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The Buie Doctrine: Consent is not an Open Door

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I. Introduction

The *Maryland v. Buie* court established the principle of a protective sweep, which is a sweep of a home incident to an arrest where “they have reasonable suspicion to believe the home may harbor a dangerous third party.”¹ *Buie* was decided solely in the arrest context, and there is now a split among the circuit courts regarding the application of the protective sweep doctrine to non-arrest contexts.² The majority of circuit courts have concluded that *Buie* does extend to non-arrest contexts, specifically consent entries.³ The doctrine is abused in certain instances which leads home owners to fear for the protection of their privacy interests.

This comment focuses on whether or not *Buie* can effectively be extended to situations where officers have been given consent to enter the home, but not consent to search. Further, does the *Buie* doctrine, as it stands, properly balance the private and governmental interests that the Fourth Amendment seeks to protect? The circuit courts are divided between the view that *Buie* applies when an objectively reasonable officer would have reason to be concerned for safety and there are articulable facts in non-arrest contexts, and that *Buie* does not apply at all to consent entries. I believe that the application of *Buie* to non-arrest, consent entry contexts can be effective as long as the consent given for entry and the articulable facts given by the officer are analyzed and justifiable to conduct a warrantless search.

I argue that *Buie* can effectively address non-arrest, consent to entry contexts. The Fourth Amendment only bars *unreasonable* searches and seizures.⁴ I suggest that for the *Buie* doctrine to apply to non-arrest, consent entry contexts without being potentially unreasonable, the courts

¹ See *Maryland v. Buie*, 494 U.S. 325 (1990).

² Leslie A. O’Brien, *Finding a Reasonable Approach to the Extension of the Protective Sweep Doctrine in Non-Arrest Situations*, 82 N.Y.U.L. Rev. 1139, 1141 (2007).

³ *Id.*

⁴ *Buie*, 494 U.S. at 331 (quoting U.S. Const. Amend. IV).

must look to the scope of consent of the home owner as well as the actual articulable facts that the officer gives to the court for justifying the warrantless search. It is important for homeowners to know that the consent given for an officer's entry is a limiting power that they possess. The consent to entry is consent to one room, not the consent to a search of an entire home. This consent analysis grants protection to the interests of the private home owner against the *Buie* doctrine's low burden of proof. In addition to emphasizing the consent to entry, the court must analyze the articulable facts. This would ensure that officers are not merely listing off a set of facts, but rather compiling facts that could justify a warrantless search in this context.

An example of the approach I emphasize is the recent decision by the United States District Court of the Southern District of New York in *United States v. Fadul*. The case involved officers entering an apartment based on consent to entry, but did not have a warrant to search.⁵ The officers believed, based on the occupants and their actions, that they needed to conduct a protective sweep to ensure their safety in the apartment.⁶ The court was faced with whether or not the officers were allowed to conduct a protective-sweep in this context.⁷ The basic principle is that the Fourth Amendment protects "the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures."⁸ However, there are justifications for warrantless searches that the courts have accepted in the warrantless search context.⁹ Of relevant concern is a search of the private home where an individual gives consent for entry, but the officers now wish to conduct a protective sweep. The *Fadul* court, after analyzing the consent and the facts found that the officers did not have articulable facts to

⁵ *United States v. Fadul*, 16 F. Supp. 3d 270, 271(S.D.N.Y. 2014).

⁶ *Fadul*, 16 F. Supp. 3d at 275.

⁷ *See Fadul*, 16 F. Supp. 3d. 270.

⁸ U.S. Const. amend. IV.

⁹ *Fadul*, 16 F. Supp. 3d 270, 279 (S.D.N.Y. 2014) (citing *In re Terrorist Bombings of United States Embassies in E. Afr.*, 552 F.3d 157, 168).

conduct the protective sweep.¹⁰ The Southern District of New York’s analysis is the proper approach and should be utilized by the courts in *Buie* searches.

In Part II, I will provide the origin of the protective sweep doctrine and the definition of consent. I will outline *Maryland v. Buie*’s creation of the doctrine and its application. In Part III, I will provide an overview of the current United States Circuit Courts of Appeals split on the protective sweep doctrine involving non-arrest cases. In Part IV, I will explain the *Jimeno v. Florida* Supreme Court Decision, and how the consent definition from that case should be applied in *Buie* analysis. In Part V, I will explain the police created exigency exception to the Fourth Amendment that arose from *Kentucky v. King* and what it means in light of protective sweep applications.

II. What is a Protective Sweep?

A. *Maryland v. Buie* and the Protective Sweep Doctrine

The Supreme Court embraced the “protective sweep” as a legitimate search in *Maryland v. Buie*. The case involved the execution of an arrest warrant for Jerome Buie, at Buie’s home.¹¹ Buie was found in the basement.¹² After his arrest, an officer looked in the basement for other individuals and found evidence tying Buie to the alleged crime.¹³ The issue before the Supreme Court was the legality of the post-arrest search of the basement. The *Buie* court turned to *Terry v. Ohio* and *Michigan v. Long* which rejected a probable cause standard “when there is a need for law enforcement officers to protect themselves against violence in situations where they may

¹⁰ *Id.* at 291-92.

¹¹ *Maryland v. Buie*, 494 U.S. 325, 328 (1990).

¹² *Id.*

¹³ *Id.*

lack probable cause for an arrest.¹⁴ *Buie* found that this similar interest in protecting officers was to “assure themselves that the house in which a suspect is in, or has just been, is not harboring other persons who are dangerous and who could expectedly launch an attack.”¹⁵

Buie’s facts emphasized officer safety in light of the risk of ambush and officer well-being.¹⁶ “The risk of danger in the context of an arrest in the home is as great, if not greater than, as an on-the-street or roadside investigatory encounter.”¹⁷ A protective sweep is done to make sure the officer is safe and to ensure a level playing field, since the officer is on the adversary’s turf.¹⁸ The Court held that

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 [an] 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.¹⁹

The Court emphasized that a protective sweep is not a search of the full premises, but only to a “cursory inspection of where a person may be found.”²⁰ The sweep lasts no longer than is necessary to dispel the reasonable suspicion of danger and in any event no longer than it takes to complete the arrest and depart the premises.²¹

Buie’s standard includes both an objective and subjective requirement.²² Thus, the government needs to prove that (1) there is a reasonable belief a third party is present but also

¹⁴ *Buie*, 494 U.S. at 332

¹⁵ *Id.* at 333.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 334.

²⁰ *Buie*, 494 U.S. at 327.

²¹ *Id.* at 335.

²² *Buie*, 494 U.S. at 333.

that (2) the searching officer actually possessed that belief.²³ Further, the *Buie* test needs proof that there is a reasonable suspicion that another person “(1) is present and (2) poses a danger.”²⁴ However, a circuit split has developed as to whether or not the *Buie* test extends to non-arrest contexts, specifically consent entries.

III. The Current Circuit Split

A. *Buie* Approach Not Extended to Consent Entries

The *Maryland v. Buie* decision has led to a split among the circuit courts as to whether or not the protective sweep doctrine can apply to the non-arrest, consent entry context. The first position to emerge from the *Buie* decision was that the protective sweep doctrine does not apply to non-arrest contexts. In *United States v. Waldner*, the Eighth Circuit declined to extend the *Buie* approach for consent entries in the non-arrest context. The court analyzed a search conducted pursuant to the enforcement of a protection order.²⁵ Officers went to Waldner’s home to execute the order, and Waldner answered the door.²⁶ The officers explained that if Waldner needed anything from the house, they would have to accompany him.²⁷ Waldner agreed, which led an officer to ask Waldner if anyone else was in the home or if there were any weapons, to which Waldner replied no.²⁸ The officers and Waldner went to the basement, where Waldner wanted to obtain clothes.²⁹ One officer followed Waldner and searched the room, finding neither guns nor any other contraband.³⁰ However, Waldner walked towards a room in the basement,

²³ Maren J. Messing, *The Protective Sweep Doctrine: Reaffirming a Limited Exception*, 44 COLUM. J.L. & SOC. PROBS. 33, 44 (2010).

²⁴ *Id.*

²⁵ *United States v. Waldner*, 425 F.3d 514, 515 (8th Cir. 2005).

²⁶ *Id.* at 515-516.

²⁷ *Id.* at 516.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

and the officers wanted to conduct a protective sweep of that room because Waldner was standing near it.³¹ The officers found a gun cabinet that contained a rifle with a silencer on it.³²

The court explained that *Buie* established a two prong test for a protective sweep.³³ The test allows for a protective sweep if: (1) incident to an arrest, officers may “search closets and other spaces immediately adjoining the place of arrest from which an attack could be immediately launched”, and (2) the court “permitted a broader sweep when an officer possesses 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.”³⁴ Further, *Buie* did not articulate whether a protective sweep could permissibly be conducted for a search of weapons or contraband.³⁵ In this case, the officers conducted the search incident to serving a protective order, a non-arrest situation.³⁶ The Eighth Circuit explicitly stated that they would not extend *Buie* to non-arrest situations.³⁷ In the alternative, the court found that the officers lacked the satisfying articulable facts required to justify a reasonable officer to have conducted a protective sweep, thus missing the objective factor of *Buie*.³⁸

Similarly to *Waldner*, the Tenth Circuit declined to extend the *Buie* doctrine to consent entries. In *United States v. Torres-Castro*, Victor Torres-Castro was suspected of abusing his fourteen-year-old girlfriend.³⁹ The officers arrived at the home and saw the house was full of

³¹ *Waldner*, 425 F.3d at 516.

³² *Id.*

³³ *Id.* at 517.

³⁴ *Id.* at 517 (citing *Buie*, 494 U.S. at 334).

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Waldner*, 425 F.3d at 517.

³⁸ *Id.* (explaining that *Waldner* would have had to pass the officer to get to the office to obtain the fire arm, which he did not do).

³⁹ *United States v. Torres*, 470 F.3d 992, 995 (10th Cir. 2006).

individuals, including Torres-Castro.⁴⁰ When the officers were allowed to enter the home by Torres-Castro, the officers felt compelled to conduct a protective sweep because the occupants were spread throughout the home.⁴¹ The court found that expanding “the doctrine will encourage law officers to gain legal entry through knock and talk requests and then gather evidence without any requirement of suspicion or compliance with the Fourth Amendment.”⁴² The Tenth Circuit concluded that the protective sweep will not be extended to include non-arrest situations, such as non-arrest consent entries.⁴³

B. *Buie* Applies to Non-Arrest, Consent Entries

The opposite side of the current circuit split is that the protective sweep doctrine should be applied in consent entry scenarios. The first circuit court to rule that *Buie* applied to the consent entry context was the United States Court of Appeals for the District of Columbia Circuit in 1992. In *United States v. Patrick*, Gary Patrick moved into Kevin Smith’s apartment while Smith was hospitalized.⁴⁴ Smith met with the police, since the officers wanted to investigate the apartment, and signed a form authorizing the officers to search his apartment within ten days, but the officers did not search the apartment until sixteen days later.⁴⁵ Smith let the officers in when they arrived.⁴⁶ The officers saw four people in the living room, and noticed a bedroom door open.⁴⁷ The officers went back to that bedroom and found Patrick half on, half off

⁴⁰ *Id.*

⁴¹ *Id.* at 999.

⁴² *Id.*

⁴³ Torres, 470 F.3d at 999.

⁴⁴ *United States v. Patrick*, 959 F.2d 991, 994 (D.C. Cir. 1992).

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

the bed with his hand underneath the bed.⁴⁸ The police saw in plain view money, a beeper, and a clear plastic bag holding cocaine.⁴⁹ The officers arrested Patrick upon finding the contraband.⁵⁰

The D.C. Circuit Court began its analysis of the search by evaluating the protective sweep conducted of Smith's apartment. Patrick argued that he had an expected privacy within the bedroom since Smith did not have the authority to give the officers consent to search his room.⁵¹ The officers were lawfully on the premises, and convinced the court that the protective sweep was proper because their reasonable belief was that the occupants were trafficking narcotics and that their safety was at risk.⁵² The officers' explanation of the articulable facts met the objective and subjective requirements of *Buie*.⁵³ Under the circumstances and absent the warrant, the D.C. Circuit Court concluded that *Buie* extended to this type of search, absent a warrant and the officers only had consent to enter the apartment.⁵⁴ Therefore, the D.C. Circuit allowed *Buie* to be applied in the non-arrest context.⁵⁵

In 2004, the United States Court of Appeals for the Fifth Circuit heard *United States v. Gould*.⁵⁶ On October 17, 2000, officers received a call warning that Kelly Gould had a plan to kill two judges.⁵⁷ The officers did not intend to arrest Gould when they visited his trailer, but to talk to him.⁵⁸ Another resident in the trailer consented to the officers' entry into the trailer and told the officers that Gould was in the back room.⁵⁹ The bedroom door was open, and Gould was

⁴⁸ *Id.*

⁴⁹ Patrick, 959 F.2d at 994.

⁵⁰ *Id.*

⁵¹ *Id.* at 996.

⁵² Patrick, 959 F.2d at 996.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ Patrick, 959 F.2d at 998.

⁵⁶ *United States v. Gould*, 364 F.3d 578 (5th Cir. 2004).

⁵⁷ *Id.* at 580.

⁵⁸ *Id.*

⁵⁹ *Id.*

not readily visible.⁶⁰ The officers then performed a sweep of the room to see if Gould was hiding, where they found rifles in a closet.⁶¹ The officers later arrested Gould after asking him who owned the rifles.⁶²

The court endeavored to decide whether or not the protective sweep was appropriate in this case. *Buie* emphasized the fact of the arrest but there is no limit that other circumstances may not expose an officer

“to a comparable degree of danger . . . [that would] justify a similar protective response (at least where those circumstances are not the product of police illegality or misconduct) . . . [b]ut nothing in *Buie* suggests that the result would have been different had the police otherwise properly entered the house as, for example, pursuant to a proper consent rather than a warrant.”⁶³

The “physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed and the Fourth Amendment has drawn a firm line at the entrance to the house.”⁶⁴

However, *Buie* makes “clear that the [protective sweep] does not preclude application in the in-home sweep context of the general reasonableness standard calculated by balancing the intrusion of Fourth Amendment interests against the promotion of legitimate governmental interests, includes those of officer safety.”⁶⁵ Specifically, *Gould* found that an arrest does give evidence of a danger to the officer, but the danger to officers may be established by other circumstances.⁶⁶ Therefore, the protective sweep doctrine should be applied in non-arrest contexts determined by the particular facts of the case.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Gould*, 364 F.3d at 580. .

⁶³ *Id.* at 581.

⁶⁴ *Gould*, 364 F.3d at 588.

⁶⁵ *Id.* at 583-83.

⁶⁶ *Id.*

The court further noted that the officers in this case were given consent to enter the trailer when the occupant told the officers they were welcome to check out the bedroom.⁶⁷ The court found that the consent given was meant to include searching the bedroom to see if Gould was there, and when they looked around the room for Gould, they then found the guns in the closet.⁶⁸ This was a lawful entry for the trailer, further granting a search of the trailer to find Gould, but not to search the bedroom. Thus, the consent here was acceptable for the entry and the articulable facts were found to be satisfying, which permitted the officers to conduct the protective sweep.

Most recently, the United States Court of Appeals for the Sixth Circuit adopted the extension of *Buie* to consent entry cases in 2013.⁶⁹ This case involved a robber attempting to hold up a restaurant, and the robber was tracked by officers to an apartment after the attempted robbery.⁷⁰ The officers went to the apartment without an arrest or search warrant after viewing the surveillance tape of the attempted robbery.⁷¹ The officers stated that they would return with a warrant if the occupants did not open the door, which caused Holland to open the door.⁷² Holland was not the suspect, but was asked by the officers whether or not there was anyone else in the apartment.⁷³ Holland replied no, but then the officers heard rustling in a nearby room, where they found the suspect attempting to hide while conducting a protective sweep.⁷⁴ Holland was arrested, and after the initial protective sweep, he signed a form consenting to an additional search of the apartment.⁷⁵

⁶⁷ *Id.* at 588.

⁶⁸ Gould, 364 F.3d at 588.

⁶⁹ United States v. Holland, 552 F. App'x 265 (6th Cir. 2013).

⁷⁰ Holland, 552 F. App'x at 269.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ Holland, 552 F. App'x at 269.

⁷⁵ *Id.*

At trial, Holland argued that he had only given consent for the officers to enter the apartment and that consent did not encompass a search of the bedroom.⁷⁶ The court concluded the consent given by Holland was valid in this case.⁷⁷ The merits of Holland's claim required that the consent be voluntary; the government bears the burden of proving that consent was given voluntarily.⁷⁸ "Consent is voluntary if it is unequivocal, specific[,] and intelligently given, uncontaminated by any duress or coercion."⁷⁹ The test is an objective one, and the court must address "whether the totality of the circumstances establishes that the defendant permitted the police inside."⁸⁰ The court must also consider the defendant's "subjective understanding of his constitutional right . . . the defendant's personal characteristics, the length and nature of the police – citizen interaction, and the use of police coercion, subtle or otherwise."⁸¹

The court found the consent was valid in this context, and transitioned to the protective sweep itself. "[W]e joined the majority of circuits in holding that the *Buie* protective sweep doctrine extends to situations other than execution of arrest warrants."⁸² Applying *Taylor*, the court found that the officers were lawfully present through the consent of Holland, and that once they heard noises from the bedroom the officers wanted to ensure their safety by checking the bedroom.⁸³ The entry to the bedroom was lawful based on these facts since it could lead an objectively reasonable officer to believe there was the potential harm of ambush.⁸⁴ Holland only intended the consent to be limited to entering the apartment, but the court was convinced by the

⁷⁶ Holland, 552 F. App'x at 269.

⁷⁷ Holland, 552 F. App'x at 271.

⁷⁸ *Id.* at 273-74.

⁷⁹ *Id.* at 274.

⁸⁰ *Id.* (See *Schneekloth v. Bustamonte*, 412 U.S. 218, 227(1973)).

⁸¹ *Id.* (citing *United States v. Lucas*, 640 F.3d 168, 174 (6th Cir. 2011)).

⁸² Holland, 552 F. App'x at 275.

⁸³ *Id.* at 276.

⁸⁴ *Id.* (See *United States v. Taylor*, 248 F.3d 506 (6th Cir. 2001)) (explaining that the protective sweep can be done in non-arrest situations when looking at the totality of the circumstances, the officers also had probable cause to search the apartment for the fear of someone hiding).

articulable facts that the protective sweep performed by the officers to ensure their safety satisfied the *Buie* doctrine and met the requirements of reasonable suspicion.⁸⁵

IV. Consent as a Limit to Help the *Buie* Doctrine

The circuit split above illustrates how law enforcement utilizes the protective sweep doctrine. Officers utilize these searches often because police officers can list a few facts to satisfy the reasonable suspicion for fear for their safety requirement under *Buie*.⁸⁶ However, the potential for abuse is present in protective sweeps, and to reduce the confusion for protective sweep doctrines as exhibited in the current circuit split, the definition of consent should be emphasized under *Buie* like the *Florida v. Jimeno* decision. Courts should give the consent of a private home owner added emphasis because it serves as a line of defense to the officer's ability to potentially conduct a warrantless search in the individual's home.

A. *Florida v. Jimeno* and the Emphasis of Consent

A. *Florida v. Jimeno* and the Definition of Consent in Search Contexts

The Supreme Court was faced with the issue of whether or not a search of a paper bag in a car was permissible, when only consent to search the car was granted to a police officer.⁸⁷ The police officer believed Enio Jimeno, a suspected drug dealer, might be involved in drug trafficking from a conversation he overheard.⁸⁸ The officer, after pulling Jimeno over in a traffic stop, asked Jimeno whether or not he could search the car under the belief that Jimeno was carrying narcotics.⁸⁹ Jimeno gave permission to Trujillo to search the vehicle.⁹⁰

⁸⁵ See generally Holland, 552 F. App'x 265.

⁸⁶ See generally Torres, 470 F.3d 992 (10th Cir. 2006)

⁸⁷ Florida v. Jimeno, 500 U.S. 248 (1991).

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.* at 249-50.

The officer eventually found a brown paper bag folded up in the car, which the officer opened the bag and found a kilogram of cocaine.⁹¹ Jimeno believed that when he gave consent to the officer only to search the vehicle, the consent given did not include opening the bag in the car, even when the search is for narcotics.⁹² The Supreme Court found consent to search creates a presumption that the officer's search was reasonable in the first place.⁹³ However, the "standard for measuring the scope of a suspect's consent under the Fourth Amendment is that of objective reasonableness – what would the typical reasonable person have understood by the exchange between the officer and the suspect?"⁹⁴

The scope of the search is limited to its expressed object.⁹⁵ This case was simple for the Court, Jimeno gave the officer permission to search the car.⁹⁶ The officer searched the car because he believed that Jimeno was in possession of narcotics.⁹⁷ The Court found that the consent given to the officer to search the car was objectively reasonable, such that the search for containers in the car which may bear narcotics was consented to as well.⁹⁸

The Court explained that a suspect may limit the consent for a search given to an officer, but if consent "would be reasonably understood to extend to a particular container, the Fourth Amendment provides no grounds for requiring a more explicit authorization."⁹⁹ The *Schneckloth* Court stated that "the community has a real interest in encouraging consent, for the resulting

⁹¹ Jimeno, 500 U.S. at 250.

⁹² *Id.*

⁹³ *Id.* 250-51 (citing *Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973)) (explaining that an individual has a right to withhold consent from an officer, and further giving consent was done voluntarily).

⁹⁴ *Id.* at 251 (citing *Illinois v. Rodriguez* 497 U.S. 177, 183-89 (1983)).

⁹⁵ *Id.* (citing *United States v. Ross*, 456 U.S. 798 (1982)).

⁹⁶ *See Jimeno*, 500 U.S. 248.

⁹⁷ Jimeno, 500 U.S. at 251.

⁹⁸ *Id.* (explaining a reasonable person may be expected to know that narcotics are generally carried in some form of a container. Further, the Court distinguished *State v. Wells*, where the driver's consent to the officer did not extend to prying open a locked briefcase found in the trunk when consent was only given to search the trunk, not in the locked containers).

⁹⁹ *Id.*

search may yield necessary evidence for the solution and prosecution of [a] crime, evidence that may insure that a wholly innocent person is not wrongly charged with a criminal offense.”¹⁰⁰

Therefore, consent is limited to the objective reasonableness of what a typical reasonable person would have understood by the exchange with the officer. On the other hand, an individual may explicitly, or by what is reasonably implied by what the individual said, limit the consent given to an officer.

B. Consent to Entry is Not Consent to Search

As the cases mentioned in the circuit split, there are situations where an officer conducts a protective sweep after a consensual entry. The protective sweep doctrine is supposed to strike a balance between an individual’s privacy right to their home and the government’s interests in conducting searches and maintaining officer safety.¹⁰¹ When these courts expanded *Buie* to include non-arrest consent entries, a danger emerged for the individual privacy rights to be sacrificed for the sake of an officer’s reiteration of facts he believes created a danger to his well-being. This occurs frequently when the officer arrives at the scene with knowledge that the suspect is potentially dangerous.¹⁰² However, the officers’ fear does not create consent to entry or a consent to search. The home owner creates the consent for an officer’s entry, and that should serve as a limit on the protective sweep doctrine unless additional consent is given.

Buie requires that the officer have reasonable suspicion in order to conduct a protective sweep.¹⁰³ Reasonable suspicion is less than a preponderance of the evidence.¹⁰⁴ It’s less than the

¹⁰⁰ *Id.* at 252.

¹⁰¹ *See Buie*, 494 U.S. 325 (1990).

¹⁰² *See generally* Leslie A. O'Brien, *Note: Finding a Reasonable Approach to the Extension of the Protective Sweep Doctrine In Non-Arrest Situations*, 82 N.Y.U.L. Rev. 1139.

¹⁰³ *Buie*, 494 U.S. at 336-37.

¹⁰⁴ *United States v. Williams*, 876 F.2d 1521 (11th Cir. 1989).

requirement of probable cause that there is a fair probability that evidence of a crime will be found.¹⁰⁵ However, reasonable suspicion is more than just a hunch.¹⁰⁶ The “Fourth Amendment accordingly requires that police articulate some minimal, objective justification for an investigatory stop.”¹⁰⁷ Reasonable suspicion is a low standard which possibly allows an open invitation for officers to gather whatever facts they can to justify the warrantless search.

The courts, in some instances, seem to have only required that officers reiterate a list of facts to justify a search instead of analyzing the facts as to whether or not they justify a protective sweep. For example, in *United States v. Reid*, the Ninth Circuit explained that “the existence of consent to a search is not lightly to be inferred and the government bears the burden of proof to establish the existence of effective consent.”¹⁰⁸ Consent, like the definition in *Jimeno* which applied to a consent to search, should be applicable in the consent entry context for a protective sweep. This is because it fairly balances the interests of the government and the homeowner.

William Ringel articulated that the

The sole authority to a search after a person has given consent derives from the consent itself, the scope of the search must be limited strictly to the terms of the consent. It is a suspect’s responsibility to limit the scope of a consensual search if he or she so intends... Where an individual gives a general consent to a search, and subsequently volunteers the information that evidence may be found within a specific part of the search area, he or she indicates that a search of that area is within the scope of the original consent.¹⁰⁹

Ringel’s analysis of consent to searches reiterates the importance of an individual’s consent and how a court should analyze a home owner’s consent. If an officer asks if they may come in, it

¹⁰⁵ Buie, 494 U.S. at 329.

¹⁰⁶ *Id.*

¹⁰⁷ *United States v. Tapia*, 912 F.2d 1367, 1370 (11th Cir. 1990).

¹⁰⁸ *United States v. Reid*, 226 F.3d 1020, 1025 (9th Cir. 2000).

¹⁰⁹ William E. Ringel, *Searches and Seizures Arrests and Confessions* §9:13 (2d ed. 2014).

should be limited to the area where the individual rationally believed they limited the officer of being in the home, except for the closets and areas where someone may be hiding as per the *Buie* doctrine. Consent is then an implicit limit and not just a formality to obtain.

For example, an officer knocks on the door and asks the occupant if they may come in to talk. If the individual says, “yes, come in,” that individual has created the scope of the entry with their consent. The home owner creates the parameters for the officer’s entry to the initial room he enters. The home owner has not said yes to a search, but only to the officer’s presence in the home. That does not leave the officer without any tool to search since an officer may search the room they’re permitted into as well as the closets adjoined to the room without having to ask for permission or consent. However, if an officer believes he has a reasonable suspicion of danger, because he was there to ask about an illegal gun charge, the officer may only justify a protective sweep if there are articulable facts that would convince a court an actual belief of danger existed.

Buie and consent to search are two different justifications to conduct a warrantless search for an officer. The consent to entry is not a form of warrantless search, and should not invite the officer to feel they may search a home at first, especially under the *Buie* doctrine. In *Gould*, the officers arrived at the trailer and asked for Gould because of a tip that Gould planned to harm judges, in which an occupant said he’s in his room asleep, and let the officers in.¹¹⁰ The scope of consent, which is what they rationally believed they were consenting to was to let the officers in and go to the bedroom to find Gould. The officers went to the bedroom and did a protective sweep where they checked places where someone could be hiding.¹¹¹ The officers were enabled to search the bedroom in case of danger under the *Buie* doctrine. However, the consent given to

¹¹⁰ United States v. Gould, 364 F.3d 578 (5th Cir. 2004).

¹¹¹ *Id.* at 580-81.

the officers was to go to the bedroom to find Gould. The officers did not go anywhere else except where the occupant gave them permission. This is a simple example of how consent operates within a *Buie* protective sweep.

However, a more complicated example would be *United States v. Hassock*. In this case, the officers were allowed into the apartment by one of the occupants.¹¹² The officers asked if they may search around, and the occupant said yes.¹¹³ The occupant did not tell the officers they may search every room in the house, but only to look around the room.¹¹⁴ The officers were not given consent to enter the front bedroom, but argued that they were conducting a protective sweep due to fear of danger of any possibility for an attack.¹¹⁵ The court concluded that the protective sweep was not justified by the officers since they did not have articulable facts to justify their suspicion of fear.¹¹⁶

The court should have utilized the *Jimeno* definition of consent, which would have enabled the court to be able to ignore the sweep itself since the officers were only allowed to enter the apartment, not enter the bedrooms of those that weren't specifically given permission to enter. It is not plausible to derive whether or not a homeowner consented to a search, only that they allowed the officers into their home. The consent to entry allows *Buie* to operate (since officers may search the adjoining areas to a room they're let into) but limits an officer from conducting an all-out search. A consent to entry is not a consent to search. The distinction above would balance the interests of the government's interests in searching and the right to privacy in

¹¹² *United States v. Hassock*, 631 F.3d 79, 82 (2d Cir. 2011).

¹¹³ *Id.*

¹¹⁴ *Id.* at 85.

¹¹⁵ *Id.* at 82.

¹¹⁶ *Id.*

one's home. An individual allowing an officer to come into the home should not be an open door for an officer to search the entire house.

The definition of consent given for consent entries serves as a stronger alternative than what has been already suggested. Maren J. Messing suggested that protective sweeps should exclude consent entries.¹¹⁷ Messing's concern is that police obtain free reign once consent is given for entry.¹¹⁸ Messing believed that law enforcement's articulable facts to justify the sweep must be scrutinized and analyzed by the court.¹¹⁹ Her solution creates an issue of limiting protective sweeps to only certain situations. This method would eliminate protective sweeps in non-arrest contexts which is too drastic of a solution and harms the government's interests.

Similarly, Leslie O'Brien suggests that consent entries should not fall under the purview of the protective sweep doctrine.¹²⁰ O'Brien seems to be concerned that a consent entry in non-arrest situations will only be a fact gathering opportunity for the officer.¹²¹ The solution is consent entries be excluded and the officer is required to have knowledge that the home owner is suspected to have committed an inherently dangerous crime.¹²² This would lead consent entries to be obsolete in this context. Both authors have found that the consent to entry context is too easily abused by officers to conduct warrantless searches.

The consent analysis with actual analysis of articulable facts approach would limit officers to a reasonable degree without eliminating the tool for officers in the consent context

¹¹⁷ Maren J. Messing, *The Protective Sweep Doctrine: Reaffirming a Limited Exception*, 44 Colum. J.L. & Soc. Probs. 33, 71-72 (Fall 2010).

¹¹⁸ *Id.* at 71-72.

¹¹⁹ *Id.* at 74.

¹²⁰ Leslie A. O'Brien, *Note: Finding a Reasonable Approach to the Extension of the Protective Sweep Doctrine in Non-Arrest Situations*, 82 N.Y.U.L. Rev. 1139, 1172. (O'Brien was a New York Law Review Member).

¹²¹ *Id.* at 1173.

¹²² *Id.*

like Messing and O'Brien have suggested. Officers should not lose the *Buie* doctrine because they entered a home pursuant to a consent to entry and without a search warrant. Officers, under *Buie*, may check the adjoining closets for their safety, but beyond that they are limited to that room. The consent given limits officers since they may not expand their search of the consented entry unless they can provide articulable facts as to fear of an ambush from another occupant, satisfying both the objective and subjective requirements of *Buie*. However, as O'Brien has suggested as well, the courts should additionally challenge the officer's articulable facts to ensure that it justifies the warrantless search conducted.¹²³

When a reasonable person has given consent to an officer for entry, all the officer may do is enter the home. The reasonable consent, described in *Jimeno*, is only for the officer to enter the doorway to the home, not a search. It would be prima facie unreasonable for an officer to begin a warrantless search of the home unless they can state facts that justify it. As said by the Supreme Court, the cornerstone of the *Buie* doctrine is reasonableness.¹²⁴ When opening the door, an individual may allow an officer to either enter the home or not. They have a choice in giving consent. However, once law enforcement is in the home, as *Buie* suggests, facts may arise that will allow officers to conduct a protective sweep.¹²⁵ Regardless of whether or not there is skepticism about an officer's intent of entering the home, there still needs to be the balance between government and privacy rights. O'Brien and Messing found that consent entries are an open ground for officers to abuse the protective sweep doctrine. However, their solutions almost eliminate the protection granted by the protective sweep doctrine to officers. If the officer

¹²³ O'Brien, *Note: Finding a Reasonable Approach to the Extension of the Protective Sweep Doctrine in Non-Arrest Situations*, 82 N.Y.U.L. Rev. 1139, 1172-73.

¹²⁴ *Buie*, 494 U.S. at 329.

¹²⁵ Maren J. Messing, *The Protective Sweep Doctrine: Reaffirming a Limited Exception*, 44 *Colum. J.L. & Soc. Probs.* 33, 36 (2010).

receives a limited consent to entry, and have already checked the adjoined areas of the room, then the *Buie* doctrine is satisfied and the home owner's private interests.

In *United States v. Fadul*, Messing's and O'Brien's fear of officers abusing the protective sweep doctrine in non-arrest, consent entry contexts are emphasized between the officers arriving to investigate marijuana usage, and then possible facts leading to why the officers went to the back bedroom and conducted a protective sweep. In *Fadul*, officers received a civilian complaint about marijuana usage in an apartment.¹²⁶ What occurred in the apartment, after the complaint was received by the officers, was heavily disputed by the New York City Police Department.¹²⁷ According to the officers, they were given consent to enter the apartment by an occupant.¹²⁸

Once the officers were in the apartment, a child left the living room and went down the hallway.¹²⁹ Detective Smyth, one of the officers, told the child to halt but the child continued down the hall.¹³⁰ With these facts, the officers decided to conduct a protective sweep of the apartment.¹³¹ The officers searched the bathroom and then the three bedrooms of the apartment.¹³² After conducting a protective sweep, the officers found a gun and drug paraphernalia.¹³³

The court stated that "even considered together, the smell of marijuana, the number of civilians present, and presence of another person (whether taking a shower or otherwise) does

¹²⁶ *Fadul*, 16 F. Supp. 3d at 274.

¹²⁷ *Id.* at 274.

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.* at 274-75.

¹³¹ *Id.* at 276.

¹³² *Id.* at 275.

¹³³ *Id.*

not even come close to justifying a protective sweep.”¹³⁴ The *Fadul* court aggressively analyzed the officers shared belief of fear or danger. The court found that the officer’s fears had no specific facts to support the officers’ belief that the individuals posed a danger to their safety according to the *Buie* test.¹³⁵ Further, the consent to entry given to the officers should concern courts since it encourages obtaining “consent as a pretext for conducting a warrantless search and undermine the well-established principle that a person can limit the scope of his or her consent to search to a particular area.”¹³⁶

Fadul shows the power of consent as well as the issues surrounding protective sweeps in consent entries. The conclusion reached by the *Fadul* court is exactly the analysis that courts should apply when determining whether a proper protective sweep was properly executed. The Court aggressively went through the facts given by the officer that the officers argued justified the warrantless search. Further, the apartment occupant’s consent was analyzed by the based on the facts given at trial. Thus, *Fadul* is a prime example of a proper protective sweep analysis in a conducted appropriately in a non-arrest, consent entry context.

If an individual consents to an officer to enter the home, the person reasonably expects the officers to simply enter the home, nothing more. However, the officers can expand from that area to other areas of the home if there are articulable facts that would lead a court to actually believe that an officer had a reasonable suspicion of danger. If the court analyzes the consent and the facts similarly to how the *Fadul* court did, Messing’s and O’Brien’s concerns are eliminated. It is important for individual home owners to understand that their consent to the officer’s entry

¹³⁴ *Fadul*, 16 F.Supp. 3d, at 291 (S.D.N.Y. 2014).

¹³⁵ *Id.* at 291-92..

¹³⁶ *Id.*

is a limiting factor for officers. When a homeowner opens the door and tells the officer they may come in, it's reasonable to believe they only meant one room and not a search of the entire home.

V. An Alternative for Officers, the Police-Created Exigency Doctrine

A. *Kentucky v. King*

The Supreme Court has acknowledged that there should be other methods for an officer to conduct a warrantless search when entering an individual's home. In 2011, the Supreme Court decided the police created exigency method for warrantless searches was constitutional depending on the specific facts of the case.¹³⁷ Officers followed an individual, who they believed to be a drug dealer, to an apartment complex in Lexington, Kentucky.¹³⁸ Undercover Officer Gibbons saw the deal take place and radioed uniformed officers to move in on the suspect.¹³⁹ The officers ran into the breezeway between the apartments, and heard a door shut, as well as the strong odor of burnt marijuana.¹⁴⁰ Even though Gibbons radioed the warning that the suspect went into the apartment on the right, the officers did not hear this and went to the apartment on the left based on the odor of burnt marijuana coming from that door.¹⁴¹ Officer Steven Cobb knocked on the door and yelled that the police were at the door.¹⁴² The officers heard people moving inside and believed the people were moving potential evidence inside.¹⁴³

The officers believed that the drug-related evidence was about to be destroyed, which led Cobb to kick down the door and enter the front room of the apartment.¹⁴⁴ The officers found

¹³⁷ *Kentucky v. King*, 131 S. Ct. 1849 (2011).

¹³⁸ *Kentucky v. King*, 131 S. Ct. at 1854 (2011).

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *King*, 131 S. Ct. at 1854.

¹⁴⁴ *Id.*

Hollis King and two others smoking marijuana.¹⁴⁵ The officers conducted a protective sweep of the apartment and found marijuana and powder cocaine in plain view.¹⁴⁶ The officers eventually entered the apartment on the right, and found their suspected drug dealer.¹⁴⁷

The issue before the court was whether the officers impermissibly created the exigent circumstances when they entered King’s apartment.¹⁴⁸ The Court recognized that “the exigencies of the situation make the needs of law enforcement so compelling that a warrantless search is objectively reasonable under the Fourth Amendment.”¹⁴⁹ The Court reiterated usual exceptions, one being to prevent the imminent destruction of evidence.¹⁵⁰ However, this Court has adopted the police-created exigency doctrine, which states officers cannot merely “rely on the need to prevent destruction of evidence when the exigency was created or manufactured by the conduct of the police.”¹⁵¹ Rather, courts require more than just a fear of detection by the police to have caused the destruction of evidence.¹⁵²

The Court stated that applicable test is whether or not the exigent circumstances justify a warrantless search “when the conduct of the police [,] preceding the exigency [,] is reasonable ...”¹⁵³ The Supreme Court further emphasized that officers may ask to enter a home if they are lawfully on the premises in the first place.¹⁵⁴ “If the consent is freely given, it makes no

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ King, 131 S. Ct. at 1856.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* (explaining that emergency aid, hot pursuit of a fleeing suspect, risk of death or serious injury, and the prevention of imminent destruction of evidence as exceptions for the warrantless search).

¹⁵¹ *Id.* at 1857.

¹⁵² *Id.* (explaining the lower courts have yet to create a standard test, and that there were currently five different tests for the police-created exigency doctrine).

¹⁵³ *Id.* at 1858.

¹⁵⁴ *Id.*

difference that an officer may have approached the person with the hope or expectation of obtaining consent.”¹⁵⁵

The Court concluded that the above test is what the lower courts shall enforce when an officer creates the exigent circumstances.¹⁵⁶ This test is based on objective factors, because law enforcement is best achieved by objectiveness versus subjective factors.¹⁵⁷ This allows reasonableness to be the determining factor of a search versus solely what that officer would have done in that situation. Further, citizens are able to refuse speaking with a police officer when the officer does not have a warrant.¹⁵⁸ Justice Sutton stated:

When the police knock on a door, but the occupants choose not to respond or to speak, “the investigation will have reached a conspicuously low point,” and the occupants “will have the kind of warning that even the most elaborate security system cannot provide.”¹⁵⁹

Occupants that elect to try and destroy evidence have only “themselves to blame for the warrantless exigent circumstances search that may ensue.”¹⁶⁰ Therefore, the Supreme Court adopted the police-created exigency test which grants officers a tool to conduct searches when there is no warrant to conduct the search in the first place, but requires more than just reasonable suspicion and a list of facts.¹⁶¹

B. Police Created Exigencies Grants Officers an Alternative Method of Warrantless Searches

¹⁵⁵ *Id.* (citing *INS v. Delgado*, 466 U.S. 210, 217, n.5 (1984) (“While most citizens will respond to a police request, the fact that people do so, and do so without being told they are free not to respond, hardly eliminates the consensual nature of the response.”)).

¹⁵⁶ *Id.* at 1862.

¹⁵⁷ *King*, 131 S. Ct. at 1859.

¹⁵⁸ *King*, 131 S. Ct. at 1862.

¹⁵⁹ *Id.* (Sutton, J., dissenting) (citing *United States v. Chambers*, 395 F.3d. 563, 577 (C.A.6 2005))

¹⁶⁰ *Id.*

¹⁶¹ *King*, 131 S.Ct. at 1863.

The *Buie* doctrine applies when an officer has a reasonable suspicion that they're in harm from ambush in the home. If an officer fails to satisfy the burden of proof under the *Buie* doctrine, the sensible alternative for an officer would be to use the police-created exigency doctrine. *Buie* is limited to one possible scenario while the *King* doctrine encompasses different scenarios that fall under the category of police-created exigencies. The *King* doctrine requires probable cause, which is a higher standard to meet for officers than *Buie*. However, the emphasis is on the facts of a case and whether or not an officer has an even stronger belief that their well-being, evidence, or other circumstances are in danger.¹⁶²

The *King* court noted that consent-based entries create lawful presence in the home, "it makes no difference that an officer may have approached the person with the hope or expectation of obtaining consent."¹⁶³ Thus, warrantless searches are permissible when the circumstances make it reasonable to do so as long as the officer did not engage or threat to engage in Fourth Amendment violations.¹⁶⁴ The test is an objective one, and must be viewed from what a reasonably objective officer would have done with the same factual scenario.¹⁶⁵

King finds police-created exigencies permissible as long as they are objectively reasonable.¹⁶⁶ For example, the officer knocks on the door and is allowed to enter the apartment. The officer realizes that there is a ton of noise in the back room. The officer could reasonably believe something suspicious is going on based upon the officer's arrival. Further, now the officer may believe he is in serious danger of a significant injury and should conduct a search under the *King* doctrine. Alternatively, if an officer wanted to utilize *Buie* to justify the search, it

¹⁶² *Id.* at 1856.

¹⁶³ *Id.* at 1858.

¹⁶⁴ *Id.* at 1859.

¹⁶⁵ *King*, 131 S.Ct. at 1859.

¹⁶⁶ *Id.*

would be more difficult because the standard is applied only to a narrow case to justify the search. However, *King* causes an officer need to have a stronger sense of reason compared to *Buie*'s reasonable suspicion standard as explained by the Supreme Court.

The goal in *Buie* was to limit officers who want to conduct a protective sweep of the home when they do not have a reasonable belief their safety may be jeopardized by ambush of someone in hiding.¹⁶⁷ The *Buie* and *King* doctrines both focus on reasonableness, however *King* is distinguishable from *Buie*. *King* specifically finds that officers have a substantial interest in the preservation of evidence and other exigencies like officer safety.¹⁶⁸ *King* implies that when police announce their presence or are seen, individuals may act in a way that requires an officer to conduct a search without a warrant only after some event or suspicion arises.¹⁶⁹ *King* does not face the consent to entry issues that *Buie* can suffer from, but requires a more rigorous, higher standard of analysis to justify the officer's search.

Buie's standard is severely limited to situations where an officer can articulate that there was a belief that his safety is in jeopardy based on articulable facts. The *King* doctrine is based on searches after exigencies occur when the officer is lawfully present in the home by consent. The warrantless search is permissible only if an objectively reasonable officer believed a police created exigency existed or they are in danger of significant harm.¹⁷⁰ *King* is limited to the notable exigencies the courts have recognized, but provides a strong balance of government and private interests under the Fourth Amendment because it does not allow officers to have reign in the home unless something occurs to warrant such a search, similarly to *Buie*.¹⁷¹

¹⁶⁷ See generally, *Buie*, 494 U.S. 325 (1990).

¹⁶⁸ *King*, 131 S. Ct. at 1858.

¹⁶⁹ See generally, *King*, 131 S. Ct. at 1858.

¹⁷⁰ *King*, 131 S. Ct. at 1857.

¹⁷¹ *Id.*

A side by side of the two doctrines creates an impression that *King* grants a wider latitude to officers to conduct a warrantless search. *King* allows a search once something occurs which makes an officer has probable cause that evidence is in jeopardy based upon their presence, or other exigencies recognized by the court. *Buie* focuses solely on officer safety, which would limit an officer in searching the rest of the home. *Buie* operates more effectively when an arrest warrant is present because it grants the officer the reasonable fear of harm present already because they are there to make an arrest of a suspected dangerous person. However, if *Buie* is utilized as the *Fadul* court has, it may be the more preferred option in the non-arrest, consent entry context.

If *Buie* is applied as it is now, officers have ample opportunity to abuse the protective sweep doctrine. The police-created exigency doctrine allows officers an alternative method to satisfy a warrantless search based upon their lawful presence, and offers a wider array of scenarios to conduct these searches. *Buie* is a limited doctrine as explained above, but if the doctrine is analyzed similarly to the *Fadul* court's method, *Buie* is an exceptional tool for officers. Both doctrines are extremely fact sensitive, but *Buie* has been utilized by officers in the non-arrest consent entry context, creating a divide among the circuit courts. Officer should not be left without alternatives to conduct warrantless searches since the private home can be a dangerous environment, but *Buie* can accurately satisfy both the state and private home owner if applied as suggested above. *Buie* is a strong doctrine if properly applied in the non-arrest, consent entry context because it effectively weighs the home owners and the government's interest. If *Buie* does not serve the officer in a given case, the officer is not left without recourse to ensure their safety.

VI. Conclusion

The Supreme Court decided in *Maryland v. Buie* to create the protective sweep doctrine, which allows officers to conduct a warrantless search beyond the area the officers have entered.¹⁷² *Buie* originally extended only to arrest contexts, but the circuit courts are now split as to whether or not *Buie* should apply to non-arrest, consent. I have suggested consent to entry should be analyzed similarly to how the *Jimeno* court analyzed the scope of consent given to an officer. The court must partake in an analysis of both the consent given by the home owner as well as the officer's articulable facts justifying the warrantless search.

There is an evident danger that officers may manipulate fact situations as to justify the protective sweep. The consent of an individual to an officer's entry accounts for both parties' interests. Home occupants will usually not announce the limits as to where an officer may go to in the home once consent is given. However, there should be a reasonable expectation that consent to entry given to an officer in a non-arrest context would lead an officer would understand that they are permitted only through the doorway of the home. In the alternative, if an officer cannot satisfy the narrow standard set forth under *Buie*, the *Kentucky v. King* doctrine grants an officer another tool to conduct warrantless searches in the consent entry context. *Kentucky v. King* allows officers to conduct searches when a possible exigency is created due to police presence without a warrant. *King* is a heightened standard with different justifications to conduct the search. An officer must not be defenseless when conducting a knock and talk, but they should not have free reign as well. An officer that fails to satisfy *Buie* may have a secondary

¹⁷² See *Buie*, 494 U.S. 325 (1990).

opportunity to conduct a warrantless search if a police created exigency occurs after they are lawfully on the property by consent or by warrant.

The Fourth Amendment focuses on reasonable searches. The *Buie* doctrine should apply to non-arrest contexts, specifically consent entries. The consent to entry is not the consent to a search. With the emphasis focused on what the occupant's reasonable expectation as to the consent given, other doors become tougher to search for officers. However, officers have the ability to ensure their safety, but not at the sacrifice of an individual's Fourth Amendment rights. Officers aren't left without avenues to search because the police created exigency doctrine grants officers an alternative if they are not able to meet the *Buie* doctrine. *King* offers a different set of circumstances where an officer may conduct a warrantless search (including officer safety). In conclusion, the *Buie* doctrine is still an effective tool in the non-arrest, consent entry context as long as the courts endeavor to analyze the consent for entry as well as the articulable facts offered to justify the warrantless search. Officers should not be left without an ability to conduct these searches, but the consent to entry is not consent to violate a home owner's Fourth Amendment rights.