

No. _____

In The
Supreme Court of the United States

ENDALKACHEW MERID,

Petitioner,

V.

COMMONWEALTH OF VIRGINIA,

Respondent.

On Petition for Writ of Certiorari
to the Supreme Court of Virginia

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

The police forcibly entered Merid's apartment without a warrant claiming a reasonable basis to conclude that Merid was suicidal and needed assistance despite the fact that Merid told them through a closed door he was fine. The police had no concerns that Merid had committed a crime or had weapons and knew that he lived alone. The question presented is whether that entry and, after rendering aid to Merid, the subsequent warrantless search of a closed room of the apartment violated the Fourth Amendment and the principles recently announced by this Court in *Caniglia v. Strom*, 141 S. Ct. 1596 (2021).

LIST OF ALL PROCEEDINGS

- *Commonwealth v. Merid*, No. CF 18000039 (Alexandria Circuit Court, June 28, 2019).
- *Merid v. Commonwealth*, 841 S.E.2d 873 (Va. App. 2020)
- *Merid v. Commonwealth*, 858 S.E.2d 825 (Va. 2021)

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THE OPINIONS BELOW

The opinion of the Supreme Court of Virginia is published at *Merid v. Commonwealth*, 858 S.E.2d 825 (Va. July 1, 2021).

JURISDICTION

The Supreme Court of Virginia denied Merid's appeal on July 1, 2021. App. 1. This Court has jurisdiction under 28 U.S.C. § 1257(a).

RELEVANT CONSTITUTIONAL PROVISIONS

The United States Constitution's Fourth Amendment provides, in part:

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . .”

STATEMENT OF THE CASE

On February 12, 2018, Endalkachew Merid (“Merid”) was indicted on one count of First-Degree Murder, VA. Code § 18.2-32, and one count of Abduction by Force, VA. Code § 18.2-47, in Alexandria, Virginia. Merid pled not guilty, and a jury subsequently found him guilty of both charges on March 7, 2019. The trial judge imposed the jury’s recommended sentence of life imprisonment for first degree

murder and 10 years of imprisonment for abduction by force on June 28, 2019.

Merid timely appealed the and the Virginia Court of Appeals affirmed the judgment by published opinion on May 12, 2020. *Merid v. Commonwealth*, 841 S.E.2d 873 (Va. App. 2020). Merid appealed to the Supreme Court of Virginia and that court affirmed for the reasons stated by the Court of Appeals. This timely petition for writ of certiorari follows.

STATEMENT OF FACTS

Merid's brother made a request for a welfare check to the police following a series of cryptic texts that Merid sent earlier in the day. Both Merid's brother and the police were concerned that Merid may be contemplating suicide.

Officers knocked on the locked door of Merid's apartment and Merid responded with various statements including asking for a moment to get dressed and informing the officers that he did not need their help. Following these responses, officers heard an unintelligible noise from inside. One officer described it as "some sort of garble, throw up, suction noise." Officers obtained a key to Merid's apartment from

the maintenance staff and, while they were able to open the door a few inches, the door's security chain was still latched, preventing entry. The officers decided that Merid was not responding quickly enough, so they broke through the security-chain-locked door and into the apartment.

At the moment they entered the apartment, officers believed that the apartment was Merid's residence, that Merid was in possible distress, that Merid lived alone, and that they were not entering pursuant to a warrant, consent, probable cause that a crime had been or was being committed, or a threat from Merid.

Officers discovered Merid on the couch in the living room—which was immediately connected to the front door. Merid was stabbing his own neck with a knife, attempting to harm himself. The officers rushed from the front door and into the living room to Merid's aid; they quickly removed the knife from his possession so that he would not hurt himself further. At no time did Merid threaten officers and, according to their statements, they did not feel threatened by Merid. They provided immediate first aid and called for medical help and passed Merid on to responding paramedics. Merid was not placed under arrest and the officers likely saved Merid's life.

As the medics treated Merid, the acting-duty-Sergeant stuck his head in the apartment door and asked the remaining officers if they had checked the remainder of the apartment. Upon receiving those instructions, one of the officers walked to the back-bedroom door, opened the closed door, and found a body on the bedroom floor. Upon finding the deceased victim in the back bedroom, officers cordoned off the apartment and obtained a search warrant. Pursuant to that warrant, law enforcement collected additional evidence in and around the apartment.

Merid moved to suppress the entry into and search of the apartment at trial. The trial court denied the motion, the evidence was admitted at trial, and Merid was convicted. The Court of Appeals affirmed. The court stated that warrantless searches must be “strictly circumscribed by the exigencies which justify its initiation,” but did not apply that principle and found that the entry and search of the apartment was “reasonable.” The Supreme Court of Virginia affirmed for the reasons stated by the Virginia Court of Appeals. The Supreme Court of Virginia also noted that:

The Supreme Court of the United States decided *Caniglia v. Strom*, 593 U.S. ___, 141 S. Ct. 1596 (2021), after the Court heard oral argument in this case. The Court finds that the judgment of the Court of Appeals is consistent with *Caniglia*.

SUMMARY OF ARGUMENT

Merid's Fourth Amendment rights were violated by the entry and subsequent search of his apartment by the police.

REASONS FOR GRANTING THE PETITION

The state court's decision in this case is contrary to the reasoning in *Caniglia*.

ARGUMENT

The Fourth Amendment prohibits unreasonable searches and seizures. Warrantless searches are *per se* unreasonable under the Fourth Amendment, subject only to a few exceptions. *Mincey v. Arizona*, 437 U.S. 385, 390 (1978). “The burden rests on the State to show the existence of such an exceptional situation.” *Id.* At 390-91 (citation omitted). And a “warrantless search must be strictly circumscribed by the exigencies which justify its initiation.” *Id.* at 393.

The “physical entry of the home is the chief evil against the wording of the Fourth Amendment is directed.” *Welsh v. Wisconsin*, 466 U.S. 740, 748 (1984). “[T]he Fourth Amendment has drawn a firm line at the entrance to the house,” and generally “that threshold may not reasonably be crossed without a warrant.” *Payton v. New York*, 445 U.S. 573, 590 (1980).

In this case, the state court found that the initial entry was reasonable under the “emergency aid exception” to the Fourth Amendment. *Merid v. Commonwealth*, 841 S.E.2d 873, 877 (Va. App. 2020). The state court also found that the search subsequent to rendering Merid aid was reasonable under the “cursory sweep” to emergency aid exception. Despite the fact that the police knew that Merid lived alone, the court explained that it was reasonable to conduct a warrantless search for “a pet, a child, or an adult.” 841 S.E.2d at 880.

Recently in *Caniglia v. Strom*, 141 S. Ct. 1596 (2021), this Court re-emphasized the primacy of protecting the home against unreasonable searches and again declined to expand the scope of exceptions to the warrant requirement. *Id.* at 1600. In this case, the initial entry by the police was suspect, and made solely to care for the well-being of Merid.

The initial warrantless intrusion was limited to assisting Merid, once that was accomplished, any further intrusion must be reasonable and justified by the facts of the case. Here, the officers conducted and the state court countenanced a general sweep of the apartment unsupported by any need or facts of the case. While the Commonwealth may stand on stronger footing regarding the police's initial intrusion into Merid's apartment, there is no authority, exception, or rationale that makes the intrusion through a closed bedroom door reasonable under these facts.

Because Merid was not suspected of any illegal activity, he was not under arrest, there was no consent or reasonable suspicion that criminal activity was afoot, and there was no reason to believe any other people were present, there was no "caretaking" reason to search the bedroom, *Caniglia v. Strom*, 141 S. Ct. 1596, 1598 (2021), the search was unreasonable.

CONCLUSION

The petition for writ of certiorari should be granted.

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