

When responding to a fire call or entering a building where there is a working fire, we're thinking about saving lives and protecting property - not criminal and constitutional law. That is as it should be, but it is possible that any fire scene could also be a crime scene.

Courts have issued a number of decisions related to crimes committed in conjunction with fires. Consequently, there are a few important principles to keep in mind anytime it appears that there may be criminal activity at the scene of a fire.

First, it is important to remember a few basic rules of law from our Constitution. The Fourth

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Amendment protects our homes and personal property from unwarranted search and seizure by any government agency. No government agency may enter our property, conduct a search or seize our possessions without our permission or a court order. As firefighters, we are agents of the government and therefore subject to this restriction.

The courts, however, have carved out some exceptions to that rule. One of the most significant exceptions is for emergencies ("exigent

circumstances," in legal terms). In a 1978 decision, *Michigan v. Tyler*, the U.S. Supreme Court specifically applied this exception to the fire service. Firefighters do not need a warrant to enter a building to fight a fire. A burning building presents an emergency sufficient to make a warrantless entry reasonable.

Further, the Court rejected the notion that the justification for the warrantless entry ends as soon as the flames are doused. It noted that firefighters might be required to undertake an immediate investigation to prevent a recurrence of the fire (what we call salvage and overhaul) or to preserve evidence from intentional or accidental destruction.

In the *Tyler* case, the fire was extinguished by 4 A.M. and the fire officials left the scene. They returned at 8 A.M. for a cursory examination and returned again at 9 A.M. State arson investigators entered the burned store without a warrant on at least three additional occasions - four days, seven days and 25 days after the fire. The Court held that the early-morning re-entry to continue the investigation did not require a warrant because it was nothing more than a continuation of the initial operation. The searches conducted days later, however, were clearly not attached to the initial emergency. The evidence obtained as a result of these later searches could not be admitted at trial.

While the Court's principle was clear, later courts have struggled with how to apply it to a variety of factual situations. In particular, courts have struggled with what constitutes a "reasonable time" after the fire to permit warrantless searches.

Courts have upheld searches conducted as long as 11 hours after the fire, but there also have been cases in which searches conducted as soon as three or four hours after the fires were knocked down were ruled not reasonable. These varying decisions, however, seem to be consistent with the Supreme Court's ruling that the conditions of each particular situation must be considered. That is, there is no specific formula that determines how long after a fire is knocked down that investigators may enter (or remain in) a building without a warrant. The specific conditions of each particular situation determine reasonableness.

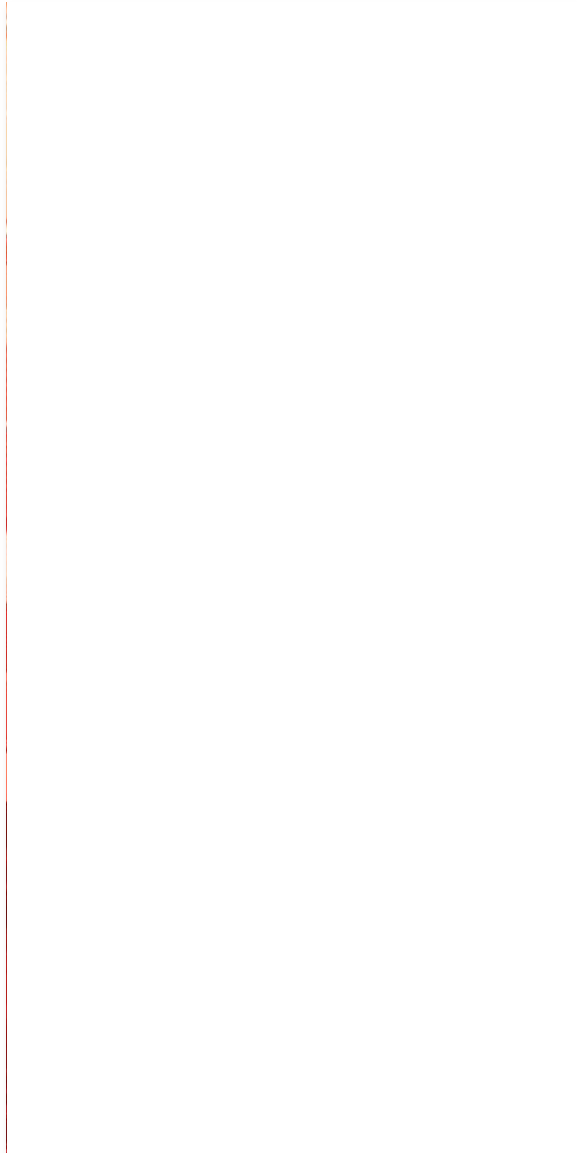
Several cases illustrate how courts see these cases:

- A Florida court found acceptable the warrantless entry immediately after fire and police personnel discovered the fire. It also approved of several later re-entries made when the smoke had cleared, up to the point when arson was determined to be the cause of the fire. Indeed, even after the cause was determined to be arson, any evidence that was in plain view in sections of the residence where the fire was located was admissible in court (*United States v. Veltmann*, 1994).

- A North Carolina court expressed the rule by saying that a search for possible presence of accelerant may reasonably be conducted without a search warrant while firefighters are present at the scene of a fire and engaged in any continuing activity to control or extinguish the fire or prevent re-ignition (State v. Langley, 1983).
- In Michigan, arson evidence seized during a search at the defendant's home at 1:30 P.M. was held inadmissible where the fire had been extinguished at 7 A.M. But, a fuel can that firefighters found in the basement and placed in the driveway was admissible because it was in plain view of the investigators (Michigan v. Clifford, 1984).
- In another Michigan case, arson evidence seized in a warrantless search that occurred 90 minutes after the fire was extinguished was not admissible. The court noted that the investigator made no effort to notify the defendant or give any notice of the inspection.

As these cases illustrate, courts will look at all of the circumstances to determine whether it was reasonable to seize the evidence. Fire officials (including investigators) may stay in the building for a reasonable time after the fire to investigate the cause. While the length of time following a fire's knockdown is an important factor, there is no simple formula for determining how long evidence of a crime may be seized.

Another



consideration is the purpose or motive for entry into the building. The courts give firefighters a wide degree of latitude in conducting overhaul operations, searching for hot spots and other post-fire operations. A Connecticut court found a search by an arson investigator and firefighters was justified even though it went beyond the area to which the fire was contained. The fire department properly conducted overhaul operations on the whole apartment to check for extension and the seized items were in plain view during that

procedure (State v. Wilson-Bey, 1990). Numerous other courts also have allowed evidence found in the course of overhaul operations.

The Constitution prohibits warrantless search and seizure. But, there is a clear exception that allows firefighters (and other government officials) to seize evidence in plain view when their entry into the building is justified by an emergency such as a fire. Courts will look at all the circumstances in determining whether the firefighters' actions were justified, but they are likely to give wide latitude to the firefighters' judgment if they have entered into an emergency and act reasonably.

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