

The Burger Court Opinion Writing Database

Mincey v. Arizona

437 U.S. 385 (1978)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

May 23, 1978

Dear Potter:

Re: 76-5353 Mincey v. Arizona

I remain in my conference position to reverse, but there are a few aspects of the opinion which lead me to consider adding not to exceed a page or two. This will also enable me to see how persuasive Bill's dissent will be. On precedent he is swimming upstream.

Regards,

WRB

Mr. Potter Stewart

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

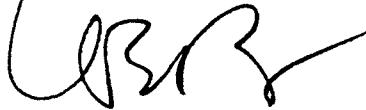
June 12, 1978

Re: 77-5353 - Mincey v. Arizona

Dear Potter:

I join.

Regards,



Mr. Justice Stewart

Copies to the Conference

✓
CHAMBERS OF
JUSTICE W. J. BRENNAN, JR.

Supreme Court of the United States
Washington, D. C. 20543

May 17, 1978

RE: No. 77-5353 Mincey v. Arizona

Dear Potter:

I agree.

Sincerely,

Bil

Mr. Justice Stewart

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE W. J. BRENNAN, JR.

May 18, 1978

RE: No. 77-5353 Mincey v. Arizona

Dear Thurgood:

Please join me.

Sincerely,

Bill

Mr. Justice Marshall

cc: The Conference

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice White
✓ Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Stewart
16 MAY 1978
Circulated: _____

1st DRAFT

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 77-5353

Rufus Junior Mincey, Petitioner, | On Writ of Certiorari to
v. | the Supreme Court of
State of Arizona. | Arizona.

[May —, 1978]

MR. JUSTICE STEWART delivered the opinion of the Court.

On the afternoon of October 28, 1974, undercover police officer Barry Headricks of the Metropolitan Area Narcotics Squad knocked on the door of an apartment in Tucson, Ariz., occupied by the petitioner, Rufus Mincey. Earlier in the day, Officer Headricks had allegedly arranged to purchase a quantity of heroin from Mincey and had left, ostensibly to obtain money. On his return he was accompanied by nine other plainclothes policemen and a deputy county attorney. The door was opened by John Hodgman, one of three acquaintances of Mincey who were in the living room of the apartment. Officer Headricks slipped inside and moved quickly into the bedroom. Hodgman attempted to slam the door in order to keep the other officers from entering, but was pushed back against the wall. As the police entered the apartment, a rapid volley of shots was heard from the bedroom. Officer Headricks emerged and collapsed on the floor. When other officers entered the bedroom they found Mincey lying on the floor, wounded and semiconscious. Officer Headricks died a few hours later in the hospital.

The petitioner was indicted for murder, assault,¹ and three counts of narcotics offenses. He was tried at a single trial and

¹ The assault charge was based on the wounding of a person in the living room who was hit by a bullet that came through the wall.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

May 17, 1978

Re: No. 77-5353, Mincey v. Arizona

Dear Harry,

Thank you for your helpful suggestions. I shall do my best to accommodate them.

Sincerely yours,

C. S.
/

Mr. Justice Blackmun

Copies to the Conference

STYLISTIC CHANGES THROUGHOUT
SEE PAGES: 4-10

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Stewart

Circulated

Received by _____ 18 MAY 1978

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-5353

Rufus Junior Mincey, Petitioner, | On Writ of Certiorari to
v. | the Supreme Court of
State of Arizona. | Arizona.

[May —, 1978]

MR. JUSTICE STEWART delivered the opinion of the Court.

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The petitioner was indicted for murder, assault,¹ and three counts of narcotics offenses. He was tried at a single trial and

¹ The assault charge was based on the wounding of a person in the living room who was hit by a bullet that came through the wall.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

June 9, 1978

Memorandum to the Conference

Re: No. 77-5353, Mincey v. Arizona

I propose to add a new footnote 14 at the end of the paragraph on page 11 of this opinion, as follows:

14/

Contrary to implications in the dissenting opinion, post, at 6, the record contains no indication, and the State does not claim, that the question of voluntariness was submitted to the trial jury, "properly instructed" or otherwise.

PS.
17

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

June 13, 1978

MEMORANDUM TO THE CONFERENCE

Re: 77-5353 - Mincey v. Arizona

In view of the changes Bill Rehnquist has made in his separate opinion, as recirculated today, I shall not add to the Court opinion the footnote contained in my memorandum of June 9.

P.S.
P.S.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

June 21, 1978

Re: No. 77-5353, Mincey v. Arizona

Dear Thurgood,

Please accept my apologies for failing to announce this morning that you had filed a concurring opinion, which Bill Brennan joined. I have no excuse. I simply forgot it, and I am truly sorry.

Sincerely yours,

P.S.

Mr. Justice Marshall

Copy to Mr. Justice Brennan

P.S.

Mr. Justice Marshall

Mr.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 17, 1978

Re: 77-5353 - Mincey v. Arizona

Dear Potter,

Join me, please.

Sincerely yours,



Mr. Justice Stewart

Copies to the Conference

17 MAY 1978

No. 77-5353, Mincey v. Arizona

MR. JUSTICE MARSHALL, concurring.

I join the opinion of the Court, which holds that petitioner's rights under the Fourth and Fifth Amendments have been violated. I write today to emphasize a point that is illustrated by the instant case, but that applies more generally to all cases in which we are asked to review Fourth Amendment issues arising out of state criminal convictions.

It is far from clear that we would have granted certiorari solely to resolve the Fifth Amendment issue in this case, for that could have been resolved on federal habeas corpus. With regard to the Fourth Amendment issue, however, we had little choice but to grant certiorari, because our decision in Stone

Pp. 1, 2, 4

23 MAY 1978

Recirculation

1st PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-5353

Rufus Junior Mincey, Petitioner, | On Writ of Certiorari to
v. | the Supreme Court of
State of Arizona. | Arizona.

[May —, 1978]

MR. JUSTICE MARSHALL, with whom MR. JUSTICE BRENNAN joins, concurring.

I join the opinion of the Court, which holds that petitioner's rights under the Fourth and Fifth Amendments have been violated. I write today to emphasize a point that is illustrated by the instant case, but that applies more generally to all cases in which we are asked to review Fourth Amendment issues arising out of state criminal convictions.

It is far from clear that we would have granted certiorari solely to resolve the Fifth Amendment issue in this case, for that could have been resolved on federal habeas corpus. With regard to the Fourth Amendment issue, however, we had little choice but to grant review, because our decision in *Stone v. Powell*, 428 U. S. 465 (1976), precludes federal habeas review of such issues. In *Stone* the Court held that, "where the State has provided an opportunity for full and fair litigation of a Fourth Amendment claim, a state prisoner may not be granted federal habeas corpus relief on the ground that evidence obtained in an unconstitutional search or seizure was introduced at his trial." *Id.*, at 494. Because of this holding, petitioner would not have been able to present to a federal habeas court the Fourth Amendment claim that the Court today upholds.

The additional responsibilities placed on this Court in the wake of *Stone* become apparent upon examination of decisions of the Arizona Supreme Court on the Fourth Amendment issue presented here. The Arizona court created its

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Stylistic Changes Throughout

8 JUN 1978

Recirculation

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

—
No. 77-5353
—

Rufus Junior Mincey, Petitioner, | On Writ of Certiorari to
v. | the Supreme Court of
State of Arizona. | Arizona.

[June —, 1978]

MR. JUSTICE MARSHALL, with whom MR. JUSTICE BRENNAN joins, concurring.

I join the opinion of the Court, which holds that petitioner's rights under the Fourth and Fifth Amendments have been violated. I write today to emphasize a point that is illustrated by the instant case, but that applies more generally to all cases in which we are asked to review Fourth Amendment issues arising out of state criminal convictions.

It is far from clear that we would have granted certiorari solely to resolve the Fifth Amendment issue in this case, for that could have been resolved on federal habeas corpus. With regard to the Fourth Amendment issue, however, we had little choice but to grant review, because our decision in *Stone v. Powell*, 428 U. S. 465 (1976), precludes federal habeas consideration of such issues. In *Stone* the Court held that, "where the State has provided an opportunity for full and fair litigation of a Fourth Amendment claim, a state prisoner may not be granted federal habeas corpus relief on the ground that evidence obtained in an unconstitutional search or seizure was introduced at his trial." *Id.*, at 494. Because of this holding, petitioner would not have been able to present to a federal habeas court the Fourth Amendment claim that the Court today unanimously upholds.

The additional responsibilities placed on this Court in the wake of *Stone* become apparent upon examination of decisions of the Arizona Supreme Court on the Fourth Amendment issue presented here. The Arizona court "created its

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 21, 1978

Re: No. 77-5353 - Mincey v. Arizona

Dear Potter:

Forget it. I never even noticed it.

Sincerely,

T.M.

T.M.

Mr. Justice Stewart

Copy to Mr. Justice Brennan

May 16, 1978

Re: No. 77-5353 - Mincey v. Arizona

Dear Potter:

I am certain that I shall be with you in your opinion proposed for this case. I have concluded, as you have, that it is well to reach the issue of voluntariness of the statements. Others may disagree as to this.

I have two suggestions for your consideration. The first you will probably reject. The second, I hope, you will accept.

1. I did not join United States v. Chadwick, and I still strongly feel the case was wrongly decided. There are many citations of Chadwick in the opinion. I would be happier if there were fewer of these or if other citations standing for the same ~~principles~~ compositions could be employed. I, of course, must concede that the case is a decided one.

2. I am somewhat disturbed by the first full paragraph on page 10. Perhaps I am hardened to hospital routine, but I get the impression that the Court could be criticized as being somewhat overtaken and emotional in its description of what was done to Mincey in the hospital. My first concern is with "a catheter was inserted into his bladder through his penis." For a male, that is the usual routine for catheter placement. It is not at all unusual in serious surgery or where abdominal wounds have been incurred. Any distress is more in the imagination than in reality. It is inconvenient, but it seldom hurts. I know. Why not just say "a catheter was in place"?

3. The following sentence about intravenous apparatus also strikes me as overstated. This, too, is almost the routine rather than the exception on a surgical floor. What would you think of saying, "He received various drugs, and intravenous paraphernalia was utilized for therapy and feeding," or something like that?

As to this second suggestion, please believe me when I say that I am trying to be helpful and not critical.

Sincerely,

HAB

Mr. Justice Stewart

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

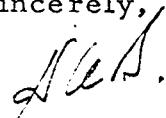
May 17, 1978

Re: No. 77-5353 - Mincey v. Arizona

Dear Potter:

We have discussed by telephone the few minor changes I suggested in your opinion. You indicated that you would incorporate some of these. I therefore am glad to join your opinion for this case.

Sincerely,



Mr. Justice Stewart

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 17, 1978

No. 77-5353 Mincey v. Arizona

Dear Potter:

Please join me.

Sincerely,



Mr. Justice Stewart

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 16, 1978

Re: No. 77-5353 - Mincey v. Arizona

Dear Potter:

In due course I plan to circulate an opinion dissenting at least from your treatment of the voluntariness of the confession and probably from your treatment of the "murder scene" exception to the warrant requirement in this case.

Sincerely,



Mr. Justice Stewart

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 7, 1978

Re: No. 77-5353 - Mincey v. Arizona

Dear Potter:

I anticipate having a dissent around within a day or so in this case, and I think there is some prospect that if my dissent does not persuade you to change your mind, the case could come down on some day other than Monday next week.

Sincerely,



Mr. Justice Stewart

Copies to the Conference

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Stevens

No. 77-5353 Mincey v. Arizona

From: Mr. Justice Rehnquist
Circulated: JUN 7 1978

MR. JUSTICE REHNQUIST, concurring in part ~~and dissenting~~

in part.

Petitioner was indicted for murder, assault, and three counts of narcotics offenses. He was convicted on all charges. On appeal, the Supreme Court of Arizona reversed all but the narcotics convictions. State v. Mincey, 115 Ariz. 472, 577 P.2d 273 (1977). In his petition for certiorari, petitioner challenged the introduction of evidence material to his narcotics convictions that was seized during a lengthy warrantless search of his apartment. Petitioner also challenged on voluntariness grounds the introduction of various statements made to the police relating to the murder charge.

STYLISTIC CHANGES THROUGHOUT

P.L.

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Stevens

From: Mr. Justice Rehnquist

2nd DRAFT

Circulated: _____

JUN 1 1978

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 77-5353

Rufus Junior Mincey, Petitioner, | On Writ of Certiorari to
v. | the Supreme Court of
State of Arizona. | Arizona.

[June —, 1978]

MR. JUSTICE REHNQUIST, concurring in part and dissenting in part.

Petitioner was indicted for murder, assault, and three counts of narcotics offenses. He was convicted on all charges. On appeal, the Supreme Court of Arizona reversed all but the narcotics convictions. *State v. Mincey*, 115 Ariz. 472, 566 P. 2d 273 (1977). In his petition for certiorari, petitioner challenged the introduction of evidence material to his narcotics convictions that was seized during a lengthy warrantless search of his apartment. Petitioner also challenged on voluntariness grounds the introduction of various statements made to the police relating to the murder charge. We granted certiorari, — U. S. —, and the Court today reverses the Supreme Court of Arizona on both issues. While I agree with the Court that the warrantless search was not justifiable on the grounds advanced by the Arizona Supreme Court, I dissent from the Court's holding that Mincey's statements were involuntary and thus inadmissible.

I

I join Part I of the Court's opinion. As the Supreme Court of Arizona recognized, the four-day warrantless search of petitioner's apartment did not, on the facts developed at trial, "fit within [any] usual 'exigent circumstances' exception." 115 Ariz., at 482, 566 P. 2d, at 283. Instead, the State of Arizona asks us to adopt a separate "murder scene" exception

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 16, 1978

Re: 77-5353 - Mincey v. Arizona

Dear Potter:

Please join me.

Respectfully,



Mr. Justice Stewart

Copies to the Conference