



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. LAQUINN ANTHONY FISHER
CR-10-0315-PR**

PARTIES:

Petitioner: Laquinn Anthony Fisher

Respondent: State of Arizona

FACTS:

Mesa police responded to a call on an aggravated assault. The victim reported “that his friend had pistol whipped him.” The victim had a gash on his forehead. He and his roommate gave police a physical description of the assailant and his car, and told them the assailant’s nickname was “Taz.” The victim also told the police where the assailant lived.

Another officer was on route to the scene of the aggravated assault when he received information that the suspect might reside at a condominium complex nearby. This officer and others proceeded directly to the condominium complex. The police took a defensive position in front and in back of the unit. They knocked and announced themselves as police. Fisher opened the door and identified himself as “TA” or “Taz.” Fisher matched the description of the assailant. He was unarmed. When asked to exit the residence Fisher did so. Two other occupants of the residence exited as well. One of them was Fisher’s roommate, who was in a wheelchair. All three individuals were cooperative with the police. Because the gun used in the assault had not been located and the police were unsure whether there might be more people in the condo, they conducted a protective sweep of the residence as the officers proceeded with the investigation. During the sweep, police smelled fresh marijuana and saw, in plain view, bags of marijuana on the floor and closet shelves. The police exited the residence after conducting the sweep. After questioning the individuals outside the residence, police obtained the written consent of the roommate to re-enter the residence and search for marijuana and paraphernalia. The police then arrested Fisher.

Prior to trial, Fisher moved to suppress all evidence seized on the ground that the warrantless “protective sweep” was illegal under the U.S. and Arizona constitutions. In *Maryland v. Buie*, 494 U.S. 325 (1990), the Supreme Court found that a protective sweep of a suspect’s residence may be reasonable under the Fourth Amendment in certain circumstances. It is permitted if the searching officers possess a reasonable belief based on specific articulable facts that, taken together with the rational inferences from those facts, reasonably warrant the officers in believing that the area harbors an individual posing a danger to the officers or others. *Id.* at 327; *State v. Kosman*, 181 Ariz. 487, 491, 892 P.2d 207, 211 (App. 1995). Fisher argued

that the sweep in this case was illegal because there was no evidence that anyone was inside the residence who posed a danger to the officers. After an evidentiary hearing, the trial court denied the motion, finding the protective sweep was reasonable under the circumstances. Following a jury trial, Fisher was found guilty of possession of marijuana for sale.

Fisher appealed his conviction on the ground that the warrantless “protective sweep” was illegal. The court of appeals found the facts supported the trial court’s finding that the protective sweep was reasonable. While Fisher had exited the apartment, the gun used in the recent assault had not been located. The police could not be certain that there were no additional persons inside the residence with the gun. Thus, the officers’ reasonable concern about the risk to their safety as they continued their investigation justified the cursory intrusion of a protective sweep.

ISSUE:

A protective sweep is permitted if the officer possessed a reasonable belief based on specific and articulable facts which taken together with the rational inferences from those facts reasonably warranted the officer in believing that the area harbored an individual posing a danger to the officers or others. The protective sweep in this case was not based on specific and articulable facts that the area harbored any danger to the officers or others. Did the trial court abuse its discretion when it denied Fisher’s motion to suppress?

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