

10-08: Protective Sweep

Case: McKibben v. State, 35 FLW D2527b (Fla. 1st DCA 11/17/10)

Date: November 17, 2010

Subject: Based upon facts articulated at the hearing, officers were entitled to conduct a protective sweep while executing an arrest warrant in a home, even though the warrant related to a non-violent offense. Marijuana plants discovered during the sweep were admissible.

FACTS: Police arrived at McKibben's home to serve an arrest warrant on McKibben's roommate. Shortly after one officer knocked on the door, another officer saw what appeared to be a male subject peek out the window. He alerted the first officer that he had seen a male subject, but moments later the door was answered by the female roommate, who was the subject of the arrest warrant. The officers informed the female that she was to be arrested, after which she requested to return inside the premises (a single-wide mobile home) to retrieve some shoes and clothing. The officers agreed and accompanied her inside. The female advised the officers that no one else was home, but they observed her making repeated glances down the hall "as if she was looking at someone or looking to see if someone was there." This prompted the officers to announce their presence, and request that anyone else in the residence show themselves. One of the officers then proceeded down the narrow hallway to check for any other occupants. Both officers testified at the hearing that the small size of the mobile home would allow a hostile person to easily attack or shoot them. After entering one bedroom, an officer observed fluorescent lighting and several potted plants in a closet, which he suspected to be cannabis. He checked the other rooms, found no other occupants, and returned to the living room. McKibben was subsequently arrested for cultivation of marijuana. He moved to suppress the cannabis plants, arguing that they were discovered during an unlawful, warrantless search of his home. The trial court denied the motion, and McKibben appealed.

RULING: The First District Court of Appeal, relying on *Maryland v. Buie*, 494 U.S. 325 (1990), agreed with the trial court and upheld the admissibility of the cannabis plants, finding that they were discovered during a valid "protective sweep" of the residence.

DISCUSSION: In *Buie*, the U.S. Supreme Court held that "incident to arrest, officers could, as a precautionary matter and without probable cause or reasonable suspicion, look in closets and other spaces immediately adjoining the place of arrest from which an attack could be immediately launched." However, the court held that to look beyond that required "articulable facts which, taken together with the rational inferences from those facts, would warrant a reasonable prudent officer in believing that the area to be swept harbors an individual posing a danger to those on the arrest scene." *Buie* at 334. The court further described limitations on protective sweeps, stating that "such a protective sweep, aimed at protecting the arresting officers, if justified by the circumstances, is nevertheless not a full search of the premises, but may extend only to a cursory inspection of those spaces where a person may be found. The sweep lasts no longer than is necessary to dispel the reasonable suspicion of danger and in any event no longer than it takes to complete the arrest and depart the premises." (Emphasis added) *Id.* at 335. In the instant case, the First DCA held that the facts, as articulated by the arresting officers, satisfied the requirements of *Buie*. Both officers believed that the small residence harbored an individual posing a danger to them, the sweep was a cursory inspection of the rooms accessed by the hallway where the female arrestee was continually glancing, and the search lasted no longer than

was necessary to dispel the reasonable suspicion of danger. The court also found that the validity of the sweep was not affected by the fact that the charges for which the female was being arrested were non-violent in nature, quoting *U.S. v. Colbert*, 76 F. 3d 773 (6th Cir.1996) for the proposition that "(t)he facts on which officers may justify a *Buie* protective sweep are those facts giving rise to a suspicion of danger from attack by a third party during the arrest, not the dangerousness of the arrested individual." *Colbert* at 777.

COMMENTS: As explained by the Supreme Court in *Buie*, the right of officers to conduct a protective sweep throughout an entire home incident to the arrest of an occupant is not automatic or unlimited; rather, officers are limited to searching only those areas "immediately adjoining the place of arrest," unless they can reasonably articulate why they believed that other individuals may be present and posing a danger to them. The evidence in this case was preserved because the officers were able to articulate, to the satisfaction of the court and in compliance with *Buie*, exactly why they believed that a more extensive search of the premises was required.

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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.