

NO. 70262-9-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Appellant,

v.

BRANDON WILLIAM DENNIS,

Respondent.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

REPLY BRIEF OF APPELLANT

DANIEL T. SATTERBERG  
King County Prosecuting Attorney

DENNIS J. McCURDY  
Senior Deputy Prosecuting Attorney  
Attorneys for Appellant

King County Prosecuting Attorney  
W554 King County Courthouse  
516 3rd Avenue  
Seattle, Washington 98104  
(206) 296-9650

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**A. STATEMENT OF THE CASE IN REPLY**

When sheriff deputies responded to the defendant's residence, they did so based on information that he might have gone home after having left another location -- intoxicated, threatening to shoot himself, and possibly waving a gun around. RP 7, 11, 44-45. After knocking and announcing their presence but getting no response, the deputies entered the residence to check on the wellbeing of the defendant, and anyone else who may have been inside. RP 9-10, 49, 83-84. The trial court ruled this was a proper and lawful entry under the community caretaking function. RP 123-25. The defendant does not dispute this.

When the deputies found the defendant, he was placed in handcuffs, while another deputy entered the room upon which the defendant had just exited. RP 14, 50, 85, 94. It is in this room where deputies observed an AR-15 assault rifle and a fully loaded handgun, both in plain view. RP 15, 17-18, 87.

The trial court ruled that while sheriff's deputies lawfully entered the defendant's residence under the community caretaking exception to the warrant requirement, the deputies exceeded the scope of the exception by conducting the brief protective sweep of

the house looking for other persons — injured, hiding or otherwise. RP 124-25. It is this ruling that the State contests.

In his response, the defendant makes certain factual assertions that are incorrect. The defendant states that he had been taken outside the residence while deputies searched the premises. Def. br. at 5. This is incorrect. The deputy who testified that he took the defendant outside immediately corrected himself (RP 86-87) and confirmed what all three deputies were agreed upon, the defendant emerged from the upstairs bedroom, was brought down one flight of stairs, was handcuffed, and then placed on the couch while another deputy entered the room the defendant had just exited. RP 12-13, 31-32. The trial court did not find, and no evidence supports the assertion that the defendant had been removed from the residence prior to deputies entering the room he had just exited.

The defendant also asserts that the weapons were not found in plain view, that the deputy removed a blanket and found the handgun underneath it, and that the deputies looked behind a door to discover the AR-15. Def. br. at 10. Again, this was not the finding of the trial court and the assertions are not supported by the evidence. Deputy Robert Kearney testified that when he entered

the bedroom, he observed what he recognized as the muzzle of a gun sticking out from under a blanket. RP 15. He uncovered the rest of the gun and seized it for officer safety reasons because he knew it was a gun from being able to see the muzzle in plain view. RP 15. The AR-15 assault rifle was observed in plain view from the location of the bed when the deputies turned to exit the room. RP 18, 20. The door was not moved, nor was it required that the door be moved in order for the deputies to see the assault rifle. Id. Thus, both weapons were observed in plain view.

The defendant also asserts that it was clear that the defendant did not need aid, that the deputies did not do a mental health evaluation of him, and that he never was evaluated by a mental health professional (MHP). Def. br. at 9, 12. This is both misleading and incorrect.

First, after the guns were found, the deputies placed the defendant under arrest and appropriately read him his Miranda warning. RP 55. The defendant then invoked, stating that he wanted to talk to an attorney. Id. Thus, while deputies do not conduct mental health evaluations, even if they did, the deputies here would have been in violation of the defendant's constitutional rights if they had questioned him.

Second, the deputy testified that he would have seized the guns regardless of whether the defendant had been placed under arrest to ensure the defendant's safety until he had been evaluated by a MHP. RP 75-76. There was still a concern the defendant was suicidal. RP 74. When the deputy booked the defendant, the jail was notified that he was potentially suicidal so that he could be put in contact with a MHP. RP 77-78.

**B. STATEMENT OF THE LAW IN REPLY -- ARGUMENT**

In the State's Brief of Appellant, the State cited cases showing that it is perfectly lawful for the police to conduct a protective sweep of premises for officer safety reasons as part of the lawful arrest of a suspect. See State v. Hopkins, 113 Wn. App. 954, 55 P.3d 691 (2002); State v. Sadler, 147 Wn. App. 97, 193 P.3d 1108 (2008), rev. denied, 176 Wn.2d 58 (2013). The scope of such a sweep is limited to a visual inspection of only those places where a person may be hiding. Hopkins, 113 Wn. App. at 959. An officer need not justify his actions in searching the area that immediately adjoins the place of the arrest. Id.

The facts of Sadler are particularly relevant. When deputies went to Sadler's residence, they possessed the following

information: A 14-year-old girl had recently disappeared, she may have met someone on the Internet, she may have been trying to pass off her age as 19, she may be involved in sadomasochistic sexual activity, and her recent internet activity had been traced to Sadler's residence. Sadler, 147 Wn. App. at 119. After knocking several times, Sadler answered the door and said that the girl was upstairs sleeping. Sadler and one deputy went upstairs where the girl was found, partially naked, sleeping or unconscious in a bed surrounded by various bondage devices. During this time, another deputy was downstairs looking for other persons to ensure officer safety. Sadler was placed in custody at the top of the stairs near the bedroom where the girl was found.

After Sadler was placed under arrest, the other deputy continued with his protective sweep. The deputy entered into a different room up near the bedroom where the defendant had been arrested, and observed numerous sexual devices and video camera equipment. In conducting the protective sweep, the deputies had no specific reason to suspect anyone else was in the residence.

Sadler moved to suppress the evidence discovered in his residence claiming that the deputies' initial entry into his residence

without a warrant was unlawful, and even if the initial entry was lawful, the security sweep conducted by the deputies exceeded the scope of the entry. The court rejected both claims.

First, the court upheld the initial warrantless entry under the community caretaking exception. The court held that the deputies had reason to believe that the young girl might be inside the residence and in need of assistance. Sadler, at 123-25. Second, the court upheld the protective sweep of the residence that occurred after the defendant was placed under arrest. Id. at 125-26. The court stated that Sadler was taken into custody just outside the upstairs bedroom where the girl was found, and the protective sweep did not extend beyond the “adjoining rooms” and “the floor below” where Sadler was detained for a period of time. Id. There was nothing in the record, the court noted, that indicated the protective sweep went beyond a cursory visual inspection of only those places where someone could be hiding. Id.

The defendant states that this case is of no relevance because it involves a protective sweep incident to arrest, not a protective sweep incident to exercise of a community caretaking function. The assertion defies logic and common sense because the rationale for the protective sweep – safety, is the same in both

situations. In both situations, the cursory protective sweep is premised on officer and public safety, allowing the officers to do their job ensuring their safety, as well as anyone else in the immediate area -- including the specific person they are dealing with. See, e.g., State v. Byrd, 178 Wn.2d 611, 620, 310 P.3d 793 (2013) (“The search incident to arrest rule respects that an officer who takes a suspect into custody faces an unpredictable and inherently dangerous situation and that officers can and should put their safety first”).

Under the defendant’s theory, that it is the arrest that makes all the difference, the following would be true: An officer could go to a residence to arrest a person on a misdemeanor warrant for failing to appear in municipal court on an illegal fishing charge.<sup>1</sup> The officer may have absolutely no fear of the defendant, or reason to believe anyone is in the home other than the defendant. However, under the law as cited herein, after placing the defendant under arrest, that officer would be fully within the law to conduct a protective sweep of the location the defendant was arrested and any adjoining areas.

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<sup>1</sup> State v. Hatchie, 161 Wn.2d 390, 166 P.3d 698 (2007) (a misdemeanor arrest warrant gives police the authority of law to enter someone’s home to place them under arrest).

On the other hand, where an officer is in the residence performing a community caretaking function, it makes no difference whether the officers are in actual and justified fear of harm and have a very strong reason to believe other persons – either dangerous persons or persons who are in need of aid – are in the residence, the officers are strictly prohibited from conducting a protective sweep. Like here, where deputies have information that the person is mentally unstable, suicidal, and that firearms may be present, the same purposes for conducting a protective sweep exist – allowing the deputies to perform their duty in a safe environment for everyone.

Finally, the defendant contrasts Sadler by claiming that the protective sweep in this case was not limited in scope. This is incorrect. First, as stated in the fact section above, all the evidence in the record shows that the weapons were observed in plain view. There is absolutely no evidence that the deputies were looking in locations other than where a person may be hiding or in need of aid. Second, in Sadler, the Court condoned the protective sweep of an entirely different but nearby room than where Sadler was placed under arrest. Here, the deputy went into the very room the defendant had just exited. If it is permissible to do a protective

sweep of an adjoining room, it is certainly permissible to check the very room the person has just exited – a room that is much more likely to have another individual either hiding or in need of assistance.

The restriction the defendant seeks on the scope of the deputies' exercise of their community caretaking function would put themselves, the defendant, and the public at risk. The law does not place such a severe restriction on the deputies' actions. The cursory protective sweep in this situation was lawful.

**C. CONCLUSION**

For the reasons cited above, and in the Brief of Appellant, this Court should reverse the trial court's CrR 3.6 suppress ruling and remand the case back to the trial court for trial.

DATED this 13 day of February, 2014.

Respectfully submitted,

DANIEL T. SATTERBERG  
King County Prosecuting Attorney

By:   
DENNIS J. McCURDY, WSBA #21975  
Senior Deputy Prosecuting Attorney  
Attorneys for Appellant  
Office WSBA #91002

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Jesse Corken, the attorney for the respondent, at JRC Practice, P.L.L.C., 119 1<sup>st</sup> Avenue South, Ste 260, Seattle, WA 8104-3450, containing a copy of the Reply Brief of Appellant, in STATE V. BRANDON DENNIS, Cause No. 70262-9-1, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.



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Name  
Done in Seattle, Washington

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