No. 17-_____

In the Supreme Court of the United States

ALEXANDER POU,

Petitioner,

–v–

PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

On Petition for Writ of Certiorari to the California Court of Appeal Second Appellate Division, Department Five

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. In *Brigham City, Utah v. Stuart*, this Court ruled that the emergency-aid exception to the warrant requirement allows warrantless home searches where police have an "objectively reasonable basis for believing that an occupant is seriously injured or imminently threatened with such injury." 547 U.S. 398, 400 (2006). Is the *quanta* of proof required to satisfy that standard equivalent to probable cause—albeit directed at an emergency, instead of criminality—or something less?

2. In this case, a 9-1-1 caller reported hearing a woman scream near a home. When officers arrived at the home, they heard "a loud muffled conversation" "similar to that of people . . . in an argument," but otherwise observed nothing signaling an injury or violence. Still, based on their domestic-violence protocol, officers forced entry into the home and conducted a top-to-bottom warrantless sweep. Did that sweep violate *Stuart*'s objectively-reasonable-basis standard?

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Alexander Pou requests that the Court issue a writ of certiorari to review the judgment below.

OPINIONS BELOW

The California Court of Appeal's opinion (Appendix A, App.1a) is published at 11 Cal.App.5th 143. The Court of Appeal's order denying Pou's Petition for Rehearing (Appendix B, App.17a), and the California Supreme Court's order denying review (Appendix C, App.19a), are not published.

JURISDICTION

This petition arises from an unsuccessful motion to suppress evidence obtained in violation of the Fourth Amendment. Following Pou's conviction, the California Court of Appeal affirmed the order denying the suppression motion on April 26, 2017. (App.1a). The Court of Appeal denied a Petition for Rehearing on May 23, 2017. (App.17a). The California Supreme Court denied a Petition for Review on August 9, 2017. (App.19a). This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const. amend. IV

> 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. amend. XIV

> [N]or shall any State deprive any person of life, liberty, or property, without due process of law . . . .

INTRODUCTION

Though it's been said that "[h]appy families are all alike,"[1] few families are happy all the time. Indeed, at some point, nearly every family disagrees; and nearly every family argues, shouts, or screams in frustration. This case asks whether a midday scream—or even a midday scream coupled with limited signs of a verbal argument—justifies the warrantless, wall-to-wall sweep of a person's home. Applying the emergency-aid exception to the warrant requirement, the

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[1] Leo Tolstoy, *Anna Karenina* 1 (Oxford Univ. Press 1980) (1877).

court below said that it does; other courts have rightly disagreed.

A clarifying answer from this Court will have broad and important implications. It will give needed guidance to police officers nationwide, for whom domestic-violence calls present a common and ongoing problem. *See*, *e.g.*, *Georgia v. Randolph*, 547 U.S. 103, 117-18 (2006) ("[W]e recognize that domestic abuse is a serious problem in the United States") (collecting studies); *see also id.* at 140 ("[I]t is far from clear that an exception for emergency entries suffices to protect the safety of occupants in domestic disputes") (Roberts, C.J., dissenting). It will also give needed guidance to discordant lower courts, which, in recent years, have been asked to extend the emergency-aid exception to increasingly-tenuous scenarios. And it will matter to a broad cross-section of everyday citizens, too. After all, even happy families shout and scream every once in a while; few expect that doing so exposes their homes to warrantless whole-house sweeps.

For the following reasons, the Court should review this case, clarify the emergency-aid doctrine, and reverse the decision below.

STATEMENT OF THE CASE

A. Factual Background

On June 12, 2014, at around 11:10 a.m., an Uber driver named Jim Preston responded to a ride request at 2314 Jupiter Drive. About an hour later, Preston called 9-1-1 and reported that he'd heard screaming

or moaning at the house across the street. *See* Appx.D (App.20a), Suppression Hearing Transcript ("Tr.") at 16:19-17:3, 36:22-27, 41:15-24, 51:10-16. Following Preston's report, Los Angeles Police Department officers Ramsey, Anaya, and Parry received a dispatch call about a "screaming" woman "across from" 2314 Jupiter Drive. *Id.* at 51:24-52:15.[2] Despite the words "across from," the three officers turned on their sirens and mistakenly responded to 2314 Jupiter Drive itself. *Pou*, 11 Cal.App.5th at 145.

After arriving at the location, Ramsey and Anaya approached the front door. Tr. at 6:9-12. As they did so, they didn't hear any screaming; they didn't see blood, broken glass, or any signs of a struggle, *id.* at 19:4-21; and, although they heard "a loud muffled conversation" "similar to that of people . . . in an argument," they couldn't make out what was being said. *Id.* at 6:17-19, 18:13-25.[3] As Ramsey later summarized, aside from the 9-1-1 call, there was nothing "indicative

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[2] Apparently crediting the officers' statements that they did not hear that the screaming was "across" from 2314 Jupiter Drive, the opinion below states that dispatch reported "a 'screaming woman,' as well as 'distressed moaning,' at 2314 Jupiter." *Pou*, 11 Cal.App.5th at 145. Though not dispositive to this petition, that's not a fully accurate account of what the 9-1-1 dispatch said. The 9-1-1 dispatch report, which is quoted in the preliminary-hearing transcript, said: "Hollywood Unit, Screaming Woman, 2314 Jupiter Drive. 2314 Jupiter. *Across from that location*[.]" Tr. at 52:9-16.

[3] The opinion below states that Ramsey and Anaya heard a "very loud" argument on approach. 11 Cal.App.5th at 145. While that reflects Ramsey's testimony on direct, he later conceded that he really heard a "loud muffled conversation." *See* Tr. at 6:13-19, 18:13-25.

of someone that might be in trouble" when he and Anaya initially got to the front door. *Id.* at 20:20-24; 20:25-21:2.[4]

Parry, who was standing roughly 50 feet behind the other two officers as they approached, also didn't hear any screaming, *id.* at 33:9-34:5; he saw no broken glass, blood, or "anything that would indicate that there was any type of struggle," *id.* at 43:9-20. Indeed, he testified that, upon arrival, the "only objective fact[] that would lead [him] to believe that there was an emergency" was "the radio call that [he] received." *Id.* at 43:21-24. He didn't observe "any objective facts" suggesting "an emergency" when he arrived. *Id.* at 43:28-44:3; *id.* at 44:8-13, 48:6-11, 57:18-26.

Nonetheless, Ramsey knocked on the front door and announced his presence as law enforcement several times. *Pou*, 11 Cal.App.4th. at 146. Eventually, Pou and another man answered the door, at which point Ramsey told them that officers "had to come in and look at the residence to be sure everybody was okay." Tr. at 8:12-20. After Pou told the officers multiple times that they "were not entering his house," *id.* at

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[4] The opinion below included a fact, purportedly observed by Anaya, not properly in evidence: "Officer Anaya observed . . . that two males inside the residence were making gestures similar to that of people engaged in an argument." 11 Cal.App.5th at 146. Because Anaya didn't testify at the suppression hearing, statements from his unsworn police report are almost certainly inadmissible, *People v. Johnson*, 38 Cal.4th 717, 730 (2006); but even setting that aside, the question put to Ramsey was: "In the arrest report, it says . . . Anaya observed two males inside the residence making gestures similar to that of people engage in an argument.' Do you know what gestures he's referring to?" Ramsey said: "I don't know, sir." Tr. at 19:13-21.

8:15-17, the three officers "forced" their "way into the residence," *id.* at 8:21-23, by "push[ing] [Pou] to the side and ma[king] entry," *id.* at 9:5-7.

As Ramsey later testified, forced entry was in line with standard protocol in "screaming woman" cases:

> Q [W]hen you receive a call of a screaming woman, what is the protocol to investigate that?
>
> A. The protocol to investigate calls of that nature is because we want to be sure everybody is okay, we quickly check with everybody inside the residence to make sure they are okay. Once we get the okay, leave.
>
> Q. And if you do not receive permission to enter the residence, do you enter the residence anyway?
>
> A. Yes, sir, we do.

Id. at 7:20-8:2.

After pushing Pou aside and forcing entry into the home, officers still did not hear screaming or moaning; they still did not see blood, broken items, or "any evidence of a disturbance." *Id.* at 21:21-22:2, 48:12-17. Eventually, upon advancing further into the home, they encountered two women sitting on a living room couch. Both women confirmed that "they were okay." *Id.* at 9:9-15.

At that point, none of the four occupants had told the officers about an emergency; the officers hadn't heard or seen any evidence of violence; and nothing in the record suggests that they heard sounds coming from other parts of the house. Nonetheless,

while Parry detained Pou and his friends downstairs, Ramsey and Anaya "searched the rest of the house for additional occupants." *Id.* at 9:13-17.

As Ramsey later stated, that whole-home sweep, like the forced entry before it, was consistent with officers' standard procedure:

> Q. What did you do after observing those females?
>
> A. We made sure that they were okay, and then we searched the rest of the house for additional occupants.
>
> Q. Is searching the house for additional occupants standard procedure in a call of this nature?
>
> A. Yes, it is.

Id. at 9:13-20.

> Q. Had you arrived at the residence . . . and had you heard nothing, would you have behaved the same way?
>
> A. Yes, sir.
>
> * * *
>
> Q. Is it policy for you to do a complete check of every room in the house when you respond to an emergency call?
>
> A. Yes, sir, it is.

Id. at 23:12-28. Echoing Ramsey's testimony, Parry testified that, for "screaming woman" calls, officers "search the entire residence to make sure that somebody is not in need of medical assistance," and the

"search does not end until [officers] complete the search of the entire property." *Id.* 47:12-28.

A 34-year LAPD veteran, Parry also testified that warrantless whole-home sweeps are common and widespread in this context. Indeed, according to Parry, officers "have these screaming woman calls every day, all day long"; in responding to those calls, officers "have forced entry" into "many" homes. *Id.* at 53:1-24.

Consistent with that practice, Ramsey and Anaya conducted a top-to-bottom sweep of Pou's home, looking into "the closets and other rooms" of the "very large residence." *Pou*, 11 Cal.App.5th at 146. Eventually, they came to a closed closet in an upstairs bedroom; after pushing it open, they saw drugs. *Id.* Based on that observation, officers got a warrant, executed it, and seized the drugs and a gun. *Id.*

B. Procedural Background

Following the search, prosecutors charged Pou with two drug counts and a gun enhancement. He moved to suppress the evidence seized from his home, arguing that the officers violated the Fourth Amendment while conducting the search that uncovered the drugs. *Id.* at 147. The trial court took testimony, heard argument, and denied the motion. Tr. at 71:13-80:22. Eventually, Pou entered a conditional guilty plea and took the suppression issue up on appeal. 11 Cal.App.5th at 147.

The California Court of Appeal affirmed, concluding that the search of Pou's house fell "squarely within the emergency aid exception as shaped by" *Brigham City, Utah v. Stuart*, 547 U.S. 398 (2006), *Michigan v. Fisher*, 558 U.S. 45, 49 (2009), and *People*

v. Troyer, 51 Cal.4th 599 (2011). *Pou*, 11 Cal.App.5th at151. In setting out the law, the court first explained that the emergency-aid exception authorizes warrantless home searches where police "have an objectively reasonable basis for believing that an occupant is seriously injured or imminently threatened with such injury." *Id.* at 148 Relying on *Troyer*, the court further explained that the "objectively reasonable basis" standard does not require a *quanta* of proof "amounting to probable cause." *Id.* at 149-50. After measuring the facts against that reduced standard, the court found that the emergency-aid exception sanctioned both the initial intrusion and whole-home sweep.

Regarding the former, the court initially reasoned that three facts made forced entry reasonable: (1) police received a dispatch report of a screaming woman; (2) upon arrival, they heard an argument; and (3) one officer saw two men "gesturing as if arguing."[5] Given those facts, "it was objectively reasonable for an officer to believe that immediate [warrantless] entry was necessary to render emergency assistance to a screaming female victim inside or to prevent a perpetrator from inflicting additional immediate harm to that victim or others in the house." *Id.* at 151. The objective reasonableness of the entry also "was bolstered," the court wrote, by the "delay before any occupant answered the door," as a delay by "occupants of a house from which loud arguing could be heard would have roused an officer's suspicions." *Id.*

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5 *But see* Note 4, *supra*.

Beyond the initial entry, the court also held that the "scope of the search . . . was reasonably tied to the apparent emergency with which the officers were presented." *Id.* at 152. In so holding, the court wrote that the emergency-aid exception entitled officers to "search of all places in the house where a body (victim or suspect) might have been hiding or lying in wait, including the closet in which the drugs were found." The "fact that the officers at the commencement of the search encountered an additional male and observed two females sitting in the living room whom they verified 'were okay' did not mean the emergency search could go no further." *Id.* Indeed, although police heard no screams at the scene, saw no signs of violence, and the four occupants said that everything was "okay," the court concluded:

> [I]t was objectively reasonable for the police to continue with their emergency search because they had yet to find the screaming woman whom they reasonably could have concluded under the circumstances had been hidden away, harmed further, or silenced in some other part of the large house after the police had alerted the occupants to their presence. Moreover, at that point in the search, the officers had neither located nor prevented from causing further harm any perpetrator who might have been arguing with and causing harm to the screaming woman. It was, therefore, reasonable for the officers to continue with their emergency search to find the victim or suspect in order to prevent further immediate harm.

Id.

After the initial opinion came down, Pou petitioned the California Court of Appeal and California Supreme Court for rehearing and review, respectively. Appx. B-C (App.17a, 19a). Both courts declined; this petition followed.

REASONS FOR GRANTING THE WRIT

I. APPELLATE COURTS AROUND THE COUNTRY REMAIN CONFUSED AND DIVIDED OVER THE EMERGENCY-AID EXCEPTION TO THE WARRANT REQUIREMENT. THESE DISAGREEMENTS—WHICH INCLUDE DISPUTES OVER THE EXCEPTION'S DOCTRINAL BASIS, STANDARD OF PROOF, AND APPLICATION—HAVE PRODUCED INCREASINGLY-UNMOORED AND CONFLICTING OPINIONS INVOLVING MATERIALLY-SIMILAR DOMESTIC-DISPUTE REPORTS

While the Fourth Amendment speaks in terms of "persons, houses, papers, and effects," U.S. Const. amend. IV, at the end of the day, "the home is first among equals," *Florida v. Jardines*, 569 U.S. 1, 6 (2013). Protecting the privacy of a person's home stands at the Amendment's "very core," *Silverman v. United States*, 365 U.S. 505, 511 (1961), and "physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed," *United States v. U.S. Dist. Court for E. Dist. of Mich., S. Div.*, 407 U.S. 297, 313 (1972).

As a rule, the Fourth Amendment relies primarily on the warrant procedure to keep that chief evil in

check. *Johnson v. United States*, 333 U.S. 10, 14 (1948) ("When the right of privacy must reasonably yield to the right of search is, as a rule, to be decided by a judicial officer, not by a policeman"). By putting the home-search decision to "a neutral and detached magistrate," rather than officers engaged in the "competitive enterprise of ferreting out crime," *id.*, that procedure "minimizes the danger of needless intrusions [into the home]," *Payton v. New York*, 445 U.S. 573, 586 (1980). Thus, it's a "basic principle of Fourth Amendment law that [warrantless] searches and seizures inside a home . . . are presumptively unreasonable." *Welsh v. Wisconsin*, 466 U.S. 740, 749 (1984) (quoting *Payton*, 445 U.S. at 586).

But because the Fourth Amendment's ultimate touchstone is "reasonableness," not "warrantlessness," the warrant requirement makes exceptions where "the needs of law enforcement" or society are "so compelling that [a] warrantless search is objectively reasonable." *Mincey v. Arizona*, 437 U.S. 385, 394 (1978).[6] This case turns on one of those exceptions—for "emergency aid"—that has garnered this Court's attention in recent years. *See*, *e.g.*, *Stuart*, 547 U.S. 398; *Fisher*, 558 U.S. 45; *Ryburn v. Huff*, 565 U.S. 469, 474 (2012).

The emergency-aid exception allows police to enter a home to prevent "imminent violence," *Ryburn*, 565 U.S. at 474, or to render emergency aid that an occupant is "unable to provide," *Fisher*, 558 U.S. at 49, so long as the basis for entry and scope of intrusion

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[6] For reasons deemed "obvious," this Court has always drawn those exceptions narrowly; were it otherwise, they'd "swallow the warrant requirement itself." *Ybarra v. Illinois*, 444 U.S. 85, 104 (1979).

are reasonable, *Stuart*, 400, 406-07. Though many emergency-aid cases stem from criminal activity, the exception focuses on the "role of a peace officer" in "preventing violence," "restoring order," and "render [ing] emergency assistance," *Stuart*, 547 U.S. at 403, 406, not in pursuing crime, *Hopkins v. Bonvicino*, 573 F.3d 752, 763 (9th Cir. 2009) (explaining that the emergency-aid exception "does not derive from police officers' function as criminal investigators") (cleaned up).

That noncriminal focus distinguishes emergency aid from the other "exigent circumstances" exceptions with which it is commonly grouped. LeFave & Baum, *Search and Seizure: A Treatise on the Fourth Amendment* ("*Search and Seizure*") (2017) § 6.6(a) & n.7 (explaining that the emergency aid exception must be "distinguished from the exigent circumstances exception," as it is "only invoked when the police are not engaged in crime-solving activities") (cleaned up). Unlike exigencies involving the imminent destruction of evidence, *Ker v. California*, 374 U.S. 23, 40 (1963) (plurality opinion), or the "hot pursuit" of a fleeing felon, *Warden v. Hayden*, 387 U.S. 294, 298-99 (1967), the emergency-aid exception turns entirely on "first-clause" reasonableness.[7] Put another way, most exigencies are exempt from the warrant requirement because, despite the existence of probable cause, police don't have time to obtain a warrant, *Michigan v. Tyler*, 436 U.S. 499, 509 (1978) ("Our decisions have recognized that a warrantless entry by criminal law

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[7] *See generally* Thomas Y. Davies, *Recovering the Original Fourth Amendment*, 98 Mich. L. Rev. 547, 557, 597 (1999) (describing the first-clause, second-clause, and unitary approaches to Fourth Amendment reasonableness).

enforcement officials may be legal when there is compelling need for official action and no time to secure a warrant"); but in emergency-aid cases, warrants, and the probable cause required to support them, either don't enter the equation at all, or don't enter it in any traditional understanding. *Sutterfield v. City of Milwaukee*, 751 F.3d 542, 563-64 (7th Cir. 2014) ("Some emergency aid cases repeat the customary language about the lack of time to seek a warrant, but one wonders whether, in the emergency aid context, it is more accurate to say that a warrant is unavailable, period. The typical warrant, after all, requires probable cause to believe that someone is engaged in criminal mischief and/or that evidence of a crime will be found in a particular place[.]") (cleaned up). Thus, unlike other exigent circumstances, emergency aid is an exception to both the warrant requirement and the suspicion requirement.

The taxonomic mismatch between emergency aid and other exigent circumstances traces back to the emergency-aid exception's origins in *Mincey,* a typical exigent-circumstances case involving a chaotic murder scene. Although, after *Mincey*, the exception lay dormant for many years, this Court revisited and, for the first time, applied it directly in its recent *Stuart* and *Fisher* decisions.

Both *Stuart* and *Fisher* involve narrow and relatively-similar fact patterns: (1) police called to the scene of an ongoing disturbance; (2) chaos observed upon arrival (blood, broken items, ongoing violence[8]);

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8 *Stuart*, 547 U.S. at 406 ("As they approached the house . . . [t]he officers heard 'thumping and crashing' and people yelling 'stop, stop' and 'get off me' . . . . [T]he officers proceeded around back

and (3) a limited entry to quell imminent harm. And in both cases, those facts led to a relatively-straightforward conclusion: the limited home intrusion was reasonable.

But since *Stuart* and *Fisher*, lower courts have been called upon to apply a newly-invigorated emergency-aid exception to increasingly-tenuous encounters. And, as the cases have gotten closer and more numerous, the exception's limited development and shaky conceptual footing have produced conflicting results.

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to investigate further . . . . From there, they could see that a fracas was taking place inside the kitchen. A juvenile, fists clenched, was being held back by several adults. As the officers watch, he breaks free and strikes one of the adults in the face, sending the adult to the sink spitting blood."); *Fisher*, 558 U.S. at 45-46 ("Upon their arrival, the officers found a household in considerable chaos: a pickup truck in the driveway with its front smashed, damaged fenceposts along the side of the property, and three broken house windows, the glass still on the ground outside. The officers also noticed blood on the hood of the pickup and on clothes inside of it, as well as on one of the doors to the house . . . . Through a window, the officers could see respondent, Jeremy Fisher, inside the house, screaming and throwing things."); *id.* at 48 ("A straightforward application of the emergency aid exception, as in *Brigham City*, dictates that the officer's entry was reasonable. Just as in *Brigham City*, the police officers here were responding to a report of a disturbance. Just as in *Brigham City*, when they arrived on the scene they encountered a tumultuous situation in the house—and here they also found signs of a recent injury, perhaps from a car accident, outside. And just as in *Brigham City*, the officers could see violent behavior inside.").

A. Courts Disagree About the Emergency-Aid Exception's Doctrinal Basis and the *Quanta* of Proof Required to Satisfy the "Objectively Reasonable Basis" Standard

In part, those disagreements stem from two basic uncertainties about emergency-aid law: (1) its doctrinal basis and (2) the proof required to satisfy it.

1. Doctrinal Disagreements.

While *Stuart* "appears to have made the emergency aid doctrine a subset of the exigent circumstances exception," LeFave & Baum, *Search and Seizure* § 6.6(a) & n.9 (cleaned up), as noted above, that's likely a categorization error. Unlike other exigent-circumstances exceptions, emergency aid seems to presume that neither probable cause nor a warrant are required—at least in any traditional sense. As a result, courts have struggled, even after *Stuart*, to correctly classify emergency aid.

Some courts simply repeat the language from *Stuart* (and earlier, *Mincey*), nominally placing emergency aid within the exigent-circumstances exception. *See*, *e.g.*, *McInerney v. King*, 791 F.3d 1224, 1231 (10th Cir. 2015) (referring to "the emergency aid exigency exception that emerged from *Mincey*"); *Pleasants v. Town of Louisa*, 524 F.App'x 891, 895 (4th Cir. 2013) ("One type of exigency is the emergency-aid exception to the warrant requirement") (cleaned up); *Carpenter v. Gage*, 686 F.3d 644, 648 (8th Cir. 2012) ("Such exigencies include the need to render emergency aid to an injured occupant"); *United States v. Martins*, 413 F.3d 139, 147 (1st Cir. 2005) ("The *Mincey* dictum has prompted several courts to designate

a general 'emergency aid' category as a genre of exigent circumstances") (cleaned up); *State v. Hathaway*, 222 N.J. 453, 469 & n.4 (2015) ("It is well-recognized that the emergency-aid doctrine is a subset of exigent circumstances").

Others, including some within the same jurisdictions, state that emergency aid is more conceptually aligned with the "community-caretaking" doctrine. *See*, *e.g.*, *United States v. Smith*, 820 F.3d 356, 360 (8th Cir. 2016) ("A police officer may enter a residence without a warrant as a community caretaker where the officer has a reasonable belief that an emergency exists requiring his or her attention"); *United States v. Toussaint*, 838 F.3d 503, 507 (5th Cir. 2016) ("Under *Stuart* and its progeny, officers can enter areas to help persons [in their] 'community caretaking function' to ensure the safety of citizens.") (cleaned up); *Hopkins*, 573 F.3d at 763 ("In general, the difference between the two exceptions is this: The 'emergency' exception stems from the police officers' 'community caretaking function' and allows them to respond to emergency situations that threaten life or limb. . . . By contrast, the 'exigency' exception does derive from the police officers' investigatory function[.]") (cleaned up).[9]

And still others have said that, given its crossover qualities—being warrantless, suspicionless, and non-criminal (like community caretaking), as well as urgent and objective (like exigent circumstances)—

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[9] This approach is complicated by an unresolved Circuit conflict over whether the community-caretaking exception is limited to car searches, or whether it also extends to homes. *See Corrigan v. District of Columbia*, 841 F.3d 1022, 1034 (D.C. Cir. 2016).

the emergency-aid exception merits entirely independent treatment. *Sutterfield*, 751 F.3d at 563 (discussing at length the differences between the emergency, exigency, and community-caretaking exceptions); *Hunsberger v. Wood*, 570 F.3d 546, 554 (4th Cir. 2009) (rejecting the idea that *Stuart* "collapsed the distinction" between the emergency-aid, exigent-circumstances, and community-caretaking doctrines); *Huff v. City of Burbank*, 632 F.3d 539, 549 & n.3 (9th Cir. 2011), *rev'd sub nom. on other grounds Ryburn*, 565 U.S. 469 (rejecting the idea that *Stuart* "merge[d]" the emergency-aid and exigent-circumstances exceptions); *State v. Kendrick*, 314 Conn. 212, 226-27 (2014) (distinguishing exigent-circumstances and emergency-aid doctrines); *Com. v. Entwistle*, 463 Mass. 205, 219 & n.8 (2012) (distinguishing community-caretaking and emergency exceptions; *Laney v. State*, 117 S.W.3d 854, 861 (Tex. Crim. App. 2003) (en banc) (carefully tracing the distinctions between exigent circumstances, emergency aid, and community caretaking).

Needless to say, courts and scholars "have frequently remarked on the lack of clarity in judicial articulation and application" of the emergency-aid, exigent-circumstances, and community-caretaking doctrines. *Sutterfield*, 751 F.3d at 553 & n.5 (collecting articles); *State v. Wilson*, 237 Ariz. 296, 300-01 (2015); *State v. Deneui*, 2009 S.D. 99, ¶ 22, 775 N.W.2d 221, 232. And, in this instance, those criticisms are more than idle navel-gazing. *Cf.* Orin S. Kerr, *The Influence of Immanuel Kant on Evidentiary Approaches in Eighteenth Century Bulgaria*, 18 The Green Bag 251 (2015). As the cases above illustrate, each exception has a different focus and requirements; and the

conceptual clutter leads to inaccurate articulations and applications of the law.

2 Standard-of-Proof Disagreements.

Perhaps the most-significant outcropping of this uncertainty appears in the standard of proof. In *Stuart*, this Court said that officers may enter parts of a home so long as they have an "objectively reasonable basis for believing that an occupant is seriously injured or imminently threatened with such injury." 547 U.S. at 400. But, although home intrusions have typically required a level of justification equivalent to probable cause, *Camara v. Mun. Court of City & Cty. of San Francisco*, 387 U.S. 523, 534 (1967); *United States v. Dawkins*, 17 F.3d 399, 403 (D.C. Cir. 1994), the Court didn't explain what an "objectively reasonable basis" means. In that void, courts have taken conflicting approaches. *See*, *e.g.*, *Evans v. United States*, 122 A.3d 876, 881 (D.C. 2015) (recognizing that federal appellate courts have split on the appropriate standard) (cleaned up); *Troyer*, 51 Cal.4th at 607 (collecting authority).

One line of appellate cases holds that the level of proof required to satisfy the reasonable basis standard "approximat[es] probable cause." *See*, *e.g.*, *United States v. Infante*, 701 F.3d 386, 392-93 (1st Cir. 2012); *Corrigan*, 841 F.3d at 1030 (emphasizing that "an exception to the warrant preference rule does not alter the underlying level of cause necessary to support entry") (cleaned up); *but see id.* at 1040 ("[B]y imposing an artificially high burden on police conduct in exigent circumstances, the court conflates the 'probable cause' normally required to search a person's home and the 'objectively reasonable basis' used to evaluate intrusions

based on exigent circumstances") (Brown, J., dissenting); *State v. Macelman*, 149 N.H. 795, 798 (2003) (stating that the "objectively reasonable basis" standard "approximat[es] probable cause") (cleaned up); *People v. Mitchell*, 39 N.Y.2d 173, 177-78 (1976), *over'd on other grounds by Stuart*, 547 U.S. at 404-05 ("There must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched"). As discussed below, that approach finds support in several of this Court's Fourth Amendment cases, which typically tie the level of justification to the extent of the privacy intrusion. *See*, *e.g.*, *Tyler*, 436 U.S. at 506; *Terry v. Ohio*, 392 U.S. 1, 26-27 (1968); *Camara*, 387 U.S. at 534.

Nonetheless, another line of appellate cases, including the California Supreme Court and the court below, have held that the objectively-reasonable-basis standard "is more lenient than the probable cause standard" when directed at an emergency. *United States v. Porter*, 594 F.3d 1251, 1258 (10th Cir. 2010); *Troyer*, 51 Cal.4th at 606 (rejecting defendant's argument that "the objectively reasonable basis for a warrantless entry under the emergency aid exception must be established by proof amounting to 'probable cause,'" and comparing the standard, instead, to the lower standard required for a "protective sweep" under *Maryland v. Buie*, 494 U.S. 325, 334-36 (1990)); *Pou*, 11 Cal.App.5th at 149; *see also*, *e.g.*, *United States v. Snipe*, 515 F.3d 947, 952 (9th Cir. 2008) (following *Stuart*, rejecting prior Circuit law holding that objective-reasonableness standard "approximat[ed] probable cause"). In so stating, some courts have explicitly connected that reduced standard to apparent doctrinal confusion. *See*, *e.g.*, *Smith*, 820 F.3d at 360 (in an

emergency-aid case, citing *Buie* for the notion that "[t]he reasonable belief required under the community caretaker doctrine is a less exacting standard than probable cause") (cleaned up).

B Among the Increasingly-Common Emergency-Aid Cases, One Common Fact Pattern Has Produced Widespread Disagreement: Police Receive a 9-1-1 Call About an Argument, Scream, or Some Other Indicia of Possible Domestic Violence; Police Observe Minimal Corroboration Upon Arrival; the Homeowner Refuses Consent; Police Still Enter and Search the House

Against this backdrop, appellate courts around the country have reached increasingly-irreconcilable results. That divergence is especially pronounced in domestic-dispute cases with factual pillars like this one: (1) a 9-1-1 call reporting a scream, argument, or some other indicia of domestic violence; (2) minimal first-hand corroboration of an emergency at the scene; (3) a non-consenting resident; and (4) a warrantless search.

For example, given materially-similar facts, numerous appellate courts have reached results at odds with the Court of Appeal's decision below. *See*, *e.g.*, *Hannon v. State*, 125 Nev. 142 (2009) (finding protective sweep of apartment unreasonable when officers received a 9-1-1 call reporting "yelling and screaming and thumping against the walls" and saw two red-faced and angry occupants, but the apartment was quiet when officers arrived, and they had no "evidence that another occupant may have been inside," just "suspicions"); *United States v. Davis*, 290 F.3d 1239, 1244 (10th Cir. 2002) (finding home search un-

reasonable when officers received a 9-1-1 call regarding a "possible domestic disturbance" and occupant lied about his wife's presence inside the home, but there was no evidence of an ongoing dispute when officers arrived; a "general assumption" that "domestic calls are always dangerous" was not enough to satisfy the Fourth Amendment); *see also generally United States v. Timmann*, 741 F.3d 1170, 1179 (11th Cir. 2013) ("Courts have held police officers' belief that someone inside a home needs immediate assistance objectively reasonable under various circumstances. However, these circumstances have in common the indicia of an urgent, ongoing emergency, in which officers have received emergency reports of an ongoing disturbance, arrived to find a chaotic scene, and observed violent behavior, or at least evidence of violent behavior").

And several cases have specifically rejected the key principle used to justify the whole-home sweep in this case, finding that expanded sweeps are objectively unreasonable absent specific facts suggesting that an endangered person may be in the searched portion of the home. *See*, *e.g.*, *People v. Kiryakoz*, No. F054463, 2009 WL 402091, at *15-16 (Cal. Ct. App. Feb. 19, 2009) (where "[n]one of the officers testified as to any observations or sounds, inside or outside, which would have supported a reasonable suspicion that more than a man and a woman were in the house," and where they identified no other evidence that "there were more people in the home," warrantless-whole-home sweep under police department's domestic-violence protocol violated Fourth Amendment); *Evans*, 122 A.3d at 882 (where, "[a]t the time of the entry," officers "had no specific reason to believe that an unknown third party

was in the apartment and in need of emergency aid," warrantless home sweep was unreasonable: "Although it was of course possible that someone else was in the apartment in need of assistance, we must apply a reasonable-basis standard, not a bare-possibility standard"); *United States v. Wolfe*, 452 F.App'x 180, 185 & n.4 (3d Cir. 2011) ("The government asserts that, even if Evans had been informed that no other victims were present, 'he would not simply accept that information, but would act to verify it.' In other words, the government seems to suggest that an officer's perceived need to 'clear' the premises (*i.e.*, conduct a room-to-room search of the entire house to ensure that no other victims or threats are present) is enough to satisfy the demands of the Fourth Amendment. [Where officers have no articulable basis for believing that anyone else was in the home,] the government is mistaken. Although a police officer who arrives at the scene of an ongoing emergency may search a residence to ensure that there are no additional victims or threats, he must have an 'objectively reasonable basis' for doing so."); *State v. Brooks*, 148 Md.App. 374, 405-06 (2002) (where police received a 9-1-1 report about a domestic disturbance, but, by the time they arrived, there was no ongoing dispute and the occupant said that her partner had left, warrantless home sweep based on possibility that "somebody else may be injured or hiding" was unreasonable: "The proffered justification would extend to the basement as well as to the upstairs and to all points between. It would presumably authorize looking into every closet and under every bed. The 911 call could not remotely have justified, over the homeowner's protest, that kind of a 'sweep.'").

On the other hand, some courts have held, effectively, that a 9-1-1 call reporting domestic violence by itself justifies a warrantless search. *See*, *e.g.*, *State v. Greene*, 162 Ariz. 431, 433 (1989) (en banc) ("Valinski was dispatched to defendant's residence in response to a 'family fight-domestic violence' call. These calls commonly involve dangerous situations in which the possibility for physical harm or damage escalates rapidly. The call itself creates a sufficient indication that an exigency exists allowing the officer to enter a dwelling if no circumstance indicates that entry is unnecessary."); *see generally United States v. Richardson*, 208 F.3d 626, 630 (7th Cir. 2000) ("911 calls reporting an emergency can be enough to support warrantless searches under the exigent circumstances exception, particularly where, as here, the caller identified himself").

And others, like the court below, have held that police may sweep a home simply to ensure that nobody else is injured or in danger, even where they have no specific reason to believe anyone else is in the home, and even where all of the occupants say that things are fine. *See*, *e.g.*, *People v. Beuschlein*, 245 Mich.App. 744, 758, 630 N.W.2d 921, 929 (2001) ("The officer testified that when he arrived at the scene, he did not know whether additional people were present in the residence. Although police intervention was in response to a domestic dispute and Ms. Collier appeared to be uninjured, other persons or children could have been present in the home, justifying at least a walk through the house to confirm that no one else was in danger."); *Snowden v. State*, 352 P.3d 439, 442-44 (Alaska Ct. App. 2015) (surveying cases and concluding that, even where an occupant says that everything is

fine and that nobody is in danger, police may discount that statement and continue to search the home); *Pou*, 11 Cal.App.5th at 152 (although police heard no screams at the scene, saw no signs of violence, and the four occupants said that everything was "okay," finding that "it was objectively reasonable for the police to continue with their emergency search because they had yet to find the screaming woman whom they reasonably could have concluded under the circumstances had been hidden away, harmed further, or silenced in some other part of the large house after the police had alerted the occupants to their presence").

In some ways, the emergence of these disputes may not surprise the Court. During the oral argument in *Stuart*, this Court repeatedly asked Brigham City's counsel whether reports of late-night shouting, screaming, or arguing—without any observed indicia of violence—would justify warrantless entry into the home under the emergency-aid exception. Brigham City's counsel acknowledged that those facts would make a more difficult case and that, generally, words alone would not be sufficient. *See*, *e.g.*, *Brigham City, Utah v. Stuart*, Oral Argument Transcript at 7:15-24, 9:15-10:3, 11:4-15, 12:2-11. Ultimately, rest and relaxation prevailed in *Stuart* because the police had observed much more: they heard "thumping and crashing" and "people yelling 'stop, stop' and 'get off me'"; they saw a kid, with "fists clenched . . . being held back by several adults"; and, as they watched, that kid "br[oke] free and str[uck] one of the adults in the face, sending the adult to the sink spitting blood." *Stuart*, 547 U.S. at 406. But the harder hypotheticals posed in *Stuart* are now a reality. And, as the above cases show, lower courts are calling out for guidance.

II. THIS CASE IS A SOUND VEHICLE FOR CLARIFYING EMERGENCY-AID DOCTRINE

For four reasons, this case is a particularly suitable vehicle for providing that guidance and refining the emergency-aid doctrine. *First*, Pou presented his Fourth Amendment challenge at every stage, and the Court of Appeal thoroughly discussed the legal standard and its application. *Second*, as discussed above, Pou's petition involves an exceedingly-common application of the emergency-aid doctrine—9-1-1 reports of a potential domestic dispute—meaning a decision will provide wide-reaching guidance.[10] *Third*, this case gives the Court an opportunity to put an outer boundary on the emergency-aid doctrine, something that has so far been lacking since the Court's earlier cases have only said what is permitted. *See*, *e.g.*, *City & Cty. of San Francisco, Calif. v. Sheehan*, ___U.S.___, 135 S.Ct. 1765 (2015); *Ryburn*, 565 U.S. 469; *Stuart*, 547 U.S. 398; *Fisher*, 558 U.S. 45. This case also deals with important-and-yet-to-be explored dimensions of the doctrine, including: (1) how it accommodates uncorroborated or lightly-corroborated 9-1-1 calls, and (2) the propriety of precautionary, *Buie*-style home sweeps in emergency-aid cases. *Fourth*, answering the questions presented will determine the outcome of Pou's

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[10] Given "the fact-specific nature of the reasonableness inquiry," *Ohio v. Robinette*, 519 U.S. 33, 39 (1996), this Court has traditionally defined concepts like probable cause and reasonable suspicion through an iterative approach. Thus, while the second question is fact-specific, that's because Fourth Amendment law has proven uniquely compatible with that most-famous maxim: "The life of the law has not been logic; it has been experience." *See* Oliver W. Holmes, *The Common Law* 1 (Little, Brown 1909) (1881).

case; indeed, even if the Court only considered the first question, that would result in reversal since the Court of Appeal applied a less-rigorous standard than probable cause.

III. THE QUESTIONS PRESENTED ARE IMPORTANT

The questions presented by this petition involve a frequently—and increasingly—invoked warrant exception, and have significant implications for law enforcement, personal privacy, police-citizen relations, and the criminal-justice system.

Indeed, this Court has recognized that domestic violence is "a serious problem in the United States." *Randolph*, 547 U.S. at 117. It's also one of the most common calls that law-enforcement officers receive. Parry testified that LAPD officers receive "screaming woman" calls "all day, every day," and that's consistent with official statistics. For example, the California DOJ's data indicate that, in California alone, police departments received an annual average of at least 162,478 domestic-violence related calls over the last 10 full calendar years. *See* California Department of Justice—Open Justice, Domestic Violence-Related Calls for Assistance, https://openjustice.doj.ca.gov/crime-statistics/domestic-violence (input "all counties" between the date range 2007 through 2016).[11] And officers' reliance on the emergency-aid exception appears to be on the rise. Roughly half of all cases

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[11] As explained in the link called "Data Characteristics and Known Limitations," this number only includes cases for which a report was written. *See* California Department of Justice—Open Justice, Crime Statistics, https://openjustice.doj.ca.gov/crime-statistics/ (link across from "Domestic Violence").

responding to the Westlaw search "emergency-aid or emergen! /25 exception /25 warrant!" were decided in the decade since *Stuart*. Answering the questions presented will provide needed clarification for courts and law-enforcement officers, explaining what the exception allows in the domestic-disturbance context, and, just as importantly, what it doesn't. *See Randolph*, 547 U.S. at 140 (describing as "far from clear" the emergency-aid exception's application to the domestic-disturbance context) (Roberts, C.J., dissenting).

Answering the questions in Pou's favor, as they should be, will also provide everyday citizens with important home-privacy protection. Just as this Court has recognized the prevalence and seriousness of domestic violence, it has likewise recognized that the "right of officers to thrust themselves into a home is . . . a grave concern, not only to the individual but to a society which chooses to dwell in reasonable security and freedom from surveillance." *Johnson*, 333 U.S. at 14. The hundreds of thousands of domestic-disturbance calls that officers receive every year entangle them in uniquely-sensitive and intimate police-citizen encounters. If police are using the emergency-aid exception to conduct nonconsensual, warrantless, suspicionless, and discretionary whole-home sweeps based on little more than a scream—and particularly if they are doing it in "many" homes "all day" long, as Parry suggested, and as other cases have alluded to, *Kiryakoz*, 2009 WL 402091, at *11 ("At the suppression hearing, the officers testified they conducted the protective sweep because it was depart-mental policy to determine if anyone else was in the house and ensure their safety on a domestic disturb-

ance call")—that's a grave threat directed right at the Fourth Amendment's core. *See Randolph*, 547 U.S. at 115 ("[I]t is beyond dispute that the home is entitled to special protection as the center of the private lives of our people") (cleaned up).[12] And because nearly every family shouts and screams from time to time, it imperils the privacy rights of a broad cross-section of society.

IV. THE CALIFORNIA COURT OF APPEAL'S DECISION IS INCORRECT

While reviewing this case is important for providing guidance and developing the law, it's also important because, for two reasons, the California Court of Appeal's decision is incorrect: (1) it applied the wrong standard; and (2) measured against the right standard, the warrantless whole-home sweep was unreasonable.

A. The Court Used the Wrong Standard.

The Court of Appeal wrote that the objectively-reasonable-basis standard requires less than probable cause. But, conceptually, the cases requiring proof approximating probable cause make more sense. Except in truly unusual cases, this Court has typically

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[12] Also, in jurisdictions where courts have held that *Stuart*'s objectively-reasonable-basis standard is less than probable cause, the emergency-aid exception is uniquely susceptible to manipulation because "the same facts that give rise to the exigency also provide [indicia] of a suspected crime." *People v. Chavez*, 240 P.3d 448, 451 (Colo. App. 2010) (quoting Amanda Jane Proctor, *Breaking into the Marital Home to Break Up Domestic Violence: Fourth Amendment Analysis of "Disputed Permission"*, 17 Am. U.J. Gender Soc. Pol'y & Law 139, 142 (2009)).

tied the *quanta* of proof required for Fourth Amendment activity to the extent of the privacy intrusion. *See Tyler*, 436 U.S. at 506 ("The showing of probable cause necessary to secure a warrant may vary with the object and intrusiveness of the search"). That's why, for example, full custodial arrests require probable cause, but stops and frisks require something less. *Terry*, 392 U.S. at 26-27; *see also*, *e.g.*, *United States v. Brignoni-Ponce*, 422 U.S. 873, 880 (1975) ("Because of the limited nature of the intrusion, stops of this sort may be justified on facts that do not amount to the probable cause required for an arrest"). While the Court has reduced the *quanta* of proof for home searches in certain highly-unusual scenarios, *e.g.*, *United States v. Knights*, 534 U.S. 112, 121 (2001) (but still recognizing that "the Fourth Amendment ordinarily requires the degree of probability embodied in the term 'probable cause'"), the home's core Fourth Amendment status dictates a probable-cause level of proof in nearly "[a]ll searches of the home," *United States v. Dawkins*, 17 F.3d 399, 403 (D.C. Cir. 1994), and "an exception to the warrant preference rule [typically] does not alter the underlying level of cause necessary to support entry," *Corrigan*, 841 F.3d at 1030. Because the extent of the intrusion is the same under both the emergency-aid and traditional exigent-circumstances exceptions, the standard of proof—probable cause—should be the same for both, even if the inquiries have a different focus.

Indeed, that's essentially what this Court said in *Camara*, where it held that noncriminal code inspectors needed a probable-cause level of proof to conduct home examinations. 387 U.S. at 537-38. In reaching that result, the Court emphasized that the municipal code-

inspection regime served a critical public-safety purpose, and that it was less stigmatizing than an individualized criminal home search because it was sterile and impersonal. *Id.* at 536-37. Nonetheless, because code inspections still involve an intrusion into the home, the Court held that "'probable cause' [was] the standard by which reasonableness" must be "tested." *Id.* at 534.

In so holding, the Court made clear that a code inspector "need [not] show the same kind of proof . . . as one must who would search for the fruits or instrumentalities of crime." *Id.* at 538 (emphasis added). Indeed, where "considerations of health and safety are involved, the facts that would justify an inference of 'probable cause' to make an inspection are clearly different from those that would justify such an inference where a criminal investigation has been undertaken." *Id.* But, even if directed at a different inquiry—*e.g.*, health and safety or emergency, rather than criminality—probable cause was still the test. *Id.*

B. Measured Against the Correct Standard, the Warrantless Whole-Home Sweep Was Objectively Unreasonable.

The "demand for specificity in the information upon which police action is predicated is the central teaching of this Court's Fourth Amendment jurisprudence." *Terry*, 392 U.S. at 22 & n.18. Thus, even under reduced standards of proof, officers may not rely on an "inchoate or unparticularized suspicion or 'hunch,'" but must instead point to "specific and articulable facts" justifying Fourth Amendment activity. *Buie*, 494 U.S. at 332 (cleaned up). And just as there is no blanket "murder scene exception" to the Fourth

Amendment's safeguards protecting the home, *Mincey*, 437 U.S. at 395, this Court has never created a domestic-violence or "screaming woman" Fourth Amendment exception, allowing searches based upon inchoate or unparticularized hunches of danger. In this case, however, that's exactly what happened.

Although the officers received a report of a "screaming woman," the call didn't contain additional facts suggesting that the mid-morning scream signaled violence. When they arrived at 2314 Jupiter Drive minutes later, the officers saw almost nothing corroborating the call or signaling a need for emergency assistance. They didn't hear screaming. They didn't see blood, broken glass, or any signs of a struggle. And, although Ramsey heard "a loud muffled conversation" "similar to that of people . . . in an argument," he couldn't make out what was being said, and didn't hear anything "indicative of someone that might be in trouble." So, unlike in *Stuart* and *Fisher*, where the officers observed several indicia of an ongoing emergency after being summoned to a home, the officers in this case observed exactly what might be expected upon arriving at the wrong location: no yelling, no screaming, no signs of violence. *Cf. Stuart*, 547 U.S. at 406 ("The officers heard 'thumping and crashing' and people yelling 'stop, stop' and 'get off me'"); *Fisher*, 558 at 45 ("Upon their arrival, the officers found a household in considerable chaos: a pickup truck in the driveway with its front smashed, damaged fenceposts along the side of the property, and three broken house windows, the glass still on the ground outside . . . . Through a window, the officers could see [Fisher] inside the house, screaming and throwing things.") Indeed, according to Parry, the

"only objective fact[]" that would have led officers "to believe that there was an emergency" upon arrival was "the radio call that [they] received," which their observations failed to corroborate.

That didn't change after the officers forced entry. After pushing Pou aside and barging into the home, the officers still didn't hear screaming. They still didn't see blood, broken items, or "any evidence of a disturbance." All of the occupants said that they were "okay." And nothing suggests that police heard sounds coming from another part of the house, or that any occupant gave them reason to believe another person was there.

Indeed, at the preliminary hearing, the officers identified no specific or particularized facts leading them to reasonably believe that someone else was in the home; they also identified nothing supporting the Court of Appeal's imaginative hypothesis: that all four downstairs occupants were lying, and that a previously-screaming woman "had been hidden away" in an upstairs bedroom—like in a Hollywood thriller—with no signs of violence left behind. Rather, the officers testified that a whole-home sweep was consistent with their blanket policy to "do a complete check of every room" in screaming woman cases simply "to make sure that somebody is not in need of medical assistance."

"[W]hile it was of course possible that someone else was in the [house] in need of assistance," however, the Fourth Amendment imposes "a reasonable-basis standard, not a bare-possibility standard." *Evans*, 122 A.3d at 882. And without specific facts from which a reasonable person might have cause to believe

that an injured person was stashed away in an upstairs closet, "a perceived need to 'clear' the premises (*i.e.*, conduct a room-to-room search of the entire house to ensure that no other victims or threats are present) is [not] enough to satisfy the demands of the Fourth Amendment." *Wolfe*, 452 F.App'x at n.4.

By the time the officers conducted the whole-home sweep, they had no non-speculative basis for believing that someone in need of emergency aid was in an upstairs closet. The decision to sweep the entire home —consistent with a blanket policy—was based on nothing more than an inchoate desire to ensure that some hypothetical person was fine. "However well-meaning the officers' [subjective] motivation," because "their concerns were not objectively corroborated, *State v. Mazzola*, 238 Or.App. 201, 209 (2010), the top-to-bottom home sweep in this case violated the Fourth Amendment.

CONCLUSION

For the foregoing reasons, the Court should issue a writ of certiorari.

Respectfully submitted,

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NOVEMBER 6, 2017

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APPENDIX A
OPINION OF THE COURT OF APPEAL OF THE STATE OF CALIFORNIA (APRIL 26, 2017)

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA SECOND APPELLATE DISTRICT DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

ALEXANDER POU,

Defendant and Appellant.

B269349

(Los Angeles County Super. Ct. No. BA425723)

Appeal from a judgment of the Superior Court of the County of Los Angeles, Michael A. Tynan, Judge. Affirmed.

Before: KIN, J., TURNER, P. J., KRIEGLER, J.

Introduction

Defendant and appellant Alexander Pou appeals the trial court's denial of his motion to suppress

evidence seized as a result of a warrantless entry and search of his home by law enforcement officers. Because we conclude the officers' initial entry and search was justified under the emergency aid exception to the warrant requirement, we affirm the judgment.

Factual Background

On June 2, 2014, City of Los Angeles Police Department Officer Michael Ramsey was on patrol in the Hollywood Hills area with his partner Officer Anaya. Around 12:10 p.m., they received a radio call about a "screaming woman," as well as "distressed moaning," at 2314 Jupiter Drive. They responded to that address with their lights and sirens activated.

Upon arrival at the location, Officers Ramsey and Anaya met with their field supervisor, Sergeant Lloyd Parry, who had arrived before them. The two officers approached the front door of the residence and "could hear several people inside the residence arguing." The arguing was "very loud," but the officers could not understand what was actually being said. The officers, however, could hear that both male and female voices were part of the "loud argument." In addition, Officer Anaya observed from outside that two males inside the residence were making gestures similar to that of people engaged in an argument.

Officer Ramsey knocked on the door and announced his presence as law enforcement "multiple times." Eventually, defendant answered the door with another male. Officer Ramsey informed defendant that the officers had received a radio call about a woman screaming at that address and that they needed "to come in and look at the apartment to make sure everybody was okay," a precaution that was consistent

with their training and experience. Defendant told the officers several times that he did not want them to enter his house.

The officers nonetheless entered the residence to make sure that everyone inside was in fact unharmed. Inside the residence, Officer Ramsey observed two females sitting on a couch in the living room. The officers "made sure [the two women] were okay" and then searched the rest of the house for additional occupants to check on their well being.

Following standard procedure, the officers looked into closets and the other rooms in what Officer Ramsey described as a "very large residence." While continuing on with a "quick search of the house" for additional occupants, the officers saw what they believed to be narcotics in a closed bedroom closet. Prior to swinging the closet door open, the officers could not necessarily tell whether the door was to a closet or some other room. The officers advised Sergeant Parry about the items they had discovered and called a narcotics unit to respond to the location.

Ultimately, narcotics officers responded to the location and obtained a search warrant for the residence. When officers executed that warrant, they located and seized 14.02 grams of cocaine, .077 grams of methylone or MDMA, scales, and money. In addition, the officers retrieved a handgun from a safe under a nightstand in the house.

Because the officers had not located a victim at the 2314 Jupiter Drive location, Sergeant Parry conducted a follow-up investigation by speaking to the person who had made the initial report of the screaming woman. The person who made the report

returned to the scene and explained that he was an Uber driver who had been called to the 2314 Jupiter Drive address to give somebody a ride. The Uber driver, however, explained that his report about a screaming woman pertained to the house across the street from 2314 Jupiter Drive.

Further investigation by Sergeant Parry revealed that an "incident recall" printout did, in fact, state that the incident was "across from 2314 at a house." According to Sergeant Parry, the information in the incident recall printout would have been input into the police computer system by the person who took the telephone report of a screaming woman. Like Officers Ramsey and Anaya, however, Sergeant Parry responded to 2314 Jupiter Drive because the radio broadcast he heard was for that address and not some location "across" from 2314 Juniper Drive.

Procedural Background

Defendant was charged in a two-count information with possession of cocaine for sale in violation of Health and Safety Code section 11352 (count one) and possession of ecstasy for sale in violation of Health and Safety Code section 11378 (count two). The information alleged as to both counts that in the commission of the charged crimes, defendant was personally armed with a firearm within the meaning of Penal Code section 12022, subdivision (c).

Following the preliminary hearing, the trial court heard argument on defendant's motion to suppress evidence pursuant to Penal Code section 1538.5, denied the motion, and held defendant to answer. Eventually, defendant entered into a plea bargain pursuant to which he pleaded guilty to count 2, and count 1 was

dismissed. The firearm allegations as to both counts were also dismissed.

The trial court ultimately sentenced defendant to eight months imprisonment on count 2, to run consecutively to the sentence in another criminal case (case number KA109209). Defendant timely appealed.

Discussion

On appeal, defendant contends that the trial erred by denying his motion to suppress evidence seized pursuant to a search warrant obtained because law enforcement officers entered his residence without a warrant or consent and saw illegal narcotics. We conclude the outcome of this appeal is dictated by our Supreme Court's decision in *People v. Troyer* (2011) 51 Cal.4th 599, 120 Cal.Rptr.3d 770, 246 P.3d 901 (*Troyer*), and hold that the officers' entry into the home and search of the premises for occupants therein was reasonably justified by the emergency aid exception to the warrant requirement.

A. Standard of Review

In reviewing the trial court's ruling on a motion to suppress, we defer to the trial court's factual findings if supported by substantial evidence. (*People v. Hoyos* (2007) 41 Cal.4th 872, 891, 63 Cal.Rptr.3d 1, 162 P.3d 528.) We review de novo whether the search was reasonable under the Fourth Amendment based on the facts found. (*Ibid.; People v. Ayala* (2000) 23 Cal.4th 225, 255, 96 Cal.Rptr.2d 682, 1 P.3d 3.)

B. The Emergency Aid Exception

In *Brigham City v. Stuart* (2006) 547 U.S. 398, 400, 126 S.Ct. 1943, 164 L.Ed.2d 650 (*Brigham City*), the United States Supreme Court established the so-called emergency aid exception, holding that "police 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." In that case, law enforcement officers had entered the defendant's home and made arrests for disorderly conduct and other related offenses when responding to a 3:00 a.m. call regarding a loud party at the residence. (*Id.* at p. 401, 126 S.Ct. 1943.) Before entering the home, the officers heard shouting from inside and saw that an altercation was taking place inside between four adults and a juvenile. (*Ibid.*) The altercation included, among other things, the adults attempting to restrain the juvenile; the juvenile breaking free and hitting one of the adults in the face, causing that adult to spit blood into a nearby sink; and the adults thereafter pressing the juvenile against a refrigerator with such force that it moved across the floor. (*Ibid.*) The Supreme Court concluded that the officers were justified in making a warrantless entry under the circumstances because "the need to protect or preserve life or avoid serious injury" was an exigency or emergency that obviated the requirement of a warrant. (*Id.* at p. 403, 126 S.Ct. 1943.)

Three years later, the Supreme Court provided additional guidance concerning application of the emergency aid exception in *Michigan v. Fisher* (2009) 558 U.S. 45, 130 S.Ct. 546, 175 L.Ed.2d 410 (*Fisher*). In *Fisher*, responding to a complaint of a disturbance involving a man "going crazy," a police officer in

Michigan entered defendant Fisher's home without a warrant, which led to Fisher pointing a gun at the officer and Fisher's consequent arrest for assault with a dangerous weapon and possession of a firearm during commission of a felony. (*Id.* at pp. 45-46, 130 S.Ct. 546.) Prior to entering the home, the police had observed: the truck on Fisher's driveway was smashed; there were damaged fenceposts along the property and broken house windows; and blood was present on the hood of the truck, on clothes inside the truck, and on one of the doors to the house. (*Ibid.*) The police also could see Fisher inside the house with a cut on his hand, screaming and throwing things. (*Id.* at p. 46, 130 S.Ct. 546.) When the officers knocked on the door, Fisher initially refused to answer. (*Ibid.*) When they asked him whether he needed medical attention, Fisher ignored such questions and "demanded, with accompanying profanity, that the officers go get a search warrant." (*Ibid.*)

The Michigan Court of Appeals had found that the warrantless entry into Fisher's house violated the Fourth Amendment because "the situation 'did not rise to the level of emergency justifying the warrantless intrusion into a residence.'" (*Fisher*, *supra*, 558 U.S. at p. 48, 130 S.Ct. 546.) In so holding, that court acknowledged there was evidence from which the police could have reasonably inferred that an injured person was on the premises, but nonetheless concluded that "'the mere drops of blood did not signal a likely serious, life-threatening injury'" necessitating the warrantless entry. (*Ibid.*)

In reversing the Michigan court, the Supreme Court in *Fisher*, *supra*, 558 U.S. 45, 130 S.Ct. 546 found the lower court's reasoning "flaw[ed]," explaining

that "[e]ven a casual review of *Brigham City*[, *supra*, 547 U.S. 398, 126 S.Ct. 1943] reveals . . . [o]fficers do not need ironclad proof of 'a likely serious, life-threatening' injury to invoke the emergency aid doctrine." (*Id.* at p. 49, 130 S.Ct. 546.) The Supreme Court thus clarified that "'[t]he role of a peace officer includes preventing violence and restoring order, not simply rendering first aid to casualties' [citation]. It sufficed to invoke the emergency aid exception that it was reasonable to believe that Fisher hurt himself (albeit nonfatally) and needed treatment that in his rage he was unable to provide, or that Fisher was about to hurt, or had already hurt, someone else." (*Ibid.*) Underlying the Supreme Court's holding was its reasoning that the emergency aid exception "requires only 'an objectively reasonable basis for believing' [citation] that 'a person within [the house] is in need of immediate aid' [citation]." (*Id.* at p. 47.)

Two years later, our Supreme Court had occasion to expound on the emergency aid exception in *Troyer*, *supra*, 51 Cal.4th 599, 120 Cal.Rptr.3d 770, 246 P.3d 901. In *Troyer*, our Supreme Court emphasized that invocation of the emergency aid exception to justify a warrantless search only requires an objectively reasonable basis by law enforcement to believe that someone on the premises is in need of immediate aid. (*Id.* at p. 605, 120 Cal.Rptr.3d 770, 246 P.3d 901.) As the court explained, this approach is based on "some measure of pragmatism" in that, "[i]f there is a grave public need for the police to take preventive action, the Constitution may impose limits, but it will not bar the way. [Citation.]" (*Id.* at p. 606, 120 Cal.Rptr.3d 770, 246 P.3d 901.) Thus, our Supreme Court rejected the suggestion that application of the emergency aid

exception must be established by proof amounting to probable cause, which would require officers at the time to form "'a reasonable ground for belief of guilt' that is 'particularized with respect to the person to be searched or seized.' [Citation.]" (*Ibid.*) The court explained that such a requirement would not make sense in an emergency situation "where the police must make split-second decisions as to whether someone is in need of immediate aid." (*Ibid.*) Indeed, the court observed that "[p]eople could well die in emergencies if police tried to act with the calm deliberation associated with the judicial process. [Citation.]" (*Ibid.*)

The court in *Troyer*, *supra*, 51 Cal.4th 599, 120 Cal.Rptr.3d 770, 246 P.3d 901 further noted that, in applying the objective reasonableness standard, the police may even permissibly make mistakes if objectively reasonable, explaining that "when we balance the nature of the intrusion on an individual's privacy against the promotion of legitimate governmental interests in order to determine the reasonableness of a search in the circumstances of an emergency [citation], we must be mindful of what is at stake." (*Id.* at p. 606, 120 Cal.Rptr.3d 770, 246 P.3d 901.) Accordingly, our Supreme Court concluded that "[t]he possibility that immediate police action will prevent injury or death outweighs the affront to privacy when police enter the home under the reasonable but mistaken belief that an emergency exists." (*Ibid.*)

The court in *Troyer*, *supra*, 51 Cal.4th 599, 120 Cal.Rptr.3d 770, 246 P.3d 901 thus found the emergency aid doctrine justified the warrantless search of defendant's home by police responding to a dispatch

report of shots fired at the location. When police arrived, they found on the front porch a male administering aid to a female victim who had been shot multiple times, as well as another male on the porch with a head wound and blood streaming onto his face. (*Id.* at p. 603, 120 Cal.Rptr.3d 770, 246 P.3d 901.) When the wounded female could not provide information to the officer because she was "in obvious distress," the officer questioned the "excited and agitated" wounded male, who said that two individuals were involved who fled in a vehicle. (*Ibid.*) When the officer asked the wounded male if anyone else was inside the residence, which had blood on the front door, the male first stared at the officer for 15 to 20 seconds without responding, then said he "did not think so," and finally said "no" after taking a long pause. (*Ibid.*) The police then entered the house to look for victims and suspects. (*Id.* at p. 604, 120 Cal.Rptr.3d 770, 246 P.3d 901.) Based on the foregoing, the court held that "[u]nder the circumstances, and inasmuch as [the police] did not know who had been the aggressor, an objectively reasonable basis existed to enter the residence to search for additional victims." (*Id.* at pp. 608-609, 120 Cal.Rptr.3d 770, 246 P.3d 901.)

After the police entered the home and found nothing downstairs, they expanded their search upstairs, "continuing to look in places where a body could be." (*Troyer*, *supra*, 51 Cal.4th at p. 604, 120 Cal.Rptr.3d 770, 246 P.3d 901.) That upstairs search led to entry into a locked bedroom, where the police saw balls of marijuana and an electronic scale, which, in turn, led to a search warrant for the home; the seizure of marijuana, firearms, and $9,000 cash; and the arrest of the defendant on charges arising from

his possession of those items in his residence. (*Ibid.*) The court rejected the defendant's contention that the scope of the officers' search was unreasonable, explaining: "[T]he scope of a warrantless search 'must be strictly circumscribed by the exigencies which justify its initiation.' [Citation.] Here, the same facts that justified entry into the residence justified a search of places where a victim could be, which included the upstairs bedroom." (*Id.* at p. 612)

Notably, the Supreme Court's conclusion in *Troyer*, *supra*, 51 Cal.4th 599, 120 Cal.Rptr.3d 770, 246 P.3d 901, that the warrantless entry and full search of the defendant's residence was objectively reasonable, was not undermined by the fact that no additional victims or suspects relating to the shots fired emergency were ultimately found in the house. The court specifically noted that "[a] 'hindsight determination that there was in fact no emergency' does not rebut the objectively reasonable basis for believing that someone in the house was injured or in danger. [Citation.]" (*Id.* at p. 613)

C. The Search of Defendant's Residence

The search of defendant's house falls squarely within the emergency aid exception as shaped by *Brigham City*, *supra*, 547 U.S. 398, 126 S.Ct. 1943, *Fisher*, *supra*, 558 U.S. 45, 130 S.Ct. 546, and *Troyer*, *supra*, 51 Cal.4th 599, 120 Cal.Rptr.3d 770, 246 P.3d 901. Here, the officers were told by the radio dispatch operator that someone had reported hearing a screaming woman and distressed moaning at the location. Upon arrival, consistent with the radio dispatch call information, the officers could hear from the outside loud voices—both male and female—engaged in an

argument inside the house. One officer additionally saw through the window that two males in the house were gesturing as if arguing. Under these circumstances, it was objectively reasonable for an officer to believe that immediate entry was necessary to render emergency assistance to a screaming female victim inside or to prevent a perpetrator from inflicting additional immediate harm to that victim or others inside the house.

The objective reasonableness of the decision to enter and search was bolstered by the fact that there was a delay before any occupant answered the door in response to the police knocking and identifying themselves multiple times. Under the circumstances, the delayed reaction by the occupants of a house from which loud arguing could be heard would have roused an officer's suspicions. In *Troyer*, *supra*, 51 Cal.4th at page 608, 120 Cal.Rptr.3d 770, 246 P.3d 901, the court cited with approval a federal appellate decision (*Causey v. City of Bay City* (6th Cir. 2006) 442 F.3d 524, 530) holding that police reasonably conducted an emergency aid search after receiving assurances that no one was injured, because the officers could have inferred the person offering such assurances was concealing an injured person or was being intimidated by an unseen attacker. Here, too, it was reasonable for the officers to enter defendant's house without a warrant, even after defendant told them several times he did not want them to enter.

Further, we find the scope of the search here was reasonably tied to the apparent emergency with which the officers were presented. The location was a "very large house," and, under the emergency aid exception, the officers were entitled to conduct an

emergency search of all places in the house where a body (victim or suspect) might have been hiding or lying in wait, including the closet in which the drugs were found. The fact that the officers at the commencement of the search encountered an additional male and observed two females sitting in the living room whom they verified "were okay" did not mean the emergency search could go no further. As the court observed in *Troyer*, *supra*, 51 Cal.4th at page 609, 120 Cal.Rptr.3d 770, 246 P.3d 901, "ordinary, routine common sense and a reasonable concern for human life justified [the police] in conducting a walk-through search truly limited in scope to determine the presence of other victims [citation]" where the police had no information whether there was only one victim.

Here, it was objectively reasonable for the police to continue with their emergency search because they had yet to find the screaming woman whom they reasonably could have concluded under the circumstances had been hidden away, harmed further, or silenced in some other part of the large house after the police had alerted the occupants to their presence. Moreover, at that point in the search, the officers had neither located nor prevented from causing further harm any perpetrator who might have been arguing with and causing harm to the screaming woman. It was, therefore, reasonable for the officers to continue with their emergency search to find the victim or suspect in order to prevent further immediate harm.[1]

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[1] For these reasons, defendant's reliance on *People v. Ormonde* (2006) 143 Cal.App.4th 282, 49 Cal.Rptr.3d 26 is misplaced. In that case, the officers had no objectively reasonable basis to search the defendant's apartment because they had already arrested the defendant for battery outside the apartment and

Finally, the fact that the officers mistakenly searched the wrong location does not undermine the reasonableness of their decision to conduct the search based on the information they had at the time. Both of the officers and the sergeant were informed by the radio dispatch broadcast that the location of the screaming woman was 2314 Jupiter Drive. They had no reason to question the accuracy of the reported address when they responded to that location. Indeed, from an objective standpoint, the seeming accuracy of the address was confirmed (albeit incorrectly) upon arrival when the officers heard loud arguing coming from that precise location and saw two men engaged in an argument therein. Based on these facts, it was objectively reasonable for the officers to conduct an emergency search of 2314 Jupiter Drive, even though it later turned out that the original distress call concerned a location across the street.[2] We do not with a "hindsight determination" upend the officers'

"[n]one of the police officers who testified articulated any reason to believe that other victims or suspects were involved in the battery, or inside the apartment." (*Id.* at pp. 291-292, 49 Cal. Rptr.3d 26). Here, by contrast, at the initiation of the search, the officers had yet to confirm the whereabouts or identity of any victims or suspects—all of whom were likely to be found, if anywhere, in the house from where the screaming and arguing came.

[2] Defendant concedes in his opening brief that the officers' decision to search was objectively reasonable, stating: "Based on the facts which the officers believed to be true, it was not unreasonable for them to make the initial entry." Defendant's contention is that the legality of the search should be evaluated in light of information the dispatch operator possessed as to the true location for the call, but *Troyer*, *supra*, 51 Cal.4th at page 613, 120 Cal.Rptr.3d 770, 246 P.3d 901, makes clear we must look to what the officers making the decision to search knew at the time.

objectively reasonable conclusion that an exigency existed at the location simply because we subsequently learn of contrary facts unknown to the officers at the time they made their decision.[3] (*See Troyer*, *supra*, 51 Cal.4th at p. 613; *see also Hill v. California* (1971) 401 U.S. 797, 804 [search incident to arrest valid where arresting officers had a "reasonable, good faith belief" that the man they mistakenly arrested was another man for whom they had probable cause and sought to arrest]; *People v. Espino* (2016) 247 Cal.App.4th 746, 760, 202 Cal.Rptr.3d 354 [upholding arrest as lawful where officers made "good faith mistake of fact" that a diamond in the defendant's pocket was crack cocaine].)

Disposition

The judgment of conviction is affirmed.

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[3] *People v. Ramirez* (1983) 34 Cal.3d 541 (Ramirez), which defendant calls "instructive" on this point, is inapposite. In *Ramirez*, the court suppressed evidence from a booking search after it was determined that the warrant in the computer system providing the basis for the defendant's arrest had been recalled months earlier. Not only does *Troyer*, *supra*, 51 Cal.4th at page 613, 120 Cal.Rptr.3d 770, 246 P.3d 901, instruct that we must look to what the officers knew at the time of the search, but it would appear subsequent United States Supreme Court precedent has entirely undermined *Ramirez*'s efficacy. (*See Herring v. United States* (2009) 555 U.S. 135, 146-148, 129 S.Ct. 695, 172 L.Ed.2d 496 [holding that exclusionary rule suppression should not apply where law enforcement personnel were negligent in failing to expunge from their computer system a warrant that led to the defendant's arrest and a search incident thereto].)

/s/ Kin, J.*

We concur:

/s/ Turner, P.J.

/s/ Kriegler, J.

* Judge of the Superior Court of the County of Los Angeles, appointed by the Chief Justice under article VI, section 6 of the California Constitution.

APPENDIX B
ORDER OF THE COURT OF APPEAL DENYING REHEARING AND MODIFYING OPINION (MAY 23, 2017)

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA SECOND APPELLATE DISTRICT DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

ALEXANDER POU,

Defendant and Appellant.

B269349

(Los Angeles County Super. Ct. No. BA425723)

Before: KRIEGLER, J., KIN, J.

Defendant and appellant Alexander Pou's petition for rehearing is denied. The opinion filed on April 26, 2017, is modified by adding the following to the end of footnote 2, on page 14:

> "For this same reason, defendant's additional contention the Uber driver who called 911 told the dispatch operator that he heard the

screaming woman about an hour before calling is irrelevant because none of the responding officers were privy to the 911 call or received such information from the operator. In any event, knowledge that screams were heard one hour earlier would not necessarily render unreasonable the conclusion that an emergency still existed when the officers arrived at the location and observed indicia of an ongoing conflict."

/s/
KRIEGLER, J.

/s/
KIN, J.*

* Judge of the Los Angeles County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

APPENDIX C
ORDER OF THE SUPREME COURT OF CALIFORNIA DENYING PETITION FOR REVIEW (AUGUST 9, 2017)

IN THE SUPREME COURT OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

ALEXANDER CHIANG POU,

Defendant and Appellant.

No. S242371

Before: CANTIL-SAKAUYE, Chief Justice

The petition for review is denied.

/s/ Cantil-Sakauye
Chief Justice

APPENDIX D
REPORTER'S TRANSCRIPT ON APPEAL— RELEVANT EXCERPTS (JANUARY 14, 2015)

COURT OF APPEAL OF THE STATE OF CALIFORNIA SECOND APPELLATE DISTRICT

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff-Respondent,

v.

ALEXANDER POU,

Defendant-Appellant.

No. BA425723

Appeal from the Superior Court
of Los Angeles County
Honorable Michael A. Tynan, Judge Presiding

Direct Examination of Officer Michael Ramsey by Justin Ford, Deputy District Attorney:

[Tr. 6:13-19.]

Q. What observations did you make?

A. The front door was closed, sir; but, however, we could hear several people inside the residence arguing.

Q. And when you—could you make out the words that they were saying?

A. No, sir, but it was very loud.

* * *

[Tr. 7:20-8:2.]

Q. And before—before going into what happened after that, based on your training and experience, when you receive a call of a screaming woman, what is the protocol to investigate that?

A. The protocol to investigate calls of that nature is because we want to be sure everybody is okay, we quickly check with everybody inside the residence to make sure they are okay. Once we get the okay, leave.

Q. And if you do not receive permission to enter the residence, do you enter the residence anyway?

A. Yes, sir, we do.

* * *

[Tr. 8:12-23.]

Q. Okay, Once the defendant answered the door, what happened next?

A. Once we told him that we had to come in and look at the residence to be sure everybody was okay, he told is multiple times that we were not entering his house.

Q. Was he alone or was there anyone else at the door?

A. There was another male at the door, sir.

Q. What happened next?

A. Once Sergeant Parry was with us at the time, we forced our way into the residence.

* * *

[Tr. 9:5-7.]

Q. When you say forced your way in, could you be more specific?

A. We pushed the defendant to the side and made entry.

* * *

[Tr. 9:9-20.]

Q. Okay. Once you made entry, what did you see?

A. There were two females sitting on the couch inside the living room.

Q. What did you do after observing those females?

A. We made sure that they were okay, and then we searched the rest of the house for additional occupants.

Q. Is searching the house for additional occupants standard procedure in a call of this nature?

A. Yes, it is.

Cross-Examination of Officer Michael Ramsey
By Berk Nelson, Esq.:

[Tr. 16:19-17:3.]

Q. Okay. Then let's go over your report. I'm not going to go too deep into it. I am going to focus on, basically, the first paragraph. So you said at approximately 1210 hours, you and Officer Anaya were assigned to Hollywood Patrol Unit 6-A-31. What is your call number—is that your call number that dispatch would contact you by?

A. It was that day, sir.

Q. And in the report it says that you received a radio call of loud screaming and distressed moaning heard; is that correct?

A. Yes.

* * *

[Tr. 18:13-25.]

Q. So in the arrest report, it states, "We approached the residence and could hear a loud muffled conversation coming from inside the residence." But today you stated that you heard an argument?

A. Yes, sir.

Q. Why is the report different that what you stated here today?

MR. FORD: Objection; argumentative.

THE COURT: Overruled.

THE WITNESS: In the report my partner wrote that—it says, "Similar to that of people engaged in an argument." So I guess that's the answer.

***

[Tr. 19:4-21]

Q. Did you observe anything in the residence of 2314 Jupiter Drive before you entered?

A. No, sir, I did not.

Q. Did you see any broken glass?

A. No, sir, I didn't.

Q. Did you see any blood?

A. No, sir.

Q. Did you hear any loud screaming?

A. No, sir.

Q. Now, in the arrest report, it says, "Officer Anaya observed two males inside the residence making gestures similar to that of people engaged in an argument." Do you know what gestures he's referring to?

MR. FORD: Objection. Calls for speculation.

THE COURT: Overruled. You can answer, if you know.

THE WITNESS: I don't know, sir.

***

[Tr. 20:20-21:2.]

Q. Based on the description that you just gave me, you didn't hear anything, you didn't see an broken glass, blood, et cetera, indicative of someone that might be in trouble; is that correct?

A. Correct, sir.

Q. But, yet, you forced your way into my client's residence regardless of the fact that there was no objective facts that anyone was in trouble; is that correct?

A. It was based upon the comments of the radio call and our response time.

* * *

[Tr. 21:21-22:2.]

Q. And then once you gained entrance, did you hear any loud screaming?

A. No, sir, we didn't.

Q. Did you hear any moans?

A. No, sir.

Q. Did you see any evidence of a disturbance, like, a turned over coffee table?

A. No, sir.

Q. Did you see any blood or anything?

A. No, sir.

Redirect Examination of Michael Ramsey
By MR. Ford:

[Tr. 23:12-28.]

Q. Okay. Had you arrived at the residence in—at the call and had you heard nothing, would you have behaved in that same way?

A. Yes, sir.

MR. NELSON: Objection; speculation.

THE COURT: Overruled.

By MR. FORD:

Q. Okay. Why is that?

A. Based on our response time and the comments that we heard additionally from the radio call, somebody could have been in trouble five minutes ago. Say, now everything seemed like it was okay, but we still have to check to make sure that people are all right.

Q. All right, Is it policy for you to do a complete check of every room in the house when you respond to an emergency call?

A. Yes, sir, it is.

Direct Examination of Sergeant Lloyd Parry
By Mr. Ford:

[Tr. 33:9-34:5.]

Q. When you arrived, do you recall if you heard any noises coming from the house?

A. I did not.

Q. Did you hear any sounds of an argument?

A. Not from where I was.

Q. Were you at the front door when officers made contact with the defendant?

A. No.

Q. Where were you in relationship to the other officers?

A. I was in front of the residence at the wets—I believe it was the west side of the house watching, you know, the side of the house, but I wasn't right where they were at.

Q. And how big is this house, do you know?

A. It was considerable. It was a large home. I don't remember how big. The homes in this area are generally big. The have different sizes.

Q. Could you estimate about how far away you were from the front door of the house when the officers made contact?

A. It might have been 50 feet, and I believe the front door was kind of set inwards. I wasn't necessarily in line of sight with them. Kind of an alcove-type front porch area.

* * *

[Tr. 36:22-27.]

Q. Okay. What was that?

A. He had been solicited to that resident. He's an Uber driver. He was solicited to that residence to give somebody a ride.

Q. To the 2314 address?

A. Yes.

Cross-Examination of Sergeant Lloyd Parry
By Berk Nelson:

[Tr. 41:15-24.]

Q. Now, what you read—and correct me if I'm wrong—it states that the address is 2313 Jupiter, and this happened about an hour ago. "My boss called me into work. So I got distracted, but I want to at least call and let you guys know." And then the dispatch officer, Chavez, says, "Okay. So across from 2314, possibly 2313," and it's stated "That's correct." Is that what you just read?

A. Yes. That's how it is written, yes.

* * *

[Tr. 43:9-24.]

Q. Did you—upon arrival, did you see any broken glass?

A. No.

Q. Did you see any blood?

A. No.

Q. Did you see anything that would indicate that there was any type of struggle?

A. No.

Q. Did you hear anything upon arrival?

A. No.

Q. Did you hear a screaming woman upon arrival?

A. No.

Q. Did you hear or see any objective facts that would lend you to believe that there was an emergency at this address?

A. Yes. The radio call that I received.

* * *

[Tr. 43:28-44:3]

Q. But upon arrival, you didn't get any objective facts that there was, in fact, an emergency; is that correct?

A. That's correct.

* * *

[Tr. 44:8-13.]

Q. I just want to talk about this sentence for a second. Just—just a few seconds ago you testified that there was no objective facts of an emergency once you arrived at the location, correct?

A. No observable or visuals, other than the radio call.

* * *

[Tr. 47:12-28.]

Q. In your report, you write "The officers made contact with the resident and a subsequent emergency search of the residence located there additional subjects. There was no evidence of a woman in distress." So shouldn't the search have ended right there?

A. The search does not end until we complete the search of the entire property.

Q. But I thought you just testified that you were there to make sure that no one was in distress?

A. Sir, we can get to the front door and someone tells us, "There's no problem here. Ah, no problem here at all." We don't just turn around and leave. We search the entire residence to make sure that somebody is not in need of medical assistance.

* * *

[Tr. 48:6-17.]

Q. You testified earlier that you didn't hear anything. You testified earlier that you didn't see anything, *i.e.*, broken glass, blood, any turned over furniture when you arrived at the residence; is that correct?

A. From outside the residence, I saw nothing.

Q. Once you gained entry to the residence, did you see any objective facts, *i.e.*, blood, broken glass, turned over furniture that would give you evidence of a struggle?

A. Not from the vantage point that I had, which was at the front entryway.

Redirect Examination of Sergeant Lloyd Parry
By Justin Ford:

[Tr. 51:10-16.]

Q. So until—you mentioned earlier that you had a complaining witness with an name and a phone number, correct?

A. Yes.

Q. That person turned out to be Jim Preston; is that correct?

A. That's correct.

* * *

[Tr. 51:24-52:16.]

Q. What, if anything, would you have heard over the radio.

A. I would have heard what the police service representative would have broadcast over the radio, which could only be a synopsis of what, maybe, Mr. Preston had told the operator over the phone.

MR. FORD: May I approach?

THE COURT: Yes.

By MR. FORD:

Q. I'm showing you now page 6 of defense A and drawing your attention to lines 7 through 10. Do you see that?

A. Yes.

Q. does that purport—is that an accurate depiction of what you recall hearing on the day in question?

A. Yes.

Q. And that states, "Hollywood unit, screaming woman, 2314 Jupiter Drive. 2314 Jupiter. Across from that location, Code 3," correct?

A. Yes.

* * *

[Tr. 53:1-24.]

Q. Now, I'm going to propose a hypothetical to you. Hypothetically, let's say that one—that a couple of your patrol officers received a screaming woman call over the radio. The reported to the address listed on the radio. They saw no objective signs of a struggle. They heard no noises. And based upon no signs and no noises, they turned around and left. What would you response and reaction to those officer's actions be?

MR. NELSON: Objection; speculation.

THE COURT: Overruled.

THE WITNESS: It depends on a lot of various circumstances. I want more of an investigation. We have these screaming woman calls every day, all day long. It all depends on the nature and what we see when we get there; who is out on the

street. We may contact neighbors, witnesses, if we don't have a location. The main focal point for the officers is to go to that specific address. And if we—and many times we force entry into a residence and wind up having them empty. Sometimes we find people inside, but we have forced entry into many of these places on these types of calls. A lot of variable information, though.

Recross Examination of Sergeant Lloyd Parry
By Berk Nelson:

[Tr. 57:18-26.]

Q. You testified earlier today when you arrived on scene at 2314 Jupiter Drive, you didn't hear anything regarding a screaming woman, loud moaning, anything of that sort, and you didn't see anything that would indicate a struggle, *i.e.*, broken glass, broken window, or anything like that when you arrive at 2314; is that correct.

A. I didn't see any of that, no.

* * *

[Tr. 71:13-80:22.]

THE COURT: I've had an opportunity to skim defense A. Let's start with the—does the defense rest?

MR. NELSON: We rest, your honor.

THE COURT: Let's start with you since it is your motion. The record should reflect that counsel has filed a notice of motion to suppress pursuant to penal code section 1538.5. The people have filed an opposition thereto, and the—and the defense has filed a reply to the people's opposition.

Those briefs should be incorporated by reference and supplement the record of any argument. You may be heard, sir.

MR. NELSON: Your Honor, I think what we've established in court is that—I'm basing this off of counsel's reply and that—I'm sorry—or opposition, and that the only reason for entry into my client's residence was for emergency purposes.

And I've provided case law for you that to enter a dwelling without a warrant requires exigent circumstances. And the exigent circumstances that counsel cited would be for emergency purposes.

The officers that were called to testify today could not provide any objective facts that supported any type of claim that there was an emergency in need of a warrantless entry into my client's residence.

They did not see any evidence of a struggle, as I questioned the officers on several occasions; that being broken glass, a turned over table, forced entry, anything like that, to warrant an emergency, and they did not hear anything. They were first called, as we have stated here today, to the residence, which is the incorrect residence, but they were called and arrived at 2314 for a screaming woman.

Upon arrival they did not state they heard a screaming woman. The closest thing we got to that was two individuals arguing, but they could not provide any proof of what they were arguing about or, in fact, that it was an argument.

Basically all they stated was that they heard two loud voices speaking with each other. That in itself does not equate to an emergency to enter a residence without a warrant.

When I questioned the officers about what their best recollection would be, would it be from their written report or what they testified here to today, both officers that were on the stand today stated that the report would be a more accurate report of what happened.

As I questioned them about their report and whether all the important facts would be laid out in the report, none of the reports said upon arrival that they saw any objective facts that would rise to a level of emergency. The only thing that they could provide is that they received a call from dispatch, who wasn't even present, stating that there's a screaming woman. Not that there's a screaming woman in distress, just that there was a screaming woman. That's it.

And that does not rise to a level to usurp my client's fourth amendment rights to an illegal search and seizure. Because that's what is before us today. There's no warrant. There's no emergency. There's no objective facts leading up to the need to enter a dwelling for exigent circumstances for an emergency.

So I believe that the 1538.5 motion stands—should be held—I'm sorry—should be granted. And I—I fail to see any emergency that would allow the warrantless search to take place.

THE COURT: People, do you wish to respond?

MR. FORD: Yes, Your Honor.

Every witness who was on the scene—so the—Sergeant Parry and Officer Michael Ramsey testified that they felt the situation was an emergency based upon the information that they received.

While they didn't see, as counsel pointed out, blood or broken glass, they heard the sounds of—first of all, they had a—a named witness, named complainant with a phone number that gave credibility to the call that they received. It was not anonymous.

And then based upon that information, they went to the house that they—that they perceived the incident to be at, and they heard sounds of—Officer Ramsey testified that he heard sounds of an argument. And based on that, they knocked on the door, and then when—when the door opened, they stated that they were going to conduct a protective sweep to see if there was anyone injured based on the basis of the call.

So cited in the brief, as the court is well aware, there's case number—there's case law supporting the proposition that law enforcement can enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury.

It is very easy for us to Monday morning quarterback the reactions of officers when they got there, but when they got there, they knew there was a screaming woman reported at that address five minutes before they arrived.

They had no idea what happened in the interim. It could be the case—it would be holding them too high a standard for them to require that it need to be continuous screaming to authorize them to conduct the protective sweep.

The objective reasonable basis for a warrantless entry under the emergency aid exception does not need to be established to prove surmounting probable cause. Only an objectively reasonable basis for believing that a person within the house is in need of immediate aid. And that's from *Michigan versus Fisher*, 558 U.S.—

THE COURT: 45.

MR. FORD: Yes.

THE COURT: From 2009.

MR. FORD: And then *People versus Troyer*, 51 Cal.App.4th, 599, from 2011.

So then with that information, they were justified in making the entry into the home, and then with the issue of the mistaken address, the law enforcement officers based the search and seizure on a reasonable mistake of fact. The fourth amendment is not violated because "sufficient probability and not certainty is the touchstone of reasonableness under the fourth amendment," and that's from *Hill versus California*, 401 U.S. 797 1971.

And the probability is sufficient if the officer's mistake was objectively understandable and reasonable. That's from *Maryland versus Garrison*, 480 U.S. 79 from 1987.

So in this case, all—everyone—Sergeant Parry and Officer Ramsey were consistent in their testimony that the address they heard was 2314, and we got the transcript that the court has now reviewed showing that 2314 Jupiter Drive was the address given. And we heard Sergeant Parry talk about how this incident—this incident recall report is not necessarily the most accurate.

Based on what they heard and the decisions that they were making at the time, each officer testified that where they thought the screaming woman call came from was 2314 Jupiter Drive. So the mistake of fact was reasonable, and the—once inside, the contraband was lawfully seized as being in plain view.

THE COURT: All right. Submit it?

MR. NELSON: Can I make one point, Your Honor.

THE COURT: Yes.

MR. NELSON: In that counsel cited *Michigan v. Fisher*. His quote was, "This emergency aid exception does not depend on the officers' subjective intent or seriousness of any crime. They are investigating when the emergency arises, if it requires only an objectively reasonable basis for believing."

I think I said at the outset there were no objective facts that led them to reasonably believe that there was any emergency taking place at the residence of 2314 because they could not have heard anything because we've already established that they were at the wrong address. 2313 was

the address that they should have been called to. That's it. I submit.

THE COURT: Submit it?

MR. FORD: Yes.

THE COURT: All right.

The purposes of fourth amendment is to deter bad police conduct. We don't want people storming into people's houses without a sufficient basis.

In this situation there are three officers, two together and one sergeant supervisor, who arrives in error at a location given and information that has been broadcast by dispatch that is, in fact, the wrong address. The description was across from that; however, that address is what the broadcaster in turn gave.

So the Uber driver gives the correct information. The broadcast is for the address that is the wrong address, in fact, not the address across the street. All three heard and thought they were to respond to 2314 Jupiter, and they do so.

There's no facts that indicate that in any way they created any exigency. Like in a narcotics case or something where there's the fake destruction of evidence that you could allege, that type of thing, where they created the situation that resulted. We have no facts that suggest any type of behavior like that whatsoever.

In this case, when they arrived, they see no broken glass, none of the facts that the defense highlighted; that is true. However, they did hear raised voices. They saw that there were individuals

in the home. They knocked on the door a number of times, and it was only after some time that the defendant finally answered the door.

It is the belief of this court that the officers would have been remiss in leaving without checking or clearing the residence. I think we've all heard numerous scenarios where someone is injured and the person who answers the door say, "No. Everything is okay."

I think they would have been remiss in accepting the representation of someone at the door and then leaving the location.

Their intent was to quickly clear and check the house out. Had nothing been ary, I think they would have left promptly, and that would have been the end of it.

It sounds like Sergeant Parry would have still followed through with the Uber driver to find out why the initial report was made since he seems to be thorough in his investigations.

During the quick clearing and checking of the house, that's when the officers immediately saw narcotics. In fact, their behavior was exemplary in that they secured the location and called for narcotic experts, who, in fact, secured a search warrant before the premises were further searched.

At that time it shifts—once the narcotics are found, it shifted to a narcotics investigation and that put in chain—in motion the chain of events to get the search warrant so that the home could be properly and thoroughly researched in response

to those observations, no longer in response to the exigent circumstances.

In looking at *Troyer*, the court rejected that probable cause would be required and indicated that the standard is whether there is an objectively reasonable basis for believing that an occupant was seriously injured or threatened with an injury.

All of the officers testified that they felt, based on the call of the screaming woman, that their duty was to check out the house. And all indicated that it would have been improper for them to leave in response to that call.

The *Troyer* case also indicates that the People's burden under the fourth amendment is to identify an objectively reasonable basis for believing that someone inside was in need of immediate aid, not to eliminate every other reasonable inference that might also have been supported by those facts.

A hindsight determination that there was, in fact, no emergency, does not rebut the objectively reasonable basis for believing someone in the house was injured or in danger.

In looking at the seminal cases, *Troyer*, *Michigan versus Fisher*; also Brigham, b-r-i-g-h-a-m, City versus Stuart, s-t-u-a-r-t—that's 2006—547 U.S. 398, I do believe under the totality of the circumstances there was an objectively reasonable basis for believing that a person in the house was in need of immediate assistance such that the officers were justified in their conduct.

I should also note as an aside that they didn't know the defendant. They had never been to that

location. They had no reason to target him or to suspect that he was involved in criminal activity whatsoever. There's no indication of that in any way. The sole purpose was to make sure that everybody was okay before they left the location.

For that reason, the motion to suppress pursuant to 1538.5 is denied.