

Bailey v. United States

(2013) __ U.S. __ [133 S.Ct. 1031]

Issue

May officers detain a suspect incident to the execution of a search warrant if the detention did not occur in the immediate vicinity of the premises to be searched?

Facts

Officers in Wyandanch, New York obtained a warrant to search a certain basement apartment for a handgun. Probable cause for the warrant was based on information from an informant who said he had seen the gun when he bought drugs in the apartment from a “heavy set black male with short hair.” Before the search team arrived, undercover officers saw two men leave the gated area above the basement apartment. Both men matched the physical description of the suspect. One of the men was Bailey. The men drove off and the officers followed them.

About five minutes later (and about one mile away), the officers stopped the vehicle and detained the men. At first, Bailey admitted that he lived in the apartment but, when the officers told him it was about to be searched, he said, “I don’t live there. Anything you find there ain’t mine.” The officers also found a key in Bailey’s possession, and they later determined that the key unlocked the door to the apartment. When the search team arrived at the apartment, they found drugs and a handgun.

Bailey filed a motion to suppress the evidence that was obtained as the result of the detention; i.e., the key and his incriminating statement. The motion was denied, and he was found guilty of drug trafficking and possession of the firearm by a felon and in furtherance of a drug-trafficking offense. On appeal, the Second Circuit ruled the detention was lawful, and Bailey appealed to the Supreme Court.

Discussion

At the outset, it is important to note that there are two legal theories upon which officers may detain a suspect incident to the execution of a search warrant. First, pursuant to the Supreme Court’s decision in *Michigan v. Summers*, they may detain anyone who was an “occupant” of the premises when they arrived.¹ Second, pursuant to the Court’s decision in *Terry v. Ohio*, they may detain any person—whether inside or outside the premises—whom they reasonably believed was implicated in the crime for which the warrant was issued.² The reason it is necessary to distinguish *Summers* and *Terry* is that the only issue in *Bailey* was whether the detention was permitted under *Summers*. And the Court ruled it was not. (We will, however, examine the *Terry* issue.)

Specifically, the Court interpreted *Summers* as authorizing a detention of a suspect who is outside the premises to be searched only if the person was in the immediate vicinity of the premises when the detention occurred. The Court reasoned that, because the purpose of a *Summers* detention is to help ensure the safety of the search team and the integrity of the search, there is simply no justification for detaining a person who is not in a position to threaten either of these interests. It then ruled that because Bailey was detained about a mile away from his apartment, and because the officers had no

¹ (1981) 452 U.S. 692, 705.

² (1968) 392 U.S. 1.

reason to believe he was aware that his apartment was about to be searched, he “posed little risk to the officers at the scene.” The Court did, however, acknowledge that an occupant who leaves the premises may present such a threat if he returns while the search is underway. But if that happens, said the Court, *Summers* would permit officers to detain him when he arrived.

The question remains whether Bailey’s detention was permitted under *Terry*. It appears so because (1) the issuance of the search warrant demonstrated probable cause to believe that the occupant of the premises possessed a firearm in connection with drug trafficking; (2) Bailey had apparently just left the apartment; and (3) although the physical description of the suspect was fairly general, it was somewhat relevant that Bailey matched it. The Court did not, however decide this issue. Instead, it remanded the case to the Second Circuit for a determination. POV

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