

# ANCHORAGE POLICE DEPARTMENT



## BUREAU BULLETIN



LEGAL BULLETIN NO. 31

WARRANTLESS SEARCH OF  
MURDER SCENE

U. S. Supreme Court  
23 CrL 3137  
Opinion No. 77-5353  
June 21, 1978

Reference: Rufus Junior MINCEY  
v.  
State of Arizona

437 US 385 (1978) January 7, 1980

### FACTS:

An undercover police officer arranged to buy some drugs from MINCEY. The officer left MINCEY's residence to obtain money. The officer returned to the MINCEY residence with eight other officers and a county attorney, all of whom were in plain clothes. A struggle took place at the door between the police and another person who was present at the MINCEY residence.

The undercover police officer went to a back bedroom and a volley of shots was heard. The undercover officer was killed; MINCEY and several other occupants of the residence were wounded. Pursuant to department policy, other officers not involved in the shooting were dispatched to investigate. The police department's homicide detail was on the scene within ten minutes and conducted the investigation.

An extensive search of the residence took place over a four-day period which resulted in over three-hundred (300) separate pieces of evidence being collected. This search and ultimate seizure of the evidence was done without a search warrant.

### ISSUE:

Can the warrantless search of premises and ultimate seizure of the evidence be justified under the "murder-scene exception" to the warrant requirement?

HELD: No.

### REASONING:

1. There is no such "exception" to the Fourth Amendment.
2. When the police come upon the scene of a homicide, they may make a prompt warrantless search of the area to see if there are other victims or if a suspect is still on the premises. The police may seize any evidence that is in plain view (emphasis added) during the course of their legitimate emergency activities.

3.

A four-day search that included opening dresser drawers and ripping up carpets can hardly be rationalized in terms of the legitimate concerns that justify an emergency search.

4. There was no indication that evidence would be lost, destroyed nor removed during the time required to obtain a search warrant.

NOTES:

Except that this was a murder case, the police were unable to articulate exigent circumstances to justify a warrantless search. The police could easily have "posted a guard" at the scene while a warrant was obtained.

A criminal defendant in Alaska can also claim he has standing (see Criminal Rule 26-G and A.P.D. Legal Bulletin No. 20, Michael Joseph PISTRO v. State of Alaska) if a search is conducted on another person's premises without benefit of a warrant---for example, if a murder took place at a neighbor's house and a warrantless search was conducted at the residence of the neighbor, the defendant could then challenge that search claiming it was illegal; therefore, any evidence so obtained could not be used against him. So far, our state Supreme Court has not addressed this "standing" issue in this regard, but we do know there is no "murder exception" to the warrant requirement.

The Alaska Supreme Court in the case of Donald SCHULTZ v. State (See A.P.D. Legal Bulletin No. 23) gave us guidelines regarding evidence seized in plain view during a warrantless emergency search of a burning building.

The Supreme Court also has said what is not an emergency search in several cases. See Charles S. FINCH v. State (A.P.D. Legal Bulletin No. 22) regarding the warrantless entry into a hotel room and State of Alaska v. John SPIETZ (A.P.D. Legal Bulletin No. 18) warrantless entry into a private residence.

It seems the best course of action is to either obtain consent (in writing) to search a murder scene or, absent exigent circumstances, post a guard, secure the scene and obtain a search warrant.