

**STATE SUPREME COURT CO**

**In the Supreme Court of the State of California**

**PEOPLE OF THE STATE OF CALIFORNIA,**  
**Plaintiff and Appellant,**  
**v.**  
**ALBERT TROYER,**  
**Defendant and Respondent.**

**\$180759**

Third Appellate District, Case No. C059889  
Sacramento County Superior Court, Case No. 07F06029  
The Honorable Laurie M. Earl, Judge

**SUPREME COURT  
FILED**

**MAR - 8 2010**

**Frederick K. Ohlrich Clerk**

**PETITION FOR REVIEW**

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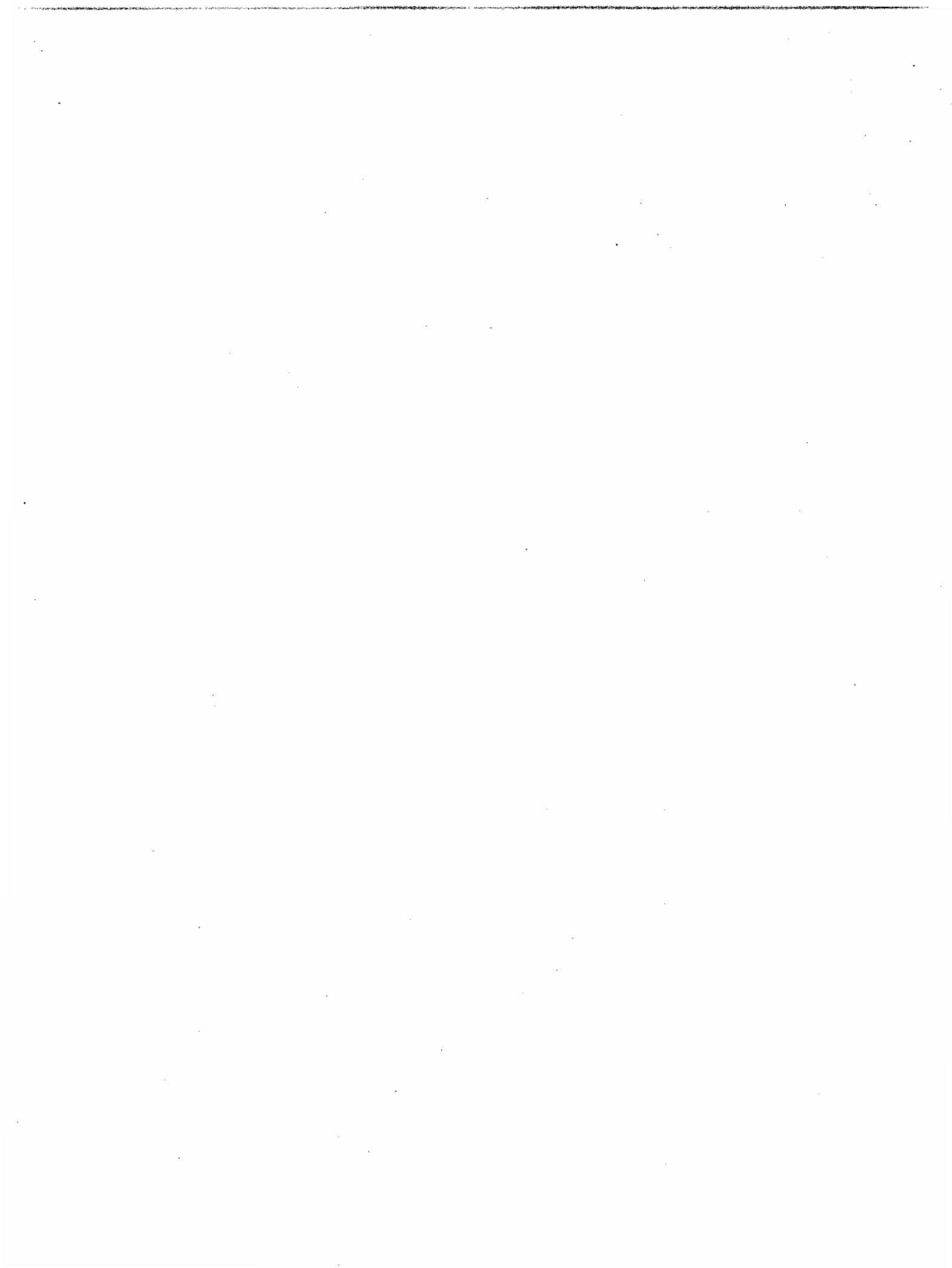
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The People of the State of California hereby petition this Court to grant review to settle an important question of law affecting the scope of law enforcement's duties under the emergency aid doctrine and the "protective sweep" exception to the Fourth Amendment warrant requirement.

### **ISSUES PRESENTED**

1. Does the authority of *Brigham City, Utah v. Stuart* (2006) 547 U.S. 398 allow both an entry and a search based on the same objective facts supporting a belief that someone in a residence may be in need of emergency aid?

2. Does a *Maryland v. Buie* (1990) 494 U.S. 325 protective sweep require more than reasonable suspicion that the area to be swept harbors a person posing a danger to officer safety before officers may enter a residence to search for suspects following a violent assault and shooting?

### **SUMMMARY OF ARGUMENT**

A dispatch report of a shooting led to the discovery of a woman shot multiple times and a man bleeding profusely from a head injury on the porch outside a two-story residence. A male victim, reported as possibly shot twice, was not present. The scene was chaotic: the female victim was constantly screaming; the responding officer had to instruct a civilian volunteer how to administer first aid; there was blood all over the porch; neighbors were running around in the street; the responding officer could not see or hear what was going on inside the house; uniformed officers were arriving; emergency vehicles were approaching with sirens activated; and it was clear from the blood smears on the locked front door that someone who had been bleeding had either gone into or come out of the

residence. Added to this, the only person who could assist officers in determining whether others were inside the residence was the man with the head wound, who was unreliable and evasive in his answers. Within minutes of the 9-1-1 call, four uniformed officers entered the residence to search for additional victims in need of aid and to conduct a safety sweep of the residence.

The court of appeal's majority opinion held that the search of the upstairs rooms violated the Fourth Amendment. The court concluded that officers could enter the residence under the emergency aid doctrine based on a concern for possible additional shooting victims but that they were not allowed to search a locked upstairs bedroom. The court further determined, in variance with the rule in *Maryland v. Buie*, that a protective sweep of the bedroom required that "[t]he facts known to law enforcement must be such as to warrant the reasonable belief that such a person *is* present." (Slip Opn. at 7, original italics.)

The court of appeal's interpretation of the limits on these recognized exceptions to the warrant requirement does not conform to United States Supreme Court precedent and decisions of this Court. *Mincey v. Arizona* (1978) 437 U.S. 385, 392, recognizes that officers may conduct "warrantless entries *and searches* when they reasonably believe that a person within is in need of immediate aid." (*Ibid.*, emphasis added.) Official action under the emergency aid doctrine "requires only 'an objectively reasonable basis for believing,' that 'a person within [the house] is in need of immediate aid.'" (*Michigan v. Fisher* (2009) 130 S.Ct. 546, 548, *per curiam*, quoting *Brigham City, Utah v. Stuart, supra*, 547 U.S. at p. 403, and *Mincey v. Arizona, supra*, 437 U.S. at p. 392.) Further, the majority opinion conflicts with this Court's decision in *Tamborino v. Superior Court* (1986) 41 Cal.3d 919. Moreover, regarding the protective sweep based on officer safety, a "protective sweep can be justified merely

by a *reasonable suspicion* that the area to be swept harbors a dangerous person.” (*People v. Celis* (2004) 33 Cal.4th 667, 678, original italics.)

The majority opinion, which will be studied and read by law enforcement officers throughout the state, tells our officers to turn around in the front hall and walk away. But responsible peace officers cannot simply turn around and walk out: we would not expect them to do so. Based on the possibility of an additional victim or shooting suspect, it would have been a dereliction of duty for officers to do anything other than walk upstairs and conduct a cursory search of all places where a person could be found. As stated in Justice Nicholson’s dissenting opinion, their actions were a “reasonable and brave execution of law enforcement duties.” (Dis. Opn. by Nicholson, J., at 4.) Under the Fourth Amendment, their actions cannot be both reasonable and unlawful.

### STATEMENT OF THE CASE

On June 6, 2007, undercover police Sergeant Tim Albright heard a radio report of a shooting at 9253 Gem Crest Way in Elk Grove. (RT 3-4.) The report indicated that a man possibly had been shot twice and that a two-door Chevrolet was associated with the shooting. (RT 4, 15.) Sergeant Albright was the first to arrive at the scene approximately two minutes after the call; because he did not have protective gear, he temporarily positioned himself down the street from the residence. (RT 4-5, 31.) He did not see the Chevrolet. (RT 5.) He approached and found codefendant Adrien Abeyta walking on the porch and a civilian administering first aid to a woman later identified as Mia Zapata. (RT 5-6, 46.)<sup>1</sup> Ms. Zapata had been shot multiple times, and she was screaming. (RT 8, 35-36, 40, 42.)

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<sup>1</sup> Appellant was not at the scene. He was later connected to the marijuana found in an upstairs bedroom.



Sergeant Albright provided first aid directions to the civilian. (RT 40.) There was no sign of the male victim who reportedly had been shot twice. (RT 4, 15.) Nor was there a sign of any suspects. (RT 5.)

The scene was chaotic. (RT 19, 42.) Sergeant Albright did not know who lived in the residence. (RT 7.) There was blood surrounding the scene, and Sergeant Albright observed blood on the front door indicating that someone who was bleeding came into contact with the door by ingress or egress. (RT 19, 41.) Although Abeyta was ambulatory, he was excited and agitated; he appeared to have a head wound, with blood streaming down the back of his head and covering the majority of his face. (RT 6-7.)<sup>2</sup> Abeyta gave a description of the two male suspects involved and their vehicle. (RT 7, 16, 20, 38.) About three minutes after his arrival, Sergeant Albright spoke with Abeyta about going into the residence. (RT 7.) He first asked Abeyta if anybody was in the house. (RT 8-9.) Instead of answering, Abeyta was unresponsive and stared at Sergeant Albright for 15 to 20 seconds. (RT 9.) The sergeant repeated his question, and Abeyta stared at him for a period of time and then said he did not believe there was anybody inside. (RT 9, 21.) Wanting to clarify Abeyta's response, Sergeant Albright asked a third time. (RT 9.) Again, Abeyta took a long pause, stared at the sergeant, and then said, "No." (RT 9, 21.) Sergeant Albright felt that he could not rely on the accuracy of Abeyta's indication that no one was inside, and he was concerned that others could be in the residence. (RT 9-11, 24.)

Approximately six minutes after Sergeant Albright first arrived at the residence, uniformed officers in protective gear entered to search for

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<sup>2</sup> The record does not indicate that Mr. Abeyta had sustained a gunshot wound. (RT 6.) It appears that the parties below knew that he had been pistol-whipped. (See RT 64.)

victims and suspects. (RT 14, 22, 42, 47, 50, 54.) The entry and search was based on the following circumstances: there had been a very recent violent shooting on the front porch of the residence (RT 19, 28); the responding officer did not see the suspects leave the scene (RT 5); there was no sign of a male shooting victim; there were blood droplets and smudges on the front door near the handle caused by someone going into or going out of the residence (RT 19, 41, 45); the front door was locked (RT 12); the officers did not know who lived in the residence (RT 7, 10); the officers could not see inside the residence because the blinds were down (RT 19); there was chaos and a cacophony of noise at the scene, and Sergeant Albright was not able to hear if there were sounds inside the residence (RT 16, 42, 43); exposed in the front of the house were the victims, emergency personnel, citizen witnesses, other witnesses, and officers (RT 43); and the only apparent victim who could speak to him was not forthcoming about whether anyone else was inside or was too injured and agitated to provide a reliable answer (RT 11, 23, 25). After entering, the officers announced their presence and cleared the first floor without finding anyone. (RT 50-51, 55.) They went upstairs looking in places where a body could be, and they kicked open a locked bedroom door after again announcing their presence. (RT 51-52, 55-56.) It was in that bedroom that they found marijuana. (RT 52.)

An information filed in the Sacramento County Superior Court charged appellant and codefendant Abeyta with possession of marijuana in violation of Health and Safety Code section 11359 and cultivation of marijuana in violation of Health and Safety Code section 11358. (CT 10-12.) Appellant pled not guilty and denied the Penal Code section 12022, subdivision (a)(1), arming allegations. (CT 4.)

Appellant filed a motion to suppress evidence pursuant to Penal Code section 1538.5. (CT 72.) The court denied the motion. (CT 92.) Appellant

subsequently withdrew his not guilty pleas, pled nolo contendere to both counts, and admitted the arming allegations. (CT 8.) The court suspended the imposition of judgment and placed appellant on probation for a period of five years with the imposition of a one-year jail term. (CT 119.)

Appellant filed a notice of appeal, and the court of appeal reversed the judgment. (CT 124.)<sup>3</sup> The court of appeal denied respondent's petition for rehearing.

## **REASONS FOR GRANTING THE PETITION**

### **I. THE COURT OF APPEAL OPINION NARROWS THE SCOPE OF THE EMERGENCY AID DOCTRINE AND APPLIES A MORE RESTRICTIVE STANDARD FOR PROTECTIVE SWEEPS CONTRARY TO UNITED STATES SUPREME COURT PRECEDENT**

#### **A. Emergency Aid Doctrine**

The court of appeal held that the officers lawfully entered the residence but unlawfully conducted a search of the upstairs locked bedroom under the emergency aid doctrine. The emergency aid doctrine, however, cannot be limited to entries when the facts necessitate both an entry and search for potential victims.

The United States Supreme Court has confirmed that “the Fourth Amendment does not bar police officers from making warrantless entries *and searches* when they reasonably believe that a person within is in need of immediate aid.” (*Mincey v. Arizona, supra*, 437 U.S. at p. 392, emphasis added.) The reason is that “the exigencies of the situation” can “make the needs of law enforcement so compelling that the warrantless search is objectively reasonable.” (*Id.* at p. 394.) Further, an “action is ‘reasonable’ under the Fourth Amendment, regardless of the individual officer’s state of

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<sup>3</sup> The court of appeal opinion is included as Attachment “A.”

mind, ‘as long as the circumstances, viewed *objectively*, justify [the] action.’” (*Brigham City, Utah v. Stuart, supra*, 547 U.S. at p. 404, original italics and brackets.)<sup>4</sup>

The United States Supreme Court reaffirmed *Brigham City* in its recent *per curiam* decision in *Michigan v. Fisher, supra*, 130 S.Ct. 546. The Supreme Court found that “[o]fficers do not need ironclad proof of ‘a likely serious, life-threatening’ injury to invoke the emergency aid exception.” (*Id.* at p. 549.) As expressed above, all that is required is “‘an objectively reasonable basis for believing,’ that ‘a person within [the house] is in need of immediate aid.’” (*Id.* at p. 548, quoting *Brigham City, Utah v. Stuart, supra*, 547 U.S. at p. 403, *Mincey v. Arizona, supra*, 437 U.S. at p. 392.) The Supreme Court further warned against the dangers of using judicial hindsight to invalidate the police response in an emergency:

It was error for the Michigan Court of Appeals to replace that objective inquiry into appearances with its hindsight determination that there was in fact no emergency. It does not meet the needs of law enforcement or the demands of public safety to require officers to walk away from a situation like the one they encountered here.

(*Id.* at p. 549.)

Here, too, through the incautious lens of hindsight the court of appeal ruled that the officers could not search the house for victims under the emergency aid doctrine. The exigencies that justify a search at its initiation determine the lawfulness of the resulting search. (See *Mincey v. Arizona, supra*, 437 U.S. at p. 393.) In this case, the same objective exigencies that justified the entry of appellant’s residence also justified a search for potential victims: officers were at the scene of a very recent violent

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<sup>4</sup> The “subjective motive” analysis in by this Court in *Ray* was not followed in *Brigham City*. (See *People v. Ray* (1999) 21 Cal.4th 464, 477 (lead opn. of Brown, J.).)

shooting; they did not locate a male shooting victim outside the house; there was blood all over the porch and smudges on the front door indicating that someone who was bleeding possibly had gone into the residence; the responding officer could not hear or see inside the two-story residence; the only person able to respond to the simple question of whether someone else was inside gave hesitant and evasive answers that were alarming under the circumstances. These exigencies were not resolved when the officers entered the residence; rather, the exigent circumstances required that the officers enter *and search* each room until they could eliminate the possibility of a victim being found.

The court of appeal's decision thus conflicts with this Court's decision in *Tamborino v. Superior Court, supra*, 41 Cal.3d 919, 924, in which the Court concluded "that the discovery of one wounded victim afforded reasonable cause to enter and briefly search for additional victims." The officers in *Tamborino* were responding to a radio call reporting a robbery victim believed to be injured and bleeding, and the dispatch did not include a description of the robber or the victims. (*Id.* at pp. 921-922.) "[T]he observation of Tamborino, wounded and bleeding, coupled with the earlier report of a robbery, constituted 'articulable facts' that reasonably could have led the officer to decide that an immediate, brief search of the apartment was warranted to determine whether additional persons were present at the crime scene." (*Id.* at p. 923.) This Court found that, in light of the situation confronting the officer, "ordinary, routine common sense and a reasonable concern for human life justified him in conducting a walk-through search truly limited in scope to determining the presence of other victims." (*Ibid.*) As in *Tamborino*, the exigency in this case--the overwhelming, immediate need at the chaotic crime scene to ensure that another victim was not inside the house--was not extinguished by not finding a victim in the first place the officers looked.

The four officers in this case who entered the residence within minutes of the shooting could not simply turn and walk away. In deciding the reasonableness of an officer's actions under the emergency aid doctrine, courts look to whether it would be a dereliction of duty to abandon an investigation based on a potential victim's safety. (See *People v. Hochstraser* (2009) 178 Cal.App.4th 883, 902; *People v. Seminoff* (2008) 159 Cal.App.4th 518, 530.) As stated in *Fisher*, "it does not meet the needs of law enforcement or the demands of public safety to require officers to walk away from a situation like the one they encountered here." (*Michigan v. Fisher, supra*, 130 S.Ct. at p. 549.) As Justice Nicholson stated in his dissent:

Society expects law enforcement to come to the aid of victims, even under stressful and dangerous circumstances. "Erring on the side of caution is exactly what we expect of conscientious police officers."

(Dis. Opn. by Nicholson, J., at 3, quoting *United States v. Black* (9th Cir. 2007) 482 F.3d 1035, 1040.) If the officers were duty-bound to check in the upstairs bedroom for another victim, then that search is necessarily reasonable under the Fourth Amendment. The opinion's restriction on a reasonable search for victims is a dangerous new California precedent.

### **B. Protective Sweep**

A lawful sweep of non-adjointing areas under *Maryland v. Buie, supra*, 494 U.S. at p. 327 requires "'a reasonable belief based on 'specific and articulable facts which, taken together with the rational inferences from those facts, reasonably warrant[ed]' the officer in believing,' . . . that the area swept harbored an individual posing a danger to the officer or others.'" What *Buie* requires is merely "a reasonable suspicion that the area to be swept harbors a dangerous person." (*People v. Celis, supra*, 33 Cal.4th at p. 678.) However, the court of appeal opinion required something more

than reasonable suspicion: the court of appeal required that “[t]he facts known to law enforcement must be such as to warrant the reasonable belief that such a person *is* present.” (Slip Opn. at 7, original italics.)

This restatement of what is required for a *Buie* protective sweep is tantamount to a requirement of probable cause, which had been specifically rejected by this Court in *People v. Celis, supra*, 33 Cal.4th at page 678. Recognizing that *Buie* protective sweeps are based upon the principles set forth in *Terry v. Ohio* (1968) 392 U.S. 1, this Court identified the parameters of a lawful protective sweep:

A protective sweep of a house for officer safety as described in *Buie*, does not require probable cause to believe there is someone posing a danger to the officers in the area to be sweep. [Citation.] A *Buie* sweep is unlike warrantless entry into a house based on exigent circumstances (one of which concerns the risk of danger to police officers or others on the scene); such an entry into a home must be supported by probable cause to believe that a dangerous person will be found inside. [Citation.] A protective sweep can be justified merely by a reasonable suspicion that the area to be swept harbors a dangerous person. [Citation.]

(*People v. Celis, supra*, 33 Cal.4th at p. 678.)

The court of appeal’s restatement of the required “belief” under *Buie* is not a matter of semantics. The court of appeal required that the officers believe that someone who could present a danger to themselves or others *was* in the locked upstairs bedroom. This exceeds what is necessary for lawful protective sweeps under United States Supreme Court precedent.

Further, although the court of appeal did not address the facts under the correct inquiry, the sweep in this case was lawful under *Buie*. The officers were in the midst of dangerous uncertainty. It was a scene of a shooting and violent assault, and the victims, civilians, emergency personnel, and police officers were exposed in the front of a two-story house. The first responding officer, who was on the scene two minutes

after the 9-1-1 dispatch, did not see the suspects or their vehicle. The only person who reported the suspecting having fled was codefendant Abeyta, who was bleeding from a head wound and provided contrary, evasive answers to the simple question of whether there was anyone inside the house. The responding officer could not see into or hear inside the house, and someone had caused a blood smear on the locked front door either coming out or going inside. Upstairs, the officers found a locked bedroom, which is exactly where a suspect would hide. In total, these circumstances amounted to reasonable suspicion that the interior of the residence, and particularly the locked upstairs bedroom, may have harbored a dangerous person tied to the shooting.

### CONCLUSION

The petition for review should be granted.

Dated: March 4, 2010

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

I certify that the attached PETITION FOR REVIEW uses a 13 point Times New Roman font and contains 3,208 words.

Dated: March 4, 2010

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**ATTACHMENT A**



NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

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THE PEOPLE,

Plaintiff and Respondent,

v.

ALBERT TROYER,

Defendant and Appellant.

C059889

(Super. Ct. No. 07F06029)

A police officer received a dispatch call that a man had possibly been shot twice at a house in Elk Grove. When the officer arrived at the two-story house, he found a man and a woman bleeding on the front porch. The man said the perpetrators had driven away, but he was equivocal about whether anyone was inside the house, and the officer saw what appeared to be droplets and smudges of blood on the front door. After the officer threatened to kick down the locked front door to gain entry, the man handed over the keys. Four police officers entered the house. They saw no signs of struggle or blood. They searched the first floor and found

nothing. While searching the second floor, one of the officers encountered a locked bedroom door. After announcing his presence and receiving no response, he broke down the door and inside the bedroom found a scale and a glass jar filled with marijuana, which led to the charges against defendant Albert Troyer.

The question here is whether the warrantless search of the *upstairs bedroom* was justified by the protective sweep or emergency aid exceptions to the warrant requirement. The answer is "no." The protective sweep exception did not apply because there were insufficient facts for the officers to reasonably believe there were dangerous people inside the house, let alone inside the locked upstairs bedroom. While the emergency aid exception permitted entry into the house, there were insufficient facts for the officers to reasonably believe there was somebody inside the locked upstairs bedroom who was seriously injured or imminently threatened with such injury.

Because the warrantless search of the locked bedroom violated the Fourth Amendment, the trial court erred in denying defendant's motion to suppress. Accordingly, we will reverse.

#### FACTUAL AND PROCEDURAL BACKGROUND

On June 6, 2007, Elk Grove Police Sergeant Tim Albright received a radio call that a man possibly had been shot twice at a home on Gem Crest Way in Elk Grove and that the perpetrators were possibly driving a "two-door Chevrolet product." He arrived at the home and did not see any vehicle matching the description given of the suspects' vehicle.

On approaching the house, he saw a woman bleeding on the front porch being tended to by another person. The woman appeared to have been shot. He also encountered a man, Adrien Abeyta, who was agitated and bleeding profusely from the head with blood covering his face and T-shirt. Abeyta was moving around the front porch. Sergeant Albright asked Abeyta to describe what had occurred and any suspects involved. Abeyta identified two suspects, a White male and a Black male, and told the sergeant they had driven off in a vehicle westbound on Gem Crest Way.

On three separate occasions within the span of approximately one minute, Sergeant Albright asked Abeyta if there were any other individuals in the residence. The first time, Abeyta was unresponsive. The second time, Abeyta "stared at [the sergeant] for a period of time and stated that he did not believe that there was anybody inside." The third time, Abeyta stared at Sergeant Albright for a time and then said "no."

While dealing with Abeyta, Sergeant Albright saw what appeared to be droplets and smudges of blood on the front door, suggesting to him that "an individual who was bleeding at some point came into contact with that door either by virtue of ingress or egress." The presence of this blood, along with Abeyta's three different responses and his head injury, and "the fact that . . . a violent shooting [had] occurred . . . mere feet or within the doorway area" gave Sergeant Albright concern.

He could not see or hear anything going on inside the house, but decided to enter and asked Abeyta if the keys in Abeyta's hands were for the residence. Abeyta said they were. Sergeant Albright asked Abeyta for the keys to open the door, and Abeyta declined. Sergeant Albright threatened to kick in the door to gain entry, so Abeyta gave him the keys to the house. Sergeant Albright estimated that the time between his appearance at the house and the entry into the house was approximately five to six minutes.

Four policemen entered the residence and saw no signs of struggle or blood. They searched the first floor and found nothing of interest. The police then began to search the second floor. On the second floor, Officer Samuel Seo found a locked door, which he broke down after receiving no response to the announcement of his presence. Upon entering through that doorway, Officer Seo smelled a strong odor of marijuana and saw a glass jar filled with marijuana and an electronic scale.

As a result of the initial foray into the residence, the officers obtained a search warrant and searched the house more thoroughly. During the subsequent search, Officer Brian George found (among other things) indicia linking defendant to a room containing several mason jars of marijuana and a loaded .40-caliber semiautomatic handgun.

Defendant was charged with unlawful possession of marijuana for sale and cultivation of marijuana with enhancements attached to both counts for possession of a firearm. Defendant moved to suppress evidence based on the initial warrantless search.

The People argued the search was justified under the protective sweep and emergency aid exceptions to the warrant requirement. The trial court found the emergency aid exception applicable and denied the motion. Thereafter, defendant pled no contest to the charges and enhancements. The trial court placed him on five years' probation and ordered him to serve a year in jail as a condition of probation.

From the order granting probation, defendant timely appeals, contending the trial court erroneously denied his suppression motion because the warrantless entry into the home was not justifiable under either the protective sweep or emergency aid exceptions to the warrant requirement.<sup>1</sup> We agree that the warrantless entry into the locked upstairs bedroom was not justified under either exception and therefore reverse the judgment.

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<sup>1</sup> Defendant refers to the emergency aid exception to the warrant requirement as "a subcategory of the community caretaking exception." We eschew the latter term altogether because of its association with Justice Brown's plurality opinion in *People v. Ray* (1999) 21 Cal.4th 464, which concluded that a search may be permissible under the community caretaking exception where the police are not engaging in crime-solving activities. (*Id.* at pp. 471-480.) As the People properly point out, Justice Brown's "'subjective' motive analysis in *Ray*" was "invalidated" by the United States Supreme Court's decision in *Brigham City v. Stuart* (2006) 547 U.S. 398, 404 [164 L.Ed.2d 650, 658].



## DISCUSSION

### I

#### *The Warrantless Entry Into The House Was Not Justified As A Protective Sweep*

Defendant contends the warrantless entry of the house on Gem Crest Way was not justified as a protective sweep under *Maryland v. Buie* (1990) 494 U.S. 325, 327 [108 L.Ed.2d 276, 281-282] because such a sweep must be "incident to arrest," and here "no one was arrested or detained before the entry into the home." He contends the People offer "no rational[e] for allowing a protective sweep in the absence of a detention or arrest." He also contends the warrantless entry "was not supported by articulable facts that would lead a reasonable officer to believe a dangerous person . . . lurked inside" the house.

To justify a warrantless search as a protective sweep, the prosecution must show that the search was "a quick and limited search of premises, incident to an arrest and conducted to protect the safety of police officers and others." (*Maryland v. Buie, supra*, 494 U.S. at p. 327 [108 L.Ed.2d at p. 281].) *Buie* further held "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 p. 334 [108 L.Ed.2d at p. 286].) Expanding on *Buie*, some courts have found that a protective sweep "is not limited to arrest situations" (*People v. Ledesma*

(2003) 106 Cal.App.4th 857, 864), and it has been suggested the doctrine may be invoked "when officers are rendering aid . . . so long as the requirements of *Buie* are met" (*ibid.*).

Here, the search was not justified as a protective sweep because, even assuming the entry and search of the home did not have to be strictly incident to an arrest for the protective sweep doctrine to apply, the other requirements of *Buie* were not met. Specifically, there were insufficient facts from which a reasonably prudent police officer would have been warranted in believing there were one or more dangerous persons inside the house. Abeyta told Sergeant Albright the assailants had fled, which was at least superficially confirmed by the absence of the car the suspects were reported to be driving. The door to the house was locked, and Abeyta, who himself was injured, was holding the keys, strongly suggesting none of the assailants had fled inside the house. Furthermore, Sergeant Albright could not see or hear anything inside the house. In their totality, these facts would not have led a reasonably prudent police officer to believe the area to be swept -- the inside of the house -- harbored an individual posing a danger to those on the scene.

The People assert that "[t]he rational inference from the objective facts was that someone with the gun used to shoot the victim *could have been inside*" the house. (*Italics added.*) But the mere *possibility* that an armed person *may be present* is not enough to justify a protective sweep. Rather, the facts known to law enforcement must be such as to warrant the reasonable belief that such a person *is present*. Here, the facts known to

Sergeant Albright did not rise to that level. Accordingly, the warrantless search of the house cannot be justified as a protective sweep.

## II

### *The Warrantless Entry Into The Locked Upstairs Bedroom Was Not Justified Under The Emergency Aid Doctrine*

Defendant contends the emergency aid exception did not apply here because "there was no articulable fact leading the officers to conclude that a person was inside the house, much less a person in imminent danger." Limiting ourselves to the entry into the locked upstairs bedroom, we agree.

The emergency aid doctrine is part of the exigent circumstances exception to the warrant requirement, which allows warrantless searches if the exigencies of the situation require. (See *Brigham City v. Stuart*, *supra*, 547 U.S. at pp. 403-404 [164 L.Ed.2d at pp. 657-658].) Under the emergency aid doctrine, law enforcement officers may "enter a home without a warrant when they have an objectively reasonable basis for believing that an occupant is seriously injured or imminently threatened with such injury." (*Id.* at p. 400 [164 L.Ed.2d at p. 656].)

In *Brigham City*, the police officers arrived at a house and heard from within "an altercation occurring, some kind of fight" and "thumping and crashing." (*Brigham City v. Stuart*, *supra*, 547 U.S. at p. 406 [164 L.Ed.2d. at p. 659].) They determined the noise was coming from the back of the house and that knocking on the front door would be futile, so they went

around back. (*Ibid.*) Through a window, they saw a juvenile strike "one of the adults in the face, sending the adult to the sink spitting blood." (*Ibid.*) Then they saw several people try to restrain the juvenile so forcefully they displaced a refrigerator. (*Id.* at p. 401 [164 L.Ed.2d at p. 656].) Based on this evidence, the United States Supreme Court held that the "officers were confronted with *ongoing* violence occurring *within* the home," which justified the entry of the officers into the home after announcing themselves outside the screen door. (*Id.* at pp. 405-406 [164 L.Ed.2d. at pp. 659-660].)

Here, the People contend "the objective facts of this case also justified the officers' entry into the residence to search for additional victims" because "[t]he female shooting victim was on the ground screaming; a male shooting victim was not outside. The only person able to relate the facts was Abeyta, who had a serious head wound and who provided odd and conflicting responses regarding whether anyone else was in the residence. The situation was intense and chaotic, and the front door to the residence had blood patterns indicated that a person who was bleeding had been against the door going out of or into the residence."

We agree that the foregoing facts -- particularly the blood on the door that suggested entry by someone who was bleeding -- provided an "objectively reasonable basis for believing that an occupant [of the house was] seriously injured . . . ." (*Brigham City v. Stuart, supra*, 547 U.S. at p. 400 [164 L.Ed.2d at p. 656].) Thus, it was reasonable for the officers to enter

the house to look for another victim. Once the officers entered, however, they did not see anything that attracted their attention. It did not appear any struggle had taken place in the house, and they did not see any blood, even though they were looking for it. Nevertheless, an officer kicked open a locked door to a second floor bedroom, where contraband was discovered in plain sight. Although the facts known to the officers justified the initial entry into the house, and assuming for the sake of argument that they justified a search of the upper floor as well as the lower floor (despite the lack of any blood except on the front door), the facts known to the officers did *not* justify kicking in the locked door to an upstairs bedroom to look for additional victims because the facts did not support an objectively reasonable belief that there was a person within the locked bedroom who was in need of immediate aid. While the officers undoubtedly were justifiably "concerned for the possibility of an injured person inside the residence," they "had no knowledge of any facts that would lead a reasonable person in their position to believe entry [into the locked bedroom] was immediately necessary to aid life or limb." (*People v. Ray, supra*, 21 Cal.4th at p. 473.) Thus, entry into the upstairs bedroom was not justified by the emergency aid exception to the warrant requirement.

Because neither the protective sweep exception nor the emergency aid exception applied, the warrantless entry and search of the upstairs bedroom violated the Fourth Amendment,

and the trial court erred in denying defendant's motion to suppress.

DISPOSITION

The judgment is reversed. Defendant shall be allowed to withdraw his no contest plea, and in the event he does so, the trial court shall vacate its order denying the motion to suppress and enter a new order granting that motion.

\_\_\_\_\_  
ROBIE, J.

I concur:

\_\_\_\_\_  
BUTZ, J.

Nicholson, A. P. J., Dissenting

After months of quiet and comfortable reflection, the majority parses what the officers did in a few stressful and dangerous minutes and finds one aspect of the officers' actions unreasonable. I disagree. Under the totality of the circumstances, the officers acted reasonably, in every way.

A warrant to enter a residence is required unless the exigencies of the situation make the needs of law enforcement so compelling that a warrantless search is objectively reasonable. (*Mincey v. Arizona* (1978) 437 U.S. 385, 393-394 [57 L.Ed.2d 290, 301].) One type of exigent circumstance is an emergency situation requiring swift action to prevent imminent danger to life. (*People v. Ormonde* (2006) 143 Cal.App.4th 282, 292.) This has been called the "'emergency aid'" exception. (*Brigham City v. Stuart* (2006) 547 U.S. 398, 401 [164 L.Ed.2d 650, 656].) Under this exception, "police officers may enter a home to render emergency assistance when they have an objectively reasonable basis to believe someone inside is seriously injured or imminently threatened with such injury." (*People v. Gemmill* (2008) 162 Cal.App.4th 958, 960.)

Here, Sergeant Tim Albright arrived at the residence within three minutes after the 911 call reporting an attempted home invasion robbery. He found three people on the porch in front of the residence: Mia Zapata, who was on the ground and apparently had been shot; a neighbor, who was trying to assist Zapata; and Adrien Abeyta, who was bleeding profusely from a

head wound. Sergeant Albright observed blood on the front door of the residence. He could not see into the residence because the window blinds were shut, and he could not hear whether any sounds were coming from inside the residence because Zapata and Abeyta were screaming and arriving police and fire personnel were loud.

Abeyta was excited and agitated. Blood was issuing from the top and rear of his head, covering most of his face. His T-shirt was covered with blood. Sergeant Albright questioned Abeyta, but it was very difficult to get answers because of Abeyta's agitated state.

Sergeant Albright asked Abeyta whether anyone was in the residence.<sup>2</sup> Abeyta just stared at Sergeant Albright, unresponsive for 15 to 20 seconds. Sergeant Albright repeated his question, and Abeyta finally responded that he did not believe anyone was inside. Sergeant Albright asked a third time, and Abeyta again stared at Sergeant Albright and finally said no.

Sergeant Albright decided to send officers into the house to check for victims or suspects. The door was locked, so he told Abeyta that he would break the door down. Abeyta did not want that to happen and provided a key to the front door.

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<sup>2</sup> Sergeant Albright also got a description of the suspects from Abeyta, but he did not remember whether this was before or after he asked whether there was anyone inside the residence.



Officer Samuel Seo was one of four officers who entered the two-story residence to look for additional victims or suspects. Downstairs, he saw nothing that attracted his attention. Officer Seo went upstairs to check any location where a victim could be found, such as on the floor and in closets. While upstairs, he encountered a locked bedroom door. He announced his presence and did not hear anything from inside the room, so he broke through the door. He checked the bedroom for victims, while another officer checked the closet. While in the bedroom, Officer Seo noticed the contraband in plain sight.

The majority concludes that the entry into the residence was reasonable but the entry into the locked bedroom was unreasonable. I agree that the entry into the residence was reasonable. Society expects law enforcement to come to the aid of victims, even under stressful and dangerous circumstances. "Erring on the side of caution is exactly what we expect of conscientious police officers." (*United States v. Black* (9th Cir. 2007) 482 F.3d 1035, 1040.)

I disagree with the majority, however, concerning the reasonableness of checking the upstairs bedroom for victims. The evidence of extreme violence just outside the residence and blood on the front door prompted the entry into the residence. In their hurried analysis of the situation once inside the residence, the officers did not find further evidence that a victim had been moving around inside. However, that moment was not the appropriate time to launch a thorough investigation of what was found in the residence upon entry. Their entry into

**DECLARATION OF SERVICE BY U.S. MAIL**

Case Name: **People v. Troyer**  
No.: S \_\_\_\_\_

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On March 5, 2010, I served the attached **PETITION FOR REVIEW** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

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**The Honorable Jan Scully**  
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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on March 5, 2010, at Sacramento, California.

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Declarant