



DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 245

February 26, 2001

**SEIZURE OF RESIDENCE AND
REFUSAL TO ALLOW UNACCOMPANIED OWNER ACCESS
WHILE AWAITING WARRANT**

Reference: Illinois United States Supreme Court
v. No. 99-1132
Charles McArthur _____ U.S. _____
February 20, 2001

FACTS:

Two police officers accompanied Tera McArthur to the residence she shared with her husband, Charles, to "stand by" while she removed her belongings. When Tera emerged from the residence, she told the officers waiting outside that it would be a good idea to check the house because "Chuck had dope in there..." and "she had seen him slide some dope under the couch."

The officers knocked on the door and Charles came outside. When the officers told Charles what Tera had said, he denied having any drugs in the residence. The officers asked Charles for his consent to search and he refused. At that time, one of the officers took Tera before a judge to apply for a warrant. The second officer remained at the scene and refused to allow Charles back into the residence unaccompanied. Charles, under observation of the officer, did go into the residence on several occasions to get cigarettes and make telephone calls.

The second officer returned to the residence about two hours later with a search warrant. Drug paraphernalia and a small amount of marijuana were seized. McArthur was charged with two misdemeanors.

ISSUE:

Because police refused to allow McArthur re-entry into his home unaccompanied, should the evidence be suppressed on grounds that the evidence was the "fruit" of an unlawful police seizure?

HELD: No.

REASONING:

1. Given the nature of the intrusion and law-enforcement interest at stake, the brief seizure of the premises was permissible under the Fourth Amendment.
2. Police had probable cause to believe that McArthur's house contained evidence of a crime and illegal drugs. The police had good reason to fear that, unless restrained, McArthur would destroy the drugs before they could return with a search warrant.
3. The police made reasonable effort to reconcile their law-enforcement needs with the demands of personal privacy by avoiding a warrantless entry or arrest and preventing McArthur from entering his home unaccompanied. Police imposed the restraint for a limited period, which was no longer than was reasonably necessary for them, acting with diligence, to obtain the warrant. (emphasis added)
4. Temporarily keeping a person from entering his home, a consequence whenever police stop a person on the street, is considerably less intrusive than police entry into the home itself in order to make a warrantless arrest or conduct a search. (emphasis added)

NOTES:

Cases cited by the U. S. Supreme Court in this case included Michigan v. Summers (Legal Bulletin No. 49)—pre-arrest seizure of person while executing a search warrant; United States v. Place (Legal Bulletin No. 75)—temporary seizure of luggage at airport; Michigan v. Sitz (Legal Bulletin No. 144)—temporary seizure at drunk driver checkpoint; and Terry v. Ohio (no legal bulletin)—investigatory seizures of persons.

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