

## **MINCEY v. ARIZONA**

**U.S. Supreme Court**

**June 21, 1978**

**437 U.S. 385**

**(In a 9-0 decision, the U.S. Supreme Court, in no uncertain terms, announced for the first time that, contrary to what many of us in the criminal justice system of that day thought, there absolutely, positively never was, and probably never will be, a "Homicide Scene Exception" to the Fourth Amendment. A warrantless and consentless four-day search of the defendant's premises, even though a police officer was killed therein, was unconstitutional. And in a secondary issue, the Big Court considered the custodial interrogation of Mincey in the intensive care unit of a hospital by a detective. Inasmuch as Mincey had a gunshot wound to his hip, damage to the sciatic nerve, partial paralysis of one leg, tubes in his throat, tubes in his nose, a catheter in his bladder, an "I.V." in his arm, strong medication in his system, and several times demanded an attorney and/or that questions cease, the Big Court found the incriminating statements he made in a four-hour interrogation inadmissible. Go figure.)**

We're in Tucson, Arizona, and undercover police officer Barry Headricks had previously purchased heroin from Rufus Mincey in the latter's apartment. On this particular, fateful day, Headricks made arrangements with Mincey in the apartment to go get some money and return to buy heroin that day. Officer Headricks left and returned with nine other plainclothes officers and a deputy county attorney, but without money or a warrant.

Present in the apartment with Mincey were his girlfriend and three associates, one of whom admitted the original officer, but then realized it was a raiding party and briefly closed the door on the group behind Headricks.

Headricks headed immediately to a bedroom where he knew the heroin

was concealed and the other officers forcibly entered the apartment in time to hear a volley of shots in the bedroom and to see Headricks emerge from the bedroom and collapse on the front room floor, fatally wounded.

The narcotics officers found Mincey and his girlfriend wounded in the bedroom and one of the associates caught a wild round from the bedroom, through the wall, in the front room. In his head.

Within ten minutes Tucson homicide investigators arrived at the apartment to relieve the narcotics officers, who departed. They supervised the removal of the officer, who died a few hours later in the hospital, and the suspects, and secured the scene.

Then, and here's the issue, without a warrant or consent, they searched the apartment. For four days. They searched. They photographed. They diagramed. They opened drawers, closets and cupboards. They emptied clothing pockets, dug bullet fragments out of the walls and floors, cut out sections of the carpeting and seized, in all, between 200 and 300 evidentiary items. In four days. Without a warrant or consent.

Obviously, much of the evidence introduced against Mincey at trial came from the four-day warrantless search, i.e., photos, diagrams, slugs, shell casings, handguns, narcotics, paraphernalia, etc.

The defense, of course, argued there should have been a search warrant. The prosecution and the Arizona Supreme Court said the search of a homicide scene should be an exception to the Fourth Amendment's warrant requirement.

The U.S. Supreme Court here holds for the defense, reverses the conviction and orders a new trial with none of the 200-300 evidentiary items from the four-day search being admissible.

*"We hold 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."*

And the Court couldn't fit the situation into any of the warrant exceptions it had previously approved, i.e., consent, incident to arrest, emergency-exigent circumstances, imminent destruction of evidence, etc. Homicide scene, or no homicide scene, they said, get a warrant.

There was a secondary issue wherein Mincey, in the intensive care unit of the hospital, while drifting in and out of consciousness, approaching a coma, was interrogated by a detective for four hours.

Mincey had sustained one gunshot wound in his hip, damaging the sciatic nerve and causing partial paralysis in his right leg. Tubes were placed in his throat to help respiration and into his nose and stomach to keep him from vomiting. A catheter was inserted into his bladder and an "I.V." was placed in his arm for feeding.

Mincey couldn't speak because of the mouth tubes. So the detective gave him writing paper, a pencil and Miranda warnings. Mincey repeatedly complained of pain, repeatedly demanded an attorney and repeatedly asked that questions cease. Medical officials suggested more than once to the detective that the interrogation cease. The detective questioned him from 8:00 p.m. to midnight and obtained some incriminating answers.

Said the Supreme Court, *"It is hard to imagine a situation less conducive to the exercise of a rational intellect and a free will than Mincey's ... seriously wounded ... unbearable pain ... encumbered by tubes, needles and breathing apparatus ... debilitated and helpless condition ... certainly not the product of his free and rational choice."*

Not surprising, all the incriminating statements were also ruled inadmissible in the new trial.

**(Bottom line? Contrary to what some of us thought at the time, the true offending factor here was not the unusual duration of the search, i.e., 4 days. As The Court made crystal clear in subsequent cases, Thompson v. Louisiana in 1984 and Flippo v. West Virginia in 1999, the offending factor is not the duration or other circumstances. The offending factor is no warrant and/or consent. Get a warrant.)**