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LEGAL LOG

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JUN 7 1984

STATE DOCUMENTS

VOL. 2 NO. 4

APRIL 1984

Detention and Search of Persons during execution of Search Warrants Ybarra v. Illinois and Michigan v. Summers

Law Enforcement Officers executing search warrants frequently find themselves faced with a situation in which more is at issue than the proper execution of the warrant itself. Specifically, an officer encountering the owner or occupant of the premises at the time of the execution of the warrant may desire to detain that individual or other individuals who happen to be present at the time. Additionally, the officer may desire, in order to protect personal safety, to pat down or "frisk" the individuals who are present during the search warrant execution. Guidelines for detention and search of persons present during a search warrant's execution were handed down by the U.S. Supreme Court in Michigan v. Summers (452 U.S. 692 (1981)) and Ybarra v. Illinois (444 U.S. 85 (1979)).

Summers involved the issue of detention of persons present at the location of a search warrant's execution. The facts of the case may be summarized as follows: Detroit police arrived at a private residence to execute a search warrant for narcotics and encountered Summers descending the front steps. One officer determined that he lived in the house, showed him a copy of the warrant, and asked him to open the door. Summers replied that he could not because his keys were inside, but he did ring someone over the intercom. One of seven people inside came to the door, but slammed it shut when the purpose of the visit was announced. The officers then gained entry by force and de-

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tained Summers and his companions inside while the warrant was executed.

Summers was arrested when the officers found the narcotics in the basement and determined that he owned the house. A search of his person following arrest resulted in the discovery of heroin in his pocket.

At trial, the judge granted Summers' motion to suppress the heroin which was found on his person on the ground that it was seized as a result of his detention which was unlawful at the outset. This ruling was affirmed by the Michigan Supreme Court on appeal.

The United States Supreme Court reversed the lower court's holding, and stated that

"A warrant to search for contraband founded on probable cause implicity

carries with it the limited authority to detain occupants of the premises while a proper search is conducted." (Summers at 705).

The court went further in its analysis of this right to detain by balancing the legitimate law enforcement interest in preventing flight in the event that contraband was found against the minor inconvenience of the person who was momentarily detained. Furthermore, the court emphasized that the "...risk of harm to both the police and the occupants is minimized if the officers routinely exercise unquestioned command of the situation". (Summers at 702-703, emphasis supplied).

The holding in Summers specifically authorized officers executing a valid search warrant for contraband to detain occupants of the premises. While the Court's decision did not directly address the issue of (1) search warrants for evidence as opposed to contraband and (2) detention of visitors and guests as well as occupants, there is ample authority to be found in Federal District Court decisions suggesting that an officer executing a search warrant has the authority to detain briefly anyone present at the location, be it private residence or business, whether the search be for contraband or other evidence (cf. U.S. v. Timpani 665 F 2d-1 (1st Cir. 1981, U.S. v. Miller 546 F 2d 25 ((8th Cir. 1976), U.S. v. Stevens 543 f. Supp. 929 (1982)). The ability to detain those about to leave as the officer arrives and those who show up while the search is in progress is included in this authority. The cases further suggest that a resident (i.e. one who actually occupies the premises) may be detained for more than a brief period of time while non-residents may be detained only briefly for an identification check and a determination of that party's relationship, if any, to the property specified in the warrant.

In Ybarra v. Illinois state officers applied for and obtained a search warrant au-

thorizing them to search a tavern in Aurora, Ill., and also the person of the bartender, named in the warrant. The warrant authorized the police to search for specifically described narcotics and narcotics paraphernalia. The search warrant did not contain any language purporting to authorize search of any person other than the bartender.

Upon entry the officers proceeded to "pat down" all occupants of the tavern to detect any weapons present. Ybarra, one of the customers was "patted down" on two occasions and on the second narcotics were found in a cigarette packet in his pocket. He was later convicted for possession of these narcotics.

The U.S. Supreme Court in reversing Ybarra's conviction laid down the following principles concerning searches and "pat downs" which may be summarized as follows:

- 1) The presence of an individual at premises subject to search under a search warrant does not, standing alone, justify a search of that person for items named in the warrant.
- 2) The presence of a person at premises subject to search under a search warrant does not, standing alone, justify a patdown or frisk of that person for weapons.
- 3) The standard of proof necessary to justify a patdown or frisk of a person present during execution of a search warrant is reasonable suspicion or belief that the person is armed and dangerous.

Thus reading Ybarra in conjunction with Summers, the following rules emerge for law enforcement officers executing search warrants. First, any person present at the location of the search warrant's execution may be detained regardless of whether the person may be leaving or arriving. Second, if the person detained is merely a visitor or guest, and not the resident then the detention may only be briefly made until identification and relationships, if any, to the contraband is established. Third,

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if the person detained is the resident then the detention may be more lengthy. Fourth, if the warrant does not authorize the search of persons, then persons present may only be searched incidental to a lawful arrest. Finally, execution of a search warrant does not carry with it the automatic authority to "pat down" any person present. The officer must have a reasonable suspicion that the person to be patted down is armed and dangerous before a frisk will be allowed.

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