The Burger Court Opinion Writing Database

Michigan v. Tyler

436 U.S. 499 (1978)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

April 7, 1978

Re: 76-1608 - Michigan v. Tyler

Dear Potter:

I join.

Regards,

WEB

Mr. Justice Stewart

Copies to the Conference

76-1608

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

4-21-78

Harry

Re Mich v Tyler

I cannot go with Potter's change & will "stand by". He may well lose his troops.

WEB

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

April 27, 1978

Dear Potter:

Re: 76-1108 Michigan v. Tyler

I would like the opinion "as you were." !

Regards,

WEB

Mr. Justice Stewart

cc: The Conference

Wm Brennan
OCT 77

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

May 17, 1978

Re: 76-1608 - Michigan v. Tyler

Dear Potter:

If I were to read your Part II as John does, I would join him, but it seems to me your Parts III, IV-A and V make clear that the warrantless searches during the night and the following morning were valid.

Bryon's advice is "when in doubt, punt". Accordingly, I punt one "join" to your end of the field.

Regards,

WEB

Mr. Justice Stewart

Copies to the Conference

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr Justice Rehnquist
Mr Justice Stevens

From: Mr. Justice Stewart

Circulated: 16 FEB 78

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-1608

State of Michigan, Petitioner,
v.
Loren Tyler and Robert Tompkins.

On Writ of Certiorari to the Supreme Court of Michigan.

[February —, 1978]

MR. JUSTICE STEWART delivered the opinion of the Court.

The respondents, Loren Tyler and Robert Tompkins, were convicted in a Michigan trial court of conspiracy to burn real property in violation of Mich. Comp. Laws § 750.157a.[1] Various pieces of physical evidence and testimony based on personal observation, all obtained through unconsented and warrantless entries by police and fire officials onto the burned premises, were admitted into evidence at the respondents' trial. On appeal, the Michigan Supreme Court reversed the convictions, holding that "the warrantless searches were unconstitutional and that the evidence obtained was therefore inadmissible." 399 Mich. 564, 584, 250 N. W. 2d 467, 477 (1977). We granted certiorari to consider the applicability of the Fourth and Fourteenth Amendments to official investigatory entries onto fire-damaged premises. —— U. S. ——.

I

Shortly before midnight on January 21, 1970, a fire broke out at Tyler's Auction, a furniture store in Oakland County, Mich. The building was leased to respondent Loren Tyler, who conducted the business in association with respondent

[1] In addition, Tyler was convicted of the substantive offenses of burning real property, Mich. Comp. Laws § 750.73, and burning insured property with intent to defraud, Mich. Comp. Laws § 750.75.

PAGES 5, 10

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-1608

State of Michigan, Petitioner, v. Loren Tyler and Robert Tompkins. | On Writ of Certiorari to the Supreme Court of Michigan.

[February —, 1978]

MR. JUSTICE STEWART delivered the opinion of the Court.

The respondents, Loren Tyler and Robert Tompkins, were convicted in a Michigan trial court of conspiracy to burn real property in violation of Mich. Comp. Laws § 750.157a.[1] Various pieces of physical evidence and testimony based on personal observation, all obtained through unconsented and warrantless entries by police and fire officials onto the burned premises, were admitted into evidence at the respondents' trial. On appeal, the Michigan Supreme Court reversed the convictions, holding that "the warrantless searches were unconstitutional and that the evidence obtained was therefore inadmissible." 399 Mich. 564, 584, 250 N. W. 2d 467, 477 (1977). We granted certiorari to consider the applicability of the Fourth and Fourteenth Amendments to official investigatory entries onto fire-damaged premises. — U. S. —.

I

Shortly before midnight on January 21, 1970, a fire broke out at Tyler's Auction, a furniture store in Oakland County, Mich. The building was leased to respondent Loren Tyler, who conducted the business in association with respondent

[1] In addition, Tyler was convicted of the substantive offenses of burning real property, Mich. Comp. Laws § 750.73, and burning insured property with intent to defraud, Mich. Comp. Laws § 750.75.

8, 10, 11

Mr. Justice Bre...
Mr. Justice Whi...
Mr. Justice Mars...
Mr. Justice Blac...
Mr. Justice Powe...
Mr. Justice Rehn...
Mr. Justice Ste...

From: Mr. Justice Ste...

Circulated: _____

Recirculated: 2/ [illegible]

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-1608

State of Michigan, Petitioner,
v.
Loren Tyler and Robert Tompkins.

On Writ of Certiorari to the Supreme Court of Michigan.

[February —, 1978]

MR. JUSTICE STEWART delivered the opinion of the Court.

The respondents, Loren Tyler and Robert Tompkins, were convicted in a Michigan trial court of conspiracy to burn real property in violation of Mich. Comp. Laws § 750.157a.[1] Various pieces of physical evidence and testimony based on personal observation, all obtained through unconsented and warrantless entries by police and fire officials onto the burned premises, were admitted into evidence at the respondents' trial. On appeal, the Michigan Supreme Court reversed the convictions, holding that "the warrantless searches were unconstitutional and that the evidence obtained was therefore inadmissible." 399 Mich. 564, 584, 250 N. W. 2d 467, 477 (1977). We granted certiorari to consider the applicability of the Fourth and Fourteenth Amendments to official investigatory entries onto fire-damaged premises. —— U. S. ——.

I

Shortly before midnight on January 21, 1970, a fire broke out at Tyler's Auction, a furniture store in Oakland County, Mich. The building was leased to respondent Loren Tyler, who conducted the business in association with respondent

[1] In addition, Tyler was convicted of the substantive offenses of burning real property, Mich. Comp. Laws § 750.73, and burning insured property with intent to defraud, Mich. Comp. Laws § 750.75.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

April 24, 1978

No. 76-1608, Michigan v. Tyler

Dear Harry,

Thank you for your note of April 24. As you correctly observe, I eliminated in the third draft of my opinion any approval or disapproval of the warrantless early morning re-entry on January 22. As I explained to some of the brethren at the Conference on Friday, this was done in an effort to achieve a Court opinion, which I think is extremely important in this case, involving as it does recurring problems that must confront fire departments throughout the country literally dozens of times every day. Since five members of the Court had subscribed to the basic principles stated in the opinion, I thought that if the opinion were confined to stating those principles, Byron would withdraw his partial dissent and we would have a Court opinion.

I have now read your proposed concurring opinion, and, of course, agree with it. It is my hope that any discussion about the early morning entry of January 22 can now take place on the "sidelines." In all likelihood it will be clear from that sideline discussion that at the retrial of this case evidence obtained during the early morning search of January 22 will be admissible.

Sincerely yours,

Mr. Justice Blackmun
Copies to the Conference

P. S. -- I confess to some difficulty in understanding Bill Rehnquist's reference to an "O'Henry ending" in the third draft. Both of the earlier circulations also affirmed the judgment of the Michigan Supreme Court ordering a new trial.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

April 24, 1978

Re: No. 76-1608, Michigan v. Tyler

Dear Harry,

Perhaps I should make explicit what I trust was implicit in my letter to you of earlier today: If four others were disposed to join the earlier version of my proposed opinion, I would gladly revert to it.

Sincerely yours,

P.S.

Mr. Justice Blackmun

Copies to: The Chief Justice
Mr. Justice Powell
Mr. Justice Rehnquist

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

May 16, 1978

Re: No. 76-1608, Michigan v. Tyler

Memorandum to the Conference

I have modified the structure of this opinion in an effort to achieve the maximum potential consensus without compromising my own views. On the basis of the previous oral and written expressions of your respective views in this case and in Barlow's, I hopefully assume that:

(1) The Chief and Lewis can join the entire opinion.

(2) Byron and Thurgood can join all of the opinion except Part IV-A, from which part they will dissent.

(3) Harry, John, and Bill Rehnquist can join Parts I, III, IV-A, and the judgment.

The first circulation in this case was in early February. While the subsequent delay is probably largely attributable to my own lack of resilience, it would be nice if it could be announced some day soon.

P.S.

SEE PAGES: 9, 11

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76–1608

State of Michigan, Petitioner,
v.
Loren Tyler and Robert Tompkins.

On Writ of Certiorari to the Supreme Court of Michigan.

[February —, 1978]

MR. JUSTICE STEWART delivered the opinion of the Court.

The respondents, Loren Tyler and Robert Tompkins, were convicted in a Michigan trial court of conspiracy to burn real property in violation of Mich. Comp. Laws § 750.157a.[1] Various pieces of physical evidence and testimony based on personal observation, all obtained through unconsented and warrantless entries by police and fire officials onto the burned premises, were admitted into evidence at the respondents' trial. On appeal, the Michigan Supreme Court reversed the convictions, holding that "the warrantless searches were unconstitutional and that the evidence obtained was therefore inadmissible." 399 Mich. 564, 584, 250 N. W. 2d 467, 477 (1977). We granted certiorari to consider the applicability of the Fourth and Fourteenth Amendments to official entries onto fire-damaged premises. — U. S. —.

I

Shortly before midnight on January 21, 1970, a fire broke out at Tyler's Auction, a furniture store in Oakland County, Mich. The building was leased to respondent Loren Tyler, who conducted the business in association with respondent

[1] In addition, Tyler was convicted of the substantive offenses of burning real property, Mich. Comp. Laws § 750.73, and burning insured property with intent to defraud, Mich. Comp. Laws § 750.75.

9, 11, 12

SEE PAGES

To: The Chief Justice
Mr Justice Brennan
Mr Justice White
Mr Justice Marshall
Mr Justice Blackmun
Mr Justice Powell
Mr Justice Rehnquist
Mr Justice Stevens

From: Mr Justice Stewart

Circulated:

Recirculated: 18 MAY

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-1608

State of Michigan, Petitioner,
v.
Loren Tyler and Robert Tompkins.

On Writ of Certiorari to the Supreme Court of Michigan.

[February —, 1978]

MR. JUSTICE STEWART delivered the opinion of the Court.

The respondents, Loren Tyler and Robert Tompkins, were convicted in a Michigan trial court of conspiracy to burn real property in violation of Mich. Comp. Laws § 750.157a.[1] Various pieces of physical evidence and testimony based on personal observation, all obtained through unconsented and warrantless entries by police and fire officials onto the burned premises, were admitted into evidence at the respondents' trial. On appeal, the Michigan Supreme Court reversed the convictions, holding that "the warrantless searches were unconstitutional and that the evidence obtained was therefore inadmissible." 399 Mich. 564, 584, 250 N. W. 2d 467, 477 (1977). We granted certiorari to consider the applicability of the Fourth and Fourteenth Amendments to official entries onto fire-damaged premises. — U. S. —.

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Shortly before midnight on January 21, 1970, a fire broke out at Tyler's Auction, a furniture store in Oakland County, Mich. The building was leased to respondent Loren Tyler, who conducted the business in association with respondent

[1] In addition, Tyler was convicted of the substantive offenses of burning real property, Mich. Comp. Laws § 750.73, and burning insured property with intent to defraud, Mich. Comp. Laws § 750.75.

5, 6, 8, 12

To: The Chief Justice
Mr Justice Brennan
Mr Justice White
Mr Justice Marshall
Mr Justice Blackmun
Mr Justice Powell
Mr Justice Rehnquist
Mr Justice Stevens

From: Mr Justice Stewart

Circulated: 2 MAR

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6th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-1608

State of Michigan, Petitioner,
v.
Loren Tyler and Robert Tompkins.

On Writ of Certiorari to the Supreme Court of Michigan.

[February —, 1978]

MR. JUSTICE STEWART delivered the opinion of the Court.

The respondents, Loren Tyler and Robert Tompkins, were convicted in a Michigan trial court of conspiracy to burn real property in violation of Mich. Comp. Laws § 750.157a.[1] Various pieces of physical evidence and testimony based on personal observation, all obtained through unconsented and warrantless entries by police and fire officials onto the burned premises, were admitted into evidence at the respondents' trial. On appeal, the Michigan Supreme Court reversed the convictions, holding that "the warrantless searches were unconstitutional and that the evidence obtained was therefore inadmissible." 399 Mich. 564, 584, 250 N. W. 2d 467, 477 (1977). We granted certiorari to consider the applicability of the Fourth and Fourteenth Amendments to official entries onto fire-damaged premises. — U. S. —.

I

Shortly before midnight on January 21, 1970, a fire broke out at Tyler's Auction, a furniture store in Oakland County, Mich. The building was leased to respondent Loren Tyler, who conducted the business in association with respondent

[1] In addition, Tyler was convicted of the substantive offenses of burning real property, Mich. Comp. Laws § 750.73, and burning insured property with intent to defraud, Mich. Comp. Laws § 750.75.

Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice White

Circulated: 2/28

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-1608

State of Michigan, Petitioner,
v.
Loren Tyler and Robert Tompkins.

On Writ of Certiorari to the Supreme Court of Michigan.

[March —, 1978]

MR. JUSTICE WHITE, concurring in part and dissenting in part.

Although the firemen were lawfully on the premises to extinguish the fire and to make any observations with respect to its cause that might reasonably be made during this process, it is my view that when the firemen had extinguished the fire and departed the premises, no further entries could be made without a proper warrant. There are two reasons for this conclusion: first, the fire-fighting mission having been concluded, later entry to determine the cause of the fire, although properly considered as a civil purpose, required a warrant. Second, I am unable to ignore the findings of the courts below that when re-entry was effected after the initial departure, a criminal investigation was underway and the purpose of the officers was to gather evidence of a crime. Hence, a warrant was necessary. *Camara* v. *Municipal Court*, 387 U. S. 523, (1967), and *See* v. *City of Seattle*, 387 U. S. 541 (1967), did not differ with *Frank* v. *Maryland*, 359 U. S. 360 (1959), that searches for criminal evidence are of special significance under the Fourth Amendment.

Except for the above, I agree with the opinion of the Court.

Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice White

Circulated: _____

Recirculated: 3/2

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-1608

State of Michigan, Petitioner,
v.
Loren Tyler and Robert Tompkins.

On Writ of Certiorari to the Supreme Court of Michigan.

[March —, 1978]

MR. JUSTICE WHITE, with whom MR. JUSTICE MARSHALL joins, concurring in part and dissenting in part.

Although the firemen were lawfully on the premises to extinguish the fire and to make any observations with respect to its cause that might reasonably be made during this process, it is my view that when the firemen had extinguished the fire and departed the premises, no further entries could be made without a proper warrant. There are two reasons for this conclusion: first, the fire-fighting mission having been concluded, later entry to determine the cause of the fire, although properly considered as a civil purpose, required a warrant. Second, I am unable to ignore the findings of the courts below that when re-entry was effected after the initial departure, a criminal investigation was underway and the purpose of the officers was to gather evidence of a crime. Hence, a warrant was necessary. *Camara* v. *Municipal Court,* 387 U. S. 523, (1967), and *See* v. *City of Seattle,* 387 U. S. 541 (1967), did not differ with *Frank* v. *Maryland,* 359 U. S. 360 (1959), that searches for criminal evidence are of special significance under the Fourth Amendment.

Except for the above, I agree with the opinion of the Court.

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice White

Circulated: May 8, 1978

Recirculated: _____

Re: 76-1608 - Michigan v. Tyler

MR. JUSTICE WHITE, concurring.

I agree with the Court that:

> "[A]n 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 the cause of the fire must be made pursuant to the warrant procedures governing administrative searches." Ante at 10-11.

The Michigan Supreme Court found that the warrantless searches at 8 and 9 a.m. were not, in fact, continuations of the earlier entry under exigent circumstances[1/] and therefore ruled inadmissible all evidence derived from those searches. Today the Court affirms that ruling.

1/ The Michigan Supreme Court recognized that "If there are exigent circumstances, such as reason to believe that the destruction of evidence is imminent or that a further entry of the premises is necessary to prevent the recurrence of the fire, no warrant is required and evidence discovered is admissible." It found, however, that "In the circumstances of this case there were no exigent circumstances justifying the searches made hours, days or weeks after the fire was extinguished."

1st PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76–1608

State of Michigan, Petitioner,
v.
Loren Tyler and Robert Tompkins.

On Writ of Certiorari to the Supreme Court of Michigan.

[May —, 1978]

MR. JUSTICE WHITE, with whom MR. JUSTICE MARSHALL joins, concurring.

I agree with the Court that:

> "[A]n 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 the cause of the fire must be made pursuant to the warrant procedures governing administrative searches." *Ante,* at 10–11.

The Michigan Supreme Court found that the warrantless searches, at 8 and 9 a. m. were not, in fact, continuations of the earlier entry under exigent circumstances* and therefore ruled inadmissible all evidence derived from those searches. Today the Court affirms that ruling.

There is no basis for overturning the conclusion of the state court that the subsequent re-entries were distinct from the original entry. Even if it were true that under the Court's

*The Michigan Supreme Court recognized that "if there are exigent circumstances, such as reason to believe that the destruction of evidence is imminent or that a further entry of the premises is necessary to prevent the recurrence of the fire, no warrant is required and evidence discovered is admissible." 399 Mich. 564, 578, 250 N. W. 2d 467, 474 (1977). It found, however, that "In the circumstances of this case there were no exigent circumstances justifying the searches made hours, days or weeks after the fire was extinguished." *Id.*, at 579, 250 N. W. 2d, at 475.

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice White

Circulated: ___

Recirculated: 5/17

1st PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-1608

State of Michigan, Petitioner, *v.* Loren Tyler and Robert Tompkins. | On Writ of Certiorari to the Supreme Court of Michigan.

[May —, 1978]

MR. JUSTICE WHITE, with whom MR. JUSTICE MARSHALL joins, concurring in part and dissenting in part.

¶ I join in all but Part IV-A of the opinion, from which I dissent.

I agree with the Court that:

> "[A]n 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 the cause of the fire must be made pursuant to the warrant procedures governing administrative searches." *Ante*, at 11-12.

The Michigan Supreme Court found that the warrantless searches, at 8 and 9 a. m. were not, in fact, continuations of the earlier entry under exigent circumstances* and therefore ruled inadmissible all evidence derived from those searches.

No ¶ The Court offers no sound basis for overturning this ~~There is no basis for overturning the~~ conclusion of the state court that the subsequent re-entries were distinct from the original entry. Even if ~~it were true that~~ under the Court's

*The Michigan Supreme Court recognized that "if there are exigent circumstances, such as reason to believe that the destruction of evidence is imminent or that a further entry of the premises is necessary to prevent the recurrence of the fire, no warrant is required and evidence discovered is admissible." 399 Mich. 564, 578, 250 N. W. 2d 467, 474 (1977). It found, however, that "In the circumstances of this case there were no exigent circumstances justifying the searches made hours, days or weeks after the fire was extinguished." *Id.*, at 579, 250 N. W. 2d, at 475.

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice White

Circulated: _____

Recirculated: 5/18

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76–1608

State of Michigan, Petitioner,
v.
Loren Tyler and Robert Tompkins.

On Writ of Certiorari to the Supreme Court of Michigan.

[May —, 1978]

MR. JUSTICE WHITE, with whom MR. JUSTICE MARSHALL joins, concurring in part and dissenting in part.

I join in all but Part IV–A of the opinion, from which I dissent. I agree with the Court that:

> "[A]n 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 the cause of the fire must be made pursuant to the warrant procedures governing administrative searches." *Ante,* at 11–12.

The Michigan Supreme Court found that the warrantless searches, at 8 and 9 a. m. were not, in fact, continuations of the earlier entry under exigent circumstances* and therefore ruled inadmissible all evidence derived from those searches. The Court offers no sound basis for overturning this conclusion of the state court that the subsequent re-entries were distinct from the original entry. Even if, under the Court's

*The Michigan Supreme Court recognized that "if there are exigent circumstances, such as reason to believe that the destruction of evidence is imminent or that a further entry of the premises is necessary to prevent the recurrence of the fire, no warrant is required and evidence discovered is admissible." 399 Mich. 564, 578, 250 N. W. 2d 467, 474 (1977). It found, however, that "In the circumstances of this case there were no exigent circumstances justifying the searches made hours, days or weeks after the fire was extinguished." *Id.*, at 579, 250 N. W. 2d, at 475.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 16, 1978

MEMORANDUM TO THE CONFERENCE

Re: No. 76-1608, Michigan v. Tyler

I vote to affirm the judgment of the Supreme Court of Michigan. There is some doubt in my mind whether this case is properly before us, since the Michigan court read a warrant requirement into a Michigan statute. Assuming that we reach the merits, however, I believe that a warrant was required for both the search after 8 a.m. on January 22, 1970, and the search on February 16, 1970.

When the fire chief and assistant fire chief arrived at the scene of the fire after 8 a.m. on January 22, they were pursuing a criminal investigation and "were not there for any purpose of fire fighting," as conceded by the assistant chief, Cert. Petn. at 27 n.18. When the chief had seen the gasoline-filled containers and smelled gasoline the night before, he had immediately called a police detective, a step that would have been necessary only if crime were suspected. That night, moreover, the gasoline and containers were taken to the police station, not the fire station. In the morning, the assistant chief brought the police detective back to the scene. In such circumstances, at a minimum an administrative warrant was required, as Byron's opinions in Camara and See make clear, but the apparent search for evidence to be used in a criminal prosecution may make the more stringent criminal standards applicable.

The search on February 16 was even more clearly part of a criminal investigation. The sergeant who took the photographs and seized additional evidence was a member of the arson investigation section of the Michigan State Police; his job was to gather evidence of criminal arson. Prior to this search, moreover, on January 29 the sergeant and the assistant fire chief met with respondent Tyler at the fire station and advised him of his Miranda rights, a step strongly indicating that the criminal investigation had focused on Tyler as a suspect. Finally, on January 31, well in advance of the search, the police had received information inculpating respondents from an employee who was to become the State's principal witness at trial.

T.M.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 28, 1978

Re: No. 76-1608, State of Michigan v. Tyler

Dear Byron:

Please join me.

Sincerely,

T. M.

Mr. Justice White

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 8, 1978

Re: No. 76-1608 - Michigan v. Tyler

Dear Byron:

I go along with your latest circulation.

Sincerely,

T.M.

Mr. Justice White

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 14, 1978

Re: No. 76-1608 - Michigan v. Tyler

Dear Potter:

Like John, I am in accord with the result you propose. In particular, I agree that the evidence seized during the daylight search the next morning is admissible. I am concerned, however, with whether the opinion speaks too sweepingly of the Fourth Amendment protection afforded "administrative searches." The full paragraph on page 6 is illustrative. It seems inconsistent with the position I expressed at conference in connection with Marshall v. Barlow's.

In summary, I am not yet at rest with respect to your opinion. I shall probably concur only in the judgment or write briefly in separate concurrence.

Sincerely,

H. A. B.

Mr. Justice Stewart

cc: The Conference

April 24, 1978

Re: No. 76-1608 - Michigan v. Tyler

Dear Chief:

You will receive under separate cover my letter response to Potter about his third draft in this case. I send you this note because you have already joined him and because my conference notes indicate that his withdrawal with respect to the early morning entry may well prompt you to take another look.

Sincerely,

HAB

The Chief Justice

[marked "Personal"]

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 24, 1978

Re: No. 76-1608 - Michigan v. Tyler

Dear Potter:

Your third draft, circulated on April 21, eliminated, of course, what I would have preferred to retain, namely, the approval of the early morning reentry of January 21.

Because my conference notes indicate that John is generally in agreement with this, I was waiting for his writing. I, however, am putting together a short separate statement which I may or may not use depending on what John has to say. It will be around without delay. Please regard it as contingent upon John's statement.

Sincerely,

H.A.B.

Mr. Justice Stewart

cc: The Conference

Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Blackmun

Circulated: APR 24 1978

Recirculated: _____

No. 76-1608 - Michigan v. Tyler

MR. JUSTICE BLACKMUN, concurring.

The Court states that the opinion of the Michigan Supreme Court may be read as holding that the need to get a warrant begins "with the dousing of the last flame," and then states that that view of the firefighting function "is unrealistically narrow." Ante, p. 10. I agree. I also agree with the Court' further observations that fire officials are charged not only with extinguishing fires but with finding their causes, and that such 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." Ibid.

Applying those principles to the facts of the present case leads me to conclude that the entry of the fire chiefs into the building at

Printed
1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-1608

State of Michigan, Petitioner,
v.
Loren Tyler and Robert Tompkins.

On Writ of Certiorari to the Supreme Court of Michigan.

[May —, 1978]

MR. JUSTICE BLACKMUN, concurring.

The Court states that the opinion of the Michigan Supreme Court may be read as holding that the need to get a warrant begins "with the dousing of the last flame," and then states that that view of the firefighting function "is unrealistically narrow." *Ante*, p. 10. I agree. I also agree with the Court's further observations that fire officials are charged not only with extinguishing fires but with finding their causes, and that such 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." *Ibid.*

Applying those principles to the facts of the present case leads me to conclude that the entry of the fire chiefs into the building at eight and nine a. m. on the morning of the fire was not a new entry or entries but a continuation of their original, entirely legal entry. The fire took place on January 21, when the nights are long in Michigan. The return was an immediate one in daylight hours. Had the firemen delayed their departure, for one reason or another, from 4 a. m. to 8 a. m., few would argue that their continued stay was improper. I see no reason to draw a conclusion of impropriety merely because they departed and then returned as soon as daylight had arrived. This, for me, is a far different situation from the return some three weeks later on February 16.

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-1608

State of Michigan, Petitioner,
v.
Loren Tyler and Robert Tompkins.

On Writ of Certiorari to the Supreme Court of Michigan.

[May —, 1978]

MR. JUSTICE BLACKMUN, with whom MR. JUSTICE POWELL joins, concurring.

The Court states that the opinion of the Michigan Supreme Court may be read as holding that the need to get a warrant begins "with the dousing of the last flame," and then states that that view of the firefighting function "is unrealistically narrow." *Ante,* p. 10. I agree. I also agree with the Court's further observations that fire officials are charged not only with extinguishing fires but with finding their causes, and that such 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." *Ibid.*

Applying those principles to the facts of the present case leads me to conclude that the entry of the fire chiefs into the building at eight and nine a. m. on the morning of the fire was not a new entry or entries but a continuation of their original, entirely legal entry. The fire took place on January 21, when the nights are long in Michigan. The return was an immediate one in daylight hours. Had the firemen delayed their departure, for one reason or another, from 4 a. m. to 8 a. m., few would argue that their continued stay was improper. I see no reason to draw a conclusion of impropriety merely because they departed and then returned as soon as daylight had arrived. This, for me, is a far different situation

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 12, 1978

Re: No. 76-1608 - Michigan v. Tyler

Dear Lewis:

You heretofore joined my brief concurring opinion in this case. The enclosed copy of my letter to Potter speaks for itself. Although my revision makes no reference to administrative search, as John's writing does, you may well wish to reconsider your joinder with me in view of the fact that you joined Byron in Barlow's. I think you could stay with me in the present case without prejudicing your position in Barlow's, but I do not wish to mislead you in any way.

Sincerely,

Harry

Mr. Justice Powell

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 12, 1978

Re: No. 76-1608 - Michigan v. Tyler

Dear Potter:

In my letters of February 14 and April 24 I indicated discomfort about the administrative search approach in this case, and further indicated that my tentative vote was somewhat contingent upon what John would have to say. John has now written in this case and in Marshall v. Barlow's, and I have joined him in Barlow's.

This requires, I think, that I now concur only in the judgment in Michigan v. Tyler. I am changing my very short statement accordingly.

I fully understand your desire to get a good solid court in this case. At least I am with you in the judgment.

Sincerely,

Harry

Mr. Justice Stewart

cc: The Conference

Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Blackmun

Circulated: _____

3rd DRAFT Recirculated: MAY 15 1978

SUPREME COURT OF THE UNITED STATES

No. 76-1608

State of Michigan, Petitioner, *v.* Loren Tyler and Robert Tompkins. | On Writ of Certiorari to the Supreme Court of Michigan.

[May —, 1978]

MR. JUSTICE BLACKMUN, concurring in the judgment.

The Court states that the opinion of the Michigan Supreme Court may be read as holding that the need to get a warrant begins "with the dousing of the last flame," and then states that that view of the firefighting function "is unrealistically narrow." *Ante*, p. 10. I agree. I also agree with the Court's further observations that fire officials are charged not only with extinguishing fires but with finding their causes, and that such 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." *Ibid.*

Applying those principles to the facts of the present case leads me to conclude that the entry of the fire chiefs into the building at eight and nine a. m. on the morning of the fire was not a new entry or entries but a continuation of their original, entirely legal entry. The fire took place on January 21, a time of year when the nights are long in Michigan. The return was an immediate one in daylight hours. Had the firemen delayed their departure, for one reason or another, from 4 a. m. to 8 a. m., few would argue that their continued stay was improper. I see no reason to draw a conclusion of impropriety merely because they departed and then returned as soon as daylight had arrived. This, for me, is a far different situation from the return some three weeks later on February 16. On the assumption that the Court's opinion with its reference to remaining "for a reasonable time" covers the morning returns, I fully concur in the judgment.

May 17, 1978

Re: No. 76-1608 - Michigan v. Tyler

Dear Potter:

I hope I am not imagining things, but I wonder if there is not the seed of some confusion between pages 2 and 11 of the opinion. On page 2 you appropriately make reference to the morning entry "four hours" after the nighttime departure, and to Somerville's return with Detective Webb around 9:00 a.m. On page 11 in Part IV-A you refer only to the 8:00 a.m. entry and make no mention of the 9:00 a.m. entry. I mention them both in my short opinion, and I notice that Byron does the same on the first page of his draft.

So far as I am concerned, my position as to the 8:00 a.m. entry also applies to the one at 9:00 a.m. either because they are appropriate separate reentries or because it all amounts to one entry anyway.

I mention this only because I do not want the Court's holding to go one way as to 8:00 a.m. and another way, by inference, as to 9:00 a.m. My joinder, in fact, is dependent on this not happening. Do you think it worthwhile to clarify the reference in the last sentence of Part IV-A to make it speak of "the morning entries" or something to that effect. Perhaps the second line in the same paragraph deserves similar treatment.

Sincerely,

HAB

Mr. Justice Stewart

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 17, 1978

Re: No. 76-1608 - Michigan v. Tyler

Dear Potter:

I agree that it is well to try to move this case along. The breakdown you have effected should provide an impetus.

I therefore am withdrawing my separate opinion. At the end of your opinion would you append the following:

> "Mr. Justice Blackmun joins the judgment of the Court and Parts I, III, and IV-A of its opinion."

Sincerely,

Harry

Mr. Justice Stewart

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 16, 1978

No. 76-1608 Michigan v. Tyler

Dear Potter:

Please join me.

Sincerely,

Lewis

Mr. Justice Stewart

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 24, 1978

No. 76-1608 Michigan v. Tyler

Dear Potter:

I am asking Harry to add my name to his concurring opinion. The elimination from your opinion of the approval of the early morning reentry had disturbed me.

The frequency with which fires occur in every state means that fire and police departments across the country will be reading closely the opinions in this case for guidance. I have viewed the early morning entry [or reentry] as more or less of a continuation of the initial entry during darkness. Indeed, the follow-up when daylight came seems an essential part of the initial duty of a fire department (i) to be certain the fire has been extinguished, and (ii) to seek contemporary evidence as to its cause - evidence that may very well dissipate quickly.

I have hoped we could get a solid Court opinion in view of the importance of this case as a precedent, but I feel compelled to qualify my joining you by the assumption expressed by Harry in his concurring opinion.

Sincerely,

Lewis

Mr. Justice Stewart

lfp/ss

cc: The Conference

J

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 24, 1978

No. 76-1608 Michigan v. Tyler

Dear Harry:

Please join me in your concurring opinion.

Sincerely,

Lewis

Mr. Justice Blackmun

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 17, 1978

No. 76-1608 Michigan v. Tyler

Dear Potter:

I am still with you.

Sincerely,

Lewis

Mr. Justice Stewart

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 24, 1978

Re: No. 76-1608 Michigan v. Tyler

Dear Potter:

I had previously told you that I was delaying my vote in this case to await John's dissent in Barlow's. The third draft of your opinion circulated on April 21, with its O. Henry ending, convinces me that I will not be able to join it. I now contemplate writing a separate opinion dissenting from your affirmance of the Michigan Supreme Court.

Sincerely,

Mr. Justice Stewart

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 25, 1978

Re: No. 76-1608 Michigan v. Tyler

Dear Potter:

In view of the various circulations in this case yesterday and today, I am shifting into neutral pending circulation of John's dissent in Barlow's.

Sincerely,

WHR

Mr. Justice Stewart

Copies to the Conference

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Stevens

From: Mr. Justice Rehnquist

Circulated: MAY 26 1978

Recirculated: _____

No. 76-1608 - Michigan v. Tyler

MR. JUSTICE REHNQUIST, dissenting.

I agree with my Brother Stevens, for the reasons expressed in his dissenting opinion in Marshall v. Barlow's, Inc., ___U.S. ___, ___, ___(1978)(Stevens, J., dissenting), that the "Warrant Clause has no application to routine, regulatory inspections of commercial premises." Since in my opinion the searches involved in this case fall within that category, I think the only appropriate inquiry is whether they were reasonable. The Court does not dispute that the entries which occurred at the time of the fire and the next morning were entirely justified, I see nothing to indicate that the subsequent searches were not also eminently reasonable in light of all the circumstances.

In evaluating the reasonableness of the later searches, their most obvious feature is that they occurred after a fire

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 13, 1978

Re: 76-1608 - State of Michigan v. Tyler and Tompkins

Dear Potter:

Although I expect to concur in the judgment, it is my present intention not to join the portions of your opinion which seem to establish a flat rule requiring an administrative warrant for any post-fire search even though there is no evidence of criminal conduct.

Respectfully,

JPS

Mr. Justice Stewart

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 28, 1978

Re: 76-1608 - Michigan v. Tyler

Dear Potter:

My apologies for being so slow in responding. I would like to complete work on my Barlow dissent before taking a final position in this case.

Respectfully,

John

Mr. Justice Stewart

Copies to the Conference

Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Mr. Justice Stevens

Circulated: MAY 11 1978

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76–1608

State of Michigan, Petitioner, *v.* Loren Tyler and Robert Tompkins. | On Writ of Certiorari to the Supreme Court of Michigan.

[May —, 1978]

MR. JUSTICE STEVENS, concurring in the result.

Because the Court's opinion in this case, like the opinion in *Camara* v. *Municipal Court,* 387 U. S. 523, seems to assume that an official search must either be conducted pursuant to a warrant or not take place at all, I cannot join its reasoning.

In particular, I cannot agree with the Court's suggestion that, if no showing of probable cause could be made, "the warrant procedure governing administrative searches," ~~*ibid.,*~~ would have complied with the Fourth Amendment. In my opinion, an "administrative search warrant" does not satisfy the requirements of the Warrant Clause.[1] See *Marshall* v. *Barlow's, Inc.,* — U. S. — (STEVENS, J., dissenting). Nor does such a warrant make an otherwise unreasonable search reasonable. {ante, at 11,

A warrant provides authority for an unannounced, immediate entry and search. No notice is given when an application for a warrant is made and no notice precedes its execution; when issued, it authorizes entry by force.[2] In my view, when

[1] The Warrant Clause of the Fourth Amendment provides that ". . . no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

[2] See *Wyman* v. *James,* 400 U. S. 309, 323–324. As the Court observed in *Wyman,* a warrant is not simply a device providing procedural protections for the citizen; it also grants the government increased authority to

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 17, 1978

Re: 76-1608 - Michigan v. Tyler

Dear Potter:

In view of your changes, I have modified my separate opinion to indicate that I concur in Parts I, III, and IV of your opinion. (I may miss something, but I do not see any problem with Part IV-B as well as Part IV-A.)

Respectfully,

Mr. Justice Stewart

Copies to the Conference

Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Mr. Justice Stevens

Circulated: MAY 11 1978

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76–1608

State of Michigan, Petitioner, v. Loren Tyler and Robert Tompkins. } On Writ of Certiorari to the Supreme Court of Michigan.

[May —, 1978] part and concurring in the judgment.

MR. JUSTICE STEVENS, concurring in ~~the result~~ part and concurring in the judgment.

Because the Court's opinion in this case, like the opinion in *Camara* v. *Municipal Court*, 387 U. S. 523, seems to assume that an official search must either be conducted pursuant to a warrant or not take place at all, I cannot join its reasoning. Part II of

In particular, I cannot agree with the Court's suggestion that, if no showing of probable cause could be made, "the warrant procedure governing administrative searches," ~~it~~ would have complied with the Fourth Amendment. In my opinion, an "administrative search warrant" does not satisfy the requirements of the Warrant Clause.[1] See *Marshall* v. *Barlow's, Inc.*, — U. S. — (STEVENS, J., dissenting). Nor does such a warrant make an otherwise unreasonable search reasonable. (ante, at 11)

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[2] See *Wyman* v. *James*, 400 U. S. 309, 323–324. As the Court observed in *Wyman*, a warrant is not simply a device providing procedural protections for the citizen; it also grants the government increased authority to