



LEGAL UPDATE · RESOURCES

Protective Sweeps and Wall Scuffs

By **Daigle Law Group**

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United States v. Thompson deals with a protective sweep surrounding a potential threat to officers. Because of some suspicious activity officers believed that an ambush could take place if they did not fully search where the suspect was staying. While performing the sweep officers uncovered evidence that would help their case.

In Maryland v. Buie, the Supreme Court held that police officers may conduct a protective sweep of a house for unknown individuals who may pose a threat to officers as they “effectuate an arrest.” Officers conducting a protective sweep must “possess a reasonable belief based on specific and articulable facts which, taken together with the rational inferences from those facts, reasonably warranted the officer in believing . . . that the area swept harbored an individual posing a danger to the officer or others.” Although Buie does not allow officers to conduct a protective sweep to locate weapons or contraband, officers may seize any “immediately apparent” contraband that is “in plain view” while performing the sweep.

In United States v. Thompson, the sweep happens after our suspect voluntarily goes into the officers’ custody and is already in the police car during the sweep. So, was the sweep lawful under the Fourth Amendment?

FACTS

Police officers had an arrest warrant for Tyreese Thompson for robbery. At the time, officers knew Thompson was a convicted felon and that he was suspected of being involved in a gunfight in 2014 and stealing guns from a pawnshop in 2016. A confidential informant told the officers that Thompson was at a house that belonged to his girlfriend. The officers went there to arrest him.

Officers knocked on the door, announced themselves, and called Thompson’s name. They saw window blinds move and heard sounds of people walking and moving things inside the house. Officers continued to knock and call for six to eight minutes. A man, later identified as George Richards, finally answered the door with an aggressive dog. Officers asked Richards to restrain the dog, and he dragged it away, leaving the door open. An officer then saw Thompson peek out from inside the house, so he ordered him to show his hands. Thompson instead retreated around a corner, but eventually he came out and surrendered. When he was arrested and put in a police car, officers saw dirt and spider webs on his arms, shirt, and the back of his head.

Richards then emerged. Police asked him twice whether anyone else was inside, but he did not answer right away. Then he said, “Nobody else that I know of.” Officers were not sure of this because of his reluctance to answer, his odd response, the information suggesting Thompson’s girlfriend lived there, the sounds from inside, and the long delay in answering the door. Concerned about “some sort of an ambush,” the officers told Richards that they would do a protective sweep of the home. Richards did not object.

During the ten-minute sweep, police investigated a back-bedroom closet and noticed an attic access panel in the ceiling and a scuff mark on the wall. Worried that someone went into the attic, an officer guarded the closet until the house was cleared. Afterward, the officers opened the attic access panel and saw disturbed cobwebs and guns. Richards claimed that he either owned or rented the house but denied knowing about the guns. He agreed to a search of his house. Richards said that Thompson was dropped off at the house the day before and did not live there. Richards also said that Thompson spent the night and slept in the room with the attic access. When officers went into the attic again, they recovered four guns.

The government charged Thompson with being a felon in possession of a firearm, for the guns seized from the attic. Thompson filed a motion to suppress the firearms, which the district court denied. Thompson was convicted. On appeal, he argued that the officers violated the Fourth Amendment because they had no authority to conduct a protective sweep of the home after he voluntarily came out of the house and was in the police car.

EIGHTH CIRCUIT COURT OPINION

In this case, the Eighth Circuit Court of Appeals held that the officers were justified in performing a sweep. First, Thompson was suspected of stealing several guns from a pawn shop in a burglary, committing a robbery, and possessing a handgun during a gunfight. Based on these facts, the court reasoned that Thompson could have left guns behind in the house for another person to use against officers. Also, after announcing their presence, officers were forced to wait for minutes while the blinds on either side of the door moved and they heard movement, and possible preparation for an attack inside. Officers also believed that the house belonged to Thompson’s girlfriend, who was not located.

The court also notes that after Richards was asked whether anyone else was still in the house, he was silent at first and then gave the odd, ambiguous answer that there was “nobody else” in the home “that he knew of.” The court concluded that Richards’s initial reluctance and his unusual response strengthened the officers’ suspicion that potentially dangerous people remained in the house.

Thompson was also covered in dust and cobwebs, suggesting that he had just been in a dusty place like an attic or basement. The court held that these facts support the reasonable belief that “someone else could be inside posing a danger to [officers] during or following the arrest.”

Lastly, the court held that extending the sweep to the closet and then to the attic after seeing the scuff mark was reasonable. The court noted that sweeping a space that requires a boost or ladder to access, like an attic, is at the outer boundary of the protective sweep doctrine; but surrounding the totality of facts in this case the officers’ actions were reasonable.

TAKEAWAYS

One of the key takeaways when examining this case is the quality of observation exhibited by these officers. Noticing the cobwebs, the scuff on the wall, and the overall body language of the suspect were all important factors in this case. What started out as an arrest warrant became an even stronger case because of circumstances surrounding some small but valuable details. Stay vigilant and continue actively observing everything around a case. You never know when a cobweb can lead to a more solid piece of evidence.

United States v. Thompson, 2021 U.S. App. LEXIS 22041 (8th Cir. MO July 26, 2021)

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