

12-07: Protective Sweep of Homes

Case: Hernandez v. State, 2012 WL 4738862 (Fla. 5th DCA 2012).

Date: October 5, 2012

Subject: Protective Sweep of Homes

FACTS: Hernandez shared an apartment with his girlfriend, Romero. Romero reported to the police that she had been beaten. When officers arrived, Romero was outside the apartment, and she advised the officers that she had escaped. The officers then saw Hernandez, in a public area of the complex, walking quickly toward his apartment. The officers lost sight of Hernandez, but believed he had entered his apartment. The officers surrounded the apartment, intending to arrest Hernandez. Romero cautioned the officers that Hernandez owned several guns and did not intend to be taken alive. The officers never sought a warrant, but entered the apartment an hour later, with Romero's consent. Before the officers entered, Romero warned them that one room in the apartment was locked, and Romero was not allowed to enter that room. The officers entered and found the locked room, but did not find Hernandez outside of the locked room. An officer forced his way into the locked room as part of a protective sweep. The officer did not find Hernandez in the room, but he saw marijuana. Based on this observation, the officer obtained a search warrant for drugs, which ultimately revealed cocaine and paraphernalia in other areas of the apartment. Hernandez was charged with trafficking, and he filed a motion to suppress. Hernandez argued that the warrantless search of the locked room violated the Fourth Amendment. The trial court denied the motion, but the appellate court reversed and suppressed the evidence.

RULING: Officers cannot engage in a "protective sweep" of a home if the entry to the home is based solely on consent and the officers knew of any dangers before they entered the home.

DISCUSSION: Romero could lawfully consent to a search of the apartment because she lived there with Hernandez. However, Romero could not consent to a search of the locked room, under circumstances where she told the officers that she never entered the room and had no permission to do so. The State conceded that point, but argued that the entry into the room was a "protective sweep" for officer safety.

When a protective sweep occurs as part of a warrant, or during an exigent entry, four requirements must be met: (1) the police enter the home legally, for a legitimate law enforcement purpose, (2) the sweep is supported by reasonable suspicion that a dangerous individual is on scene, (3) the sweep is cursory, i.e. not a "full search", and (4) the sweep cannot last any longer than necessary. All of those elements were met in this case, but the sweep occurred during a consensual search. When entry is based solely on consent, a protective sweep is allowed only if officers learn of the danger *after* they enter the home. Here, the officers understood the danger *before* they entered the apartment: they knew about the locked room, they knew about Hernandez's violent tendencies, and they knew about his guns. Because of that knowledge, the officers could not use a "protective sweep" as the basis for searching the room. To enter the locked room, the officers needed a warrant, or an exigency, or the consent of someone authorized to enter.

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Officers should consult with their agency legal advisors to confirm the interpretation provided in this Update and to determine to what extent the case discussed will affect their activities