

The Mora Case, The Mora Bettah:
Mora v. Gaithersburg, Md.
Legal Question of The Week
Vol. 1, Number 17
October 24, 2008

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Congratulations to all of us for making it through yet another International Home Furnishings Market without doing anything that was considered an act of war by another country. I stood ready to assist all week by carrying around a list of countries that require notification of their consulate upon detention of a foreign national.¹ Fortunately, I did not have to use it.² Now we can all go back to business as usual, which includes all the criminals hired by furniture companies this week going back to plying their normal trades down in Southside.

Today we look at a 4th Circuit case called Mora v. The City of Gaithersburg, Maryland. As you know, the 4th Circuit is the federal appellate court for the North Carolina federal district courts and its decisions are therefore controlling law in our great state. The 4th Circuit also includes Maryland, Virginia, and South Carolina.³ Let's set the stage with an actual quote from the court opinion.

“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. These new predators are not terrorists in the ordinary sense; they are not linked to foreign powers or international organizations hostile to the United States. They are often isolated but heavily armed, filled to the brim with rage and anguish, and bent not just on murder, but on indiscriminate slaughter followed, frequently, by suicide. Violent derangement is nothing new, of course, but the atrocities seem to be growing at once more shocking and more commonplace. This case presents the question of what emergency preventive action police may take, consistent with the Fourth and Fourteenth Amendments, when they learn of an individual who may well intend a similar slaughter, but who has neither committed nor attempted any crime. The legal issues are somewhat novel, and so we proceed with two values in mind: the need to prevent massacres whose human costs are

¹ Sworn officers will recall from their 2008 Legal Update that a “foreign national” is anyone who is not a U.S. citizen who is on U.S. land.

² I say fortunately because as I reviewed the list today, I noticed that it still listed The Union of Soviet Socialist Republics (as in “I’m back in the U.S.S.R.”) and the countries of Yugoslavia and Babylon. Guess I’ll have to look for an update.

³ The rumors of expansion in order to qualify for a Circuit Court championship game are far-fetched in my opinion.

beyond comprehension, and the need to preserve civil liberty for those who may be angry and depressed but not ultimately violent, and who cannot under our constitutional traditions be treated like criminals when they have committed no crime.”

Here are the facts of the case:

1. At 1302 hours in July of 2002, a healthcare (suicide) hotline operator called police to tell them that she had just spoken to Anthony Mora, a local firefighter, who had told her that he was suicidal, had weapons in his apartment, could understand shooting people at work, and said “I might as well die at work.”⁴
2. By 1303, multiple units were in route to Mora’s apartment. At 1304, police had contacted one of Mora’s co-workers who advised that the threat should be taken seriously. Police also learned that Mora had recently been dumped by his girlfriend.
3. Police arrived at the apartment and found Mora in the parking lot loading suitcases and gym bags into a van and they approached him with guns drawn. By 1313, Mora was handcuffed and on the ground.
4. Police then searched Mora’s luggage and van, finding one .32 caliber round.
5. They then took his keys and entered his apartment, where they found a large gun safe in the kitchen and all the interior doors locked. Inside the safe⁵ were twelve handguns, eight rifles, one shotgun, and keys to a second safe. Unlocking and opening the interior doors, the second safe, and a locked file cabinet, police found guns, ammo, gun accessories, and what police called “survival literature” in every room but the bathroom.⁶ In all, police removed forty-one (41!) firearms, some automatic, some semi-automatic, some assault-style, and some loaded, as well as 5,000 rounds of ammo.
6. All of this was done without a warrant.
7. Mora was taken to the hospital to see a psychiatrist, but Mora (surprise!) was not involuntarily committed. Instead he voluntarily admitted himself and stayed at the hospital for several days. There were no criminal charges ever brought against him (he was a licensed gun collector.)
8. When Mora returned home after his stay in the hospital, he was shocked to discover that his firearms and associated property were missing. Over the next three years of wrangling, everything was returned to Mora except for the firearms.

Finally, Mora sued the city, the Chief of Police, and various individual officers claiming that (1) the search of his van, luggage, and apartment violated the Fourth Amendment, (2) the seizure of his property violated the Fourth Amendment, and (3) the failure to return his firearms violated his Due Process rights. Mora lost.

⁴ “I might as well die at work.” This has to be one of the most depressing statements I’ve ever heard. If you hear one of your co-workers say this, come and tell me immediately. As I run screaming from the building, you are free to warn anyone else you like.

⁵ The opinion says that “Mora relinquished the combination under pressure.” I don’t know what this means, but I immediately thought of Jack Bauer. The next season of “24” begins in February. I predict that Kiefer Sutherland is in for another long day. By the way, I just realized that “Kiefer Sutherland” isn’t flagged by Microsoft Word’s spell-check. That gives you some indication of what a big star he is.

⁶ Seems like the bathroom would be the appropriate place for “survival literature,” but maybe that’s just me.

As to the third argument, whether Mora's due process rights were violated, the Court ruled that he would have to raise that argument in a State court, not in the Federal court. The reasons for this are somewhat complicated and trust me, you don't care about what they are. And that's all I've got to say about that.⁷

Looking at the Fourth Amendment claims, Mora first argued that there was no reason to search the luggage, van, and apartment without first getting a warrant because he was under arrest, handcuffed, and on the ground, and therefore (in Mora's argument) the threat was over. The Court disagreed, saying that the salient⁸ fact in this case was the overwhelming justification the police had for rushing to his home and taking him into custody. He was a man who was armed, suicidal, and inclined to kill his co-workers on the way out. "Protecting the physical security of its people is the first job of any government," the Court noted, "and the threat of mass murder implicates that interest in the most compelling way. Police, then, simply must be entitled to take effective preventive action when evidence surfaces of an individual who intends slaughter."

The Court also stated that "respecting the rights of individuals has never required running a risk of mass death." The principle was that the justification for and scope of police preventative action increases as the likelihood, urgency, and magnitude of the threat increases. The Court concluded that "in circumstances that suggest a grave threat and true emergency, law enforcement is entitled to take whatever preventative action is needed to defuse it." The fact that Mora was handcuffed didn't end the threat because he might have had a bomb, he might have taken his girlfriend hostage, or he might have had an accomplice.

From Ralph Strickland, legal adviser to the Cumberland County Sheriff's Office: "Think about this: if you arrest a man next to his car and have the authority under *Thornton* [v. U.S. (2004)] to search the passenger compartment under the search incident to arrest doctrine, then if you arrest a man in the *Mora* situation, the "urgent threat of mass murder," you may certainly search his entire vehicle under the emergency exception doctrine to the Fourth Amendment as well as N.C.G.S. 15A-285.⁹

Next, Mora argued that the seizure of his property was unconstitutional since there was no crime charged and no warrant obtained. The Court pointed out that a credible threat of mass homicide led police into the home where they found corroborating evidence: a home locked up like a fortress with lots of guns, ammo, and survivalist¹⁰ literature. Because of the lawsuit, the on-scene command officer prepared an affidavit which said that the guns were seized for safekeeping reasons -- to protect Mr. Mora and

⁷ *Forrest Gump*, Paramount Pictures (1994). Dave Chappelle turned down the role of Bubba in this movie, thinking it would bomb. As a result, neither "Forrest Gump" or "Tom Hanks" is flagged by spell-check, but "Chappelle" gets the wavy red underline. I am not making this up.

⁸ Prominent, strikingly conspicuous, primary. This word has nothing to do with salt. That's saline.

⁹ Entitled "Non-law-enforcement actions when urgently necessary."

¹⁰ On *Survivor* last night, the Fang tribe lost both challenges and Sugar got sent to exile island. It's like watching the same show every week. At least it's in HD this year -- I would watch grass grow in high definition. By the way, Kelly was voted off.

the general public. The Court ruled that this public safety rationale was a sound basis for the seizure.¹¹

The failure to get a search warrant was also excused by the fact that officers could not be sure if Mora might have confederates who might have access to the weapons, whether Mora himself might return sooner than expected, or whether the weapons might end up being evidence in an upcoming prosecution. So Mora lost on all counts.

But what does the Mora case mean for us? For that answer, let's go again to our colleague Ralph Strickland...

“[T]he federal appellate court for North Carolina, the 4th Circuit Court of Appeals, has bestowed upon law enforcement agencies in Maryland, Virginia, North Carolina and South Carolina clear authority in writing to deal *proactively* with potentially critical incidents of the temper and tone of Columbine and Blacksburg and Oklahoma City before indiscriminate slaughter can occur.

At the same time you must make a reasonable decision, based on your training and experience, in balancing the need to preserve the peace *and* the need to provide basic civil rights guaranteed all persons in this country by our United States Constitution. That's it: peace of the community balanced with civil rights.”

Well said, Ralph. Let's hope that all we have to deal with here are fistfights in the cafeteria. Stay safe out there.

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¹¹ We do these types of safekeeping seizures all the time.