



The Court of Appeals of Texas holds that a warrantless search during an arson investigation did not violate the Defendant's constitutional rights and the fruits of the search did not need to be suppressed



February 2018

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Article Source : http://www.patc.com/weeklyarticles/2018_tata_v_state_chapman.shtml

In *Tata v. State*, 446 S.W.3d 456 (Tex. App. 2014), the Court of Appeals of Texas was asked to review the conviction and sentence of Jessica Tata who had been convicted, after a jury trial, of felony murder. On appeal, Tata raised five issues as to why her conviction and sentence should be reversed, but this article will focus on only one issue: whether the Trial Court erred in denying Tata's motion to suppress the evidence obtained as a result of a warrantless arson investigation.

Tata was the owner and operator of Jackie's Day Care which she operated out of the home that she leased from Ronald Velasco. On the afternoon of February 24, 2011, Tata had seven children ranging in age from one to three years old under her care at her home. Four of the children died as a result of a fire that day, and others were severely injured but survived.

Using Tata's cell phone records, surveillance footage, and the testimony of witnesses, the State established at trial that Tata entered a Target store near her home at approximately 1:09 p.m. and spoke to a Target employee. That Target employee testified that, while Tata was taking a survey seeking customer feedback, she told him that she had left grease on the stove at home and that there were children at home with only her sister who was sleeping. The Target employee told Tata that he did not think that was "okay," and Tata told him that she would complete the survey at a later date. Surveillance footage shows that Tata bought a drink from the food court area of the store at 1:21 p.m. and walked out of the store at 1:22 p.m.

Tata's neighbors, Geoffrey Deshano and John Chestnut, were outside their home that afternoon and saw Tata drive up to her house. Deshano and Chestnut testified that Tata quickly ran back out of the house calling for help because there was oil burning in the house and there were small children inside. Deshano ran toward Tata and saw smoke coming out of her open front door. Chestnut called 9-1-1 to report the fire at approximately 1:30 p.m., and he and Deshano tried to help Tata remove some of the children from the house. Chestnut could see a bright fire on the stove.

Firefighters arrived on the scene shortly thereafter and entered the house and found the kitchen area on fire. While firefighters put out the fire in the kitchen, a search and rescue team located and removed the remaining children. Various witnesses testified about Tata's behavior during this time. Specifically, Tata told some people that she was home when the fire broke out, but she had passed out from the smoke, and, when she woke up, she tried to get some of the children out and call for help. Tata told others, including investigators, that she did not know what had happened. One of the firefighters noticed that Tata appeared clean and that the collar of her shirt was still white. Another firefighter observed that Tata did not demonstrate any symptoms of smoke inhalation or other characteristics of someone who had been inside a burning structure.

Arson investigators arrived on the scene less than two hours after the fire was reported and while firefighters were still present. Arson investigator Anita Delgadillo arrived at approximately 3:30 p.m., took exterior

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photographs of the house, and then went inside to continue her investigation. Delgadillo immediately saw a Target bag that looked out of place because it was the only item that was not covered in soot. Delgadillo moved the bag out of the interior walkway and noticed that the juice in the bag was still cool to the touch. The Target bag also contained a receipt with a time stamp of 1:18 p.m., and the items listed on the receipt matched the items found in the bag and outside the house on the lawn.

Four children died in the fire, and the other children suffered injuries including severe burns. Tata was subsequently indicted for the death of one of the children under the theory of felony murder. Before trial, Tata moved to suppress evidence, including the Target bag seized during the initial investigation into the cause of the fire. Following a hearing on Tata's motion to suppress, the Trial Court denied her motion. The jury found Tata guilty of felony murder, and Tata was sentenced to eighty years' confinement.

At the hearing on Tata's motion to suppress the Target bag that fire investigators found in her house after the fire, the following evidence was presented. Thomas Wood, an arson investigator, testified that he arrived on the scene at approximately 3:00 p.m. while firefighters and emergency medical personnel were still present. Wood was assigned the duty of conducting the origin and cause examination which he testified meant that he had to determine "a physical location where the fire began" and "whatever caused the fire to happen, what things were present and what things came together to result in a fire." Wood testified that, when he arrived at the house, "[t]he scene was still smoky. The fire had been extinguished, but it was still hot and smoky."

Wood further testified regarding the general process of completing an origin and cause investigation as follows: "There are several steps involved, but it included my initial assessment, my exterior examination, my interior examination. Once the room of origin was established, a more detailed examination of that area and ultimately establishing the origin of the fire." Wood established that the fire originated in the kitchen and focused the majority of his investigation in that room. He stated that, other than documenting things that were on floor, he and his team did not go through Tata's personal effects that were in the house. Specifically, Wood testified that he and his team collected physical evidence from the kitchen, including the stove and frying pan that had melted and various swabs for testing. Wood also testified that his team collected a Target bag that was in plain view in the front of the house, a tablet just inside the entry door that "appeared to have names of families who had children staying there at the day care," and a board with the day care schedule written out. The team also collected clothing and other items, such as some Gatorade bottles, that had been left out in the front yard and driveway.

Wood also testified about general standards used by fire investigators promulgated by the National Fire Protection Association, NFPA 921. Pursuant to the guidelines in NFPA 921, investigators look at damage left by the fire, fire patterns, and witness information to learn about the origin of the fire and the direction it moved. Wood testified that part of his investigation required examining potential human actions that were relevant to the cause of the fire and that it was "always" relevant to determine who, if anyone, was present when a fire started. He testified that he and his team were present on the scene from the time of his arrival until they concluded the on-scene examination shortly after midnight following the fire.

Several months later, Wood returned to the scene to conduct further investigation into the cause and origin of the fire. Wood "conducted an arc mapping of the structure, trac[ed] the electrical wires and document[ed] any noticeable damage," and completed other aspects of his investigation into the cause of the fire. Wood testified that he entered on to the property at that time pursuant to a voluntary consent form signed by Ronald Velasco, the owner of the property, who had terminated Tata's lease after the fire.

Wood was aided in his investigation by Anita Delgadillo and Steven Ross. Delgadillo testified at the suppression hearing regarding her role in the investigation and testified that, while she and Wood completed

their external assessment, they found new, unused Gatorade bottles in the driveway. The bottles seemed out of place to her because she noticed that the majority of the damage was at the back of the house near the kitchen and “there was nothing else that would indicate to me that those bottles should be outside.” Upon entering the house to do her internal assessment, Delgadillo noticed a Target bag approximately seven feet from the doorway. It also seemed out of place because it looked “new and crisp—it didn’t fit with the other items that were scattered, all of the other debris that was scattered there.” After she documented the bag’s location, she moved it out of the entryway and noticed that the juice container in the bag was full, “wet,” and cool to the touch. In addition to the juice, the bag contained an empty plastic Starbucks cup and a receipt. Delgadillo testified that it was a common part of a cause and origin investigation to evaluate things that seemed out of place and to “try to fit them into the overall scheme of what might have happened.”

Finally, Leo Gonzales, another arson investigator, testified that investigators sought to determine the origin and cause of the fire and that a determination of who was present at the time of the fire was relevant to that investigation. Gonzales also testified that it was standard protocol to begin with a “360-degree examination of the exterior of the structure” and a preliminary interior examination of the fire scene to determine fire patterns, followed by more extensive investigation of the point of origin. He further stated that, when investigators completed their initial investigation on the evening of the fire, they determined that the origin of the fire was in the kitchen on the stove, but they did not then determine the exact cause of the fire. Gonzales testified that when he arrived on the scene to investigate the fire, he was aware of some witnesses’ reports that, based on appellant’s statements to them, they believed oil had been left on the stove. The investigation ultimately determined that burning oil left on the stove caused the fire.

In considering Tata’s argument that the Trial Court erred in denying her motion to suppress, the Court of Appeals of Texas noted that a warrantless entry into a residence is presumptively unreasonable. However, a burning building creates an exigency that justifies a warrantless entry by fire officials to fight the blaze. Once in a building for this purpose, firefighters may seize evidence of arson that is in plain view.

Furthermore, officials need no warrant to remain for a reasonable time to investigate the cause of a blaze after it has been extinguished. The United States Supreme Court has reasoned that this justification for a warrantless entry is based on the public’s interest in determining the origins of a fire. *Michigan v. Tyler*, 436 U.S. 499, 510 (1978). “Fire officials are charged not only with extinguishing fires, but with finding their causes. Prompt determination of the fire’s origin may be necessary to prevent its recurrence, as through the detection of continuing dangers such as faulty wiring or a defective furnace. Immediate investigation may also be necessary to preserve evidence from intentional or accidental destruction. And, of course, the sooner the officials complete their duties, the less will be their subsequent interference with the privacy and the recovery efforts of the victims. For these reasons, 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. And if the warrantless entry to put out the fire and determine its cause is constitutional, the warrantless seizure of evidence while inspecting the premises for these purposes also is constitutional.” *Id.*

Moreover, the determination of what constitutes “a reasonable time to investigate” varies according the circumstances of a particular fire, and appropriate recognition must be given to the exigencies that confront officials serving under these conditions, as well as to individuals’ reasonable expectations of privacy. Privacy expectations vary with the type of property, the amount of damage, prior and continued use of the premises, and, in some cases, the owner’s efforts to secure it against intruders. Regarding fire-damaged premises, however, the warrant requirement applies only if some reasonable privacy interest remains in the fire-damaged property, and warrantless entry is justified where evidence demonstrates that the structure was so badly damaged as to preclude any reasonable expectation of privacy. *Michigan v. Clifford*, 464 U.S. 287, 292 (1984). Accordingly, the constitutionality of a warrantless, nonconsensual entry onto fire-damaged premises turns on

several factors: (1) whether there are legitimate privacy interests in the fire-damaged property that are protected by the Fourth Amendment; (2) whether exigent circumstances justify the government intrusion regardless of any reasonable expectations of privacy; and, (3) whether the object of the search is to determine the cause of the fire or to gather evidence of criminal activity. *Id.*

In this case, the Court of Appeals held that the Trial Court correctly denied Tata's motion to suppress. The Court of Appeals explained that, although the building was her residence, Tata also used the home as a state-licensed day care facility, and the expectation of privacy in a commercial structure is less than the expectation of privacy in one's home. Furthermore, the Court of Appeals noted that Tata had not done anything to secure the property against intruders following the extinguishing of the fire but before the arson investigators returned. Furthermore, exigent circumstances justified the fire investigator's warrantless entry. Almost immediately upon their first entry, investigator Delgadillo noticed the Target bag in plain view. Therefore, the bag and its contents were discovered during the initial investigation.

Finally, the Court of Appeals relied upon the fact that investigators entered Tata's home/business in order to determine the cause of the fire, not to gather evidence of criminal activity. Therefore, considering all of the evidence, the Court of Appeals held that any legitimate expectation of privacy that Tata had in the Target bag and its contents was "overwhelmed" by the exigent circumstances arising in the aftermath of the fire and the need of the investigators to determine the cause and origin of the fire. Accordingly, the Court of Appeals affirmed the Trial Court's ruling on Tata's motion to suppress and affirmed Tata's conviction and sentence.