



The Connecticut Supreme Court holds that a search warrant was not required under the Connecticut Constitution for law enforcement to perform a gas chromatography analysis on charred wood flooring samples that were lawfully seized from the Defendant's home pursuant to an arson investigation



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In *State v. Bernier*, 246 Conn. 63, 717 A.2d 652 (Conn. 1998), the Connecticut Supreme Court was asked to consider whether the trial court erred when it suppressed evidence obtained against Defendant Christopher G. Bernier. Specifically, the trial court suppressed evidence obtained during a warrantless seizure of evidence related to law enforcement's arson investigation against Bernier. The relevant facts are as follows.

On November 15, 1990, Morris, Connecticut's fire department responded to a house fire alarm at Bernier's home. Firefighters and equipment arrived at the scene at 8:37 a.m. to begin fire suppression measures. At 9:11 a.m., Joel Skilton, the local fire marshal, requested the state fire marshal's assistance in conducting an investigation to determine the cause and origin of the fire.

At 10:53 a.m., Detectives James Pierpont and Julio Fernandez of the state fire marshal's office arrived at the house and met with Skilton. Pierpont was accompanied by an accelerant detecting dog. The detectives and Skilton walked around the exterior of the house inspecting the fire damage and photographing the exterior. While taking photographs, they entered the interior of the home. As a part of their investigative inspection, they checked various rooms and moved various items of debris and furniture. In the living room, they observed a low burn pattern and pour patterns on the living room floor. These indicated the presence of a flammable liquid. Thereafter, the accelerant detecting dog was brought into the house. The dog alerted the fire investigators to several pour pattern areas. Because of those findings, four samples of charred wood flooring were taken from four different areas of the house.

The samples were placed in four separate cans and were transmitted to the state police forensic science laboratory on November 16, 1990, the day after the fire. A moderate odor of petroleum was detected when the lab personnel opened one of the cans containing the samples. Gas chromatographic analysis revealed the presence of something similar to gasoline in three of the samples and a medium range petroleum distillate in all four samples.

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Thereafter, Bernier was charged with arson in the first degree and with arson in the third degree. Initially, the trial court denied Bernier's motion to suppress the wood samples and the photographs of the fire scene that had been obtained without a warrant. The trial court ruled that the warrantless seizure was legally justified because it was part of an investigation of the cause and origin of the fire. Bernier, then, filed an amended motion to suppress any and all evidence obtained as a result of the warrantless analysis of the charred flooring samples. The trial court granted the amended motion to suppress and subsequently granted Bernier's motion to dismiss the charges against him. The State appealed to the Appellate Court.

On appeal, the Appellate Court was divided, but the majority concluded that Bernier's expectation of privacy in the flooring samples was reasonable, relying principally on the fact that they had been taken from his home, an area traditionally afforded heightened protection from government intrusion, as well as the fact that Bernier owned the property at issue.

The Appellate Court next concluded that the gas chromatography tests constituted a search because the Connecticut Supreme Court had reached a similar conclusion in an earlier, unrelated case. Having determined that Bernier had a reasonable expectation of privacy in the flooring samples and that the gas chromatography analysis constituted a search, the Appellate Court was left to consider only whether there existed an applicable exception to the warrant requirement. The Appellate Court concluded that the exigent circumstances exception did not apply because, at the time of the testing at the state laboratory, any exigency had abated.

Thereafter, the Connecticut Supreme Court granted the State's petition for certification to appeal from the judgment of the Appellate Court limited to the following issue: Did the Appellate Court properly conclude that *State v. Joyce*, 229 Conn. 10, 639 A.2d 1007 (Conn. 1994), require that a search warrant be obtained to test items lawfully seized as part of an investigation into the cause and origin of a residential fire? Ultimately, the Connecticut Supreme Court determined that the Appellate Court had erred in its conclusion.

On appeal before the Connecticut Supreme Court, the State argued, that under the Connecticut's Constitution, a search warrant is not required to test the charred flooring samples because, once the evidence was lawfully seized pursuant to the statutorily mandated cause and origin investigation of the fire scene, Bernier's expectation of privacy in the samples was not reasonable. Bernier conceded that a warrant was not required for the fire marshal to enter the premises and to seize the samples of the wood flooring. However, Bernier argued that the Appellate Court properly concluded that he retained a reasonable expectation of privacy in the flooring samples.

The Connecticut Supreme Court began its Opinion by explaining that, in order for Bernier to demonstrate that he had a reasonable expectation of privacy in the flooring samples: (1) he must have manifested a subjective expectation of privacy with respect to the samples, and (2) that expectation must be one that society would consider reasonable. The Connecticut Supreme Court, then, assumed that Bernier had sufficiently manifested a subjective expectation in the charred flooring samples. Therefore, the threshold question was whether Bernier's expectation of privacy in the charred flooring samples was an objectively reasonable one for purposes of the Connecticut Constitution. In other words, the focus was on whether Connecticut's citizens are prepared, because of their code of values and notions of custom and civility, to give deference to that manifested expectation of privacy.

First, the Connecticut Supreme Court explained that the state arson statutes themselves demonstrated that no warrant was necessary and that Bernier's claimed expectation of privacy was not one that Connecticut citizens were prepared to give deference. The Connecticut Supreme Court explained that determining the cause of a fire is such a compelling public interest that fire marshals, both state and local, are required under state law to conduct an investigation. Accordingly, the arson statutes permit state officials to enter into private premises without a warrant and to seize evidence.

Second, the Connecticut Supreme Court state that the statutory framework led the Court to reach this conclusion because it encompassed the gas chromatography analysis. The determination of the presence of an accelerant in the flooring and its identity were essential to ascertain the cause of the fire. Therefore, the Connecticut Supreme Court concluded that, once the charred flooring samples were lawfully seized pursuant to the cause and origin investigation statutes, Bernier no longer possessed an expectation of privacy in them that Connecticut citizens would recognize as meriting constitutional protection.

Third, the Connecticut Supreme Court held that the particular location from which the material was taken from, alone, was not dispositive of the constitutional protection afforded. The Court opined that the heightened protection of the Connecticut Constitution generally accorded to a private home is to prevent state officials from thrusting themselves into a home. In this case, this concern was not present because the intrusion had already occurred when the fire officials legitimately entered Bernier's home to conduct an investigation, inspected the premises, and subsequently seized the evidence. Once the flooring samples were removed from Bernier's, the sanctity of the home already had been compromised, and the reasonable expectations of privacy were necessarily diminished.

Accordingly, the Connecticut Supreme Court reversed the lower courts' decision and remanded the case for the trial court to deny Bernier's motion to suppress and to deny his motion to dismiss the arson charges against him. The Connecticut Supreme Court took these actions because it held that a search warrant was not required under the Connecticut Constitution to perform a gas chromatography analysis on charred wood flooring samples that were lawfully seized from Bernier's home pursuant to the arson investigation against him.

Note: *Court holdings can vary significantly between jurisdictions. As such, it is advisable to seek the advice of a local prosecutor or legal adviser regarding questions on specific cases. This article is not intended to constitute legal advice on a specific case.*