

FOURTH AMENDMENT--SEARCH AND SEIZURE--LAW ENFORCEMENT OFFICERS MAY CONDUCT A "PROTECTIVE SWEEP" OF AN ARRESTEE'S HOME WHEN THE OFFICERS POSSESS A REASONABLE SUSPICION THAT THE AREA TO BE SWEEP HARBORS INDIVIDUALS WHO POSE A DANGER TO THOSE ON THE ARREST SCENE--*Maryland v. Buie*, 110 S. Ct. 1093 (1990).

The United States Supreme Court recently expanded the established fourth amendment principle that law enforcement officials, absent a search warrant, may search only the area within an arrestee's immediate control. *Maryland v. Buie*, 110 S. Ct. 1093 (1990). The Court rejected the more stringent probable cause standard and held that a "protective sweep" of an arrestee's home is permissible when the "searching officer possesses a reasonable belief . . . that the area to be swept harbors an individual posing a danger to those on the arrest scene." *Id.* at 1099-100.

On February 3, 1986, a man wearing a red running suit, along with an accomplice, committed armed robbery. *Id.* at 1095. That same day, an arrest warrant was issued for Jerome Edward Buie and Lloyd Allen. *Id.* After surveillance confirmed Buie's presence, several police officers entered Buie's home and "fanned out through the first and second floors." *Id.* One of the officers shouted for anyone who may have been in the basement to come out, at which time, Buie emerged where he was searched and arrested. *Id.* An officer then proceeded into the basement "in case there was someone else' down there," whereupon he discovered a red running suit in plain view. *Id.*

At trial, the court denied Buie's motion to suppress the red running suit, citing the police officer's need to ascertain if anyone else was in the basement and the seriousness of the offense with which Buie was charged. *Id.* Buie was convicted of robbery with a deadly weapon and with using a handgun during the commission of a felony. *Id.*

The Court of Special Appeals of Maryland affirmed the trial court's denial of Buie's motion to suppress the red running suit, reasoning that the officer entered the basement not to search for evidence, but, rather, to look for the suspected accomplice or anyone who may have posed a danger to those on the arrest scene. *Id.*

Declaring that probable cause, rather than a reasonable articulable suspicion, must exist to justify a protective sweep of a home, the Court of Appeals of Maryland reversed Buie's conviction, finding that the state did not satisfy the probable cause requirement. *Id.* at 1095-96. The United States Supreme Court granted certiorari. *Id.* at 1096.

The United States Supreme Court reversed and held that incident

to an in-home arrest law enforcement officials may conduct a protective sweep of the premises as long as the officers possess a reasonable belief "that the area to be swept harbors an individual posing a danger to those on the arrest scene." *Id.* at 1099-100.

The majority opinion, authored by Justice White, began by defining a protective sweep as a "quick and limited search of a premises, incident to an arrest and conducted to protect the safety of police officers or others." *Id.* at 1094. The Court postulated that to determine whether a search is reasonable under the fourth amendment, a balance must be struck between the need to perform the search and the intrusion which the search entails. *Id.* at 1097 (quoting *Terry v. Ohio*, 392 U.S. 1, 21 (1968)). Before applying this balancing test, however, the Court reviewed the rationale of both *Terry v. Ohio*, 392 U.S. 1 (1968) and *Michigan v. Long*, 392 U.S. 1032 (1983). *Buie*, 110 S. Ct. at 1097.

In *Terry*, the Court authorized a limited patdown search for weapons absent probable cause after balancing the need for police officers to protect themselves against the intrusion which a limited patdown entails. *Id.* The *Terry* Court stated that, to perform such a limited patdown absent probable cause, the officer must possess a reasonable belief, based on specific and articulable facts, that the individual to be searched poses a danger to the officer or others. *Id.*

Similarly, the *Long* Court, applying the same principles, held that a search of an automobile compartment is permissible where the search is limited to areas where a weapon may be hidden and the officer possesses a reasonable belief, based on specific and articulable facts, that the individual poses a danger to the officer and may gain immediate control of a weapon. *Id.* As in *Terry*, the *Long* Court found that the officers' need to protect themselves and others outweighed the intrusion occasioned by the search. *Id.*

The *Buie* Court applied the rationale of *Terry* and *Long* and determined that the officers who entered *Buie's* home had a sufficient interest to protect themselves and others from possible danger, and thus, could search *Buie's* home for persons who might launch an unexpected attack. *Id.* at 1097-98. Furthermore, the majority concluded that the officers' interest sufficiently outweighed the intrusion which the protective sweep entailed. *Id.* at 1098. Extending the rationale of *Terry* and *Long*, the Court declared that the officers need only to possess a reasonable suspicion, supported by articulable facts, "that the area to be swept harbors an individual posing a danger to those on the arrest scene." *Id.* Reversing the Court of Appeals of Maryland, the Supreme Court rejected the higher probable cause standard, as well as the state's bright-line rule that no objective justification is required to support a

protective sweep. *Id.* at 1098 n.1. Moreover, the Court emphasized that the protective sweep is limited to a " cursory inspection of those spaces where a person may be found" and "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." *Id.* at 1099.

The Court distinguished a protective sweep of a home incident to an arrest from that of a "top-to-bottom" search of a home for evidence which took place in *Chimel v. California*, 395 U.S. 752 (1969). *Buie*, 110 S. Ct. at 1099. In *Chimel*, the Court held that an unwarranted search of a home incident to an arrest could not extend beyond the area within the arrestee's immediate control. *Id.* Justice White stressed that *Chimel* involved a full-blown search for evidence, rather than the limited intrusion which a protective sweep entails. *Id.* Furthermore, Justice White articulated that the danger to the officers in *Chimel* was posed by the arrestee, unlike in the present case, where the danger was posed by possible third parties in the house. *Id.*

Justice Stevens, in a brief concurring opinion, emphasized that the lower threshold of reasonable suspicion applies only to a protective sweep. *Id.* at 1100 (Stevens, J., concurring). Furthermore, Justice Stevens suggested that, based on the record before the Court, no reasonable suspicion existed which would have justified the officer's entry into the basement and therefore, the state faced "a formidable task on remand." *Id.*

Concurring separately, Justice Kennedy took exception to Justice Stevens' "gratuitous observation that the State has a formidable task on remand." *Id.* at 1101 (Kennedy, J., concurring). Justice Kennedy maintained that based on his understanding of the record, the protective sweep performed was within the parameters of established police safety procedures. *Id.*

Justice Brennan, joined by Justice Marshall, vigorously dissented. *Id.* (Brennan, J., dissenting). Justice Brennan expostulated that the majority had transformed "the *Terry* decision from a narrow exception into one that 'swallow[s] the general rule that [searches] are "reasonable" only if based on probable cause.'" *Id.* (quoting *United States v. Place*, 462 U.S. 696, 719 (1983) (Brennan, J., concurring)). Justice Brennan emphasized that the sanctity of the home is the bedrock on which the fourth amendment was built. *Id.* at 1102. (Brennan, J., dissenting). Recognizing that a protective sweep would effectively permit the police officers to view virtually all the personal effects within the home, Justice Brennan maintained that the majority was disingenuous in defining a protective sweep as a limited intrusion. *Id.* Accordingly, Justice

Brennan contended that the expansive nature of a protective sweep, coupled with the unique sanctity of the home, requires that the officers have probable cause that the area to be swept harbors someone posing a danger to the officers. *Id.* at 1103 (Brennan, J., dissenting).

The underpinnings of both *Terry* and *Long* are equally implicated when an officer makes an in-home arrest. Therefore, the majority correctly extended the rationale of *Terry* and *Long* to include a search of a private dwelling when an officer possesses reasonable suspicion that his or others' safety is endangered. The majority aptly recognized that the degree of danger posed to an officer is no less during an in-home arrest than when an officer conducts an on-the-street frisk or during a roadside encounter.

In fact, in the case of an in-home arrest, there is a greater degree of danger posed to the officer and those on the arrest scene. *Id.* at 1098. When an officer conducts a protective sweep he already possesses probable cause to arrest the suspect. Hence, the degree of danger posed to the officers and others on the arrest scene is heightened because of the nature of the confrontation. *See id.* Conversely, during an on-the-street frisk or a roadside encounter, the confrontation between the police and the individual has not risen to the level of an arrest. *Id.*

Additionally, the protective sweep, as the majority emphasized, is not a tool for law enforcement officers to search for evidence that would otherwise be violative of the fourth amendment. Rather, a protective sweep is a cursory inspection of only those places where a person may be found to protect the safety of the officer or others. The majority, therefore, correctly concluded that reasonable suspicion, rather than probable cause, is the appropriate standard to be applied to a protective sweep.

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