

CERTIFIED FOR PUBLICATION
IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

ARNOLD IKEDA,

Defendant and Appellant.

2d Crim. No. B238600
(Super. Ct. No. 2011007697)
(Ventura County)

We hold that where a person is detained outside but near his residence, the police may conduct a "protective sweep" inside the residence when there is a reasonable suspicion that a person therein poses a danger to officer safety.

Arnold Ikeda appeals his conviction by plea to possession of methamphetamine for sale (Health & Ins. Code, § 11378), entered after the trial court denied a motion to suppress evidence (Pen. Code, § 1538.5). The trial court found that the protective sweep of appellant's motel room, made in conjunction with appellant's detention outside the room, did not violate his Fourth Amendment rights. We affirm.

Facts & Procedural History

On February 14, 2011 the named victim reported that his laptop computer equipped with a GPS tracking device was stolen. On March 1, 2011, the tracking company notified Ventura County Deputy Sheriff Hardy that someone had changed the computer password to "Arnold Ikeda" and was using the laptop at the Holiday Inn Express in Oxnard. Deputy Hardy went to the motel and showed the motel manager appellant's photo. The manager said that appellant was in room 104, that appellant

changed rooms every day, and that he had left a card key at the front desk for a woman who came and went.

Based on his training and experience, Deputy Hardy was concerned because the room change was consistent with someone selling narcotics. Room 104 was on the ground floor and had a curtained rear glass sliding door to the parking lot. Deputies Hardy and Johnson went to the front door and Detective Lynch positioned himself outside the rear sliding door,

Deputy Hardy heard two male voices inside the room, knocked, and announced "Sheriff's Department." A voice responded "One moment." A minute later, Detective Lynch saw the rear glass door open and appellant step out.

Detective Lynch detained and handcuffed appellant for officer safety purposes. Appellant said that a BB gun was in the room. Appellant claimed no one was in the room. This was inconsistent with Deputy Hardy having heard voices before knocking. He believed a woman or someone else was in the room.

Deputy Hardy and Detective Lynch announced "Sheriff's Department," pulled back the door curtain, and conducted a protective sweep. A laptop computer was in plain view and matched the description of the stolen laptop. A crystalline substance that resembled methamphetamine was on the counter and a scale, pay/owe sheet, and cash were on the bed. Appellant was arrested and consented to a search of the room. The officers seized the BB gun. After advisement and waiver of his constitutional rights, appellant admitted selling drugs and using methamphetamine.

Appellant brought a motion to suppress evidence on the theory that the protective sweep violated his Fourth Amendment rights. The trial court denied the motion to suppress because the officer had a reasonable suspicion that someone was hiding in the room and posed a danger to officer safety.

Protective Sweep

On review, we defer to the trial court's express and implied factual findings which are supported by substantial evidence and independently determine whether the protective sweep was reasonable under the Fourth Amendment. (*People v. Ledesma* (2003) 106 Cal.App.4th 857, 862.) It is settled officers may conduct a protective sweep of a house when a suspect is *arrested* outside the house and the officers have a reasonable, articulable suspicion that the house harbors a person who poses a threat to officer safety. (*Maryland v. Buie* (1990) 494 U.S. 325, 335-336 [108 L.Ed.2d 276, 287].)

Appellant argues that a protective sweep is not permitted unless the officer is lawfully inside the house or the sweep is incident to an arrest outside the house. In *People v. Celis* (2004) 33 Cal.4th 667 (*Celis*), our Supreme Court assumed, without deciding, that the *Buie* reasonable suspicion standard applied to a *detention* where an officer detained defendant outside his house and conducted a protective sweep. (*Id.*, at pp. 679.) In *Celis*, officers watched defendant's house for two days and had no information that anyone else was in the house when defendant was detained in the backyard. "The facts known to the officers before they performed the protective sweep fell short of what *Buie* requires, that is, 'articulable facts' considered together with the rational inferences drawn from those facts, that would warrant a reasonably prudent officer to entertain a reasonable suspicion that the area to be swept harbors a person posing a danger to officer safety. [Citation.]" (*Id.*, at pp. 679-680.)

We reject the argument that protective sweeps must be incident to a lawful arrest, as opposed to a detention outside his house. Consistent with *Buie* and *Celis*, courts have concluded that a protective sweep may be conducted in conjunction with a suspect's detention where there is a reasonable suspicion that the area to be swept harbors a dangerous person. (*People v. Werner* (2012) 207 Cal.App.4th 1195, 1206 [rule allowing protective sweep in conjunction with suspect's detention recognized but suppression motion should have been granted because no reasonable suspicion that a dangerous person was inside the residence]; see also *United States v. Garcia* (9th Cir. 1993) 997 F.2d 1273, 1282.)

Reasonable Suspicion

Appellant asserts that the officers lacked a reasonable suspicion that someone was hiding in the room and posed a risk of harm to the officers. Although Deputy Hardy was investigating a computer theft, the motel clerk said that appellant changed rooms daily and always requested a ground floor room. The officers were told that appellant had left a card key at the front desk for a woman who came and went.

Deputy Hardy heard male voices in the room and knocked. Someone in the room said "one moment" and appellant exited the rear sliding door, was detained, and said there was a BB gun in the room. Based on the voices, the card key at the front desk, the report that a woman came and went to the room, appellant's use of motel rooms consistent with drug trafficking, and appellant's statement that a gun was in the room, a reasonably prudent officer would entertain a reasonable suspicion that a protective sweep of the room was required for officer safety purposes.

Although appellant was detained and handcuffed, the rear door was ajar about two feet and the door curtain blocked everyone's view into the room. Detective Lynch testified: "I was concerned that there might be another individual inside the room, coupled with the fact that Mr. Ikeda told me there was, in his words, a BB gun, I didn't feel safe. I don't feel secure in being able to investigate in the manner we were doing without first ensuring there was nobody in the room that could hurt us."

"Reasonable suspicion" is an abstract concept, not a finely-tuned standard. (*People v. Ledesma, supra*, 106 Cal.App.4th at p. 863.) The United States Supreme Court has repeatedly warned that reasonable-suspicion determinations must be based on "the totality of the circumstances'. . . . [Citation.] This process allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that 'might well elude an untrained person.' [Citations]." (*United States v. Arvizu* (2002) 534 U.S. 266, 273 [151 L.Ed.2d 740, 749-750].)

Conclusion

The Fourth Amendment has never been, and should not be, interpreted to require that police officers take unreasonable risks in the performance of their duties. We again borrow from the words of Presiding Justice Pierce, i.e., the law requires police officers, "live ones," to enforce constitutional statutory, and decisional law. Here, we have balanced competing rights and conclude that "officer safety" must carry the day. (See e.g., *In re Richard G.* (2009) 173 Cal.App.4th 1252, 1255, citing *People v. Koelzer* (1963) 222 Cal.App.2d 20, 27.) .)

The judgment (order denying motion to suppress) is affirmed.

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YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

Charles W. Campbell, Judge
Superior Court County of Ventura

Stephen P. Lipson, Public Defender; Michael C. McMahon, Chief Deputy
and Cynthia Ellington, Senior Deputy Public Defender, for appellant.

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