

ISSUE

Did officers have grounds to conduct a protective sweep of a home before conducting a probation search?

FACTS

Napa police officers went to the home of Cindy Barajas to conduct a probation search. The officers were aware that Barajas was on searchable probation in two drug cases. When they arrived they saw two cars parked in front of the house and a trailer parked in the driveway. The door to the house was opened by Ledesma who said he lived there with Barajas, that they had separate bedrooms, and that Barajas was not at home. It appeared Ledesma was under the influence of drugs.

Before searching Barajas' bedroom, the officers asked Ledesma if anyone else was inside the house. He said no. They then told him they were going to conduct a protective sweep to make sure nobody was going to sneak up behind them while they were conducting the search. The officers then went into Ledesma's bedroom where, in plain view, they saw several bindles of methamphetamine and a "large" amount of money. Ledesma was arrested.

DISCUSSION

Ledesma contended the protective sweep of his home was unlawful because the officers were not aware of any facts suggesting there was someone else on the premises who constituted a threat. The court disagreed.

It is settled that officers who are lawfully inside a residence may conduct a protective sweep if there is "reasonable suspicion" to believe a person on the premises poses a threat to them.¹ In determining whether reasonable suspicion exists, officers may consider direct evidence and also circumstantial evidence, such as the following:

WHY OFFICERS WERE ON THE PREMISES: The reason that officers were on the premises is an important circumstance in determining the extent of danger. For example, it would seem there would be a greater risk of danger if officers were there to take action that might result in an arrest; e.g., to execute an arrest warrant or execute a search warrant.

NATURE OF PLACE BEING SEARCHED: If officers were inside the home of a suspect, there may be greater danger because, as the court noted, they are "on their adversary's turf."

WHAT OFFICERS WILL BE DOING: If officers are on the premises to conduct a search, there may be greater danger because they will necessarily be more vulnerable when they are focusing their attention on the search.

NATURE OF CRIME UNDER INVESTIGATION: If officers are on the premises to make an arrest or to search for evidence, the nature of the crime with which the occupants are suspected is an important factor.

The court then examined the circumstances confronting the officers as they arrived, noting:

- The officers were on the premises to conduct a probation search which might result in an arrest.
- The officers were in an unfamiliar place ("their adversary's turf").

¹ See *Maryland v. Buie* (1990) 494 US 325.

- The officers would be especially vulnerable while “conducting a careful examination of all the nooks and crannies of a probationer’s bedroom.”
 - Barajas was on probation for two drug offences.
 - Because Ledesma appeared to be under the influence of drugs, the officers reasonably believed that Barajas and Ledesma were involved in “ongoing narcotics activity” which often involves deadly weapons and violence.
 - There was a trailer in the driveway and two cars parked “sufficiently close to the residence” to create a reasonable possibility that other people were inside.
- Based on these circumstances, the court ruled the protective sweep was justified.

Said the court:

Here, [the officer] not only had a reasonable suspicion that others were present at the residence, but that a convicted drug user resided there and that recent drug activity had occurred there. Relying on these facts and his expertise, [the officer] formed the reasonable opinion that these other persons would pose a danger to him during the search. No more was needed to permit the limited intrusion of a protective sweep.

Ledesma’s conviction was affirmed.