13 -07 - Protective Sweeps

Los Angeles County Sheriff's Department

NEWSLETTER

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PROTECTIVE SWEEPS AND VICINITY SWEEPS

While the objective of most police searches is to find evidence of a crime, there is a different type of search, the protective search, whose sole purpose is to help protect officers and others from harm. "Protective sweeps" or "vicinity sweeps" are a type of protective search. They are a quick, limited search of the premises conducted prior to or just after effecting an arrest. The scope of a "sweep" is narrowly confined to a visual inspection of places wherein a *person* may be hiding.

Reasons for "protective sweeps" – The U.S. Supreme Court Case Law decision of *Maryland vs. Buie* depicts examples of circumstances where peace officers have legal standing to conduct warrantless entries based on exigent circumstances. They are:

Incident to arrest - Look in closets and spaces immediately adjoining the place of arrest. Look throughout the remainder of the residence with reasonable suspicion for persons who may be hiding and may pose a threat to officers.

Victim, Injured, or Ill Person Inside - Warrantless entry allowed based on reasonable belief an imminent threat exists to the life or welfare of a person inside, or a person who is in need of aid.

Suspected Child Abuse – Warrantless entries are upheld to prevent child abuse-related crimes. Entering open doors to investigate possible child neglect are also upheld.

Suspected Domestic Violence – Entries into a residence without consent or warrant may be legal on the basis of exigent circumstances to protect a victim inside.

Requirements for "protective sweeps" – **ALL** three of the following need to exist.

1. <u>Lawful entry or legal standing</u>: Officers must have a legal right to enter or be in a   position to observe potential exigent circumstances: e.g., consent, arrest warrant, hot pursuit/fresh pursuit, or have legal standing to be where you observe an exigency.

2. <u>Person on premises</u>: Officers must have reason to believe there is a person(s) on the premises (other than the arrestee) who is hiding or has not made him/herself known.

3. <u>Danger or threat</u>: Officers must have reason to believe a person may pose a threat.

Deputy personnel should ensure the requirements of protective sweeps exist before conducting one. Based on a California Supreme Court decision (*People v. Celis*), peace

officers cannot enter a residence without a reasonable suspicion that persons inside pose a danger to officer safety. A vague, unsubstantiated suspicion will not suffice.

Limited legal scope of a protective sweep – When conducting protective sweeps beyond the immediate area or immediately adjoining areas, remember that protective sweeps are a type of search. A U.S. Supreme Court of Appeals decision (*U.S. v. Archibald)* stated protective sweeps cannot be justified simply to rule out the mere possibility someone MAY be present in an area not immediate to the officers.

Since the scope of a protective sweep varies upon circumstance, Deputy personnel should obtain consent or a warrant to search beyond the scope of a protective sweep.

Please refer to the publications below for various examples on how protective sweeps apply to various situations.

Questions regarding the contents of this newsletter may be directed to Field Operations Support Services. <u>foss@lasd.org</u>

References

U.S. Supreme Court Case Maryland v. Buie, 494 U.S. 325 (1990).

http://supreme.justia.com/cases/federal/us/494/325/case.html

California Supreme Court Case People v. Celis (2004) 33 Cal.4th 667, 679.

http://www.courts.ca.gov/documents/Jaime2.pdf

U.S. Supreme Court of Appeals Case U.S. v. Archibald (6th Cir. 2009) 589 F.3d 289, 300.

http://www.ca6.uscourts.gov/opinions.pdf/09a0423p-06.pdf

Related Publications

FOSS Newsletter 06-13 http://intranet/intranet/sites/Rmb/FOSS/newsletters/2006/nl_06-13_Warrantless_Entries_Brigham_City_v_Stuart.pdf

Alameda County District Attorney's Office publication on Protective Sweeps.

http://le.alcoda.org/publications/point_of_view/files/W11SWEEPS.pdf