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Bailey v. United States***The Rule In Michigan v. Summers Does Not Extend To Those Occupants Not In The Immediate Vicinity Of The Premises To Be Searched***

In *Bailey v. United States*, No. 11-770 (Feb. 19, 2013), the issue before the Court was whether *Michigan v. Summers*, 452 U.S. 692 (1981) justified the detention of occupants beyond the immediate vicinity of the premises covered by a search warrant. The facts showed that two detectives were conducting surveillance in an unmarked car outside an apartment while other law enforcement officers were preparing to execute a search warrant at that apartment. The detectives saw Bailey and another individual get in a vehicle and drive away from the apartment. The officers followed. When Bailey had driven a mile from the apartment, the detectives stopped him. Bailey was frisked and keys to the apartment were found in his pocket. Bailey also admitted to residing in the apartment. Bailey and his passenger were then both handcuffed and returned to the apartment where the search team had already discovered a gun and drugs. One of the keys found in Bailey's possession unlocked the apartment door. The trial court denied Bailey's motion to suppress his keys and his statements, finding that the stop was justified under *Summers* and under *Terry v. Ohio*, 392 U.S. 1(1968). The federal court of appeals affirmed, but ruled only that the detention was authorized under *Summers*.

The Supreme Court stated that in *Summers*, the Court defined an important category of cases in which detention is allowed without probable cause to arrest. *Summers* permits officers executing a search warrant to detain the occupants of the premises while a proper search is conducted. The rule in *Summers* is a bright-line one and does not require law enforcement to have particular suspicion that the individual is involved in criminal activity or poses a special danger to the officers. The rule is based on three important law enforcement interests that, when taken together, justify the detention of the occupant who is on the premises during the execution of the search warrant: 1) officer safety; 2) facilitating of the completion of the search; and 3) preventing flight.

The Court discussed each of these three law enforcement interests and determined that none of them justify detentions beyond the "immediate vicinity" of the premises to be searched. In determining whether a person is within the "immediate vicinity" of the premises to be searched, some of the factors that may be considered include, but are not limited to, the lawful limits of the premises, whether the person was within the line of sight of the premises, and the ease of re-entry from the person's location. Since it was clear that Bailey was detained at a point beyond the immediate vicinity of the premises, the trial court erred in determining that the detention was justified under *Summers*. But, because the federal court of appeals only addressed and affirmed that the detention was justified under *Summers*, the case was remanded so that the court of appeals could determine the validity of the trial court's second rationale for denying the motion to suppress, that Bailey's detention was a lawful Terry stop.