

People v. Ikeda

(2013) __ Cal.App.4th __ [2013 WL 342672]

Issue

If officers arrest or detain a suspect just outside his home, under what circumstances may they conduct a protective sweep of the premises?

Facts

A man reported to Ventura County sheriff's deputies that someone had stolen his GPS-equipped laptop computer. About two weeks later, the GPS company notified deputies that someone had changed the computer password to "Arnold Ikeda," and that the laptop was currently in use at the Holiday Inn Express in Oxnard.

Having obtained a photo of Arnold Ikeda, deputies went to the motel and confirmed with the manager that Ikeda was a registered guest. They also learned that he was currently in a room on the ground floor but that he changed rooms every day. The deputies were aware that a daily room change "was consistent with someone selling narcotics." The manager also said that Ikeda had left a card key to the room at the front desk for a woman who "came and went."

One deputy then went to the front door of the room while the other went to the back where there was a sliding glass door. When the deputy in front knocked and announced, a man inside said "One moment," at which point Ikeda opened the back door and stepped outside. He was detained and handcuffed.

Ikeda told the deputies that there was a BB gun in the room but no other people. Nevertheless, they decided to conduct a sweep mainly because they had heard the sounds of two men talking and because a woman had access to the room. While conducting the sweep, they found the stolen laptop, methamphetamine, and drug packaging paraphernalia. Apparently, no one was in the room. When Ikeda's motion to suppress the evidence was denied, he pled guilty to possession of methamphetamine for sale.

Discussion

A "protective sweep" or "walk through" occurs when officers make a quick tour through a residence or other structure, looking in places where a person might be hiding. Protective sweeps often take place after officers had entered the premises to make an arrest, and their purpose is usually to locate the arrestee or anyone else on the premises who posed a threat to them.

Because a protective sweep constitutes a "search," the Supreme Court has ruled that they are permitted only if both of the following circumstances existed:

- (1) **Lawful entry:** Officers must have been lawfully on the premises; e.g., arrest warrant, search warrant, hot pursuit, defuse an exigent circumstance.
- (2) **Dangerous person on premises:** There must have been reason to believe there was someone on the premises who, (a) had not made himself known or was otherwise not accounted for, and (b) posed a threat to the officers or others.¹

Ikeda argued that the sweep of his motel room was unlawful because he was detained outside the room, and the officers had insufficient reason to believe there was someone inside who posed a threat. The court disagreed.

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

At the outset, the court rejected the argument that the “lawful entry” requirement cannot be satisfied unless the officers had independent legal grounds to enter the premises, such as an arrest warrant. Specifically, the court ruled that, if officers are carrying out their duties outside a certain home, and if they reasonably believed there was someone inside who posed an immediate threat to them, they may attempt to alleviate the threat by entering the premises and conducting a sweep. In other words, the existence of the threat constitutes an exigent circumstance that justifies both the entry and sweep.

This ruling is consistent with the decision in *People v. Maier* in which the court observed, “The basic question is whether the limited inspection of the premises was reasonable in each case ... This, rather than on which side of a door an arrest is effected, is the issue in these limited-inspection cases.”²

The question, then, was whether the officers reasonably believed there was someone inside Ikeda’s motel room who posed a threat to them. In ruling they did, the court noted the following:

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.

Accordingly, the court ruled that Ikeda’s motion to suppress was properly denied.

Comment

It is possible that where, as here, officers enter a residence for the purpose of conducting a protective sweep, they must have *probable cause* to believe there is someone on the premises who constitutes a threat; i.e., reasonable suspicion is insufficient.³ But even if that is the rule, it probably wouldn’t have mattered here because it seems apparent that the various circumstances cited by the deputies would have constituted probable cause. [POV]

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² (1991) 226 Cal.App.3d 1670, 1675.

³ See *Maryland v. Buie* (1990) 494 U.S. 325, 334, fn.1 [the lower standard of reasonable suspicion applies once the officers were inside]; *Sharrar v. Felsing* (3rd Cir. 1997) 128 F.3d 810, 824 [“Predictably, where the courts have differed in permitting protective sweeps incident to arrests outside the home is on the quantity and quality of the articulable facts necessary to justify the sweep, rather than on the underlying standard.”]. **NOTE:** This issue was presented in *People v. Celis* (2004) 33 Cal.4th 667, 678 but the court, having concluded that the sweep was not even supported by reasonable suspicion, declined to address it.