No. 05-502

In The
Supreme Court of the United States

BRIGHAM CITY,

Petitioner,

vs.

CHARLES W. STUART, SHAYNE R. TAYLOR, AND SANDRA TAYLOR,

Respondents.

On Writ Of Certiorari To The Supreme Court Of The State Of Utah

BRIEF FOR RESPONDENTS

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STATEMENT OF THE CASE

On July 23, 2000, Brigham City, Utah police officers were dispatched to a home for a noise complaint. J.A. 24, 43. This led to the eventual arrest of the Respondents for contributing to the delinquency of a minor, furnishing alcohol to minors, disorderly conduct and intoxication – all misdemeanors. J.A. 1. After being formally charged, the Respondents moved to suppress the evidence seized by the police during the officer's warrantless entry into the house. J.A. 2. Following an evidentiary hearing, the trial court granted the motion to suppress. J.A. 94, Pet. App. 46-48. The Utah Court of Appeals and Utah Supreme Court agreed with the trial court's suppression order.

As to the underlying facts, when the officers arrived at the scene of the complaint, they stood on the curb and heard loud yelling coming from the direction of the residence they were called to investigate. J.A. 26-28. The officers eventually made a determination that the commotion in the house sounded like there was something going on, maybe even a fight. J.A. 29.

The officers testified that they could have knocked on the front door to see what was going on, but decided not to based on a claim of officer safety. J.A. 29-30. Subsequent to that decision the officers put aside their safety concerns to investigate the area. J.A. 33. The officers saw what appeared to be two high-school-aged males drinking beer in the back yard. J.A. 34-35.

The officers then went further into the back yard of the home where the Respondents were, and one officer was able to observe four people restraining a juvenile by holding his wrists and pinning him against a refrigerator. J.A. 39. At this time, the home's screen door was shut, but

the regular door was open. J.A. 38-39. Law enforcement did not act on what they saw.

Through the screen door one officer was able to observe this juvenile get a hand free and hit one of the men who was holding him. J.A. 40. The officer then decided to enter the home without knocking, and stepped inside the door and announced his presence. J.A. 40. Once the occupants became aware of the officer's presence, the situation dissipated. J.A. 41. At no time did law enforcement offer any emergency aid to anybody in the home, but rather made the arrests which they thought were needed. J.A. 76.

SUMMARY OF ARGUMENT

This matter has come before this Court based on three different Utah State Court's application of the Fourth Amendment of the United States Constitution. One question to be resolved is whether a law enforcement officer's subjective or objective intent governs the application of the emergency aid exception to the Fourth Amendment in relation to a warrantless entry into a home. Specifically, does the standard enunciated in *People v. Mitchell*, 347 N.E.2d 607 (N.Y. Ct. App. 1976), govern an analysis in the application of the emergency aid exception? There is adequate legal support, which is grounded in a common sense approach, which supports the application of this subjective intent analysis.

A workable definition of the terms of "objective" and "subjective" has been identified. *People v. Dickson*, 144 Cal. App. 3d 1046, 1063 (Cal. Ct. App. 1983), *rev'd on other grounds*, *People v. Hull*, 34 Cal. App. 4th 1448 (Cal. Ct. App. 1995). Under an objective standard, an analysis is

made whether the threat law enforcement faced was so imminent and serious a reasonable law enforcement officer would believe a warrantless entry was necessary to save lives and property. The subjective standard would ask whether the law enforcement officer was indeed motivated primarily by a desire to save lives and property. *Dickson*, 144 Cal. App. 3d at 1063.

The other issue before the Court is whether a minor misdemeanor rises to the level this Court enunciated in *Mincey v. Arizona*, 437 U.S. 385 (1978), as forming a basis of using the emergency aid exception to enter a home without a warrant. These factors are whether somebody is in need of immediate aid, or whether evidence would be lost, removed or destroyed. *Id*. at 392, 394. Under this standard, the situation has to be more serious than a minor altercation.

Based on the fact that officers in the present matter stood outside the home, and only misdemeanor, non-assault offenses were charged, the requisite level of necessity was not reached to rise to the level of entering a home under *Mincey*. There was no immediate need for help, and there was no likelihood that any evidence would be lost, removed, or destroyed.

ARGUMENT

A. EVALUATING LAW ENFORCEMENT'S SUBJECTIVE INTENTIONS IS AN INTEGRAL PART OF FOURTH AMENDMENT PROTECTIONS AGAINST WARRANTLESS ENTRIES INTO A HOME, AND EQUALLY SERVES THE NEEDS OF LAW ENFORCEMENT AND CITIZENS

A person is protected from unreasonable searches of their home and person, and warrantless searches are *per*

se unreasonable but for a limited set of exceptions. U.S. Const. Amend. IV; *Katz v. United States*, 389 U.S. 347, 357 (1967); *Coolidge v. New Hampshire*, 403 U.S. 443, 454-55 (1971). The protections related to a home are important because a person has a subjectively legitimate expectation of privacy in their home. *Kyllo v. United States*, 533 U.S. 27, 32-33 (2001) (citations omitted). One of these exceptions is the emergency aid exception. *Mincey v. Arizona*, 437 U.S. 385, 392-93 (1978) (citations omitted). The analysis of law enforcement officer's subjective intent is vital to protecting a person's rights under the Fourth Amendment, as well as meeting the emergency aid exception under *Mincey*. By failing to examine a law enforcement officer's subjective intent, law enforcement's discretion to enter a home without a warrant is broadened. Simply put, an officer's state of mind must be evaluated to ensure there is not an intent to abuse the warrant process. Jacqueline Bryks, *Exigent Circumstances and Warrantless Home Entries: United States v. MacDonald*, 57 Brook. L. Rev. 307, 335 (1991). While it is true that "[s]ubjective intent alone does not make otherwise lawful conduct illegal or unconstitutional.", *Whren v. United States*, 517 U.S. 806, 813 (1996) (quotations and ellipses omitted), this has not been applied to cases of a warrantless entry into a home.

In *Whren* this Court was asked to determine whether a temporary motor vehicle stop and detention was a violation of the Fourth Amendment protections. *Id*. at 808. This Court rejected claims that a law enforcement officer's subjective intent was to be evaluated in this type of stop. However, it was noted there are exceptions to this general statement. Specifically, it was noted that a balancing act is required when the search and seizure is "[c]onducted in an

extraordinary manner, unusually harmful to an individual's privacy . . . " *Id*. at 818. These include cases of unannounced entry into a home, and entry into a home without a warrant. *Id*. (citations omitted).

The seminal state appellate case related to the emergency aid exception to the Fourth Amendment, and the appropriate analysis concerning a law enforcement officer's intent, was decided almost thirty years ago. *People v. Mitchell*, 347 N.E.2d 607 (N.Y. Ct. App. 1976). In this case, the state appellate court discussed and applied the emergency aid exception to the Fourth Amendment. The Court announced certain requirements in this exception's application. These are: (1) law enforcement must have reasonable grounds to believe there is an emergency which needs their immediate assistance to protect life or liberty; (2) any search under this exception must not be primarily motivated by an intent to arrest a person or seize evidence; and (3) there has to be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched. *Id*. at 609 (citations omitted). A reading of *Mitchell* shows this is a multi-faceted test which can be viewed as a subjective standard. *Id*. at 609-10. A number of courts since *Mitchell* have analyzed the emergency aid exception to the Fourth Amendment, and favorably cited to *Mitchell*.[1] While courts may look

[1] *State v. Gallmeyer*, 640 P.2d 837, 842 (Alaska Ct. App. 1982); *State v. Fisher*, 686 P.2d 750, 759-61 (Ariz. 1984); *Wofford v. State*, 952 S.W.2d 646, 651 (Ark. 1997); *People v. Hebert*, 46 P.3d 473, 480 (Colo. 2002); *United States v. Bell*, 357 F.Supp.2d 1065, 1074 (N.D. Ill. 2005); *State v. Mendez*, 66 P.2d 811, 820 (Kan. 2003); *United States v. Meixmer*, 128 F.Supp.2d 1070, 1074 (E.D. Mich. 2001); *State v. Resler*, 306 N.W.2d 918, 923 (Neb. 1981); *State v. Macelman*, 834 A.2d 322, 326 (N.H. 2003); *State v. Cheers*, 607 N.E.2d 115, 117 (Ohio Ct. App. 1992); *State v. Mountford*, 769 A.2d 639, 644 (Vt. 2000); *State v. Nichols*, 581 P.2d

(Continued on following page)

favorably upon the emergency aid exception, it must be strictly construed to protect a person's rights. *Lubenow v. North Dakota Hw'y Comm'r*, 438 N.W. 2d 528 (N.D. 1989) (Levine, J. concurring). The question is, then, why use a subjective, rather than objective, standard in applying the emergency aid exception to the Fourth Amendment?

A reason for applying a subjective rather than objective standard in evaluating the use of the emergency aid exception is "[a]n officer engaged in the often competitive enterprise of ferreting out crime . . . may lack sufficient objectivity to weigh correctly the strength of the evidence supporting the contemplated action against the individual's interests in protecting [their] own liberty and the privacy of [their] own home." *Stealgald v. United States*, 451 U.S. 204, 212 (1981) (citations omitted). Using a subjective standard, as found in *Mitchell*, addresses this concern and takes into account the necessary requirement to protect a person against warrantless entries in a home.

An analysis of an officer's subjective intent does not harm law enforcement roles. *State v. Fisher*, 686 P.2d 750 (Ariz. 1984). In this matter, a defendant who was found guilty in a capital murder case appealed a trial court's decision denying his Motion to Suppress. In denying the defendant's request, the Arizona court applied the various *Mitchell* standards in finding that the subjective element was met. *Id.* at 760-61. *See also*, *State v. Kraimer*, 298 N.W.2d 568, 574-76 (Wis. 1980) (upholding a warrantless entry of a home based on the officer's subjective intent which was demonstrated by his obvious concern for the

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1371, 1373 (Wash. Ct. App. 1978); *United States v. Borchardt*, 809 F.2d 1115, 1117 (5th Cir. 1987).

children at the potential crime scene and the potential victim).

The Fourth Amendment protections are vital to protecting a person's legitimate expectation of privacy in their home. These protections are heightened in relation to a warrantless entry into a home. There is no reason to not take the doctrine offered by *Mitchell* and apply this standard in relation to the emergency aid exception under the Fourth Amendment. As noted, many courts favor this type of analysis. This is what the Utah courts have applied. Pet. App. 12.

The case before this Court began as misdemeanor offenses where law enforcement stood outside the home and watched the events transpire. J.A. 39. When law enforcement made their warrantless entry, no medical treatment was offered to anybody – including the alleged victim. J.A. 76. Applying a purely objective standard would diminish the Respondent's constitutional protections. Rather, in the present matter, and similar to cases throughout the country, the facts should be evaluated subjectively concerning why the law enforcement officers entered the home. This is what the Utah Supreme Court appropriately did. Pet. App. 12. As noted *supra*, not looking at law enforcement's subjective intent would lead to an officer's entry rights being unnecessarily broadened at the expense of the Respondents and people who are similarly situated.

Applying only an objective intentions test places an insurmountable restriction on a person's Fourth Amendment protections, and eats away at the protections which the warrant requirement offers by allowing warrantless entry into a home on only one part of what should be a

multi-part standard. This Court has never before permitted warrantless entry into a home for law enforcement purposes without a warrant, or probable cause plus an exigency. This Court has allowed law enforcement's subjective intent to be evaluated when looking at programmatic non-home cases. *City of Indianapolis v. Edmond*, 531 U.S. 32, 46 (2000); *Ferguson v. City of Charleston*, 532 U.S. 67, 84 (2001). These areas are different from a home. Protections offered to a home rise to such a level that as a general rule law enforcement must knock and announce before entering a person's home. *Wilson v. Arkansas*, 514 U.S. 927 (1995). Applying only an objective intent standard could also lead to law enforcement coming up with pretextual reasons, based only on objective factors, which would make it impossible, or extremely difficult, to challenge at a court hearing. If a non-home is afforded a subjective intent analysis for programmatic searches, it is just as appropriate to apply such an analysis to a home.

Balancing the constitutional protections of the Fourth Amendment supports the application of a standard similar to *Mitchell*. As such, the Respondents would ask this Court to adopt what some have determined to be a subjective standard to look at an officer's intent in entering a home under the emergency aid exception.

B. A MINOR MISDEMEANOR ALTERCATION DOES NOT WARRANT DISREGARDING THE FOURTH AMENDMENT PROTECTIONS UNDER THE AUSPICES OF THE EXIGENT CIRCUMSTANCES EXCEPTION TO GAIN ENTRY INTO A HOME WITHOUT A WARRANT

There are many cases which demonstrate the level of gravity which is necessary in applying the emergency aid

exception to the Fourth Amendment. *Turner v. State*, 645 So.2d 444, 447 (Fla. 1994) (a suicide attempt in the presence of law enforcement); *United States v. Presler*, 610 F.2d 1206, 1211 (4th Cir. 1979) (seeking a missing residential occupant); and *United States v. Goldenstein*, 456 F.2d 1006, 1010 (8th Cir. 1972) (seeking a person known to suffer from a gunshot). A key determination concerning whether the gravity of the situation warrants the application of the exigent circumstances exception to the Fourth Amendment is whether "[t]here are exigent circumstances in which police action literally must be now or never to preserve the evidence of the crime . . . " *Roaden v. Kentucky*, 413 U.S. 496, 505 (1973); *United States v. Turner*, 650 F.2d 526, 527 (4th Cir. 1981) (noting the degree of urgency is a factor that must be considered). Issues related to the gravity of a situation leading to the application of the emergency aid exception to the Fourth Amendment are fact specific, and appellate courts should be reluctant to overturn those determinations. *Minnesota v. Olson*, 495 U.S. 91, 100-01 (1990); *United States v. Thomas*, 372 F.3d 1173, 1177 (10th Cir. 2004). Generally speaking these usually involve felony, and not misdemeanor, offenses. However, courts are not silent on misdemeanor offenses.

Misdemeanor offenses are not of such a serious nature as to warrant an attempt to use the emergency aid exception to side-step the necessity for obtaining a warrant to enter a home. *State v. Santiago*, 619 A.2d 1132, 1134 (Conn. 1993); *People v. Reinhardt*, 366 N.W.2d 245, 248 (Mich. Ct. App. 1985); *King v. City of Ft. Wayne, Ind.*, 590 F.Supp. 414, 422 (N.D. Ind. 1984); *State v. Lee*, 457 N.E.2d 377, 379-80 (Ohio 1983); and *Prather v. State*, 182 So. 2d 273, 276 (Fla. 1966).

This Court has given adequate guidance concerning the type of emergency that would rise to the level of exigent circumstances to enter a home without a warrant. *Welsh v. Wisconsin*, 466 U.S. 740 (1984). This case began with a driver of a vehicle who appeared to non-law enforcement people to either be sick or drunk. *Id*. at 742. The driver had actually left the scene and abandoned his car. However, law enforcement was able to locate the driver based on his vehicle's registration. He was arrested at his home, and was cited for DWI and refusal to submit to a breath test. *Id*. at 743. This Court noted that "Our hesitation in finding exigent circumstances, especially when warrantless arrests in the home are at issue, is particularly appropriate when the underlying offense for which there is probable cause to arrest is relatively minor." *Id*. at 750. This Court held that the "[a]pplication of the exigent circumstances exception in the context of a home entry should rarely be sanctioned when there is probable cause to believe that only a minor offense . . . has been committed," *Id*. at 753. While this was a non-criminal traffic offense, the same type of application is viable for other misdemeanors.

A review of the record by the Utah Supreme Court shows the circumstances of the present case were not severe enough to warrant the application of the emergency aid exception to the Fourth Amendment. The State relies on the fact that this matter was an assault as the basis of forming the exigency. However, the assault did not rise to the requisite level to create an exigency as required. This is demonstrated by the simple fact that the Respondents were not charged with assault. J.A. 1. Nor did the police officers give medical aid to anybody in the home, but instead only acted in their law enforcement capacity and

instituted arrests. As the Utah Supreme Court notes, "[t]he circumstances known to the officers at the time of entry did not create a reasonable belief that emergency aid was required." Pet. App. 15.

Expanding the ability of law enforcement to execute a warrantless home entry based on an officer's view concerning an alleged emergency will allow this exception to swallow the rule. Existing precedent allows entry to stop serious harm. Adopting the Petitioner's view allows a law enforcement officer to claim they objectively thought an emergency existed for misdemeanor offenses, and not having a subjective intent evaluation concerning their warrantless entry. This seriously hinders a person's Fourth Amendment protections. Law enforcement should be able to intervene as long as the *Mincy* and *Welsh* factors are met. The present matter is lacking these factors. Nor was there a "now or never" requirement as found in *Roaden* – the officers stood outside and watched things transpire before entering the home. J.A. 38-39.

Adopting a bright-line rule as some may suggest is not necessary because this Court has already given adequate guidance concerning minor offenses and the emergency aid exception. Adopting a bright line rule would subject the Respondents, and people throughout the country, to attempts to use the emergency aid exception to side-step the requirement for obtaining a warrant.

C. THE OFFICER'S ACTIONS THE NIGHT THEY ENTERED THE HOME WITHOUT A WARRANT WERE PROPERLY REVIEWED BY THREE DIFFERENT COURTS AND FOUND TO HAVE VIOLATED UTAH LAW AS WELL AS A COMMON SENSE APPROACH TO FOURTH AMENDMENT JURISPRUDENCE

As noted previously, Utah and many other jurisdictions look at what has come to be known as the subjective intent standard in the emergency aid exception to the warrant requirement. The facts of this case show that the officer's did not have a subjective intent to offer aid to anybody in the home. They actually stood outside the home and watched the events unfold. When they did enter, no medical treatment was offered. J.A. 76. The transcript of the suppression hearing does not even show that any law enforcement officers asked if the alleged victim was hurt or needed any treatment.

The Petitioner seeks to rely on the claim of violence as a basis to enter the home. However this was not the level of violence which would and should lead to a disregarding of the constitutional protections which the Respondents are entitled to. Subjective intent of the officers at the scene has to be evaluated, and that is exactly what three different Utah courts did in this matter. This is also the same standard that various courts throughout the country, as cited herein, follow.

The Petitioner seeks to rely upon the claim that there was an emergency in the home which required law enforcement to enter. However, the standards found in *Mincey* and *Welsh* regarding this type of entry are not met. Interestingly, applying a subjective view to law enforcement's intent would actually lead to a determination of

why the officers entered and if there was a true emergency then their entry would stand.

CONCLUSION

For the reasons stated above, this Court should affirm the decision of the Utah Supreme Court and apply appropriate standards throughout the country.

Respectfully submitted,

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