Criminal Procedure - Warrant to Search Premises as Authorizing Search and Detention of Occupants of Premises

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INTRODUCTION

The right of citizens to be secure against unreasonable searches and seizures of their persons is protected by the Fourth Amendment to the Constitution of the United States. In Michigan v. Summers, the United States Supreme Court addressed the question of whether police may legally seize and detain an occupant of a house that is being searched for narcotics pursuant to a valid search warrant even though there is no probable cause to believe such occupant has committed any offense. The Court held that 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 being conducted. This case is significant because the Court has often stressed the importance of warrant procedure, but has seldom dealt with the means by which warrants are actually executed.

The Court’s ruling represents a serious threat to the Fourth Amendment principle which requires that all seizures be based on probable cause. A ruling by the Court that has an erosive effect on the Fourth Amendment’s protection against oppressive governmental intrusions should be carefully scrutinized.

1. U.S. Const. amend. IV, provides: “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons to be seized.” The Fourth Amendment has been made applicable to the States through the Fourteenth Amendment by Mapp v. Ohio, 367 U.S. 643 (1961).
3. The Court expressly limited the scope of this holding to search warrants for contraband rather than search warrants merely authorizing a search for evidence. Id. at ___, 101 S.Ct. 2595, n.20.
4. Id. at ___, 101 S.Ct. 2595.
THE CASE

As Detroit police officers were about to execute a warrant to search a house for narcotics, they observed Summers come out of the house and proceed down the steps. The officers then detained Summers on the sidewalk for limited inquiry and ascertained that Summers was the owner-occupant of the house. The police then required Summers to re-enter the house and remain there while a search of the house was conducted. After discovering two bags of heroin, the police officers formally arrested Summers and a custodial search revealed a bag of heroin on Summers’ person.

At the trial for possession of the heroin found on his person, Summers moved to suppress the heroin and quash the information. Summers argued that the pre-arrest “seizure” was not supported by probable cause and, therefore, was an unreasonable seizure under the Fourth Amendment. The trial court granted Summers’ motion to suppress the evidence. A divided panel of the Michigan Court of Appeals and the Michigan Supreme Court affirmed the trial court’s order. The Supreme Court granted certiorari to consider the scope of authority granted to police officers.

6. The warrant did not name the owner of the house, nor did it specify any persons to be searched. It was issued “to search the premises and seize heroin and any other narcotics material and paraphernalia.” People v. Summers, 407 Mich. 432, 441, 286 N.W. 2d 226, 226 (1979).


8. Id. at __, 101 S.Ct. at 2589, n.1.

9. Id..

10. The execution of the search warrant is described in greater detail in Mr. Justice Moody’s opinion for the Michigan Supreme Court. 407 Mich. at 441-442, 286 N.W. 2d at 226-227 (1979).

11. Id.

12. The initial detention of the defendant constituted a “seizure” within the meaning of the Fourth Amendment. The Supreme Court has said: ‘It must be recognized that whenever a police officer accosts an individual and restrain his freedom to walk away, he has ‘seized’ that person.’ Terry v. Ohio, 392 U.S. 1, 16 (1968).

13. Probable cause, within the meaning of the Fourth Amendment, was never an issue in this case. The State did not contend that the officers had probable cause to seize and detain the defendant. ___U.S. at___, 101 S.Ct. at 2590, n.3 (1981).


15. Id.


in executing a search warrant.\textsuperscript{18}

\textbf{BACKGROUND}

Before \textit{Terry v. Ohio},\textsuperscript{19} the general standard for determining whether a seizure-detention was proper was not whether the police officers’ actions were reasonable under the circumstances, but, rather, whether the police officers had probable cause\textsuperscript{20} to arrest.\textsuperscript{21} While warrants were not required in all circumstances,\textsuperscript{22} the requirement of probable cause was treated as absolute.\textsuperscript{23} The Court found that the standard of probable cause embodied the best compromise that has been found for accommodating the often opposing interests; safeguarding citizens from rash and unreasonable interferences with privacy, balanced against the interests of law enforcement and the community’s need for protection.\textsuperscript{24} The standard applied to all arrests,\textsuperscript{25} without the need to “balance” the interests and circumstances involved in a particular situation.\textsuperscript{26}

The first time the Court recognized an exception to the absolute requirement of probable cause was \textit{Terry v. Ohio}.\textsuperscript{27} While formal arrests required probable cause because of their substantial invasion of personal security, less intrusive searches such as a “stop and frisk” for weapons were held to a lesser standard; a balancing test of the opposing interest of police officer’s safety and individual

\textsuperscript{18} \textit{Id.} at 2587 (1981).
\textsuperscript{19} 392 U.S. 1 (1968).
\textsuperscript{20} “Probable Cause” exists where “the facts and circumstances within their (the officers) knowledge and of what they had reasonable trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense had been or is being committed.” See \textit{Terry v. Ohio}, 392 U.S. 1, 20-27 (1968); \textit{Brinegar v. United States}, 338 U.S. 160, 164-165 (1949); \textit{Husty v. United States}, 282 U.S. 694, 700-701 (1931); \textit{Dumba v. United States}, 268 U.S. 435 (1925); \textit{Carroll v. United States}, 267 U.S. 132, 161 (1925); \textit{Steele v. United States No. 1}, 267 U.S. 498 (1925).
\textsuperscript{21} \textit{Id.} at 1.
\textsuperscript{24} \textit{Brinegar v. United States}, 338 U.S. 160, 176 (1949).
\textsuperscript{25} The term “arrest” is often considered synonymous with those seizures governed by the Fourth Amendment. \textit{Dunaway v. New York}, 442 U.S. 200, 208 (1979).
\textsuperscript{26} 392 U.S. at 12 (1968).
\textsuperscript{27} \textit{Id.} at 1.
privacy. A “stop and frisk” search is limited to the discovery of weapons as opposed to evidence and may be used only where the police officer has a “reasonable belief that the suspect is armed and presently dangerous.”

The Court applied Terry to two subsequent cases involving frisks for weapons. In Adams v. Williams, the Court held that an officer could forcibly stop a suspect to investigate an informant’s tip that the suspect was armed and carrying narcotics. However, the Court expressly limited the scope of its holding by saying: “The purpose of the limited search is not to discover evidence of crime, but to allow the officer to pursue his investigation without fear of violence.” In Pennsylvania v. Mimms, the Court held that a police officer may order a driver to get out of a vehicle being detained for traffic violations and frisk for weapons if the officer has a reasonable suspicion that the suspect is armed and presently dangerous. The Court balanced the State’s legitimate interest in police officers’ safety against the intrusion into the personal liberty of the individual and concluded that the police officers’ actions were reasonable.

In United States v. Brignoni-Ponce, the Court applied Terry in the special context of roving border patrols stopping automobiles to check for illegal immigrants. These investigative stops, which usually lasted less than a minute and involved a brief question or two, were approved because of the unique governmental interest in protecting the nation’s international borders and preventing illegal immigration. The Court stated that “because of the limited nature of the intrusions, stops of this sort may be justified on facts that do not amount to probable cause required for

28. “When an officer is justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others, it would appear to be clearly unreasonable to deny the officer the power to take necessary measures to determine whether the person is in fact carrying a weapon and to neutralize the threat of physical harm.” Id. at 24.
30. The Court noted that the informant’s tip was insufficient to justify an arrest or search based on probable cause under the ruling in Spinelli v. United States, 393 U.S. 410 (1969) and Aguilar v. Texas, 378 U.S. 108 (1964).
33. Id. at 111-112.
34. Id.
35. 422 U.S. 873 (1975).
36. Id. at 878-880.
In *Dunaway v. New York*, the Court reaffirmed the general rule that an official seizure of the person must be supported by probable cause, even if no formal arrest is made. In *Dunaway*, police officers located a murder suspect at a neighbor's house, and without probable cause to arrest, took him into custody. The officers then transported the suspect to the police station where interrogations ultimately produced incriminating statements. The Court held that the police officers' actions violated the Fourth Amendment under the balancing test enunciated in *Terry*, not falling within the category of a "limited intrusion".

In *Ybarra v. Illinois*, the primary issue was whether the search of a customer in a tavern during the execution of a search warrant of the premises was justified under the *Terry* test as a frisk. The Court reaffirmed the *Terry* limitation; a frisk is justified only when an officer has reason to believe the individual confronted is "armed and presently dangerous". The Court further stated that the "narrow scope of the *Terry* exception does not permit a frisk for weapons on less than reasonable belief or suspicion directed at the person to be frisked, even though that person happens to be on premises where an authorized narcotics search is tak-

37. *Id.* at 880. The Court expressly refused to expand *Terry* saying: "The officer may question the driver and passengers about their citizenship and immigration status, and he may ask them to explain suspicious circumstances, but any further detention or search must be based on consent or probable cause." *Id.* at 881-882. *See also* Delaware v. Prouse, 440 U.S. 648 (1979) (random checks for vehicle registration and driver's licenses not permitted on less than articulable reasonable suspicion); United States v. Martinez-Fuerte, 428 U.S. 543 (1976) (fixed checkpoint to stop and check vehicles for illegal immigrants).

39. *Id.* at 216.
40. *Id.* at 203.
41. *Id.*
42. *Id.* at 216-219.
44. The search warrant authorized the police officers to search the tavern and the person of the bartender for evidence of narcotics possession. The officers advised all those present that they intended to conduct a "cursory search for weapons." As one of these officers conducted a pat-down search of Ybarra, a customer, he felt a cigarette pack with objects in it. After completing the pat-down of the other customers, the officer returned to Ybarra, retrieved the cigarette pack, and discovered packets containing heroin. *Id.* at 87-89.
45. *Id.* at 93-94.
In summary, prior to *Michigan v. Summers*, the Court had approved only two types of seizures not based on probable cause. The first, represented by the *Terry* line of cases, was a limited stop to question a person and to perform a pat-down search for weapons when the police have reason to believe the person is armed and dangerous. The second, recognized in *Brignoni-Ponce*, was a brief stop of vehicles near international borders to question occupants of the vehicles about their citizenship.

**ANALYSIS**

In *Michigan v. Summers*, the Court held that a warrant to search for contraband which is founded on probable cause implicitly carries with it the limited authority to detain the occupants of the premises while a search is being conducted. The Court recognized that some Fourth Amendment seizures consistute such "limited intrusions" on the personal security of those detained that they may be made on less than probable cause because they are justified by substantial law enforcement interests. However, the police must have an articulable basis for suspecting criminal activity to support the intrusion. If the Court determines that the police officers' actions constitute a "limited intrusion", then the interests of law enforcement are subjected to a balancing test to determine if the harm of the intrusion is justified.

The first step of the balancing approach is to determine whether the seizure and detention can be considered a "limited intrusion." The courts, in cases involving limited intrusions, seem to have considered two main points: 1) how appropriate is the intrusion in light of the purpose for which the intrusion is made, and 2)
is the intrusion narrow enough to accomplish the purpose without unduly restricting individual liberty. The factors the court considers are the duration of the intrusion, where the intrusion takes place, and what personal liberties are being affected as well as to what degree. In Summers, when a house was being searched for contraband pursuant to a valid warrant, detention of an occupant was justified as a "limited intrusion".\(^55\) The Court reasoned that detention in one's own home is only a minor inconvenience which involves minimal indignity.\(^64\) The detention would not likely be exploited or unduly prolonged by police in efforts to gain more information because the search will normally produce the information sought.\(^58\)

The second step in the balancing process is to assess the law enforcement interests which may justify the intrusion. Some of the generally recognized governmental interests include safety of police officers and protecting the nation's international borders against illegal immigration. Now, in Summers, the Court indicates two other governmental interests to be served by limited intrusions: prevention of flight and the orderly execution of a search warrant.\(^56\) Besides those two interests, the Court also discussed minimizing the risk of harm to police officers.\(^57\) The Court said that the execution of a search warrant for narcotics is "the kind of transaction that may give rise to sudden violence or frantic efforts to conceal or destroy evidence."\(^58\) Risk of harm to police officers is minimized if they have the authority to exercise complete command of the situation.\(^59\)

The last step of the balancing process is to determine whether there was a sufficient articulable basis for suspecting criminal activity to support the intrusion.\(^60\) The cases do not define exactly what is required to meet this standard. It appears that the experienced, prudent police officer must be able to articulate the facts that led him to believe a limited intrusion was warranted in order to protect the governmental interests being served.\(^61\) In Summers,

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53. Id. at __, 101 S.Ct. at 2593-94.
54. Id.
55. Id.
56. Id. at __, 101 S.Ct. at 2594.
57. Id.
58. Id.
59. Id.
60. Id.
the court felt that existence of a search warrant provided objective justification for the detention of an occupant of a house subject to the warrant because a judicial officer had determined that the police have probable cause to believe that someone in the house had committed a crime. 62 The connection of an occupant to that house gives police officers an easily identifiable and certain basis for determining that suspicion of criminal activity justifies detention of the occupant. 63

Comparing *Summers* to previous cases involving "limited intrusions," the Court does not seem to adequately address at least two issues. First, does the governmental purpose served by the intrusion have to be unique or otherwise insurmountable? Second, does the intrusion unduly restrict individual liberty? The result is that the Court has established a third situation where an intrusion does not have to be supported by probable cause, but, in so doing, failed to provide clear guidelines that would serve predictability.

Unlike the law enforcement objectives that justified the police conduct in the weapons frisk cases, the law enforcement objectives in *Summers* represented nothing more than the ordinary police interests in discovering evidence of crime and apprehending criminals, 64 and the dissent points out that if a detention is not supported by probable cause, the government has to demonstrate "an important purpose beyond the normal goals of criminal investigation, or must demonstrate an extraordinary obstacle to such investigation." 65 The governmental interest in *Terry* was the assurance of police officers' safety when the officer reasonably believes he may be dealing with an armed and dangerous person. 66 In *Summers*, the police officers made no attempt to search the defendant until they had thoroughly searched the house and formally arrested the defendant. 67 If the police officers had feared for their safety, they could have performed a pat-down for weapons during their initial contact with Summers. The Court merely speculates that the officers may face a threat of harm in similar circumstances. 68 The majority's reasoning that a threat of harm in similar

62. ___ U.S. at ___, 101 S.Ct. at 2594.
63. *Id.*
64. ___ U.S. at ___, 101 S.Ct. at 2597. (Stewart, J., dissenting) (Justices Bren- nan and Marshall joined in the dissent).
65. *Id.*
66. *Id.* at ___, 101 S.Ct. at 2596.
67. *Id.* at ___, 101 S.Ct. at 2589.
68. *Id.* at ___, 101 S.Ct. at 2594.
circumstances can only be minimized by granting police the broad authority to detain the occupants while the house is being searched overlooks the fact that the authority to "stop and frisk" for weapons granted in Terry achieves the same objective.

The border patrol cases presented an "extraordinary obstacle" to the enforcement of immigration laws and involved "significant economic and social problems" which justified the minimal intrusions on personal freedom. The law enforcement interest in preventing flight is not unique to the execution of a warrant to search for narcotics. Preventing flight is a law enforcement objective in nearly all criminal investigations. To allow police to seize and detain a person without probable cause in order to make him available for arrest in the event that probable cause is later developed makes the requirement of probable cause meaningless. The fact that detention of the occupants may facilitate execution of the search warrant does not constitute a unique governmental interest.

The dissent next focused its attack on the majority's conclusion that the police officers' actions should be considered "limited intrusions." In the rare cases where the Court has permitted an independent balancing of interests, the police intrusion has been "extremely narrow." The pat-down searches in Terry, Adams, and Mimms were declared legal because they were extremely limited in time and degree of personal intrusion. The dissenters also noted that in the border patrol cases the stops normally lasted less than a minute and involved no more than a brief interrogation. The Court's explicit holding in Summers permits a detention "while a proper search is being conducted." This broad authority allows police to make a person a prisoner in his own home for a potentially long period of time.

The holding in Summers established a third situation where a person may be legally seized and detained by police without probable cause. The Court departed from the restrictive standards established in the prior cases which made it necessary for the government to demonstrate "an important purpose beyond the normal...

69. Id. at ___, 101 S.Ct. at 2596-97 (Stewart, J., dissenting) (quoting from United States v. Brigoni-Ponce, 422 U.S. at 879.).
70. Id. at ___, 101 S.Ct. at 2598.
71. Id.
72. Id.
73. Id.
74. Id. at ___, 101 S.Ct. at 2595.
75. Id. at ___, 101 S.Ct. at 2598 (Stewart, J., dissenting).
goals of criminal investigation," or demonstrate "an extraordinary obstacle to such investigation." There is also an indication by the Court in *Summers* that a broader interpretation of what constitutes a "limited intrusion" on personal security will be applied.

**CONCLUSION**

A warrant to search for contraband which is founded on probable cause implicitly carries with it the limited authority to detain the occupants of the premises while a proper search is being conducted. If the Court determines that police actions constitute a "limited intrusion" on personal security, an independent balancing process may be applied to determine whether the action is reasonable in light of the competing interests.

While the ruling in *Summers* is limited to situations involving search warrants for narcotics, the Court's reasoning could be expanded to apply to other intrusions. The exception to the traditional requirement of probable cause established in *Terry* has been expanded to create a new category of exceptions. Now there are three categories of situations where probable cause is not necessary to support an intrusion. *Summers* established a dangerous precedent because the government no longer needs to demonstrate any unique or important objectives beyond the normal goals of criminal investigation or demonstrate an extraordinary obstacle to law enforcement objectives. *Summers* also failed to establish clear guidelines for predicting what will be considered a "limited intrusion." The intrusion permitted in *Summers* was substantially broader than the special situations presented in the earlier cases. This ruling poses a significantly greater threat to the protections guaranteed by the Constitution.

The Federal Constitution imposes many restraints on the power of law enforcement. Courts cannot make a practice of compromising those restraints simply to "facilitate" the interests of law enforcement. Some inefficiency in law enforcement is a small price to pay for freedom. In the words of Former United States Supreme Court Justice Goldberg:

"We should not rush to abandon our autonomy as individuals just because it creates inefficiencies in the apprehension of criminals. When it is said that democracy is an inefficient means for determining policy, we do not rush to abandon democracy. We are jus-
tifiably concerned with crime, but the power of the criminal is nothing compared to the power of the state.""

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