Arrest Search and Investigation

Bailey v. United States, 568 U.S. __ (Feb. 19, 2013) (http://www.supremecourt.gov/opinions/12pdf/11-770_j4ek.pdf). *Michigan v. Summers*, 452 U.S. 692 (1981) (officers executing a search warrant may detain occupants on the premises while the search is conducted), does not justify the detention of occupants beyond the immediate vicinity of the premises covered by a search warrant. In this case, the defendant left the premises before the search began and officers waited to detain him until he had driven about one mile away. The Court reasoned that none of the rationales supporting the *Summers* decision—officer safety, facilitating the completion of the search, and preventing flight—apply with the same or similar force to the detention of recent occupants beyond the immediate vicinity of the premises. It further concluded that "[a]ny of the individual interests is also insufficient, on its own, to justify an expansion of the rule in *Summers* to permit the detention of a former occupant, wherever he may be found away from the scene of the search." It stated: "The categorical authority to detain incident to the execution of a search warrant must be limited to the immediate vicinity of the premises to be searched." The Court continued, noting that *Summers* also relied on the limited intrusion on personal liberty involved with detaining occupants incident to the execution of a search warrant. It concluded that where officers arrest an individual away from his or her home, there is an additional level of intrusiveness. The Court declined to precisely define the term "immediate vicinity," leaving it to the lower courts to make this determination based on "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."

Florida v. Harris, 568 U.S. __ (Feb. 19, 2013) (http://www.supremecourt.gov/opinions/12pdf/11-817_5if6.pdf). Concluding that a dog sniff "was up to snuff," the Court reversed the Florida Supreme Court and held that the dog sniff in this case provided probable cause to search a vehicle. The Court rejected the holding of the Florida Supreme Court which would have required the prosecution to present, in every case, an exhaustive set of records, including a log of the dog's performance in the field, to establish the dog's reliability. The Court found this "demand inconsistent with the 'flexible, common-sense standard' of probable cause. It instructed:

> In short, a probable-cause hearing focusing on a dog's alert should proceed much like any other. The court should allow the parties to make their best case, consistent with the usual rules of criminal procedure. And the court should then evaluate the proffered evidence to decide what all the circumstances demonstrate. If the State has produced proof from controlled settings that a dog performs reliably in detecting drugs, and the defendant has not contested that showing, then the court should find probable cause. If, in contrast, the defendant has challenged the State's case (by disputing the reliability of the dog overall or of a particular alert), then the court should weigh the competing evidence. In all events, the court should not prescribe, as the Florida Supreme Court did, an inflexible set of evidentiary requirements. The question—similar to every inquiry into probable cause—is whether all the facts surrounding a dog's alert, viewed through the lens of common sense, would make a reasonably prudent person think that a search

would reveal contraband or evidence of a crime. A sniff is up to snuff when it meets that test.

Applying that test to the drug dog's sniff in the case at hand, the Court found it satisfied.