

Supreme Court Limits Detention Incident to Execution of Search Warrant

Just this past week, the United States Supreme Court issued its ruling in *Bailey v. United States*¹ finding that the detention of a suspect or occupant incident to the execution of a search warrant is limited to the “immediate vicinity” of the premises to be searched. This decision reverses the Appellate Court’s holding that the detention of a suspect a mile from the premises being searched was permissible. The result of this decision is that law enforcement officers must analyze the circumstances surrounding the execution of a particular search warrant to decide whether or when to detain an occupant who is seen leaving the premises subject to the search warrant immediately prior to its execution.

On July 28, 2005, Suffolk County Police Department Detectives obtained a search warrant for the “basement apartment of 103 Lake Drive” in Wyandanch, New York, the principle target of the search a .380-caliber handgun. The warrant also stated that the apartment was located at the rear of the premises. A confidential informant had told police officers that he had observed the handgun at the basement apartment during a drug purchase from a man he identified as “a heavy set black male with short hair known as ‘Polo.’”

As officers were preparing to execute the search warrant, Detective Sneider and Detective Gorbecki were conducting surveillance in an unmarked vehicle outside the residence. The two Detectives saw two men, later identified as Chunon Bailey (the defendant) and Bryant Middleton, leave the gate at the top of the stairs that led down to the basement of 103 Lake Drive. Both men matched the description of “Polo,” as provided by the informant. The detectives did not confront the men as they entered a vehicle that was parked in the driveway, as they did not want to alert anyone else who may have been in the apartment to the presence of law enforcement. Rather, they waited as the men pulled out of the driveway and drove down the block. The detectives pulled the car over after it had traveled about a mile from the house and five minutes had lapsed, in part to prevent people in the apartment or neighbors passing by from seeing the stop.

After stopping the men, the detectives patted them down to check for hard objects that might be used as weapons. Bailey told Sneider that he was coming from his house at “103 Lake Drive.” Middleton also identified Bailey’s residence as 103 Lake Drive. At that time, the detectives placed both men in handcuffs, and explained that they were being detained, not arrested, “incident to the execution of a search warrant in the basement apartment of 103 Lake Drive.” Bailey then responded: “I don’t live there. Anything you find there ain’t mine, and I’m not cooperating with your investigation.” The four men then drove back to 103 Lake Drive. When they arrived, Bailey and Middleton were told that, during the search, the police entry team had found a gun and drugs in plain view in the apartment. The police then arrested the men, and seized Bailey’s house and car keys incident to the arrest. Later that night, an officer found that one of the keys on Bailey’s key ring opened the door of the basement apartment. In all, less than ten minutes elapsed between Bailey’s stop and his formal arrest.

Bailey was charged with three federal offenses: possession of cocaine with intent to distribute; possession of a firearm by a felon; and possession of a firearm in furtherance of a drug-trafficking offense. At trial, Bailey

filed a motion to suppress the apartment key found on his key ring and the statements he made to Detectives Sneider and Gorbecki when they initially stopped him on the basis that they were obtained from an unreasonable seizure. The District Court denied the motion and held that Bailey's detention was permissible under *Michigan v. Summers*.²

The Court of Appeals for the Second Circuit affirmed the District Court's ruling, also finding that Bailey's detention was permissible under *Summers*. The Court of Appeals interpreted the *Summers* decision to "[a]uthorize law enforcement to detain the occupant of premises subject to a valid search warrant when that person is seen leaving those premises and the detention is effected as soon as reasonably practical."

The United States Supreme Court granted certiorari to address whether, under *Summers*, officers may detain occupants who have left the immediate vicinity of the premises subject to the search warrant. The Supreme Court held that officers have the authority to detain a suspect or departing occupant only in the immediate vicinity of premises to be searched. Once a departing suspect or occupant has left the immediate vicinity of the premises, officers must justify a detention under a different rationale, e.g. a *Terry* stop based on reasonable suspicion or an arrest based on probable cause.

Under the Fourth Amendment, seizures are reasonable if officers have probable cause to believe that an individual has committed a crime. This general rule, however, allows law enforcement officers some latitude to detain individuals without probable cause of a crime under certain circumstances. In *Summers*, the Supreme Court identified three important law enforcement interests, which justify the detention of an occupant of a premises during the execution of a proper search warrant: (1) minimizing the risk of harm to officers; (2) facilitating the orderly completion of the search warrant; and (3) preventing flight in the event incriminating evidence is found during the search. In reaching its decision in *Bailey*, the court compared the three interests found in *Summers* to the specific facts and circumstances present in *Bailey*.

Considering the first interest, the Supreme Court stated that during the execution of a search warrant, specifically one involving a search for narcotics, occupants may become violent and attempt to conceal evidence. Officers are permitted to detain occupants to minimize the risk of harm to both officers and the occupants of the premises. The Supreme Court found that in *Bailey*, the occupant had left the premises, without knowledge of the impending search, and did not pose a risk to officers during the execution of the warrant. The Supreme Court opined that if Bailey had returned to the premises while the search was underway, the police would have had justification to detain him. Under the present circumstances, however, Bailey's detention was not justified under the first interest as he did not pose a risk to the officers once he left the immediate vicinity.

The second law enforcement interest was based on the fact that occupants who are allowed to roam about during the execution of a search warrant may attempt to obstruct the orderly completion of the search and may try to hide or destroy evidence, seek to distract officers, or get in the way of officers. The Court reiterated that since Bailey had left the premises and the immediate vicinity, he did not pose a threat to the execution of the search warrant and, therefore, his detention was not justified under the second interest.

Lastly, the third interest addresses law enforcement’s interest in preventing the flight of a suspect should the search reveals incriminating evidence. Under *Summers*, officers may detain occupants at the scene of a search in order to secure the scene and prevent suspects or occupants from potentially leaving the scene with evidence. The Supreme Court stated, however, that this interest does not provide officers with an independent justification to detain occupants once they have left the immediate vicinity of the premises subject to the search warrant. The Court reasoned that “[t]he need to prevent flight, if unbounded, might be used to argue for detention, while a search is underway, of any regular occupant regardless of his or her location at the time of the search.”

The Court found that these three interests, which justified the detention in *Summers*, were not applicable to *Bailey*, and do not apply to the detention of occupants who have left the immediate vicinity of the premises subject to the search warrant. Specifically, the Court held that “[l]imiting the rule in *Summers* to the area in which an occupant poses a real threat to the safe and efficient execution of a search warrant ensures that the scope of the detention incident to a search is confined to its underlying justification. Once an occupant is beyond the immediate vicinity of the premises to be searched, the search-related law enforcement interests are diminished and the intrusiveness of the detention is more severe.”

The Supreme Court, however, did not provide a precise definition of the term “immediate vicinity” to impart guidance to officers navigating the often convoluted standards applicable to the detention of a suspect. The term “immediate vicinity,” as used by the Supreme Court, does not appear to only mean “within” or “inside” the premises where the search is underway. The Court did provide some standards to consider when determining whether a suspect is being detained in the immediate vicinity of the premises subject to the search warrant. These factors include: “the lawful limits of the premises, whether the occupant was within the line of sight of his dwelling, and the ease of reentry from the occupant’s location.

Unfortunately the murkiness of this term poses a challenge to officers making the decision whether to detain a suspect who is seen leaving the premises immediately prior to the execution of the search warrant. Officers express the concern that stopping the individual directly outside the premises, in view of the surrounding residents, may tip off any remaining occupants in the premises of the impending search or presence of law enforcement officers, and lead to the destruction of evidence. This is clearly another instance where officers must apply a balancing test when determining whether to detain the individual at that time. Because, as *Bailey* has made clear, these same officers are prohibited from detaining the suspect or occupant once they leave the immediate vicinity of the premises subject to the search.

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¹ 568 U.S. ___ (2013).

² 452 U.S. 692 (1981).