

13-02: Detaining Persons Leaving Premises Prior to Execution of Search Warrant

Case: Bailey v. United States, 2013 WL 598438 (2013).

Date: February 19, 2013

Subject: Detaining persons leaving premises prior to execution of a search warrant

FACTS: The police lawfully obtained a search warrant for an apartment. The officers were on scene preparing to execute the warrant when they noticed two unidentified men leave the apartment, get in a car, and drive away. The officers followed the car for approximately one mile and then stopped the vehicle. During the stop, the officers frisked the driver (Bailey), and found a set of keys that matched the apartment. Ultimately, the officers executed the warrant and found weapons and drugs in the apartment. Bailey was arrested and charged with possessing a variety of illegal weapons and drugs. He then filed a motion to suppress the apartment keys that were found on his person. Bailey argued that the officers engaged in an illegal seizure by stopping his car without a reasonable suspicion that Bailey had committed any illegal act. The trial court denied the motion to suppress, and the circuit court of appeals agreed with the trial court. However, the United States Supreme Court reversed the ruling of the circuit court by holding that the motion to suppress should have been granted.

RULING: Officers executing a search warrant can temporarily detain anyone on the premises; however, officers *cannot* detain occupants who have already left, unless the officer has a reasonable suspicion that the occupant has committed a crime.

DISCUSSION: In the case of *Michigan v. Summers*, the Supreme Court held that officers, while executing a search warrant, can temporarily detain the occupants of the premises while the search is being conducted. Under the *Summers* rule, officers can detain an occupant even without a reasonable suspicion that the occupant has committed a crime. Subsequent cases have held that "occupants" include people who are standing outside the home or on the curtilage.

However, the primary justification for this rule is officer safety. When a suspect has left the scene, the officers are not in danger of harm or interference with the search. Therefore, an occupant who has left the scene before the warrant is executed cannot be detained *unless* the officer has a reasonable suspicion that the occupant has committed or is committing a criminal act or traffic infraction.

The Court did not decide whether the officers had a reasonable suspicion that Bailey had committed a crime. Instead, it simply held that officers cannot detain people who leave the scene of a warrant prior to its execution, unless the officer has a reason to believe that person has committed a crime.

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Officers should consult with their agency legal advisors to confirm the interpretation provided in this Update and to determine to what extent the case discussed will affect their activities.