Case Brief: *State v. Tripp*[*]

INTRODUCTION

Recently, notorious officer misconduct has placed the conduct of police under increased scrutiny.[1] In response, Americans have demanded more accountability and checks on police power and discretion.[2] One original check on police misconduct, found in the Fourth Amendment of the U.S. Constitution, provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated."[3] However, courts have allowed police some discretion to search and detain individuals when executing a legal warrant out of concern for officer safety.[4] Thus, the question has become where to draw the line between protecting an individual's Fourth Amendment rights and allowing officers to safely execute a warrant.

In North Carolina, a recent case made the question even more specific: How far away can an individual, not subject to a search warrant, be from the premises of the warrant and still be detained out of safety concerns for officers? In *State v. Tripp*,[5] the Supreme Court of North Carolina suggests that the answer is sixty yards.[6] However, the divided court could not form a majority, leaving the ultimate answer in North Carolina undecided.[7]

FACTS OF THE CASE

On April 26, 2017, officers of the Craven County Sheriff's Office executed a search warrant on a house where Michael Tripp had sold heroin to a confidential informant the previous day.[8] When officers arrived, Tripp was

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1. *See, e.g.*, Scott Clement & Emily Guskin, *Most Americans Support Greater Scrutiny of Police as Discrimination Concerns Persist, Post-ABC Poll Finds*, WASH. POST (Apr. 23, 2021, 6:00 AM), https://www.washingtonpost.com/politics/2021/04/23/poll-police-bias-floyd/ [https://perma.cc/G9ZR-7LBV (dark archive)].
2. *See, e.g.*, *id.*
3. U.S. CONST. amend. IV.
4. *See, e.g.*, Bailey v. United States, 568 U.S. 186, 195 (2013); Michigan v. Summers, 452 U.S. 692, 702–03 (1981); State v. Wilson, 371 N.C. 920, 923, 821 S.E.2d 811, 814 (2018).
5. 381 N.C. 617, 873 S.E.2d 298 (2022).
6. *Id.* at 631, 873 S.E.2d at 309.
7. *See id.* at 618, 635, 873 S.E.2d at 311, 316.
8. *Id.* at 618–21, 873 S.E.2d at 302–03. The sale of heroin to the confidential informant was organized by the Craven County Sheriff's Office, and audio and video surveillance of the operation

sixty yards away from the house, on another property in the direct line of sight of the officers.[9] Based on his past experiences with Tripp—including a briefing identifying Tripp as a possible threat given his violent history with police and status as a known drug dealer—a deputy recognized, detained, and subsequently searched Tripp for weapons.[10]

While executing the search, the deputy saw a plastic baggie in Tripp's pocket.[11] The deputy patted Tripp down and felt a lump in the same pocket where he had observed the baggie.[12] Based on these observations, his experience, and the purpose of the operation, the deputy believed the baggie contained narcotics, so he removed the bag and arrested Tripp.[13] Tests confirmed that the baggie indeed contained narcotics, specifically a mixture of heroin and fentanyl.[14]

Tripp was charged under North Carolina law with trafficking in heroin, possession with intent to sell or deliver fentanyl, and possession with intent to sell or deliver heroin.[15] At trial, the court denied Tripp's motion to suppress the evidence found by the deputy despite Tripp's assertion that the search and seizure was unreasonable under the Fourth Amendment.[16] Tripp subsequently pled guilty to the charges but reserved his right to appeal the denial of his motion to suppress.[17]

In a divided opinion, a majority of the North Carolina Court of Appeals panel reversed and vacated Tripp's convictions.[18] The dissent, however, argued that Tripp's detention and subsequent search were justified under *Michigan v. Summers*,[19] *United States v. Bailey*,[20] and *State v. Wilson*.[21] The State appealed on

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confirmed the sale by Tripp. *Id.* at 620, 873 S.E.2d at 303. The later search warrant "authorized a search of the residence, carport, outside storage building, and three vehicles," but not of Tripp's person. *Id.* at 619–20, 873 S.E.2d at 302–03.

9. *Id.* at 619–21, 873 S.E.2d at 302–03.

10. *Id.* at 619–20, 873 S.E.2d at 302–03. The deputy's past experiences included (1) a briefing prior to the execution of the warrant of which the goal was to search for heroin based on the controlled buy, and (2) his familiarity with Tripp from three prior encounters with police during which Tripp either fired or possessed a firearm. *Id.* at 619, 873 S.E.2d at 302.

11. *Id.* at 620, 873 S.E.2d at 302.

12. *Id.*

13. *Id.*

14. *Id.* at 620, 873 S.E.2d at 302–03.

15. *See id.* at 624, 873 S.E.2d at 305.

16. *See id.* at 623–24, 873 S.E.2d at 304–05.

17. *Id.* at 624, 873 S.E.2d at 305.

18. State v. Tripp, 275 N.C. App. 907, 908, 853 S.E.2d 848, 850 (2020), *rev'd*, 381 N.C. 617, 873 S.E.2d 298.

19. 452 U.S. 692 (1981).

20. 568 U.S. 186 (2013).

21. 371 N.C. 920, 821 S.E.2d 811 (2018); *Tripp*, 275 N.C. App. at 932–35, 853 S.E.2d at 865–66 (Stroud, J., concurring in part and dissenting in part).

the basis of the dissent,[22] and the Supreme Court of North Carolina reversed the decision of the North Carolina Court of Appeals.[23]

LEGAL ISSUES AND OUTCOMES

At issue in *Tripp*, according to the plurality, was (1) whether Tripp was lawfully detained under *Summers*, *Bailey*, and *Wilson*;[24] and (2) whether the subsequent search of Tripp and seizure of the evidence was justified under *Terry v. Ohio*.[25]

First, the *Tripp* plurality discussed the precedents of *Summers*, *Bailey*, and *Wilson* to determine whether Tripp was lawfully detained upon the officers' arrival to execute the search warrant. In *Summers*, the U.S. Supreme Court recognized that "[w]ith respect to the Fourth Amendment, 'a warrant to search for contraband founded on probable cause implicitly carries with it the limited authority to detain the occupants of the premises while a proper search is conducted.'"[26] Further, in *Bailey*, the Court extended this exception to allow officers to detain individuals within an immediate vicinity of the premises to be searched under the warrant, while also reinforcing the premise that officer safety and search efficacy justify the infringement on Fourth Amendment rights.[27]

In *Wilson*, the Supreme Court of North Carolina interpreted these precedents and established a test for whether a detention incident to the execution of a search warrant was lawful.[28] The *Wilson* court held that "'a warrant to search for contraband founded on probable cause implicitly carries with it the limited authority to detain [(1)] the occupants,' (2) who are 'within

22. *Tripp*, 381 N.C. at 625, 873 S.E.2d at 305. The Supreme Court of North Carolina also "allowed defendant's petition for discretionary review to determine whether the trial court's findings of fact listed in its order denying the motion to suppress were supported by competent evidence." *Id.* However, this Case Brief includes no further discussion of this issue since a majority of the court specifically found that the findings of fact were supported by competent evidence, *see id.* at 629, 873 S.E.2d at 307; *id.* at 635, 873 S.E.2d at 311 (Barringer, J., concurring in part and concurring in the result), and the dissent did not address this issue, *see id.* at 635–43, 873 S.E.2d at 311–16 (Earls, J., dissenting).

23. *Id.* at 618, 873 S.E.2d at 301 (plurality opinion). The court was divided in its decision; Justice Berger's plurality opinion was joined by Chief Justice Newby and Justice Ervin. *Id.* at 618–35, 873 S.E.2d at 301–11. Justice Barringer concurred in part and in the result. *Id.* at 635, 873 S.E.2d at 311 (Barringer, J., concurring in part and concurring in the result). Justice Earls, joined by Justice Hudson and Justice Morgan, dissented. *Id.* at 635–43, 873 S.E.2d at 311–16 (Earls, J., dissenting).

24. *See id.* at 629–32, 873 S.E.2d at 308–09 (plurality opinion).

25. 392 U.S. 1 (1968); *see Tripp*, 381 N.C. at 632–34, 873 S.E.2d at 309–11.

26. *Tripp*, 381 N.C. at 629, 873 S.E.2d at 308 (quoting Michigan v. Summers, 452 U.S. 692, 705 (1981)).

27. *See* Bailey v. United States, 568 U.S. 186, 195, 201 (2013) ("A spatial constraint defined by the immediate vicinity of the premises to be searched is . . . required for detentions incident to the execution of a search warrant."); *see also Tripp*, 381 N.C. at 629–31, 873 S.E.2d at 308–09.

28. *See* State v. Wilson, 371 N.C. 920, 924, 821 S.E.2d 811, 815 (2018).

the immediate vicinity of the premises to be searched,' and (3) who are present 'during the execution of a search warrant.'"[29] Further, the *Wilson* court defined an "occupant" as someone who "poses a real threat to the safe and efficient execution of a search warrant."[30]

Without a guiding definition for what qualifies for "immediate vicinity," the *Tripp* plurality went on to discuss the spatial limitations under *Summers* and *Bailey*. The plurality concluded that the "immediate vicinity line . . . may extend beyond the lawful limits of the property,"[31] and held that "[u]ltimately, determining whether an occupant was within the vicinity is a question of reasonableness."[32]

In *Tripp*, the plurality concluded that the detention of Tripp, incident to the execution of the search warrant, was lawful under the *Wilson* test.[33] Specifically, the plurality held that Tripp "was an occupant within the immediate vicinity of the . . . residence because [Tripp] was close enough to the search that he had access to the residence and could have posed a real threat to . . . officers and the efficacy of the search."[34] The plurality reasoned that Tripp was an occupant since, as "a known drug dealer with a history of gun violence," he posed a real threat to the officers.[35] Likewise, the plurality found Tripp to be in "the immediate vicinity" due to his positioning only sixty yards from the premises.[36]

Second, the *Tripp* plurality discussed whether the subsequent search of Tripp was justified based on *Terry*.[37] Under *Terry*, an officer has the authority to search a suspect when the officer acts upon "'specific and articulable facts' that [lead them] to conclude that [the suspect] was, or was about to be, engaged in criminal activity and . . . was 'armed and presently dangerous.'"[38] Courts have

29. *Id.* (alteration in original) (citations omitted) (first quoting *Summers*, 452 U.S. at 705; then quoting *Bailey*, 568 U.S. at 194, 201; and then citing Muehler v. Mena, 544 U.S. 93, 102 (2005)); *see also Tripp*, 381 N.C. at 630, 873 S.E.2d at 308.

30. *Wilson*, 371 N.C. at 925, 821 S.E.2d at 815 (quoting *Bailey*, 568 U.S. at 201).

31. *Tripp*, 381 N.C. at 631, 873 S.E.2d at 309.

32. *Id.* (first citing *Bailey*, 568 U.S. at 201; and then citing *Wilson*, 371 N.C. at 925, 821 S.E.2d at 815). The U.S. Supreme Court in *Bailey* listed several factors to be considered, including "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." *Id.* (quoting *Bailey*, 568 U.S. at 201).

33. *See id.*

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.* at 632, 873 S.E.2d at 309–10 ("[W]e must determine separately whether the search of defendant's person was justified." (alteration in original) (quoting *Wilson*, 371 N.C. at 926, 821 S.E.2d at 816)).

38. State v. Butler, 331 N.C. 227, 233, 415 S.E.2d 719, 722 (1992) (quoting Terry v. Ohio, 392 U.S. 1, 21, 24 (1968)); *see also Tripp*, 381 N.C. at 632, 873 S.E.2d at 310.

also generally recognized that "[f]irearms are tools of the trade for individuals involved in the illegal distribution of drugs."[39]

In *Tripp*, the defendant "was a known drug dealer with a history of gun violence."[40] The deputy searched Tripp with knowledge of this fact, given the deputy's previous experiences with Tripp and attendance at the warrant briefing.[41] Thus, the *Tripp* plurality concluded that the deputy "relied on specific and articulable facts based on his training, experience, and available information to form the reasonable belief that [Tripp] was armed."[42] Therefore, the search of Tripp was lawful under *Terry*.[43]

Justice Barringer, in her concurrence, did not think it was necessary to decide whether Tripp was lawfully detained under *Summers* and *Bailey*.[44] In her opinion, since the deputy had reasonable suspicion to search Tripp under *Terry*, the discovery of the evidence that led to Tripp's conviction was lawful.[45] Thus, Justice Barringer declined to join the plurality's analysis and application of *Summers* and *Bailey*.[46]

Justice Earls argued in dissent that Tripp was not lawfully detained under *Summers*[47] and that the deputy did not have reasonable suspicion under *Terry*.[48] Even under the *Wilson* definition,[49] Justice Earls wrote, Tripp "was not an 'occupant,'"[50] since his status as a drug dealer did not make him "a *real* threat" to the officers.[51] Similarly, in Justice Earls's view, the search of Tripp's person was not justified under *Terry* because "the *general* insight that drug dealers sometimes utilize firearms"[52] is not a "*specific* and *articulable* fact[]."[53]

39. *Tripp*, 381 N.C. at 633, 873 S.E.2d at 310 (collecting cases).

40. *Id.*

41. *Id.*

42. *Id.* (citing *Butler*, 331 N.C. at 233–34, 415 S.E.2d at 722–23).

43. *Id.* The *Tripp* plurality also concluded that the seizure of the plastic baggie was lawful under the "plain-view" doctrine. *See id.* at 634, 873 S.E.2d at 311 (first citing State v. Grice, 367 N.C. 753, 756–57, 767 S.E.2d 312, 316 (2015); and then citing Minnesota v. Dickerson, 508 U.S. 366, 375 (1993)).

44. *Id.* at 635, 873 S.E.2d at 311 (Barringer, J., concurring in part and concurring in the result).

45. *Id.*

46. *Id.*

47. *Id.* at 642, 873 S.E.2d at 316 (Earls, J., dissenting).

48. *Id.* at 642–43, 873 S.E.2d at 316.

49. *See id.* at 638–42, 873 S.E.2d at 313–16 (stating that *Wilson*'s definition of "occupant" under *Summers* "jettisons [the] spatial dimension" of the rule).

50. *Id.* at 642, 873 S.E.2d at 316.

51. *Id.* (quoting State v. Tripp, 275 N.C. App. 907, 918, 853 S.E.2d 848, 856 (2020), *rev'd*, 381 N.C. 617, 873 S.E.2d 298).

52. *Id.*

53. *Id.* (quoting State v. Butler, 331 N.C. 227, 233, 415 S.E.2d 719, 722 (1992)).

BRIEF ANALYSIS AND POTENTIAL IMPACT

In *Tripp*, the Supreme Court of North Carolina potentially created powerful precedent giving police officers more discretion to detain and search individuals without a specific warrant despite Fourth Amendment protections. However, the reach of the plurality opinion and its impact will depend on which opinion later courts find binding. Under the narrowest grounds test, when a majority of justices cannot agree on an issue, "the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds."[54] Here, Justice Barringer's concurrence would govern since it decided the case solely on *Terry* grounds without any discussion of *Summers* or *Bailey*.[55] If Justice Barringer's concurrence governs, there would be little erosion of Fourth Amendment rights based solely on being within sixty yards of the premises of a search warrant, since the decision was grounded squarely in preexisting law.

Further, based on Justice Barringer's reasoning, was the plurality's discussion of *Summers* and *Bailey* even necessary? Or did the court attempt to expand the power of police officers for no reason?[56] Justice Barringer's concurrence stands for the common-sense proposition that if police are justified to search a suspect, then they are also justified to detain that suspect.[57] This conclusion seems logical since the suspect would have to be at least momentarily detained so that an officer could perform the search. Even Justice Earls, in her dissent, recognized this proposition[58] and stated that "it is at least plausible . . . that both the detention and search could independently have been justified under *Terry*."[59] Under this logic, the plurality's analysis of *Summers* and *Bailey* was completely unnecessary. Thus, the plurality may have acted imprudently when it created unnecessary law that would significantly impact an individual's Fourth Amendment rights. The concurrence walked the fine line between

54. Ramos v. Louisiana, 140 S. Ct. 1390, 1403 (2020) (quoting Marks v. United States, 430 U.S. 188, 193 (1977)); *see also* State v. Ortiz-Zape, 367 N.C. 1, 7, 743 S.E.2d 156, 160–61 (2013); Justin Marceau, *Argument Preview: Narrowing the "Narrowest Grounds" Test, or Simply Interpreting a Federal Statute?*, SCOTUSBLOG (Mar. 20, 2018, 10:42 AM), https://www.scotusblog.com/2018/03/argument-preview-narrowing-narrowest-grounds-test-simply-interpreting-federal-statute/ [https://perma.cc/2X9L-UUUF].

55. *See Tripp*, 381 N.C. at 635, 873 S.E.2d at 311 (Barringer, J., concurring in part and concurring in the result).

56. *See* Justin Swaim, Case Note, Bailey v. United States*: The Supreme Court's Futile Attempt at Setting Boundaries Around a Borderless Rule*, 60 LOY. L. REV. 355, 379–84 (2014) (arguing that *Bailey*'s exception is meaningless since a *Terry* stop will be justified in almost all *Summers* situations).

57. *See* Anne Marie Lyons, Case Comment, *Dilution of the Probable Cause Mandate of the Fourth Amendment*, 16 SUFFOLK U. L. REV. 805, 816–17 (1982).

58. *See Tripp*, 381 N.C. at 637, 873 S.E.2d at 313 (Earls, J., dissenting) ("[F]or *Summers* and *Bailey* to have any substantive meaning, these cases must authorize the detention of an individual who is not reasonably suspected of being armed and dangerous—otherwise, [they] are just another way of characterizing actions that already justify a search under *Terry*.").

59. *Id.* at 636, 873 S.E.2d at 312.

protecting an individual's Fourth Amendment rights and allowing officers to safely execute a legal warrant by maintaining the status quo under current *Summers*, *Bailey*, and *Terry* jurisprudence.

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