

# ANCHORAGE POLICE DEPARTMENT



## BUREAU BULLETIN



LEGAL BULLETIN NO. 23

MAY 11, 1979

### EMERGENCY SEARCH OF BURNING BUILDING

Reference: Donald E. SCHULTZ  
v.  
State of Alaska

Alaska Supreme Court  
File No. 4152  
593 P.2d 640

#### FACTS:

A fire was discovered in the home of SCHULTZ. Firefighters were on the scene at about 8:50 a.m. Around 9:00 a.m., a fire inspector arrived and made entry into the house sometime between 9:15 and 9:30 a.m. The purpose of the entry was to determine the cause of the fire. The inspector had no search warrant.

While in the residence, the inspector took about seventy (70) photographs and seized other evidence which suggested arson. The fire inspector left the house with the collected evidence around 10:45 a.m. At 1:00 p.m., the same inspector returned to the house in the company of a police detective. The inspector took additional photographs and the detective seized additional evidence. They did not have a search warrant.

SCHULTZ was subsequently arrested for arson and a hearing was held in Superior Court regarding the evidence seized. The Superior Court held that the warrantless search made by the fire inspector was permissible but suppressed the evidence seized by the detective several hours later. The defendant, SCHULTZ, appealed and the District Attorney elected not to "fight" the suppression of the evidence seized by the detective without a warrant.

#### ISSUE:

Can the photographs and evidence seized (without a search warrant) by the fire inspector within twenty-five (25) to forty (40) minutes after arrival of the firefighters be used against SCHULTZ at trial?

HELD: Yes.

#### REASONING:

1. The fire inspector entered the house when the fire was under control but not entirely extinguished.
2. It was the inspector's specific duty to attempt to discover the cause of the fire.
3. Entry into the building and remaining in the building for approximately one and one-half hours were well within a "reasonable time" to investigate the cause of the fire without first securing a warrant.

\* In this case the court discusses "exigent circumstances" where the officer may not have time to secure a search warrant. (See notes below)

4. Since the entry into the house without a warrant was lawful, the taking of photographs and seizing of evidence was lawful; the premises photographed and evidence collected were in "plain view".

NOTES:

The narrowly defined classes of cases which justify invasion of privacy without a warrant are those instances where there is a "compelling need for official action and no time to secure a warrant." That was the situation here when it was discovered that SCHULTZ'S house was on fire. In the language of the United States Supreme Court in MICHIGAN v. Tyler, \_\_\_ vs \_\_\_ (1978):

"A burning building clearly presents an exigency of sufficient proportions to render a warrantless entry "reasonable." Indeed, it would defy reason to suppose that firemen must secure a warrant or consent before entering a burning structure to put out the blaze. And once in a building for this purpose, firefighters may seek evidence of arson that is in plain view."

Furthermore, the exigency justifying the entry of SCHULTZ'S house by the fire officials, and seizure of evidence indicating arson, did not end when the fire was contained or under control, or even when the last burning ember was thought to be extinguished.

In this case, the Alaska Supreme Court makes reference to Michigan v. Tyler, 56 L. Ed. 2d 486, 498 (1978). Inasmuch as the State elected not to fight the evidence suppressed by the Superior Court regarding the second visit several hours later, it is suggested that a search warrant be obtained if you intend to return to any crime scene a second time. The evidence gathered or observations made during the initial visit can be used in your affidavit for the "probable cause" to obtain the warrant.

Remember, you must be able to justify a warrantless search as one of the "exigent circumstances" recognized by the law. If possible and time permits, the better practice is to get a search warrant.