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Observations of Several Officers Taken as a Whole Can Establish the Articulable Facts Necessary to Justify a Protective Sweep of an Area Not Immediately Adjacent to an Arrest Site, but the Area Searched Must Be Determined with Regard to the Exigencies of the Situation: *Commonwealth v. Taylor*

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Observations of Several Officers Taken as a Whole Can Establish the Articulable Facts Necessary to Justify a Protective Sweep of an Area Not Immediately Adjacent to an Arrest Site, but the Area Searched Must be Determined With Regard to the Exigencies of the Situation: *Commonwealth v. Taylor*

CRIMINAL PROCEDURE — WARRANTLESS SEARCHES — FOURTH AMENDMENT — PROTECTIVE SWEEPS — ZONE OF IMMEDIATE CONTROL — STOP AND FRISK — The Pennsylvania Supreme Court held the facts articulated by several police officers demonstrated that a search of the basement of a convenience store, not described in the warrant for the search of the store, was a valid protective sweep justified by the reasonable safety fears of the police officers. The court further held that a pill bottle removed from an individual's pocket while conducting a legal quick frisk of the individual was justified because the officer believed the bottle to be a weapon. However, the court held that contraband found in the coats of two individuals in the basement was not admissible as evidence because the coats were outside of the zone of the individuals' immediate control.

Commonwealth v. Taylor, 771 A.2d 1261 (Pa. 2001)

On January 20, 1995, the Duquesne Police Department executed a search warrant authorizing the search of the G Service Convenience Store at 418 Crawford Avenue.[1] The search warrant was issued upon information gathered through surveillance of the G Service Convenience Store and a confidential informant's controlled purchase of crack cocaine from the store.[2]

Prior to entering the store, Officer Richard Scott Adams saw Anthony Taylor and John Mahone[3] enter the store on the first level.[4] Upon entering the store, police encountered only Eric

1. Commonwealth v. Taylor, 771 A.2d 1261. 1264 (Pa. 2001).

2. *Id.*

3. *Id.* at 1268. The caption in full reflects that this appeal is the consolidation of two appeals, that of Anthony Taylor, and that of John Mahone, Jr. *Id.* at 1261.

4. *Id.* at 1268.

Gooden, with a large quantity of crack cocaine.[5] Officer Adams and another officer then proceeded down a set of stairs into the basement of the building where they found Mahone cutting Taylor's hair.[6] Noticing Taylor's hands moving under the apron he was wearing, and fearing that Taylor could be reaching for a weapon, Officer Adams removed the apron and patted Taylor's pocket.[7] Feeling a hard object in Taylor's pocket, Officer Adams removed what turned out to be a pill bottle filled with crack cocaine.[8] After both Mahone and Taylor were handcuffed, Constable Gordon McIntyre searched their coats, which were draped over a chair approximately ten feet from the men.[9] The search of the coats revealed more crack cocaine in Taylor's coat and several bags of marijuana in Mahone's coat.[10]

Taylor and Mahone were charged with possession of a controlled substance and possession of a controlled substance with intent to deliver.[11] Subsequently, they filed motions to suppress the evidence seized from them during the search of the basement of the G Service Convenience Store.[12] The suppression court held that the search of Taylor and Mahone in the basement of the store had exceeded the scope of the warrant, which was issued for the search of the G Service Convenience Store, and accordingly suppressed the evidence.[13] Believing that the suppression of the evidence substantially handicapped its case, the Commonwealth certified that fact in good faith and appealed to the superior court.[14] In reversing the decision of the suppression court, the superior court held that although the search of the basement was in fact outside the scope of the warrant as issued, the search of the basement was valid as a protective sweep of the premises after the arrest of Gooden.[15]

The Pennsylvania Supreme Court granted the petitions of Taylor

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5. *Id.* at 1264. Gooden is not a party to this appeal.

6. *Taylor*, 771 A.2d at 1264. The basement also contained some hair-cutting equipment and one barber's chair in addition to the barber's chair that Taylor was sitting in. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. *Taylor*, 771 A.2d at 1265.

12. *Id.*

13. *Id.*

14. *Id.* Pennsylvania Rule of Appellate Procedure 311(d) provides in pertinent part, "in a criminal case . . . the Commonwealth may take an appeal as of right from an order that does not end the entire case where the Commonwealth certifies in the notice of appeal that the order will . . . substantially handicap the prosecution." Pa.R.A.P. 311(d).

15. *Taylor*, 771 A.2d at 1265.

and Mahone for Allowance of Appeal to determine whether the searches conducted in the basement of the G Service Convenience Store were outside the scope of the warrant, and if they were, whether they were reasonable within the meaning of the Fourth Amendment to the United States Constitution.[16] Justice Newman delivered the opinion of the court, which held that the searches conducted in the basement of the convenience store were outside the scope of the warrant.[17] The court went on to hold that the search of the basement was valid as a protective sweep subsequent to the arrest of Gooden, and that the pill bottle confiscated from Taylor was discovered during a valid *Terry*[18] frisk, thus upholding these aspects of the superior court's decision.[19] The majority further held, however, that the search of the coats could not be upheld as a valid search incident to arrest and the evidence discovered in the coats was correctly suppressed, thus reversing that aspect of the superior court's decision.[20]

The court first addressed the issue of whether the search of the basement was outside the scope of the warrant.[21] The warrant executed by the Duquesne Police Department was valid for the search of the G Service Convenience Store, but the affidavit of probable cause upon which it was issued made no mention of the basement barbershop.[22] Justice Newman agreed with the suppression court that the basement barbershop was a separate entity from the G Service Convenience Store, and that without the existence of probable cause to believe that there was drug activity in the basement, the barbershop was outside the scope of the warrant.[23] The majority, however, went on to hold that because the police may have reasonably believed that they were in danger of harm from other persons on the premises, the basement, being the only access to the store other than the front entrance, could be

16. *Id.* at 1265. The Fourth Amendment of the United States Constitution provides, in pertinent part, that "[t]he right of the people to be secure in their persons . . . against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause . . . and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. amend. IV.

17. *Taylor*, 771 at 1266.

18. Terry v. Ohio, 392 U.S. 1 (1968). The Court held in *Terry* that a police officer may conduct a quick search of a person that he fears may be carrying a weapon in order that the officer may find such weapon. *Id.*

19. *Taylor*, 771 A.2d at 1273.

20. *Id.* at 1273.

21. *Id.* at 1265.

22. *Id.*

23. *Id.* at 1266.

lawfully searched as a protective sweep.[24] The court further stated that the reasonable belief that the officers were in danger must be based on articulable facts, considered along with the inferences that can be drawn from those facts that would cause a reasonably prudent officer in similar circumstances to believe the same.[25] That standard was satisfied in this case, Justice Newman stated, because Officer Adams saw Taylor and Mahone enter the store, but when the police entered, Taylor and Mahone were not present on the first floor.[26]

After determining that the search of the basement was a valid protective sweep, the court turned its attention to the validity of the search of Taylor. The majority first stated that if a police officer reasonably believes that a suspect is carrying a dangerous weapon, the officer may conduct a quick frisk of the suspect in order to find the weapon.[27] The court found that because Taylor continued reaching for his pocket underneath the apron he was wearing, despite repeated warnings from Officer Adams to stop moving, Officer Adams was justified in touching Taylor's pocket to determine if he had a weapon.[28] Further, the Justice Newman reasoned that Officer Adams was justified in pulling what turned out to be a pill bottle from Taylor's pocket because, although the purpose of a quick frisk is not to discover evidence,[29] Officer Adams believed the pill bottle may have been a weapon.[30]

After finding that both the search of the basement and of Taylor were valid, the court examined the validity of the searches of Taylor and Mahone's coats that were hanging approximately ten feet from the men who had already been handcuffed and secured.[31] Justice Newman first established that, incident to arrest, a police

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24. *Taylor*, 771 A.2d at 1266. The court went on to explain that there are two levels of protective sweeps. *Id.* at 1267. The first allows police to make visual inspections of areas adjacent to the arrest scene that could hide an attacker without even reasonable suspicion. *Id.* The second, which the search of the basement falls into, allows police, upon articulation of specific facts that give rise to a reasonable fear for their safety, to search areas further away from the place of arrest for possible attackers. *Id.*

25. *Id.* at 1267-68.

26. *Id.* at 1268.

27. *Id.* at 1268-69.

28. *Taylor*, 771 A.2d at 1269.

29. *Id.* at 1269. The court explained that under the "plain feel" doctrine, an officer is justified in removing from a suspect's person an object that the officer knows to not be a weapon only when it is immediately apparent when conducting the quick frisk that the object is contraband. *Id.* at 1269 n.4 (citing Minnesota v. Dickerson, 508 U.S. 366, 375-76 (1993)).

30. Taylor, 771 A.2d at 1269.

31. *Id.* at 1271.

officer may conduct a search of those areas within the immediate control of the arrestee.[32] As the court explained, the limits of the area within the immediate control of the arrestee are determined through an examination of the exigencies that justify the initiation of the search.[33] Here, Taylor and Mahone had been handcuffed and secured ten feet from where the coats were hanging.[34] The court concluded that because the coats were well beyond the reach of Taylor and Mahone, and because there was no reason for the police to believe that either Taylor or Mahone would attempt to destroy contraband or secure a weapon from the coats, the coats were not in an area within the immediate control of the arrestees and thus the search of the coats was invalid.[35]

In a concurring and dissenting opinion, Justice Nigro wrote that he agreed with the judgment of the court that the search of the basement was outside the scope of the warrant.[36] He disagreed, however, with the judgment of the court that the search of the basement was valid as a protective sweep.[37] In Justice Nigro's opinion, the police officers did not articulate facts sufficient to justify a reasonable belief that they were in danger from anyone who might be hiding in the basement.[38] Furthermore, even if he conceded that the search of the basement was a valid protective sweep, Justice Nigro concluded that once Officer Adams, while patting Taylor's pocket, determined that the object in the pocket was not a gun or a knife, he was not justified in removing the pill bottle from Taylor's pocket.[39]

All searches and seizures without a warrant are not necessarily in violation of the Fourth Amendment because the Fourth Amendment protects against unreasonable searches and seizures only.[40] The United States Supreme Court in *Terry v. Ohio* expressly carved one of the first exceptions to the warrant requirement of the Fourth Amendment out.[41] Terry was convicted of carrying a concealed weapon after he was stopped and frisked by a police

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32. *Id.*
33. *Id.*
34. *Id.* at 1272.
35. *Taylor*, 771 A.2d at 1273.
36. *Id.* (Nigro, J., concurring in part and dissenting in part).
37. *Id.* at 1274 (Nigro, J., concurring in part and dissenting in part).
38. *Id.* (Nigro, J., concurring in part and dissenting in part). Justice Nigro stated that the Commonwealth's witnesses explained only that they entered the basement because it was easily accessible to the convenience store. *Id.* at 1274 n.2 (Nigro, J., concurring in part and dissenting in part).
39. *Id.* at 1275 n.5 (Nigro, J., concurring in part and dissenting in part).
40. *See* Terry v. Ohio, 392 U.S. 1, 9 (1968).
41. *Terry*, 392 U.S. at 9.

officer that suspected that Terry, along with two other men, might be contemplating the robbery of a store.[42] The officer stopped the three men, identified himself as a police officer, and asked them for their names.[43] Not having received a satisfactory response to his question, the officer took hold of Terry and proceeded to pat down the outside of his clothing.[44] Feeling a gun in the pocket of Terry's coat, the officer removed the coat and took the gun from the pocket.[45]

The *Terry* Court characterized the issue as "whether it is always unreasonable for a policeman to seize a person and subject him to a limited search for weapons [when the officer does not have] probable cause for an arrest."[46] To determine whether the search conducted by the officer on Terry was reasonable, the United States Supreme Court stated that it was necessary to weigh the government's interest in performing the search against an individual's right to be secure in their person.[47] The majority held that when a police officer observes conduct which arouses reasonable suspicion that a person may be engaged in criminal behavior, and after reasonable inquiries is not relieved of his reasonable fear for his safety or the safety of others, the officer may conduct a pat down of the outer clothing of the individual to discover any weapons that the person may be carrying, without violating the Fourth Amendment.[48] The Court did not discuss the limitations of its holding; rather, it left them to be developed in

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42. *Id.* at 4-7. The officer witnessed Terry and another man, joined at one point by a third man, walking back and forth in front of a store window approximately a dozen times, each time stopping to peer in the store window and then briefly engaging in conversation before repeating the same motions. *Id.* at 4-7.

43. *Id.* at 6-7.

44. *Id.* at 7.

45. *Id.* The officer then went on the pat down the other two men, finding a gun in the pocket of one of their coats, but no weapons on the other. *Id.* The officer testified that he was only patting the men down to determine if they had weapons and only placed his hands under the garments of the men after he felt their guns. *Id.*

46. *Terry*, 392 U.S. at 15. The Court explained that when a police officer stops an individual and restrains his freedom to walk away, the officer has seized that person. *Id.* at 16. The Court then determined that the officer had "seized [Terry] and subjected him to a 'search' when he took hold of him and patted down the outer surfaces of his clothing." *Id.* at 19.

47. *Id.* at 20-21. The Court cautioned that the government's interest in performing the search is more than that of simply investigating crime; it is also that of the police officer being able to take steps to be sure that the person with whom he is dealing does not possess a weapon that could be used against him. *Id.* at 23.

48. *Id.* at 30-31. The Court stated that reasonable suspicion must be judged against an objective standard of whether, with the facts available to the officer at the time his suspicion is aroused, an officer of reasonable caution would believe that the actions taken were appropriate; simple good faith is not sufficient. *Id.* at 21-22.

later cases.[49]

In *United States v. Cortez*[50] the Court was faced with the problem of how it should determine whether a law enforcement official has reasonable suspicion to stop a person.[51] In this case, border patrol officers stopped a truck driven by Cortez that they suspected was transporting illegal aliens into the United States from Mexico.[52] In the back of the truck, the officers found six illegal aliens, and therefore proceeded to arrest Cortez for the transportation of illegal aliens.[53] Cortez argued that the officers did not have proper cause to stop his vehicle based on simply the circumstantial evidence and inferences from it that the officers had made.[54]

The *Cortez* Court explained that reasonable suspicion should be determined from the totality of circumstances, and based upon the whole picture, the officer conducting a stop must have an objective basis for believing that the person being stopped is involved in criminal activity.[55] The majority then held that the border patrol officers had reasonable suspicion that the truck they stopped was involved in criminal activity, and thus, based upon the totality of the evidence they had, and the inferences they could draw therefrom, they were justified in stopping the truck.[56]

The United States Supreme Court was again required to revisit its stop-and-frisk doctrine in *Minnesota v. Dickerson*.[57] The issue in this case was whether a police officer may seize items other than weapons found on a person while conducting a valid pat-down search for weapons.[58] The majority held that if, during the course

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49. *Id.* at 29.

50. 449 U.S. 411 (1981).

51. *Cortez*, 449 U.S. at 412-13.

52. *Id.* at 415. The Court first discussed a substantial amount of circumstantial evidence that the border patrol officers had gathered over a 2-month period of investigating the suspected transporting of illegal aliens into the United States. *Id.* at 413-15. The evidence was discussed to lay a foundation for the inference that the officers had drawn from it, which was that the truck that they stopped would contain the answers to their 2-month investigation. *Id.*

53. *Id.* at 416.

54. *Id.*

55. *Id.* at 417-18.

56. *Cortez*, 449 U.S. at 421-22.

57. 508 U.S. 366 (1993).

58. *Dickerson*, 508 U.S. at 373. Dickerson was stopped by police officers upon reasonable suspicion and subjected to a valid patdown search. *Id.* at 368-69. During the course of the search, the officer conducting the search felt a lump in Dickerson's pocket. *Id.* at 369. The identity of the lump not being immediately apparent, the officer proceeded to manipulate it with his fingers until he was satisfied that it was crack cocaine wrapped in cellophane. *Id.* The officer then removed the crack and arrested Dickerson for possession of

of a valid pat-down search, the officer feels an object whose identity is immediately apparent as contraband, the officer is justified in removing the object and using it as evidence against the individual.[59] The Court explained that, while the purpose of a pat-down search of this type is only to discover weapons, not to discover evidence of criminal behavior,[60] an object felt during the course of a pat-down search that is immediately identified as contraband by the officer may be seized without a warrant upon the same justifications that support the plain-view doctrine.[61]

The Pennsylvania Supreme Court had occasion to review a case dealing with the "stop-and-frisk" and "plain feel" doctrines in *Commonwealth v. Graham*.[62] While executing an arrest warrant for one of Graham's companions, a police officer saw a bulge in Graham's front pocket.[63] Concerned for his safety, the officer patted Graham down, and in the course of doing so the officer shined a flashlight into Graham's back pocket and saw a Lifesavers Holes bottle filled with crack cocaine, removed it, and arrested Graham for possession of crack cocaine.[64]

After determining that the police officer was justified in performing a protective pat-down search of Graham to alleviate his concern for his safety,[65] the court went on to find that the officer had exceeded the scope of a permissive pat-down search when he shined the flashlight into Graham's pocket and saw the Lifesavers Holes bottle.[66] The court held that once the pat-down reveals that a person is not carrying a weapon, any subsequent manipulation of items in the person's clothing is outside the scope of a valid protective pat-down search.[67] The court further held that the plain-feel doctrine will only support the seizure of items that are immediately known to the officer as contraband based solely on the officer's initial pat down of a person without the aid of a

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a controlled substance. *Id.*

59. *Id.* at 375-76.

60. *Id.* at 373.

61. *Id.* at 375-76. "[The] [p]lain-view doctrine [is a] rule permitting a police officer's warrantless seizure and use as evidence of an item observed in plain view from a lawful position or during a legal search when the officer has probable cause to believe that the item is evidence of a crime." BLACK'S LAW DICTIONARY 938 (7th ed. 1999).

62. 721 A.2d 1075 (1998).

63. *Graham*, 721 A.2d at 1076.

64. *Id.* at 1076-77. The officer had ascertained the bulge in Graham's front pocket to be money, and in continuing the search felt what he believed to be a Lifesavers Holes bottle in Graham's back pocket. *Id.* at 1076.

65. *Id.* at 1077.

66. *Id.* at 1079-80.

67. *Id.* at 1082.

flashlight or other such items.[68]

In *Chimel v. California*,[69] the United States Supreme Court was required to examine the scope of a search incident to a valid arrest.[70] In this case, police officers arrived at the home of Chimel in order to execute a warrant for his arrest.[71] After giving the warrant to Chimel, the officers asked him if they could search his home, telling him that because he had been lawfully arrested they would search the home with or without his consent.[72] The officers then proceeded to search the entire house, directing Chimel's wife to open drawers and move the contents of them so that the officers might find evidence of the crime for which Chimel was being arrested.[73]

The Court framed the issue as "whether the warrantless search of the petitioner's entire house can be constitutionally justified as incident to [a lawful] arrest."[74] The majority held that the warrantless search of petitioner's entire house cannot be constitutionally justified as a search incident to a lawful arrest.[75] The Court explained that this limitation is necessary because the justification of a search incident to arrest is to discover weapons or evidence that may be destroyed by the arrestee if not found at the time of arrest.[76] The opinion then extended, under the same justification, the scope of a search incident to arrest to include the area within the arrestee's immediate control from which he might be able to acquire a weapon or destructible evidence.[77]

Although the United States Supreme Court had already examined the scope of a search of a person incident to a valid arrest,[78] the Court did not expressly establish an exception to the warrant requirement of the Fourth Amendment for such a search until *United States v. Robinson*.[79] The validity of a search of a person

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68. *Graham*, 721 A.2d at 1082.

69. 395 U.S. 752 (1969).

70. *Chimel*, 395 U.S. at 753. Although this case was decided before *Robinson* the search incident to arrest exception had been regarded as settled and remained unchallenged until *Robinson*, in which the Court expressly set the exception forth. United States v. Robinson, 414 U.S. 218, 224 (1973).

71. *Chimel*, 395 U.S. at 753.

72. *Id.* at 753-54.

73. *Id.* at 754. The search lasted between 45 minutes and an hour to complete and the items taken from Chimel's house were introduced as evidence at his trial. *Id.*

74. *Id.* at 755.

75. *Id.* at 768.

76. *Chimel*, 395 U.S. at 763.

77. *Id.* at 763.

78. *Id.*

79. 414 U.S. 218 (1973).

incident to a lawful arrest had been regarded as settled from its first enunciation, however, the validity of such a search had not been challenged until this case.[80] The issue in this case was whether, after a valid arrest, the arresting officer may subject the arrestee to a search of his person in order to discover either weapons or evidence of a crime.[81] The Court explained that a search of a person incident to a lawful arrest is necessary not only to protect the arresting officer from any weapons that the arrestee may be carrying, but also to preserve evidence on his person that may be destroyed if not found when the officer places him under arrest.[82] The majority held that "in the case of a lawful custodial arrest a full search of the person is not only an exception to the warrant requirement of the Fourth Amendment, but is also a 'reasonable' search under that Amendment."[83]

The Pennsylvania Supreme Court, in *Commonwealth v. Norris*,[84] recognized the exigency created by hidden third parties during an arrest.[85] Norris was arrested by police officers in his apartment, which a woman across the hall had told the police was occupied by both Norris and his brother.[86] Norris was arrested in the living room of the apartment, but his brother's presence was unaccounted for in that room.[87] The court stated that it could not expect the officers to refrain from looking in the bedrooms of the apartment when they had reason to believe that they may be in danger from a person concealed therein.[88] The whereabouts of Norris' brother being uncertain, the court held that the officers had a right, due to the exigencies of the situation, to search the bedrooms of the apartment in order to determine whether Norris' brother was hiding

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80. *Robinson*, 414 U.S. at 224. Robinson was arrested for operating a motor vehicle after revocation of his license and for obtaining a permit through misrepresentation. *Id.* at 220. After arresting Robinson, the arresting officer proceeded to conduct a search of Robinson's person. *Id.* at 222. During the search, the officer felt a crumpled up cigarette pack in Robinson's pocket, removed it, opened it and discovered a quantity of heroin inside which was admitted as evidence at Robinson's trial. *Id.* at 223.

81. *Id.* at 223-24.

82. *Id.* at 234.

83. *Id.* at 235.

84. 446 A.2d 246 (Pa. 1982).

85. *Norris*, 446 A.2d at 248.

86. *Id.* at 248. Norris was suspected of raping a twelve-year old girl, who gave a description of the apartment building where Norris could be found. *Id.* at 247-48. The entry into Norris' apartment and the arrest made thereupon entering the apartment were made without a warrant, but the court determined that the officers were justified in both entering the apartment and arresting Norris due to the exigency of the situation. *Id.* at 248.

87. *Id.* at 249.

88. *Id.* The court stated that the officers also had every reason to believe that a firearm was available to the occupants of the apartment. *Id.*

in one of the rooms, in order to keep the officers safe from danger.[89]

The United States Supreme Court established a further extension of the search incident to arrest exception to the Fourth Amendment, the protective sweep, in *Maryland v. Buie*.[90] Police officers executed an arrest warrant for Buie at his home.[91] During the search, one of the officers twice yelled into the basement for anyone down there to come out; a voice from the basement asked who was yelling, and finally, after the officer identified himself three times, Buie emerged from the basement.[92] Subsequently, another officer entered the basement to make sure that no one else was down there.[93] In the basement, the officer found a red sweat suit that Buie had been suspected of wearing during the robbery for which he was being arrested for, and the sweat suit was introduced as evidence at Buie's trial.[94]

The Court framed the issue as "what level of justification the Fourth Amendment required before [the officer] could legally enter the basement to see if someone else was there."[95] The Court explained that police officers have a legitimate interest in being sure that a house in which a person has just been, or is just being, arrested does not contain individuals who may pose a danger to the officers effectuating the arrest.[96] The Court went on to hold that without probable cause or reasonable suspicion, an officer conducting a lawful arrest may look in spaces immediately adjoining the place of arrest in which an assailant could be hiding; this is a level one protective sweep.[97] The Court further held, however, that beyond the above stated places, there must be articulable facts that cause an officer to reasonably believe that the area to be searched as a protective sweep contains individuals that pose a danger to those on the scene of the arrest; this is a level two protective sweep.[98] The Court cautioned, however, that a protective sweep lasts no longer than is necessary to remove an

89. *Id.*

90. 494 U.S. 325 (1990). A protective sweep is "a police officer's quick and limited search — conducted after the officer has lawfully entered the premises — based on a reasonable belief that such a search is necessary to protect the officer or others from harm." BLACK'S LAW DICTIONARY 992 (7th ed. 1999).

91. *Buie*, 494 U.S. at 328.

92. *Id.* at 328.

93. *Id.*

94. *Id.*

95. *Id.* at 330.

96. *Buie*, 494 U.S. at 333.

97. *Id.* at 334.

98. *Id.*

officer's reasonable suspicion of danger.[99]

The court's holding in *Commonwealth v. Taylor* followed long-standing precedent regarding the validity of warrantless searches under the Fourth Amendment. The Pennsylvania Supreme Court reaffirmed the validity of a protective sweep incident to arrest first established by the United States Supreme Court in *Buie.* Examining both levels of sweeps established by *Buie*, the court determined that the search of the basement in this case fit the second level of sweep, and thus required the articulation of specific facts upon which a reasonable fear for the safety of the police officers could be justified.[100]

With the holding in *Taylor*, it seems that the court changed the requirements for a level two protective sweep set forth in *Buie* by allowing testimony of several officers taken together as a whole to serve as the articulable factual basis for justifying the sweep. The *Buie* Court explained that a protective sweep of the type conducted in the present case is justified if *the officer conducting the sweep* can articulate specific facts that give rise to a reasonable fear for the safety of the officer.[101] The *Taylor* court however, considered facts offered through the testimony of several officers, including officers who were not involved in conducting the sweep, to justify its initiation.[102]

The Pennsylvania Supreme Court followed precedent on the long-standing principle of the "stop-and-frisk" first established by the United States Supreme Court in *Terry.* With its holding in *Taylor*, the court reassured police officers that they are entitled to exercise discretion as to whether they should conduct a quick frisk of a person who they believe may be carrying a weapon that could pose a threat to the officer while conducting his or her duties.

Although the court held that Officer Adams was justified in removing the pill bottle from Anthony Taylor's pocket, others might disagree.[103] It seems that since the pill bottle was not immediately recognizable to Officer Adams as contraband, the seizure of the pill bottle should have been handled under the plain-feel doctrine set forth by the United States Supreme Court in *Dickerson.* The Court declined, however, to enter into a plain-feel doctrine analysis in

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99. *Id.* at 335.

100. *Taylor*, 771 A.2d at 1266-67.

101. *Buie*, 494 U.S. at 334 (emphasis added).

102. *Taylor*, 771 A.2d at 1268.

103. *Id.* at 1275. Justice Nigro argues that once Officer Adams determined that the object in Anthony Taylor's pocket was not a gun or a knife; he was not justified in removing the pill bottle. *Id.* (Nigro, Zappala, JJ. and Flaherty, C.J., concurring and dissenting).

this case because Justice Newman found that Officer Adams reasonably believed that the object in Anthony Taylor's pocket was a weapon.[104]

Finally, the highest court of Pennsylvania reaffirmed the limits of the area within the immediate control of a person that may be searched incident to a valid arrest. The holding in *Taylor* cautions police officers that the area that may be searched incident to a valid arrest is circumscribed by the exigencies of the situation.

Whether or not one agrees with every aspect of the court's holding in *Taylor*, the court's decision was based on firmly established precedent and will be useful in several ways. First, it reassures police officers that they may exercise reasonable discretion in ascertaining whether a person they suspect of being involved in criminal activity is carrying a weapon. Second, it allows the use of facts gathered by several officers at the scene of a search to serve as the basis for a protective sweep. Finally, it affirms the principle that although a person has been subjected to a legal arrest, he still retains some rights under the Fourth Amendment, and police officers must determine the area to be searched incident to arrest with due regard to the exigencies of the situation.

Barry J. Clegg

104. *Id.* at 1269 n.4.