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POLICE OFFICERS EXECUTING A SEARCH AND SEIZURE WARRANT AT AN OPEN-AIR DRUG MARKET ARE ENTITLED, WITH A LIMITED EXCEPTION, TO IMMOBILIZE EVERYONE UNTIL THEY KNOW WHAT THEY ARE CONFRONTING

QUESTIONS: WHEN POLICE OFFICERS ARE EXECUTING A SEARCH AND SEIZURE WARRANT AT A RESIDENCE KNOWN TO BE AN OPEN-AIR DRUG MARKET, WHERE THEY MAY ENCOUNTER PEOPLE WHO MAY BE DANGEROUS, CAN OFFICERS TAKE COMMAND OF THE SITUATION AND IMMOBILIZE EVERYONE PRESENT UNTIL THEY KNOW WHAT THEY ARE CONFRONTING?

ANSWER: YES, AS LONG AS THE OFFICERS ACT WITH REASONABLE EXPEDITION AND DO NOT "IMMOBILIZE" OR OTHERWISE DETAIN THOSE PERSONS WHO ARE CLEARLY UNCONNECTED WITH ANY CRIMINAL ACTIVITY AND WHO CLEARLY PRESENT NO POTENTIAL DANGER.

CASE: ***Cotton v. Maryland, No. 29, Sept. Term, 2004***
Court of Appeals of Maryland, April 11, 2005

In *Cotton v. Maryland,* the Maryland Court of Appeals examined the police practice of detaining persons during the execution of a search and seizure warrant at premises known to be an open-air drug market. Specifically, the Court explored whether such detentions were arrests that required probable cause or investigative seizures that could be justified on less than probable cause. After resolving these questions, the Court focused on how long such detentions may last.

In *Cotton*, the facts disclosed that a four-year investigation by the Caroline County Sheriff's Office had established that Don Antonio Jones, his grandfather Calvin Edgar Bolden, and his mother, Calvileen Bolden, were operating an open-air drug market from and around their home in Federalsburg. The investigation revealed that: (1) significant quantities of drugs were brought into the house by Jones; (2) the drugs were being sold not only in the house but around it as well, from the front porch and other adjacent areas; and (3) many of the individuals observed in the drug trafficking, including Jones and Calvin Bolden, had extensive drug-crime records, and some had extensive backgrounds in crimes of violence.

Jones, in particular, associated with individuals who had extensive backgrounds in violent crimes including assaults, attempted murders, and handgun violations. He had established an elaborate counter surveillance network around the vicinity of the house; and had

threatened that a member of the police department was "going to get shot" if the police did not cease patrols in the Brooklyn-Federalsburg area.

Based on this and other information, a detective from the Sheriff's Office made application for a search and seizure warrant. A District Court judge found probable cause to believe that violations of the controlled dangerous substance laws were occurring "in and upon" the residence, as well as the property's outbuildings and motor vehicles. Accordingly, the judge issued a warrant that authorized police to enter and search these areas. The warrant further empowered the police to search the persons and clothing of Jones, Calvileen and Calvin Bolden, and "*any other persons found in or upon said premises who may be participating in violations of [those statutes] and who may be concealing evidence, paraphernalia, and Controlled Dangerous Substances*;" to seize all evidence "found in or upon said premises;" and to arrest "*all persons found in or upon said premises . . . who are participating in violations of* [*those statutes*.]" (Emphasis added.)

When the warrant was executed, the police arrived in force. Some twenty to twenty-five officers participated. When the police arrived, they found at least four people, including Jones and Steven Terry Cotton, in the front yard near the porch--an area in which much of the drug activity described in the application for the warrant had taken place. Jones immediately fled, and was pursued and overtaken by two officers. The others, including Cotton, were handcuffed and detained under guard. They were not held at gunpoint. Cotton was allowed to sit on a bucket or log during the search. As the officers secured the house and its perimeter, the lead detective began "making his rounds" to interview the persons who had been detained. By this time, Cotton had been detained for approximately twenty minutes. The detective approached Cotton and told him what was going on, and advised him of his *Miranda* rights. The detective then asked Cotton if he had anything on him. Cotton answered, "All I've got is a bag of weed, that's all I got." Cotton was arrested and subsequently searched incident to arrest, at which time the officers located the bag of marijuana that Cotton had mentioned.

On an agreed statement of facts, Cotton was convicted of possession of marijuana for which, as a repeat offender, he was sentenced to two years in prison. His arguments that he had been a mere "bystander" who happened to be on the scene when the police arrived to execute the warrant, that the police had no probable cause to believe that he had committed any crime or had any contraband in his possession, and that, therefore, they had no lawful authority to detain him, were rejected first by the Circuit Court and then by the Court of Special Appeals. In sum, Cotton's contention that his twenty-minute detention was tantamount to an arrest without probable cause, and, that, as a result, his subsequent interrogation and the search of his person were also unlawful, met with no success. The Court of Appeals agreed to revisit Cotton's contentions.

In the Court of Appeals, the result was the same--Cotton's conviction was affirmed. In upholding the lower courts, the Court of Appeals synthesized earlier Supreme Court opinions to conclude that, in executing a search and seizure warrant such as the one here, for a premises known to be an open-air drug market where the police were likely to encounter people who may well be dangerous, "police officers are entitled, for their own safety and the

safety of other persons, to take command of the situation and, except for persons who clearly are unconnected with any criminal activity and who clearly present no potential danger, essentially immobilize everyone until acting with reasonable expedition, they know what they are confronting." The Court reasoned, "[i]t really cannot be otherwise. The police do not know who may be at the scene when they arrive. The people they find there, in or on the property to be searched, are not wearing identifying labels—supplier, customer, processor, bodyguard, innocent bystander. It would be decidedly *unreasonable* to expect the police simply to give a friendly greeting to the folks there and proceed to search the house without another thought as to who those people are or what they may do." (Emphasis in original.) Thus, for the twenty minutes he was detained prior to his actual arrest, during which he was neither interrogated nor searched, Cotton had been the subject of an investigative detention, not a *de facto* arrest. Further, the duration of the detention did not convert it into an arrest, and, thus, did not violate the Fourth Amendment. To the contrary, during Cotton's twenty-minute detention, the police acted with "reasonable expedition" in establishing a security perimeter and securing the residence. The reasonableness of their actions ensured that the officers did not violate the Fourth Amendment.

NOTE: One of many arguments advanced by Cotton was that the detective's recitation of the *Miranda* warnings before questioning was evidence that an arrest, merely an investigative detention, had already occurred. The Court of Appeals rejected this argument, concluding that merely giving the *Miranda* warnings "should have no special significance in determining whether a temporary detention constitutes an arrest for Fourth Amendment purposes because it may well be required even when there is clearly no arrest." In light of this statement, officers should bear in mind that the *Miranda* warnings need to be given *whenever there is "custodial interrogation," and a custodial interrogation can arise from a pure Terry stop that never crosses into an arrest*. In other words, courts have found that a "custodial interrogation" may occur not only when a formal arrest is made, but also when an officer, during an investigative detention, restrains a suspect's freedom of action to the degree associated with a formal arrest. Understanding this, courts have made clear that an officer's cautious or gratuitous recitation of the *Miranda* warnings is irrelevant to determining whether there has been an arrest, or even a custodial interrogation. Simply stated, officers do not need to be concerned that giving the *Miranda* warnings as a precautionary measure during a *Terry* stop will automatically convince a court that the investigative detention is actually an arrest. As the Court of Appeals pointedly said in *Cotton*, "[t]he law should encourage police to give those warnings when questioning a suspect, not discourage them by regarding the warnings as converting a good *Terry* stop into a bad arrest."

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