

Vermont Supreme Court Addresses Emergency Aid Exception to Search Warrant Requirement

In a 3-2 decision rendered earlier this year, the Vermont Supreme Court held that evidence obtained by a warrantless search by a State trooper responding to an emergency call be suppressed. *State v. Ford*, 998 A.2d 684 (2010).

The facts of the case begin with a 9-1-1 call by someone identifying himself as Stephen Ford who claimed he had been in an automobile accident and was trapped in his car on the Hartford-Quechee Road in Hartford. After searching the area and finding neither a damaged car nor Mr. Ford, a Vermont state police trooper was called upon to conduct a welfare check at his last known address in Williamstown, some 40 miles from the scene of the reported accident. The trooper arrived at the residence at 6 a.m. and witnessed only one snow-covered car in the driveway and no fresh tire tracks, but did see footprints leading to the basement. No lights were on in the home. Believing Mr. Ford lived in the basement, the trooper knocked on the basement door next to the driveway and announced her presence. Receiving no response, the trooper proceeded to the back of the house where she saw lights coming out of the basement windows. Peering in for a closer look, the trooper wasn't able to locate Ford or anyone else, but she did notice several marijuana plants growing under some lights in an aquarium. The trooper subsequently obtained a search warrant to search the house owned by Ford's mother. Upon seizing the plants, oxycodone tablets and other materials, the police learned that the basement was occupied not by Stephen Ford but by his brother, Justin.

Justin Ford (hereinafter "defendant") was charged with two misdemeanor counts of possession of marijuana and narcotics. At trial, the defendant moved to suppress the evidence seized on state constitutional grounds that the search emanated from a warrantless entry of his grounds. The district court denied his motion, resulting in a guilty plea conditioned upon the outcome of his appeal to the Vermont Supreme Court.

Article 11 of the Vermont Constitution, like its federal analogue, the Fourth Amendment, protects people from unreasonable searches of their homes and other property. The difference, as noted by the Vermont Supreme Court, is "we have ... long held that our traditional Vermont values of privacy and individual freedom – embodied in Article 11 – may require greater protection than that afforded by the federal Constitution." *State v. Bauder*, 2007 VT 16. The scope of this protection covers all corners of the home and its curtilage – those areas adjoining a home that are "intimately tied to the privacies of life." Invasions upon these spaces are presumptively unreasonable and exceptions to them are narrowly drawn. The emergency aid exception, for instance, allows for warrantless entries to private property to prevent an imminent threat to life or property. Since this type of entry is still technically an invasion of one's privacy, any associated searches must be "circumscribed by the emergency which serves to justify it and should not be used to support a general exploratory search."

The Court conducted a three-part analysis (the "Mountford/Mitchell test") to determine whether the trooper's visual inspection of the defendant's home through his basement window fell within this emergency aid exception to the search warrant requirement. This test requires that:

1. the trooper 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 entry not be “primarily motivated by intent to arrest and seize evidence”; and
3. the area actually searched was in some way associated to the emergency.

The Court held the trooper’s search failed the first and third parts of the test and therefore constituted an illegal warrantless search in violation of the Vermont Constitution. The first part failed because there was no indication of an immediate need for emergency police assistance at the defendant’s home. No accident was discovered. No report of physical injuries was made. The trooper was dispatched to Williamstown to conduct a welfare check at the defendant’s last known address, but she testified to nothing that would indicate the defendant was even there, much less justify the existence of an emergency. The Court, aware of the potentially chilling effect its opinion could have on law enforcement conducting welfare checks, drew an important distinction between those parts of curtilage afforded full constitutional protection for search purposes and those that are only “semiprivate areas.” “(T)he trooper’s presence in his driveway and dooryard, and her knock upon his door, did not constitute an unlawful search ... Had she discovered evidence supporting a reasonable belief that there was an immediate need for emergency assistance in those areas, she could have continued her search.” A majority of the Court felt that footprints and an unlit house on their own, far removed from the scene of a reported accident, weren’t enough to establish an emergency justifying a further invasion of one’s privacy. The Court held that the search failed the third part of the test because it exceeded the scope of the emergency, which was limited to the scene of the reported accident in Hartford. Without any evidence that anyone had been hurt or even that an accident had occurred, the State lacked any reasonable basis for expanding the search area to the defendant’s home. Because the search failed two-thirds of the test, the Court felt it unnecessary to assess the continued applicability of the second part, which the United State Supreme Court had previously invalidated. (See “U.S. Supreme Court Affirms Officers’ Right to Enter Property” in the July 2006 edition of the *VLCT News* for the Court’s holding that an officer’s intent entering a home is irrelevant.) All evidence obtained during the search was suppressed and the case was remanded back to the district court for further proceedings.

The dissent, which itself characterizes this as a “close case,” writes of the potential chilling impact this decision could have on law enforcement rendering emergency assistance. It warns that “(u)nder the majority’s limited interpretation of the emergency aid exception, police officers are now asked to ignore this general obligation (search for persons in distress) and risk leaving injured people undiscovered rather than briefly and logically investigating the situation further.” The majority notes, however, that its decision doesn’t prevent welfare checks in response to emergency calls, but there must be a reasonable belief that a warrantless entry is necessary to protect life. In this case, there just wasn’t enough to link the area searched and the emergency reported.

Garrett Baxter, Staff Attorney
VLCT Municipal Assistance Center
VLCT News, December, 2010