

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**June 11, 2008**

David R. Schanker  
Clerk of Court of Appeals

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**Appeal No. 2007AP816-CR**

**Cir. Ct. No. 2006CF56**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**THOMAS E. BUNTROCK,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Ozaukee County:  
JOSEPH D. McCORMACK, Judge. *Affirmed.*

Before Brown, C.J., Snyder and Neubauer, JJ.

¶1 PER CURIAM. Thomas E. Buntrock has appealed from a judgment convicting him of the possession of narcotic drugs in violation of WIS. STAT.

§ 961.41(3g)(am) (2005-06).<sup>1</sup> The sole issue on appeal is whether Buntrock is entitled to reversal of the trial court's order denying his motion to suppress evidence seized from his residence. Because the trial court properly determined that the seizure resulted from a lawful protective sweep of the premises, we affirm the judgment.

¶2 In reviewing an order granting or denying a motion to suppress evidence, this court upholds the trial court's findings of fact unless they are clearly erroneous. *State v. Blanco*, 2000 WI App 119, ¶8, 237 Wis. 2d 395, 614 N.W.2d 512. However, the issue of whether the search and seizure passes constitutional muster is a question of law subject to de novo review. *Id.*

¶3 Unreasonable searches and seizures are prohibited by the Fourth Amendment of the United States Constitution and Article I, sec. 11 of the Wisconsin Constitution. *State v. Horngren*, 2000 WI App 177, ¶8, 238 Wis. 2d 347, 617 N.W.2d 508. Warrantless searches and seizures are per se unreasonable, subject to certain exceptions. *State v. Stout*, 2002 WI App 41, ¶10, 250 Wis. 2d 768, 641 N.W.2d 474. An exception exists when a protective sweep is justified. *See Blanco*, 237 Wis. 2d 395, ¶23.

¶4 A “protective sweep” is a quick and limited search of premises incident to an arrest, conducted to protect the safety of the arresting officers and others. *Id.* The arresting officers may conduct a limited protective sweep of a residence if they have a reasonable belief based on specific and articulable facts that the area harbors an individual posing a danger to those on the scene. *Id.* The

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2005-06 version.

sweep must be narrowly confined to a cursory visual inspection of those places in which a person might be hiding. *Id.* The sweep must be limited in duration, and may last no longer than is necessary to dispel the reasonable suspicion of the danger. *Id.*

¶5 In applying the protective sweep doctrine and determining what constitutes a cursory visual inspection of those places in which a person might be hiding, courts look at the individual facts available to the police at the time the action was taken. *Id.*, ¶24. “[E]ach situation must be examined by the facts and circumstances confronted by the police at the time the sweep was conducted.” *Id.*, ¶26.

¶6 Applying these standards here, we affirm the trial court’s denial of Buntrock’s suppression motion. The evidence at the suppression hearing indicated that police were dispatched to Buntrock’s residence at 3:16 a.m. because Buntrock wanted someone removed from his residence. Buntrock’s residence was the lower half of a two-family duplex. The residence was approached by walking up a sidewalk and a few steps, at which point an outer door was separated from an inner door by a small entryway, or vestibule. The inner door opened into the living room of the residence.

¶7 Sergeant Eric Leet testified that upon being dispatched to the residence, he and a second officer, Officer Knowski, made contact with Buntrock, who stood at the inner door while they stood in the vestibule. Leet testified that Buntrock told them that there was a person in his residence who had to go, and was refusing to leave. Buntrock gestured toward a man named Neff, who could be seen by the officers standing by a couch in the living room. Leet testified that he then attempted to step inside the residence, but was stopped by Buntrock, who told

the officers that they could not enter the residence. Leet testified that Buntrock would not tell them why they could not enter the residence, and that Buntrock repeated that he wanted Neff removed, but was unwilling to allow the officers into the residence to remove him. Leet also testified that the officers advised Buntrock that they could not remove Neff if Buntrock was not willing to let them in.

¶8 Leet then spoke to Neff in an attempt to convince him to come out and speak with the officers. Leet testified that Neff stated that he was “unable” to leave the residence, but could not tell the officers why. Leet testified that as they were speaking with Neff, Buntrock had gone past Leet and Knowski and was pacing back and forth on the sidewalk in front of the residence.

¶9 Leet testified that Neff had approached the doorway of the inner door to speak to the officers after Buntrock walked down to the sidewalk. Leet testified that they continued to talk to Neff through the open inner door, and after a short time Neff asked them, “What do you need to hear from me to allow you into the apartment?” Leet testified that the officers were about to advise Buntrock that they were unable to help him and leave, when Neff stated that there were drugs in the house and he was trying to prevent Buntrock from using them. The officers asked Neff if he had seen the drugs and when he said yes, Leet asked Neff if he would be willing to fill out a statement so that the officers could attempt to get a warrant.

¶10 Leet testified that at that point, Buntrock charged up the steps and slammed into Neff, who was standing in the vestibule just outside the inner door, which was now closed. Leet testified that he and Knowski struggled to subdue Buntrock in the vestibule, and eventually were able to handcuff him.

¶11 Leet testified that after helping Knowski walk Buntrock part way toward the squad car, he called for backup assistance and went back to wait near the vestibule, staying there to keep a watch on both the residence and the squad car. Leet testified that, at the officers' direction, Neff had walked down by the sidewalk at the time of Buntrock's arrest. Leet testified that when Officer Footit arrived, he and Footit made a "sweep" of the residence.

¶12 In describing the sweep, Leet testified that he and Footit announced themselves and entered the residence through the inner door with their guns drawn. He testified that upon entering the residence, Footit covered the visible entryways and Leet walked into the room to the right. Leet testified that he did not recall opening a door to enter the room, which was a bedroom. He testified that he went into the room looking for any person who might be a threat to the officers. He testified that he walked around scanning the room over the sight of his gun, looking for any place someone might be hiding. In doing so, he observed syringes and a small open bag containing cotton balls and a beige rubber strap, lying on a table. He also observed a burned metal container leaning on its side on a dresser. The container contained a yellowish-brown liquid which Leet believed was an illegal drug.<sup>2</sup>

¶13 Leet testified that he made the same type of sweep of a second bedroom, the kitchen, and basement, looking again for anyone who might pose a threat. He testified that the entire sweep took no more than three to five minutes. He testified that the situation had been "highly unusual," and that the sweep was

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<sup>2</sup> At the suppression hearing, Buntrock stipulated that controlled drugs were found in the residence.

conducted to make sure that there were no people in the residence who could pose a threat to the officers, Buntrock or Neff. He also testified that he believed the officers were going to be there for a while, which added to his fears about the situation because in his experience, weapons were usually present when illegal drugs were involved.

¶14 We have described the evidence at the suppression hearing in great detail because it provides the basis for our affirmance of the trial court's order. As found by the trial court, the officers dispatched to Buntrock's residence were faced with an unstable, bizarre, and escalating situation. After being dispatched in the middle of the night at Buntrock's request to remove someone from his residence, Buntrock refused to let them in the residence, even after being informed that the officers could not remove Neff unless they entered. In an escalation of the situation, the officers were then told by Neff that he was "unable" to leave, but wanted them to come in. Moreover, Neff did not leave the residence except to enter the vestibule even after Buntrock walked outside to the sidewalk, giving rise to a reasonable inference that an armed person might be in the residence and that this person posed a danger to Neff or the officers. The reasonableness of this inference increased when Neff told the officers that there were drugs in the residence since, as noted by Leet, weapons are often present in situations involving illegal drugs. *Cf. State v. Guy*, 172 Wis. 2d 86, 96-97, 492 N.W.2d 311 (1992) (recognizing that drug dealers and weapons frequently go "hand in hand").

¶15 While the officers could not use the information from Neff about the presence of drugs as a pretext to enter the residence and search for drugs, the trial court did not find this to be the case, and the facts do not support such a conclusion. Instead, as determined by the trial court, the evidence supports a finding that the officers had a reasonable concern for their safety and the safety of

Neff and Buntrock, and acted consistently with that concern by conducting a protective sweep.

¶16 In reaching this conclusion, we note that Leet expressed his concern for the safety of the officers, Neff, and Buntrock. His behavior was consistent with this concern, including placing himself in a position to be able to watch both the residence and the squad car after Knowski, Buntrock, and Neff went down to the sidewalk and squad car. The brief nature of the protective sweep also supports an inference that it was performed for safety purposes, particularly in light of Leet's testimony that it was conducted with guns drawn after the police announced themselves, and that he was scanning through his gun sight during the sweep.

¶17 Buntrock emphasizes that, when the police entered the residence, he had been arrested and placed in the squad car and Neff was on the sidewalk, implying that the officers no longer had any concern for their safety. However, as found by the trial court, any armed or dangerous person who remained in the residence would have had access to anyone outside. This included Knowski, Neff, and Buntrock until they left the scene, Leet while he remained waiting outside the residence, and Footit when he arrived to provide back up assistance.<sup>3</sup>

¶18 Because the officers had a reasonable belief based on specific and articulable facts that the residence might be harboring an individual posing a danger to those on the scene, and because the sweep was narrowly confined to a

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<sup>3</sup> The officers' concern for their safety, combined with the reasonableness of their belief that an armed person posing a threat to them might be on the premises, distinguishes this case from *State v. Kruse*, 175 Wis. 2d 89, 499 N.W.2d 185 (Ct. App. 1993). The officers in *Kruse* did not testify that they were concerned for their safety, and browsed through the defendant's apartment without having their weapons drawn. *Id.* at 98. They also had no basis for believing that anyone else in the apartment posed a danger to them. *Id.* at 97-98.

cursory visual inspection of those places in which a person might be hiding, the sweep passes constitutional muster. The trial court therefore properly denied Buntrock's motion to suppress.

*By the Court.*—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.



