

821 Fed.Appx. 662

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UNITED STATES of America Plaintiff - Appellee

v.

Michael Scott HANUMAN Defendant - Appellant

No. 19-2232

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Submitted: June 19, 2020

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Filed: August 18, 2020

Synopsis

Background: After his motion to suppress evidence was denied, defendant entered a conditional guilty plea in the United States District Court for the District of Minnesota, [Ann D. Montgomery](#), Senior District Judge, to possession with intent to distribute methamphetamine and possession of a firearm. Defendant appealed.

[Holding:] The Court of Appeals held that police officers' protective sweep of residence did not violate defendant's Fourth Amendment rights.

Affirmed.

Procedural Posture(s): Appellate Review; Pre-Trial Hearing Motion.

West Headnotes (1)

[1] Searches and Seizures  Protective sweep; security check

Police officers' protective sweep of residence did not violate defendant's Fourth Amendment rights; officers knew of defendant's history of possessing firearms and using drugs, as well as the presence of surveillance cameras at

his residence, when officers arrived the lights were on inside the residence and they could hear someone yelling for help, after obtaining permission to breach the door, which delayed the apprehension of possible assailants and provided time for any assailants to hide, officers found a traumatized victim who appeared to have trouble breathing, and defendant, who was found in the garage, did not respond to officers' inquiries as to whether anyone else was in the residence. [U.S. Const. Amend. 4](#).

Appeal from United States District Court for the District of Minnesota

Attorneys and Law Firms

[Craig Raymond Baune](#), Assistant U.S. Attorney, [Benjamin Bejar](#), Assistant U.S. Attorney, U.S. Attorney's Office, District of Minnesota, Minneapolis, MN, for Plaintiff-Appellee

Michael Scott Hanuman, Pro Se

[Douglas Micko](#), Federal Public Defender's Office, Minneapolis, MN, for Defendant-Appellant

Before [GRUENDER](#), [WOLLMAN](#), and [KOBES](#), Circuit Judges.

[Unpublished]

PER CURIAM.

Michael Scott Hanuman entered a conditional guilty plea to charges of possession with intent to distribute methamphetamine in violation of  21 U.S.C. §§ 841(a)(1) and  (b)(1)(B), and possession of a firearm in *663 furtherance of a drug-trafficking crime in violation of  18 U.S.C. § 924(c)(1)(A). The district court¹ sentenced Hanuman to 172 months' imprisonment. We affirm.

¹

The Honorable Ann D. Montgomery, United States District Judge for the District of Minnesota, adopting the report and recommendation of the

Honorable Steven E. Rau, United States Magistrate Judge for the District of Minnesota, now deceased.

Deputies from the Dakota County Sheriff's Department were dispatched to Hanuman's residence shortly before midnight on January 6, 2018. The deputies knew that Hanuman was on probation for possessing firearms, that he had a history of drug use, and that he had multiple surveillance cameras around his residence. Lights were on inside Hanuman's home when the deputies arrived, a vehicle was parked in the attached garage, and a second vehicle was parked in the driveway. Deputies knocked on the front door and heard a woman crying for help. After receiving permission from their supervisor, the deputies breached the door and found the woman lying motionless at the bottom of the stairs, moaning and yelling in pain and appearing to be having trouble breathing. One deputy stated that the woman yelled and screamed that, "Mike was here" or "Mike is here," and that he had assaulted her, though she did not know whether he was armed. Another deputy's post-arrest report asserted that the victim had also indicated that just Mike was present in the house. Upon observing visible marks and redness on the woman's face, the deputies called for an ambulance. While they were awaiting its arrival, one of the deputies administered oxygen to her from his medical bag.

Because Hanuman did not respond when the deputies began calling to him, two of the deputies began searching the house for him. The other two deputies soon found Hanuman crouching in front of the vehicle in the garage, where they were joined by the two house-searching deputies. After handcuffing and arresting Hanuman, the deputies discovered a large amount of cash on his person. Hanuman did not respond when twice asked if there was anyone else in the home. The deputies then conducted a some three-minute protective sweep of the residence, during which they observed evidence of drug distribution. They thereafter obtained a search warrant based in part on the evidence viewed during the protective sweep. Their subsequent warrant-authorized search revealed further evidence of drug distribution, as well as firearms and ammunition.

The district court denied Hanuman's motion to suppress evidence, concluding that the protective sweep was justified because of the officers' reasonable belief that other persons could be hiding within the residence. On appeal, Hanuman argues that the protective sweep violated his Fourth Amendment rights, contending that the protective sweep was unnecessary because he had already been handcuffed and placed under arrest and because the victim had indicated that no one other than he was present.

The Fourth Amendment permits protective sweeps of areas beyond the space "immediately adjoining the place of arrest" when there exist "articulable facts which, taken together with the rational inferences from those facts, would warrant a reasonably prudent officer in believing that the area to be swept harbors an individual posing a danger to those on the arrest scene." [Maryland v. Buie](#), 494 U.S. 325, 334, 110 S.Ct. 1093, 108 L.Ed.2d 276 (1990); see [United States v. Davis](#), 471 F.3d 938, 944 (8th Cir. 2006) ("A protective sweep may be executed after an arrest if there is a reasonable possibility that other persons may be present on the premises *664 who pose a danger to the officers."). We find no error in the district court's determination that a protective sweep of the home was supported by a reasonable suspicion that other persons may have been hiding therein.

See [Davis](#), 471 F.3d at 944 ("We review the District Court's factual findings for clear error and its legal conclusions de novo when examining the motion to suppress."). The deputies knew of Hanuman's history of possessing firearms and using drugs, as well as of the presence of surveillance cameras at his residence. They saw two cars at Hanuman's residence and lights on in his home. Having sought and obtained permission to breach the door, they were delayed in apprehending any possible assailants, providing time for any such persons to hide. Although Hanuman may not have been required to respond to their inquiries, neither were the deputies required to rest assured from his silence, or from the severely traumatized, oxygen-deprived victim's responses, that no other individuals might be present who could pose a threat to their or to the victim's safety, as well as to the safety of those who were attending to her needs. The deputies' brief, reasonably based protective sweep thus did not violate Hanuman's Fourth Amendment rights notwithstanding his immobilization. See [Davis](#), 471 F.3d at 945 (upholding protective sweep because the existence of surveillance cameras and the presence of multiple cars on the property, as well as the knowledge of defendant's prior firearms possession, are factors that can indicate a "heightened possibility of a surprise attack"); [United States v. Waters](#), 883 F.3d 1022, 1025-26 (8th Cir. 2018) (per curiam) (upholding protective sweep notwithstanding the defendant's fiancée's statement to investigating officers that the defendant was the only person inside the residence). In so holding, we have considered [United States v. Rodriguez](#), 834 F.3d 937 (8th Cir. 2016), and [United States v. Waldner](#), 425 F.3d 514 (8th Cir. 2005), and find that they are distinguishable

on their facts. Among other things, both cases involved non-arrest situations, and neither case involved a hidden, yet to be found and restrained non-responsive subject.

The judgment is affirmed.

All Citations

821 Fed.Appx. 662

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**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

App. B

No: 19-2232

United States of America

Appellee

v.

Michael Scott Hanuman

Appellant

Appeal from U.S. District Court for the District of Minnesota
(0:18-cr-00112-ADM-1)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

September 22, 2020

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

2018 WL 5995497

Only the Westlaw citation is currently available.
United States District Court, D. Minnesota.

UNITED STATES of America, Plaintiff,
v.
Michael Scott HANUMAN, Defendant.
Criminal No. 18-112 ADM/SER
|
Signed 11/15/2018

Attorneys and Law Firms

[Benjamin Bejar](#), Assistant United States Attorney, United States Attorney's Office, Minneapolis, MN, on behalf of Plaintiff.

[Douglas L. Micko](#), Assistant Public Defender, Office of the Federal Defender, Minneapolis, MN, on behalf of Defendant.

MEMORANDUM OPINION AND ORDER

[ANN D. MONTGOMERY](#), U.S. DISTRICT JUDGE

I. INTRODUCTION

*1 This matter is before the undersigned United States District Judge for consideration of Defendant Michael Scott Hanuman's ("Hanuman") Objection [Docket No. 44] to Magistrate Judge Steven E. Rau's September 18, 2018 Report and Recommendation ("R&R") [Docket No. 43]. In the R&R, Judge Rau recommends denying Hanuman's Motion to Suppress Evidence Obtained as a Result of Search and Seizure ("Motion to Suppress Evidence") [Docket No. 24] and Hanuman's Motion to Suppress Statements, Admissions, and Answers ("Motion to Suppress Statements") [Docket No. 25]. Hanuman objects to the R&R.¹ Based on a de novo review of the record, Hanuman's Objection is overruled, the R&R is adopted, and Hanuman's Motions are denied.

¹ During the July 9, 2018 evidentiary hearing on Hanuman's Motions, the parties agreed that the Motion to Suppress Statements is moot. Hrg Tr. [Docket No. 35] at 4. Hanuman does not object to the recommended denial of the Motion to Suppress Statements.

II. BACKGROUND

The factual background of this case is set forth in the R&R and is incorporated by reference. To directly address the Objection, some facts of record not discussed in the R&R are relevant. Briefly, around midnight on January 6, 2018, five Dakota County Sheriff's Deputies responded to a 911 "check welfare" call for Defendant Hanuman. Hrg Tr. at 8–9, 57. An unidentified female had called dispatch to report that Hanuman was in the downtown area of Hampton, Minnesota and had phoned her multiple times saying he was "messed up" and needed help. *Id.* at 9–10, 57–58. There was a concern that Hanuman was intoxicated and wandering outside in the frigid weather. *Id.* at 12–13.

The computer-aided dispatch system generated an alert for Hanuman and his home address in Hampton. *Id.* at 10–11, 58–59. The alert warned that Hanuman was on probation for being a felon in possession of a firearm, and that he had multiple cameras around his house. *Id.* at 10–11, 58–59. The deputies were also aware that Hanuman had previous arrests for drugrelated offenses. *Id.* at 11, 58. The deputies had no information whether anyone else lived at Hanuman's house. *Id.* at 34.

Two of the deputies drove directly to Hanuman's home while the other three searched for him in Hampton. *Id.* at 12–15. The three deputies searching in Hampton did not locate Hanuman so proceeded to his house. *Id.* at 15–16, 59.

One of the deputies who drove directly to Hanuman's home observed some lights on in the house, but the windows in the door of the attached garage were dark. *Id.* at 14, 16. The deputy shined his flashlight into the garage and saw a sedan and some miscellaneous garage-related items, but nothing further. *Id.* at 16.

The deputy then approached the house and knocked on the front door. *Id.* at 16–17. Shortly after knocking, he heard a faint yell followed by a female voice screaming for help. *Id.* at 17. The officer asked the woman if she could come to the door, but she did not do so and continued to scream in pain. *Id.* at 17–18, 62–63. Three additional deputies came to the door to assist in forcing it open with a ram. *Id.* at 18–19, 63.

*2 The door opened to a split entryway, and the officers saw a woman laying motionless at the bottom of the stairs. *Id.* at 21, 64–65. The woman was moaning and yelling in pain and

appeared to be having difficulty breathing. *Id.* at 22, 65. She told the deputies that “Mike” had hit her in the head. *Id.* at 23, 65. When asked whether anyone else was home, the woman responded that “Mike” was there. *Id.* at 23, 65.

The deputies radioed dispatch to request an ambulance and asked that the ambulance “stage” (i.e., not come onto the scene) until the scene was safe. *Id.* at 65, 67. The deputies then shouted to announce their presence and to ask Mike where he was. *Id.* at 66. When no one responded, the deputies began a sweep of the home with their guns drawn to look for Mike and anyone else who might be in the home or might be injured. *Id.* at 24, 66.

As two of the deputies were ascending the staircase to the kitchen and living room, they heard two other deputies shouting commands to a man (later identified as Hanuman) who was found hiding behind the a car in the dark garage. *Id.* at 27–29, 66–67. The deputies on the staircase turned around before reaching the top of the stairs and went down to the garage to assist. *Id.* at 28, 37–38, 66, 68. Hanuman was handcuffed in the garage and placed under arrest. *Id.* at 30, 69. The deputies twice asked Hanuman if anyone else was in the house, but he did not respond. *Id.* at 30, 92–93.

After Hanuman was arrested, three deputies went back into the house and performed a protective sweep to look for other possible victims or assailants who might still be in the home. *Id.* at 30–31, 48, 69–70. The purpose of the search was to ensure the scene was safe for the victim who remained in the home, as well as the deputies who were treating her and the paramedics who were on their way. *Id.* at 31, 70. The sweep lasted approximately one to three minutes. *Id.* at 31, 76.

When performing the protective sweep, the officers observed: a digital scale and baggies on the center island of the kitchen; a torch and propane tank on the staircase leading to the kitchen; and a black safe, Ziplock bags, and a Gatorade bottle fashioned into a methamphetamine pipe in an upstairs bedroom. *Id.* at 71–76. No other individuals were found in the house. *Id.* at 32.

After the sweep was completed, the deputies radioed dispatch to inform them that the scene was safe and the paramedics were clear to enter. *Id.* at 77. While awaiting the paramedics, two deputies remained in the house to provide the victim with medical attention that included administering oxygen. *Id.* at 32. After the paramedics’ arrival, the victim was carried out of the house on a backboard to an ambulance. *Id.* at 78.

The deputies then applied for and obtained a search warrant for Hanuman’s house and car. *Id.* at 78, 89–90. The search warrant was based on the items the deputies had seen in plain view during the protective sweep, the assault, and a large amount of cash that was found on Hanuman when he was arrested. *Id.* at 78–79. When law enforcement searched Hanuman’s car they found a .357 handgun and more than 100 grams of methamphetamine. *Id.* at 89.

On May 16, 2018, a grand jury returned an Indictment [Docket No. 1] charging Hanuman with: (1) possessing an unregistered firearm; (2) being a felon in possession of a firearm; (3) possession with intent to distribute methamphetamine; and (4) possessing a firearm in furtherance of a drug trafficking crime.

*3 Hanuman moves to suppress the evidence obtained from the warrant-based search. He argues the protective sweep was unjustified and that the search warrant was tainted by information obtained through the sweep. Hanuman contends that the evidence must be suppressed as the fruit of an unconstitutional protective sweep.

III. DISCUSSION

A. Standard of Review

In reviewing a magistrate judge’s report and recommendation, the district court “shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.”  28 U.S.C. § 636(b)(1)(C); see also D. Minn. L.R. 72.2(b). A district judge “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” *Id.*

B. Hanuman’s Objection

Hanuman argues the protective sweep was unlawful because he had been secured in police control at the time of the search and there were no facts to suggest that a dangerous person remained in the house. Hanuman contends the protective sweep was based solely on the officers’ perception that he was dangerous and the absence of information about whether someone else was in the house.

The Fourth Amendment generally prohibits the search of a residence without a warrant issued on probable cause.

 [Maryland v. Buie](#), 494 U.S. 325, 331 (1990). However, an exception exists for the protective sweep.  [Id.](#) at 327. “A ‘protective sweep’ is a quick and limited search of the premises, incident to an arrest and conducted to protect the safety of police officers or others. It is narrowly confined to a cursory visual inspection of those places in which a person might be hiding.” [Id.](#) A protective sweep is justified if it is supported by “a reasonable belief based on specific and articulable facts that the area to be swept harbors an individual posing a danger to those on the arrest scene.”  [Id.](#) at 337. The Eighth Circuit has recognized that a protective sweep is “particularly important during an in-home arrest, due to the heightened potential for an ambush in unfamiliar surroundings.” [United States v. Alatorre](#), 863 F.3d 810, 814 (8th Cir. 2017).

Here, the protective sweep of Hanuman’s home was justified by articulable facts to support a reasonable belief that someone posing a danger to them could be inside the house. First, the protective sweep was necessary to protect the officers who were tending to the victim and the paramedics arriving on the scene from anyone who may have been in the house. See  [Buie](#), 494 U.S. at 334 (stating officers are permitted to ensure their safety both “after, and while making, the arrest”); [United States v. Ford](#), 888 F.3d 922, 928 (8th Cir. 2018) (“Justification for a preventive sweep does not automatically end when a suspect is arrested.”); [Alatorre](#), 863 F.3d at 815 (holding protective sweep justified because officers who remained on the front porch of a residence to deal with the defendant and his girlfriend “were vulnerable to attack from someone inside the residence”). The officers were justified in ensuring the home was free from danger while they and the paramedics were required to remain in the house.

See  [United States v. Lucas](#), 898 F.2d 606, 610 (8th Cir. 1990) (“[I]t does not make sense to prescribe a constitutional test that is entirely at odds with safe and sensible police procedures.”). Here, the involvement of the officers with the crime scene did not conclude with Hanuman’s arrest because of the need to assist the victim.

*4 Second, during the time it took law enforcement to force their way into the home, Hanuman was able to hide in the garage until he was found. It was reasonable for the police to believe that anyone else inside the home would similarly have had the time and ability to hide from the officers’ view, which had been limited to the front entryway and the garage. No officer had reached the top of the stairway to have any view

of the upstairs portion of the house. See [Alatorre](#), 863 F.3d at 814–15 (holding protective sweep justified where defendant’s girlfriend “lingered in the kitchen out of sight of the officers until she was specifically called to the door, indicating that it was easy for someone to hide just out of view of the officers inside the residence in a position from which an attack could be launched”); [United States v. Waters](#), 883 F.3d 1022, 1026–27 (8th Cir. 2018) (noting that the officers’ announcing their presence several times before breaching the door “provided anyone in the residence ample time to hide before officers entered the residence”).

Third, the officers knew that Hanuman had multiple cameras surveilling his home, which may have given ample forewarning to others in the house of the officers’ arrival sufficient to allow someone to hide within the house. See  [United States v. Davis](#), 471 F.3d 938, 945 (8th Cir. 2006) (upholding protective sweep where “surveillance cameras were attached to the [defendant’s] house, which could indicate the heightened possibility of a surprise attack”).

Fourth, the officers knew that Hanuman had been convicted for being a felon in possession of a firearm, making it was possible that anyone remaining in the house might have access to guns that could be used in an ambush. See [Alatorre](#), 863 F.3d at 815 (noting that defendant’s criminal history involving concealed weapons made it conceivable that others were in the house with access to weapons).

Fifth, the officers’ unexpected discovery of the assault victim in Hanuman’s home presented a violent and dangerous situation in which the officers were uncertain as to how many other people were inside the house and what the intention of those other persons might be toward the officers. See  [United States v. Boyd](#), 180 F.3d 967, 975–76 (8th Cir. 1999) (holding protective sweep justified because “[w]hen the law enforcement officers entered the house ... they had no way of knowing how many people were there”). Although the assault victim responded that “Mike” was there and did not name others when she was asked if anyone else was in the house, the officers were not required to assume that no one else was in the home. See, e.g., [Waters](#), 883 F.3d at 1025 (upholding a protective sweep even though the defendant’s fiancee told officers that the defendant was the only person inside the residence). Moreover, Hanuman refused to respond to officers’ questions about whether anyone else was in the house.

Given the existence of articulable facts and inferences to support a reasonable belief that an additional person on the scene could pose a danger to them, the protective sweep of the house was constitutional. “[T]hough hindsight reveals that the officers had already encountered the only two individuals present in [the defendant's] residence, the ... officers were justified in conducting the protective sweep.” [Alatorre, 863 F.3d at 815](#).

IV. CONCLUSION

Based upon the foregoing, and all the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that:

1. Hanuman's Objection to Report and Recommendation [Docket No. 44] is **OVERRULED**;
2. The Report and Recommendation [Docket No. 43] is **ADOPTED**;
3. Hanuman's Motion to Suppress Evidence Obtained as a Result of Search and Seizure, [Docket No. 24] is **DENIED**; and
4. Hanuman's Motion to Suppress Statements, Admissions, and Answers [Docket No. 25] is **DENIED**.

All Citations

Not Reported in Fed. Supp., 2018 WL 5995497

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Only the Westlaw citation is currently available.

United States District Court, D. Minnesota.

UNITED STATES of America, Plaintiff,

v.

Michael Scott HANUMAN, Defendant.

Case No. 18-cr-112 (ADM/SER)

|
Signed 09/18/2018**Attorneys and Law Firms**

[Benjamin Bejar, Esq.](#), United States Attorney's Office, Minneapolis, Minnesota, for Plaintiff.

[Douglas L. Micko, Esq.](#), Office of the Federal Defender, Minneapolis, Minnesota, for Defendant.

REPORT AND RECOMMENDATION

STEVEN E. RAU, United States Magistrate Judge

*1 The above-captioned case came before the undersigned on Defendant Michael Scott Hanuman's ("Hanuman") Motion to Suppress Evidence Obtained as a Result of Search and Seizure ("Motion to Suppress Evidence") [Doc. No. 24] and Motion to Suppress Statements, Admissions, and Answers ("Motion to Suppress Statements") [Doc. No. 25]. This matter was referred for the resolution of the issues raised in Hanuman's Motions to Suppress pursuant to  28 U.S.C. § 636(b)(1)(B)-(C) and District of Minnesota Local Rule 72.1. For the reasons stated below, the Court recommends the Motions to Suppress be denied.

I. BACKGROUND

On May 16, 2018, the United States of America (the "Government") filed an indictment charging Hanuman with possession of an unregistered firearm in violation of  26 U.S.C. §§ 5861(d) and 5871, being a felon in possession of firearms in violation of  18 U.S.C. §§ 922(g)(1) and  924(a)(2), possession with intent to distribute methamphetamine in violation of  21 U.S.C. §§ 841(a)(1) and  841(b)(1)(B), and possession of a firearm in

furtherance of a drug-trafficking crime in violation of  18 U.S.C. § 924(c)(1)(A). (Indictment) [Doc. No. 1].

The Court held an evidentiary hearing on July 9, 2018. (Minute Entry Dated July 9, 2018) [Doc. No. 29]. Dakota County Sheriff's Office Deputy James O'Meara ("Deputy O'Meara") and Dakota County Sheriff's Office Deputy Timothy Fletcher ("Deputy Fletcher") testified, and the Court received seventeen exhibits into evidence. (Ex. & Witness List) [Doc. No. 30]. During the hearing, the parties agreed that the Motion to Suppress Statements is moot. (Tr. of Evidentiary Hr'g, "Tr.") [Doc. No. 35 at 4]. The parties submitted supplemental briefing regarding the Motion to Suppress Evidence. (Gov't's Mem. in Opp'n to Def.'s Mot. to Suppress) [Doc. No. 38]; (Mem. of Law in Supp. of Mot. to Suppress, "Hanuman's Mem. in Supp.") [Doc. No. 39]; (Gov't's Reply to Def.'s Mem. in Supp. of Mot. to Suppress) [Doc. No. 40].

II. FACTS

As stated above, Deputy O'Meara and Deputy Fletcher are deputies with the Dakota County Sheriff's Office (Tr. at 7, 54). Deputy Fletcher previously worked with the Drug Enforcement Agency ("DEA") task force and is certified as a clandestine drug examiner. (*Id.* at 55). During his DEA tenure, Deputy Fletcher participated in searches of residences for narcotics. (*Id.* at 56).

On January 6, 2018, Deputy O'Meara, Deputy Fletcher, and several other deputies responded to a "check welfare call" for Hanuman, who was described as "messed up." (*Id.* at 9–10, 57). Dispatch advised the deputies that Hanuman was on probation following his conviction of being a felon in possession of a firearm. (*Id.* at 10–11). Deputies were also aware that Hanuman had a history of drug use. (*Id.* at 11); *see also* (*id.* at 58). After an unsuccessful attempt to contact Hanuman by phone, Deputy O'Meara drove to Hanuman's residence in Hampton, Minnesota, while other officers searched for Hanuman in other locations in Hampton. (*Id.* at 9, 12–14). Deputy O'Meara drove around the residence to determine whether anyone was home and observed some lights on. (*Id.* at 14). Deputy O'Meara then parked his squad car and was joined by Deputy Johnson. (*Id.* at 14–15). After learning the other deputies were unable to locate to locate Hanuman, Deputy O'Meara and Deputy Johnson then knocked on the outer front door of Hanuman's residence. (*Id.* at 15–16). At this point, Deputy Fletcher had also arrived at

Hanuman's residence and was waiting in his squad car. (*Id.* at 59).

*2 After his first knock, Deputy O'Meara heard a faint yell. (*Id.* at 17). After knocking again, he heard a female voice screaming for help. (*Id.*); *see also* (*id.* at 60). Deputy O'Meara asked the woman to come to the door, but could not communicate with her. (*Id.* at 17–18). Deputy Fletcher took his ram in anticipation of a forced entry, instructed Deputy Johnson to get his rifle, and instructed Deputy Jaskowiak to get her “less lethal shock gun.” (*Id.* at 60). The three deputies approached the door, as did Deputy Klug. (*Id.* at 18). Deputy O'Meara and Deputy Fletcher received permission to breach the door, and Deputy O'Meara kicked in the glass door. (*Id.* at 18–19, 62–63). Then Deputy O'Meara stepped aside, and Deputy Fletcher breached the door with a ram. (*Id.* at 19). At this point, Deputy Johnson and Deputy Klug were at the back of the house. (*Id.* at 34, 64). Deputy Fletcher, Deputy O'Meara, and Deputy Jaskowiak—whose firearms were drawn—entered the home into a split entry way and saw a motionless woman at the bottom of the stairway. (*Id.* at 21, 64–65). Deputy Joskowiak's body microphone was recording when the deputies entered the home. *See* (Gov't's Exs. 1, 1A); (Tr. at 20–21, 60–61). The woman was moaning and yelling in pain. (*Id.* at 21–22, 65); *see* (Gov't's Exs. 2–3) (photographs of the victim lying on the floor). At this point, Deputy Klug joined the others, and the deputies asked the woman if anyone was home. (*Id.* at 23, 65). She told the deputies that Hanuman had hit her and that he was in the home. (*Id.* at 23, 65–66). Deputy Fletcher radioed to dispatch for medical assistance. (*Id.* at 65). The deputies then searched the residence with their guns drawn to look for Hanuman. (*Id.* at 24, 66).

Deputy O'Meara and Deputy Fletcher went up the stairs, while Deputy Jaskowiak and Deputy Klug searched the garage. (*Id.* at 27, 66). Deputy O'Meara heard Deputy Jaskowiak and Deputy Klug giving verbal commands suggesting that they had found someone. (*Id.* at 27–28); *see also* (*id.* at 66–67). Deputy O'Meara then radioed to dispatch that the other deputies had found someone. (*Id.* at 28). He and Deputy Fletcher went to the garage to assist. (*Id.*). Deputy O'Meara observed Deputy Jaskowiak and Deputy Klug holding a man—later identified as Hanuman—at gunpoint near the front of the driver's side of the sedan in the garage. (*Id.*). The deputies told Hanuman not to move and to keep his hands up. (*Id.* at 29–30). Hanuman lowered his hands and the deputies raised their voices to tell him to keep his hands up and arrested him. (*Id.* at 30, 69). Deputy O'Meara asked Hanuman twice if anyone was home, but Hanuman did not respond. (*Id.* at

30); *see also* (*id.* at 92–93). After Hanuman was arrested and put into the back of a squad car, Deputy O'Meara, Deputy Jaskowiak, and Deputy Fletcher went back into the home to search the rest of the residence to see if anyone else was inside. (*Id.* at 30–31, 69). Deputy O'Meara stated that the purpose of the search was to make sure the scene was safe, to treat the victim, to see who was inside, and to make sure “there's no unknowns.” (*Id.* at 30–31). Deputy Fletcher testified that the protective sweep was necessary to protect the safety of himself, the other deputies, the victim, and the paramedics. (*Id.* at 69–70). Deputy Fletcher testified that protective sweeps are limited to places where a person can be, including in closets, underneath beds, and in various rooms in the house. (*Id.* at 70).

Deputy Fletcher and Deputy O'Meara began the protective sweep by looking in the living room and kitchen. (*Id.* at 70). In the kitchen, Deputy Fletcher noticed a digital scale, tear-offs, and baggies on the center island of the kitchen.¹ (*Id.* at 71); *see* (Gov't's Exs. 8–10). Deputy Fletcher also found a torch and propane tank on the staircase, which he believed to be used to heat methamphetamine, heroin, or another controlled substance. (Tr. at 71–72); *see* (Gov't's Ex. 4). In the corner of the upstairs bedroom, Deputy Fletcher saw a black safe. (Tr. at 74); *see also* (Gov't's Exs. 11–12). Deputy Fletcher also saw a large amount of Ziploc bags, which he knows to be commonly used for controlled-substance distribution, and a Gatorade bottle that “had been fashioned into some sort of methamphetamine pipe.” (Tr. at 74–75); *see* (Gov't's Exs. 13–14). After the protective sweep of the upper level was completed, Deputy Fletcher, Deputy O'Meara, and Deputy Jaskowiak did a sweep of the lower level. (Tr. at 76). Deputy Fletcher instructed Deputy Johnson and Deputy Klug to place Hanuman into a squad car. (*Id.* at 76–77). Deputy Fletcher was informed that a large amount of U.S. currency had been found on Hanuman. (*Id.* at 79). Deputy Fletcher then radioed to dispatch that the scene was safe and that the medics were clear to enter the scene. (*Id.* at 77). The deputies began treating the victim, and Deputy Fletcher assisted the medics when they arrived on the scene. (*Id.* at 33–33, 78).

¹ Deputy Fletcher defined a tear-off as the corner of a Ziploc bag that is ripped off from the rest of the bag and used to store drugs by tying the end off. (Tr. at 73).

*3 Deputy Fletcher remained on the scene and waited for the authorization of a search warrant. (*Id.* at 78). The search warrant was based on the items the deputies had seen in plain

view during their protective sweep, as well as the assault allegation. (*Id.*). After the search warrant was obtained, Deputy Fletcher searched the residence and found a .357 handgun and more than 100 grams of methamphetamine in Hanuman's car. (*Id.* at 88–89).

Hanuman argues that the deputies' protective sweep was not justified and therefore violated the Fourth Amendment. *See* (Hanuman's Mem. in Supp. at 5). Correspondingly, Hanuman argues the evidence seized pursuant to the search warrant—which was based on items viewed during the protective sweep—should “be suppressed as fruit from a poisonous tree.” (*Id.*).

III. DISCUSSION

A. Legal Standard

The Fourth Amendment guarantees “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” *U.S. Const. amend. IV.* “[S]earches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions.”  *Katz v. United States*, 389 U.S. 347, 357 (1967) (footnotes omitted).

One of these exceptions is a protective sweep—“a quick and limited search of premises … narrowly confined to a cursory visual inspection of those places in which a person might be hiding.”  *Maryland v. Buie*, 494 U.S. 325, 327 (1990). In a situation where a suspect is or recently was arrested, law enforcement officers may need to ensure that the suspect “is not harboring other persons who are dangerous and who could unexpectedly launch an attack.”  *Id.* at 333. This risk is higher in case of an arrest—compared to a traffic stop—for two reasons. First, an arrest is a “serious step of taking a person into custody for the purpose of prosecuting him for a crime.” *Id.* In a traffic stop, the “police-citizen confrontation” has not yet “escalated to the point of arrest.” *Id.* Second, “unlike an encounter on the street or along a highway, an in-home arrest puts the officer at the disadvantage of being on his adversary's ‘turf.’ An ambush in a confined setting of unknown configuration is more to be feared than it is in open, more familiar surroundings.” *Id.*

In order to conduct such a protective sweep, “there must be articulable facts which, taken together with the rational inferences from those facts, would warrant a reasonably

prudent officer in believing that the area to be swept harbors an individual posing a danger to those on the arrest scene.”

 *Id.* at 334.

B. Analysis

The Court concludes that at the time of the protective sweep, the deputies had specific, articulable facts that suggested that there may be an unidentified individual in the residence and the protective sweep was lawful.

As an initial matter, the Court notes that arresting and removing a defendant is not dispositive of the lawfulness of a protective sweep. *See* *United States v. Waters*, 883 F.3d 1022, 1026 (8th Cir. 2018) (per curiam) (citing *United States v. Alatorre*, 863 F.3d 810, 814 (8th Cir. 2017);  *United States v. Boyd*, 180 F.3d 967, 975–76 (8th Cir. 1999)); *see also*

 *Buie*, 494 U.S. at 334 (“[A]rresting officers are permitted in [certain] circumstances to take reasonable steps to ensure their safety after, and while making, the arrest.”). The Eighth Circuit has found protective sweeps lawful in circumstances similar to this case. In one case, a protective sweep was lawful when there were areas of the residence that were not visible to officers. *See* *Alatorre*, 863 F.3d at 813–15. When officers approached the house, they “saw movements in the residence consistent with multiple people inside.” *Id.* at 812. The officers conducted a protective sweep after the defendant was arrested and removed from the residence and after his girlfriend left the residence and said no one else was inside. *Id.* The Eighth Circuit concluded that officers “dealing with [defendant] and his girlfriend were vulnerable to attack from someone inside the residence.” *Id.* at 815.

*4 In another case, law enforcement officers knew that the defendant “was on parole for possession of narcotics with intent to distribute and possession of a machine gun.”

 *Boyd*, 180 F.3d at 975. They secured all the occupants of the house, handcuffed the defendant, and moved him to another area of the residence before conducting a protective sweep. *Id.* The Eighth Circuit concluded the protective sweep was lawful because the search was “quick and limited” and “confined to places large enough to conceal a person.”  *Id.* at 976 (internal quotation marks omitted).

Here, Hanuman had been arrested at the time of the protective sweep. (Tr. at 30–31, 69). The woman in the home had only identified one other person—Hanuman—as being in the

residence. (*Id.* at 23, 65). Hanuman, however, when asked if anyone else was in the home, refused to answer. (*Id.* at 30, 92–93). The deputies were aware that Hanuman was on probation for being a felon in possession of a firearm and had been arrested in the past for controlled-substance related offenses. (*Id.* at 10–11, 58). The Court concludes that these facts are sufficient for the deputies to reasonably conclude that the residence may have contained an individual posing a danger to the deputies at the scene.² See  *Buie*, 494 U.S. at 334; *United States v. Williams*, 577 F.3d 878, 881 (8th Cir. 2009) (“While hindsight reveals that the officers had already encountered all of the occupants of the home before conducting the protective sweep, that information was not apparent to the officers when they initiated the sweep.”). Therefore, the Court concludes the protective sweep was lawful. Correspondingly, the items in plain view during the protective sweep were properly included in the search warrant application, and suppression of the evidence obtained from the execution of the search warrant is not warranted.

² Hanuman speculates that the true reason for the protective sweep was because officers felt entitled to do it. (Hanuman's Mem. in Supp. at 1, 8–9). Hanuman argues this is so because when Hanuman asked why officers were searching his home, Deputy Fletcher responded, “because we can.” (*Id.*); (Tr. at 80–81). But this Court must rely on what facts the deputy knew at the time of their sweep, not statements they made afterwards. See  *Buie*, 494 U.S. at 334.

IV. RECOMMENDATION

Based on all the files, records, and proceedings herein, **IT IS HEREBY RECOMMENDED** that

1. Defendant Michael Scott Hanuman's (“Hanuman”) Motion to Suppress Evidence Obtained as a Result of Search and Seizure [Doc. No. 24] be **DENIED**; and
2. Hanuman's Motion to Suppress Statements, Admissions, and Answers [Doc. No. 25] be **DENIED** as moot.

Notice

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore, not appealable directly to the Eighth Circuit Court of Appeals.

Under [D. Minn. LR 72.2\(b\)\(1\)](#) “a party may file and serve specific written objections to a magistrate judge's proposed findings and recommendations within 14 days after being served a copy” of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. [LR 72.2\(b\)\(2\)](#). All objections and responses must comply with the word or line limits set forth in [LR 72.2\(c\)](#).

All Citations

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