SUPREME COURT COPY

In the Supreme Court of the State of California

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, v. ALBERT TROYER, Defendant and Appellant.	Case No. S180759

SUPREME COURT
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Sacramento County Superior Court, Case No. 07F06029
The Honorable Laurie M. Earl, Judge

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INTRODUCTION

Each day, peace officers face the unknown and the unknowable. They are dispatched to scenes of violence and turmoil, and they must make split-second decisions to provide aid and ensure public safety. Officers are expected to protect victims from further harm and to prevent further crime.

This case arises from a shooting in a residential neighborhood. One undercover officer arrived on the scene three minutes after the 9-1-1 call to find a seriously wounded shooting victim on the front porch of a residence. Another person, suffering from an injury to the head, was strangely evasive and contradictory when the officer asked if anyone else was inside the two-story house. There was no sign of the male shooting victim indicated in the dispatch. Blood was all over the porch, and the particular pattern of blood smears on the front door indicated that someone who was bleeding had gone into or come out of the house. The officer could not see inside the house. Within six minutes of the dispatch, uniformed officers arrived to assist. What were the officers required to do to aid the victims and ensure the safety of everyone at the scene?

Officers do not have the same options as civilians. They cannot peek inside a house, hope for the best, and walk away; they cannot fail to act. What they must do is exactly what the responding officers in this case did: they must go into the house, face the unknown, and eliminate the possibility of an incapacitated victim or an armed suspect hiding behind a locked door.

STATEMENT OF THE CASE

On June 6, 2007, undercover Elk Grove 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 had been shot, possibly 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 dispatch. (RT 4, 5, 31.)[1] Because he did not have protective gear, he temporarily positioned himself down the street from the residence. (RT 4-5.) He did not see the Chevrolet. (RT 5.) He approached the residence and found codefendant Adrien Abeyta walking on the 4' x 10' front porch and another man administering first aid to a woman later identified as Mia Zapata. (RT 5-6, 8, 46.)[2] Ms. Zapata had been shot multiple times, and she was screaming. (RT 8, 35-36, 40, 42.) Sergeant Albright provided first aid directions to the man helping her. (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.) There was blood surrounding the scene, and Sergeant Albright observed multiple blood droplets on the front door and smudges near the handle indicating that someone who was bleeding had come into contact with the door by ingress or egress. (RT 19, 41.) Sergeant Albright did not know who lived in the residence. (RT 7.) 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.)[3] Abeyta gave a description of two male suspects 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.) Abeyta was holding a set

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[1] The dispatch went out less than one minute after the 9-1-1 call. (RT 31.)

[2] Appellant was not at the scene. His connection to the residence was established at the hearing on the motion to suppress evidence by reference to the preliminary hearing transcript. (RT 60-61.)

[3] The record does not indicate that Abeyta had sustained a gunshot wound. (RT 6.) It appears that the parties below knew that he had been pistol-whipped. (See RT 64, 75.)

of keys, which included a key to the front door. (RT 11-12, 22.)[4] Sergeant Albright 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.) Abeyta again took a long pause, stared at the sergeant, and then said, "No." (RT 9, 21.) Sergeant Albright did not believe that Abeyta was being truthful, and he was concerned that others could be inside. (RT 9-11, 23-24.)

Approximately six minutes after Sergeant Albright first arrived at the scene, uniformed officers in protective gear entered to search for victims and suspects. (RT 14, 22, 42, 47, 50, 54.)[5] 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 near the doorway (RT 19, 28, 48); 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 out of the residence (RT 19, 41, 45); the front door was locked (RT 12); the officers did not know who lived in the house (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 (RT 16, 42, 43); exposed in the front of the house were the apparent victims, emergency personnel, citizen witnesses, and officers (RT 43); and the only person associated with the residence who could speak to Sergeant Albright was not forthcoming

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[4] Respondent will refer to the residence as the "Abeyta residence."

[5] Abeyta initially refused to give Sergeant Albright the key to the front door. (RT 12.) He provided the key and unlocked the door after Sergeant Albright said he would have to kick it in. (RT 22-23, 54.)

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 person could be found. (RT 51.) Again announcing their presence, they kicked open the locked master bedroom door. (RT 50-52, 55-56.)[6] They found marijuana in plain view. (RT 52.)

An information filed in the Sacramento County Superior Court charged appellant Albert Troyer 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 filed a motion to suppress evidence pursuant to Penal Code section 1538.5. (CT 72, 92.) The court denied the motion, and appellant pled nolo contendere to both counts and admitted arming allegations. (CT 8, 92.) 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. (CT 124.) The Court of Appeal reversed the judgment, finding that the entry and cursory search of the upstairs bedroom was not justified under either the emergency aid doctrine or as a protective sweep. (Slip Opn. at 10.) The Court of Appeal denied respondent's petition for rehearing. On April 28, 2010, this Court granted respondent's petition for review.

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[6] The record does not indicate what type of lock was on the bedroom door or whether the door was locked from inside or from the outside.

SUMMARY OF ARGUMENT

The warrantless entry and search of the Abeyta residence for potential victims and suspects within minutes of the violent shooting complied with the Fourth Amendment. Under the emergency aid doctrine, the officers lawfully entered and searched the residence based on an objectively reasonable belief that someone inside could be in need of immediate aid. Further, the danger to the officers and everyone exposed in the front of the residence justified a *Buie*[7] protective sweep for suspects based on reasonable suspicion that a dangerous person could have been hiding inside.

ARGUMENT

I. THE ENTRY INTO THE RESIDENCE AND SEARCH FOR ADDITIONAL VICTIMS OR SUSPECTS COMPLIED WITH THE FOURTH AMENDMENT

Approximately six minutes after responding to an emergency call reporting a shooting, officers went inside the Abeyta residence to search for additional victims and clear the residence for possible suspects. The Court of Appeal ruled that the entry into the residence was lawful but that the search in the upstairs bedroom for additional victims or suspects violated the Fourth Amendment. According to the court, when the officers did not see evidence of a struggle or a trail of blood leading upstairs, they should have turned and left without completing their search. But the officers could not, in fulfilling their duties, leave the residence before ensuring that a victim was not inside or that a shooting suspect was not hiding in any room in the house and possibly endangering the victims, the civilians, and the officers just outside the front door. Respondent submits that the cursory

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[7] *Maryland v. Buie* (1990) 494 U.S. 325.

search of the upstairs rooms was lawful under the emergency aid doctrine and, also, as a protective sweep.

A. Standard of Review

The standard of review for challenges to a trial court's ruling on a Penal Code section 1538.5 motion to suppress evidence is well settled. This Court reviews the trial court's determination of the historical facts under the "deferential substantial evidence standard" and independently reviews the application of law to the facts. (*People v. Brendlin* (2008) 45 Cal.4th 262, 268.) Then, in "evaluating whether the fruits of a search or seizure should have been suppressed," the Court considers "only the Fourth Amendment's prohibition on unreasonable searches and seizures." (*Ibid.*) The Fourth Amendment provides:

> The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

(U.S. Const., 4th Amend.)

B. The Emergency Aid Doctrine Permitted the Warrantless Entry and Search for Additional Victims

The emergency aid doctrine is generally attributed to the United States Supreme Court decision in *Mincey v. Arizona* (1978) 437 U.S. 385, 392, which recognized that warrantless searches are permitted when officers "reasonably believe that a person within is in need of immediate aid." The reasoning behind the exception is that the "need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency." (*Id.* at p. 393, quoting *Wayne v. United States* (D.C. Cir. 1963) 318 F.2d 205, 212 (opinion of Burger, J.). It is now well established that under the emergency aid

doctrine "law enforcement officers may enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury." (*Brigham City, Utah v. Stuart* (2006) 547 U.S. 398, 403.) "Officers do not need ironclad proof of 'a likely serious, life-threatening' injury to invoke the emergency aid exception." (*Michigan v. Fisher* (2009) 558 U.S. ___, 130 S.Ct. 546, 549 (*per curiam*).) 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, and *Mincey v. Arizona*, *supra*, 437 U.S. at p. 392.) The usual warrant requirement is excused because an emergency situation requiring that officers act immediately to assist "persons who are seriously injured or threatened with such injury" is an "exigency obviating the requirement" of a search warrant. (*Brigham City, Utah v. Stuart*, *supra*, 547 U.S. at p. 403.) The Fourth Amendment does not "demand that public safety officials stand by in the face of an imminent danger and delay potential lifesaving measures while critical and precious time is expended obtaining a warrant." (See *State v. Frankel* (N.J. 2004) 847 A.2d 561, 568.) "It is difficult to imagine a scenario in which immediate police action is more justified than when a human life hangs in the balance." (*United States v. Holloway* (11th Cir. 2002) 290 F.3d 1331, 1337.)

The emergency aid doctrine, or "emergency doctrine" in some jurisdictions, is now recognized throughout the country as a lawful basis for *entering and searching* a residence when circumstances require immediate action. [8] The test is an objective one, which does not take into account an

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[8] See, e.g., *United States v. Martins* (1st Cir. 2005) 413 F.3d 139, 147; *Tierney v. Davidson* (2nd Cir. 1998) 133 F.3d 189, 196; *Good v. Dauphin County Social Services* (3rd Cir. 1989) 891 F.2d 1087, 1093;

(continued...)

officer's subjective state of mind. (*Brigham City, Utah v. Stuart*, *supra*, 547 U.S. at p. 404; accord, *United States v. Valencia* (8th Cir. 2007) 499 F.3d 813, 815.)[9] Further, a "reasonable belief that an emergency exists" is "a less exacting standard than probable cause." (See *United States v. Quezada, supra,* 448 F.3d at p. 1007; accord, *United States v. Holloway, supra,* 290 F.3d at p. 1336; see also *United States v. Najar, supra,* 451 F.3d at p. 718 [the "inquiry determining the existence of an exigency is essentially one of reasonable belief"].)

(...continued)
Hunsberger v. Wood (4th Cir. 2009) 570 F.3d 546, 554; *United States v. Troop* (5th Cir. 2008) 514 F.3d 405, 409; *Causey v. City of Bay City* (6th Cir. 2006) 442 F.3d 524, 528-529; *United States v. Richardson* (7th Cir. 2000) 208 F.3d 626, 627-631; *United States v. Quezada* (8th Cir. 2006) 448 F.3d 1005, 1007; *United States v. Stafford* (9th Cir. 2005) 416 F.3d 1068, 1073-1074; *United States v. Najar* (10th Cir. 2006) 451 F.3d 710, 718-720; *United States v. Holloway, supra,* 290 F.3d at p. 1336; *Hotrum v. State* (Alaska Ct.App. 2006) 130 P.3d 965, 968; *State v. Fisher* (Ariz. 1984) 686 P.2d 750, 760-761; *People v. Hebert* (Colo. 2002) 46 P.3d 473, 478-479; *State v. Fausel* (Conn. 2010) 993 A.2d 455, 461-462; *Guererri v. State* (Del. 2007) 922 A.2d 403, 406-408; *Riggs v. State* (Fla. 2005) 918 So.2d 274, 280; *State v. Drennan* (Kan. 2004) 101 P.3d 1218, 1231-1232; *People v. Meddows* (Ill.App. 1981) 427 N.E.2d 219, 222; *Wilson v. State* (Md.Ct.App. 2009) 975 A.2d 877, 886-887; *Commonwealth v. Snell* (Mass. 1999) 705 N.E.2d 236, 242-743; *People v. Davis* (Mich. 1993) 497 N.W.2d 910, 920; *State v. Lemieux* (Minn. 2007) 726 N.W.2d 783, 787; *State v. Illig* (Neb. 1991) 467 N.W.2d 375; *State v. Frankel, supra*, 847 A.2d at pp. 598-609; *State v. Ryon* (N.M. 2005) 108 P.3d 1032, 1039-1040); *People v. Molnar* (N.Y. 2002) 774 N.E.2d 738, 740; *State v. Matthews* (N.D. 2003) 665 N.W.2d 28, 32-34; *State v. White* (Ohio App. 2008) 886 N.E.2d 904, 910-911; *Duquette v. Godbout* (R.I. 1984) 471 A.2d 1359, 1362; *State v. Deneui* (S.D. 2009) 775 N.W.2d 221; *Laney v. State* (Tex.Crim.App. 2003) 117 S.W.3d 854, 861-862; *State v. Comer* (Utah App. 2002) 51 P.3d 55, 62-63; *Reynolds v. Commonwealth* (Va.App. 1990) 388 S.E.2d 659, 663-664.

[9] The "subjective motive" analysis 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.).)

In this case, the officers who entered and searched the Abeyta residence had an objectively reasonable basis for believing that additional victims needing immediate aid could have been inside the house. The record in this case is replete with the details of frightful crime scene. This was not a call of a cold burglary or a prowler: this scene was the aftermath of a violent shooting and physical attack. Sergeant Albright arrived alone, out of uniform, to find Mia Zapata shot multiple times and Abeyta bleeding profusely from a head injury on the porch outside the two-story residence. (RT 5-8, 35-36, 40, 42, 46.) He did not see a male victim, reported in the dispatch as possibly shot twice. (RT 4, 15.) He did not know Abeyta's connection to the residence or his role in the shooting. (RT 7, 10.) Ms. Zapata was constantly screaming, and Sergeant Albright had to give a civilian volunteer instructions on how to administer first aid to her while attempting to evaluate the scene. (RT 35-36, 40, 42.) Neighbors were running around in the street, uniformed officers were arriving, and emergency vehicles were approaching with sirens activated. (RT 5, 16, 42, 43.) There was blood all over the porch, and he could tell from the smudges of blood near the handle on the locked front door that someone who was bleeding had either gone into or come out of the residence. (RT 41, 45.) Added to this chaos and cacophony was the bizarre behavior by the only person on the scene connected to the residence who could talk to the officer. Sergeant Albright felt that he could not rely on the accuracy of Abeyta's denial that someone was in the house, and he was concerned that others could be inside. (RT 9-11, 24.) He could not see inside the residence because the blinds were down, and the activity and ambient noises outside prevented him from focusing on any sounds coming from the interior. (RT 19, 41-43.)

On these facts, any reasonable officer would believe that it was necessary to enter the residence without delay and search for any additional

victims, particularly a male shooting victim identified in the dispatch report. Reasonable, responsible officers could not simply hope for the best because "it does not meet the needs of law enforcement or the demands of public safety to require officers to walk away from a situation . . . ." (See *Michigan v. Fisher*, *supra*, 130 S.Ct. at p. 549.)[10] In deciding the reasonableness of an officer's actions under the emergency aid doctrine, it is appropriate look to whether it would be a dereliction of duty to abandon an investigation and jeopardize 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.) It is not enough to say that the situation was ambiguous, that additional victims or suspects *might not* have been inside the Abeyta residence. Peace officers are "expected to aid those in distress, combat actual hazards, prevent potential hazards from materializing, and provide an infinite variety of services to preserve and protect community safety." (*United States v. Rodriguez-Morales* (1st Cir. 1991) 929 F.2d 780, 784-785; accord, *People v. Ray, supra*, 21 Cal.4th at p. 467 (lead opn. of Brown, J.).) Officers responding to emergency situations often must make "an on-the-spot judgment based on incomplete information and sometimes ambiguous facts bearing upon the potential for serious consequences" (see *United States v. Martins, supra,* 847 413 F.3d at p. 147), and courts must "examine the conduct of those officials in light of what was reasonable

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[10] 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.)

under the fast-breaking and potentially life-threatening circumstances that were faced at the time" (*State v. Frankel*, *supra*, 847 A.2d 561, 568, citing *Terry v. Ohio* (1968) 392 U.S. 1, 21-22; see also, *Wayne v. United States, supra*, 318 F.2d at p. 212 ["the business of policemen and firemen is to act, not to speculate or meditate on whether the report is correct"]). The officers in this case knew that someone who was bleeding had come out of or gone into the Abeyta residence: the chance of a victim in need of aid not only permitted the entry but, more pointedly, demanded it.

Furthermore, the fact that two possible victims were already found outside the house in distress did not neutralize the need to look for additional victims. In *Tamborino v. Superior Court* (1986) 41 Cal.3d 919, 922, officers were dispatched to an apartment complex on reports that a robbery victim was believed to be injured and bleeding. The officers did not receive descriptions of the victims or the suspect. (*Ibid.*) When they arrived, they saw blood spots on the walkway outside Tamborino's apartment. (*Ibid.*) A neighbor told them that an injured person was in the apartment. (*Ibid.*) The officers kicked in the door and entered after they heard sounds inside the apartment without anyone answering the door. (*Ibid.*) Tamborino was in the living room bleeding from his face, with blood on his head, neck and hands. (*Ibid.*) Because the officers did not know if Tamborino was a victim or the suspect, they escorted him outside. (*Ibid.*) One officer then re-entered the apartment to determine if other injured persons were inside. (*Ibid.*) Approving the second entry and search, this Court explained that "the 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.) The Court concluded "that the discovery of one wounded victim afforded

reasonable cause to enter and briefly search for additional victims." (*Id.* at p. 924.) 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.*)

The discovery of one shooting victim also did not invalidate the search for additional victims in *People v. Hill* (1974) 12 Cal.3d 731.[11] In *Hill*, officers were dispatched to investigate a residential shooting that had occurred very recently. (*Id.* at p. 755.) One person with serious wounds had been transported to a hospital. (*Ibid.*) On an automobile parked outside and on the fence and porch of the residence, the officers found fresh bloodstains. (*Ibid.*) Through a porch window they could see what looked like more bloodstains on the floor inside the house. (*Ibid.*) The circumstances justified a warrantless entry and search of the residence:

> Although only one casualty had thus far been reported, others may have been injured and may have been abandoned on the premises. There was no response when the officers knocked and announced themselves, and entering the premises was the only practical means of determining whether there was anyone inside in need of assistance. If there was, the delay incidental to obtaining a search warrant could have resulted in the unnecessary loss of life. Under the circumstances it was reasonable for the officers to believe that the shooting may have resulted in other casualties in addition to that reported to the police and that an immediate entry was necessary to render aid to anyone in distress.

(*Ibid.*; see also *United States v. Mason* (D.C.Cir. 1992) 966 F.2d 1488, 1492 [after finding shooting victim outside his residence, warrantless entry and sweep were lawful because officers did not know if suspects had returned or whether more victims were inside].)

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[11] Overruled on a separate ground in *People v. DeVaughn* (1977) 18 Cal.3d 889.

Here, too, the only practical means of determining whether there was someone inside the Abeyta residence in need of aid was to enter and search the residence. It was not just a matter of the chaotic crime scene: Abeyta's odd and evasive responses to Sergeant Albright's simple inquiry whether anyone was inside the house significantly exacerbated the situation. In *United States v. Russell* (9th Cir. 2006) 436 F.3d 1086, 1089-1090, officers responded to two 9-1-1 calls reporting two men shot in a residence and found two women outside the residence with one male shooting victim who would not identify himself and rebuffed the officer's inquiry as to what had happened. Upholding a warrantless entry and search of the residence, the court found, instead, that "[g]iven the substantial confusion and conflicting information, the police were justified in searching the house in order to determine whether there were other injured persons, as their information indicated was the case." (*Id.* at p. 1090.) Abeyta's evasive and conflicting responses to Sergeant Albright's questions, the report of a male shooting victim, and the fact that someone bleeding may have caused the bloodstains on the locked front door left the officers uncertain as to whether someone in the residence needed their help or whether a suspect was secreted inside.

The uncertainty needed to be resolved and resolved swiftly. The Supreme Court has warned against the dangers of after-the-fact repudiations of police actions in the midst of an emergency, finding error for a reviewing court "to replace that objective inquiry into appearances with its hindsight determination that there was in fact no emergency." (*Michigan v. Fisher*, *supra*, 130 S.Ct. at p. 549.) "When policemen, firemen or other public officers are confronted with evidence which would lead a prudent and reasonable official to see a need to act to protect life or property, they are authorized to act on that information, even if ultimately found erroneous." (*Wayne v. United States, supra,* 318 F.2d at p. 212.) Courts must "avoid viewing the events through the distorted prism of

hindsight, recognizing that those who must act in the heat of the moment do so without the luxury of time for calm reflection or sustained deliberation." (*State v. Frankel, supra,* 847 A.2d 561, 568.) When police have "only a few minutes in which to determine whether a lurking predator or injured person in need of assistance might be inside [a] house" it is unreasonable for a court "to expect the police to piece together a perfectly coherent picture in the scant minutes they had to digest the constantly-updated and conflicting information." (*United States v. Russell, supra,* 436 F.3d at p. 1091.) The officers in this case had six minutes to assess the scene, the victims, the conflicting information, and the suspicious responses from the only person who had access to the residence. The only rational conclusion was that the officers had to search every room of the residence to eliminate the possibility of additional victims.

Finally, under the facts of this case, the officers could not stop at the front hallway. The United States Supreme Court has articulated the proper scope of a search based on emergencies or exigencies: specifically, 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; see also *Arizona v. Hicks* (1987) 480 U.S. 321, 325 [noting that *Mincey* addresses the scope of a primary search].)

For example, homeowners sued a sheriff's sergeant for violations of the Fourth Amendment for searching their residence in response to a 9-1-1 call by a neighbor concerned that the house was being vandalized while the owners were away. (*Hunsberger v. Wood, supra*, 570 F.3d 546.) The sergeant found a car in front of the residence connected to a teenage girl who could not be located by her parents, and the circumstances suggested the strong possibility of an intruder inside the residence. (*Id.* at pp. 555-556.) The owners contended that, even if the entry was justified under the emergency doctrine, the scope of the search of the upstairs rooms and

basement was unreasonable because the sergeant did not find evidence of vandalism on the first floor. (*Id.* at p. 556.) The court rejected their argument:

> The fact that there was no evidence of vandalism in the main living area did not require the conclusion that all was well in the Hunsberger house. Vandals do not confine their search for valuables to downstairs rooms, nor do they rule the upstairs out of bounds for hiding or for inflicting serious harm on others they may happen upon in a house.

(*Ibid.*) Additionally, the sergeant had not yet located the missing teenager, "[n]or did anything he saw on the first floor make clear who had been or remained in the house that night, and thus it was not unreasonable for him to continue searching in order to determine whether an unauthorized person was present." (*Ibid.*) Accordingly, the sergeant's actions did not exceed the scope of the initial justification for the cursory search for suspects or victims.

Similarly, here the officers were looking for suspects and possible victims, who could have been injured or hidden any where in the house. The blood droplets and smudges on the front door indicated that someone who had been bleeding had come out of or gone into the house. The officers were faced with proving a negative: their task was to make certain that someone needing their aid was not inside. There was no reason to assume that a victim would be found only in the front hall or in the one of the downstairs rooms. The same exigent circumstances that allowed the entry into the house also allowed the search of all the rooms in the house, including the locked upstairs bedroom.

C. Officers Also Lawfully Conducted a Protective Sweep of the Residence

A "protective sweep" is a narrowly tailored visual inspection of places where a person posing a danger to the officers or others might be hiding.

(*Maryland v. Buie, supra,* 494 U.S. at p. 327.) A peace officer may conduct a protective sweep of an entire residence upon reasonable suspicion, based on "'"'specific and articulable facts which, taken together with the rational inferences from those facts, reasonably warrant[ed]" the officer in believing,' [citation] that the area swept harbored an individual posing a danger to the officer or others." (*Ibid.*; see *People v. Celis* (2004) 33 Cal.4th 667, 678.) Protective sweeps are not limited to arrests in the home. (See *People v. Ledesma* (2003) 106 Cal.App.4th 857, 864.) Additionally, the principles of *Buie* have been applied to entries into a house to conduct a protective sweep when the potential danger may be inside the residence. (See *People v. Maier* (1991) 226 Cal.App.3d 1670; see also *People v. Mack* (1980) 27 Cal.3d 145, 149-150.) At times, the "officers' right to enter and investigate the premises under the emergency exception [coincide] with their right to conduct a 'protective sweep' of those areas that they reasonably believed might 'harbor an individual posing a danger.'" (See *Earle v. United States* (D.C. 1992) 612 A.2d 1258, 1264.)

In *Celis*, this Court linked *Buie* protective sweeps to the principles set forth in *Terry v. Ohio, supra,* 392 U.S. 1, and 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.]

(*People v. Celis*, *supra*, 33 Cal.4th at p. 678.) What *Buie* requires is merely "a reasonable suspicion that the area to be swept harbors a dangerous person." (*Ibid.*)

Under the facts of this case, Sergeant Albright and his officers were faced with circumstances giving rise to the reasonable concern that dangerous persons could be inside the Abeyta residence. As discussed *supra*, there already had been a shooting and a violent assault, with one victim shot multiple times found on the front porch of the house. The situation was rapidly evolving, and the victim, civilians, emergency personnel, and police officers were exposed and at risk outside the two-story residence. (RT 10, 43.) Sergeant Albright had not observed the suspects or their vehicle, and someone had caused a blood smear on the locked front door either coming out or going inside the residence. (RT 5, 19, 41.) The only person who reported the suspect having fled was codefendant Abeyta, who was not reliable based on his demeanor, injuries, and conflicting responses. (RT 7, 16, 20, 38.) To protect his officers and the others in front of the house, approximately six minutes after his arrival--when enough uniformed officers were present--Sergeant Albright authorized the cursory sweep for victims and suspects.[12] On the second floor of the house, officers found a locked bedroom, which is exactly where a suspect would hide. The rational inference from the objective facts was that someone with the gun used to shoot the victim could have been inside the house and, specifically, inside the locked bedroom. The officers would have placed themselves and everyone at the scene at risk had they not conduced a cursory sweep of all rooms of the residence.

Moreover, the officers could not wait to conduct the sweep. "The Fourth Amendment does not require police officers to delay in the course of an investigation if to do so would gravely endanger their lives or the lives

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[12] Sergeant Albright could not go into the house without protective gear and without police insignia that would easily identify him as an officer to anyone inside the residence. (RT 12-14, 43.)

of others." (*Warden v. Hayden* (1967) 387 U.S. 294, 298-299.) The level of violence resulting in the shooting of Mia Zapata and the high degree of risk associated with the possibility that a shooting suspect could be inside the residence warranted a corresponding level of protective conduct. The officers could not be expected to place themselves and others at risk by failing to sweep the residence.

CONCLUSION

The judgment of the Court of Appeal should be reversed.

Dated: June 24, 2010

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached **APPELLANT'S OPENING BRIEF ON THE MERITS** uses a 13 point Times New Roman font and contains 5,053 words.

Dated: June 24, 2010

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **People v. Troyer**
No.: **S180759**

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 June 25, 2010, I served the attached **RESPONDENT'S OPENING BRIEF ON THE MERITS** 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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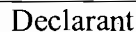
I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on June 25, 2010, at Sacramento, California.



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