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State v. Thompson

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Wrong Place, Wrong Time

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Happy New Year! I hope that in the midst of making your New Year's Resolutions for 2020 that you paused and gave thanks for all of the blessings in your life because I have come to learn that there are some very unlucky people¹ out there. Consider the story of Tsutomu Yamaguchi. Mr. Yamaguchi was on a business trip in Hiroshima on August 6, 1945, when the first atomic bomb exploded less than two miles from where he stood. His eardrums were ruptured, he was temporarily blinded, and he suffered burns on his body from the heat. Nevertheless, he was able to make his way to a bomb shelter and the next day was healthy enough to travel back home – to Nagasaki.

Two days later, on August 9th, Yamaguchi went back to work² as an engineer designing oil tankers. He was explaining to his boss what he had experienced in Hiroshima when he saw the white flash from the second atomic bomb exploding. He again survived and is the only officially recognized survivor of both bombings. He lived to be 93 years old and it was stomach cancer that eventually killed him.

In a much less significant way, today's defendant was also arguably at the wrong place at the wrong time. His case in the North Carolina Court of Appeals, State v. Thompson,³ further clarifies the rules on who may be detained when executing a search warrant. In Thompson, officers with the Charlotte-Mecklenburg Police Department executed a search warrant at a particular apartment. The subject named in the search warrant was a female. As they approached the apartment, they saw the defendant cleaning his vehicle in the parking lot of the building directly in front of the walkway which led to the apartment. An officer approached him to confirm that he was not the female listed in the warrant and to ensure that he did not interfere with the search.

The officer asked Thompson for his identification and then handed him and his driver's license over to another officer, who remained with him throughout the search. About ten minutes later, an officer exited the apartment and asked Thompson for consent to search his vehicle which was given. Officers conducted the search and found paraphernalia, a firearm, and a felony amount of marijuana in the truck. Defendant was subsequently convicted of drug charges and possession of firearm by a felon and appealed.

Although there was somewhat conflicting testimony about whether the officers held onto Thompson's license during the encounter or whether they gave it back to him early on, the court assumed for the purposes of the appeal that the defendant was seized from the time officers initially obtained his license.⁴ As a result, the only question before the court was whether the seizure was justified based on the defendant's presence near the apartment where the search warrant was being executed. The court considered this question by reviewing some

¹ "Unlucky" is probably not the right word but I'm not sure what else to call them. You'll understand in a bit.

² I'm going to feel pretty guilty the next time I call in sick when I remember that Tsutomu Yamaguchi was back at work three days after surviving an atomic bomb explosion.

³ COA 17-477-2 (20 August 2019).

⁴ This was due more to the complicated procedural history of this case than any kind of legal issue. I won't bore you with the details, but just assume for now that Thompson was seized and there was no other justification.

previous cases that dealt with these types of seizures, beginning with the 1981 U.S. Supreme Court case of Michigan v. Summers.⁵

The Summers case created a rule that allowed officers to detain persons present at a location during the execution of a search warrant. In Summers, officers detained the defendant when they saw him leaving his house just as they arrived with a search warrant. The subsequent search of the house discovered drugs and the defendant was arrested. The Court held that a search warrant implicitly authorizes officers to detain those present at the premises while the search is occurring.⁶ No added justification such as reasonable suspicion or probable cause is necessary.

The Summers Court set out three justifications for this rule. First, the detention of those present at the scene allows officers to search without fear that the persons will become disruptive, dangerous, or otherwise frustrate the search. Second, unrestrained occupants could potentially hide or destroy evidence, attempt to distract the officers, or simply get in the way. And third, detaining the occupants keeps them from fleeing the scene in the event incriminating evidence is found. The Court pointed out that these justifications outweighed the very minor increase in privacy intrusion brought about by detaining someone who is already in a home where a search has been authorized by warrant and therefore, it was reasonable under the Fourth Amendment to allow the seizure.

A more recent U.S. Supreme Court case, Bailey v. United States,⁷ tested the outer limits of the Summers rule. In Bailey, officers stopped a vehicle that left the property where they were preparing to but had not yet begun to execute a search warrant. The vehicle was stopped about a mile away from the residence and the only reason for the stop was that it was incident to the execution of the search warrant; there was no traffic violation or other justification. The Court held that the Summers rule only allows officers to detain those occupants in the “immediate vicinity” of the location to be searched and that this did not extend to a traffic stop a mile away. The Court did not define what “immediate vicinity” meant exactly but stated that various factors should determine that question, such as “the lawful limits of the premises, whether the occupant was within the line of sight of his dwelling, the ease of reentry from the occupant’s location, and other relevant factors.”

In late 2018, the North Carolina Supreme Court in State v. Wilson⁸ considered the question of which persons in the “immediate vicinity” of the search warrant could be considered “occupants.” In order to retrieve a moped, Mr. Wilson entered the property where a search warrant was already being executed and walked down the driveway toward the residence. He was stopped by officers who noticed that he was carrying something in his sweatpants that was causing one side of them to droop almost to his knee. Believing it might be a gun, they frisked him, confirmed their suspicions, and arrested him for possession of a firearm by a convicted felon. Even though Wilson’s connection with the residence was not clear, the court upheld this stop and defined an “occupant” as someone who “poses a real threat to the safe and efficient execution of a search warrant.”⁹

⁵ 452 U.S. 692 (1981).

⁶ This is true even if the person being detained is not suspected of the criminal activity being investigated. Muehler v. Mena, 544 U.S. 93 (2005).

⁷ 568 U.S. 186 (2013).

⁸ 371 N.C. 920 (2018). Jason and Jenny Cairns-Lawrence, an English couple, have been in the wrong place at the wrong time on several vacation trips. They were visiting New York City on September 11, 2001 when the World Trade Center attacks occurred. A later trip found them in London in July of 2005 when terrorists bombed London Underground trains, killing 52 and injuring over 700. Finally, they were in Mumbai, India in November of 2008 when terrorists attacked several landmarks in the city which killed 164 people. And you thought it was bad when that Weather Channel guy showed up in your town before a big storm.

⁹ There is also the unfortunate story of Austin Hatch, who was in a plane crash in 2003 that killed his mother, sister, and brother. He then suffered another plane crash in 2011 that killed his father. But Austin went on to join the University of Michigan basketball team where he played a few minutes in his freshman year before moving to a medical scholarship and becoming a student assistant. And that is the last time I care to talk about anything connected with college basketball until at least the fall.

Applying the rules of these cases to the facts in Thompson, the court held that the defendant was clearly detained during the execution of the search warrant and could be considered to be in the immediate vicinity of the premises to be searched. However, the court determined that Thompson was not an “occupant” as that term had been defined by State v. Wilson, because there was insufficient evidence to show that he posed any real threat to the safe and efficient execution of the search.¹⁰ As a result, they held that his detention was unlawful which made his subsequent consent to search his vehicle involuntary.

One judge dissented from the decision and contended that Thompson’s presence in the immediately vicinity made him a potential threat without any further evidence required. However, the majority countered that such a rule would mean that “any grass-mowing uncle,¹¹ tree-trimming cousin,¹² or next-door godson checking his mail”¹³ would be subject to seizure “merely based upon his ‘connection’ to the premises and hapless presence in the immediate vicinity.” Because of the dissenting opinion, this case is more likely to be heard in the N.C. Supreme Court in the future, so I will keep you posted.

Until then, there are three things that must be shown in order to justify the detention of a person in connection with the execution of a search warrant. The detained person must be:

1. An “occupant:” someone who poses a real threat to the safe and efficient execution of the warrant (the court referred to this question as the “who” question);
2. Within the immediate vicinity of the premises to be searched (the “where” question);
3. While the search warrant is being executed (the “when” question).

So please try to stay out of the wrong place especially at the wrong time. Don’t be like Gene Robinson, for example, who was serving as a member of a grand jury in Dayton, Tennessee. He had already voted on around twenty indictments when the next defendant’s name that came up was his. He politely raised his hand and said, “That’s me,” and excused himself. His fellow grand jury members indicted him on drug charges and the police arrested him at his home a short time later.

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ABOUT THE AUTHOR: Brian Beasley is the Legal Advisor for the High Point Police Department. This legal update is provided free of charge to the SR Webpage in the hopes that officers across the state would be able to benefit from it. Brian is not an attorney with Smith Rodgers, PLLC but he thinks they’re pretty cool guys.



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¹⁰ This was true despite the fact that it turned out that Thompson was the boyfriend of the woman who lived in the apartment.

¹¹ I wish I was lucky enough to have a grass-mowing uncle.

¹² I would love to have a tree-trimming cousin.

¹³ I...oh, okay – I’ll check my own mail.