

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

**COMMONWEALTH**

v.

**HYSON FREDERICKS,  
Defendant**

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**CR: 355-2012  
CRIMINAL DIVISION**

**OPINION AND ORDER**

The Defendant filed a Motion to Suppress Evidence on May 25, 2012. A hearing on the motion was held June 26, 2012.

***Background***

On January 19, 2012, Lycoming Sheriff Deputy Eric Spiegel and Lycoming County Detective Laudenslager arrived at 338 High Street to serve an arrest warrant on Miranda Welsh. Hyson Fredericks (Defendant) is a resident of the address with Welsh, as evidenced by their joint names on the mailbox of the residence. Spiegel and Laudenslager knocked on the back door of the residence several times but there was no answer. Laudenslager believed he could hear someone in the residence. Spiegel and Laudenslager then went to the main or common entrance of the building and knocked on the front door several times and there still was no answer. Spiegel and Laudenslager then returned to the back entrance that was directly attached to Welsh's residence and began to knock again.

Spiegel tried the door knob and noticed the door was locked but that he could push the door open. Upon pushing open the door Spiegel could tell that a television was on. Both Spiegel and Laudenslager announced themselves before entering. Hearing no response, they then began "clearing" or searching the residence room-by-room for Welsh. They got to a rear bedroom with its door slightly open, which they could tell had occupants in it. They announced themselves

once again and there was no response. Spiegel and Laudenslager entered the apartment and saw Welsh and two (2) small children on a bed. While waiting for the Defendant to arrive at the residence, Spiegel opened a closet door in the bedroom to see if anyone was hiding in it. Spiegel observed a sawed off shotgun leaning against a pile of clothes.

Williamsport Bureau of Police were notified and arrived at the residence. Defendant was charged with Persons Not to Possess and Prohibited Offensive Weapon. On May 25, 2012, the Defendant filed a timely Motion to Suppress.

*Whether the search was constitutional*

The Defendant does not challenge whether the entry into his residence was done under a valid arrest warrant. “[F]or Fourth amendment purposes, an arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within.” Payton v. New York, 445 U.S. 573, 603 (1980); Commonwealth v. Conception, 657 A.2d 1298 (1995) (finding that marijuana viewed after police forcibly entered a residence of a third party on an arrest warrant was not to be suppressed); Commonwealth v. Williams, 396 A.2d 1177 (Pa. Super. 1993) (stating that an arrest warrant is required to validly arrest someone in his home unless there is an exception). Therefore, because the arrest warrant of Welch was not raised or argued during the hearing this Court will not address that issue.

The Defendant, however, contends that the search of his residence was unconstitutional because there was no probable cause. The Commonwealth counters that police may do a protective sweep during the execution of an arrest warrant. In Buie, the U.S. Supreme Court found that protective sweeps that are quick and limited searches incident to an arrest and conducted to protect the safety of police officers or others are allowed. Maryland v. Buie, 494

U.S. 325 (1990); Commonwealth v. Crouse, 729 A.2d 588 (Pa. Super. 1999) (adopting the holding in Buie). The search must be narrowly confined to a cursory visual inspection of those places in which a person may be hiding. Id. at 327.

As an incident to the arrest the officers could, 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. Beyond that, however, we hold that 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 (emphasis added). “Pursuant to the first level of a protective sweep, without a showing of even reasonable suspicion, police officers may make cursory visual inspections of spaces immediately adjacent to the arrest scene, which could conceal an assailant.” Commonwealth v. Taylor, 771 A.2d 1261, 1267 (Pa. 2001).

Here, the Court finds that the police properly conducted a cursory visual inspection of the closet adjacent to the arrest scene. When officers arrived no one answered the door even though Laudenslager believed he could hear someone in the residence. After entering the residence they could hear a television set playing. At no point did the occupants of the residence acknowledge the Officers presence. Spiegel and Laudenslager then found Welsh in a bedroom along with two (2) small children. While waiting for the Defendant to arrive so that he could supervise the children, Speigel opened the closet door in the bedroom to see if anyone was hiding in the closet. The sawed off shotgun was immediately visible upon opening the door; Speigel did not search the closet. Speigel did not need probable cause or reasonable suspicion to open the closet to see if there was a concealed individual. see Taylor, 771 A.2d at 1267. Therefore, the Court finds the search falls within the first level of protective sweeps and was valid.

**ORDER**

AND NOW, this \_\_\_\_\_ day of July, 2012, based upon the foregoing Opinion, the Court finds that the protective sweep that resulted in a sawed off shotgun being found was valid. Therefore, the Defendant's Motion to Suppress is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge

xc: DA (AB)  
Jeana Longo, Esq.  
Eileen Dgien, Dep. CA  
Gary Weber