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Appellate Division, Second Department: People v. Rodriguez

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SUPREME COURT OF NEW YORK
APPELLATE DIVISION, SECOND DEPARTMENT

People v. Rodriguez[1]
(decided August 31, 2010)

George Rodriguez faced criminal prosecution after police found "significant amount[s] of marijuana and cocaine, along with drug paraphernalia" in his apartment.[2] At trial, Rodriguez argued the evidence should have been suppressed because the police officers' initial warrantless entry into his apartment constituted a violation of his Fourth Amendment to the United States Constitution[3] and article I, section 12[4] rights of the New York State Constitution.[5] The court held that "the police were presented with an emergency situation, justifying their warrantless entry into the defendant's apartment," and therefore the defendant's "motion . . . to suppress physical evidence [was] denied."[6]

On August 4, 2006, Officers Bellico and Hennessy received a call "informing them of a stabbing in progress on the fifth floor of an apartment complex."[7] The officers responded and found the injured defendant who "provided a description of his assailant."[8] The defendant contended that he did not live in the building and was walking on the fifth floor when he was stopped and stabbed by another indi-

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[1] 907 N.Y.S.2d 294 (App. Div. 2d Dep't. 2010).

[2] *Id.* at 296.

[3] The Fourth Amendment to the United States Constitution states, in relevant part: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause . . . ."

[4] Article I, section 12 of the New York State Constitution states, in relevant part: "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause . . . ."

[5] *Rodriguez*, 907 N.Y.S.2d at 296.

[6] *Id.* at 303.

[7] *Id.* at 295.

[8] *Id.*

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vidual.[9] After the defendant was transported to the hospital, the officer noticed a trail of blood "leading down to . . . the third floor" in front of an apartment, later identified as that of the defendants.[10] Officer Hennessy, unable to receive a response from the apartment, asked the superintendent to open the door.[11] The officer believed this was the most expeditious way to enter the apartment, as he was unable to knock the door down on his own and an emergency services unit would have taken about thirty minutes to arrive.[12] After about ten minutes, the officer was notified of the alleged assailant's detainment and the superintendent arrived with the key for the door.[13] Upon entry into the apartment, the officer noticed additional blood in the kitchen and living room, "but no other victims were found."[14] However, the search also revealed "a hydroponic tank with as many as [twelve] pots containing marijuana plants inside."[15] Subsequently, the officers obtained a warrant which turned up "significant amount[s] of marijuana[,] . . . cocaine, . . . [and] drug paraphernalia."[16]

The People attempted to enter the marijuana, cocaine, and other drug paraphernalia discovered at the defendant's apartment into evidence.[17] The People argued that although the evidence was obtained after a warrantless entry into the defendant's apartment, it was "justified under the emergency exception to the warrant requirement."[18]

Mr. Rodriguez argued that "there was no report of a missing person, and no reason for the officers to believe that there were more than two people involved in the incident, both of whom had been accounted for just prior to the officers' entry into [the] apartment."[19] In addition, the officer "demonstrated that there was no emergency," because the officer waited ten minutes to open the door instead of

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[9] *Id.* at 295-96.
[10] *Rodriguez*, 907 N.Y.S.2d at 296.
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] *Id.*
[15] *Rodriguez*, 907 N.Y.S.2d at 296.
[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] *Id.* at 300.

knocking it down.[20] Therefore, the People failed to satisfy the first prong of the *Mitchell* analysis, which required "reasonable grounds to believe that there is an emergency at hand and an immediate need for [officer] assistance for the protection of life or property."[21] The New York Court of Appeals promulgated this standard, establishing a three prong test to determine whether an emergency situation justified a warrantless entry into a protected space.[22] The hearing court agreed with the defendant and held that the physical evidence should have been suppressed because the People failed to satisfy the first prong of the *Mitchell* test.[23]

The appellate division reversed the holding of the hearing court,[24] and analyzed the facts under *Mitchell's* three prong test.[25] First, it was reasonable for the police to believe an emergency existed where "a person had just been violently stabbed," the defendant had been disingenuous about where the attack occurred, and there was a large trail of blood leading up to a blood stained apartment door.[26] Additionally, the circumstances prevented Officer Hennessy from obtaining information which may have convinced him that an emergency did not exist.[27] Furthermore, although the officer waited ten minutes, the court believed this was the most expedient avenue provided for opening the door.[28] The third prong of the analysis was satisfied

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[20] *Rodriguez*, 907 N.Y.S.2d at 301.

[21] *Id.* at 297 (quoting People v. Mitchell, 347 N.E.2d 607, 609 (N.Y. 1976)) (internal quotation marks omitted).

[22] *See Mitchell*, 347 N.E.2d at 609. The court held that the following elements must be satisfied in order to constitute an emergency:

> (1) The police must 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 search must not be primarily motivated by intent to arrest and seize evidence. (3) There must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched.

Id.

[23] *Rodriguez*, 907 N.Y.S.2d at 296.

[24] *Id.* at 303.

[25] *Id.* at 301-03.

[26] *Id.* at 299. *See also* United States v. Chipps, 410 F.3d 438, 443 (8th Cir. 2005) (holding that it was reasonable for an officer to believe that a trail of blood indicated someone's life was in immediate danger).

[27] *Rodriguez*, 907 N.Y.S.2d at 301 ("The defendant never indicated how many people were stabbed, and, having been taken by ambulance, [the defendant] was not there for [Officer] Hennessy to ask any additional questions.").

[28] *Id.*

because the trail of blood leading to the blood-stained door gave the police a "reasonable basis . . . to associate the emergency with the inside of [the] apartment."[29] Nonetheless, the second prong of the analysis required a greater degree of scrutiny.

Under the *Mitchell* standard, the second prong requires the use of a subjective standard when determining whether "[t]he search . . . [was] primarily motivated by intent to arrest and seize evidence."[30] However, the United States Supreme Court, in *Brigham City v. Stuart*,[31] recently held that "[t]he officer's subjective motivation is irrelevant."[32] This represents a clear contradiction, yet the court in *Rodriguez* refused to opine as to whether the New York Constitution required the removal of the subjective standard.[33] Instead, the court held that both standards had been satisfied.[34] Therefore, the court denied the defendant's motion to suppress the evidence.[35]

A divergence of opinion exists within the New York court system. Some courts have adopted the Supreme Court's less restrictive objective standard,[36] others have retained the subjective test,[37] and some have failed to determine whether an objective or subjective standard should be applied to the second prong of the *Mitchell* analysis.[38]

The Fourth Amendment essentially provides "that [any] searches and seizures inside a home without a warrant are presumptively unreasonable."[39] However, "the ultimate touchstone for the Fourth Amendment is 'reasonableness,' " which has caused the creation of several exceptions.[40] These exceptions exist under "exigent

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[29] *Id.*

[30] *Id.* at 297 (quoting *Mitchell*, 347 N.E.2d at 609) (internal quotation marks omitted).

[31] 547 U.S. 398 (2006).

[32] *Rodriguez*, 907 N.Y.S.2d at 297. (quoting *Brigham City*, 547 U.S. at 404) (internal quotation marks omitted).

[33] *Id.*

[34] *Id.* at 295.

[35] *Id.* at 304.

[36] *See, e.g.*, People v. Leggett, 904 N.Y.S.2d 773, 774 (App. Div. 2d Dep't 2010); People v. Denis, 909 N.Y.S.2d 325, 328 (Nassau Cnty. Dist. Ct. 2010); People v. Fallucchi, 865 N.Y.S.2d 874, 876 (Watertown City Ct. 2009).

[37] *See, e.g.*, People v. Liggins, 883 N.Y.S.2d 415, 418 (App. Div. 4th Dep't 2009); People v. Stevens, 871 N.Y.S.2d 525, 527 (App. Div. 4th Dep't 2008).

[38] *See, e.g.*, *Rodriguez*, 907 N.Y.S.2d at 297; People v. Dallas, 865 N.E.2d 1, 2 (N.Y. 2007); People v. Desmarat, 833 N.Y.S.2d 559, 561 (App. Div. 2d Dep't 2007).

[39] Payton v. New York, 445 U.S. 573, 586 (1980).

[40] *Brigham City*, 547 U.S. at 403 (citing Flippo v. West Virginia, 528 U.S. 11, 14 (1999)

circumstances," which may include situations such as fires, police chases, or the need to assist someone "seriously injured or threatened with such injury."[41] Many contentious legal battles are fought on this issue, because oftentimes, highly probative and damaging evidence may be found after a warrantless entry. If the prosecution can argue that an emergency situation existed, the Fourth Amendment no longer provides protection to the defendant against any incriminating evidence placed in the "plain view" of the officer.[42] The process by which an emergency situation is determined has been debated amongst the federal courts for numerous years, until the Supreme Court's decision in *Brigham City*.[43]

In *Brigham City*, "four police officers responded to a [complaint] regarding a loud party."[44] After arriving at the residence, the officers proceeded up the driveway to investigate.[45] Moving through the backyard, the officers witnessed underage drinking and an altercation taking place in the kitchen of the home.[46] During the altercation, one of the juveniles struck a victim in the face, causing him to spit up blood.[47] Then, one of the officers quickly entered the kitchen to quell the violence.[48] Subsequently, the defendants were arrested and charged with "contributing to the delinquency of a minor, disorderly conduct, and intoxication."[49] At trial, the defendants attempted to suppress the evidence, "arguing that the warrantless entry [of the

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(per curium)).

[41] *Id. See, e.g.*, Michigan v. Tyler, 436 U.S. 499, 510 (1978) (holding the warrantless search and seizure was objectively reasonable to prevent the imminent destruction of evidence); Ker v. California, 374 U.S. 23, 54-55 (1963) (holding engagement in a "hot pursuit" reasonably eliminates the necessity for a warrant).

[42] *See* Minnesota v. Dickerson, 508 U.S. 366, 375 (1993) (holding "[u]nder [the plain view] doctrine, if police are lawfully in a position from which they view an object, if its incriminating character is immediately apparent, and if the officers have a lawful right of access to the object, they may seize it without a warrant").

[43] *Compare* United States v. Cervantes, 219 F.3d 882, 890 (9th Cir. 2000) (holding that "absent probable cause, examining a government actor's motivation for conducting an emergency search provides a necessary safeguard against pretextual . . . interests to serve criminal investigation and law enforcement functions"), *with* People v. Lewis, 845 N.E.2d 39, 54 (Ill. App. Ct. 2006) ("[H]olding that the officer's motives are legally irrelevant to the validity of an emergency-assistance search . . . .").

[44] *Brigham City*, 547 U.S. at 400-01.

[45] *Id.* at 401.

[46] *Id.*

[47] *Id.*

[48] *Id.*

[49] *Brigham City*, 547 U.S. at 401.

police officers] violated the Fourth Amendment."[50]

The Utah Supreme Court rejected the State's argument and explained that the emergency exception to the Fourth Amendment's warrant requirement was inapplicable.[51] The court explained, " 'a reasonable person would [not] believe that the entry was necessary to prevent physical harm to the officers or other persons.' "[52] In addition, the Utah court accepted the defendants' argument that the police were motivated to make an arrest and not to stop the impending violence.[53]

The Supreme Court granted certiorari, reversed the judgment of the Utah Supreme Court, and remanded for further proceedings.[54] First, the Court rejected the subjective requirement of an officer's motivations.[55] The only relevant inquiry was whether the circumstances surrounding the officer created a situation justifying police action.[56] Under the circumstances of an ongoing altercation, the officers could have reasonably believed the altercation could have become violent and assistance was necessary to avert serious bodily injury.[57] However, the officer's subjective motivations have no bearing on the ultimate determination of the case.[58] The Court argued, "[t]he role of a peace officer . . . [is] not simply rendering first aid to casualties; an officer is not like a boxing . . . referee, poised to stop a bout only if it becomes too one-sided."[59]

Although the Court adopted an objective standard to determine whether an emergency situation existed, the determination of

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[50] *Id.*

[51] *Id.*

[52] *Id.* at 402.

[53] *Id.* at 404.

[54] *Brigham City*, 547 U.S. at 407.

[55] *Id.* at 404. *See also* Bond v. United States, 529 U.S. 334, 339 n.2 (2000) (stating the "issue is not [the officer's] state of mind, but the objective effect of his actions").

[56] *Brigham City*, 547 U.S. at 404 (citing Scott v. United States, 436 U.S. 128, 138 (1978)).

[57] *Id.* at 406.

[58] *Id.* at 404-05.

[59] *Id.* at 406. *See also id.* at 409 (Stevens, J., concurring) ("Federal interests are not offended when a single State elects to provide greater protection for its citizens than the Federal Constitution requires."); Whren v. United States, 517 U.S. 806, 813 (1996) ("Recognizing that we have been unwilling to entertain Fourth Amendment challenges based on the actual motivations of individual officers . . . ."). However, *Whren* only addressed situations involving administrative searches based upon probable cause and not searches prompted by an emergency situation. *Id.* at 811-12; Scott v. United States, 436 U.S. 128, 136 (1978) ("Subjective intent alone . . . does not make otherwise lawful conduct illegal or unconstitutional.").

what may or may not be an emergency was continually evolving.[60] Akin to *Brigham City*, the Supreme Court continued to expand the definition of the emergency doctrine's application in *Michigan v. Fisher*.[61]

In *Fisher*, officers approached a house with "a pickup truck in the driveway with its front smashed, damaged fenceposts . . . [and] three broken house windows."[62] In addition, the officers observed blood on the hood of the truck and one of the doors of the house.[63] After peering into the home, officers noticed that Jeremy Fisher "had a cut on his hand, and they asked him whether he needed medical attention."[64] Fisher angrily told the authorities that they should go obtain a search warrant.[65] Officer Goolsby attempted to open the front door, but the defendant threatened the officer by "pointing a long gun at him."[66] Eventually, after police retreated and returned, Fisher was charged with "assault with a dangerous weapon and possession of a firearm during the commission of a felony."[67]

The trial court suppressed evidence obtained by the officers on Fourth Amendment grounds.[68] The Michigan Court of Appeals affirmed, arguing that the situation did not rise to that of an emergency because the blood found was corroborated by the cut on the defendant's hand and the injury was not life threatening.[69]

The Supreme Court granted "the State's petition for certiorari and reverse[ed],"[70] stating: "Officers do not need ironclad proof of 'a likely serious, life-threatening' injury to invoke the emergency aid

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[60] *See* United States v. Martin, 781 F.2d 671, 674-75 (9th Cir. 1986) (holding that an officer's warrantless search was justified after receiving a report of an explosion and an injured victim); Mincey v. Arizona, 437 U.S. 385, 394 (1978) ("[T]he seriousness of the offense under investigation itself [does not] create[] exigent circumstances of the kind that under the Fourth Amendment justify a warrantless search."); Warden v. Hayden, 387 U.S. 294, 298-99 (1967) (holding police officers in hot pursuit of a suspect were justified in their warrantless entry of the home); Preston v. United States, 376 U.S. 364, 367 (1964) (holding warrantless searches are reasonable to "prevent the destruction of evidence of the crime").

[61] 130 S. Ct. 546 (2009) (per curiam).

[62] *Id.* at 547.

[63] *Id.*

[64] *Id.*

[65] *Id.*

[66] *Fisher*, 130 S. Ct. at 547.

[67] *Id.*

[68] *Id.*

[69] *Id.* at 549.

[70] *Id.* at 548.

exception."[71] Since the police observed the defendant throwing projectiles, it was reasonable to believe that those projectiles had a "human target . . . or that Fisher would hurt himself in the course of his rage."[72]

The emergence of these two decisions in the Supreme Court has produced little change amongst the federal courts.[73] In *United States v. Klump*,[74] the defendant was charged and convicted of "one count of manufacturing 1,000 or more marijuana plants, . . . possessing with intent to distribute 1,000 or more marijuana plants, and one count of possessing a semiautomatic assault weapon in furtherance of a drug-trafficking crime."[75] During the surveillance operation leading to the arrest of the defendant, officers followed a white van to a warehouse owned by the defendant.[76] Surveillance of the warehouse revealed small traces of marijuana from departing vehicles.[77] After smelling smoke from the warehouse, agents called the fire department and accompanied the firefighters inside where they located approximately three hundred marijuana plants.[78] Based on their observations, the agents obtained a search warrant which lead to the seizure of "1,044 marijuana plants and a semi-automatic [weapon]."[79]

The defendant, Klump, argued that the evidence should have been suppressed because the search warrant was granted based upon

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[71] Fisher, 130 S. Ct. at 549 (citing *Brigham City*, 547 U.S. at 406).

[72] *Id. See also id.* at 550-51 (Stevens, J., dissenting) ("The State bears the burden of proof . . . and relied entirely on the testimony of Officer Goolsby in its attempt to carry that burden. . . . Goolsby was not sure about certain facts . . . . [and] it is hard to see how the Court is justified in micromanaging the day-to-day . . . fact-intensive decisions of this kind.").

[73] *See* United States v. MacDonald, 916 F.2d 766, 769 (2d Cir. 1990) (stating the test for determining whether an emergency situation existed "is an objective one that turns on the district court's examination of the totality of the circumstances confronting law enforcement agents in the particular case"); *see also* Dorman v. United States, 435 F.2d 385, 392 (2d Cir. 1970). The court held that the following elements were relevant in determining whether an emergency situation existed: (1) "[if] a grave offense is involved, particularly one that is a crime of violence"; (2) "[if] the suspect is reasonably believed to be armed"; (3) "a clear showing of probable cause . . . that the suspect committed the crime"; (4) "[a] strong reason to believe that the suspect is in the premises being entered"; (5) a likelihood that the suspect will escape if not swiftly apprehended"; and (6) "that the entry, though not consented, is made peaceably." *Id.* at 392-93.

[74] 536 F.3d 113 (2d Cir. 2008).

[75] *Id.* at 115.

[76] *Id.*

[77] *Id.*

[78] *Id.* at 116.

[79] *Klump*, 536 F.3d at 116.

a warrantless search by the agents.[80] The core question the court analyzed was "whether the facts, as they appeared at the moment of entry, would lead a reasonable, experienced officer to believe that there was an 'urgent need to render aid or take action.' "[81] The Second Circuit found that it was objectively reasonable for an officer of similar experience who smelt a strange, oily, electrical odor to believe it was necessary to enter the warehouse.[82] The court also dismissed any investigation of the officer's subjective motivations, based upon the *Brigham City* holding.[83]

The previous analysis represents a clear recognition of Supreme Court precedent. However, unlike the federal courts, New York courts have failed to come to a clear consensus as to retaining the subjective standard or adopting the Supreme Court's objective test. Article I, section 12 of the New York Constitution is most often read in part and parcel with the Fourth Amendment to the United States Constitution.[84] Both forbid warrantless searches and seizures of persons or places and afford greater protection to the home.[85] However, article I, section 12 grants even greater protection to New York State citizens by shielding them "against unreasonable interception of telephone and telegraph communications."[86] Although the New York courts fail to provide a clear answer, states are free to afford greater protections to their citizens (i.e. the subjective standard), but no less than those that are afforded by the United States Constitution.

The three prong test set forth in *Mitchell*, which includes a subjective analysis, is still used by New York courts.[87] On December

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[80] *Id.*

[81] *Id.* at 117-18 (quoting United States v. MacDonald 916 F.2d at 769) (citations omitted).

[82] *Id.* at 118.

[83] *Id.* at 118-19. *See also* United States v. McNeill, 285 Fed. App'x. 975, 979 (3d Cir. 2008) (holding it was objectively reasonable for officers to believe a "third party could be in imminent danger[,] [w]hen the police arrived at the motel" and one party was bleeding and the other party was covered in blood); United States v. Wilson, 273 Fed. App'x. 356, 357 (5th Cir. 2008) (stating the defendant's desire to seek testimony showing the officers desired to seize evidence from his motel room was irrelevant); United States v. Huffman, 461 F.3d 777, 784-85 (6th Cir. 2006) (holding it was objectively reasonable for officers warrantless entry into a home reporting shots fired and riddled with bullet holes).

[84] *See generally* People v. Knapp, 422 N.E.2d 531, 533 (N.Y. 1981) ("[O]ur Constitutions accord special protection to a person's expectation of privacy in his own home.").

[85] *Id.* at 533-34.

[86] N.Y. CONST. art. I, § 12.

[87] 347 N.E.2d at 609.

30, 1972, a hotel chambermaid went missing.[88] The desk clerk contacted the police, and two patrol officers arrived to help conduct the search.[89] Shortly thereafter, Detective O'Neill arrived to help search for the maid.[90] Unfortunately, the detective entered the defendant's room and discovered the chambermaid's corpse in the closet.[91] At trial, the defendant attempted to suppress the evidence, arguing the detective's entry into his room violated the Fourth Amendment.[92] The judge denied the request, and the jury convicted the defendant of murder.[93] After an affirmance by the appellate division, the defendant was granted leave to appeal.[94]

The court of appeals held the search did not implicate the Fourth Amendment because it was triggered by an emergency situation.[95] In order to help courts decipher when an exigent or emergency situation existed, the court provided three guidelines.[96]

> (1) The police must 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 search must not be primarily motivated by intent to arrest and seize evidence. (3) There must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched.[97]

Under the first prong, there was an objectively reasonable belief that there was an emergency because the maid had been missing for several hours, which lead to the assumption that she had suffered some misfortune.[98] The court believed that the detective's primary motivation when entering the defendant's room was to provide assistance to the maid and not to obtain incriminating evidence, thereby

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88 *Id.* at 608.
89 *Id.*
90 *Id.*
91 *Id.* at 609.
92 *Mitchell*, 347 N.E.2d at 609.
93 *Id.*
94 *Id.*
95 *Id.*
96 *Id.*
97 *Mitchell*, 347 N.E.2d at 609.
98 *Id.* at 610.

satisfying the second prong of the test.[99] Finally, the area searched was on the sixth floor of the hotel, the last known whereabouts of the maid, satisfying prong three.[100]

After *Brigham City*, the New York Court of Appeals has failed to decide whether *Mitchell's* second prong should remain intact.[101] However, the appellate division has provided some direction by ratifying the objective standard in its analyses of the emergency doctrine.[102]

In *Desmarat*, police responded to a call and found "a body lying near the rear fire exit door of a motel."[103] Concurrently, the officers noticed "bloody drag marks [inside the motel] leading to the area near room 210."[104] The officers knocked on the door, but received no response.[105] After an employee opened the door, police cordoned off the area and seized corroborating evidence linking the defendant to the crime.[106] The trial court denied the suppression of the evidence, ruling the "seizure was proper under the emergency exception to the warrant requirement."[107] On appeal, the appellate division accepted the holding in *Brigham City*, yet failed to address "whether the New York State Constitution require[d] retention of the *Mitchell* standard."[108] The court stated: "[T]he objective facts observed by the police provided them with a reasonable basis to believe that an emergency was at hand, that other persons may have been at risk of injury, and that the emergency was associated with Room 210."[109]

Although *Desmarat* has received positive treatment within the New York court system, it failed to provide any coherent answer to

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[99] *Id.*

[100] *Id.*

[101] *See Dallas*, 865 N.E.2d at 2 ("We have no occasion to consider whether our holding in *Mitchell* should be modified in light of the Supreme Court's decision in *Brigham City*.").

[102] *See Desmarat*, 833 N.Y.S.2d at 561.

[103] *Id.* at 560.

[104] *Id.*

[105] *Id.*

[106] *Id.* at 560-61.

[107] *Desmarat*, 833 N.Y.S.2d at 561.

[108] *Id. See also* People v. Leggett, 904 N.Y.S.2d 773, 774 (App. Div. 2d Dep't 2010) (holding the subjective element of the *Mitchell* test would be replaced by the objective standard promulgated by the Supreme Court).

[109] *Desmarat*, 833 N.Y.S.2d at 561.

obvious inconsistencies in the state and federal standards.[110] This has forced trial courts to decide whether the federal decision requires the modification of the *Mitchell* standard.[111] Some courts have chosen to retain the subjective standard of the *Mitchell* test until the New York Court of Appeals takes up the issue, while others have relinquished the subjective standard.[112]

In *People v. Saldana*,[113] the defendant's home caught fire.[114] After the fire was extinguished, the fire department told Officer March "there was something [he] should see in the attic."[115] Upon entering the attic, Officer March saw approximately fifteen marijuana plants.[116] After questioning the homeowner about the plants, he admitted to "cultivating marijuana for personal use."[117] Subsequently, the police arrested the defendant "for marijuana cultivation and issued him an appearance ticket."[118] The court found that the officer's warrantless search violated the defendant's Fourth Amendment right against unreasonable searches and seizures.[119] "First, no emergency existed[]" upon the officer's search.[120] More importantly, the court recognized the second prong of the *Mitchell* analysis by stating that the officer's "intent was to investigate a crime, not to provide emergency services."[121]

Other courts have taken a different approach, by relying on the *Leggett* and *Desmarat* analyses, which eliminate the use of *Mit-*

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[110] *Id.* (stating that the court would not rule on whether the New York State Constitution required retention of the subjective test of the *Mitchell* standard).

[111] *See, e.g.*, People v. Dillon, 844 N.Y.S.2d 402, 403 (App. Div. 2d Dep't 2007) (holding "the firefighters were presented with an emergency which permitted their warrantless entry and search under both the *Mitchell* test and the rule adopted by the United states Supreme Court").

[112] *See, e.g.*, *Leggett*, 904 N.Y.S.2d at 774; *Denis*, 909 N.Y.S.2d at 329; *Fallucchi*, 906 N.Y.S.2d at 875 (holding the subjective standard should not be retained). *But see, e.g.*, *Liggins*, 883 N.Y.S.2d at 417-18; *Stevens*, 871 N.Y.S.2d at 527 (holding the subjective standard should be retained).

[113] 906 N.Y.S.2d 775 (Watertown City Ct. 2009).

[114] *Id.* at 775.

[115] *Id.*

[116] *Id.*

[117] *Id.*

[118] *Saldana*, 906 N.Y.S.2d at 775.

[119] *Id.*

[120] *Id. See also* People v. Guins, 569 N.Y.S.2d 541, 552-53 (App. Div. 4th Dep't 1991) (holding the emergency doctrine was not applicable to contraband found in a post-fire arson investigation in the defendant's home).

[121] *Saldana*, 906 N.Y.S.2d at 775.

chell's subjective standard.[122] In *People v. Fallucchi*,[123] police responded to a call about an intoxicated male operating a black motor vehicle.[124] Upon arriving at the first reported location of the vehicle, the car was no longer there.[125] Then, the search brought the police to a street address with a vehicle fitting the description parked in the driveway.[126] After arriving, the police arrested the defendant and charged him with driving while intoxicated and per se aggravated driving while intoxicated.[127] The defendant sought to suppress the blood test results and any statements he made to the police.[128] The trial court held that "the warrantless arrest of the defendant was in violation of his Fourth Amendment rights, thus requiring . . . [any] evidence seized [to] be suppressed."[129] The court recognized that "the second subjective test [had been] eliminated" and only analyzed the first and third prongs of the *Mitchell* test.[130] The analysis revealed a failure to find the existence of any objective emergency requiring the officer's entry into the defendant's home.[131]

The pertinent questions now become: What is the utility of the subjective standard and can it find its place under the Supreme Court's objective test? Throughout recent decisions, including *Rodriguez*, it has become markedly clear that these two tests may produce strikingly similar results.[132] It may be possible to conclude that elimination of the subjective analysis would not lead to a greater likelihood of evidence being admitted from an officer's warrantless entry.

Although the *Brigham City* and *Mitchell* tests are different, it can be argued that the two standards are reconcilable. This reconciliation of the two standards is exemplified in the *Rodriguez* case,

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122 *See Leggett*, 904 N.Y.S.2d at 774; *Desmarat*, 833 N.Y.S.2d at 561.

123 865 N.Y.S.2d 874 (Yates Cnty. Ct. 2008).

124 *Id.* at 875.

125 *Id.*

126 *Id.* at 876.

127 *Id.* at 875.

128 *Fallucchi* at 876.

129 *Id.* at 877.

130 *Id.* at 876.

131 *Id.*

132 *See Desmarat*, 833 N.Y.S.2d at 561 (stating that "under the circumstances, the police were presented with an emergency situation under both the *Mitchell* rule and the *Brigham City* rule"); *see also Rodriguez*, 907 N.Y.S.2d at 297 (holding that an emergency situation existed under both tests).

where the court concluded both tests could be fulfilled.[133] The first prong of the *Mitchell* analysis requires that "[t]he police must 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."[134] If the first prong of the analysis was satisfied, it would provide the ultimate contradiction to argue that the officer then was motivated to seize evidence. In addition, if a jury were to conclude there were no objectively reasonable grounds to believe an emergency existed, then this would constitute an implied assertion that either the officer misread the situation or the officer may have been motivated for other reasons. These may be reasonable interpretations; however, the reconciliation of the two standards may leave room for abuse under situations which may be less apparent as emergencies.

Arguably, the objective standard may be overly broad, giving police more freedom to act arbitrarily in more controversial emergency situations. Law enforcement would be given the freedom to overlook the possibility of further legal implications for its actions. The New York court system would no longer be able to provide a check on this type of abuse and investigate the officer's true motivations. Interestingly, the New York Court of Appeals may have intended this subjective analysis to be a balancing test for situations which are not perceptibly emergencies. If the trier of fact was uncertain, they may use the subjective intent of the officer as the determining factor. This creates a situation in which the subjective intent of the officer is increasingly relevant to the decision of an objective emergency. More or less, the first and second prongs of the analysis may become cohesive as opposed to independent analyses.

Based upon the foregoing analysis it becomes apparent that the two tests are irreconcilable. Understandably, both tests are likely to find the same result nine out of ten times. In addition, under most conditions, the quality and professionalism of the police force is unlikely to be motivated for any other reason than to protect and serve the public. Therefore, any emergency would produce the same result under both tests. However, there will be circumstances which require additional scrutiny. Under those circumstances, the second prong's subjective analysis will help ensure the steadfast protection of our Fourth Amendment rights. Even as the analysis will be relatively fu-

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[133] *Rodriguez*, 907 N.Y.S.2d at 297.

[134] *Mitchell*, 347 N.E.2d at 609.

tile in most cases, its main purpose will be for those situations where the question becomes whether an emergency existed under less evident circumstances. For that reason alone, the subjective test should continue to be employed.

The *Rodriguez* case may acquire some influence in the state courts. Ostensibly, the decision will probably not influence courts to relinquish or maintain the subjective test under *Mitchell*. However, courts which would have otherwise sided with the Supreme Court may instead be pushed into failing to take a position. In that instance, the effect will likely be to force the New York Court of Appeals to rule on the issue and decide once and for all whether their citizens should be provided with increased protection via the subjective test.

The Fourth Amendment is one of society's most deeply held rights. There is no more profound thought than the safety inside one's home. That right does not exist to protect the criminals and law breakers of society, but stands as a wall of protection to those individuals who choose to abide by the law. In a judicial system that favors innocence over guilt, there should be no parsing of this right to the detriment of the free and the veracious. By reaffirming the *Mitchell* standard's precedent in the New York court system, it will achieve the dual purpose of providing full protection under the law to the citizenry and maintaining a safe and orderly society. The New York courts would be foolish to dispose of this time tested and proven standard.

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