

Fools Rush In...

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State v. Wilson

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In my more than 21 years of being a prosecutor and then a police attorney, I have found that there are some things about law enforcement that are extremely challenging. There are some complex mysteries that detectives must work long hours to solve. There are suspects who sometimes make it difficult to catch them or to prove their guilt beyond a reasonable doubt. There are intelligent people who know how to take advantage of the system and get away with various bad behaviors. Yes, there are certainly many crafty criminals out there. And then there are the “Terry Jerome Wilsons” of the world.

According to the facts of today’s North Carolina Supreme Court case of State v. Wilson,¹ Mr. Terry Jerome Wilson decided at around 11:00 p.m. on March 21, 2014, to arm himself with a handgun and go to 2300 North Glenn Avenue in Winston-Salem to retrieve his moped. Undeterred by the heavy police presence at that particular time (described by the trial judge as “literally crawling with police. . . many of whom [were] in full SWAT-type gear”), Mr. Wilson walked down the driveway toward the residence.² He may not have realized that the weight of the gun he was carrying in his sweatpants was causing his right sweatpants leg to droop almost all the way to his knee as an officer approached him and informed him that a search warrant was currently being conducted at the house. He was, however, clever enough to lie to the officer when asked if he was carrying a gun.³ Unfortunately for Mr. Wilson, the officer decided to frisk him anyway and when he turned him around, he saw the butt of the gun sticking out of his pocket. Once the officer seized the gun, Mr. Wilson helpfully informed him that he was indeed a convicted felon. It is unclear whether he ever got his moped back.

At the time Mr. Wilson decided to carry a gun (that he was prohibited from possessing as a convicted felon) loose in the pocket of a pair of saggy sweatpants and walk up to a crowd of police officers, those officers were watching the perimeter while a SWAT team initially cleared a residence as the first step in the execution of a narcotics search warrant. The officer who arrested Wilson testified that he knew the address to be dangerous because he had previously responded to shots fired calls and narcotics calls there and had also responded previously when a subject inside had been shot in the face. This officer was standing in the driveway a few feet from the house when he saw Wilson walking towards him after passing by another officer near the end of the driveway. As Wilson approached, the officer noticed the heavy object in his pocket and based on his training and experience believed it to be a firearm based on size, shape, and weight.

Wilson was arrested and charged with Possession of a Firearm by a Convicted Felon. The defendant argued in court that there was no reasonable suspicion for the stop or the frisk and the case eventually found its way to the North Carolina Supreme Court. Before considering whether reasonable suspicion justified the stop of the defendant, the court examined whether the stop was justified under the U.S. Supreme Court case of Michigan v. Summers.⁴

¹ 295PA17 (December 21, 2018).

² “Who’s the more foolish: the fool, or the fool who follows him?” – Obi-Wan Kenobi

³ As Sir Winston Churchill said, “The greatest lesson in life is to know that even fools are right sometimes.”

⁴ 452 U.S. 692 (1981). “Foolproof systems do not take into account the ingenuity of fools.” (Gene Brown)

Michigan v. Summers is a 1981 U.S. Supreme Court case that created the rule allowing officers to detain persons present at a location during the execution of a search warrant.⁵ 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 for contraband implicitly authorizes officers to detain those present at the premises while a search is being conducted.⁶ No added justification such as reasonable suspicion or probable cause is necessary.

The Summers Court found 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 if 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.

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 getting ready to execute a search warrant after it had travelled about a mile down the road. 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.”

Applying those cases to Wilson’s situation, the N.C. Supreme Court had to decide whether Wilson was an “occupant in the immediate vicinity” when he walked up the driveway. Since Wilson was clearly “in the immediate vicinity” when he walked up to the house, the remaining question was whether he was an “occupant” under the Summers rule. Using the rule in Bailey, the Wilson court determined that a person is an “occupant” if he or she “poses a real threat to the safe and efficient execution of a search warrant.” Applying that test, they held that Wilson did pose such a threat since he approached the house, announced his intent to retrieve his moped, and appeared to be armed. In addition, the court noted that Wilson was attempting to enter the area being searched and would have occupied that area had he not been restrained. As a result, the detention of Wilson was justified under Summers whether reasonable suspicion existed or not.

The court went on to say that even if Summers did not apply, the officer also had reasonable suspicion to detain Wilson. The defendant breached a police perimeter during a SWAT team operation and the execution of a search warrant, which was unusual behavior. The officer had reason based on his observations coupled with his training and experience to suspect the defendant was armed. This gave rise to a reasonable suspicion that the defendant had entered the property to violently interfere with the execution of the search warrant and justified the stop.

Once the court had justified the stop of the defendant, they considered whether the frisk of the defendant was also justified. As you know, a non-consensual frisk is only allowed when an officer has a reasonable suspicion that the suspect is armed and dangerous.⁸ Here, the officer testified that the area they were searching was known

⁵ “Any fool can make a rule. And any fool will mind it.” (Henry David Thoreau)

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). “Every man is a damn fool for at least five minutes every day. Wisdom consists in not exceeding the limit.” (Elbert Hubbard)

⁸ There is still some confusion out there about whether having a reasonable suspicion that a person is armed is sufficient to justify a frisk or whether an officer also has to articulate something more to show that the person is also dangerous on top of that. The Fourth Circuit case of U.S. v. Robinson, 846 F.3d 694 (4th Cir. 2017) held that during a valid stop, an officer may frisk (and seize any dangerous weapons found) if

for gun violence. The defendant approached the premises in a manner that “was very unusual for a member of the general public.” Finally, the officer saw something heavy in defendant’s pocket and based on its size, weight, and shape believed it to be a gun. Based on these facts, the court held that there was reasonable suspicion to justify the frisk. As a result, the defendant’s motion to suppress was properly denied by the trial court.

THINGS TO KNOW

1. When executing a search warrant, you have the authority to detain everyone in the immediate vicinity of the scene without any additional suspicion. This is the rule of Michigan v. Summers.
2. You may not stop a person and detain them outside the immediate vicinity of the premises based on the execution of a search warrant simply because they left the residence right before you were ready to execute the warrant. Bailey v. United States.
3. You may stop a person who comes onto the scene of a search if you have reasonable suspicion that he is committing or is about to commit a crime⁹ or if he is about to occupy the premises and poses a real threat to the safe and efficient completion of the search. State v. Wilson
4. Whatever you choose to do in life, strive to be excellent at it, whether it is police work or a life of crime.¹⁰ If you do not understand that it is best to avoid a large number of police while actively breaking the law, perhaps “criminal” is not the best career choice for you.¹¹

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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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he or she reasonably suspects the suspect is armed even though the suspect might be in legal possession of the weapon and not obviously “dangerous.”

⁹ This would include the crime of Resist, Delay and Obstruct a Public Officer if it appears the individual is getting ready to interfere with the execution of the search.

¹⁰ It’s 2019, so I need to include the following disclaimer: this is a joke. I do not actually encourage anyone to live a life of crime even if they are or believe themselves to be excellent at it. Please follow all laws, rules, and regulations. Thank you.

¹¹ If you didn’t like this update, just remember the words of Benjamin Franklin: “Any fool can criticize, condemn, and complain – and most fools do.”