


Las Vegas Police Protective Association Metro, Inc.



To: Officer Hector Navarro
From: David Roger, General Counsel 
Re: Protective Sweeps
Date: October 22, 2013

You have asked whether an officer may conduct a protective sweep of a residence during a consensual encounter with a citizen. Unless the citizen gives the officer consent to search the residence, during the knock and talk, the officer may not conduct a warrantless search. That said, I would like to take this opportunity to address the parameters of a protective sweep.

The United States Supreme Court, in *Maryland v. Buie*, 494 U.S. 325, 333, 110 S.Ct. 1093, 1097 (1990), recognized the dangers police face when executing an arrest warrant in a suspect's home:

“In *Terry and Long*¹ we were concerned with the immediate interest of the police officers in taking steps to assure themselves that the persons with whom they were dealing were not armed with, or able to gain immediate control of, a weapon that could unexpectedly and fatally be used against them. In the instant case, there is an analogous interest of the officers in taking steps to assure themselves that the house in which a suspect is being, or has just been, arrested is not harboring other persons who are dangerous and who could unexpectedly launch an attack. The risk of danger in the context of an arrest in the home is as great as, if

¹ *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868 (1968); *Michigan v. Long*, 463 U.S. 1032, 103 S.Ct. 3469 (1983).

not greater than, it is in an on-the-street or roadside investigatory encounter. A *Terry* or *Long* frisk occurs before a police-citizen confrontation has escalated to the point of arrest. A protective sweep, in contrast, occurs as an adjunct to the serious step of taking a person into custody for the purpose of prosecuting him for a crime. Moreover, unlike an encounter on the street or along a highway, an 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.

Id.

The Court extended the principals of *Terry* and *Long* to those situations when police have an arrest warrant for a suspect who is taken into custody in a residence or other building in which the suspect has a reasonable expectation of privacy. The Court explained:

We also hold that as an incident to the arrest the officers could, as a precautionary matter and without probable cause or reasonable suspicion, look in closets and other spaces immediately adjoining the place of arrest from which an attack could be immediately launched. Beyond that, however, we hold that there must be 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.

Id. 104 U.S. at 335, 110 S.Ct. at 1099.

An officer may conduct a protective sweep, of the immediate area, incident to arrest. If an officer seeks to extend the sweep to other areas, the officer must have reasonable suspicion that a dangerous person will be located in that area.

On a final note, it is important to underscore that a protective sweep is not equivalent to a search for evidence.