

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PATRICK ALLEN MARTIN,

Defendant-Appellant.

UNPUBLISHED

December 26, 2000

No. 217195

Roscommon Circuit Court

LC No. 98-003587-FC

Before: Saad, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction for second-degree murder, MCL 750.317; MSA 28.549, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). The trial court sentenced defendant to twenty-five to fifty years' imprisonment for the murder conviction, and the mandatory consecutive two years' imprisonment for the felony-firearm conviction. We affirm but remand for further proceedings consistent with this opinion.

I. NATURE OF THE CASE

This appeal raises yet another narrow and precise application of the plain view doctrine. Where, as here, a police officer is called to the scene of a homicide and thus is properly in the residence of another, and sees items in plain view, but leaves the premises without seizing the items, but secures the scene to preserve it for forensic processing of the evidence, may the police return to the home to "scientifically process the crime scene" without first obtaining a search warrant?

Importantly, the police in this case were called to the scene of a multiple shooting and possible homicide and could not tamper with the plain view evidence because the scene required scientific processing by specially trained forensic experts. Also, the police secured the premises by posting two police officers outside the home while waiting for the forensic specialists from the Michigan State Police Crime Laboratory Unit.¹

¹ The specialists included a latent fingerprint examiner and firearms expert, another
(continued...)

Defendant claims that the warrantless “reentry” of the home, three hours after the original proper entry, violated the Fourth Amendment because the exigent circumstances which justified the original entry ended and, therefore, any “reentry” required a search warrant. In contrast, the prosecutor claims that, because the scene was secured and the crime lab investigators processed only those items previously seen in plain view, they were merely continuing the ongoing investigation and, therefore, the processing of the murder scene was not unconstitutional.

For the reasons stated below, we conclude that the warrantless “reentry” into defendant’s home by the Michigan State Crime Lab Unit specialists and consequent forensic processing and collecting of the plain view evidence did not violate defendant’s Fourth Amendment Rights.

II. FACTS AND PROCEDURE

This case arises out of a fatal shooting at defendant’s trailer home on March 29, 1998, following a violent argument between defendant and his wife, Dawn Martin. During the altercation, defendant was shot once in the chest with a rifle and Dawn was shot three times by the same gun. One of the bullets passed through Dawn’s brain, killing her within minutes of the shooting. The prosecutor alleged that defendant shot and killed Dawn while defendant maintained that Dawn committed suicide.

At approximately 1:10 p.m. on the day of the incident, Roscommon County Sheriff Jack Sheppard arrived at the scene in response to an emergency call and two other officers reached the home shortly thereafter. After Sheriff Sheppard announced his presence, defendant crawled out of the trailer and told Sheriff Sheppard, “She just fired again.” Sheriff Sheppard entered the home and saw Dawn lying on the living room floor along with a nearby rifle, six spent shell casings, various bullet holes and a large quantity of blood. After paramedics took defendant and Dawn to the hospital, Sheriff Sheppard secured the scene by instructing Deputy Steve LeMire and Deputy Jerry Wallington to stand guard outside the trailer while he left to interview a neighbor. At approximately 4:00 p.m. that afternoon, a detective and two forensic specialists from the Michigan State Crime Laboratory arrived at the trailer and, after talking to officers LeMire and Wallington, entered the home to process the crime scene. No warrant was obtained to search defendant’s home until the next day, and accordingly, a generalized search of the premises did not occur until the search warrant was obtained.

A. *The First Entry Into Defendant’s Home*

Prior to the start of trial, defendant moved to suppress all evidence the crime lab investigators processed and seized after their warrantless “reentry” of his home. The parties agree that when Sheriff Sheppard first entered defendant’s home, he did so properly based on the exigent circumstances exception to the general warrant requirement. Under this exception, the police may enter a dwelling without a warrant if the officers have probable cause to believe that (1) a crime was recently committed on the premises, and (2) the premises contain evidence or

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fingerprint examiner and photographer, and two scientists specializing in trace and fiber evidence and serology.

perpetrators of the suspected crime. *In re Forfeiture of \$176,598*, 443 Mich 261, 271; 505 NW2d 201 (1993). Furthermore, officers must “establish the existence of an actual emergency on the basis of specific and objective facts indicating that immediate action is necessary to (1) prevent the imminent destruction of evidence, (2) protect the police officers or others, or (3) prevent the escape of a suspect.” *Id.*

Here, Sheriff Sheppard went to defendant’s home in response to an emergency call and, when he arrived, defendant crawled out of the house and indicated he was shot by someone inside. Thus, Sheriff Sheppard had probable cause to believe that a crime was recently committed and that a perpetrator may be inside the home. *In re Forfeiture of \$176,598, supra*, 443 Mich 271. Also, Sheriff Sheppard justifiably entered the house to protect himself or others from potential harm or to prevent the escape of a suspect. *Id.*

B. *The Second Entry Into Defendant’s Home*

The trial court denied defendant’s motion to suppress evidence processed and collected by the crime lab investigators and relied on the plain view exception to the warrant requirement. The plain view doctrine provides that police officers may seize, without a warrant, items in plain view if the officers are lawfully in a position from which they view the item, if the incriminating character of the item is immediately apparent, and if the officers have a lawful right of access to the object. *Horton v California*, 496 US 128, 136-137; 110 S Ct 2301; 110 L Ed 2d 112 (1990); *Texas v Brown*, 460 US 730, 739; 103 S Ct 1535; 75 L Ed 2d 502 (1983) (plurality opinion). The trial court ruled that no Fourth Amendment violation occurred because when Sheriff Sheppard first entered the trailer at 1:10 p.m., he properly entered the home and saw the evidence in plain view. The court reasoned correctly that because Sheriff Sheppard could have seized the evidence at that time, that the crime lab investigators merely “continued to process the evidence which was readily observable.”

III. ANALYSIS

In reviewing a ruling on a motion to suppress evidence, we review the trial court’s findings of fact for clear error and we review de novo the trial court’s rulings of law. *People v Howard*, 233 Mich App 52, 54; 595 NW2d 497 (1998).

A. *Cases Denying the Validity of a “Murder Scene Exception” to the Warrant Requirement*

In *Mincey v Arizona*, 437 US 385; 98 S Ct 2408; 57 L Ed 2d 290 (1978), undercover police officer Barry Headricks arranged to buy drugs from the defendant and, when Headricks arrived at the defendant’s apartment to finalize the transaction, he brought with him several plainclothes police officers to effect the defendant’s arrest. *Id.* at 387. When the defendant’s friend opened the apartment door, Headricks quickly entered and walked to the bedroom. *Id.* As the other officers entered the apartment, they heard gunshots from the bedroom area. *Id.* Headricks then emerged from the bedroom, collapsed on the floor, and later died from his gunshot wounds. *Id.*

Within minutes of the shooting and without a warrant, homicide detectives arrived at the apartment and conducted an exhaustive, four-day search during which police seized 200 to 300 objects. *Mincey, supra*, 437 US 389. 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; [and] they pulled up sections of the carpet and removed them for examination.” *Id.* On appeal from a denial of the defendant’s motion to suppress, the Arizona Supreme Court ruled that a prompt, warrantless search of a homicide scene did not violate the Fourth or Fourteenth Amendments. *Id.* at 389-390. The United States Supreme Court reversed, ruling that no general “murder scene exception” to the warrant requirement justified the prolonged and intrusive exploration of virtually every inch of the defendant’s home. *Id.* at 393-395.

In *Thompson v Louisiana*, 469 US 17; 105 S Ct 409; 83 L Ed 2d 246 (1984), officers entered the defendant’s house in response to a homicide call, discovered the body of the victim, then secured the scene and transported the defendant to the hospital because of an apparent drug overdose. *Id.* at 18-19. Thirty-five minutes later, two homicide investigators arrived at the home and conducted a two-hour “exploratory search” of the defendant’s entire house. *Id.* at 18-19. The officers found a gun inside a chest of drawers located in the same room as the victim’s body, a torn up note in a wastebasket in an adjoining room and another note inside an envelope on top of a chest of drawers. *Id.* at 19. Relying on *Mincey*, the United States Supreme Court reiterated that a warrantless search of the defendant’s home was not constitutional simply because it was the scene of a recent homicide. *Id.* at 21. The Court observed that, while less intrusive than in *Mincey*, the officers’ two-hour general search of Thompson’s entire house was still “a significant intrusion,” particularly because the evidence seized was not discovered in plain view when the officers were legitimately inside the house to render emergency aid. *Id.* at 22.

Although not cited by either party, the Indiana Supreme Court recently addressed the subsequent seizure of plain view evidence in *Middleton v State*, 714 NE2d 1099 (Ind, 1999). In *Middleton*, a probationary police officer entered the defendant’s residence as a prospective home-buyer and was not inside the house on official police business. *Id.* at 1100. While touring the home, the officer spotted marijuana and drug paraphernalia in a bedroom. *Id.* at 1100. The officer then left the house and radioed the information from his police car. *Id.* Other police officers soon arrived, entered the house without a warrant and seized the drugs and paraphernalia as evidence. *Id.* The Indiana Supreme Court ruled that the seizure of the evidence violated the Fourth Amendment. *Id.* at 1103. Specifically, the Court noted that the officer who saw the evidence while properly inside the home could have immediately seized the items pursuant to the plain view doctrine before leaving the house and calling other officers to the scene. *Id.* at 1101.

In *Flippo v West Virginia*, 528 US 11; 120 S Ct 7; 145 L Ed 2d 16 (1999), the United States Supreme Court again addressed the warrantless seizure of evidence in the context of a murder investigation. In *Flippo*, the defendant called police to a state park cabin, reporting that he and his wife had been attacked. *Id.* When police officers arrived, they found defendant standing outside the cabin with injuries to his head and legs and they discovered the defendant’s wife inside, suffering from fatal head wounds. *Id.* The officers secured the scene and other officers arrived thereafter to both (1) search the cabin and (2) to process evidence. *Id.* During the warrantless search, the police officers found a closed briefcase which they opened and discovered inside an envelope containing several photographs and negatives. *Id.* The United

States Supreme Court declined to consider the jury issue of whether the defendant had consented to the search, holding that the warrantless seizure of items in the briefcase violated the Fourth Amendment because the Court in *Mincey* rejected the general “crime scene exception” to the warrant requirement. *Id.* at 8-9.

We read *Mincey*, *Thompson* and *Flippo* as rejecting a categorical “murder scene” exception to the search warrant requirement. We do not read these cases as disallowing the scientific processing of only plain view evidence of a secured murder scene within a reasonable time after the original seizure of the home.

B. *Cases Which Support a Finding That The Scientific Processing of Plain View Evidence is Constitutional*

In *Michigan v Tyler*, 436 US 499, 98 S Ct 1942; 56 L Ed 2d 486 (1978), the United States Supreme Court addressed the validity of several warrantless searches by investigators who sought to determine the cause of a suspicious building fire. In *Tyler*, firefighters arrived at the defendants’ furniture store after a fire broke out shortly before midnight. *Id.* at 501. At approximately 2:00 a.m., the fire chief arrived at the scene and learned that firefighters saw plastic containers of flammable liquids inside the building as they were attempting to douse the flames. *Id.* at 501-502. The fire chief called a police detective and then entered the building to investigate the possibility of arson, but left the premises when smoke and steam interfered with his search. *Id.* at 502. At approximately 4:00 a.m., after firefighters extinguished the fire, the chief and detective entered the building without a warrant and removed the suspicious containers. *Id.* Between four and five hours later, the fire chief and detective again searched the building without a warrant and removed evidence, including carpeting and sections of a stairway. *Id.*

In addressing the defendant’s claim that the above searches violated the Fourth Amendment, the United States Supreme Court first observed that “[a] burning building clearly presents an exigency of sufficient proportions to render a warrantless entry ‘reasonable,’” and noted that officials may validly seize any evidence scene in plain view while inside. *Tyler*, *supra*, 436 US 509. The Court refused to narrow those principles to require that fire investigators obtain a warrant as soon as the fire is extinguished. *Id.* at 509-510. Rather, because the investigators were also charged with determining the cause of the fire, the Court concluded that the investigators could remain in the building and reenter without a warrant to conduct a prompt investigation. *Id.* at 510. Indeed, the Court held that the warrantless reentry by investigators some four hours after they extinguished the fire did not violate the Fourth Amendment because it constituted one continuing investigation. *Id.* at 511.

In *Clark v United States*, 593 A2d 186 (DC App, 1991), the victim died of a gunshot wound received during a drunken argument with her boyfriend, the defendant. *Id.* at 186. In response to an emergency call, police arrived at the defendant’s apartment at approximately 9:50 p.m. and, upon entering, observed in plain view the victim’s body, a handgun, and an ammunition clip. *Id.* at 196. At approximately 10:20 p.m., after officers took the defendant to the police station but before he consented to a search, a police technician entered the apartment and seized the gun and clip and took photographs of the scene. *Id.* Relying on *Tyler*, the District of Columbia Court of Appeals held that the technician properly seized the evidence because the officers who responded to the call made a legal emergency entry, observed the disputed evidence

in plain view and remained on the scene for a reasonable time until the crime scene search officer seized the evidence. *Clark, supra*, 593 A2d 197-198.

In a case with facts very similar to the case at bar, in *State v Johnson*, 413 A2d 931 (Me, 1980), police arrived at and entered the defendant's house after learning of a dead body inside the dwelling. *Id.* at 932. As one officer searched the house for the perpetrator or other victims, he saw various incriminating items, but did not seize them because of a department procedure requiring that only state police laboratory specialists touch or alter evidence at the scene of a homicide. *Id.* The officers secured the premises and a state police laboratory technician arrived approximately two hours later. *Id.* The officers then reentered the house without a warrant and, for the next five hours, the technician dusted for fingerprints, took photographs and seized various pieces of evidence that the first officer saw in plain view during his initial entry. *Id.* at 932-933.

The Supreme Judicial Court of Maine held that the first officers at the scene properly entered the home pursuant to the exigent circumstances exception to the general warrant requirement. *Johnson, supra*, 413 A2d 933. Further, the Court concluded that, because the responding officers were prohibited from touching evidence at the scene, the entry by the police lab technician constituted an "actual continuation" of the initial, proper entry and that "the lack of a warrant thus did not invalidate the resulting seizure of evidence." *Id.* at 933-934, quoting *Tyler, supra*, 436 US 511. The Court also found *Mincey* distinguishable because, in *Johnson*, "the police conducted a very limited search, seizing only items that were in plain view" and obtained a warrant before conducting a more intrusive search. *Id.* at 934.

The Colorado Supreme Court upheld the validity of photographs and measurements taken by crime lab investigators of evidence previously observed in plain view in *People v Reynolds*, 672 P2d 529 (Colo, 1983). In *Reynolds*, at approximately 3:00 a.m., police responded to an emergency call about a shooting and were admitted into the defendant's house by the victim's daughter. *Id.* at 531. The police found the victim's body in a locked bedroom and promptly placed the defendant under arrest. *Id.* Other officers soon arrived and, during a warrantless security sweep of the house, they saw in plain view an empty liquor bottle, several handwritten notes and a revolver. *Id.* At 4:30 a.m., crime lab investigators entered the house without a warrant, seized the plain view evidence and took photographs and measurements of the murder scene. *Id.* The investigators then conducted a thorough search of the home after obtaining a search warrant at 7:00 a.m. *Id.*

On appeal, the district attorney claimed that the trial court improperly suppressed the photographs and diagrams made by the crime lab investigators. *Reynolds, supra*, 672 P2d 531. The Colorado Supreme Court concluded that the first officers entered the home legitimately pursuant to both the exigent circumstances exception and the consent doctrine. *Id.* at 531-532. The Court further held that the officers discovered the seized evidence in plain view while legitimately inside the house. *Id.* at 532. Furthermore, the Court held that police did not violate the Fourth Amendment by failing to obtain a warrant before photographing and diagramming the scene because they were merely documenting what officers lawfully saw in plain view as part of a continuing police investigation. *Id.* at 533.

C. *Reasons Why the Scientific Processing and Seizure Here Are Constitutional*

As discussed above, Sheriff Sheppard validly entered defendant's trailer home without a warrant pursuant to the exigent circumstances exception. Thus, he could properly seize any items in plain view during the course of his "legitimate emergency activities." *Mincey, supra*, 437 US 393; *Tyler, supra*, 436 US 509. While inside, Sheriff Sheppard saw the rifle lying near Dawn's body, the spent cartridges on the floor, various bullet holes in the walls and blood all over the scene. As in *Johnson, supra*, after attending to the wounded, Sheriff Sheppard secured the scene and posted two officers at the trailer to await the arrival of the crime lab specialists. When the specialists arrived, they entered the home to measure and photograph the scene and to collect evidence. Based on *Tyler* and its progeny, the continuation of the investigation by way of processing of only those items Sheriff Sheppard saw in plain view did not violate the Fourth Amendment.²

Importantly, because of the nature of the scene and the evidence at issue, Sheriff Sheppard wisely refrained from touching or seizing the plain view evidence. Because both defendant and his wife were wounded, it was unclear if defendant and Dawn shot each other, if a third person inflicted their wounds or if, as defendant maintained throughout trial, Dawn committed suicide. Because the events leading up to Dawn's death remained unclear, like the officer in *Johnson*, Sheriff Sheppard prudently refrained from compromising the plain view evidence and instead secured the scene in order to leave to the crime lab specialists the job of scientifically processing the scene.

The processing of plain view evidence by forensic specialists simply does not constitute the kind of intrusive, exploratory or generalized search condemned by the United States Supreme Court in *Mincey, Thompson* and *Flippo*. Here, according to the prosecutor, crime lab investigators seized, tested, measured and photographed only that evidence that was within Sheriff Sheppard's plain view as he entered the trailer to attend to the emergency at hand. Furthermore, the evidence was readily observable and did not require any exploration into closets, drawers, briefcases or envelopes. This very limited scientific processing of only those items already viewed by police takes it outside the province of *Mincey* and *Thompson* both of which involved exhaustive searches of the defendants' entire home. Further, unlike *Flippo*, the crime lab specialists here did not find the disputed evidence inside a briefcase.

Another important factor in our decision is that the police immediately secured the scene to preserve the evidence by posting two officers outside the trailer home and only allowed forensic specialists access to conduct their tests. This conduct is consistent with our view and with the rulings in *Tyler, Clark* and *Reynolds*, that scientific processing of the scene was part of one, continuing investigation. We do not believe that this important constitutional issue should turn on whether the officers were immediately outside or inside the trailer door. As the United States Supreme Court similarly observed in *Tyler*:

² As we note later in this opinion, there is some dispute if officers processed and seized evidence in addition to the plain view evidence and because the record is unclear about this, we remand to the trial court to make its determinations consistent with this opinion.

Little purpose would have been served by their remaining in the building, except to remove any doubt about the legality of the warrantless search and seizure later that same morning. Under these circumstances, we find that the morning entries were no more than an actual continuation of the first, and the lack of a warrant thus did not invalidate the resulting seizure of evidence. [*Tyler, supra*, 436 US 511.]

Further, as the DC Court of Appeals in *Clark* noted, “the legality of the seizure cannot reasonably be questioned” where officers remained in the vicinity of the scene and items already observed in plain view were seized within a reasonable time. *Clark, supra*, 593 A2d 198. Defendant’s contention that the plain view doctrine requires officers to remain inside the home until the seizure occurs would do little to advance the legitimate privacy interests protected by the Fourth Amendment. Instead, adopting defendant’s view would make the important function of securing and scientifically processing a crime scene unduly cumbersome and precariously formalistic. In cases such as this, where the interest of an accurate investigation of a crime is at stake and the forensic experts limit their work to the plain view evidence, the constitutionality of their conduct should not rest on whether they were posted inside the or outside the house.

We also find that because Sheriff Sheppard observed the evidence in plain view and he immediately secured the scene, that defendant had a lessened expectation of privacy in the items processed by the crime lab specialists. A legitimate expectation of privacy exists if, based on all circumstances surrounding the intrusion, the person had an actual, subjective expectation of privacy. *People v Smith*, 420 Mich 1, 27; 360 NW2d 841 (1984). Further, “the expectation of privacy must be one that society is prepared to recognize as reasonable.” *Id.* at 28. Defendant briefly surrendered his expectation of privacy in his home by allowing police to enter to remove his wife. As noted in *Thompson*, however, he did not forever abandon that expectation in his entire home when he was taken to the hospital and ultimately arrested. *Thompson, supra*, 469 US 22; *Middleton, supra*, 714 NE2d 1102. However, because Sheriff Sheppard observed the evidence during his legal entry into the home and promptly secured the scene to prevent its disturbance, defendant’s expectation of privacy in the homicide scene and in *that evidence* was arguably diminished. Again, the crime lab investigators did not explore defendant’s entire home or rummage through his belongings; their seizure was limited according to the prosecutor, to only those items already seen in plain view in a very limited area.

Our ruling that the officers’ actions in this case were constitutional should not be read as a license to conduct a warrantless, exploratory search at a murder scene after the premises have been secured. Our ruling is premised primarily on the need to ensure the integrity of the vital evidence at a murder scene. For example, in a factual situation like *Middleton*, a decision with which we agree, where the only interest is in “seizing” evidence observed during the earlier lawful presence in the house, the later warrantless entry cannot be legitimately characterized as a continuing investigation and scientific processing of evidence. Rather, in *Middleton*, as noted by the Indiana Supreme Court, the earlier observation of marijuana simply provided the probable cause to obtain a warrant.

We hold that it does not violate the Fourth Amendment for police to timely “reenter” a police-secured homicide scene to allow forensic specialists to scientifically process only plain view evidence which was earlier left untouched to prevent compromising the evidence.

We thus affirm in part the trial court’s denial of defendant’s motion to suppress. However, like the court in *Ex parte Usrey*, 527 So 2d 732 (1987), we find it necessary to remand this case for a determination of whether the crime lab specialists seized only evidence that Sheriff Sheppard saw in plain view when he properly entered the home.³

We do not retain jurisdiction.

/s/ Henry William Saad
/s/ Joel P. Hoekstra
/s/ Jane E. Markey

³We find this case similar to *Ex parte Usrey*, *supra*, 527 So2d 732, in which the Alabama Supreme Court determined that the trial testimony did not adequately show whether the first officer entering the home actually saw all the disputed items in plain view. In *Usrey*, the police responded to an emergency call about a shooting inside the defendant’s trailer home. *Id.* at 733. The first officer at the scene entered the trailer without a warrant and secured the scene after the defendant’s neighbor allowed him inside. *Id.* at 733. The officer then radioed for other investigators and a four-hour, warrantless search ensued. *Id.*

After quoting extensively from both *Mincey* and *Thompson*, the Supreme Court of Alabama found that no exigent circumstances justified the warrantless, exploratory search in this case. *Id.* at 736-739. However, the Court went on to rule that photographs taken of the interior of the trailer would not constitute a search if they merely recorded the plain view evidence already seen by the officers when they legitimately entered the home. *Id.* at 739. The Court remanded the case to the Alabama Court of Criminal Appeals to determine if the photographs depicted only the evidence in plain view. *Id.* After reviewing the testimony of the first officer at the scene, the Court of Appeals determined that the photographs were properly admitted as plain view evidence. *Id.* at 739-740; *Usrey v State*, 527 So2d 741-743 (Ala App, 1988).

According to defendant’s suppression motion, in addition to the rifle, spent cartridges, bullet holes and blood stain evidence collected inside the trailer, investigators seized from the trailer two boxes of cartridges, two loose cartridges, a door knob from the front door, a blood-stained shirt, an earring, and floor tiles bearing footprint impressions. Furthermore, the motion indicates that investigators tested blood stain evidence inside a Chevrolet Blazer on the property and also seized a shirt and cigarette lighter from outside the trailer. Because the record below does not indicate whether Sheriff Sheppard saw all the evidence admitted at trial during his initial plain view search, we remand with directions that the trial court make this determination on the record.