



# DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 139  
March 24, 1990

## PROTECTIVE SEARCH OF RESIDENCE

Reference: Maryland  
v.  
Jerome Edward Buie

United States Supreme Court  
58 USLW 4281 (No. 88-1369)  
February 28, 1990

### FACTS:

Two men committed an armed robbery of a pizza restaurant. One of the men was wearing a running suit. On the day of the robbery, police obtained an arrest warrant for Buie and his accomplice, Lloyd Allen. Buie's house was placed under surveillance and the police executed the warrant two days later, after first verifying, with a surreptitious telephone call, that he was home.

About six officers executed the warrant. Once inside, they fanned out through the first and second floors. One of the officers had his service revolver drawn and shouted to the basement, "This is the police; show me your hands." Eventually, a pair of hands appeared around the bottom of the stairwell and Buie emerged from the basement. He was arrested and handcuffed. Thereafter, another officer entered the basement "in case there had been someone else there." While in the basement, the officer saw a red running suit and seized it. The running suit was used as evidence at Buie's trial.

### ISSUE:

Does the Fourth Amendment permit a properly limited protective sweep in conjunction with an in-home arrest?

HELD: Yes.

### REASONING:

1. The searching officers possessed a reasonable belief, based on specific and articulable facts, that the area to be swept could harbor an individual posing a danger to those at the arrest scene.
2. Incident to arrest and as a precautionary measure, the officers could look in closets and other spaces immediately adjoining the place of arrest from which attacks could be launched.
3. A protective sweep, aimed at protecting the arresting officer if justified by the circumstances, is not a full search of the

premises, but may extend only to a cursory inspection of those spaces where a person may be found. (emphasis added)

4. The seizure of the red running suit, which was in plain view and which the officer had probable cause to believe was evidence of a crime, was lawful under the Fourth Amendment.

NOTES:

The court cautioned that a protective search is not the same as a full search "top to bottom". A protective search only allows a cursory inspection of those spaces where a person may be found. The sweep can last no longer than is necessary to dispel the reasonable suspicion of danger and no longer than it takes to complete the arrest and depart the premises.

Review of the following is recommended:

Murdock & Robinson v. State, Legal Bulletin No. 69--guns seized during protective search were in plain view.

The following sections of the Alaska Legal Brief Manual all contain related information and perusal is advised:

Section E, Incident to Arrest; Section G, Protective Searches; and Section K, Plain View.

NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEF MANUAL:

Add this case to Section E, page 4; Section G, page 5; and Section K, page 10, of your Contents. Also add to Section E, page 5; Section G, page 3; and Section K, page 5, of your Text. File Legal Bulletin No. 139 numerically under Section R of the manual.