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IN THE SUPREME COURT OF CALIFORNIA

THE PEOPLE, Plaintiff and Respondent, v. ARNOLD IKEDA Defendant and Petitioner.	)	S_____ Ct.App. 2/6 B238600 Ventura County Super. Ct. No. 2011007697

SUPREME COURT
FILED

MAR 11 2013

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Deputy

PETITION FOR REVIEW OF A PUBLISHED OPINION

Seeking review of an order
denying a motion to suppress by the
Honorable Ronald Purnell and a motion to set aside the Information by the
Honorable Charles Campbell

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TO THE HONORABLE TANI G. CANTIL-SAKAUYE, CHIEF JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

Defendant and petitioner Arnold Ikeda respectfully petitions for review of the published decision of the Court of Appeal for the Second District, Division Six, affirming the decision of the Superior Court. The Court of Appeal decision, which is attached as Appendix A, was filed on January 30, 2013. Petitioner filed a petition for rehearing on February 11, 2013, which was denied on February 15, 2013. This petition is timely. (Cal. Rules of Court, rule 8.500(e).)

ISSUE PRESENTED

- Is reasonable suspicion sufficient to constitutionally justify the entry into a suspect's residence in order to conduct a protective sweep, where a suspect is detained outside?

NECESSITY OF REVIEW

Review is necessary to settle an important question of law. (California Rules of Court, rule 8.500(b)(1).) The Court of Appeal opinion herein concludes that reasonable suspicion is sufficient to support officers' warrantless entry into a suspect's home after detaining the suspect outside of his home. This holding is not supported by the Fourth Amendment of the United States Constitution, which has drawn a firm line at the entrance to a house which may not reasonably be crossed without a warrant or exigent circumstances. (*Payton v. New York* (1980) 445 U.S. 573, 590.) Petitioner therefore respectfully requests review of the Court of Appeal decision.

STATEMENT OF THE CASE

In a complaint filed on March 4, 2011, the Ventura County District Attorney charged petitioner with violations of Penal Code section 496[1] (receiving stolen property; count 1); Health and Safety Code section 11378 (possession for sale of a controlled substance; count 2), and Health and Safety Code section 11550, subdivision (a) (being under the influence of a controlled substance; count 3). (CT 1.)

On June 3, 2011, petitioner filed a motion to suppress evidence pursuant to section 1538.5. (CT 13.) The prosecution filed an opposition to the motion to suppress on July 11, 2011. (CT 25.) The motion to suppress was heard at the August 4, 2011 preliminary hearing, and denied by the Honorable Roland N. Purnell. (CT 14.)

Petitioner's motion to suppress and motion to set aside the information rested upon his contention that the items underlying the prosecution were seized during an illegal protective sweep of the inside of his hotel room, made in conjunction with his detention outside the room.

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[1] Unless otherwise indicated, all future statutory references will be to the Penal Code.

On August 15, 2011, the prosecution filed an information, charging petitioner as originally charged in the complaint. (CT 42.) Petitioner pled not guilty to all counts on August 18, 2011. (CT 45.) On September 29, 2011, petitioner filed a motion to set aside the information pursuant to section 995. (CT 48.) The prosecution filed an opposition to the motion to set aside the information on October 11, 2011. (CT 59.) On October 25, 2011, the motion was heard and was denied by the Honorable Charles W. Campbell. (CT 77.)

On December 7, 2011, petitioner withdrew his not guilty plea as to count 2, and pled guilty to possession for sale of a controlled substance in violation of Health and Safety Code section 11378. (CT 78.) On January 6, 2011, petitioner was sentenced by the Honorable Bruce A. Young to 300 days in the Ventura County Jail, and was released on formal probation for 36 months. (CT 99-100.) Counts 1 and 3 were dismissed. (CT 101.)

Petitioner filed a timely notice of appeal on January 17, 2012. (CT 103.) On January 30, 2012, the Court of Appeal filed its opinion (Appendix A) concluding that there was no error in the denial of either petitioner's motion to suppress, or petitioner's motion to set aside the information. Petitioner sought rehearing before the Court of Appeal, which relief was denied on February 15, 2013.

STATEMENT OF FACTS

In February 2011, Scott Hardy, a Detective with the Ventura County Sheriff's Department, was investigating an allegation of a stolen laptop computer from Elias Vasquez. (CT 108-09.) During the course of his investigation, Detective Hardy discovered that the computer was equipped with a GPS tracking device, and that an investigator with the company that monitored the GPS device was monitoring the location of the computer, and was able to monitor key strokes and IP addresses (CT 110). The investigator

gave Detective Hardy the IP address and the protocol address for the computer, and informed Hardy that the IP address belonged to AT&T. (CT 110-11.) Detective Hardy contacted AT&T, who confirmed that the IP address was AT&T's, but required a search warrant to release any further information. (CT 111.) Detective Hardy obtained a search warrant, and received information showing that the laptop had been used on February 21, 2011, at a location of 181 Santa Clara Avenue and that that the password on the computer had been changed to "Arnold Ikeda." (CT 111-112.)

On Tuesday, March 1, 2011 Detective Hardy contacted the investigator at the company that was monitoring the computer's GPS location. (CT 111-12.) The investigator informed Detective Hardy that the computer was logged in at a location on Schooner Drive. (CT 111-112.)

Detective Hardy then conducted a records check on the name of Arnold Ikeda and located a booking photograph, a DMV photograph and address of petitioner. (CT 113.) He and his partner, Detective Kevin Lynch, then drove to the Schooner Drive address.[2] (CT 115.) They arrived at around 2:00 p.m. (CT 132.) They did not secure, nor did they attempt to secure, either a search warrant for the room or an arrest warrant for Mr. Ikeda. (CT 132.)

Upon Detective Hardy's arrival at the Schooner Drive address, he entered the lobby of the Holiday Express and spoke to the manager. (CT 114.) He provided the manager the name of Arnold Ikeda, and she confirmed that someone by that name was checked in at the Four Points Sheraton.[3] (CT 114.) Hardy showed her the DMV photograph of petitioner, and she confirmed that she thought it was the same person. (CT 114.) The manager informed

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[2] Two separate hotels share the address of 1050 Schooner Drive in Ventura: the Holiday Inn Express, and the Four Points Sheraton.

[3] The Holiday Inn Express and the Four Points Sheraton at the Schooner Drive location use the same computer system. The manager at the Holiday Inn Express confirmed that Mr. Ikeda was checked into the Four Points Sheraton.

Detective Hardy that petitioner was currently checked into room 104, that he had been staying there for several days, and that he had been changing ground floor rooms every day. (CT 114.) She also told him that there was a female who was associated with the room, and that there was a key card currently at the desk for that female. (CT 114.) Again, Detective Hardy chose not to secure either a search warrant or an arrest warrant, despite it being the middle of the afternoon on a Tuesday, and despite the less than 5 mile proximity to the courthouse. (CT 132.) At the preliminary hearing, the magistrate was careful to note that judges are available 24 hours a day to review and sign warrants. (PHT p.27, 11. 2-4.)

Detective Hardy discussed the information with Detective Lynch, and they then requested a uniformed patrol to officer come to the location. (CT 115.) Deputy Johnson arrived on scene. The officers then located room 104. (CT 115.) Detective Hardy and Deputy Johnson approached the front door of the hotel room, and Detective Lynch went around the building to the rear sliding door of the room. (CT 115.)

Detective Hardy listened at the door, and thought he heard "two male subjects" having a conversation inside the room. (CT 115.) He then knocked on the door, and announced he was with the sheriff's department. (CT 116.) Petitioner responded with "hold on a moment," but then exited the hotel room through the back sliding door. (CT 116.) Detective Lynch informed Deputy Johnson of petitioner's exit, and Deputy Johnson went around the building to assist Detective Lynch. (CT 116.) Detective Lynch told petitioner that he was being detained, and directed him to put his hands behind his back. (CT 117.) Petitioner complied. (CT 117.) Petitioner informed Detective Lynch that there was a BB gun inside the hotel room. (CT 117.)

In the meantime, Detective Hardy remained at the front door. (CT 116.) After several minutes, Detective Hardy went around to the back of the building to see what was going on. (CT 117.) There he saw Deputy

Johnson standing with petitioner, who was in handcuffs in a grassy area away from the room. (CT 117, 130.) Detective Hardy then decided that there may be a "female or somebody else inside" the room, despite the female's card key remaining at the front desk, and proceeded to engage in a "protective sweep" of the room based on the information that he had gathered by that point in the investigation (CT 117-118), including:

1. When he first arrived at the hotel room door, he "thought" he had heard two male subjects inside the room;
2. Petitioner informed Deputy Johnson that there was a BB gun inside the hotel room;
3. There was a female associated with the hotel room, whose key card was currently at the front desk of the Holiday Inn Express; and
4. Petitioner had changed rooms several times within the previous few days, leading the officer to suspect drug transactions may be occurring within the room.

Detectives Hardy and Lynch then performed a protective sweep of the hotel room. (CT 118.) Deputy Hardy remained inside the one-bedroom, one-bathroom hotel room for 45 minutes to an hour. (CT 119, 136.)[4] Once inside, the detectives observed in plain view a computer that matched the description of the stolen laptop, a crystal substance which appeared to be methamphetamine, and related drug paraphernalia. (CT 118-19.) Detective Hardy then exited the room to talk to petitioner, and told Deputy Johnson to remain inside the room. (CT 121.) At that time, Detective Hardy asked the defendant for consent to search the hotel room. (CT 112.) Petitioner agreed. (CT 122.) Detective Hardy then returned to the hotel room and collected the

[4] Approximately 15 minutes into the protective sweep, a female subject arrived at the hotel room and was placed under arrest by Detective Lynch. (CT 135-36.)

items he had previously observed in plain view during the protective sweep. (CT 122.) Petitioner was then placed under arrest. (CT 123.)

ARGUMENT

I.

The Fourth Amendment requires more than a mere reasonable suspicion where law enforcement officers seek to enter a home and conduct a protective sweep after the detention of a suspect effectuated outside of his residence.

The Fourth Amendment to the United States Constitution, made applicable to the states through the 14th Amendment, provides "[t]he right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated ... ." (U.S. Const., 4th Amend.) The California Constitution provides identical protection. (Cal. Const., art. I, § 13.) Warrantless searches inside a home are presumptively unreasonable. (*Payton v. New York* (1980) 445 U.S. 573, 586 (hereafter, *Payton*).)

This presumption of unreasonableness may be overcome by the showing that one of the "specifically established and well-delineated exceptions" to the warrant requirement is present. (*People v. Celis* (2004) 33 Cal.4th 667, 676 (hereafter, *Celis*) [*quoting Katz v. United States* (1967) 389 U.S. 347].) A "protective sweep" of a residence, conducted in order to protect the safety of police officers or others on scene, is one such exception that *may* support a search inside a home. (*Celis*, *supra*, 33 Cal.4th at pp. 676-77.) A protective sweep after law enforcement are *already legally justified for being inside the home by means of having secured an arrest warrant* may be based on reasonable suspicion that the area to be swept harbors a dangerous person. (*Maryland v. Buie* (1990) 494 U.S. 325, 337 (hereafter, at times, *Buie*).)

1. Protective sweeps incident to an arrest inside the home may be based on reasonable suspicion.

An arrest must be supported either by an arrest warrant, or by probable cause. (*Celis*, *supra*, 33 Cal.4th at 673.) Probable cause is present when "the facts known to the arresting officer would persuade someone of 'reasonable caution' that the person to be arrested has committed a crime." (*Ibid.*) "'The substance of all definitions of probable cause is a reasonable ground for belief of guilt,' and that belief must be 'particularized with respect to the person to be ... seized.'" (*Ibid.*, citing *Maryland v. Pringle* (2003) 540 U.S. 366, 371.) Therefore, when a protective sweep is conducted incident to a valid arrest, there is necessarily either an arrest warrant that has already been issued by a neutral and detached magistrate, or the presence of probable cause to believe that the arrestee is guilty of having committed a crime.

The Court of Appeal decision here relied on *Buie* in its proclamation that "[i]t is settled officers may conduct a protective sweep of a house when a suspect is arrested *outside* the house and the officers have a reasonable articulable suspicion that the house harbors a person who poses a threat to officer safety." (Opinion page 3.) As noted, the arrest in *Buie* was effectuated in-home, pursuant to an arrest warrant (*Buie*, *supra*, at p. 328; *Celis*, *supra*, 33 Cal.4th at p. 677), not outside. The court of appeal appears to have concluded that Mr. Buie was arrested *outside* his home and officers subsequently went inside his home to conduct a search of the basement. The Maryland Court of Appeals made a similar error: "The Maryland Court of Appeals was under the impression that the search took place after 'Buie was safely outside the house, handcuffed and unarmed.' 314 Md. 151, 166, 550 A. 2d 79, 86 (1988). All of this suggests that no reasonable suspicion of danger justified the entry into the basement." (*Maryland v. Buie, supra,*494 U.S. 325, 338.)

The court of appeal in *People v. Werner* (2012) 207 Cal.App.4th 1195, 1206 (hereafter, *Werner*) did indicate, however, that an entry into a house for a protective sweep conducted after an *arrest outside* the home *might* be constitutional where the sweep was required for the safety of the officers effectuating the arrest. However, even in those cases there first necessarily exists either a warrant or probable cause to justify an arrest. [5] Here, of course, petitioner was only detained and not arrested until a thorough search of his hotel room was conducted.

2. Protective sweeps incident to a detention outside the home are unconstitutional.

A detention of a citizen does not require probable cause, but rather requires merely "'some objective manifestation' that criminal activity is afoot and that the person to be stopped is engaged in that activity." (*Celis, supra*, 33 Cal.4th. at p. 674.) The function of an investigative detention is to permit the officers to diligently pursue a means of "investigation designed to confirm or dispel their suspicions quickly." (See *People v. Russell* (2000) 81 Cal.App.4th 102.) Hence, extending the authority to conduct a warrantless sweep after a detention extends the authority to invade a home before there is any probable cause that a crime has been committed. As the United States Supreme Court enunciated in *Florida v. Royer, 460 U.S.* 491, "in the name of investigating a person who is no more than suspected of criminal activity, the police may not carry out a full search of the person or of his automobile or

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[5] As stated in appellant's reply brief, the court in *People v. Werner,* misstated the high court's opinion in *People v. Celis, supra,* 33 Cal.4th 667, 680, in asserting that: "A protective sweep is not limited to situations immediately following an arrest, but one which may occur in conjunction with a suspect's detention." *(Werner, supra,* 207 Cal.App.4th. at 1206 [Citing *dicta* in *Celis,supra,* 33 Cal.4th at 679].)

other effects. Nor may police seek to verify their suspicions by means that approach the conditions of arrest." (*Id.* at 499.)

There is a critical distinction between arrests and detentions outside the home. A detention does not require the probable cause demanded by an arrest. A detention outside of the home does not require the exigency demanded by a detention inside the home. A detention of an individual outside of his home should not authorize mere reasonable suspicion to cross the firm line drawn by the United States Supreme Court in *Payton* to conduct a protective sweep.[6] Surely the Fourth Amendment provides stronger protection. "It is axiomatic that the 'physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.'" (*Celis*, *supra*, 33 Cal.4th at p. 676 [citing *Welsh v. Wisconsin* (1984) 466 U.S. 740, 880].)

Although it goes without saying that officers must be protected during the performance of their duties, "[s]ociety's interest in protecting police officers must . . . be balanced against the constitutionally protected interest of citizens to be free of unreasonable searches and seizures." (*Celis*, *supra*, at p. 680.)

One of the oft-cited exigent circumstances justifying a warrantless entry into a home is "the risk of danger to the police or to other persons inside or outside the dwelling." (*Id.* at p. 676.) This belief that a dangerous person is inside the home, however, must be based on probable cause unless the police are already inside the home, in which case reasonable suspicion may prevail in some circumstances as noted above. (*Id.* at p. 680.) The Court of Appeal's decision effectively lowers the standard for entry into a home from probable cause to the much reduced standard of reasonable suspicion when police have no other legal reason for being inside.

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[6] *Payton v. New York* (1980) 445 U.S. 573 [stating "In terms that apply equally to seizures of property and to seizures of persons, the Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not be reasonably crossed without a warrant."]

Petitioner also disagrees with the Court of Appeal that the California Supreme Court in *Celis* "assumed, without deciding, that the *Buie* reasonable suspicion standard applied to a detention where an officer detained defendant outside his house and conducted a protective sweep." The *Celis* court found it unnecessary to decide whether probable cause or reasonable suspicion would be required because the officers in *Celis* failed to meet either standard, nothing that because "the lower standard was not satisfied here, it follows that the higher standard requiring probable cause was not met either." (*Celis*, *supra*, 33 Cal.4th at p. 680.)

In fact, the *Celis* court expressly acknowledged that it was not deciding the propriety of an in-home protective sweep conducted after an out-of-home detention:

> "Would that rationale [that in some circumstances, a detention taking place just outside a home may pose an equally serious threat to the arresting officers as one conducted inside the house] also apply when officers enter a home to conduct a protective sweep after lawfully detaining a suspect outside the residence? [Citation.] That is an issue we need not resolve here because the facts known to the officers when they entered defendant's house fell short of the reasonable suspicion standard necessary to justify a protective sweep under *Buie* [citation]." (*People v. Celis, supra* 33 Cal.4th at p. 679.)

The Court of Appeal's decision unconstitutionally expands the police power to make a warrantless entry into a home. It sanctions the circumvention of the warrant requirement of the Fourth Amendment and allows law enforcement to simply surveil a citizen's residence, waiting for him to exit, and then detaining him based on reasonable suspicion. The officer would then be free to make warrantless entry into the suspect's home so long

as she could articulate a reasonable suspicion that another person was inside posing a potential, if hypothetical, danger. The potential for abuse of authority is clear, but most importantly the decision sanctions searches based merely on suspicion.

II.

The law enforcement officers who detained Mr. Ikeda did not have reasonable suspicion to conduct a protective sweep inside of his hotel room.

A protective sweep requires a reasonable suspicion that (1) another person is in the premises; and (2) that person is dangerous. (*Werner*, *supra*, 207 Cal.App.4th at p. 1206.) This suspicion must be supported by "articulable facts considered together with the rational inferences drawn from those facts." (*Celis, supra*, 33 Cal.4th at p. 379.)

In this case law enforcement officers did not have sufficient reasonable suspicion from which inferences could be derived justifying a protective sweep.

First, the reported criminal conduct was totally non-violent in nature. Detective Hardy's suspicions that narcotics activities might be involved did not elevate the investigation to one of a violent crime in progress. Second, Detective Hardy lacked reasonable suspicion that *another person* was present in the hotel room. Hardy testified at the preliminary hearing that he conducted the protective sweep because he thought that there may be a "female or somebody else inside" the room. As discussed, the "articulable facts" were thin, if non-existent:

1. He believed he had heard two male subjects inside the room;
2. There was a female associated with the hotel room, but her key card was currently at the front desk of the Holiday Inn Express.

In *Celis*, "while police had information that two other people lived with the defendant, they had no information that anyone was inside the home when they detained the defendant outside." Here, no surveillance was conducted and other than what Deputy Hardy thought he heard, the police had no information that anyone was inside the room when they detained the defendant outside. In fact, at the preliminary hearing, Deputy Hardy testified that it was an "*unknown*" in his mind whether anybody was inside (PHT p. 31, l. 21) and only that "*there could be*." (PHT p. l.) Further, he articulated no specific facts as to why a person who might possibly be inside posed a danger to police.

The "articulable facts" presented by Deputy Hardy as to why a person inside the room posed a threat to the officers was that petitioner changed ground floor rooms frequently which "*made him wonder*" if there were "*possible* drug transactions going on." (PHT p. 10, ll. 8-27.) The officers had no plausible information about that possibility, which was only speculation on their part; the investigation involved only a stolen laptop computer.

The lynchpin of the court of appeal's argument seems to be that petitioner admitted there was a BB gun inside the room. As the deputy public defender argued in the trial court, the BB gun did not transmute into a reasonable suspicion that the BB gun was a danger to police or that a person inside intended to use it.

> "The mere abstract possibility that someone dangerous might be inside a residence does not constitute "articulable facts" justifying a protective sweep." (*People v. Werner, supra,* 207 Cal.App.4th, 209.)

CONCLUSION

The undisputed facts in this case reveal that appellant was the subject of an investigative detention for a non-violent crime; he was not near the room after his detention; he was handcuffed, posed no harm and had indicated no one else was inside the room. Neither the police nor anyone else observed anyone inside the room. By allowing protective sweeps after a suspect is safely detained well away from his home on the suspicion there may be someone else inside the home posing a danger, the court has carved out a new exception to the warrant requirement based on police officer "experience and specialized training." (Opinion, page 4).

As the court in *Werner* summed up: "It does not appear to be enough, under *Celis,* that the police were genuinely apprehensive of danger based on past experience with domestic battery situations or large scale drug operations... . [T]o say that the warrantless entry into defendant's home in this case was justified because of a police officer's past experiences with domestic violence arrests would be tantamount to creating a domestic violence exception to the warrant requirement. This we cannot do. [Citation.]" *(People v. Werner* (2012) 207 Cal.App.4th 1195, 1209.)

The court here has attempted to carve out an exception based only on hypothetical small scale drug operations that may possibly attend the theft of one laptop computer.

For the foregoing reasons, petitioner respectfully requests that this court grant review.

Dated: March 8, 2013

Respectfully Submitted,
STEPHEN P. LIPSON, Public Defender

By: _____
CYNTHIA ELLINGTON,
Senior Deputy Public Defender
Attorney for petitioner, ARNOLD IKEDA

CERTIFICATE OF WORD COUNT

I, , certify pursuant to the California Rules of Court that the word count for this document is 4,599 words, excluding the tables, this certificate, and any attachment permitted under rule 8.204 subsection (d). This document was prepared in Microsoft Word, and this is the word count generated by the program for this document. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Ventura, California, on March 8, 2013.

STEPHEN P. LIPSON, Public Defender

By: _____

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APPENDIX A

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

ARNOLD IKEDA,

Defendant and Appellant.

2d Crim. No. B238600
(Super. Ct. No. 2011007697)
(Ventura County)

We hold that where a person is detained outside but near his residence, the police may conduct a "protective sweep" inside the residence when there is a reasonable suspicion that a person therein poses a danger to officer safety.

Arnold Ikeda appeals his conviction by plea to possession of methamphetamine for sale (Health & Ins. Code, § 11378), entered after the trial court denied a motion to suppress evidence (Pen. Code, § 1538.5). The trial court found that the protective sweep of appellant's motel room, made in conjunction with appellant's detention outside the room, did not violate his Fourth Amendment rights. We affirm.

Facts & Procedural History

On February 14, 2011 the named victim reported that his laptop computer equipped with a GPS tracking device was stolen. On March 1, 2011, the tracking company notified Ventura County Deputy Sheriff Hardy that someone had changed the computer password to "Arnold Ikeda" and was using the laptop at the Holiday Inn Express in Oxnard. Deputy Hardy went to the motel and showed the motel manager appellant's photo. The manager said that appellant was in room 104, that appellant

changed rooms every day, and that he had left a card key at the front desk for a woman who came and went.

Based on his training and experience, Deputy Hardy was concerned because the room change was consistent with someone selling narcotics. Room 104 was on the ground floor and had a curtained rear glass sliding door to the parking lot. Deputies Hardy and Johnson went to the front door and Detective Lynch positioned himself outside the rear sliding door,

Deputy Hardy heard two male voices inside the room, knocked, and announced "Sheriff's Department." A voice responded "One moment." A minute later, Detective Lynch saw the rear glass door open and appellant step out.

Detective Lynch detained and handcuffed appellant for officer safety purposes. Appellant said that a BB gun was in the room. Appellant claimed no one was in the room. This was inconsistent with Deputy Hardy having heard voices before knocking. He believed a woman or someone else was in the room.

Deputy Hardy and Detective Lynch announced "Sheriff's Department," pulled back the door curtain, and conducted a protective sweep. A laptop computer was in plain view and matched the description of the stolen laptop. A crystalline substance that resembled methamphetamine was on the counter and a scale, pay/owe sheet, and cash were on the bed. Appellant was arrested and consented to a search of the room. The officers seized the BB gun. After advisement and waiver of his constitutional rights, appellant admitted selling drugs and using methamphetamine.

Appellant brought a motion to suppress evidence on the theory that the protective sweep violated his Fourth Amendment rights. The trial court denied the motion to suppress because the officer had a reasonable suspicion that someone was hiding in the room and posed a danger to officer safety.

Protective Sweep

On review, we defer to the trial court's express and implied factual findings which are supported by substantial evidence and independently determine whether the protective sweep was reasonable under the Fourth Amendment. (*People v. Ledesma* (2003) 106 Cal.App.4th 857, 862.) It is settled officers may conduct a protective sweep of a house when a suspect is *arrested* outside the house and the officers have a reasonable, articulable suspicion that the house harbors a person who poses a threat to officer safety. (*Maryland v. Buie* (1990) 494 U.S. 325, 335-336 [108 L.Ed.2d 276, 287].)

Appellant argues that a protective sweep is not permitted unless the officer is lawfully inside the house or the sweep is incident to an arrest outside the house. In *People v. Celis* (2004) 33 Cal.4th 667 (*Celis*), our Supreme Court assumed, without deciding, that the *Buie* reasonable suspicion standard applied to a *detention* where an officer detained defendant outside his house and conducted a protective sweep. (*Id.*, at pp. 679.) In *Celis*, officers watched defendant's house for two days and had no information that anyone else was in the house when defendant was detained in the backyard. "The facts known to the officers before they performed the protective sweep fell short of what *Buie* requires, that is, 'articulable facts' considered together with the rational inferences drawn from those facts, that would warrant a reasonably prudent officer to entertain a reasonable suspicion that the area to be swept harbors a person posing a danger to officer safety. [Citation.]" (*Id.*, at pp. 679-680.)

We reject the argument that protective sweeps must be incident to a lawful arrest, as opposed to a detention outside his house. Consistent with *Buie and Celis,* courts have concluded that a protective sweep may be conducted in conjunction with a suspect's detention where there is a reasonable suspicion that the area to be swept harbors a dangerous person. (*People v. Werner* (2012) 207 Cal.App.4th 1195, 1206 [rule allowing protective sweep in conjunction with suspect's detention recognized but suppression motion should have been granted because no reasonable suspicion that a dangerous person was inside the residence]; see also *United States v. Garcia* (9th Cir. 1993) 997 F.2d 1273, 1282.)

Reasonable Suspicion

Appellant asserts that the officers lacked a reasonable suspicion that someone was hiding in the room and posed a risk of harm to the officers. Although Deputy Hardy was investigating a computer theft, the motel clerk said that appellant changed rooms daily and always requested a ground floor room. The officers were told that appellant had left a card key at the front desk for a woman who came and went.

Deputy Hardy heard male voices in the room and knocked. Someone in the room said "one moment" and appellant exited the rear sliding door, was detained, and said there was a BB gun in the room. Based on the voices, the card key at the front desk, the report that a woman came and went to the room, appellant's use of motel rooms consistent with drug trafficking, and appellant's statement that a gun was in the room, a reasonably prudent officer would entertain a reasonable suspicion that a protective sweep of the room was required for officer safety purposes.

Although appellant was detained and handcuffed, the rear door was ajar about two feet and the door curtain blocked everyone's view into the room. Detective Lynch testified: "I was concerned that there might be another individual inside the room, coupled with the fact that Mr. Ikeda told me there was, in his words, a BB gun, I didn't feel safe. I don't feel secure in being able to investigate in the manner we were doing without first ensuring there was nobody in the room that could hurt us."

"Reasonable suspicion" is an abstract concept, not a finely-tuned standard. (*People v. Ledesma, supra,* 106 Cal.App.4th at p. 863.) The United States Supreme Court has repeatedly warned that reasonable-suspicion determinations must be based on "the totality of the circumstances'. . . . [Citation.] This process allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that 'might well elude an untrained person.' [Citations]." (*United States v. Arvizu* (2002) 534 U.S. 266, 273 [151 L.Ed.2d 740, 749-750].)

Conclusion

The Fourth Amendment has never been, and should not be, interpreted to require that police officers take unreasonable risks in the performance of their duties. We again borrow from the words of Presiding Justice Pierce, i.e., the law requires police officers, "live ones," to enforce constitutional statutory, and decisional law. Here, we have balanced competing rights and conclude that "officer safety" must carry the day. (See e.g., *In re Richard G.* (2009) 173 Cal.App.4th 1252, 1255, citing *People v. Koelzer* (1963) 222 Cal.App.2d 20, 27.) .)

The judgment (order denying motion to suppress) is affirmed.

CERTIFIED FOR PUBLICATION

YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

Charles W. Campbell, Judge

Superior Court County of Ventura

Stephen P. Lipson, Public Defender; Michael C. McMahon, Chief Deputy and Cynthia Ellington, Senior Deputy Public Defender, for appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Susan Sullivan Pithey, Supervising Deputy Attorney General, Mary Sanchez, Deputy Attorney General, for Plaintiff and Respondent.

PROOF OF SERVICE

Case Name:	***People v. Arnold Ikeda***
Case No.	**S_____; (B238600; 2011007697)**

On **March 8, 2013**, I, **ANNA TWITTY**, declare:

I am over the age of 18 years and not a party to this action. I am employed in the Office of the Ventura County Public Defender. My business address is 800 South Victoria Avenue, Ventura, California 93009.

On this date, I personally served the following named persons at the places indicated herein, with a full, true, and correct copy of the attached document: **PETITION FOR REVIEW:**

Gregory Totten, District Attorney
Attn: Michael Schwartz, Spec. Asst DA
Office of the District Attorney
Hall of Justice, 3rd Floor
800 South Victoria Avenue
Ventura, CA 93009

Hon. Ronald Purnell, Judge, and
Hon. Charles Campbell,
Ventura County Superior Court
Hall of Justice, 2nd Floor
800 South Victoria Avenue
Ventura, CA 93009

Clerk of the Court
California Superior Court, Ventura
800 South Victoria Avenue
Ventura, CA 93009

On this date, I enclosed a full, true, and correct copy of the attached document: **PETITION FOR REVIEW OF A PUBLISHED OPINION** in a sealed envelope or package addressed to the persons at the addresses listed below, and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the County of Ventura's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with

postage fully prepaid. I am employed in the county where the mailing occurred. The envelope was placed in the mail at Ventura, California.

Clerk of the Court
Second District Appellate Court,
Division 6
200 East Santa Clara Street
Ventura, CA 93001

Kamala Harris, Attorney General
Mary Sanchez, DAG
Office of the Attorney General
300 South Spring Street
North Tower- Fifth Floor
Los Angeles, CA 90013-1230

Arnold Ikeda
Address of Record
(Defendant-Petitioner)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

STEPHEN P. LIPSON, Public Defender

By: _____

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