



Roll Call Reporter

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LEGAL UPDATE FOR MARYLAND LAW ENFORCEMENT OFFICERS

Protective Sweeps of Premises Incident to Arrest

Question: Can a protective sweep incident to arrest expand to areas of the residence other than where the suspect was arrested?

Answer: Yes. If officers have reasonable articulable suspicion that other areas of the premises may be harboring persons who pose a danger to the them, they can conduct a quick visual inspection of those areas.

Case: *Curtis Lee Groves v. State of Maryland*
Court of Special Appeals of Maryland
Decided December 21, 2018

The Parole Retake Warrant and the Investigation Leading to the Suspect

In the Fall of 2016, Agent Frank Toston of the Washington County Narcotics Task Force received information that Curtis Lee Groves was selling and distributing narcotics in Hagerstown. The information was that Groves frequented the area of John Street and North Mulberry Street. The source of information indicated that Groves was always in possession of a handgun.

Groves was a member of the “Bloods” from Harlem. He was being hunted by the United States Marshals Service/Capital Area Regional Fugitive Task Force (“Task Force”), in cooperation with the Hagerstown Police Department. Groves

had prior convictions for drug and weapons charges in New York State. In January 2017, the Task Force was looking for Groves to arrest him on an active Violation of Parole retake warrant issued by New York State.

Subsequent investigation revealed that Groves was living at 43 Charles Street in Hagerstown.

The Task Force’s Arrest of the Suspect

On January 25, 2017, the Task Force arrest team went to the duplex that consisted of 41 and 43 Charles Street and knocked on the door of unit 43. No one answered. The team then went to the adjoining unit and spoke with a Ms. Brown who indicated that her daughter, teenage granddaughter, and her daughter’s boyfriend lived in 43 Charles. She identified the boyfriend as Curtis Lee Groves. Ms. Brown called her daughter, Sidrease Morgan, which resulted in Ms. Morgan’s opening the door of 43 Charles. Ms. Morgan confirmed to the officers that Groves was inside, but she didn’t know if he was upstairs or downstairs. She said that her child was in the residence, but that she didn’t know if anyone else was there. When asked if Groves had a gun, Ms. Morgan said she had previously seen Groves with a gun, but had not seen it in about a week. The child was then passed out of the house.

Before entering the residence, the “shield” officer called out for Groves. There was no response. The officers (ten in total) then entered the residence and went into the living room. They continued through the living room into the kitchen. Their repeated calls for Groves were met with no response. The shield officer located an open stairway off the kitchen which led to the basement. He kicked a bottle down the basement steps in the hope of getting a reaction. The officer could hear fumbling around in the basement, but there was still no response to his calls for Groves.

After about two minutes, Groves showed himself at the bottom of the stairs. He was instructed to come up the stairs. Initially he refused, then he came part of the way up but then stopped. Members of the arrest team went down and took Groves into custody, walking him up the stairs and into the kitchen. At this point, the shield officer was still holding the stairwell to the basement in case others were downstairs.

The Protective Sweep, the Discovery of the Gun, Ammunition, and Drugs, and the Search Warrant

As soon as Groves was in custody, the arrest team conducted a protective sweep of the house. Since noises had been heard on the second-floor, arrest team members searched that area. A black semi-automatic handgun was observed on the floor of the second-floor bedroom. Two other arrest team members went down to the basement to make sure no one else was there. The basement was dark, and the officers needed to use their flashlights. They made quick visual scans and looked behind only large items. Nothing was moved or opened. On one side of the basement, one of the officers observed a black object in plain view sticking out of a Christmas tree box. The object resembled the black grip of a handgun. A box of ammunition was visible about chest high in the brick wall where a brick was missing. On the other side of the basement, the other officer observed a rectangular package, wrapped in plastic, which he believed to

be illegal narcotics. This package was also in plain view, to the side of a second Christmas tree box. The protective sweep of the house took approximately five minutes.

The officers did not seize any of the items observed during the protective sweep. Instead, they applied for a search warrant which was executed the same day. The detailed warrant application included the visual observations of the officer’s during the protective sweep. The warrant issued, and the handgun, the ammunition, and the drugs (heroin) were seized.

The Charges, the Motion to Suppress, and the Conviction

Groves was charged with possession of heroin with intent to distribute and possession of a firearm in a drug trafficking crime. He moved to suppress the evidence against him. The key issue before the court was the constitutionality of the search warrant executed at Groves’ residence. There was no question that the detailed, eight-page warrant application was facially valid. The contention, however, was that the protective sweep itself was unconstitutional, and that the observations made during it were “fruit of the poisonous tree.” The circuit court denied Groves’ motion. He was convicted and sentenced to a term of 32 years of incarceration, with all but 26 suspended. Groves appealed.

The Outcome on Appeal

On appeal, the Court of Special Appeals of Maryland first turned to the Supreme Court’s 1990 decision in *Maryland v. Buie*. In that case, the court held that the Fourth Amendment permits a properly limited protective sweep in conjunction with an in-home arrest when the searching officer possesses a reasonable articulable suspicion (RAS) that the area to be swept harbors an individual posing a danger to those on the arrest scene. RAS is measured objectively, from the view of a reasonable police officer acting in the same circumstances. The purpose of a protective sweep is officer safety and a



protective search does not in any way look for evidence of a crime. Its exclusive purpose is to look for potentially armed and dangerous persons, persons who might harm the officers. For this reason, a protective sweep of the premises must be quick and limited, confined to a visual inspection of those places in which a person might be hiding. Closets and other spaces immediately adjoining the place of arrest are included without the need for RAS. However, as a protective sweep moves outward and farther from the place of arrest, courts will focus on the officer's RAS to have included those areas in the sweep. As to duration, a protective sweep must last no longer than 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.

In this case, the Task Force arrest team had RAS to believe that Groves may have had an armed and dangerous accomplice in the house at the time of his arrest, including one hiding upstairs or in the basement. Groves' prior firearms convictions, the information that he was "always" in possession of a handgun, the failure to open the door upon knocking, the girlfriend's not knowing who else was in the house, the girlfriend's knowing that Groves had a gun, his gang affiliation, his status as a parolee, his failure to respond when ordered to do so, the noises heard upstairs and in the basement, and Groves' behavior on the basement stairs, all added up to RAS to include both the upstairs and the basement in the protective sweep after Groves' arrest. Since the sweep was limited to confirming that no one else was present, and took only several minutes, the discovery of the guns and drugs in plain view was constitutional, as was the inclusion of the officers' observations in the warrant affidavit. Thus, the circuit court properly denied the motion to suppress and Groves' convictions were affirmed.

Note: It must be re-emphasized that protective sweeps are not searches for evidence. They are limited visual scans designed to ensure officer safety when an arrest has occurred in or just outside

of premises. RAS is needed when the scope of the sweep moves beyond the immediate area of arrest and into other areas of the premises. Sweeps are limited to confirming whether someone else who might be armed and dangerous is present but unseen. Even if the arrest takes place immediately *outside* of the residence (rather than in it), a protective sweep of the premises may still be conducted. In sum, officers must have RAS to expand the scope of a protective sweep away from the immediate area of arrest, and officers must keep in mind that the purpose of the sweep is officer safety, not to look for evidence.

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

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