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Topic: Fire and Crime Scene  
Searches

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## RECENT U.S. SUPREME COURT CASES ON FIRE AND CRIME SCENE SEARCHES

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### I. INTRODUCTION

The Fourth Amendment to the United States Constitution prohibits all unreasonable searches and seizures.<sup>1</sup> A basic principle in interpreting the Fourth Amendment is that searches conducted outside the judicial process are per se unreasonable under the Fourth Amendment.<sup>2</sup> Despite the presumption that warrantless searches are unreasonable, a few specifically established and narrowly defined exceptions have emerged under the heading of "emergency searches." The exceptions to the search warrant requirements share a common justification: an emergency, a situation that demands an immediate response. Thus a policeman may make a warrantless entry into a house when he is in "hot pursuit" of a criminal suspect.<sup>3</sup> Similarly, a policeman may make a warrantless and unannounced entry to prevent the imminent destruction of evidence.<sup>4</sup>

In its recent term, the United States Supreme Court handed down two decisions<sup>5</sup> that clarify the concept of emergency searches as well as narrow the lawful scope of such activities.

### II. INVESTIGATIONS OF FIRE SCENES

Michigan v. Tyler arose out of a fire in a furniture store owned by Loren Tyler. When the local fire chief arrived at the scene of the blaze at four a.m. on January 22, 1970, the firemen were watering down the smoldering embers. The chief was met by a line officer who informed him that two plastic containers of flammable liquid had been found in the building. The two men entered the gutted store, which was filled with smoke and steam, to examine the containers. Concluding that the fire could have been caused by arson, the chief called a police detective, who took pictures of the containers and of the store's interior but abandoned

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his efforts because of the darkness, smoke, and steam. The containers were taken to the fire station, where they were turned over to the detective for safekeeping. Neither consent nor a warrant had been obtained for any of these entries into the building or for the removal of the containers.

Four hours later, the fire chief returned to the store with an assistant fire chief. After a cursory examination, they left. The assistant fire chief soon returned with a police detective to determine the cause of the fire. They found suspicious burn marks in the carpet as well as tape with burn marks on the stairway. They left to obtain tools and returned to remove bits of evidence that suggested a fuse trail. Again, neither consent nor a warrant had been obtained for any of these entries and seizures.

Several weeks after the fire, an arson investigator from the Michigan State Police inspected the premises several times. He discovered a number of pieces of physical evidence, including part of a fuse. These entries and seizures were also without consent or warrants.

Tyler was found guilty of conspiring to burn real property, burning real property, and burning insured property with intent to defraud.

In an opinion written by Mr. Justice Stewart, the U.S. Supreme Court ruled that the entries and seizures made at the initial inspection and four hours later to determine the fire's cause were lawful, but those that were made several weeks after the fire by the arson investigator from the Michigan State Police were unlawful.

Tyler establishes a general rule that official entries to investigate the cause of a fire must adhere to the warrant requirements of the Fourth Amendment.<sup>6</sup> Because an investigator is a fireman rather than a policeman reduces neither a person's reasonable expectations of privacy nor the protection of the Fourth Amendment.<sup>7</sup> But this general rule is subject to a number of exceptions.

The Court observed that a burning building presents a sufficient emergency to justify a warrantless entry by firemen to fight a fire.<sup>8</sup> Such a situation fits very closely the traditional justification for emergency searches: a situation that demands an immediate response. The response must be immediate because not only is the property of the person whose privacy is intruded upon threatened but also the property, and perhaps the lives, of others is jeopardized by the fire. Before a warrant could be obtained to fight the fire, the fire would probably have spread.

A fireman's authority to be on the premises of a burning building does not end when the fire is out. Their authority to remain on the scene after a fire has been extinguished is grounded on two bases. The first basis is derived from their authority to enter a burning building to fight a fire. Though the fire might be over, the prompt determination of its origin is often necessary to prevent its recurrence. Immediate action may also be necessary to preserve evidence from intentional or accidental destruction. Therefore, the Court reasoned, firemen do not need a warrant to remain in a building for a reasonable time after a fire has been put out to investigate its cause.<sup>9</sup> It should be noted that the firemen who investigated

the fire in Tyler had to halt their investigation because of darkness, smoke, and steam, which hampered visibility; the court ruled that their warrantless search when they returned four hours later was no more than a continuation of the initial search.

The Court did not put any precise boundaries on what length of time it deemed to be "reasonable." It did, however, provide some guidelines that will help to determine whether the time that fire investigators remain on the premises is reasonable. The Court observed that a fire in a single-family dwelling that is put out at an identifiable time presents fewer problems of investigation and containment than does a fire that spreads through an apartment complex or engulfs a number of buildings.<sup>10</sup> In the latter, firemen may have to remain on the scene for a long time, repeatedly entering or re-entering the buildings to insure that the fire is out. Another factor that serves to determine the reasonableness of the firemen's extended stay is the reasonable expectation of privacy of the people who are affected by the fire investigators' presence. A person's reasonable expectations of privacy are less if the structure has been destroyed by fire than if only one or two rooms have been damaged. In the first example, the presence of fire investigators to insure that the fire is out works no greater disruption of routine than has already been caused by the fire. Therefore, it can be argued that the length of time that firemen may remain on the scene checking to see that the fire is out and has not spread is longer in the first example than in the second.

The second basis for firemen's authority to remain on the scene after a fire has been put out is grounded not on the emergency that was presented by the fire itself but on statutory grants of power to investigate the cause of the fire.<sup>11</sup> If a fireman wishes to go beyond his initial investigation he must secure a warrant.<sup>12</sup> The kind of warrant he will need depends on the purpose of the investigation.

Administrative Inspection Warrants. If the fire's cause is unknown and the purpose of the investigation is to determine the cause, he will need an administrative inspection warrant.<sup>13</sup> The authority to determine the origin of a fire could be based on a local ordinance or on a state statute.<sup>14</sup> In North Carolina, the municipal fire chief, the sheriff, and the chief of a rural fire department are authorized to investigate the cause, origin, and circumstances of each fire in which property is destroyed.<sup>15</sup>

To obtain an administrative inspection warrant, a fireman must show that (a) the property is to be searched as part of a legally authorized program of inspection that naturally included that property, or (b) there is probable cause to believe that a condition, object, activity, or circumstance exists in reference to it that legally justifies the search.<sup>16</sup> Probable cause in the criminal law sense is not required.<sup>17</sup> An administrative inspection warrant, therefore, could be issued if it is shown that a fire occurred that destroyed property and firemen need to enter and search the premises to determine what caused the fire.<sup>18</sup>

Search Warrants. If the fireman is seeking evidence to be used in a criminal prosecution, he must secure a search warrant.<sup>19</sup> To do so, he must show that there is probable cause to believe that a crime was

committed.<sup>20</sup> Probable cause means that if the statement in the application were told to a person unfamiliar with the case, he would agree that it is more likely than not that a crime was committed and evidence that is sought will be found in the place to be searched.<sup>21</sup>

Both search warrants and administrative inspection warrants must describe the evidence sought<sup>22</sup> and the place to be searched<sup>23</sup> with reasonable particularity. The description of the evidence may be less precise than the description of the place that is to be searched.<sup>24</sup> Since the standard of probable cause for search warrants is more demanding than the standard for an administrative inspection warrant, the evidence sought under the search warrant should be described more precisely than evidence sought under an administrative inspection warrant.

Once firemen are in a building to put out a fire, they may seize evidence of arson or any other crime that is in plain view.<sup>25</sup>

### III. SEARCHES OF CRIME SCENES

Mincey v. Arizona arose from a raid on the apartment of a suspected narcotics dealer. An undercover police officer had allegedly arranged to purchase heroin from the defendant, Rufus Mincey. The officer left after arranging the deal, ostensibly to get the money. He returned, accompanied by nine other policemen and an assistant district attorney. When the door was opened, the undercover agent slipped inside, but the door was slammed shut before the other policemen could enter. As they forced open the door, a volley of shots came from a back bedroom. The undercover officer emerged from the room and collapsed on the floor. When the other officers entered the room, they found the defendant on the floor, wounded and semiconscious. The officer died a few hours later.

While they were on the scene, the narcotics agents administered first aid to the officer and looked for other victims. They made no further investigation. Shortly thereafter, homicide detectives arrived to take charge of the investigation. They conducted a four-day search: the entire apartment was searched, photographed, and diagrammed. Drawers, closets, and cupboards were opened and their contents inspected. Clothing pockets were emptied. Bullet fragments were dug out of the walls and floors. Sections of the carpet were pulled up and removed for examination. Some two or three hundred items were seized. No warrant was ever obtained. Mincey was convicted of murder, assault, and narcotics offenses.

Before Mincey, seven states<sup>26</sup> had held that the constitutional requirements of a search warrant may be set aside for a search of a scene where there is a homicide or a personal injury with the likelihood of death in which foul play may be reasonably suspected. Under the "murder scene" exception, the search so justified was limited to determining the circumstances of the death or injury.<sup>27</sup> The search had also to begin within a reasonable time after officials learned of the homicide or injury.<sup>28</sup>

In an opinion delivered by Mr. Justice Stewart, the Supreme Court in Mincey held that the "murder scene" exception to the warrant requirement was unconstitutional. This exception was premised on the idea that a homicide or potential homicide is an emergency, a situation that demands

an immediate response.<sup>29</sup> The Court disagreed, noting that a warrantless search must be strictly limited by the unusual circumstances that justify the intrusion.<sup>30</sup> It observed that in Mincey the search was not justified by an emergency that threatened life or limb.<sup>31</sup> In fact, all of the victims had been found by police before the homicide detectives arrived and began their search.

Under the threat to life or limb justification, the Court held the Fourth Amendment does not bar police officers from making warrantless entries and searches when they reasonably believe that a person within the entered premises needs immediate aid.<sup>32</sup> In particular, when police come to the scene of a homicide, they may make a prompt warrantless search of the area to see whether there are any other victims or whether the killer is still present.<sup>33</sup> The need to protect life or prevent serious injury justifies what would otherwise be illegal absent the emergency.<sup>34</sup>

The rule that the Supreme Court laid down has two apparent limitations. First, the warrantless search of the scene of a homicide must be prompt. Second, the purpose of the search is to determine whether there are any other victims or whether the killer is still on the premises. The purpose is not to obtain evidence. Police can conduct a "walk-through" of each room to look for victims or suspects and check under beds and in closets. A garage or similar outbuilding within the same yard may also be searched. In short, police may search wherever they reasonably think a victim or suspect may be found.

The Court did not directly address the issue of whether police may search cupboards and drawers. The justification that the Court used to support a warrantless search of the scene of a homicide or serious injury was the need to protect life or limb; a warrantless search must be strictly limited by its justification.<sup>35</sup> Therefore, any search of cupboards and drawers must be limited to that which is necessary to protect life or limb.<sup>36</sup> If a suspect is found on the premises and arrested, drawers and cupboards that are within his immediate control may be searched for weapons.<sup>37</sup> But there is no general authority to search drawers, cupboards, or other closed or concealed areas for weapons without a warrant.<sup>38</sup>

If the circumstances are such as to constitute probable cause, police may secure the scene of a homicide pending the issuance of a search warrant after making an emergency search to find other victims or the killer.<sup>39</sup>

What can be searched for under the search warrant will depend on the facts as the police find them when they arrive on the scene and conduct an emergency search. Bullet wounds and knife slashes provide fairly clear evidence of the cause of death. Without further investigation, the particular instrument that caused death may not be known. Certainly, in an application for a search warrant, the more definite the description of the object, the better the application. But, if the condition of the body indicates that death was caused by a pistol or by a small bladed knife, a description of the weapon no more detailed than that ought to be sufficient, because, even though a crime is evident, it is often impossible to know precisely what objects were used to commit it.<sup>40</sup>

The police may seize any evidence that is in plain view during their legitimate emergency search.<sup>41</sup>

#### IV. STANDING TO OBJECT TO A WARRANTLESS SEARCH

Despite the restrictiveness of Tyler and Mincey, a warrantless search of the scene of a crime may be conducted if consent is obtained from those persons who have a recognized privacy interest.<sup>42</sup> Therefore, the husband of a murdered woman could give effective consent to a search of their home, but not a search of the room of a boarder he and his wife had taken in.

Even if a warrantless search is conducted unlawfully, a criminal suspect has no standing to challenge the admissibility of any evidence obtained in the search unless he has a recognized privacy interest that has been violated.<sup>43</sup> Thus a defendant charged with arson would have no standing to object to an illegal warrantless search of a building that he did not own or rent, or in which he had no other recognized privacy interest.

#### V. CONCLUSION

Tyler and Mincey limit the permissible scope of emergency searches to situations that clearly demand an immediate response. Such situations include, but are not necessarily limited to, fighting fire and preventing its recurrence, hot pursuit of a suspect, preventing the imminent destruction of evidence, and searching for victims of crimes as well as suspects. Such searches must be conducted as soon as the emergency is discovered, and their scope is limited by its circumstances. Searches that are prolonged or go beyond meeting the immediate need of the emergency are lawful only under a warrant.

Though Tyler and Mincey occurred in connection with investigations of arson and murder, respectively, the rules they lay down apply to investigations of other crimes. Such investigations may be conducted without a warrant only to the extent that is required by a legitimate emergency. If no emergency exists, then no warrantless search may be conducted.

## FOOTNOTES

1. "The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated...". U.S. Const. amend. IV.
2. *Katz v. United States*, 389 U.S. 347, 357 (1967).
3. *Warden v. Hayden*, 387 U.S. 294 (1967).
4. *Ker v. California*, 374 U.S. 23 (1963).
5. *Mincey v. Arizona*, 23 Cr.L.Rep. 3137 (June 21, 1978); *Michigan v. Tyler*, 23 Cr.L. Rep. 3055 (May 31, 1978).
6. 23 Cr.L. Rep. at 3058.
7. *Id.* at 3057.
8. *Id.* at 3058.
9. *Id.*
10. *Id.*
11. See generally, N.C. Gen. Stat. §§ 69-1 to -7.1 (Supp. 1977).
12. 23 Cr.L. Rep. at 3058.
13. *Id.*; see also, *See v. Seattle*, 387 U.S. 541 (1967).
14. Cf. *See v. Seattle*, 387 U.S. 541 (1967) (local ordinance authorizing municipal fire inspections).
15. N.C. Gen. Stat. § 69-1 (Supp. 1977).
16. N.C. Gen. Stat. § 15-27.2 (1975). See also, *Camara v. Municipal Court*, 387 U.S. 523, 538 (1967).
17. *Marshall v. Barlow's, Inc.*, 23 Cr.L. Rep. 3020, 3032 (May 24, 1978).
18. 23 Cr.L. Rep. at 3058.
19. *Id.*
20. *Id.*
21. *M. Crowell*, Search Warrants in North Carolina 14 (1976).
22. *Id.* at 8-9.
23. *Id.* at 11-13.
24. *Id.* at 8.
25. *Coolidge v. New Hampshire*, 403 U.S. 443, 465-76 (1971).
26. *State v. Mincey*, 115 Ariz. 472, 482, 566 P.2d 273, 283 n. 4 (1977).
27. 115 Ariz. at 482, 566 P.2d at 283.
28. *Id.*
29. 23 Crim.L. Rep. at 3139.
30. *Id.* See also, *Terry v. Ohio*, 392 U.S. 1, 25-26 (1968).
31. 23 Crim.L. Rep. at 3139.
32. *Id.*
33. *Id.*
34. *Id.* citing *Wayne v. United States*, 115 U.S. App. D.C. 234, 241, 318, F.2d 205, 212 (1965).
35. 23 Cr.L. Rep. at 3139; 392 U.S. at 25-26.
36. Cf. *Chimel v. California*, 395 U.S. 752, 763 (1969) (warrantless search of house for stolen coins held unlawful).
37. *Id.*
38. *Id.*
39. *United States v. Picariello*, 568 F.2d 222 (1st Cir. 1978).
40. *M. Crowell*, supra note 22, at 8.
41. 403 U.S. at 465-66.
42. *United States v. Matlock*, 415 U.S. 164 (1974).
43. See, N.C. Gen. Stat. § 15A-972 (1978).