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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

APPENDIX

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United States Court of Appeals
For the Eighth Circuit

No. 20-3687

United States of America,

Plaintiff - Appellee,

v.

Angela Dee Garges,

Defendant - Appellant.

Appeal from United States District Court
for the Southern District of Iowa - Western

Submitted: August 13, 2021

Filed: August 15, 2022

Before COLLOTON, WOLLMAN, and KOBES, Circuit Judges.

COLLOTON, Circuit Judge.

Angela Garges entered a conditional guilty plea to a charge of conspiracy to distribute methamphetamine. *See* 21 U.S.C. § 846. She reserved her right to appeal an order of the district court¹ denying her motion to suppress evidence that police

¹The Honorable John A. Jarvey, then Chief Judge, United States District Court for the Southern District of Iowa, now retired.

"Appendix A"

seized after conducting a protective sweep of a hotel room in which she was staying. *See* Fed. R. Crim. P. 11(a)(2). We conclude that officers permissibly entered and searched the hotel room, and therefore affirm the order denying the motion to suppress.

The disputed search occurred at a Best Western Hotel in Council Bluffs on January 29, 2020. Police officers, responding to a tip, arrived at the hotel to arrest one Jason Byers, who was wanted on a felony arrest warrant for the offense of false imprisonment. Officers learned that Byers was staying with Garges in Room 246, and they proceeded to that room.

When a police officer knocked on the door, Garges answered. Police asked whether Byers was present. When Garges answered affirmatively, police told her to exit the room and escorted her down the hall and around a corner. Officers then commanded Byers to come out of the room. One officer testified that police handcuffed Byers “in the doorway.” Another stated that officers “did not enter the room to place Mr. Byers in handcuffs,” but did not elaborate on where Byers was physically seized. The district court found only that Byers came out of the room without incident.

After Byers was secured, police asked Garges whether there were other people in the hotel room. She replied that there was a baby inside the room. Officers decided to enter the room to conduct a “protective sweep.” Two officers briefly entered the room, saw the ten-month-old baby, but found no other occupants. They also observed drug paraphernalia in the room. Garges said that the baby did not belong to her or Byers, that she knew only the baby’s first name, and that she did not have a telephone number for the baby’s mother. Officers arrested Garges for drug possession and child endangerment, and took the baby into custody for safekeeping and return to the appropriate guardian.

Officers questioned Garges further, and she admitted that methamphetamine was located in a black bag in the hotel room. Police obtained a search warrant for the room and for Garges's cellular telephone. Officers seized incriminating evidence from the hotel room and the phone.

A grand jury charged Garges with drug trafficking offenses, and she moved to suppress evidence seized from the hotel room and cellular phone. Garges argued that there was no legal justification for the protective sweep of the hotel room, and that all evidence seized thereafter should be suppressed as a product of the unlawful search.

The district court denied the motion. The court ruled that the officers had a "reasonable belief based on specific and articulable facts that the area to be swept harbor[ed] an individual posing a danger to those on the arrest scene." The court cited the facts that Byers and Garges were present in the hotel room before the arrest, that part of the room was out of the view of officers even with the door ajar, that Byers lingered in the room out of sight after Garges was removed, and that Byers had a history of assaultive behavior. The court thus concluded that the officers were permitted to conduct a cursory inspection of the room, to seize drug paraphernalia that was in plain view during the sweep, and to obtain a search warrant based on that information. Garges then entered her conditional guilty plea, and the court sentenced her to 120 months' imprisonment.

On appeal, Garges argues that the district court erred in denying the motion to suppress because the police lacked specific and articulable facts suggesting that a person posing a danger to the officers was located inside the hotel room. She maintains that the officers violated her rights under the Fourth Amendment by entering the hotel room without a warrant, and that all evidence seized as a result of the entry should be suppressed.

The appeal requires an application of the Fourth Amendment's prohibition on unreasonable searches and the decision in *Maryland v. Buie*, 494 U.S. 325 (1990), concerning the reasonableness of a "protective sweep" within a home. Police officers armed with an arrest warrant may enter a home where the named suspect is located and search anywhere in the home that the suspect might be found. Once police officers have found the suspect, the warrant no longer provides authority to enter rooms that have not yet been searched, but *Buie* held that it is still reasonable for officers to conduct a cursory inspection of certain spaces within the home to ensure their safety. First, 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." *Id.* at 334. Second, officers may "sweep" other areas in the home if there are "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 334-35. The district court relied on the second source of authority; the government argues on appeal that a sweep of the hotel room was justified on either rationale. The government also asserts authority of officers to act as community caretakers after learning about the baby in the room.

We conclude that a protective sweep of the hotel room was justified here as an inspection of "spaces immediately adjoining the place of arrest from which an attack could be immediately launched." *Id.* at 334. Although the record does not include a finding on precisely where officers physically seized Byers, it is undisputed that officers were positioned in the doorway to effect the arrest, and that police crossed the threshold into the room under the authority of the warrant. The hotel room door opened inward, R. Doc. 57-2, 57-3, and defense counsel elicited testimony that one of the officers held the door open (thus crossing the threshold) from the time that Garges first opened the door through the apprehension of Byers. R. Doc. 119, at 13.

We may consider these undisputed facts in resolving the contested legal issue. *See United States v. McCoy*, 200 F.3d 582, 583-84 (8th Cir. 2000).

In determining whether the protective sweep was reasonable in this scenario, we do not think it necessary to determine exactly where officers laid hands on Byers or placed him in handcuffs. *Buie* says that officers may sweep spaces “immediately adjoining the place of arrest,” but we do not read judicial opinions like statutes, and the animating principle of *Buie* is that arresting officers may take reasonable steps to protect themselves from an unexpected attack. The reasonableness inquiry under the Fourth Amendment properly takes into account the location of both the suspect and the officers at the time of an arrest that occurs near a boundary.

The officers here were positioned in the doorway, and they summoned Byers to exit. Regardless of where in the immediate vicinity of the doorway the officers physically seized Byers, at least one officer permissibly entered the room under authority of the warrant, and was properly positioned at least partially inside the room while holding the door open to assist with the arrest. That officer was vulnerable to attack from spaces immediately adjoining the entryway, and it was therefore permissible for the police to conduct a cursory inspection of adjoining spaces without probable cause or reasonable suspicion. Because police had crossed the threshold of the room under the authority of a warrant before conducting the sweep, there was no unlawful entry. *Cf. United States v. Calhoun*, 49 F.3d 231, 234 & n.3 (6th Cir. 1995).

In the context of a hotel room like this one, the entire room is an adjoining space that may be subject to a cursory inspection under *Buie*. The bathroom, with door open, was immediately to the left as officers moved forward in the room. The remaining space consisted of a single bedroom that was connected directly to the entry area. Each of these spaces was a place from which an attack on arresting officers could be immediately launched, and it was reasonable for officers to inspect those areas briefly to ensure that no person posing a threat was located there. That

the officers observed evidence of unlawful drug activity in plain view while conducting the protective sweep did not violate Garges's rights under the Fourth Amendment.

For these reasons, the order of the district court denying Garges's motion to suppress is affirmed.

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
WESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ANGELA DEE GARGES,

Defendant.

No. 1:20cr0010-02-JAJ

ORDER

This matter comes before the court pursuant to the defendant's April 20, 2020 Motion To Suppress Evidence [Dkt. No. 37]. The motion was filed during the height of the Coronavirus pandemic. Less than one month before the motion was filed, the court had certified under the CARES Act that it was not safe to conduct in-person hearings. That order was lifted with respect to the Western Division of the Southern District of Iowa on July 1, 2020. The court then set this matter for hearing on July 21, 2020. At the hearing, the government was represented by Assistant United States Attorney Shelly Sudmann. The defendant was present and represented by attorney James McGough.

The Motion To Suppress challenges, among other things, the protective sweep search conducted by police on January 29, 2020, of a hotel room rented by the defendant and also occupied by a man named Jason Byers. Byers was wanted on a warrant for arrest for false imprisonment. After arresting Byers without incident, the police conducted a protective sweep of the hotel room during which they observed drug paraphernalia in plain view. The circumstances were made more complex by reason of the presence of a ten-month-old baby who belonged to neither the defendant nor Byers.

The defendant's motion to suppress is **denied**. The court makes the following findings of fact and conclusions of law.

I. FINDINGS OF FACT

On January 29, 2020, officers with the Council Bluffs police department received information from an Omaha law enforcement officer. The Omaha officer had received an anonymous tip through Crime Stoppers indicating that they could find Jason Byers at the Best Western Hotel on 27th Avenue in Council Bluffs. Byers was wanted on a felony arrest warrant for false imprisonment. The information provided to the Omaha officer was that Byers would be at the Best Western Hotel with defendant Angela Dee Garges.

A number of police officers went to the Best Western Hotel. They confirmed that defendant Garges had registered at the hotel and was staying in room 246. Officers were posted near the entrances to the property and four officers approached room 246. When they knocked on the door to room 246, the defendant answered. Police asked whether Jason Byers was in the room. The defendant told the police that he was. The defendant was told to exit the room, and she was escorted a few feet away around a corner. The police commanded Byers to come out of the room, and he did so without incident. At about this same time, police asked whether there were other people in the room. Defendant Garges told the police that there was a baby inside the room. The police could not see the baby from the door to the room.

The police decided to enter the room to conduct a protective sweep. In addition to being wanted on a felony arrest warrant for false imprisonment, Jason Byers was known to have a history of assaultive behavior. Two officers briefly entered the room, found no other occupants, but found drug paraphernalia, the baby, and that the smoke detector had been covered. Officers were concerned about the presence of someone else who might do them harm while Byers was arrested. They had an independent concern for the welfare of the baby.

Defendant Garges was questioned about the baby. She indicated that the baby was not hers or Byers'. She did not have a telephone number for the baby's mother and only knew the baby's first name. Ultimately, Garges was arrested for child endangerment and

the baby was taken to the appropriate agency for safekeeping and return to its guardian. The baby was ten months old.

Police administered *Miranda* warnings to the defendant. She made admissions concerning methamphetamine that would be found in a black bag in the hotel room as well as other admissions. Armed with this information, the police secured a search warrant for the hotel room [Gov't Ex. 3] and for the defendant's cellular telephone [Def't Ex. B].

II. CONCLUSIONS OF LAW

Garges argues that, at the time the officers entered the hotel room, after Byers had been placed in custody outside of the room, there were no specific or articulable facts that an individual posing a danger was inside to justify the warrantless entry into the hotel room. Consequently, she argues that evidence obtained after the unconstitutional entry must be excluded. The government asserts that the officers had authority to conduct a protective sweep to check on the infant that the defendant told officers was in the room and to assure the safety of the officers and the infant by making sure no other people were present in the room. The government argues that the search warrants were products of evidence of drug activity found in plain sight in the room during the protective sweep and statements made after defendant received a *Miranda* warning. The court agrees with the government.

A protective sweep is justified when officers have ““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.”” *United States v. Coleman*, 909 F.3d 925, 931 (8th Cir. 2018) (quoting *Maryland v. Buie*, 494 U.S. 325, 337 (1990)). “[T]he inquiry as to the reasonableness and validity of a protective sweep is necessarily fact-specific.” *United States v. Alatorre*, 863 F.3d 810, 814 (8th Cir. 2017) (quoting *United States v. Thompson*, 842 F.3d 1002, 1009 (7th Cir. 2016)). Nevertheless, a protective sweep when a defendant is arrested near his residence is justified “because officers are vulnerable during an arrest at a home, even when the arrestee and other occupants have been secured,” where the residence might be harboring other persons who are dangerous and could launch a surprise

attack, and the officers are disadvantaged by not knowing the surroundings. *Alatorre*, 863 F.3d at 814 (citing *Buie*, 494 U.S. at 333).

In *Coleman*, the Eighth Circuit Court of Appeals rejected a defendant's argument—much like Garges's argument, here—that once he had been removed from the residence, “a reasonably prudent officer would not infer ‘that the area to be swept harbor[ed] an individual posing a danger to those on the arrest scene.’” *Id.* at 930 (quoting *United States v. Davis*, 471 F.3d 938, 944 (8th Cir. 2006), with quotation omitted). The court explained that the presence of the defendant in the area of the residence prior to his arrest and the presence of others occupying the residence were circumstances giving rise to the necessary reasonable belief based on articulable suspicion, so no permission of any resident was required for the sweep. *Coleman*, 909 F.3d at 931. Similarly, in *Alatorre*, the Eighth Circuit Court of Appeals found a protective sweep of a residence was appropriate, even after the defendant had been removed, because his girlfriend had lingered in the kitchen out of sight until called out, indicating that someone could hide out of sight to launch an attack; the defendant's criminal history involving firearms and resisting arrest indicated weapons were conceivably present; audible movements suggested the presence of others in the residence; and officers on the front porch were vulnerable to attack from someone inside the residence. 863 F.3d at 814-15.

Other Circuit Courts of Appeals have found that similar circumstances justified a protective sweep of a hotel or motel room, when the defendant was arrested just outside it. *See, e.g., United States v. Hearn*, 563 F.3d 95, 106 (5th Cir. 2009) (finding a protective sweep of a hotel room was justified where the defendant was arrested in the hall while trying to enter the room, the arrest was for drug charges which are often associated with weapons, and the officer did not know who was in the room or if someone inside intended the officer harm or might destroy evidence); *United States v. Biggs*, 70 F.3d 913, 916 (6th Cir. 1995) (concluding that, although the defendant was arrested outside, a sweep of a motel room was justified, in part, because another person was expected to be there and the

door was ajar, allowing anyone inside to see the arrest in progress); *United States v. Sheikh*, 654 F.2d 1057 (5th Cir. 1981) (expanding the protective sweep exception of the warrant requirement by allowing a protective sweep of a hotel room following an arrest in the hall outside the room), *overruled on other grounds*, *United States v. Zuniga-Salinas*, 952 F.2d 876, 879 (5th Cir. 1992) (en banc); *see also United States v. Brown*, 374 F. App'x 208, 210 (2d Cir. 2010) (finding officers had sufficient reasonable suspicion to perform a protective sweep of the bathroom in a motel room, where several suspected killers were staying in the motel and not all had been accounted for, the room's resident was arrested immediately outside the motel room, and the light was on in the bathroom); *United States v. Rosemond*, 5 F. App'x 644, 645–46 (9th Cir. 2001) (finding ATF agents were justified in making a protective sweep of a hotel room when the defendant was arrested outside it, because they reasonably suspected that the room harbored another person who could have posed a danger to them).

Here, the officers had “‘a reasonable belief based on specific and articulable facts that the area to be swept harbor[ed] an individual posing a danger to those on the arrest scene.’” *Coleman*, 909 F.3d at 931 (quoting *Buie*, 494 U.S. at 337). As in *Coleman*, Byers and the defendant were in the hotel room prior to Byers's arrest, reasonably suggesting that another person might also be present. *Id.* Also, much as in *Alatorre*, Byers lingered in the hotel room even after Garges was removed from the entrance, showing that someone could hide out of sight in the hotel room, even with the door ajar, to launch an attack; the hotel room was familiar to anyone inside, but unfamiliar territory to the officers; Byers was being arrested for false imprisonment and was known to have a history of assaultive behavior, reasonably suggesting that someone else, either a danger to the officers or improperly detained by Byers might be in the hotel room; and officers just outside the hotel room door, which was ajar, were vulnerable to attack from someone inside the hotel room. 863 F.3d at 814-15.

Furthermore, in this case, the need to conduct the sweep to protect others, as well as the officers, was immediately apparent, both from the information that a ten-month-old baby was in the room, either alone or possibly with a hostile person, and from the fact that hotel rooms that might be occupied by innocent people were in close proximity to a room that might harbor dangerous or armed occupants cable of launching an attack. *See Buie*, 494 U.S. at 327 (holding that a protective sweep is justified if officers reasonably believe “that the area swept harbored an individual posing a danger to the officer *or others*” (emphasis added)); *see also United States v. Scott*, 876 F.3d 1140, 1144 (8th Cir. 2017) (legitimate concerns that someone at a house might be armed and that children might be hurt or in danger were “exigent circumstances” that justified a warrantless entry into a residence).


Because the protective sweep was justified, drug paraphernalia in plain view could properly be seized, because its incriminating character was immediately apparent. *See United States v. Williams*, 951 F.3d 892, 896 (8th Cir. 2020). If such items could be seized, their presence could also be used to obtain a search warrant for the premises. Likewise, the covered smoke detector, also in plain view during the sweep, which an officer testified was indicative of drug use in the room, could also be used to obtain a search warrant.

III. CONCLUSION

Upon the foregoing,

IT IS ORDERED that defendant’s April 20, 2020 Motion to Suppress [Dkt. 37] is **denied**.

DATED this 29th day of July, 2020.


 JOHN A. JARVEY, Chief Judge
 UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF IOWA

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

No: 20-3687

United States of America

Appellee

v.

Angela Dee Garges

Appellant

Appeal from U.S. District Court for the Southern District of Iowa - Western
(1:20-cr-00010-JAJ-2)

ORDER

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

September 20, 2022

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

/s/ Michael E. Gans

"Appendix C"