

NOT TO BE PUBLISHED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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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)

----

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.

---

<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.

---

<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

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.

What the majority calls a violation of the Fourth Amendment, I find to be a reasonable and brave execution of law enforcement duties. Therefore, I would affirm.

NICHOLSON, Acting P. J.