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The mere fact that an arrest occurs outside of a residence does not automatically preclude a “protective sweep” of the residence for officer safety

QUESTION: Can an arrest made immediately outside of a residence justify a “protective sweep” of the residence?

ANSWER: Yes. The same exigent circumstances that justify a “protective sweep” when the suspect is arrested inside a residence may still exist even if the arrest is made just outside of the residence.

CASE: *Branden S. Murphy A/K/A Jawaun Antonio Fussell v. State*
Court of Special Appeals, Decided May 27, 2010

In this case, the Court of Special Appeals considered the issue of protective sweeps made when suspects are arrested outside of a residence as opposed to inside. The facts established that at 3:40 a.m. on May 6, 2007, Baltimore County Police Officer Rodney Speights responded to the residence of Sirronn Shell. Shell told Officer Speights that he had been assaulted by five men, and he gave Officer Speights the men's names and physical descriptions. Shell said the men, one of whom was Branden Murphy, had accused him of stealing a handgun from Murphy's apartment. When Shell denied it, Murphy struck him twice in the jaw. The men also had handcuffed Shell and threatened him with a shotgun and a nine millimeter pistol. One of the men removed Shell's wallet from his back pocket, passed it to another man, who then returned it to Shell's pocket. Consistent with Shell's statement, Officer Speights observed that Shell's cheeks and wrists were swollen and red. Shell told the officer that he had been "hanging out" at Murphy's apartment and that several of the men involved in the assault also hung out at the apartment. He said that Murphy often carried a shotgun when he answered the apartment door. He also said that Byrd, one of the men involved in the assault, sometimes answered the apartment door while carrying his nine millimeter handgun. In response to Shell's complaint, Officer Speights and two other officers went to the area where the assault occurred. There, they found Shell's earrings. Officer Speights and several patrol officers then left for Murphy's apartment which was located on the second floor of his building.

Upon their arrival, the officers knocked on the door. Murphy answered, and he fit the description Shell had given the officers. The officers removed Murphy from the apartment and then called into the apartment announcing their presence and asking

everyone inside to come out. A woman and two other men, including one named Dobbins, came out and were detained on the landing. The officers again called into the apartment and, when no one else emerged, they entered the apartment and conducted a protective sweep. The officers conducted the protective sweep because the persons inside were known to possess weapons. Also, although Shell implicated five men in the assault, only three were in custody. After entering the apartment, the officers scanned for weapons and persons that were armed. During the sweep, one of the officers found a shotgun leaning against a dresser in the rear bedroom.

Murphy was charged with robbery with a dangerous weapon, simple robbery, first degree assault, two counts of use of a handgun in commission of a crime of violence, and related offenses. He moved to suppress the shotgun on grounds that there was no emergency requiring a protective sweep and, as a result, the police had ample time to obtain a search warrant. Murphy's motion was denied and he was convicted of all counts. After he was sentenced, Murphy appealed.

The Court of Special Appeals affirmed Murphy's convictions. It did so in light of the Supreme Court's 1990 decision in *Maryland v. Buie*, where the nation's high court authorized protective sweeps of residences in certain circumstances. However, in the *Buie* case, the protective sweep was conducted after the suspect had been arrested *inside* his residence. The court defined a "protective sweep" as "a quick and limited search of premises, incident to an arrest and conducted to protect the safety of police officers or others. It is narrowly confined to a cursory visual inspection of those places in which a person might be hiding." A protective sweep is permissible incident to arrest only if there are articulable facts which 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. The "protective sweep" exception to the warrant requirement is justified by the interest of officers in taking steps to assure themselves that the premises in which a suspect is being, or has just been, arrested is not harboring other persons who are dangerous and who could unexpectedly launch an attack.

Murphy argued that the *Buie* case didn't apply because none of the suspects were arrested inside his apartment; to the contrary, all had been arrested outside of the apartment on the landing. Murphy also contended that the police had made an "end run" around the Fourth Amendment by ordering him out of the apartment and arresting him instead of first obtaining a warrant to enter the residence. The appeals court ignored this argument because Murphy had not raised it during the suppression hearing. Instead, the court kept its focus on the protective sweep. Based upon cases from other jurisdictions, the appeals court concluded that a protective sweep may be justified even when the arrest is made outside of a residence. In short, those cases hold that the same threats an officer may face inside a residence may exist just outside the residence as well. In this case, for example, the officers had every reason to believe armed suspects were still inside Murphy's apartment. Further, since none of the suspects was armed, the officers had reason to believe that there were still weapons in the apartment. For these reasons, the protective sweep was justified, and it was during that sweep that the shotgun was discovered in

plain view. Based upon these circumstances, the appeals court found that no Fourth Amendment violation had occurred.

NOTE: The reasonableness of a protective sweep does not turn on whether the arrest occurred inside or outside the residence (or other location of arrest). The same threats an officer may face inside the premises may exist just outside the premises. However, if the arrest is made on the outside, be prepared to articulate why the protective sweep was necessary. Also, as a general rule, the farther away from the premises an arrest is made, the more difficult it will be to justify a protective sweep.

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