



Police Law Bulletin



City Attorneys' Office

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NORTH CAROLINA COURT OF APPEALS



Defendant Was Not an Occupant of the Premises to Justify His Detention During the Execution of a Search Warrant

State v. Thompson, ___ N.C.App. ___, ___ S.E.2d ___ (Aug. 20, 2019).

On April 10, 2015, officers with the Charlotte-Mecklenburg Police Department went to an apartment in order to execute a search warrant. The target of the search warrant was a female. Defendant was cleaning his vehicle in the street adjacent to the apartment when the officers arrived. Sergeant Sullivan approached the Defendant. The Defendant told the Sergeant Sullivan that he did not live in the apartment, but his girlfriend did. Sergeant Sullivan asked Defendant for his identification, handed it to Officer Price, and then proceeded inside the apartment in order to supervise the search. Officer Price testified that Defendant was in custody at that point. Two officers remained with Defendant while the warrant was executed. About ten minutes later, another officer exited the apartment and asked Defendant for permission to search his vehicle. Defendant consented to the search, and officers found marijuana, paraphernalia, and a firearm in the trunk.

Defendant was indicted for various violations of the controlled substances laws and possession of a firearm by a felon. Defendant filed a motion arguing that the encounter was an illegal detention not supported by reasonable suspicion and that the court was therefore required to suppress all evidence gathered as a result of the illegal seizure. The trial court denied the motion. Defendant appealed. After a complex procedural history, the case eventually came before the Court of Appeals for it to determine, assuming arguendo that Defendant was in fact “seized” for purposes of the Fourth Amendment, whether such seizure was nevertheless justified.

In *Michigan v. Summers*, the United States Supreme Court held that “for Fourth Amendment purposes, . . . 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.” 452 U.S. at 705, 69 L. Ed. 2d at 351. The United States Supreme Court has concluded that a person is an “occupant” for purposes of the rule “if he poses a real threat to the safe and efficient execution of a search warrant.”

In the instant case, the Court of Appeals concluded that Defendant was not an “occupant” of the searched premises. Defendant was cleaning his vehicle in the street when officers arrived to execute the search warrant. The officers approached Defendant to question him. Defendant remained inside his vehicle and told the officers that he did not live in the apartment, but that his girlfriend did. At no point did Defendant attempt to approach the apartment. Nor did he exhibit nervousness or agitation, disobey or protest the officers’ directives, appear to be armed, or undertake to interfere with the search. Quite simply, there were no circumstances to indicate that Defendant would pose a real threat to the safe and efficient execution of the officers’ search. To hold that Defendant’s presence in his vehicle under these circumstances was sufficient to render him an “occupant” of the apartment would afford the State the wide discretion to detain any unlucky bystander, simply because he or she happens to be familiar with a resident of the premises being searched. Such logic would boundlessly subject to detention any grass-mowing uncle, tree-trimming cousin, or next-door godson checking his mail, merely based upon his “connection” to the premises and hapless presence in the immediate vicinity.

Accordingly, the court vacated the judgment denying Defendant’s motion to suppress, and sent the matter back to the trial court for entry of an order consistent with the holdings of the Court of Appeals.

Defendant Was Not An “Occupant” Of Premises Subject To A Search Warrant

State v. Tripp, __ N.C. App. __, __ S.E.2d __ (Dec. 31, 2020).

After receiving complaints of “bad heroin” coming from 8450 U.S. Highway 17 in Vanceboro, North Carolina, investigators arranged a controlled buy between a confidential informant and Defendant at that residence. Based upon the transaction, a search warrant for the residence, but not the Defendant’s person, was obtained. Eleven officers arrived at the property to execute the warrant. Several people, including the Defendant, were standing outside a neighboring residence, which belonged to Defendant’s grandfather. Defendant was 50-60 yards away from the subject residence, leaning against a wheelchair ramp on his grandfather’s front porch. He did not run away, make any furtive movements, or take any action to raise any suspicion of criminal activity. However, one of the officers, who was unaware of the previous day’s controlled buy involving the Defendant, detained Defendant on the ramp and patted him down for weapons. During the frisk, the officer discovered fentanyl.

Defendant was charged with various drug offenses. Defendant filed a motion to suppress which the trial court denied. Defendant pled guilty preserving his right to appeal. On appeal, Defendant argued that the search and seizure were impermissible because he was not an “occupant” of the premises for which law enforcement officers possessed a valid search warrant. Analyzing the propriety of the seizure of the Defendant under both *Michigan v. Summers* and *Terry v. Ohio*, the court determined that the seizure was illegal.

The court explained that under *Michigan v. Summers*, a warrant to search for contraband founded on probable cause implicitly carries with it the limited authority to detain (1) the occupants, (2) who are within the immediate vicinity of the premises to be searched, and (3) who are present during the execution of a search warrant. Relying on reasoning from *State v. Thompson*, 267 N.C. App. 101 (2019) that a person is an “occupant” of premises for purposes of *Summers* when he or she poses a real threat to the safe and efficient execution of the search, the court concluded that the Defendant did not pose such a threat and therefore, was not at that time an “occupant” of the premises subject to the search warrant. Defendant did not make any attempt to penetrate the police perimeter, demonstrate an intent to enter the premises, appear to be armed, appear nervous or agitated, make any furtive movement, or disobey any police commands. By the officer’s own admission, Defendant was “simply leaning against the rail and did not take any action to raise any suspicion of criminal activity on his part.”

The court then determined, largely because the particular officer who seized the Defendant was unaware of the defendant's sale of heroin to the confidential informant, that there was no basis for the officer to stop and frisk the defendant under *Terry v. Ohio*.