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HOW REASONABLE IS A WARRANTLESS PROTECTIVE SWEEP? AND HOW A LIMITED SEARCH IS BETTER FOR SOCIETY AS A WHOLE

Jamie Sotiropoulos

I. INTRODUCTION

As the police officer obtained consent to enter the house and began talking with the home owner, the police officer states that he heard a thump upstairs as if somebody else is in the house. He subsequently decided to go upstairs to investigate what the noise was for the safety of himself and the homeowner. On the way upstairs, he noticed through an open door way a bag of marijuana sitting on a desk. Consequently, the officer arrested the homeowner for possession of marijuana.

Cases like this fact situation happen frequently. When a homeowner gives consent to an officer to come into the house for something as simple as a question, and the officer subsequently finds an illegal object as he searches the entire house because the officer believed they were in risk of danger. This type of search is considered to be a warrantless protective sweep. A warrantless protective sweep is a limited search of a premise incident to an in-home arrest.¹ These sweeps, however, are also conducted by police officers when an in-home arrest has not occurred. For example, officers may conduct a sweep of the house with the consent of the owner, or when they arrest someone outside of the home and then conduct a sweep inside. In the past few years, the courts have gone back and forth

¹ Ann K. Wooster, Annotation, *Construction and Application by State Courts of Protective Sweep Doctrine Recognized in Maryland v. Buie*, 494 U.S. 325, 110 S. Ct. 1093, 108 L. Ed. 2d 276 (1990)--*Warrantless Search of House for Dangerous Persons*, 78 A.L.R. 6th 297.

on defining what a warrantless protective sweep is. The courts base their arguments off of the definition of a protective sweep established in the United States Supreme Court case of *Maryland v. Buie*. The *Buie* court held that, “[a] ‘protective sweep’ is a quick and limited search of premises, incident to an arrest and conducted to protect the safety of police officers or others.”² While warrantless protective sweeps can create many issues concerning consent, knowledge, and reasonableness, this article will discuss the background of warrantless protective sweeps with regards to the change in definition and application. Next, it will explain how warrants protect one’s personal right to privacy, and finally, it will discuss how a limited search for a warrantless protective sweep, based off of the definition found in the *Buie* case, is better for society as a whole.

II. BACKGROUND

a. Right to Privacy

The Fourth Amendment states:

“ [t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”³

The Fourth Amendment protects people where they have a reasonable expectation of privacy, and therefore they are entitled to be free from

² See *Maryland v. Buie*, 494 U.S. 327, 327 (1990); See also Ann K. Wooster, Annotation, *Construction and Application by State Courts of Protective Sweep Doctrine Recognized in Maryland v. Buie*, 494 U.S. 325, 110 S. Ct. 1093, 108 L. Ed. 2d 276 (1990)--*Warrantless Search of House for Dangerous Persons*, 78 A.L.R. 6th 297.

³ U.S. Const. amend. IV.

unreasonable governmental intrusions.⁴ Unreasonable governmental intrusions and an individual's reasonable expectation of privacy are measured based upon an individual's privacy interest and the promotion of legitimate governmental interests.⁵ The reasonableness requirement has been established through case law such as the balancing analysis established in *Terry v. Ohio*. In *Terry*, the court held that when the totality of circumstances gave an officer the ability to articulate specific facts that lead to reasonable inferences the officer could be at risk of serious danger, then the officer may frisk the person for weapons.⁶ Like *Terry*, the court in *Mich. v. Long*, also held that police officers can do protective searches when they have a reasonable belief that the suspect poses a danger and danger may arise from the possible presence of weapons in the area surrounding the suspect.⁷ The exception of the warrant requirement of the Fourth Amendment with warrantless protective sweeps is repeatedly held to be constitutional through case law and secondary materials.

Additionally, the Fourth Amendment protects individuals by requiring a warrant to be issued when police officers want to search or seize items, or people.⁸ The Fourth Amendment protects individuals by requiring police officers to have a warrant, and if they do not have a warrant and conduct the search or seizure anyway, then the police officers must fulfill an exception to the warrant requirement, such as having probable cause that there is an illegal item or activity

⁴ See *Cucuta v. New York City*, 25 F. Supp.3d 404, 410 (S.D.N.Y. 2014).

⁵ *Id.*

⁶ *Terry v. Ohio*, 392 U.S. 4, 27 (1968).

⁷ *Mich. v. Long*, 463 U.S. 1034, 1050 (1983).

⁸ See Sherry F. Colb, *Article: The Qualitative Dimension of Fourth Amendment "Reasonableness"*, 98 Colum. L. Rev. 1642, 1648 (1998).

happening, or that the police officers must conduct a protective sweep for their or others safety.⁹ The courts especially believe that there must be an exception to the warrant requirement when a search or seizure is conducted inside a home without a warrant.¹⁰ This is because the courts and society find that a home is where people have the highest expectation for privacy and there is no other place in society with this expectation.¹¹ Therefore, privacy in a home is a basic principle of Fourth Amendment law and if these searches and seizures in homes do not have warrants, then they are considered to be unreasonable.¹² So, if evidence is obtained through unreasonable searches and seizures then it is inadmissible in state and federal criminal trials.¹³ However, there are exceptions to the warrant requirement in searching the home.¹⁴ This is because of the doctrine of reasonableness that is implemented in the Fourth Amendment.¹⁵ These exceptions to the warrant requirement could be for allowing the officers to conduct searches or seizures in a home when, “the exigencies of the situation make the needs of law enforcement so compelling that the warrantless search is objectively reasonable

⁹ *Id.*

¹⁰ See *Brigham City v. Stuart*, 547 U.S. 400, 403 (2006).

¹¹ *Id.* See also Daniel D. Schick, *Recent Decision: Constitutional Law-Unlawful Searches - When the Police Investigate a Home Using a Drug-Sniffing Dog it is a Physically Intrusive “Search” within the Meaning of the Fourth Amendment*, 83 Miss. L.J. 427, 442 (2014).

¹² See *Brigham City v. Stuart*, 547 U.S. 400, 403 (2006); See also *Groh v. Ramirez*, 540 U.S. 553, 559 (2004); and Ann K. Wooster, Annotation, *Construction and Application by State Courts of Protective Sweep Doctrine Recognized in Maryland v. Buie*, 494 U.S. 325, 110 S. Ct. 1093, 108 L. Ed. 2d 276 (1990)--*Warrantless Search of House for Dangerous Persons*, 78 A.L.R. 6th 297.

¹³ See S. R. Shapiro S. R. Shapiro, Annotation, *Violation of Federal Constitutional Rule (Mapp v. Ohio) Excluding Evidence Obtained Through Unreasonable Search or Seizure, as Constituting Reversible or Harmless Error Violation of Federal Constitutional Rule (Mapp v. Ohio) Excluding Evidence Obtained Through Unreasonable Search or Seizure, as Constituting Reversible or Harmless Error*, 30 A.L.R.3d 128.

¹⁴ See *Brigham City v. Stuart*, 547 U.S. 400, 403 (2006).

¹⁵ *Id.*

under the Fourth Amendment.”¹⁶ For example, in *Mincey v. Arizona*, police officers conducted a warrantless search of an apartment because there was a homicide.¹⁷ The court concluded that a homicide presents an emergency situation demanding immediate action in order to see if there are other victims or to see if the killer is still within the premises.¹⁸ Emergency situations usually are always an exception to the Fourth Amendment, because it is reasonable for the police to protect human life or substantial property interests.¹⁹ However, in *Mincey*, the police officers conducted a four day warrantless sweep and therefore, the court found that a four day warrantless sweep was objectively unreasonable under the Fourth Amendment.²⁰ Thus, in this case the police officers should have obtained a warrant to search dresser drawers, carpets, and the like.²¹ Another example where police officers conduct a warrantless search of a home is during a protective sweep. In these cases, the police officer feels that they or others on scene will be harmed by third parties who are within the house. Again, a protective sweep is not an extensive search as a search done with a warrant.²²

b. How Warrants Protect A Right to Privacy

Warrants are essential to the right to privacy because they are established through an objective standard.²³ This allows a neutral party, the magistrate, to

¹⁶ *Id.*

¹⁷ *See Mincey v. Arizona*, 437 U.S. 387, 392 (1978).

¹⁸ *Id.*

¹⁹ John F. Decker, *Article: Emergency Circumstances, Police Responses, and Fourth Amendment Restrictions*, 89 J. Crim. L. & Criminology 434, 444 (1999).

²⁰ *See Mincey v. Arizona*, 437 U.S. 387, 393 (1978).

²¹ *Id.*

²² *See Ann K. Wooster, Annotation, Construction and Application by State Courts of Protective Sweep Doctrine Recognized in Maryland v. Buie*, 494 U.S. 325, 110 S. Ct. 1093, 108 L. Ed. 2d 276 (1990)--*Warrantless Search of House for Dangerous Persons*, 78 A.L.R. 6th 297.

²³ *See Terry v. Ohio*, 392 U.S. 4, 21 (1968).

judge the reasonableness of a search or seizure in light of the particular circumstances within the situation at hand.²⁴ For an officer to obtain a warrant, the officer must show that there is a justified belief for having probable cause.²⁵ “Officers must support this showing with sworn statements (affidavits), and must describe in particularity the place they will search and the items they will seize.”²⁶ The magistrate would determine the facts presented to them and see if a man of reasonable caution would think that the search or seizure that might be taken is appropriate.²⁷

An invasion of privacy, however, can be conducted without a warrant through exceptions established in case law to the Fourth Amendment.²⁸ One exception to the warrant requirement of the Fourth Amendment found by the United States Supreme Court is a warrantless protective sweep. A warrantless protective sweep is “a quick and limited search of premises, incident to an arrest and conducted to protect the safety of police officers or others.”²⁹ This exception was found constitutional under the Fourth Amendment through reasoning laid out in the 1968 case of *Terry v. Ohio*.³⁰ In *Terry*, the United States Supreme Court held that,

“where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquiries, and were

²⁴ *Id.*

²⁵ See *Unreasonable Search and Seizure*, Cornell University Law School (Sep. 12, 2015), available at https://www.law.cornell.edu/wex/unreasonable_search_and_seizure.

²⁶ *Id.*

²⁷ See *Terry v. Ohio*, 392 U.S. 4, 22 (1968).

²⁸ See *United States v. Fadul*, 16 F. Supp. 3d 271, 280 (S.D.N.Y. 2014).

²⁹ See *Maryland v. Buie*, 494 U.S. 327, 327 (1990).

³⁰ *Id.*

nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety, he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons seized may properly be introduced in evidence against the person from whom they were taken."³¹

From this reasoning the court found that a warrantless protective sweep is permitted "if the searching officer possess[es] a reasonable belief based on specific and articulable facts which reasonably warranted the officer in believing that the area swept harbored an individual posing a danger to the officer or others."³² Therefore, warrantless protective sweeps are an exception to the warrant requirement of the Fourth Amendment.³³ As established above, the warrantless protective sweep is not an extensive search.³⁴ During a warrantless protective sweep if police officers find illegal activities or items, then they can use the "plain view" doctrine to obtain the evidence.³⁵

The "plain view" doctrine is another exception to the warrant requirement established in the Fourth Amendment.³⁶ The "plain view" doctrine allows an officer to seize an item in plain view where the officer has a lawful right, such as a warrant or permission to be in a home, and to access the illegal object(s).³⁷ However, the object's incriminating character must be immediately apparent to

³¹ See *Terry v. Ohio*, 392 U.S. 4, 30-1 (1968).

³² See *Maryland v. Buie*, 494 U.S. 327, 327 (1990).

³³ Minnesota criminal law also agrees that protective sweeps are an exception to the warrant requirement of the Fourth Amendment; "Law enforcement officers may conduct, as a precautionary measure, protective sweep searches of areas immediately adjoining the place of arrest without probable cause or reasonable suspicion to believe criminal conduct is occurring." 11 *Dunnell Minn. Digest CRIMINAL LAW* § 4.01

³⁴ See Ann K. Wooster, Annotation, *Construction and Application by State Courts of Protective Sweep Doctrine Recognized in Maryland v. Buie*, 494 U.S. 325, 110 S. Ct. 1093, 108 L. Ed. 2d 276 (1990)--*Warrantless Search of House for Dangerous Persons*, 78 A.L.R. 6th 297.

³⁵ See *Maryland v. Buie*, 494 U.S. 327, 331 (1990).

³⁶ See *Horton v. California*, 496 U.S. 130, 137 (1990).

³⁷ *Id.*

the police officer.³⁸ To be immediately apparent, the police officer must have immediately recognized the incriminating character of the object and understand that the object could be used as evidence against the accused.³⁹ Therefore, a bag of marijuana sitting on a table where police are conducting a search warrant for a gun is in plain view since the officers had a legal right to be in the home and the object, the marijuana, is readily viewable and it is immediately apparent that it is an illegal substance or a crime.⁴⁰ However, the Supreme Court has not found a plain view exception when a police officer finds a stolen stereo in a home, because it is not immediately apparent that the stereo was stolen, since the officer would have to lift up every stereo in the house to read the serial number and to see if that stereo was stolen.⁴¹

III. WARRANTLESS PROTECTIVE SWEEPS

a. The Definition of Protective Sweeps Changing with Time

Warrantless protective sweeps were established as an exception to the warrant requirement in the case of *Maryland v. Buie* in 1990.⁴² The Supreme Court held that, “[a] ‘protective sweep’ is a quick and limited search of premises, incident to an arrest and conducted to protect the safety of police officers or others.”⁴³ The *Buie* court went on to define the protective sweep as “a cursory visual inspection of those places in which a person might be hiding and may last no longer than is necessary to dispel the reasonable suspicion of danger, in any

³⁸ *Id.*

³⁹ See *Coolidge v. N.H.*, 403 U.S. 443, 466 (1971).

⁴⁰ See *Arizona v. Hicks*, 480 U.S. 323, 325-26 (1987).

⁴¹ *Id.*

⁴² See *Maryland v. Buie*, 494 U.S. 327, 327 (1990).

⁴³ *Id.*

event no longer than it takes to complete the arrest and depart the premises.”⁴⁴ To determine if a police officer has reasonable suspicion to conduct a warrantless protective sweep, the courts look at the type of offense that is suspected and the officers’ experience with that type of offense.⁴⁵ However, reasonable suspicion is not needed within the arrestee’s immediate grab area this is due to the fact that police officers want themselves and others on the arrest site to be free from the danger of the arrestee using weapons against them, and so the police officers can obtain those weapons or items as evidence against the accused.⁴⁶ The *Buie* court also held that officers may search spaces where a person could be hidden, as long as it was a search-incident-to-arrest, and if not, then a search that includes places where a person can be hidden is not allowed during a warrantless protective sweep.⁴⁷ Still, courts are debating the issue on what a protective sweep is with regards to what exactly is a quick and limited search.⁴⁸

⁴⁴ Again, the police officers must have a reasonable suspicion or belief that the area might harbor third parties that may pose a danger to the officers or others on the arrest scene. See Ann K. Wooster, Annotation, *Construction and Application by State Courts of Protective Sweep Doctrine Recognized in Maryland v. Buie*, 494 U.S. 325, 110 S. Ct. 1093, 108 L. Ed. 2d 276 (1990)--*Warrantless Search of House for Dangerous Persons*, 78 A.L.R. 6th 297.

⁴⁵ See Ann K. Wooster, Annotation, *Construction and Application by State Courts of Protective Sweep Doctrine Recognized in Maryland v. Buie*, 494 U.S. 325, 110 S. Ct. 1093, 108 L. Ed. 2d 276 (1990)--*Warrantless Search of House for Dangerous Persons*, 78 A.L.R. 6th 297.

⁴⁶ See *State v. McGrane*, 733 N.W.2d 671, 678 (Iowa 2007).

⁴⁷ See *State v. McGrane*, 733 N.W.2d 671, 678 (Iowa 2007).

This idea established by *Buie*, with concerns to searching for third parties when there is an arrest, has been affirmed by the Northern District of Illinois, the Court of Appeals of Missouri, and by the Eastern District of Tennessee. See *Rusinowski v. Village of Hillside*, 19 F. Supp. 3d 798 (N.D. Ill. 2014); *State v. Cromer*, 186 S.W.3d 333 (Mo. Ct. App. W.D. 2005); and *U.S. v. Gregg*, 30 F. Supp. 3d 704 (E.D. Tenn. 2014). However, the Court of Appeals of Idaho, the Court of Appeals of Kentucky, the Supreme Court of New Jersey, the Court of Appeals of Texas, and the United States Court of Appeals for the Eight Circuit narrowed the idea further stating that even if there was an arrest, a reasonably prudent officer must be able to point to articulable facts based on the officer’s knowledge and experience to support their belief that others may be on the premises after effecting an arrest or detention at a house. See *State v. Slater*, 133 Idaho 882, 994 P.2d 625 (Ct. App. 1999); *Brown v. Com.*, 423 S.W.3d 765 (Ky. Ct. App. 2014); *State v. Gamble*, 218 N.J. 412, 95 A.3d 188 (2014); *Sayers v. State*, 433 S.W.3d 667 (Tex. App. Houston 1st Dist. 2014); and *U.S. v. Aguilar*,

The United States Court of Appeals for the Second Circuit has held that law enforcement officers may not enter a defendant's home to perform a protective sweep when the defendant is arrested outside of that home, unless there are "articulable facts which 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."⁴⁹ An example of a police officer having articulable and reasonable facts to conduct a warrantless protective sweep inside the home when they arrested a person outside of the home is when, the police officer knows that the arrestee habitually pursues criminal activities with accomplices.⁵⁰ So by searching the house for third parties, it is a reasonable and articulable fact that the arrestee's accomplices might be in the home.⁵¹ Even so, police officers cannot "create circumstances warranting application of the search incident to arrest exception merely by bringing the arrestee near the items or areas they wish to search, or vice

743 F.3d 1144 (8th Cir. 2014). Yet, the Court of Appeals of Minnesota is in the middle of this argument. Minnesota agrees with *Buie* but also adds that courts must look at the totality of the circumstances involved to see if the police officer had an objective basis for their suspicions. See *State v. Bergerson*, 671 N.W.2d 197 (Minn. Ct. App. 2003).

⁴⁸ See *United States v. Fadul*, 16 F. Supp. 3d 271, 280 (S.D.N.Y. 2014).

⁴⁹ See *United States v. Barone*, 721 F.Supp.2d 263, 272 (S.D.N.Y. 2010).

Six other state courts have affirmed *Barone* in regards to allowing police officers to conduct protective sweeps when officers have articulable facts that the house harbors dangerous third parties. See Ann K. Wooster, Annotation, *Construction and Application by State Courts of Protective Sweep Doctrine Recognized in Maryland v. Buie*, 494 U.S. 325, 110 S. Ct. 1093, 108 L. Ed. 2d 276 (1990)--*Warrantless Search of House for Dangerous Persons*, 78 A.L.R. 6th 297. Although, other state courts have also found this idea to be unconstitutional under the Fourth Amendment. *Id.*

⁵⁰ See Ann K. Wooster, Annotation, *Construction and Application by State Courts of Protective Sweep Doctrine Recognized in Maryland v. Buie*, 494 U.S. 325, 110 S. Ct. 1093, 108 L. Ed. 2d 276 (1990)--*Warrantless Search of House for Dangerous Persons*, 78 A.L.R. 6th 297.

⁵¹ See Ann K. Wooster, Annotation, *Construction and Application by State Courts of Protective Sweep Doctrine Recognized in Maryland v. Buie*, 494 U.S. 325, 110 S. Ct. 1093, 108 L. Ed. 2d 276 (1990)--*Warrantless Search of House for Dangerous Persons*, 78 A.L.R. 6th 297.; and see also *Moorer v. State*, 286 Ga. App. 395, 649 S.E.2d 537 (2007); and *People v. Maier*, 226 Cal. App. 3d 1670, 277 Cal. Rptr. 667 (4th Dist. 1991).

versa.”⁵² A search incident to an arrest is different from a warrantless protective sweep. This is due to the fact that the search incident to an arrest is conducted after someone is arrested. Whereas, a warrantless protective sweep can be done in any place where a police officer is and has reasonable suspicion that there could be harm. Therefore, a police officer can conduct a warrantless search whenever the officers feel they or other parties might be faced with harm.⁵³ Furthermore, the police in a protective sweep cannot conduct a full search of a whole house or of a whole building. In a protective sweep, when the police are looking for third parties, they may only conduct a sweep that is no more than “a cursory inspection of those spaces where a person may be found.”⁵⁴ The reason why a warrantless protective sweep is more permissible in a search incident to an arrest is because the police officers want to stay safe from third parties who might harm the police officers, or others in the area.⁵⁵ Police officers also want to make sure that the arrestee is kept away from objects that they could use to escape from the arrest or objects that they can use that could harm the officer, and the police officers want to find evidence that the prosecution can use in trial against the arrestee.⁵⁶

⁵² See *United States v. Barone*, 721 F.Supp.2d 263, 271 (S.D.N.Y. 2010).

⁵³ Again, the police officers might have to fulfill other requirements in their than just feeling a threat from a third party. Ann K. Wooster, Annotation, *Construction and Application by State Courts of Protective Sweep Doctrine Recognized in Maryland v. Buie*, 494 U.S. 325, 110 S. Ct. 1093, 108 L. Ed. 2d 276 (1990)--*Warrantless Search of House for Dangerous Persons*, 78 A.L.R. 6th 297.

⁵⁴ See *United States v. Gould*, 364 F.3d 580, 587 (5th Cir. 2004).

⁵⁵ See Illya Lichtenberg, Article: *The Dangers of Warrant Execution in a Suspect's Home: Does An Empirical Justification Exist for the Protective Sweep Doctrine?*, 54 Santa Clara L. Rev. 623, 629-30 (2014). Also, this law review article explains that out of seventy-six felonious killings, thirty-six (over half) have occurred during an execution of an arrest warrant. Therefore, police officers face a very intense situation when they execute an arrest warrant. Thus, protective sweeps are generally allowed when there is an incident to an arrest because society is protecting the police officers and themselves from serious harm.

⁵⁶ See Ann K. Wooster, Annotation, *Construction and Application by State Courts of Protective Sweep Doctrine Recognized in Maryland v. Buie*, 494 U.S. 325, 110 S. Ct. 1093, 108 L. Ed. 2d 276

Therefore, the police officer's sweep can cover anything that the arrestee can grab before they are handcuffed and it can extend to inside a home if there is reasonable suspicion that the officer is in danger or that evidence might be destroyed by a third party.⁵⁷

In 2011, the Court of Appeals of Ohio, Second Appellate District held that protective sweeps can be done even when the appellee is only detained and not arrested.⁵⁸ Here, the court's analysis is focused on the reasonableness of the exception to the warrant requirement.⁵⁹ The court found that the officer had a reasonable belief criminal activity had occurred or was about to occur inside the house and therefore, the officer was justified to detain people in order to conduct a warrantless protective sweep.⁶⁰ According to the facts of the case, the officers thought they saw a man put a gun in his waistband before the officers went into the house, and because of this, the officers were reasonable in detaining the suspects in the house and they were reasonable in searching every floor for the gun.⁶¹ The Second Appellate District also established that while conducting the protective sweep, if an officer finds evidence of a separate criminal act, under the

(1990)--*Warrantless Search of House for Dangerous Persons*, 78 A.L.R. 6th 297. See also Illya Lichtenberg, Annotation, *Article: The Dangers of Warrant Execution in a Suspect's Home: Does An Empirical Justification Exist for the Protective Sweep Doctrine?*, 54 Santa Clara L. Rev. 623, 629-30 (2014).

⁵⁷ See *United States v. Barone*, 721 F.Supp.2d 263, 272 (S.D.N.Y. 2010).

⁵⁸ See *State v. Young*, N.E. 1, 1 (Ohio Ct. App. 2011). However many state courts have found that an arrest must happen if police officers want to take a warrantless protective sweep. See Ann K. Wooster, Annotation, *Construction and Application by State Courts of Protective Sweep Doctrine Recognized in Maryland v. Buie*, 494 U.S. 325, 110 S. Ct. 1093, 108 L. Ed. 2d 276 (1990)--*Warrantless Search of House for Dangerous Persons*, 78 A.L.R. 6th 297.

⁵⁹ See *State v. Young*, N.E. 1, 14 (Ohio Ct. App. 2011).

⁶⁰ *Id* at 22.

⁶¹ *Id* at 4-8.

plain view doctrine the officers can confiscate the evidence and arrest the people for the crime.⁶²

Additionally, the Florida Court of Appeals narrowed the definition of warrantless protective sweeps further by establishing that police officers cannot search a locked room during a protective sweep.⁶³ The Florida Court of Appeals found this because there was a lack of exigent evidence that would have given the police officers authority to enter a locked room.⁶⁴ The court acknowledged, however, that if there were no exigent evidence to gain access to a locked room, the police can obtain consent from the homeowner in order to enter the locked room.⁶⁵ The court affirmed this rule from *State v. Davile*.⁶⁶ According to Davile, the “police ‘cannot create the danger that becomes the basis for a protective sweep, but rather must be able to point to dangerous circumstances that developed once the officers were at the scene.’”⁶⁷ Thus, without consent from the homeowner or exigent circumstances that can give rise to danger, police officers

⁶² *State v. Young*, N.E. 1, 29 (Ohio Ct. App. 2011).

Recently, the Ohio Second District Court has affirmed their opinion in two 2015 cases. In the one case a protective sweep was done due to the fact that the police had a reasonable suspicion that harm can come to them since the defendants fled from their car into their house, they would not let the police into the house after knocking, and once when the police were able to enter, they saw the two men and a toilet flushed which gave them the belief that they could be ambushed by a third party. *State v. Lam*, 2015 Ohio App. LEXIS 4201 at ¶ 16 (Ohio Ct. App. 2015). The second case where the Ohio District Court affirmed their 2011 ruling in *State v. Young*, was in *State v. Koon*, where the police received complaints about marijuana and when asked to go inside, the defendant let them in and upon conducting a protective sweep the police found marijuana and supplies to grow marijuana. From this the police detained the defendants inside of the house and waited for a warrant to conduct a search of the whole house. *State v. Koon*, 2015 Ohio App. LEXIS 1291 at ¶ 17 (Ohio Ct. App. 2015).

⁶³ See *Hernandez v. State*, 98 So.3d 703, 703 (Fla. Dist. Ct. App. 2012).

⁶⁴ *Id* at 708.

⁶⁵ *Id* at 709.

⁶⁶ *Id* at 708.

⁶⁷ *Id*.

cannot enter a locked room when they are conducting a warrantless protective sweep.⁶⁸

The Supreme Court of Kentucky in 2013 affirmed the ruling in *United States v. Archibald*⁶⁹, where the court narrowed Buie's holding on requiring police to have an articulable basis on which to support their reasonable suspicion of danger from inside the home.⁷⁰ An articulable basis means that the police have to be able to express the facts that clearly show that there is a reasonable basis for the police officer's belief that the police or anyone else is in danger.⁷¹ The Kentucky Supreme court added that the "absence of information cannot be an articulable basis for a protective sweep that requires information to justify it in the first place."⁷² *Archibald* argues that, this narrowed decision is based off of the idea that a standard for warrantless protective searches should not be made off of ignorance, where "police [can] stay ignorant as to whether or not anyone else is inside a house in order to conduct a protective sweep."⁷³ Therefore, the government has to meet its burden to demonstrate that there were "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."⁷⁴

⁶⁸ The Florida Criminal Procedure has incorporated this belief that police officers cannot enter a locked room during a warrantless protective sweep into their Criminal Defense Trial Manual. 1-2 Florida Criminal Defense Trial Manual § 2.3 (2015).

⁶⁹ See *United States v. Archibald*, 589 F.3d 291 (6th Cir. 2009).

⁷⁰ *Id.*

⁷¹ *Id.* at 300-01.

⁷² See *Brumley v. Commonwealth*, 413 S.W.3d 280, 287 (Ky. 2013).

⁷³ See *United States v. Archibald*, 589 F.3d 291, 300 (6th Cir. 2009).

⁷⁴ See *United States v. Archibald*, 589 F.3d 291, 301 (6th Cir. 2009).

In 2014, a federal district court in New York affirmed Buie with regards to ensuring that a protective sweep is conducted "only when justified by a reasonable, articulable suspicion that the house is harboring a person posing a danger to those on the scene."⁷⁵ The court affirmed the holding in Buie because they looked at the analysis in Payton⁷⁶ with regards to the right to privacy integrated within the Fourth Amendment of the U.S. Constitution.⁷⁷ This analysis in Payton was concerned with the Fourth Amendment ideal that there is a greater burden placed on officers who enter a home or dwelling without consent and this constitutional protection afforded to the individual's interest in the privacy of his own home is equally applicable to a warrantless entry for the purpose of arresting a resident of the house.⁷⁸ Consequently, a protective sweep can be carried out only if there is a reasonable, articulable suspicion that the house is harboring a person posing a danger to those on the scene.⁷⁹

B. How the Court Looks at Warrantless Protective Sweeps Today

The Michigan courts also agree with the sixth circuit that police must have an articulable basis for doing a warrantless protective sweep. Here, the police entered the house to conduct an arrest and on their way to retrieve a coat and shoes for the arrestee in the back bedroom on the same floor as they conducted the arrest on, the police saw in plain view a .22 caliber long rifle and a black rifle. The Michigan district court found that the protective sweep was reasonable based on the belief that the officers saw the guns in plain view and the officers then had a reasonable belief that they were in danger. See *United States v. Abdulkadin*, 880 F. Supp. 2d 779, 780 & 784-85 (2012).

⁷⁵ See *United States v. Fadul*, 16 F. Supp.3d. 271, 293 (S.D.N.Y. 2014).

⁷⁶ See *Payton v. New York*, 445 U.S. 574, 587 (2014).

⁷⁷ See *United States v. Fadul*, 16 F. Supp.3d. 271, 293 (S.D.N.Y. 2014).

⁷⁸ See *Payton v. New York*, 445 U.S. 574, 587-8 (2014).

⁷⁹ Like the New York Federal District Court the Maine District Court agrees that a warrantless protective sweep can be conducted only if the police have a reasonable articulable suspicion that the house is harboring a person posing a danger to those on the scene. In this case, the police entered a small hotel room in which the police conducted a search because the person they were questioning had a background of drugs, firearms, and resisting arrest. The court found that the warrantless protective sweep was reasonable and constitutional since the defendant had this background and the police were able to articulate their fear with facts that the room was a confined space and the police knew that an unknown person was hiding behind the closed bathroom door. *United States v. Henry*, 2014 U.S. Dist. LEXIS 147783, at 25-6 (D. Me. 2014).

Today, there is a court split on how much of a search police officers can do in a warrantless protective sweep.⁸⁰ Some of the courts, cite the Buie Court's definition of a protective sweep, which is “a quick and limited search of premises, incident to an arrest and conducted to protect the safety of police officers or others.”⁸¹ However, these courts have held strongly that the protective sweep doctrine does not apply to consent searches.⁸² These courts who cite Buie reason that a broader search would not be consistent with the balancing test implemented in the Fourth Amendment.⁸³ Again, this balancing test is the balance of an individual’s privacy interest against the promotion of legitimate governmental interests, such as protecting society from the harm of drugs.⁸⁴ The Fourth Amendment balancing test is weighing the governmental interests against the privacy interests implemented in the Fourth Amendment.⁸⁵ Here, the governmental interest is protecting officers from danger by the possibility of there being armed third parties in the house.⁸⁶ The privacy interests implemented in the Fourth Amendment is the right that citizens have the right to privacy within their own home without governmental intrusion.⁸⁷ By having a broader search, this “would enable and encourage [police] officers to obtain . . . consent as a pretext

⁸⁰ See *United States v. Fadul*, 16 F. Supp.3d. 271, 281 (S.D.N.Y. 2014).

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.* at 287.

⁸⁴ See *Cucuta v. New York City*, 25 F. Supp.3d 404, 410 (S.D.N.Y. 2014); See also Ann K. Wooster, Annotation, *Construction and Application by State Courts of Protective Sweep Doctrine Recognized in Maryland v. Buie*, 494 U.S. 325, 110 S. Ct. 1093, 108 L. Ed. 2d 276 (1990)--*Warrantless Search of House for Dangerous Persons*, 78 A.L.R. 6th 297.

⁸⁵ See *Terry v. Ohio*, 392 U.S. 4, 20 (1968).

⁸⁶ *Id.* at 20-1.

⁸⁷ *Id.*

for conducting a warrantless search of the home.⁸⁸ This view also considers how police officers are not “compelled to enter,”⁸⁹ but they choose to enter in spite of knowing the risks that they can face in doing so.⁹⁰ Instead, officers could arrest people outside of the home, or officers can go into the house with more precaution because of these possibilities instead of searching or taking a warrantless protective sweep that includes the whole house.

However, “[o]ther courts have held the opposite, reasoning that when officers are lawfully present in a home pursuant to consent ‘circumstances can give rise to equally reasonable suspicion of equally serious risk of danger of officers being ambushed by a hidden person as would be the case were there an arrest.’”⁹¹ For example, there could be a situation like in *United States v. Gandia*, where police officers had obtained permission to enter the defendant’s apartment and upon entering in plain view saw a bullet.⁹² From this the officers conducted a warrantless protective sweep in order to protect their safety because they had a reasonable suspicion that a third party could be in the apartment. Another example is found in *United States v. Holland*, where officers had consent to enter an apartment and when they entered the apartment they saw a marijuana plant in

⁸⁸ See *United States v. Fadul*, 16 F. Supp.3d. 271, 286 (S.D.N.Y. 2014).

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.* at 281.

In Illya Lichtenberg’s Article: *The Dangers of Warrant Execution in a Suspect’s Home: Does An Empirical Justification Exist for the Protective Sweep Doctrine?*, She repeatedly discusses a statistic with seventy-six fatal incidents and out of these seventy-six incidents, sixteen of the incidents were ambushes which resulted in the deaths of sixteen police officers. Illya Lichtenberg’s Article: *The Dangers of Warrant Execution in a Suspect’s Home: Does An Empirical Justification Exist for the Protective Sweep Doctrine?*, 54 Santa Clara L. Rev. 623, 629-30 (2014).

⁹² See *United States v. Gandia*, 424 F.3d 257, 258 (2d Cir. 2005).

plain view.⁹³ From this they had probable cause in believing that there was contraband in the apartment and that others might be hiding.⁹⁴ For the officers safety they conducted a full protective sweep throughout the apartment.⁹⁵ Therefore, these courts argue that upon probable cause combined with exigent circumstances and the normal requirement that officers knock and announce themselves, this view can protect police officers when facts and circumstances can suggest that they might be at a serious risk of danger.

IV. HOW A LIMITED SEARCH IS BETTER FOR SOCIETY AS A WHOLE

a. A Reasonable Protective Sweep

Again, a limited sweep held in *Buie* is “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,' have held categorically that the doctrine does not apply to consent searches.”⁹⁶ By implementing this rule established in *Buie* as a rule requiring certain elements to be needed in order for police officers to conduct warrantless protective sweeps, it will provide a minimal reasonable intrusion on people, it will protect police officers from harm, and it will stop the possibility of police misuse or abuse. First, the elements that police officers would need to satisfy in order to conduct a warrantless protective sweep include: (1) an arrest, (2) the arrest took place in the home that the officer wants to conduct the sweep in, and (3) the sweep is limited to the area where the arrestee can grab. Second, by making sure that the officer satisfies these three elements it will

⁹³ See *United States v. Holland*, 522 Fed. Appx. 268, 276 (6th Cir. 2013).

⁹⁴ *Id.*

⁹⁵ See *United States v. Holland*, 522 Fed. Appx. 268, 275-76 (6th Cir. 2013).

⁹⁶ See *United States v. Fadul*, 16 F. Supp.3d. 271, 287 (S.D.N.Y. 2014).

ensure that non-criminals, or innocent citizens, will not have an intrusion on their right to privacy. This guarantees that the arresting officer will be safe from harm committed by the arrestee, and it will make sure that the accused, or the arrestee's, rights are protected as well.

By allowing a broader search, police officers can be more susceptible to misuse or abuse with the use of warrantless protective sweeps. This can be because the officers want to make sure no harm will come to them or others. One of the ways in which harm can come to the police officers is by third parties ambushing them when the officers are invited into someone's home. If an accused or an accused's relative believes that they were wronged and they want payback, then they can easily invite the officer into their home and have another person waiting for the officer so that they could kill or seriously harm them. Of course society sees people being seriously harmed or killed by others as a very bad thing. Yet, this is especially true with society not wanting police officers to be targeted. This is because police officers put their life in jeopardy every day for society, and people would not want to become police officers if police officers are being targeted. Thus, there would be no one in society to enforce and protect the laws, and everyone would be in danger. Everyone would be in danger because harm can come to people in society through small and large criminal acts, such as selling and buying drugs, murder, and armed robbery. Therefore, police are needed to protect society to ensure that these criminal acts are not committed and society is kept from harm, and if these acts are committed, then the people who committed them will face punishment. Thus, by having a broader search of a

home in a warrantless protective sweep, the police can keep guns, drugs, and other illicit things off of the streets and keep society safe.

Not only can a broader approach to a warrantless protective sweep be used to protect society, but it can also ensure the guilty get punished for those crimes. This can be done by the police obtaining all of the evidence against the arrestee. By having more evidence the prosecution will be able to charge and find the suspects guilty of the crimes that they have committed. Therefore, this can help put away a lot more criminals in jail for the crimes that they commit and keep society safe from them.

However, this broader approach also means that innocent people will have their right to privacy violated. The violation could occur through mistake by the police officers, such as two people having the same name but living in two different towns. This could cause the innocent person to be subjected to their home and belongings being searched for no reason, and the guilty person to stay free and not being subjected to warrantless searches. This will create distrust among the citizens and the police, and the governmental system could be eroded by this distrust. Yet, mistake might not be the only problem to this broader approach of warrantless protective sweeps. The broader approach could facilitate misuse by the police. The police could conduct protective sweeps at homes in high crime areas to ensure that those people are really not criminals and not harming society.⁹⁷ Or, this broader approach could create the police to abuse this

⁹⁷ The Supreme Court in *Illinois v. Wardlow*, has found that a high-crime area can be a determinative factor for a police officer with satisfying the reasonable suspicion requirement. So if the broader approach to a warrantless protective sweep is accepted, then police can use a high-crime area and the belief that the home harbors a third party to gain reasonable suspicion and

exception to a warrant requirement.⁹⁸ For instance, this could be done through the officer's abuse of power because they do not like a specific person. When an officer does not like a specific person for any reason the officer can be susceptible to abuse of their police power. For example, the officer could conduct these searches on the person they do not like repeatedly for the belief that, that person could harm the officer or other people in society. Consequently, by implementing the limited search of a warrantless protective sweep a person's right to privacy will be protected from the mistake, misuse, or abuse of police officers. Not only does the limited search of a warrantless protective sweep protect the rights of the people, but it also will protect the police officers from false accusations with regards to why they chose to do a warrantless protective sweep.

therefore, they can conduct a warrantless protective sweep if they are in someone's home. See Andrew Guthrie Ferguson and Damien Bernache, *Article: The "High-Crime Area" Question: Requiring Verifiable and Quantifiable Evidence for Fourth Amendment Reasonable Suspicion Analysis*, 57 Am. U.L. Rev. 1587, 1604. Another example, where police officers strategize on high-crime areas is in Minneapolis, Minnesota, where the "Hot Spots" program increases the number of police presence in the area to reduce criminal activity. They found this program to be effective. See Law enforcement: Policing Strategies, <https://www.crimesolutions.gov/TopicDetails.aspx?ID=84> (last visited Jan. 14, 2016). Therefore, with a broader approach to warrantless protective sweeps, the police might abuse the sweeps in order to decrease crime, especially if they find the sweeps to be effective.

⁹⁸ The police could discriminate based on racial profiling. If they enter a home of someone with a certain race, the officer might use the warrantless sweep more against that race than they would against a different race. Here, society can see this when the police officers stop, question, arrest, and search or investigate a person because the officer believes that members of that person's racial or ethnic group are more likely than the population at large to commit the sort of crime that the officer is investigating. For example, after September 11, 2001, Arab Americans or people from Middle Eastern countries are believed to be prone to crime more than other racial or ethnic groups. See Samuel R. Gross and Katherine Y. Barnes, *Article: Road Work: Racial Profiling and Drug Interdiction on the Highway*, 101 Mich. L. Rev. 651, 654-55 (2002). Another example is in New Jersey where the government investigated allegations of racial profiling on a New Jersey Turnpike. The court found "that 42% of stops and 73.2% of arrests were of blacks motorists, resulting in respective disparities of 16.35 and 54.2 standard deviations." See David Rudovsky, *Article: Law Enforcement by Stereotypes and Serendipity: Racial Profiling and Stops and Searches without Cause*, 3 U. Pa. J. Const. L. 296, 300 (2001). Therefore, it is easy to see that racial profiling could be a great concern to privacy if the broaden approach is the accepted way for warrantless protective sweeps.

b. Protecting the Police Officers

The limited search of a warrantless protective sweep will also protect police officers. This is because police officers will be able to conduct a minimal search in the area in which the arrestee is being arrested in. So that is the area in which the arrestee can reach for things. As a result, the police officer(s) will not have to worry for an ambush because the police officers will not have to ask for consent of the homeowner to enter the home, if there is a valid arrest taking place. Therefore, the potential arrestee or third parties will not have the time to set up an ambush. By implementing the limited search, it will protect police officers, society, and protect the privacy rights of citizens. Like the decision in *Fadul*, police officers do not have to enter a home if they have knowledge of the risks faced in doing so.⁹⁹ The officers can conduct the arrest outside of the home, arrest someone at an arrestee's job, or if the officers only want to question an individual, the officers can do so at the police station.¹⁰⁰ The police do not have to enter a home when they have no reason to. These measures will ensure the police officers' safety while at the same time protect the right to privacy.

Yet, if the officers are still afraid for their safety by third parties when they are arresting someone, then they can have more officers with them to conduct an arrest. By having more officers at one time during one arrest, it can help prevent ambushes. This is because a larger group of police can scare away a third party and it will show all of the people involved that the police are taking the arrest or questioning very seriously. The police will want to do this because it

⁹⁹ See *United States v. Fadul*, 16 F. Supp.3d. 271, 286 (S.D.N.Y. 2014).

¹⁰⁰ See *States v. Gandia*, 424 F.3d 257, 263 (2005).

ensures that they will stay safe from harm and if there becomes too many arrests and the police cannot do this, then there could be a new unit or section open in the police force to have officers or trained workers to be able to conduct these arrests. Again, society will want to have more police officers if it means that society will stay safe, therefore, society will pay more in taxes or change funding from taxes to make sure that this happens.¹⁰¹ However, the officers still would have to make sure that they satisfy the three elements, (1) an arrest, (2) the arrest took place in the home that the officer wants to conduct the sweep in, and (3) the sweep is limited to the area where the arrestee can grab, to ensure that a proper limited warrantless protective sweep is being taken.¹⁰²

c. Obtaining a warrant

Yet, if there is a time when an officer observes something during an arrest inside of a home that gives them probable cause that a crime is taking place, the officer can obtain a search warrant in order to search the house.¹⁰³ By reaffirming this warrant requirement from the Fourth Amendment, police officers will not have to worry about their actions becoming unreasonable and the police officers can obtain legal evidence that can be used in court. Overall, the limited search to a warrantless protective sweep will ensure that fairness is conducted by the police who follow the laws, and the citizens' right to privacy will be protected.

¹⁰¹ One can see this idea in education, where society will change funding for certain classes like the arts in order for the schools to have more teachers to teach students. Another example, can be seen in towns where the township will raise funding for a new park, in order for kids to be able to play in a safe area.

¹⁰² That in order to conduct a warrantless protective sweep under the limited approach theory police officers would have to satisfy that there was: (1) an arrest, (2) an arrest that took place in the home that the officer wants to conduct the sweep in, and (3) a sweep that is limited to the area where the arrestee can grab.

¹⁰³ See [Unreasonable Search and Seizure](https://www.law.cornell.edu/wex/unreasonable_search_and_seizure), Cornell University Law School (Sep. 12, 2015), available at https://www.law.cornell.edu/wex/unreasonable_search_and_seizure.

Moreover, when the limited protective sweep is not enough, the police will be able to conduct a full search if probable cause is found by a neutral and detached magistrate¹⁰⁴ who will review the facts to see if a reasonable person could find the search warranted¹⁰⁵, people's right to privacy is ensured¹⁰⁶, and police work is completed.

V. CONCLUSION

The definition of a warrantless protective sweep has been changing over time, creating narrow and broad definitions of a sweep and when a sweep goes into the realm of a search for Fourth Amendment purposes. For instance, one of the first definitions of a warrantless protective sweep was found in *Buie*, by establishing that it is “a quick and limited search of premises, incident to an arrest and conducted to protect the safety of police officers or others.”¹⁰⁷ Barone added to this definition with the rule that a protective sweep must have been supported by a reasonable, articulable suspicion that the area to be swept harbored an individual posing a danger to those on the scene.¹⁰⁸ Then, the courts went on to say that, “the [] protective sweep [must] not have been ‘a full search’ but

¹⁰⁴ A long standing principle that probable cause must be determined by a “neutral and detached magistrate,” and not by “the officer engaged in the often competitive enterprise of ferreting out crime.” *Spinelli v. United States*, 393 U.S. 411, 413-17 (1969). See also, *Johnson v. United States*, 333 U.S. 11, 13-4 (1948).

¹⁰⁵ See *Terry v. Ohio*, 392 U.S. 4, 22 (1968).

¹⁰⁶ See Sherry F. Colb, *ARTICLE: THE QUALITATIVE DIMENSION OF FOURTH AMENDMENT "REASONABLENESS"*, 98 Colum. L. Rev. 1642 (1998).

¹⁰⁷ See *Maryland v. Buie*, 494 U.S. 327, 327 (1990).; See also: *United States v. Miller*, 430 F.3d 94, 97 (2d Cir. 2005).

Minnesota law also agrees with this idea, “[a] protective sweep search is limited and may extend only to a cursory inspection of those spaces where a person may be found.” 11 Dunnell Minn. Digest CRIMINAL LAW § 4.01.

¹⁰⁸ See *Hernandez v. State*, 98 So.3d 703, 707 (Fla. Dist. Ct. App. 2012).; See also: *United States v. Barone*, 721 F.Supp.2d 263, 272 (S.D.N.Y. 2010).

[instead] ‘a cursory inspection of those spaces where a person may be found.’”¹⁰⁹ Lastly, “the protective sweep must have lasted no longer than was necessary to dispel the reasonable suspicion of danger and no longer than the police were justified in remaining on the premises;” and “[t]he police must not have entered (or remained in) the home illegally and their presence within it must have been for a legitimate law enforcement purpose.”¹¹⁰

However, today the courts tend to look at protective sweeps in one of the two ways. Either what the Buie court established, with “a quick and limited search of premises, incident to an arrest and conducted to protect the safety of police officers or others.”¹¹¹ Or, as other courts with the theory that when “officers are lawfully present in a home pursuant to consent circumstances can give rise to equally reasonable suspicion of equally serious risk of danger of officers being ambushed by a hidden person as would be the case were there an arrest.”¹¹²

Understanding the right to privacy that people have is essential to fully understand how a warrantless protective sweep can become an unreasonable intrusion onto someone’s right to privacy in their own home. However, to balance out the interests of the government and citizens, there can be an exception to the warrant requirement of the Fourth Amendment. This exception that can keep the

¹⁰⁹ *Id.*; See also: *United States v. Gould*, 364 F.3d 580, 587 (5th Cir. 2004).

¹¹⁰ *Id.*

Minnesota law also agrees with *Hernandez* that, “[t]he time frame of the search is also limited; it may last no longer than is 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.” 11 Dunnell Minn. Digest CRIMINAL LAW § 4.01.

¹¹¹ See *United States v. Fadul*, 16 F. Supp.3d. 271, 281 (S.D.N.Y. 2014).

¹¹² *Id.*

balance of the interests of the government and citizens is the warrantless protective sweep. A warrantless protective sweep provides police officers with protection from arrestee's and third parties when an in-home arrest is conducted. However, a limited protective sweep with a satisfaction of a three element analysis¹¹³ will ensure the balance of the governmental interests and the right of privacy protected under the Fourth Amendment.

In order for this theory to work, the legislature or the court will have to implement ways for police officers to be accountable. This could be done through other officers checking on them when they are conducting an in-home arrest, or the legislature can create a statute that incorporates a search within an arrest warrant. However, currently, warrantless protective sweeps are too broad so there is room for error by police officers and this can create bigger intrusions on people's right to privacy. Also, by not having accountability, the court cannot know which side of the story is correct.¹¹⁴ Another way the legislature and police department can solve this is by implementing cameras, recorders, or other tools to help society with understanding what happened during the arrest or search. This will make sure the protection of the citizens with their right to privacy, and this will ensure the protection of the police from serious risk of danger.

¹¹³ As established in Section IV(A) of this paper, this three element analysis again is the elements that police officers would need to satisfy in order to conduct a limited warrantless protective sweep. Police officers must make sure that there is (1) an arrest, (2) the arrest took place in the home that the officer wants to conduct the sweep in, and (3) the sweep is limited to the area where the arrestee can grab.

¹¹⁴ An example where society uses accountability is with cameras in interrogation rooms. These cameras not only help defendants with proving if their miranda rights were waived properly, but the cameras also help the police with any questions of culpability. See Steven A. Derision and Beth A. Colgan, *Article: Let the Cameras Roll: Mandatory Videotaping of Interrogations is the Solution to Illinois' Problem of False Confessions*, 32 Loy. U. Chi. L.J. 337, 363 (2001). Therefore, by having police accountable, it will lead to benefits all around.

Thus, by implementing a limited search to the warrantless protective sweep this could guarantee that a citizen's right to privacy is protected, police are kept safe, and if a bigger search was needed the police can obtain a search warrant from a neutral magistrate as established in the Fourth Amendment of the United States Constitution.