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

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

RESPONDENT'S REPLY BRIEF

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The Court of Appeal in its decision found that the entry into the Abeyta residence was lawful under the emergency aid exception but that the continued search of the locked upstairs bedroom violated the Fourth Amendment. (Slip Opn. at 2, 10.) Appellant argues that even the initial entry was not justified. (Answer Brief at 2, 26-33.) He claims that the entry and search were not lawful under the emergency aid doctrine as articulated in *Brigham City, Utah v. Stuart* (2006) 547 U.S. 398 and *Michigan v. Fisher* (2009) 558 U.S. ___, 130 S.Ct. 546, 549 (*per curiam*). (Answer Brief at 12-26.) He further claims that a *Maryland v. Buie* (1990) 494 U.S. 325 protective sweep must be connected to an arrest inside a residence and founded on probable cause. (Answer Brief at 2, 37-51.)

The Fourth Amendment does not bar law enforcement officers from rendering aid or protecting the public or themselves from harm in the performance of their duties. What the Fourth Amendment prohibits are unreasonable government intrusions. Despite appellant's claims to the contrary, the entry and search of the Abeyta residence was reasonable police conduct based on the objective facts known to the officers who responded to the 9-1-1 call. In lawfully performing their duties, the officers had to search the residence for additional victims and ensure that no one at the scene was in danger in the wake of the violent shooting.

I. THE EMERGENCY AID DOCTRINE AUTHORIZES WARRANTLESS ENTRIES AND SEARCHES BASED ON OBJECTIVELY REASONABLE GROUNDS FOR BELIEVING THAT SOMEONE IS IN NEED OF IMMEDIATE AID

Appellant asks this Court to disregard United States Supreme Court authority and find that a warrantless entry and search of a residence under the emergency aid doctrine must be based on probable cause. (Answer Brief at 1, 16-18.) This argument ignores the now well-established

exception under the emergency aid doctrine allowing the warrantless entry of a home "to render emergency assistance to an injured occupant or to protect an occupant from imminent injury." (*Brigham City, Utah v. Stuart, supra,* 547 U.S. at p. 403.) Officers do not need probable cause: rather, they must have "'an objectively reasonable basis for believing,' that 'a person within [the house] is in need of immediate aid.'" (*Michigan v. Fisher, supra,* 130 S.Ct. at p. 548, quoting *Brigham City, Utah v. Stuart, supra,* 547 U.S. at p. 403, and *Mincey v. Arizona* (1978) 437 U.S. 385, 392.) Stated otherwise, the probable cause "element" is "satisfied where officers reasonably believe a person is in danger." (*United States v. Holloway* (11th Cir. 2002) 290 F.3d 1331, 1338.) What the Fourth Amendment requires are objective facts providing a reasonable basis for believing that an entry or search is necessary to provide immediate aid or protect an occupant from injury.

A. The Situation Outside the Abeyta Residence Minutes After the Armed Assault Justified the Warrantless Entry and Search Under the Emergency Aid Doctrine

In the Opening Brief, respondent discusses the scene outside the Abeyta residence and the circumstances that the officers responding to the 9-1-1 call were facing. (Opening Brief at 1-4, 8-9, 13.) Disagreeing with the Court of Appeal, appellant argues that these circumstances did not justify an immediate entry to search for additional victims. (Answer Brief at 2, 26.) He further claims that the officers could not search any part of the residence for victims or suspects based on his rendition of the facts. (Answer Brief at 26-35.)

The actual factual circumstances confronting the officers are critical in this case, and respondent does not agree with appellant's factual discussion. First, Albright did not testify that he had determined that Abeyta was the reported male victim in the dispatch call. (Answer Brief at

6, 26, 29.) This was an emergency 9-1-1 call, not a call from another officer who had already evaluated the crime scene. Officer Albright had not heard the 9-1-1 call himself, and he would not have known who made the call: he heard only the dispatch report on his radio. (RT 4, 14-15, 39-40.)[1] That report indicated that a man had been shot, possibly twice, and that a two-door Chevrolet was associated with the shooting. (RT 4, 15.) The broadcast did not include a description of the victim. (RT 4.)[2] What Sergeant Albright found at the scene was a woman who had been shot multiple times and Abeyta walking around on the front porch after having sustained an apparent head injury, with blood streaming down the back of his head and covering his face. (RT 5-8, 36, 40.)[3] Sergeant Albright never stated that he had identified Abeyta as the reported male shooting victim[4] or

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[1] The 9-1-1 tape was played at the hearing during Sergeant Albright's cross-examination, and Sergeant Albright was asked to compare the voice of the caller with Abeyta's voice. (RT 33-35.)

[2] Appellant makes numerous references to Abeyta as fitting or not fitting the "description" in the 9-1-1 dispatch. (Answer Brief at 26, 29, 32 fn. 19.) Sergeant Albright testified that the report he heard was of a male shot, possibly twice. (RT 4, 15.) He did not testify to any description of the male shooting victim. Further, it was Abeyta who, at the scene, provided physical descriptions of the suspects. (RT 7, 16, 20, 38, 40.)

[3] Sergeant Albright did not refer to Abeyta as having been pistol-whipped. The references to his having been pistol-whipped came from appellant's attorney during cross-examination and in the prosecutor's closing argument. (RT 15, 64, 75.)

[4] Respondent disagrees with appellant's statement that "Albright testified that before the search he had understood Abeyta to be the injured victim identified in the dispatch call." (Answer Brief at 29, citing RT 8; see also, Answer Brief at 26—"the record indicates that Albright did, in fact, believe Abeyta to be the reported male victim," citing RT 8.) Appellant's assertion is based on the following testimony:

> [PROSECUTOR:] Let me back up just a second.
>
> In relation to the amount of blood that was on Mr. Abeyta's face and in, about his head area, can you

(continued...)

that Abeyta's condition resolved whether there were other shooting victims in addition to Mia Zapata. He testified that after talking to Abeyta he was unsure whether "there were further victims located within the residence that were unknown." (RT 10.) He stated on cross-examination that after his initial assessment of the scene he was concerned that a victim could be inside the house. (RT 24-26.)[5] A reasonable officer carrying out his duties to protect the public and provide aid to victims would not have determined that all victims were accounted for based on the limited information in the

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(...continued)

> describe for us whether or not you had any concerns about Mr. Abeyta?
>
> [SERGEANT ALBRIGHT:] Yes. Due to the amount of blood and the fact that originally the report was that a male had been shot, combined with a head injury and the amount of blood, I had concern for his safety.

(RT 8.) Sergeant Albright did not say that Abeyta had been shot, and he never described Abeyta's head injury as a gunshot wound. (RT 8-9, 11, 24-25, 28.) Although Abeyta was clearly involved in violence that resulted in a head injury, the only gunshot victim identified on the record was Ms. Zapata. (RT 36, 40.)

[5] Appellant abbreviates Sergeant Albright's full statement on cross-examination. (Answer Brief at 32-33.) His full testimony was as follows:

> [MR. BOWMAN:] And was there any other reason you wanted to go in the residence other than just perhaps there's a suspect or perhaps there's a victim?
>
> A To find a suspect or a victim, if that truly existed.
>
> Q Did you feel that since [Abeyta] was being untruthful with you that there might be some evidence in there of illegal activity?
>
> A At that particular time, my focus was to find the suspect or victims located inside.
>
> Q I know, but – so I guess the answer is no?
>
> A Sitting here today, absolutely. At the time, no, I was concerned, again, with further suspects and a victim inside.

(RT 25-26.) Sergeant Albright also stated, "I had a duty to ensure in my opinion that there were no suspects or victims inside." (RT 24.)

9-1-1 dispatch, Abeyta's evasive responses,[6] and the violent scene encountered in the first minutes of the investigation. There were no operative certainties except the fact that a woman found screaming on the front porch had been short multiple times and a man, whose connection with the residence was unclear, had sustained a head injury.

Second, appellant asserts that "[t]here was no evidence that the shooting actually occurred at that address." (Answer Brief at 26.) The dispatch indicated that a shooting "had just occurred at" 9253 Gem Crest Way in Elk Grove. (RT 4.) Sergeant Albright arrived approximately two minutes after the dispatch and found blood surrounding the scene. (RT 4-5, 19, 31.) Samaritan first aid was being administered to Ms. Zapata by a neighbor in front of the residence. (RT 5-6, 35, 40.) Further, Sergeant Albright adduced that a violent shooting had occurred mere feet from "or within the doorway area" of the residence. (RT 19.) He also noted blood patterns on the closed front door indicating that someone who was bleeding had been in contact with the door.[7] (RT 19, 41, 45.) It was evident to the officers at the scene that the shooting had occurred at the Abeyta residence.

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[6] Sergeant Albright did not believe that Abeyta was being truthful. (RT 23-24.) Sergeant Albright believed that Abeyta's information was unreliable either because he was being purposefully untruthful or because of his head injury and excitable state. (RT 11, 23-25.)

[7] Appellant states that the record does not support respondent's assertion at page three of the Opening Brief that "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) . . . ." (Answer Brief at 6, fn. 3.) Sergeant Albright testified that "there was blood on the door" (RT 19). He described "smudge marks" on the closed front door, "as well as some blood droplets on the door itself, in multiple areas." (RT 41.) He explained the significance of these observations, concluding that "an individual who was bleeding at some point came into contact with that door either by virtue of ingress or egress." (RT 41.) He had the additional following exchange with appellant's counsel on cross-examination:

(continued...)

On these facts and the facts fully discussed in the Opening Brief,[8] Sergeant Albright had a reasonable basis for believing that the entry and search of the residence was necessary to ensure that additional victims were not inside. Beyond what was indicated in the 9-1-1 dispatch, there were already two apparent victims outside. If Abeyta was not a shooting victim, it left a male shooting victim unaccounted for. Sergeant Albright could not see into the house or hear above the cacophony of the shooting scene. Abeyta had the keys to the house, but he could not directly answer Albright's questions whether anyone else was inside. Abeyta's answer that he did not believe anyone was in the house (response #2)[9] was not a sufficient guarantee against someone being inside in need of immediate aid. Appellant is not correct in stating that officers may enter and search only if they have an "identifiable potential victim." (Answer Brief at 33.) Nothing in *Brigham City* or *Fisher* adds this requirement to the emergency aid

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(...continued)

> [MR. BOWMAN:] Does that appear to be an accurate photograph of the front door of the residence in which we've been talking about?
>
> [SERGEANT ALBRIGHT:] Correct.
>
> Q I see that – at least as I look at the front door, it looks like there may be something of a foreign nature or foreign substance on the door; I would say in the middle to the right of the door. Would that be a fair statement? If you can even see it?
>
> A There's something there, yes.
>
> Q Could you describe where the other blood was at on that door?
>
> A I believe it's more near the handle side of the door on the exterior portion.

(RT 45.) Sergeant Albright therefore identified blood near the handle side of the exterior portion of the door.

[8] See Opening Brief at pages 1-4, 9 and 13.

[9] Abeyta had provided three different responses in approximately 90 seconds. (RT 9, 21.)

exception. Here, the officers were looking for a direct victim of the violent shooting that had occurred minutes earlier: they were not operating on gut instincts or a "theoretical possibility." (See Answer Brief at 32-33.) They were faced with a violent crime scene involving at least one shooting victim and uncontroverted evidence that someone who was bleeding had come into contact with the locked front door in either coming out of or going into the residence.

The two out-of-state "third-party" cases appellant relies on were decided on different facts. (Answer Brief at 30-33.) *People v. Allison* (Colo. 2004) 86 P.3d 421 was a pre-*Brigham City* decision that found that the officer's primary objective in re-entering the defendants' residence was for a law enforcement purpose--not to render emergency aid. (*Id.* at p. 429.) Further, although the initial entry following a 9-1-1 hang-up call was not disputed, the officer's re-entry to search for a possible roommate after the two domestic dispute combatants had been removed from the home was not justified under the emergency aid exception. (*Id.* at p. 427.) The police had no information that children were involved or that a third party needing emergency assistance might have participated in the dispute. (*Ibid.*) The officers observed only minor facial injuries on the combatants and personal items broken and in disarray in the residence. (*Ibid.*) The court noted that the officers had not observed any weapons or any other blood outside or inside the residence, and there were no signs that a gun had been used. (*Ibid.*) The couple's minor injuries and the broken personal items "did not indicate that a third party was in need of emergency assistance." (*Id.* at p. 428.) In *Hannon v. State* (Nev. 2009) 207 P.3d 344, 345, officers forced their way into an apartment after a neighbor had called 9-1-1 reporting a possible domestic disturbance. The argument had stopped 45 minutes before the officers arrived. (*Ibid.*) A woman who was red-faced, crying, and breathing hard answered the door, and a man behind her appeared

flushed and angry; both parties refused to allow the officers into the apartment. (*Ibid.*) Neither party exhibited signs of injury, and both stated they were unharmed. (*Id.* at p. 347.) The court noted that the altercation was over by the time the officers arrived, which meant that there was "no apparent need for swift action." (*Ibid.*) Further, neither person in the apartment appeared to have been injured, and nothing whatsoever indicated that an unidentified third person in the apartment might have been in need of emergency assistance. (*Id.* at pp. 347-348.)

Neither *Hannon* nor *Allison* approaches the facts of this case. The officers in this case were not looking for an incidental third-party victim after resolving a domestic dispute call. Rather, Sergeant Albright arrived at the scene of a violent shooting just minutes after a 9-1-1 call to find one victim shot multiple times on the front porch, another victim with a head injury, blood surrounding the scene, blood marks on the front door indicating that someone who was bleeding has used that door, and the only person who could speak to them about the shooting unable or unwilling to clearly state whether there was anyone inside the two-story house. Appellant has not advanced any case in which, upon these facts, officers could have remained outside without checking for victims.

Moreover, contrary to appellant's claims, this obligation to find any additional victims extended to the upstairs bedroom. The scope of a search based on emergencies or exigencies derives from the exigency necessitating the search. (See *Mincey v. Arizona, supra*, 437 U.S. at p. 393; see also *Arizona v. Hicks* (1987) 480 U.S. 321, 325.)[10] The exigency in this case was the possibility of additional victims. Officer Sao, who led the search, indicated that his instructions were "[t]o make sure that there was no extra

[10] Respondent did not assert that the scope of a search under the emergency aid doctrine is "static." (See Answer Brief at 34.)

victims or suspect inside [the] residence." (RT 50.) The scope of his search was to look in all areas where "a body could be lying on the floor" and in closets. (RT 51.) All the doors to the rest of the bedrooms of the second floor were open; only the one bedroom door was locked. (RT 51.)[11] The fact that the door was locked when the other bedroom doors were open increased the likelihood that someone could have been inside that room. A reasonable officer charged with clearing the Abeyta residence to find additional victims would not turn and walk away from the locked bedroom door.

As the Supreme Court recognized in *Fisher*, a valid inquiry in determining reasonable conduct under the Fourth Amendment is whether the conduct comports with the demands we place on our law enforcement officers. (*Michigan v. Fisher, supra*, 130 S.Ct. at p. 549 ["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"].) Professor LaFave has recognized that "the question is whether 'the officers would have been derelict in their duty had they acted otherwise.'" (3 W. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment* (4th ed. 2004) § 6.6(a), at 453; see also *People v. Hochstraser* (2009) 178 Cal.App.4th 883, 902; *People v. Seminoff* (2008) 159 Cal.App.4th 518, 530.) 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.

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[11] As stated in the Opening Brief, the lock was not described. It bears noting, however, that interior bedroom doors in a single family residence generally lock from the inside.

(Slip dis. opn. by Nicholson, J., at 3, quoting *United States v. Black* (9th Cir. 2007) 482 F.3d 1035, 1040.) What is or is not discovered in an emergency search does not bear on whether the search was reasonable. (See 3 W. LaFave, *supra*, § 6.6(a), at 453.) The officers in this case could not walk away. (See RT 24 and footnote 5, *supra*.) As Justice Nicholson concluded, "[w]hat the majority calls a violation of the Fourth Amendment" was "a reasonable and brave execution of law enforcement duties":

> 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 the residence was justified, and a swift search of the house to find the possible victims was the essence of that justification. That, in hindsight, no other victim was found in the residence may make it more comfortable to find a violation of the Fourth Amendment, but it did not make the search less reasonable.

(Slip dis. opn. by Nicholson, J., at 3-4.)

On the facts of this case, any objectively reasonable officer would have entered the bedroom to determine whether a victim in need of immediate aid was behind the locked door. Sergeant Albright, without protective gear and without backup, had approached the shooting scene even though the area was not secure because it was his duty, because he had "a responsibility to somebody who's been shot multiple times, and that responsibility . . . outweighed the safety issue." (RT 24, 26.) This is brave and commendable action, and it is what we expect from our officers. We also expect that they will go inside a house and face further danger upon a reasonable belief that others are in need of immediate aid. Embodied in the Fourth Amendment is the "overarching principle of 'reasonableness.'"

(*United States v. Villamonte-Marquez* (1983) 462 U.S. 579, 588.) Someone who was bleeding had either come out of or gone into the residence through the front door. Under the facts of this case, it was reasonable for the officers to enter the residence and conduct an immediate search of all areas where they might find an additional victim. The Fourth Amendment does not require that law enforcement officers shirk their duties and walk away, but that is what the majority opinion in this case informs them to do.

II. THE CURSORY SEARCH OF THE RESIDENCE WAS ALSO JUSTIFIED AS A *BUIE* PROTECTIVE SWEEP

Appellant asserts that officers may not *enter* a residence to conduct a protective sweep and that probable cause is necessary to conduct a *Buie* search. (Answer Brief at 2, 48.) He further restricts *Buie* protective sweeps to arrest situations only. (Answer Brief at 47-50.) His final claim is that, even if the officers in this case could have conducted a protective sweep of the residence, they could not check the locked upstairs bedroom. (Answer Brief at 51.) As discussed in the Opening Brief,[12] the circumstances in the minutes following the shooting justified a protective sweep of the residence, including a search of the locked upstairs bedroom.

As with the preceding section, respondent challenges appellant's assertions concerning what the officers knew about the suspects in the shooting and assault. Appellant states that "based on the information known to [the] police, all known suspects had fled." (Answer Brief at 2, 41, 43.) However, the information in the dispatch call was limited to a description of the suspect vehicle—a two-door Chevrolet. (RT 4.) It was Abeyta who gave Sergeant Albright a description of the suspects and indicated that they had fled in the Chevrolet. (RT 7, 16, 20, 38.) Abeyta,

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[12] See Opening Brief at pages 16-17.

because of his conflicting answers and evasiveness, was not a reliable source for such critical information: Sergeant Albright did not believe that Abeyta was being truthful, and he was concerned that others could be inside. (RT 9-11, 23-25.) The officers did not know who lived in the house. (RT 7, 10, 22.)[13] Further, although Abeyta was injured, that did not mean that he was not involved as a perpetrator. The problem was that the officers were faced with an unfolding criminal investigation just minutes after a shooting and their response had to be measured by the immediate uncertainties before them. It would not have been reasonable for the officers to simply accept Abeyta's assertions when he could not reliably state that no one else was in the residence.

Respondent also disagrees with appellant's discussion of second-tier *Buie* sweeps. (See Answer Brief at 37-51.) The Supreme Court in *Buie* set forth criteria for two forms of protective sweeps. In the first circumstance, officers do not need articulable facts to search closets and spaces immediately adjoining the place of arrest "from which an attack could be immediately launched." (*Maryland v. Buie, supra*, 494 U.S. at p. 334.) Beyond that is the second-tier *Buie* sweep of nonadjoining areas, which requires "articulable facts" and "rational inferences from those facts" that "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." (*Ibid.*) Although *Buie* concerned an arrest, second-tier protective sweeps are not limited to arrests in the home. (See *People v. Ledesma* (2003) 106 Cal.App.4th 857, 864 [relying on the following federal appellate decisions clarifying that *Buie* is not limited to arrest situations: *United States v.*

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[13] Appellant asserts that the suspects did not live at the residence (Answer Brief at 49, fn. 16), but Sergeant Albright did not know whose house it was when he was evaluating the necessity of searching the house for additional victims and suspects (RT 10).

Taylor (6th Cir. 2001) 248 F.3d 506, 513; *United States v. Patrick* (D.C. Cir. 1992) 959 F.2d 991, 996-997; *Drohan v. Vaughn* (1st Cir. 1999) 176 F.3d 17, 22]; accord, *United States v. Gould* (5th Cir. 2004) 364 F.3d 578, 584 (en banc) ["arrest is not always, or *per se*, an indispensable element of an in-home protective sweep, and that although arrest may be highly relevant, particularly as tending to show the requisite potential of danger to the officers, that danger may also be established by other circumstances"].)

Appellant does not address the cases cited in the Opening Brief applying the principles of *Buie* to residential entries for the purpose of conducting protective sweeps when the potential danger to officers may be inside the residence. In *People v. Maier* (1991) 226 Cal.App.3d 1670, 1673-1674, the suspect in a murder and robberies investigation was ordered out of a residence in Illinois and arrested while other officers entered to search for confederates. In their search, they found the gun used in a California execution. (*Id.* at p. 1674.) Validating the *Buie* sweep, the Court of Appeal found that *Buie* allowed the entry into the residence to search for possible confederates. (*Id.* at pp. 1675-1677.) The court compared the case to the facts of *Buie* and noted that an "accomplice on another floor is surely no more dangerous than one on the other side of a window, or a door." (*Id.* at p. 1675.)

In *People v. Mack* (1980) 27 Cal.3d 145, 149, this Court in a pre-*Buie* decision approved the entry into a residence to search for possible other suspects after officers ordered a group of five occupants out of a suspect's garage. The officer who entered the garage to make sure that no other suspects remained inside observed stolen property in plain view. (*Ibid.*) The Court held that the entry and search were lawful based on the officer's justifiable concern for his own safety. (*Id.* at p. 151.) His actions were based on specific and articulable facts: the officer knew that a juvenile who lived at the residence had been arrested for armed robbery involving shots

fired; the juvenile's accomplices had escaped; dangerous fugitives thus might have been in the garage; stolen property reportedly in the garage included firearms, which gave anyone in the garage access to deadly weapons; and the officer did not know if the five men who had come out of the garage included all five accused burglary suspects. (*Id.* at p. 151.) No one was arrested outside the garage prior to the search, and the sole justification was the need for officer safety outside the residence. Nothing in *Buie* invalidates the Court's analysis or holding. Consistent with *Buie*, a cursory sweep of a residence is reasonable under the Fourth Amendment if it is based on articulable facts justifying a reasonable belief that persons posing a danger to officers are inside.

Arguing for a different rule, appellant relies on *People v. Celis* (2004) 33 Cal.4th 667. (Answer Brief at 40-42.) In *Celis*, this Court never reached the question whether a detention outside a residence during a narcotics investigation justified a warrantless entry to conduct a second-tier *Buie* search. (*People v. Celis, supra*, 33 Cal.4th at p. 679.) Because the officers lacked specific and articulable facts supporting "a reasonable suspicion that the area to be swept harbors a person posing a danger to officer safety," the entry was "presumptively unreasonable." (*Id.* at pp. 679-680.)

Appellant asserts that the facts of *Celis* are more compelling than the circumstances confronting the officers in this case. (Answer Brief at 42.) However, unlike the facts of the present case, the officers in *Celis* did not have reason to suspect that someone who could pose a danger might be inside the house. (*People v. Celis, supra,* 33 Cal.4th at p. 679.) The "type of criminal conduct underlying" a search "is significant in determining if a protective sweep is justified." (*People v. Ledesma, supra*, 106 Cal.App.4th at p. 865.) A violent shooting and assault preceded the entry in this case. Whereas Celis and his associate were not armed when they were detained

outside the residence, the officers knew that the suspects in this case had recently used a firearm to shoot Ms. Zapata. (See *People v. Celis, supra*, 33 Cal.4th at p. 679.) Further, the detention in *Celis* followed a narcotics surveillance effort where officers had the chance to collect and coolly evaluate their findings. (See *id* at pp. 672-673.) In the present case, officers were responding to a very recent shooting and assault. It was significant in this case that the shooting had occurred on the porch "mere feet or within the doorway area" (RT 19) and that someone who was bleeding had touched the front door in entering or leaving the residence, which connected the crime to the house. (See Answer Brief at pp. 45, 49 fn. 16, 51.) Additionally, the officers and the civilians were positioned in front of the two-story residence, so they were easy targets if an armed suspect had taken refuge in the house and entered an upstairs room facing the street. (See RT 10, 17, 37.) Unlike *Celis*, articulable and specific facts supported a reasonable suspicion that the officers, the victims, and the emergency personnel were at risk until the officers checked the residence for additional suspects.

Appellant also relies on *Minnesota v. Olson* (1990) 495 U.S. 91, 100, to suggest that the correct standard is not one of reasonable suspicion but that probable cause is required for a *Buie* sweep. (Answer Brief at 48.) *Olson*, decided two months after *Buie*, was not addressing officer-safety protective sweeps. Rather, the Court was evaluating whether exigent circumstances justified the warrantless entry of a home to arrest someone staying in the home. (*Minnesota v. Olson, supra*, 495 U.S. at pp. 100-101.) The Court did not mention *Buie* or reverse its prior holding that explicitly rejected any requirement that a protective sweep be "justified by probable

cause to believe that a serious and demonstrable potentiality for danger existed." (*Maryland v. Buie, supra*, 494 U.S. at p. 336.)[14]

Finally, appellant asserts that, even if the officers had sufficient grounds for a protective sweep, they could not go into the locked upstairs bedroom. (Answer Brief at 51.) The scope of a second-tier *Buie* sweep includes "those spaces where a person may be found." (*Maryland v. Buie, supra*, 494 U.S at p. 335.) A bedroom is necessarily a space where a person could be found. A single locked bedroom, when all of the remaining rooms upstairs were open, is the most likely place for a person to be hiding.[15]

Here, the entry and search of all the rooms in the two-story residence was a valid second-tier *Buie* sweep for persons whose presence would have placed the officers and the civilians outside the residence in immediate peril. The sweep was reasonable under the Fourth Amendment and compelled by the officers' obligation to protect themselves, the victims, and the public from further imminent harm.

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[14] Similarly, *Steagald v. United States* (1981) 451 U.S. 204 concerning arrests of third parties in a residence is also inapposite. (See Answer Brief at 44 fn. 15, 49 fn. 16.)

[15] Appellant cites *United States. v. Davis* (8th Cir. 2006) 471 F.3d 938, to support his claim that entering the locked bedroom exceeded the permissible scope of a protective sweep. (Answer Brief at 51.) In *Davis*, officers broke into a closet that was padlocked from the outside. (*United States. v. Davis, supra,* 471 F.3d at p. 942.) A padlocked closet, which would have trapped a suspect inside, is not similar to a locked bedroom of a residence.

CONCLUSION

The judgment of the Court of Appeal should be reversed.

Dated: September 13, 2010

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached **RESPONDENT'S REPLY BRIEF** uses a 13 point Times New Roman font and contains 4,279 words.

Dated: September 13, 2010

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Attorneys for Plaintiff and Respondent

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 September 14, 2010, I served the attached **RESPONDENT'S BRIEF** 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:

J. Wilder Lee, Esq.
360 Ritch Street, Suite 201
San Francisco, CA 94107

Representing Appellant Troyer
Sent 2 Copies

The Honorable Jan Scully Esq.
District Attorney
Sac. County District Attorney's Office
P.O. Box 749
Sacramento, CA 95814-0749

The Hon. Laurie M. Earl Judge
Sacramento County Superior Court
Lorenzo Patino Hall of Justice
650 I Street, Department 61
Sacramento, CA 95814

California Appellate Project (SF)
101 Second Street, Suite 600
San Francisco, CA 94105-3647

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 September 14, 2010, at Sacramento, California.

_____
Declarant

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