



DEPARTMENT OF PUBLIC SAFETY

TRAINING ACADEMY

LEGAL BULLETIN NO. 49
July 13, 1981

PRE-ARREST SEIZURE OF PERSON WHILE EXECUTING SEARCH WARRANT

Reference: State of Michigan
v.
George SUMMERS

U. S. Supreme Court
~~Opinion No. 79-1794~~
452 US 692
June 22, 1981

FACTS:

Police officers had a warrant to search a residence for narcotics. When the officers arrived to execute the warrant, SUMMERS had just exited the residence. The officers asked if he would admit them to the locked residence; he said he had left his keys inside the house. Contact was made with other occupants by use of an intercom. There were eight other persons within the residence but no-one would open the door. Forced entry was made and the house was searched. SUMMERS had been brought into the residence. As a result of the search, some drugs were found. SUMMERS was determined to be the owner of the house. After the drugs were found, SUMMERS was placed under arrest and searched; a bag of heroin was found in his coat pocket. SUMMERS was charged with possession of that heroin. His application to suppress the heroin because of an illegal search was granted and the State of Michigan appealed to the U. S. Supreme Court.

ISSUE:

Did the officers have the authority to require SUMMERS to re-enter the house and to remain there while they conducted a search?

HELD: Yes.

REASONING:

1. SUMMERS was not formally arrested until after the search was completed. The heroin was discovered "incident to his arrest".
2. A neutral and detached magistrate had found probable cause to believe that the law was being violated in SUMMERS' house and had authorized a substantial invasion of privacy of the persons residing there.
3. The detention of one of the residents while the premises were searched, although admittedly a significant restraint on his liberty, was surely less intrusive than the search itself. Most citizens,

unless they intend flight to void arrest, would elect to remain in order to observe the search of their possessions.

4. Since the detention in this case was in SUMMERS' own residence, it could add only minimally to the public stigma associated with the search itself and would involve neither the inconvenience nor the indignity associated with a compelled visit to the police station (emphasis added).

5. A warrant to search for contraband founded on probable cause implicitly carries with it the limited authority to detain the occupants of the premises while a proper search is conducted.

NOTES:

This opinion is limited to detention of occupants of the premises while searching for contraband. It is still an "open question" if the court would permit such a detention while searching for "mere evidence". This decision does not permit police to frisk occupants unless the police believe they are dealing with a possibly armed and dangerous suspect. (See Terry v. Ohio, 392 U.S. 1, and Adams v. Williams, 407 U.S. 143.) In this case, SUMMERS was not searched until after he had been placed under arrest and the heroin on his person was discovered incident to his arrest.

In this opinion, the court cites several familiar cases used to reach its conclusion...Dunaway v. New York (see Legal Bulletin No. 33); Payton v. New York (see Legal Bulletin No. 34); Terry v. Ohio, Adams v. Williams, and Ybarra v. Illinois (cites omitted).

The Dunaway case involves seizing and bringing him to a police station where he confessed after being placed in an interrogation room (not at liberty to leave). Payton surrounded the warrantless entry into a private residence. Ybarra had to do with the frisking of patrons in a public bar. Terry is the "stop and frisk" exception to a warrant and Adams is like Terry except that force is allowed.