

A “MURDER SCENE” EXCEPTION TO THE 4TH AMENDMENT WARRANT REQUIREMENT?

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It is firmly ingrained in our system of law that “searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment, subject only to a few specifically established and well-delineated exceptions.”¹ This brief statement emphasizes the preference in this country for obtaining warrants prior to conducting searches. Nonetheless, the courts have outlined a number of “established and well-delineated” exceptions to the warrant requirement of the Fourth Amendment, including, but certainly not limited to, consent searches; searches of vehicles; searches incident to arrest; and inventory searches. However, one exception to the warrant requirement which the Supreme Court has expressly and repeatedly refused to recognize is a general “murder scene” exception. Even so, in speaking with numerous Federal law enforcement officers, many of whom have a state or local law enforcement background, it appears that a misconception regarding this point continues to exist. Most of those with whom I have spoken believe that such an exception is alive and well, and that in the course of investigating a homicide, no warrant is required to “process” the crime scene. The purpose of this article is to review the Supreme Court’s rulings on this

issue, so that Federal law enforcement officers are fully cognizant of how it has been addressed by the Court in the past.

The Supreme Court first addressed this issue in the 1978 case of *Mincey v. Arizona*.² In *Mincey*, an undercover officer was shot and killed by the defendant during a narcotics raid. In addition to the undercover officer, the defendant and two other persons in the apartment were wounded in the shootout. The officers on scene secured the apartment, made a search for additional victims, and arranged for medical assistance. However, pursuant to police directives, they refrained from any further investigation. Within 10 minutes of the shooting, two homicide detectives arrived at the apartment. After supervising the removal of the undercover officer and the other wounded persons, the homicide detectives began to gather evidence. As described by the Supreme Court:

Their search lasted four days, during which period the entire apartment was searched, photographed, and diagramed. The officers opened drawers, closets, and cupboards, and inspected their contents; they emptied clothing pockets; they dug bullet fragments out of the walls and floors; they pulled up sections of the carpet and removed them for examination. Every item in the apartment was closely examined and inventoried, and 200 to 300 objects were seized. In short, *Mincey*’s apartment was subjected to

¹ *Mincey v. Arizona*, 437 U.S. 385, 390 (1978)(emphasis in original) (citation omitted)

² *Id.*

an exhaustive and intrusive search. No warrant was ever obtained.³

At his trial, Mincey's motion to suppress the evidence from the search was denied. The Arizona Supreme Court affirmed the trial court's ruling, holding that the "... warrantless search of the scene of a homicide - or of a serious personal injury with likelihood of death where there is reason to suspect foul play - does not violate the Fourth Amendment ... where the law enforcement officers were legally on the premises in the first instance...."⁴

In a unanimous opinion, the U.S. Supreme Court reversed, concluding that "... the 'murder scene' exception created by the Arizona Supreme Court is inconsistent with the Fourth and Fourteenth Amendments - that the warrantless search of Mincey's apartment was not constitutionally permissible simply because a homicide had recently occurred there."⁵ The Court expressly rejected the State's assertion that the search of Mincey's apartment was justified on the basis of "exigent" circumstances.

Except for the fact that the offense under investigation was a homicide, there were no exigent circumstances in this case.... There was no indication that evidence would be lost, destroyed, or removed during the time required to obtain a search warrant. Indeed, the police guard at the apartment minimized that possibility. And there is no suggestion

that a search warrant could not easily and conveniently have been obtained. We decline to hold that the seriousness of the offense under investigation itself creates exigent circumstances of the kind that under the Fourth Amendment justify a warrantless search.⁶

While rejecting the State's argument regarding exigent circumstances, the Supreme Court nonetheless noted a number of permissible actions that a law enforcement officer may take at a homicide scene in the absence of a warrant. First, if law enforcement officers reasonably believe that a person inside a premises is in need of emergency assistance, they may make a warrantless entry and conduct a search for victim(s). Additionally, when the police arrive at a homicide scene, they may immediately conduct a warrantless search to determine if there are additional victims or if the killer is still on the premises.⁷ Any evidence observed by the officers during the course of these lawful activities may be seized pursuant to the plain view doctrine. However, the scope of the search conducted must be consistent with a legitimate search for emergency reasons. The Court emphasized that "... a warrantless search must be 'strictly circumscribed by the emergencies which justify its initiation'. "⁸ Finally, the officers may secure the premises for a reasonable

³ Id. at 437 U.S. 389 (footnote omitted).

⁴ Id. at 437 U.S. 389-390 (citation omitted).

⁵ Id. at 437 U.S. 395 (footnote omitted).

⁶ Id. at 437 U.S. 394 (emphasis added) (citation omitted).

⁷ Id. at 437 U.S. 392 (citations omitted) ("The need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an emergency or exigency").

⁸ Id. at 437 U.S. 393 (citation omitted)

amount of time necessary to secure a search warrant.⁹

In this case, the initial entry by the officers was justified. However, once all the shooting victims had been evacuated, and the officers had secured the premises to prevent the destruction or removal of evidence, the emergency situation justifying the warrantless entry ended. To continue searching, the officers were required to have either a warrant or an exception to the warrant requirement.

Such was the state of the law when, in 1984, the Supreme Court decided the case of *Thompson v. Louisiana*.¹⁰ In *Thompson*, the defendant fatally shot her husband, then attempted to commit suicide through an overdose of pills. However, before losing consciousness, the defendant placed a telephone call to her daughter and revealed what had happened. The daughter immediately notified the police, who arrived at the house and located the victim and the defendant. Both were taken to the hospital for medical assistance, and the residence was secured. Just over ½ hour later, two homicide detectives arrived and, without a warrant, began a “general exploratory search for evidence”¹¹ that lasted approximately two hours. Three key pieces of evidence were discovered during this warrantless search: First, a pistol found inside a chest of drawers in the same room where the victim’s body was found; second, a note found in a wastebasket in an adjoining bathroom; and third, a suicide note found inside an envelope on top of a chest of drawers.

⁹ *Segura v. United States*, 468 U.S. 796 (1984) (Premises secured for 19 hours from within to preserve evidence while officers obtain search warrant).

¹⁰ 469 U.S. 17 (1984)

¹¹ *Id.* (citations omitted).

Citing their earlier decision in *Mincey*, the Supreme Court held that the warrantless search violated the Fourth Amendment, in that no warrant was obtained and the search did not fall within one of the recognized exceptions to the warrant requirement.

In *Mincey v. Arizona* ... we unanimously rejected the contention that one of the exceptions to the Warrant Clause is a “murder scene exception.” Although we noted that police may make warrantless entries on premises where “they reasonably believe that a person within is in need of immediate aid ... and that ‘they may make a prompt warrantless search of the area to see if there are other victims or if a killer is still on the premises,’ ... we held that “the murder scene exception” ... is inconsistent with the Fourth and Fourteenth Amendments....¹²

The Court noted that the initial entry by the officers into the defendant’s home was justified to look for victims or others in need of emergency medical assistance. However, once both the defendant and her deceased husband were removed from the residence, the emergency justifying the warrantless entry ended, especially in light of the fact the residence was secured so as to effectively prevent the loss or destruction of evidence located within. The “general exploratory search” that was commenced required either a search warrant or an “established

¹² *Id.* at 469 U.S. 21 (citations omitted).

and well-defined” exception, neither of which was present in this case.

In a more recent opinion, the Supreme Court once again expressly refuted any notion that a “murder scene” exception to the warrant requirement of the 4th Amendment exists. In *Flippo v. West Virginia*¹³, police officers arrived at a cabin in a state park, where the defendant notified them he and his wife had been attacked and his wife had been murdered. Officers immediately entered the cabin and located the body of the victim. The defendant was transported to the hospital, while the officers secured the crime scene. A few hours later, the officers reentered the cabin and began to “process” the crime scene. “For over 16 hours, they took photographs, collected evidence, and searched through the contents of the cabin.”¹⁴ However, no search warrant had been obtained. During this search, the officers found “... a briefcase, which they, in the ordinary course of investigating a homicide, opened, wherein they found and seized various photographs and negatives.”¹⁵ The photographs found suggested a possible motive for the murder. The Circuit Court of West Virginia denied the defendant’s motion to suppress the evidence. However, the Supreme Court reversed, concluding that the photographs had been discovered during a warrantless search for which no exception to the warrant requirement existed. Again, the Court emphasized that there is no “murder scene” exception to the Fourth Amendment’s warrant requirement. Further, they determined that:

It seems implausible that

the court found that there was a risk of intentional or accidental destruction of evidence at a ‘secured’ crime scene or that the authorities were performing a mere inventory search when the premises had been secured for “investigative purposes” and the officers opened the briefcase “in the ordinary course of investigating a homicide.”¹⁶

In sum, the Supreme Court has addressed the issue of a “murder scene” exception to the warrant requirement on three separate occasions spread out over a 20-year period. In each instance, the Court has emphatically rejected the notion that such an exception exists. Nonetheless, as noted above, there appears to be a misconception among law enforcement officers regarding the viability of a “murder scene” exception to the warrant requirement. This misconception can most likely be attributed to the concept of “standing.”

“Standing” simply means that an individual has a reasonable expectation of privacy (REP) in the item or place searched. If an individual does not have REP, he or she cannot object to the illegality of the search, because they have no standing to do so. In most instances where officers search a premises under the fictional “murder scene” exception, the evidence found is admissible against the defendant, not because the warrantless search was permissible, but because the defendant had no REP in the premises and cannot object to the legality of the search. For example, assume A (an intruder)

¹³ 120 S.Ct. 7 (1999).

¹⁴ Id. at 120 S.Ct. 7.

¹⁵ Id.

¹⁶ Id.

breaks into B's home and murders B. Officers arrive and conduct a warrantless search of B's premises, which results in an abundance of evidence being seized. While technically the search was in violation of the Fourth Amendment, the evidence found in B's home would still be admissible against A, because A has no standing to object to the impermissible search of B's home. This result can ultimately lead law enforcement officers to the false conclusion that search warrants are not required when processing a "murder scene." The problem with such a conclusion, however, is clearly illustrated in *Mincey*, *Thompson*, and *Flippo*, cases in which the defendant had REP in the premises and where the unlawful search resulted in the suppression of evidence.