# CAPTION: STATE V. JONES

 **03-17-2023**

APPEAL NO.: C-220007

TRIAL NO.: B-2002096

KEY WORDS: CONSTITUTIONAL LAW — CRIMINAL COUNSEL – SEARCH AND SEIZURE – FOURTH AMENDMENT– PROTECTIVE SWEEP – INEVITABLE DISCOVERY

SUMMARY:

 Trial counsel was constitutionally ineffective for failing to challenge the constitutionality of a consent search and protective sweep of the home. [*But see* DISSENT: The defendant did not meet his burden to show ineffective assistance of counsel because the record does not show that counsel’s alleged deficient performance rendered the result of the proceedings unreliable or fundamentally unfair.]

 Defendant demonstrated arguable merit to his claim that consent to search the home provided to the officers was a product of coercion, and the search violated the Fourth Amendment to the United States Constitution, where officers told a resident of the home they were “doing a search warrant” before receiving consent.

 Defendant demonstrated arguable merit to his claim that a protective sweep of the home lacked justification, and the seizure of a safe discovered in the course of the protective sweep violated the Fourth Amendment to the United States Constitution, where there were no specific and articulable facts to support a belief that a person was in the home and the protective sweep was consistent with a routine practice. [*But see* DISSENT: The police officers had articulable facts, which taken together with reasonable inferences from those facts, would warrant a reasonably prudent officer in believing that the area to be swept harbored an individual posing dangers to those at the scene, particularly given the danger involved in investigating drug activity and the danger inherent in the confines of a house or otherwise on an “adversary’s turf.”]

 Application of the inevitable-discovery exception to the exclusionary rule was not proper where the state failed to show that the safe would have been discovered apart from the unconstitutional search where the record contains no indication that the officers were attempting to secure a warrant to search the house. [*But see* DISSENT: Even if the protective sweep was improper, the discovery of the safe was inevitable given the facts and circumstances known to the police before they entered the residence where the officers had probable cause to obtain a warrant and where they would have been justified in freezing the scene to prevent any destruction of evidence while they waited for a warrant.]

JUDGMENT: CASE REMANDED

JUDGES: OPINION by BOCK, J.; BERGERON, P.J, CONCURS and WINKLER, J., DISSENTS.