

1976 WL 30600 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 13, 1976

*1 A member of a volunteer rescue unit can enter a house lawfully without a warrant under certain circumstances.

Honorable Tony J. Lister
Member
House of Representatives
P. O. Box 6291
Spartanburg, South Carolina

QUESTION PRESENTED:

Can a member of a volunteer rescue unit enter a house to administer aid to one who appears to need emergency treatment on the basis of a call received giving the address of the victim and upon the basis of the rescue worker peering through a window of the house and seeing what appeared to be an unconscious person at this address?

AUTHORITIES CITED:

[McDonald v. U. S.](#), 335 U.S. 451, 69 S.Ct. 191, 93 L.Ed. 153 (1948);

[United States v. Barrone](#), 330 F.2d 543 (2nd Cir., 1964);

[Wayne v. United States](#), 318 F.2d 205 (D.C.C. 1963);

[United States v. Jeffers](#), 342 U.S. 48, 72 S.Ct. 93, 96 L.Ed. 59 (1951);

[Johnson v. U.S.](#), 333 U.S. 10, 68 S.Ct. 367, 92 L.Ed. 436 (1947);

[Root v. Gauper](#), 438 F.2d 301 (8th Cir., 1971);

[United States v. Dunavan](#), 485 F.2d 201 (6th Cir., 1973).

DISCUSSION:

The precise issue involved in the question posed is the lawfulness of the entry of the volunteer rescue workers into the house. The Fourth Amendment of the United States Constitution provides that, '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 arise, 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'. Thus, the crucial question is whether the warrantless entry was in violation of the homeowner's Fourth Amendment right against unlawful search and seizure.

In my opinion, under the facts of the question presented here, such an entry by volunteer rescue workers would be unlawful. Generally, the Fourth Amendment would require a warrant prior to such an entry but there are certain exceptions to this warrant

requirement. One such exception is the emergency or exigency doctrine which has been recognized by various courts. [McDonald v. United States](#), 335 U.S. 451, 69 S.Ct. 191, 93 L.Ed. 153 (1948); [United States v. Barrone](#), 330 F.2d 543 (2nd Cir., 1964); [Wayne v. United States](#), 318 F.2d 205 (D.C.C. 1963); See also [United States v. Jeffers](#), 342 U.S. 48, 72 S.Ct. 93, 96 L.Ed. 59 (1951); [Johnson v. United States](#), 333 U.S. 10, 68 S.Ct. 367, 92 L.Ed. 436 (1947). It seems that the situation described would fall within this exception for warrantless entry.

In [Root v. Gauper](#), 438 F.2d 361, 364 (8th Cir., 1971), it is clearly stated that:

‘This is not to say that the police cannot lawfully enter a home without a warrant in response to a cry for help or for some other emergency purposes. . . . There never has been any doubt that a policeman or fireman is privileged to enter private premises in the discharge of his public duty’

*2 Although no authority has been found to indicate that the emergency or exigency exception to the Fourth Amendment warrant requirement is applicable to a volunteer rescue unit, the discharge of their public duty is sufficiently analogous to that of policemen and firemen to justify using a similar standard relating to the conduct of their affairs.

The emergency or exigency doctrine is best stated as follows in [United States v. Dunavan](#), 485 F.2d 201, 204 (6th Cir., 1973): ‘. . . [P]olice officers may enter a dwelling without a warrant to render emergency aid and assistance to a person whom they reasonably believe to be in distress and in need of that assistance. In applying this doctrine, two principles must be kept in mind. (1) Since the doctrine is an exception to the ordinary Fourth Amendment requirement of a warrant for entry into a home, the burden of proof is on the state to show that the warrantless entry fell within the exception. [McDonald v. United States](#), 335 U.S. [451] at 456, 69 S.Ct. 191 [93 L.Ed. 153]; [United States v. Jeffers](#), 342 U.S. 48, 51, 72 S.Ct. 93, 96 L.Ed. 59 (1951). (2) An objective standard as to the reasonableness of the officer's belief must be applied.

* * * [I]n justifying the particular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion. * * * And in making that assessment it is imperative that the facts be judged against an objective standard’

It is further pointed out in [United States v. Dunavan](#), *supra* at 204 ‘that a legitimate life-saving purpose may provide another example of the exigent circumstances which excuse failure to follow the warrant requirements of the Fourth Amendment’.

In applying the two-pronged test of the emergency doctrine to the case at hand, the burden of proof requirement would not come into play unless the entry was contested in a court proceeding. On the other hand, the requirement of an objective standard can be applied to determine if the entry was justifiable under the circumstances. One only has to look at the facts of someone reporting the address to the rescue unit and the actual observation of the rescue workers of a victim appearing to be in need of assistance to conclude that a reasonable man would believe that appropriate action should be taken under the circumstances. Therefore, the entry into the house by volunteer rescue workers under the instant circumstances was not an unlawful entry within the meaning of the Fourth Amendment.

It should be noted, however, that this opinion is limited to the specific situation described above and any other determinations with reference to similar situations would require a case by case determination. Moreover, it should be borne in mind from whom such an alerting call is received and the reliability of such a call as such details may make the difference between a lawful or unlawful intrusion. In the case at hand, the call to the rescue unit was reinforced by the observations of the workers themselves.

CONCLUSION:

*3 It is the opinion of this Office that a member of a volunteer rescue unit can enter a house to administer aid to one who appears to need emergency treatment on the basis of a call received giving the address of the victim and upon the basis of the rescue working peering through a window of the house and seeing what appeared to be an unconscious person at this address.

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