

THIRD DEGREE COMMUNICATIONS, INC.

TRAINING BULLETIN: LEGAL UPDATE

Protective Sweeps

By Charles Gillingham

It is critical for you to be safe. Protective sweeps help to insure your safety. Under what circumstances and when can you conduct a protective sweep? As with many of the articles in the legal update, a justification is almost never, “I do it every time” nor is it “routine procedure,” nor the notorious “for officer safety reasons.” While the last justification is the best, you still need to know the law and understand when it is appropriate to conduct a sweep and what evidence can be gathered during a protective sweep.

You need to understand that a protective sweep is considered a search for purposes of the Fourth Amendment and therefore is subject to the exclusionary rule. In this article we only delve into **full** sweeps of residences.

WHEN TO SWEEP

Most officers consider conducting a protective sweep of a residence just after an arrest inside that residence. That arrest situation is obviously dangerous because anyone, a co-defendant, family member, friend, etc. may not take too kindly to you arresting the suspect. An arrest *outside* the residence may justify a sweep *inside*, but the facts have to suggest that danger lurked just inside; otherwise it is an illegal warrantless entry into a residence.

The U.S. Supreme Court, lower Federal Courts and California courts have repeatedly recognized that an arrest in a home is extremely dangerous and that an ambush by someone located inside is a very real danger. As a result, it doesn't matter why you are at the premises, be it a parole or probation search, search warrant or consent search, you are entitled to conduct a protective search. But remember, a protective sweep is by definition a quick visual inspection of areas that a person may be hiding.

FULL PROTECTIVE SWEEP

STANDARD

A full sweep of the residence allows you to look anywhere in the structure or home where a **person** might be located or hiding. It is not a general search for evidence. Because a full sweep is an intrusion into every part of the residence or location, officers cannot just search on a whim. Officers must have reasonable suspicion that another person is located

on the premises and that person poses a threat to the officers. What that means is that you must be able to articulate facts that lead you to believe another person was located there and that their presence posed a threat to you. Innocent conduct may be enough for you to have reasonable suspicion of another's presence and danger.

It is important to be able to justify your sweep because while the sweep is a search for a person, it provides legal justification for plain view sightings and seizures of other evidence. Evidence found during a protective sweep will be suppressed if you cannot legally justify your sweep.

ARTICULATE FACTS TO JUSTIFY SWEEP

What facts do you need to be able to tell the judge to justify your protective sweep? You need to be able to tell the judge why you thought it was important to your safety to sweep the residence. Some circumstances that have been upheld federally and in California to justify a protective sweep:

- Voices that suggest more than one person is in the apartment; voices in a garage; when coming up to a motel room, seeing a person shut the curtains and say out loud "it's the cops!"
- Sounds from somewhere in the residence that could have been made by a person
- Multiple cars parked at the residence is circumstantial evidence that more than one person may be there
- Prior knowledge that more than one person lives in the residence or are generally present during the time of entry. CI information can be used to satisfy the reasonable suspicion requirement
- When asked if there is anyone else inside and the suspect says, "No," you are not required to take his word for it if you have facts that suggest someone else is located there
- Consent is given to search limited areas of the premises
- If an arrestee committed his crimes with co-defendant's and you have knowledge that these people hang out together at that location
- Is this a residence known for weapons or violence?

Clearly the courts have acknowledged that your job is dangerous. The cases try to balance your safety against the privacy intrusion that is part of a search. While you need facts to justify your sweep, be safe.

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