

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

ANGELA DEE GARGES,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

1. Whether the Eighth Circuit Court's determination that law enforcement officers may search an entire dwelling without probable cause or reasonable suspicion if an arrest occurs in or near a dwelling improperly expanded the scope of a "protective sweep" contrary to the parameters set forth by this Court in *Maryland v. Buie*, 494 U.S. 325 (1990).

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PETITION FOR WRIT OF CERTIORARI

Petitioner Angela Dee Garges respectfully petitions for Writ of Certiorari to review the Opinion of the United States Court of Appeals for the Eighth Circuit.

OPINIONS BELOW

Appendix A contains the Eighth Circuit's unpublished opinion in *U. S. v. Garges*, No. 20-3687 (8th Cir. Aug. 15, 2022). Appendix B is the decision from the United States District Court for the Southern District of Iowa, *U.S. v. Angela Dee Garges*, 1:20-CR-10, (Dec. 15, 2020).

JURISDICTION

The district court had jurisdiction of this criminal case under 18 U.S.C. § 3231. The United States Court of Appeals for the Eighth Circuit had jurisdiction over the appeal under 28 U.S.C. § 1291.

On August 15, 2022, the Eighth Circuit Court of Appeals affirmed the district court's ruling on Defendant's Motion to Suppress. (App. A, p. 6). On September 20, 2022, the Eighth Circuit denied Petitioner's request for a rehearing. (App. C).

This Court has jurisdiction of this appeal under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment of the United States Constitution states:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

I. Material Facts of the Case

Law enforcement officers received a tip that a wanted felon was staying at a hotel in Council Bluffs, Iowa. Garges was staying in the room and it was registered in her name. When officers knocked on the hotel room door, Garges answered the door, cooperated with officers and then exited the hotel room. She told officers that the suspect was in the room. Officers commanded him to exit the room and he complied without incident and was arrested. (App. B, p. 2). Officers were not required to enter the room to arrest the wanted male suspect. (App. A, p. 2).

Garges notified officers that an infant was in the room and officers conducted a “protective sweep” of the hotel room. At the time of the “protective sweep” officers had no knowledge, information or reason to believe that individuals were present in the hotel room that posed any risk to officers. During the “protective sweep” officers observed drug paraphernalia that was not visible from the doorway. (App. A, p. 2). Following the discovery of drugs in the room during the unlawful protective sweep, Garges made incriminating statements. (App. A, pp. 2-3).

II. Findings of the Courts Below

Garges moved to suppress the search of the hotel room and her subsequent incriminating statements. The district court conducted an evidentiary hearing and denied Garges' motion. In its denial, the district court held that officers were justified in conducting a "protective sweep". (App. B, pp. 3-6). At the hearing, officers were unable to provide any specific or articulable facts that the room harbored any individual that posed any danger to officers. Garges appealed to the Eighth Circuit and argued that there was no evidence that officers had a reasonable belief that the hotel room harbored any individual posing a danger to officers. (App. A, p. 3).

In its decision, the Eighth Circuit failed to address whether officers had a reasonable belief that the hotel room harbored a dangerous individual. Instead, the Eighth Circuit determined that the "protective sweep" was justified as an inspection of "spaces immediately adjoining the place of arrest from which an attack could be immediately launched." (App. A, p. 4). The Eighth Circuit determined that because there was evidence that officers had crossed the threshold into the hotel room when one officer held the door open, the entire room constituted an adjoining space to the arrest. (App. A, pp. 4-5). The Eighth Circuit stated, "[i]n the context of a hotel room like this one, the entire room is an adjoining space that may be subject to a cursory inspection." (App. A, p. 5).

REASONS FOR GRANTING THE WRIT

The Eighth Circuit decision improperly expanded the scope of a “protective sweep” defined and limited by this Court in *Maryland v. Buie*, 494 U.S. 325 (1990). In *Buie* this Court held that after effectuating an arrest officers may “as a precautionary matter and without probable cause or reasonable suspicion, look in closets and other spaces **immediately adjoining** the place of arrest from which an attack could be immediately launched.” *Buie*, 494 U.S. at 334 (App. A, p. 4) (emphasis added). The Eighth Circuit expanded *Buie* to allow officers to search the hotel room by finding that the entire room was close enough to the arrest that occurred in the doorway. The Eighth Circuit Court’s decision permits officers who arrest someone on their porch or entryway to search the entire home as a “protective sweep” since the interior of the home is “adjoining” to the place of arrest.

The Eighth Circuit justified its reasoning by declaring that officers were “vulnerable to attack from spaces immediately adjoining the entryway”. (App. A, p. 5). This expansion of *Buie* allowed officers to search the entire hotel room without probable cause or reasonable suspicion. *Id.* The Eighth Circuit failed to cite any precedent that supported the expansion of the ruling set forth in *Buie* that a “protective sweep” requires a reasonable belief supported with specific and articulable facts that the residence harbors individuals who may pose a risk to officers’ safety.

The Circuit's decision in this case eliminates the requirement of probable cause or reasonable suspicion and allows officers to search an arrestee's residence so long as they were arrested in the home or its curtilage. The Eighth Circuit relied merely on a finding that any officer who is "vulnerable" to a potential attack has the right to search any "adjoining" area where an attack could be launched. (App. A, p. 5). This finding swallows the rule set forth in *Buie* that a "protective sweep" must be supported with specific and articulable facts that support a belief that the area harbors dangerous individuals that pose a threat to officers.

The Eighth Circuit misinterpreted what this Court meant by an attack that could be immediately launched from an adjoining space. This Court's example in *Buie* suggested that in a situation where an officer arrests a suspect next to a closed closet door, the officers have a right to quickly open and inspect the closet door because it immediately adjoins the arrest and someone could launch a physical attack against the officers without time for the officers to react. *Buie* did not authorize officers to search any space, area, domicile, dwelling or structure from which anyone could have a line of sight on the officers to discharge a firearm. The Eight Circuit's unsupported expansion permits officers to search an entire "area" or room without limitation, probable cause, reasonable suspicion or articulable facts supporting a belief that the area harbors a threat to officers.

The granting of this writ is important to protect the right to privacy of all citizens and to enforce the limitations of a “protective sweep” set forth in *Buie*. The arrest of any citizen, whether it occurs in or near the home, should not give rise to an unrestrained or unwarranted search by officers simply because the home was “adjoining” to the place of arrest. Furthermore, the Circuit’s determination of the bathroom as an “adjoining” area to the doorway was unsupported by the evidence offered at the hearing and improperly expanded the ordinary meaning of an immediately “adjoining area”. The Eighth Court’s expansion of the scope of a “protective sweep” eliminates the requirement set forth in *Buie* that there must be specific and articulable facts that the area to be searched harbors individuals who pose a threat to the arresting officers.

For this reason, Garges’ petition should be granted and the decision by the Eighth Circuit should be reversed.

CONCLUSION

For the forgoing reasons, Petitioner prays that this Court grant her Petition for Writ of Certiorari.

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PETITIONER,

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