

Recent Case

Mora v. Gaithersburg Police Dept.

(4th Cir. 2008) 519 F.3d 216

Issue

Is a warrant required to search for weapons in the home of a person who has threatened mass murder?

Facts

At about 1:00 P.M., a hotline operator notified the police in Gaithersburg, Maryland that she had just spoken with a caller named Anthony Mora who said that he was suicidal, that he had weapons in his apartment, that he could “understand shooting people at work,” and that “I might as well die at work.” After officers were dispatched to the apartment, an officer phoned Mora’s employer who advised that his threats “should be taken seriously.”

When officers arrived they saw Mora outside his apartment loading suitcases and gym bags into a van. They handcuffed him and, after finding a handgun in the luggage, they entered his apartment. The first thing they noticed was that every interior door had been locked, including closet and bathroom doors. They then searched the apartment and found 41 firearms, 5,000 rounds of ammunition, and “survivalist literature.”

Pursuant to a Maryland law that authorizes emergency psychiatric evaluations (essentially the same as California’s Welfare & Institutions Code § 5150), officers took Mora to mental health facility. They also seized his weapons and ammunition.

Mora was not charged with a crime, so after he was released he demanded the return of his guns and ammunition. The police refused and he filed suit, claiming the officers had obtained them in violation of the Fourth Amendment.

Discussion

A credible threat to commit mass murder must, of course, be taken seriously, especially in light of tragic events that have shocked the country. As the court in *Mora* observed, “At Columbine High School in Littleton, in Blacksburg, Omaha, and Oklahoma City, America has had to learn how many victims the violence of just one or two outcasts can claim.”

With these events in mind, the court had to answer the question: If a person has made such a threat, under what circumstances can officers enter and search his home without a warrant for the purpose of seizing any deadly weapons?

Because *Mora* was the first case in which a court has had to address this issue, it looked for guidance in other areas of Fourth Amendment law in which searches and seizures are based on the need to prevent anticipated harm, as opposed to the need to obtain evidence to be used in court. And it found it in the principles pertaining to exigent circumstances and pat searches. Citing these principles, the court ruled that officers may conduct such a search if they were aware of “specific and articulable facts” that demonstrated a sufficient likelihood that the person could have carried out the threat before they could have obtained a warrant. Said the court:

As the likelihood, urgency, and magnitude of a threat increase, so does the justification for and scope of police preventive action. In circumstances that suggest a grave threat and true emergency, law enforcement is entitled to take whatever preventive action is needed to defuse it.

Because it was obvious that a threat of mass murder constitutes an urgent and serious danger to the public, the main issue was whether the officers’ action were reasonably necessary.

Mora argued that it wasn’t because he had already been arrested and handcuffed, and was therefore unable to grab any weapons. Although this was technically true, the court pointed out that the officers could have reasonably believed that he had already set a nefarious plan into motion or had otherwise created a dangerous situation inside his home. For example, said the court, “Mora might have had a bomb—not an unprecedented thing for men in his state of mind”; or he “might have taken hostage the girlfriend who, police knew, had recently broken up with him.”

Thus, the court ruled the search was justified because “[t]he authority to defuse a threat in an emergency necessarily includes the authority to conduct searches aimed at uncovering the threat’s scope.”

Finally, Mora claimed the subsequent seizure of his guns was unlawful because, like the search, it occurred after he no longer posed a threat to anyone. This was his strongest argument because the officers could have—and *probably should have*—secured the apartment while they sought a warrant to seize the weapons.

But for three reasons, the court refused to rule that a warrant was required in this case. First, the situation remained sufficiently confusing and bizarre that the officers could not rule out the possibility that the weapons continued to pose a threat. As the court pointed out, Mora's apartment was "locked up from the inside like a fortress [and] the officers found weapons everywhere."

Second, judges must not breezily second-guess the life-and-death decisions by officers. As the California Supreme Court observed, "People could well die in emergencies if the police tried to act with the calm deliberation associated with the judicial process."¹

Third, under circumstances such as these, the public would have expected the officers to seize the weapons. Said the court:

A psychological evaluation would not change what the officers already knew: that Mora was unstable and heavily armed, and a risk to himself and others. Indeed, had they not taken the weapons, and had Mora used those weapons to cause harm, the officers would have been subject to endless second-guessing and doubtless litigation as well, just as the officers and teachers at Columbine were challenged for red flags they had overlooked before the tragedy.

Thus, the court ruled the officers' search and seizure were justified under the circumstances. POV

¹ *Tamborino v. Superior Court* (1986) 41 Cal.3d 919, 924.