

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

CEDRIC JOHNSON,

Defendant-Appellee.

UNPUBLISHED

September 10, 2002

No. 239886

Wayne Circuit Court

LC No. 01-013859

Before: Murray, P.J., and Fitzgerald and O'Connell, JJ.

O'CONNELL, J. (*dissenting*).

I respectfully dissent. In this case, the police obtained a valid search warrant to search the premises at 8855 Hayden. While executing the search warrant, defendant, an occupant of the premises, was searched by Officer Haidar. Officer Haidar located heroin in the defendant's pocket.

Following previous Michigan cases, the majority concludes that it is unlawful to search persons on the premises who are not named in the search warrant. This previous precedent appears to set an absolute bar to searching persons located on the premises, but not named in a search warrant. Unfortunately, this bar allows persons not named in a search warrant to frustrate the search simply by placing the contraband in their pocket. In my opinion, this absolute bar leads to an absurd result.¹

¹ The majority concludes that, "Absent probable cause to search individuals not named in the search warrant and who do not own or reside in the premises, they cannot be searched without offending the Fourth Amendment . . . " I note that in most instances, once the police obtain a search warrant, they have probable cause to search all containers on the premises that may contain drugs. The police are not required to obtain further probable cause to search these containers. Stated another way, once the police obtain a search warrant, the police may search within the scope of the search warrant without obtaining additional probable cause.

The majority concludes that prior case law limits the scope of a search warrant. This limitation, in my opinion, is unreasonable. The distinction is between visitors on the premises and containers on the premises. The majority, following prior precedent, concludes the search warrant does not provide probable cause to search visitors. If a container, such as a coat, is located on a guest of the premises, the majority concludes that the police cannot search the coat. However, under present case law, if that same coat is located on a bar stool in the kitchen, the

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I conclude that Officer Haidar, acting under the authority of a valid search warrant, did not exceed the scope of the warrant in locating and retrieving the heroin hidden in defendant's pocket. The test to determine if a search warrant violates the Fourth Amendment is one of reasonableness. See *United States v Knights*, 534 US 112, ____; 122 S Ct 587, 588; 151 L Ed 2d 497, ____ (2001), on remand 278 F3d 920 (CA 9, 2002). Extracting heroin from defendant's pocket at a known drug house while executing a search warrant does not violate my sense of reasonableness.

For the reasons stated in Justice Rehnquist's dissent in *Ybarra v Illinois*, 444 US 85; 100 S Ct 338; 62 L Ed 2d 238 (1979), I would reverse the decision of the trial court.

/s/ Peter D. O'Connell

(...continued)

search warrant authorizes the police to search the coat. If the police have obtained a valid search warrant supported by probable cause, the scope and intensity of the probable cause that supports the search warrant should allow the police officers to search all containers located on the premises where drugs may be hidden.