

Recent Case Report

United States v. Paopao

(9th Cir. 2006) 465 F.3d 404

ISSUE

Can officers conduct a protective sweep of the inside of a residence based on an arrest that occurred *outside*?

FACTS

Honolulu police had probable cause to arrest two men, Paopao and Matamua, who were suspected of robbing several illegal gambling rooms at gunpoint. While trying to locate them, an HPD detective received a call from a confidential reliable informant who said the men responsible for the robberies were now inside another illegal gambling spot known as “Charlie’s Game Room.” Investigators knew that Charlie’s was located in an apartment, so they went there, not knowing whether the suspects were merely visiting the establishment or robbing it.

As they were approaching the door to the apartment, someone inside opened it and eight people stepped into the walkway. The eighth person was Paopao who, when he saw the officers, quickly turned around and went back inside. One of the officers peeked inside and saw Paopao discard a bag he had been carrying. Paopao then walked back outside and was arrested.

Because the officers did not know if Matamua was hiding in the apartment, they conducted a protective sweep. He wasn’t there, but they happened to notice that Paopao’s bag was open, and they could see a gun inside. As a result, Paopao was arrested for being a felon in possession of a firearm. When his motion to suppress the gun was denied, he pled guilty.

DISCUSSION

On appeal, Paopao argued that the gun should have been suppressed, claiming that a protective sweep of the inside of a residence should never be permitted when the arrest occurred outside. The court disagreed.

By way of background, a protective sweep is a type of search incident to arrest that typically occurs after officers have lawfully entered a home to arrest an occupant. It is defined as a “quick and limited search” of the structure, “narrowly confined to a cursory visual inspection of those places in which a person might be hiding.”¹ Sweeps are permitted because, as the United States Supreme Court observed:

[A]n in-home arrest puts the officer at the disadvantage of being on his adversary’s “turf.” An ambush in a confined setting of unknown configuration is more to be feared than it is in open, more familiar surroundings.²

¹ *Maryland v. Buie* (1990) 494 U.S. 325, 327.

² *Maryland v. Buie* (1990) 494 U.S. 325, 333.

But unlike other searches incident to arrest, protective sweeps may not be conducted as a matter of routine. Instead, they are permitted only if officers had reason to believe, (1) there was someone inside, and (2) the person posed a threat to them.³

Although most protective sweeps occur after the officers had already entered the premises (e.g., via arrest warrant or exigent circumstances), this is not an absolute requirement because, as the Ninth Circuit previously pointed out, “A bullet fired at an arresting officer standing outside a window is as deadly as one that is projected from one room to another.”⁴

Thus, the issue is not whether the officers were inside or outside the residence when the arrest occurred, but whether they were aware of specific facts that reasonably indicated there was someone inside who posed a threat. And it was apparent to the court that the facts known to the officers who entered Charlie’s had good reason to be apprehensive.

Not only had they learned that the two armed robbers were presently inside Charlie’s, the tip came from an informant with a track record of providing “very accurate information on approximately twenty previous occasions.” Moreover, the tip was “reasonably detailed,” which is another indication of its reliability. As the court pointed out, the informant had provided “the name and general location of the Game Room and stated that the men were still in the Game Room.”

Consequently, the court ruled the sweep was lawful, and that Paopao’s motion to suppress was properly denied.⁵ POV

³ See *Maryland v. Buie* (1990) 494 U.S. 325, 333; *People v. Celis* (2004) 33 Cal.4th 667, 678 [“A protective sweep can be justified merely by a *reasonable suspicion* that the area to be swept harbors a dangerous person.”].

⁴ *U.S. v. Hoyos* (9th Cir. 1989) 892 F.2d 1387, 1397 [overruled on other grounds by *U.S. v. Ruiz* (9th Cir. en banc 2001) 257 F.3d 1030, 1032. ALSO SEE *U.S. v. Lawlor* (1st Cir. 2005) 406 F.3d 37, 41; *U.S. v. Cavely* (10th Cir. 2003) 318 F.3d 987, 995-6; *U.S. v. Watson* (5th Cir. 2001) 273 F.3d 599, 603.

⁵ **NOTE:** The motion to suppress was also denied because a mere visitor to an illegal Paopao did not have standing to challenge the officers’ entry inasmuch as here was another reason for the court’s ruling: a mere visitor to an illegal gambling club lacks standing to challenge a warrantless entry of the establishment. See *Rakas v. Illinois* (1978) 439 U.S. 128.