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Seventh Circuit Scrutinizes Sweeps in *United States v. Walker*

By **Daigle Law Group**

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In a recent decision from the United States Court of Appeals for the Seventh Circuit, the Court examined *United States v. Walker*, a case that highlights the issue of the reasonable expectation of privacy owed to an overnight guest during a warrantless protective sweep. In October 2022, officers arrived at Ramona Paulette’s home to execute an arrest warrant for her boyfriend, Richard Walker, for removing his ankle monitor. Upon arrival, they encountered Paulette, her son, and her mother, Laverne Shipp. After taking Walker into custody, officers decided to conduct a protective sweep of the home to ensure their safety. During the sweep, an officer lifted the mattress in the son’s bedroom, discovering a firearm underneath it.

After the arrest and sweep, the officers requested Shipp’s consent to conduct a more thorough search, and she signed a voluntary consent form. This led to the discovery of “fentanyl, empty pill capsules, a pill press, a pipe, scales, and Walker’s credit card” in Paulette’s bedroom. Walker was charged with one count of being a felon in possession of a firearm and one count of possession with intent to distribute fentanyl.

At the district court level, he moved to suppress both the firearm and the drug evidence, claiming the protective sweep was unconstitutional and that the evidence found was tainted by the fruit of the poisonous tree—the original unlawful entry and search. The district court denied the motion, holding that the sweep was justified. The court also concluded that even if it was not, the subsequent discovery of the firearm and drugs was sufficiently attenuated from the conduct to permit its admission. Walker appealed to the Seventh Circuit Court of Appeals.

United States Court of Appeals for the Seventh Circuit

On appeal, the Seventh Circuit first examined whether Walker had a reasonable expectation of privacy to challenge the protective sweep. The court cited *Minnesota v. Olson*, which states that overnight guests are afforded a reasonable expectation of privacy. However, one of his probation terms was to stay at his mother’s house, which he clearly violated. Therefore, the court had to determine whether his unlawful presence in the residence made the expectation of privacy unreasonable. The court concluded that while Walker was unlawfully at the house, he was not legally prohibited from being there by protective order or eviction. Therefore, he was a legitimate overnight house guest with a reasonable

expectation of privacy in the residence.

The court then carefully examined the officers' actions during the protective sweep. A protective sweep is a quick and limited search of premises, performed to protect officer safety by identifying other individuals who may pose a danger. In 1990, the United States Supreme Court emphasized in *Maryland v. Buie* that protective sweeps must be strictly limited in scope and duration to sectors where a person may be found. This must be supported by a reasonable belief that the area harbors an individual who presents a threat based on articulable facts. Applying *Buie*, the Seventh Circuit concluded that the protective sweep exceeded the permissible scope with the lifting of the mattress in the child's bedroom. The officers had no reasonable basis to believe anyone was hiding under the mattress or in that area prior to conducting the intrusive action.

The court then examined whether the discovery of the firearm could be admissible evidence under at least one exception to the exclusionary rule. The exclusionary rule states that illegally obtained evidence is not admissible at trial. In this case, the government tried to argue that although the firearm was found as fruit of the poisonous tree, it would still be admissible under the good-faith exception, the attenuation exception, and/or the inevitable discovery exception. Citing its ruling in *United States v. Rainone*, the court examined whether the officers "act[ed] with objectively reasonable good-faith belief that their conduct [was] lawful." If the officers had reasonably relied on precedent, the discovery of the firearm would be admissible evidence even though it was found through unlawful means. Since no Seventh Circuit case could be cited by the government, the court concluded that the sweep amounted to an unconstitutional search that could not be justified by the good-faith exception.

The court then analyzed whether the attenuation doctrine sufficiently removed the firearm's discovery from the original sweep due to Shipp's later consent to the full search. The attenuation doctrine allows illegally obtained evidence to be admitted if the connection between the unconstitutional conduct and the evidence has become remote or has been interrupted by an intervening circumstance, neutralizing the taint. The court clarified that attenuation applies only where a clear intervening event, such as valid consent or a *Miranda* warning, comes after the unconstitutional conduct, breaking the causal chain between the initial illegality and the evidentiary discovery. In this case, the firearm was located during an unlawful sweep prior to obtaining any consent. There was no intervening event capable of purging the taint between the illegal action and the discovery of the evidence. Therefore, the Seventh Circuit concluded that the standard for attenuation was not satisfied since the firearm was not discovered because of a lawfully consented search or following some new independent cause.

The court then evaluated the firearm discovery under the inevitable discovery exception, which allows the government to show with historical facts that the evidence in question would have ultimately been

discovered by lawful means even without any police misconduct. The Seventh Circuit decided not to make a conclusion based on fact, remanding the case back to the district court instead.

Turning to the drug evidence, the Court examined whether Shipp's consent after the protective sweep was voluntary and effective. The government argued that Walker had not specifically challenged the voluntariness of Shipp's consent, but the court disagreed. The court held that Walker's motion to suppress was broad enough to contest all evidence seized, implicitly including any argument over the voluntariness or legitimacy of the post-sweep consent search. The Court reaffirmed that when law enforcement officers conduct a warrantless search of a home, the government bears the burden to justify it. Therefore, the validity of the post-sweep search remained a live issue for the district court on remand, particularly as to whether Shipp's consent was voluntary and informed, and not the result of unlawful coercion stemming from the preceding illegal entry and sweep.

Key Takeaways

Officers may only conduct protective sweeps when they have specific, articulable facts that lead them to reasonably believe a dangerous person may be present. Even then, the sweep must be limited in scope and duration to areas where a person may reasonably be hidden. Further, officers must obtain valid consent for a search and document it carefully. Be especially cautious when asking a third party for consent, as it is crucial to lawfully search areas that are afforded Fourth Amendment protections. While illegally obtained evidence may be admitted under exceptions such as the attenuation and inevitable discovery doctrines, it is a high burden for the government to bear. Therefore, it is crucial to remember that procedural mistakes made during searches can critically impact the outcome of a prosecution.

United States v. Walker, No. 24-1522 (7th Cir. 2024)

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