

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,

Appellant,

v.

CHARLES WADE MCCALL,

Respondent.

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CASE NO: 82640

APPELLANT'S REPLY BRIEF

**Appeal From Decision and Order
Eighth Judicial District Court, Clark County**

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STATEMENT OF THE ISSUES

- I. Whether protective sweeps apply in non-arrest scenarios
- II. Whether law enforcement officers had a reasonable suspicion to conduct a protective sweep

ARGUMENT

I. PROTECTIVE SWEEPS APPLY IN NON-ARREST SCENARIOS

The State and Respondent largely agree on the law surrounding protective sweeps. The reasonableness of a seizure is a matter of law reviewed de novo. Id.; United States v. Campbell, 549 F.3d 364, 370 (6th Cir. 2008). Generally, a protective sweep is “a quick and limited search of premises, incident to an arrest and conducted to protect the safety of police officers or other.” Maryland v. Buie, 494 U.S. 325, 327, 110 S. Ct 1093, 1094 (1990) The only point of contention is whether a protective sweep can occur in absence of an arrest. As discussed in the Appellant’s

Opening Brief, the State requests that this Court follow the majority of circuit courts and permit law enforcement officers to conduct protective sweeps in non-arrest scenarios.

II. LAW ENFORCEMENT OFFICERS HAD A REASONABLE SUSPICION TO CONDUCT A PROTECTIVE SWEEP

Law enforcement officers possessed a reasonable belief that a protective sweep was necessary for officer safety. The officers observed multiple articulable facts and inferences leading to a reasonable suspicion. Prior to entry, the officers received a letter stating both that weapons may be present and that narcotics were being sold in the house. AA I 237. Ongoing narcotic activity alone leads to a reasonable inference that firearms may be present. People v. Ledesma, 106 Cal. App. 4th 857, 865 (Cal. Ct. App. 2003) (“Firearms are, of course, one of the ‘tools of the trade’ of the narcotics business.”). This combined with the information that weapons may be found indicates a reasonable suspicion of danger.

Collette Winn’s behavior, as well as the officer’s surveillance indicated the presence of dangerous third parties. While questioning Winn on the code for the front door keypad, Winn was unable to give officers the precise code. AA I 175-176. Winn’s behavior signaled that she was attempting to alert unknown persons of the officer’s presence. Additionally, officers noticed an unknown person “coming and going” from the house. AA I 94. Probation officers had no knowledge regarding how

many people were inside the residence, the layout of the residence, and whether it was safe inside. AA I 102, 126, 128, 140, 178, 199-200, 212. As such, officers possessed a reasonable fear of ambush in the unknown setting. See Buie, 494 U.S. at 333, 110 S. Ct at 1098 (“An ambush in a confined setting of unknown configuration is more to be feared than it is in open, more familiar surroundings.”)

Complying with the limited nature of a protective sweep, the officers only searched areas where an unknown dangerous person could be hiding. While doing so, they found shotgun shells, mirandized Respondent, and questioned him. AA I 103-104, 185. He confessed that there were multiple firearms nearby. AA I 104. Pursuant to a search incident to arrest, the officers secured the nearby firearms. See State v. Greenwald, 109 Nev. 808, 810, 858 P.2d 36, 37, (1993) (“the authority to search incident to arrest derives from the need to disarm and prevent any evidence from being concealed or destroyed.”). At no point did the officer’s actions constitute an unreasonable search or seizure. Accordingly, this Court should hold that Respondent’s Fourth Amendments rights were not violated and reverse the district court’s ruling.

CONCLUSION

Based on the foregoing the State respectfully requests that the district court’s Order be reversed and that the matter be remanded for further proceedings.

Dated this 16th day of December, 2021.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. **I hereby certify** that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in 14 point font of the Times New Roman style.
2. **I further certify** that this brief complies with the page and type-volume limitations of NRAP 32(a)(7)(A) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points, contains 562 words and does not exceed 15 pages.
3. **Finally, I hereby certify** that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 16th day of December, 2021.

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on December 16, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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