



LGIT'S ROLL CALL REPORTER
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QUESTION: **Are officers conducting a “protective sweep” after an arrest bound by the arrestee’s statement as to the number of persons in the house?**

ANSWER: **No. Officers who have a reasonable belief that the house is harboring a person or persons who pose a danger to them can sweep the entire residence. They do not have to accept the suspect’s statement as to who is or who is not in the house or the number of occupants.**

CASE: ***United States of America v. Jordan Laudermilt***
U.S. Court of Appeals (Fourth Circuit), Decided May 3, 2012

The facts established that on February 27, 2011, at around 10 p.m., Shannalee Kurri placed a 911 call to report that her boyfriend, Jordan Laudermilt, was threatening her and her family with a gun at his home in Wheeling, West Virginia. The Ohio County Sheriff’s Office responded by sending five officers to the scene—Deputies Brooks, Costello, Moore, and Bise, and Sergeant Ernest. An officer from another agency also responded. The officers were familiar with the residence because of past domestic disputes involving its occupants. After all of the officers were on the scene, they approached the house, which was at the top of a hill, at the end of a long driveway. As they approached, they saw a vehicle being driven from the residence and someone “slouched” down in the passenger seat. They stopped the car, but when they saw that Laudermilt was not the passenger, they let the driver through. Upon reaching the house, the officers met Kurri, her brother, and her father. Kurri told them that Laudermilt was inside with a gun. Laudermilt then appeared on the porch, shouting that he was going to “kill” Kurri and “f***k them up.” He did not have a gun. However, the officers saw Laudermilt kneel down, pick something up out of their view, and go back in the house. When Laudermilt again came out on the porch without a gun, the officers quickly moved in and took him into custody. Laudermilt told the officers that his fourteen year old brother, who was autistic, was the only person in the house.

Four officers then entered the house to perform a “protective sweep.” The officers’ protective sweep continued upstairs and into the bedrooms. In one of the bedrooms, they found Laudermilt’s brother. The boy was “shaking” and talking on the phone with his mother. One of the deputies took the boy downstairs and tried to calm him down. While the deputy and the boy were seated in the kitchen, another deputy came in and asked the boy if he knew where the gun was. The boy led the officers to a gun rack and pointed to a rifle. The deputies secured the gun and finished their sweep of the house. The entire protective sweep lasted about five minutes.

Laudermilt was indicted for possession of a firearm after a felony conviction in violation of federal law. He moved to suppress the evidence on grounds that the officers had violated his

Fourth Amendment rights. The trial court agreed and suppressed the gun. The trial judge concluded that Supreme Court case law that authorized protective sweeps did not authorize the officers in this case to seize the rifle after the residence had been secured and their protective sweep had ended. The court ruled that the protective sweep ended when Laudermilt's brother, who was the only person in the house, was brought downstairs and seated in the kitchen. The government appealed.

The Court of Appeals for the Fourth Circuit reversed the trial court and sent the case back for trial. The appeals court observed that a "protective sweep" is an exception to the warrant requirement and allows officers who make an arrest at a home to conduct a protective sweep of the home if they have "articulable facts, which, taken together with the rational inferences from those facts, would warrant a reasonably prudent officer in believing that the area to be swept *“harbors an individual posing a danger to those on the arrest scene.”*" A protective sweep is limited to a brief inspection of those spaces where a person may be found and should last no longer than needed to dispel the reasonable suspicion of danger and no longer than needed to arrest the suspect and leave the premises. The key to protective sweeps is not the threat posed by the person arrested, but the safety threat posed by the house, or more properly by unseen third persons in it.

In light of this framework, the appeals court held that the protective sweep was justified. The officers knew that a firearm was unaccounted for and that there was at least one person in the house. In addition, the officers had seen at least two other people leaving the residence by car. The court also held that the protective sweep did *not* end when Laudermilt's brother was led downstairs. They had only Laudermilt's word that there was one person in the house—they didn't actually know how many people were inside and they weren't required to accept the arrestee's word. Further, even the calls from the dispatcher were confused as to the actual number of persons in the house. So, securing the brother in the house did not end the sweep. The danger faced by the officers in this case authorized them to sweep the entire house. Even then, the sweep lasted all of but five minutes. The officers didn't secure the brother and use that as an excuse to sweep the rest of the house—instead, they had every right to sweep the entire house from the start.

NOTE: Even apart from a protective sweep, the officers in this case could still have seized the weapon as the de facto community caretakers of the autistic child. They knew of the child's special needs and that the weapon was in the house. As such, it was reasonable for them to ask him if he knew where the gun was and to retrieve it when he showed them.

By John F. Breads, Jr., Director of Legal Services, Local Government Insurance Trust

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