*, 928 N.E.2d at 1030.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 1031.

<sup>28</sup> *Id.* at 1032.

<sup>29</sup> *Id.*

not swiftly apprehended; and (6) the peaceful circumstances of the entry.<sup>30</sup>

Although the factors were instrumental in the court's analysis, the court noted "that th[e] list is illustrative" and that "the ultimate inquiry . . . [wa]s 'whether in light of all the facts of the particular case there was an urgent need that justifies a warrantless entry[.]'"<sup>31</sup> The court determined that exigent circumstances were present based on the combination of "the police ha[ving] probable cause to arrest [McBride] for armed robbery, a violent crime[,] . . . [their] strong belief that [McBride] was inside his apartment and that they only entered the [] apartment after Mitchell opened the door and they observed her crying, hyperventilating, and [being] unresponsive to their questions."<sup>32</sup>

To fully comprehend the New York Court of Appeal's reasoning, it is essential to examine federal court decisions to explain the warrant requirement. In *Payton v. New York*,<sup>33</sup> the defendant moved to suppress evidence taken from his apartment by New York detectives without a warrant.<sup>34</sup> The detectives, having probable cause, went to the defendant's apartment with the intention of arresting him for an alleged murder of a gas station manager.<sup>35</sup> After knocking on the door with no response, even though "light and music emanated from the apartment," they requested emergency assistance to open the door.<sup>36</sup> About thirty minutes later, the officers entered the apartment.<sup>37</sup> No one was found in the apartment, but police obtained a .30-caliber shell casing, which "was seized and later admitted into evidence at [the] murder trial."<sup>38</sup> The trial court held that the warrantless entry by the officers to make a routine felony arrest "was authorized by the New York Code of Criminal Procedure."<sup>39</sup> The Appellate Division, First Department and the New

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<sup>30</sup> *McBride*, 928 N.E.2d at 1031 (quoting *United States v. Martinez-Gonzalez*, 686 F.2d 93, 100 (2d Cir. 1982) (internal quotation marks omitted)).

<sup>31</sup> *Id.* at 1031 (quoting *Martinez-Gonzalez*, 686 F.2d at 100).

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

<sup>33</sup> 445 U.S. 573 (1980).

<sup>34</sup> *Id.* at 577.

<sup>35</sup> *Id.* at 576.

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

<sup>37</sup> *Id.*

<sup>38</sup> *Payton*, 445 U.S. at 576-77.

<sup>39</sup> *Id.* at 577. As of January 15, 1970, the Code of Criminal Procedure, section 177 read:

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York Court of Appeals affirmed the judgment.<sup>40</sup>

The United States Supreme Court reversed, holding that it is unconstitutional for police to “mak[e] a warrantless and nonconsensual entry into a suspect’s home in order to make a routine felony arrest.”<sup>41</sup> The Court determined that warrantless searches inside a home are “condemned by the plain language of the first clause of the [Fourth] Amendment,” and are presumed to be unreasonable.<sup>42</sup> The Court, however, noted that “the warrantless entry to effect Payton’s arrest might have been justified by exigent circumstances.”<sup>43</sup> However, there was no emergency or dangerous situation that arose in the case for the Court to consider the exception.<sup>44</sup>

In *Kirk v. Louisiana*,<sup>45</sup> the Supreme Court overturned a Louisiana Court of Appeal’s decision that a warrantless entry, absent exigent circumstances, did not violate the Fourth Amendment.<sup>46</sup> The defendant was charged “with possession of cocaine with intent to distribute” after being arrested at his apartment by police officers who had been observing the apartment due to a “citizen complaint that drug sales were occurring there.”<sup>47</sup> While observing the apartment, the officers saw the defendant transact with a buyer and stopped the buyer once he left the apartment.<sup>48</sup> Concerned about the possibility of destruction of evidence, the officers decided to enter the apartment without a warrant and found cocaine and money from the transactions.<sup>49</sup> The defendant “filed a pretrial motion to suppress the evidence obtained” from the warrantless entry, but the trial court denied suppression of the evidence, and the defendant was convicted of the drug charges.<sup>50</sup> “On direct review to the Louisiana Court of

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“[A] peace officer may, without a warrant, arrest a person . . . when a felony has in fact been committed, and he has reasonable cause for believing the person to be arrest to have committed it.” *Id.* at 578.

<sup>40</sup> *Id.* at 578-79.

<sup>41</sup> *Id.* at 576.

<sup>42</sup> *Payton*, 445 U.S. at 585-86.

<sup>43</sup> *Id.* at 583.

<sup>44</sup> *Id.*

<sup>45</sup> 536 U.S. 635 (2002).

<sup>46</sup> *Id.* at 636.

<sup>47</sup> *Id.*

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

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

<sup>50</sup> *Kirk*, 536 U.S. at 636.

Appeals,” the defendant argued that there were no exigent circumstances to justify the warrantless entry in the apartment.<sup>51</sup> By a slim margin, the Louisiana Supreme Court denied review.<sup>52</sup> The court acknowledged the defendant’s argument, but decided not to determine whether exigent circumstances were present because “ ‘[t]he officers had probable cause to arrest and properly searched the defendant incident thereto.’ ”<sup>53</sup>

The Supreme Court did not agree with the Louisiana Court of Appeal’s decision. The Court relied upon its holding in *Payton*, stating that “police officers need[ed] either a warrant or probable cause plus exigent circumstances in order to make a lawful entry into a home.”<sup>54</sup> The lower court’s failure to examine whether exigent circumstances were present violated *Payton* and made the officer’s actions unconstitutional.<sup>55</sup>

*United States v. Martinez-Gonzalez*<sup>56</sup> expanded the *Payton* holding by applying the exigent circumstances exception. The Second Circuit reversed a judgment by the United States District Court for the Eastern District of New York that suppressed evidence seized in the defendant’s apartment obtained by a warrantless entry and arrest.<sup>57</sup> The defendant was arrested after police entered his apartment without a warrant and stopped him from disposing large quantities of white powder into a toilet.<sup>58</sup> The defendant was “indicted for conspiring to possess with intent to distribute cocaine.”<sup>59</sup> The defendant moved to suppress the evidence that was seized from the apartment, and the district court granted the motion.<sup>60</sup> The court determined that because “ ‘(t)here were no sounds indicating destruction of evidence . . . and there was no testimony from the [officers] that they feared such destruction,’ ” there were no exigent circumstances present, prohibiting a warrantless entry and

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<sup>51</sup> *Id.* at 636-37.

<sup>52</sup> *Id.* at 637 (noting that review was denied by a vote of four-to-three).

<sup>53</sup> *Id.* (quoting *Louisiana v. Dirk*, 773 So. 2d 259, 263 (4th Cir. 2000)).

<sup>54</sup> *Id.* at 638.

<sup>55</sup> *Kirk*, 536 U.S. at 638.

<sup>56</sup> 686 F.2d 93 (2d Cir. 1982).

<sup>57</sup> *Id.* at 94.

<sup>58</sup> *Id.* at 96.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

arrest.<sup>61</sup>

The Second Circuit reversed, holding that while the district court correctly applied the ruling in *Payton* and assessed whether exigent circumstances were present, it misinterpreted a decision made in *United States v. Gomez*.<sup>62</sup> The Second Circuit created a six-factor test to be used to assess whether exigent circumstances are present.<sup>63</sup> The list of factors is not exclusive because the absence of particular factors does not rule out the possibility of exigent circumstances being present, and other factors may be included when relevant.<sup>64</sup> The court held that exigent circumstances were present at the time of the warrantless entry because several factors of the six-factor test were met, such as the police having probable cause of the defendant's involvement in trafficking cocaine, a serious offense, knowing that any delay in arresting the defendant would likely result in the destruction of evidence, having reason to believe the defendant was armed because a revolver was found in an apartment of a woman whom the defendant had close connections with, and used a peaceful means to enter the apartment, by using the woman's key.<sup>65</sup> Therefore, the warrantless entry was justified and the evidence obtained from it was wrongfully suppressed.<sup>66</sup>

In *Payton*, the United States Supreme Court refused to consider what types of situations would be described as exigent circumstances.<sup>67</sup> However, in *Welsh v. Wisconsin*,<sup>68</sup> the Supreme Court took a step towards answering this question by holding that the Fourth Amendment prohibits a warrantless entry of the home to arrest for a minor civil traffic offense.<sup>69</sup> In *Welsh*, police officers responded to a call from a witness, who described the defendant's erratic driving and explained that he swerved off the road, seemed to

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<sup>61</sup> *Martinez-Gonzalez*, 686 F.2d at 97.

<sup>62</sup> 633 F.2d 999, 1008 (2d Cir. 1980) (indicating that exigent circumstances consist of "the classic sounds indicating destruction of evidence"). The Second Circuit in *Martinez-Gonzalez* stated that "the district court took too narrow a view" of this concept and what constitutes exigent circumstances "is not limited to circumstances indicating the destruction of evidence." *Martinez-Gonzalez*, 868 F.2d at 100.

<sup>63</sup> *Id.*

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

<sup>65</sup> *Id.* at 100-01.

<sup>66</sup> *Id.* at 102.

<sup>67</sup> *Welsh v. Wisconsin*, 466 U.S. 740, 742 (1984).

<sup>68</sup> *Id.* at 740.

<sup>69</sup> *Id.* at 754.

be either intoxicated or sick.<sup>70</sup> The defendant walked away from the scene before the police arrived, but the officer learned of the defendant's address from the abandoned vehicle's registration number and proceeded to his home.<sup>71</sup> After the defendant's step-daughter answered the door, the police entered the house without a warrant and placed the defendant under arrest for operating a motor vehicle while under the influence and refusing to take a breath-analysis test.<sup>72</sup> The Supreme Court of Wisconsin established that several factors for exigent circumstances were present, such as the " 'hot pursuit' of a suspect, the need to prevent physical harm to the offender and the public, and the need to prevent destruction of the evidence," reversed the appellate court's decision that the warrantless entry was unconstitutional, and upheld the trial court's judgment to suspend the defendant's driver's license.<sup>73</sup>

It was difficult for the Supreme Court justices to envision a warrantless entry that would be reasonable under the Fourth Amendment for a minor offense.<sup>74</sup> On this basis, the Supreme Court has been hesitant to find exigent circumstances concerning minor offenses, even if probable cause existed.<sup>75</sup> Although the police had probable cause to arrest the defendant, the hot pursuit claim had no merit "because there was no immediate or continuous pursuit of the" defendant, the defendant abandoned his car, and "there was little remaining threat to public safety."<sup>76</sup> To allow a warrantless entry into a home in an effort to preserve evidence for such a minor offense "would be to approve unreasonable police behavior that the principles of the Fourth Amendment will not sanction."<sup>77</sup> Therefore, the Supreme Court held that the gravity of the offense for which the arrest is to be made should be an important factor when considering if exigent circumstances exist.<sup>78</sup>

The existence of only one factor of the six-factor test,

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<sup>70</sup> *Id.* at 742.

<sup>71</sup> *Id.*

<sup>72</sup> *Welsh*, 466 U.S. at 743. The State of Wisconsin classifies driving while intoxicated as a noncriminal, civil offense for which there is no imprisonment. *Id.* at 754.

<sup>73</sup> *Id.* at 747-48.

<sup>74</sup> *Id.* at 753.

<sup>75</sup> *Id.* at 750.

<sup>76</sup> *Welsh*, 466 U.S. at 753.

<sup>77</sup> *Id.* at 754.

<sup>78</sup> *Id.* at 753.



although important, may not constitute exigent circumstances to justify a warrantless entry. For example, in *Mincey v. Arizona*,<sup>79</sup> the Supreme Court reversed the lower court's decision that the warrantless entry and search of the defendant's apartment had not violated the Fourth Amendment.<sup>80</sup> In *Mincey*, an undercover police officer arranged to purchase heroin from the defendant at his apartment.<sup>81</sup> In an effort to break up the drug sale, the officer, accompanied by nine other officers, gained entry into the apartment when one of the defendant's acquaintances opened the door.<sup>82</sup> The confrontation led to gun shots between the undercover officer and the defendant, resulting in the officer being wounded from the crossfire.<sup>83</sup> The *Mincey* Court held that police officers are not prohibited from warrantless entry by the Fourth Amendment when a person within a residence is in need of immediate assistance.<sup>84</sup> The Court noted that "[t]he need to protect or preserve life or avoid serious injury [] justifies [] what would be otherwise [an] illegal [entry]."<sup>85</sup>

However, the Court determined that a "warrantless search must be 'strictly circumscribed by the exigencies which justify its initiation.'" <sup>86</sup> Even though the initial warrantless entry to aid the wounded officer was justifiable due to an emergency, the ensuing entry of homicide officers and the four day search that occurred afterwards was not justified.<sup>87</sup> Although a homicide is a serious offense, the four day search, which "included opening dresser drawers and ripping up carpets[,] can hardly be rationalized in terms of the legitimate concerns that justify an emergency search."<sup>88</sup>

The Supreme Court has held that the determination of the existence of exigent circumstances by the six-factor test is measured by an objective analysis. In *Brigham City v. Stuart*,<sup>89</sup> the Court

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<sup>79</sup> 437 U.S. 385 (1978).

<sup>80</sup> *Id.* at 390.

<sup>81</sup> *Id.* at 387.

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

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

<sup>84</sup> *Mincey*, 437 U.S. at 392.

<sup>85</sup> *Id.* (quoting *Wayne v. United States*, 318 F.2d 205, 213 (D.C. Cir. 1963)).

<sup>86</sup> *Id.* at 393 (quoting *Terry v. Ohio*, 392 U.S. 1, 25-26 (1968)).

<sup>87</sup> *Id.*

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

<sup>89</sup> 547 U.S. 398 (2006).

determined that the subjective motives of police officers were irrelevant when they entered a home without a warrant in order to break up an altercation between several adult men and a juvenile.<sup>90</sup> An officer's state of mind is irrelevant, " 'as long as the circumstances, viewed *objectively*, justify [the] action.' "<sup>91</sup> The Court held that the officer's entry was reasonable to assist an injured adult and to halt the violence that was beginning to brew.<sup>92</sup> The Court determined that any police officer in that situation would have done the same because "[t]he role of a peace officer includes preventing violence and restoring order, not simply rendering first aid to casualties."<sup>93</sup>

The New York Court of Appeals decision in *McBride* was a result of the application of the objective approach that has been applied in prior New York State cases. In *People v. Levan*,<sup>94</sup> the Court of Appeals reversed an order by the Appellate Division stating that the warrantless entry of defendant's apartment by the police was lawful.<sup>95</sup> The police went to the defendant's apartment pursuant to an eyewitness report that the defendant shot someone.<sup>96</sup> When police approached the second floor of the apartment building, they observed the defendant's neighbor ring the defendant's doorbell and knock on his door.<sup>97</sup> As soon as the defendant answered the door, the officers entered the apartment with their guns drawn, arrested the defendant, and seized a gun that was found in his closet.<sup>98</sup> Although section 178 of the New York Code of Criminal Procedure<sup>99</sup> was deemed unconstitutional by the United States Supreme Court in *Payton*,<sup>100</sup> the trial court still denied the defendant's motion to suppress the gun

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<sup>90</sup> *Id.* at 405.

<sup>91</sup> *Id.* at 404 (quoting *Scott v. United States*, 436 U.S. 128, 138 (1978)).

<sup>92</sup> *Id.* at 406.

<sup>93</sup> *Id.*

<sup>94</sup> 464 N.E.2d 469 (1984).

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

<sup>96</sup> *Id.* at 470.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *See Payton*, 445 U.S. at 577. The Code provided that the police could, without exigent circumstances, enter a person's home to arrest the person without a warrant. *Levan*, 464 N.E.2d at 470.

<sup>100</sup> *See People v. Payton*, 380 N.E.2d 224 (N.Y. 1978) (holding that a warrantless entry of an officer, for the purpose of a felony arrest, into one's home, if based on probable cause, does not violate the Fourth Amendment, even absent exigent circumstances).

seized in his apartment.<sup>101</sup> The Appellate Division affirmed the decision, with the majority concluding that *Payton* did not apply because once the defendant opened the door, he was “ ‘clearly visible to the police and to anyone else who might be in the public hallway’ and therefore ‘not in an area where [he] had any expectation of privacy.’ ”<sup>102</sup>

The Court of Appeals held that because no exigent circumstances were present, under *Payton*, the warrantless entry by the police was unconstitutional.<sup>103</sup> In its decision, the court disregarded the expectation of privacy argument because “ ‘physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.’ ”<sup>104</sup> It was clear that the police forcibly entered the defendant’s apartment without a warrant, and although the defendant was in view when he answered the door, it did not make the entry constitutional.<sup>105</sup> The court mentioned that “[b]oth the Fourth Amendment and section 12 of article I of the New York Constitution expressly provide that ‘the right of the people to be secure in their . . . houses . . . shall not be violated.’ ”<sup>106</sup>

In *People v. Cruz*,<sup>107</sup> the Appellate Division adopted the six-factor test, applied in *Martinez-Gonzalez*, to determine whether exigent circumstances existed. While investigating an armed robbery, the police were informed by the victim’s husband of the defendant’s whereabouts.<sup>108</sup> The police used force to enter the defendant’s apartment and arrested him along with a codefendant.<sup>109</sup> Although the first factor of the test was met because the officers were investigating an armed robbery, a serious offense, the court held that the serious offense “ ‘alone does not overcome the presumption of unreasonableness that attaches to a warrantless house arrest.’ ”<sup>110</sup>

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<sup>101</sup> *Levan*, 464 N.E.2d at 470.

<sup>102</sup> *Id.* at 470-71 (holding that whenever something is exposed to the public, it does not get the Fourth Amendment protection).

<sup>103</sup> *Id.* at 471.

<sup>104</sup> *Id.* (quoting *United States v. United States Dist. Ct.*, 407 U.S. 297, 313 (1972)).

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

<sup>106</sup> *Levan*, 464 N.E.2d at 471.

<sup>107</sup> 545 N.Y.S.2d 561 (App. Div. 1st Dep’t 1989).

<sup>108</sup> *Id.* at 563.

<sup>109</sup> *Id.*

<sup>110</sup> *Id.* at 566-67 (quoting *United States v. Cattouse*, 666 F. Supp. 480, 483 (S.D.N.Y. 1987)).

The remaining factors did not convince the court that exigent circumstances were present; therefore, the court reversed the trial court's decision and held that the warrantless entry into the defendant's apartment was unlawful.<sup>111</sup> The court reasoned that the police did not have probable cause to believe that they would find the two robbery suspects in the apartment based on a weak tip given by the victim's husband.<sup>112</sup> Furthermore, police did not have had any evidence that the suspects were planning to flee, they did not peacefully enter the apartment, and they only waited about a minute before knocking down the door.<sup>113</sup>

Unlike the federal courts, the New York Court of Appeals has not consistently utilized the objective approach when determining the existence of exigent circumstances. Instead, it occasionally has applied a subjective approach. In *People v. Mitchell*,<sup>114</sup> the Court of Appeals established guidelines for the subjective approach, known as the emergency exception, when assessing whether exigent circumstances are present.<sup>115</sup> In *Mitchell*, the police entered the defendant's hotel room, in search of a chambermaid who had been missing.<sup>116</sup> In the room, the police found the chambermaid's corpse along with a hatchet.<sup>117</sup> The trial court denied the defendant's motion to suppress the evidence obtained from the warrantless search.<sup>118</sup> The defendant was convicted of murder, and the conviction was affirmed by the Appellate Division.<sup>119</sup>

The Court of Appeals, in determining that exigent circumstances were present to justify the warrantless entry, outlined and applied elements of the emergency exception, which are:

- 1) The 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[;]
- 2) The search must not be primarily motivated by intent to arrest and seize evidence[; and]

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<sup>111</sup> *Id.* at 568.

<sup>112</sup> *Cruz*, 545 N.Y.S.2d at 565-66.

<sup>113</sup> *Id.* at 567.

<sup>114</sup> 347 N.E.2d 607 (N.Y. 1976).

<sup>115</sup> *Id.* at 609.

<sup>116</sup> *Id.* at 608.

<sup>117</sup> *Id.* at 609.

<sup>118</sup> *Id.*

<sup>119</sup> *Mitchell*, 347 N.E.2d at 609.

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3) There must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched.<sup>120</sup>

First, the police had reasonable grounds to believe there was an emergency that needed immediate assistance because the chambermaid had not been seen for hours and “the circumstances led to the conclusion that some grave misfortune of an indeterminable nature had befallen the maid.”<sup>121</sup> In addition, the purpose of the officer’s entry into the apartment was to render aid to a missing chambermaid rather than gathering evidence of a crime.<sup>122</sup> Lastly, the officers performed a thorough search of the entire hotel, and the last room inspected was the defendant’s, which was on the floor where the chambermaid was last seen.<sup>123</sup> With all of the elements satisfied, the court determined that because an emergency created exigent circumstances, the warrantless entry into the hotel room was lawful.<sup>124</sup>

The Court of Appeals in *People v. Molnar*<sup>125</sup> expanded the emergency exception elements established in *Mitchell*. In affirming the lower court’s decision to convict the defendant of murder in the second degree and the denial of a suppression motion for evidence found from a warrantless entry into his home by police,<sup>126</sup> the court focused its decision on whether the police had reasonable grounds to believe that there was an emergency.<sup>127</sup> The police responded to a neighbor’s complaint of a strange odor emanating from the defendant’s apartment.<sup>128</sup> After an hour of assessing alternative options for entering the apartment because the defendant was not in his apartment, the police ultimately decided that it was necessary to use force.<sup>129</sup> The police entered the apartment, and found a body that was severely decomposed, covered with maggots, and surrounded by

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<sup>120</sup> *Id.* at 609.

<sup>121</sup> *Id.* at 610.

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

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

<sup>124</sup> *Mitchell*, 347 N.E.2d at 611.

<sup>125</sup> 774 N.E.2d 738 (N.Y. 2002).

<sup>126</sup> *Id.* at 739.

<sup>127</sup> *Id.* at 741.

<sup>128</sup> *Id.* at 739.

<sup>129</sup> *Id.*

vermin and flies.<sup>130</sup> Despite arguments of odor not constituting an emergency and the length of time the police allowed to go by before they decided to enter the apartment, the court determined that “not all emergencies are the same.”<sup>131</sup> Reasonableness governs how police respond to emergencies, between one extreme of using force immediately to break into a premises when a hostage is held, to not authorizing police to enter the premises to remedy a minor irritant.<sup>132</sup> The court noted that “[t]he Fourth Amendment’s warrant requirement was not meant to apply to situations where police reasonably need to enter a premises for a legitimate, benevolent purpose distinct from crime-fighting.”<sup>133</sup> This purpose is to act as public servants to protect “public health and safety” and police are not required to obtain a warrant when reasonably acting in a community caretaking function.<sup>134</sup>

When the court in *McBride* did not use the emergency exception and instead applied the six-factor test, the court, in essence, disregarded the subjective approach in favor of the objective approach. Although there have been some cases where the New York Court of Appeals utilized the subjective approach instead of the objective approach, in this instant case, the court did not make any mention to it.<sup>135</sup> The court held in *McBride* that for a warrantless entry to be lawful under the Fourth Amendment and the New York State Constitution, probable cause must be accompanied by exigent circumstances.<sup>136</sup> The majority opinion was joined by three other justices, one justice dissented, and another took no part in the opinion.<sup>137</sup> In the majority opinion, the court did not examine whether the officer’s intent was to arrest and seize evidence when arriving at defendant’s apartment, as one would when applying the second element of the emergency exception.<sup>138</sup> Instead, the court

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<sup>130</sup> *Molnar*, 774 N.E.2d at 739.

<sup>131</sup> *Id.* at 741.

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

<sup>133</sup> *Id.*

<sup>134</sup> *Id.* at 742. The community caretaking function is another exception to the warrant requirement. See *Community Caretaking Guide*, 2 No. 4 CRIM. PRAC. GUIDE 3 (2001).

<sup>135</sup> *McBride*, 928 N.E.2d at 1032 n.\*.

<sup>136</sup> *Id.* at 1030-31.

<sup>137</sup> *Id.* at 1035 (noting that Judges Graffeo, Read and Smith concurred with Judge Ciparick, Judge Pigott dissented in a separate opinion in which Judge Jones concurred, and Chief Judge Lippman took no part in the opinion).

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

viewed the circumstances objectively when applying the six-factor test to determine whether the police's actions were justified by exigent circumstances.<sup>139</sup> The first factor was satisfied because an armed robbery is a violent offense.<sup>140</sup> The third factor was also satisfied since the defendant did not dispute whether "the police had probable cause to arrest him for armed robbery."<sup>141</sup> Although the court does not explicitly state whether the second factor was satisfied, it is safe to assume that it was because the defendant was suspected of committing armed robbery and therefore likely that he was in possession of dangerous weapons when confronted by police. The findings in the record show that the fourth factor was satisfied because the police had a strong reason to believe that the defendant was inside his apartment, along with the sixth factor because the police only entered the apartment to assist Mitchell, who was crying and hyperventilating.<sup>142</sup>

The dissenting opinion does not dispute the application of *Payton*, but holds that the existence of an exigent circumstance does not excuse the failure to obtain a warrant when there was ample time to secure a warrant, and thus making the warrantless entry "a clear *Payton* violation."<sup>143</sup> The dissenting opinion stated that the real issue was whether the police, with their intentions to arrest the defendant, could have obtained a warrant prior to entering his apartment.<sup>144</sup> The dissent focused its discussion on the amount of time that passed between the identification of the defendant and the police arriving at the defendant's apartment, which was three days.<sup>145</sup> The factors were "blindly" applied, missing the point that there was no evidence to suggest that the police "had to act quickly to arrest the defendant."<sup>146</sup> The majority recognized that it would have been prudent of the police to first obtain a warrant before going to the defendant's apartment, but also noted "that there [i]s nothing illegal about the police going to a defendant's apartment and requesting that he voluntarily come

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<sup>139</sup> *McBride*, 928 N.E.2d at 1031.

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

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

<sup>143</sup> *Id.* at 1034 (Pigott, J., dissenting).

<sup>144</sup> *McBride*, 928 N.E.2d at 1033-34.

<sup>145</sup> *Id.* at 1034.

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

out.”<sup>147</sup>

With the dissenting opinion in mind, there seems to be a flaw in the six-factor test. With every case having a different set of facts, it is extremely difficult to establish a bright line rule for the amount of time police have to obtain a warrant. To clear up any misconceptions about whether the police had enough time to obtain a warrant, another factor should be added to the list. A temporal requirement, describing a reasonable time frame to obtain a warrant, would give notice to police and other authorities about the amount of time it has to gather the necessary facts to obtain a warrant and to plan accordingly. A period of time, although not effective in every case, is more definitive than having no timeframe at all.

In conclusion, the court in *McBride* correctly chose to objectively view the circumstances and apply the six-factor test to uphold the lower court's holding that the warrantless entry of McBride's apartment was constitutional. If there was a temporal requirement factor included in the six-factor test, it may have impacted the court's decision. Assuming that the time frame would be less than three days, the court would have to take the lapse of time into consideration. Even though the police would have exceeded the temporal requirement, this alone may not have influenced the court to change its decision.

In its current state, the exigent circumstances exception does not violate one's Fourth Amendment rights. It is very unlikely that the United States Supreme Court will be making drastic changes to the warrant requirement. As long as the exigent circumstances exception does not overpower these rights, the Court will not be in a hurry to modify any aspect of it. However, the Court should be open to adjusting the exception to address some flaws, such as the temporal issue. In addition, the New York Court of Appeals should distinguish between the application of the objective and subjective approach to determine the existence of exigent circumstances to eliminate any confusion between the two approaches. If this cannot be done, then one approach needs to be eliminated for the court to have consistent decisions when determining whether a warrantless search is justified due to exigent circumstances and for the

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<sup>147</sup> *Id.* at 1032 (majority opinion).



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defendant's Fourth Amendment rights to be fully protected.

*Joseph Leocata*\*

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\* Juris Doctor Candidate, Touro College Jacob D. Fuchsberg Law Center, May 2012; M.B.A. and B.A. in Accounting from St. Joseph's College; Certified Public Accountant. I wish to thank my family and friends for their support throughout my legal education, especially my parents and my brother. Special thanks to Professor Arcila for his editing, guidance, and helpful advice.