State of Alaska v. Robert Duane Gibson, III, Case No. S-13509

Petitioner's opening brief

IN THE SUPREME COURT OF THE STATE OF ALASKA

STATE OF ALASKA,

Petitioner,

vs.

ROBERT DUANE GIBSON, III,

Respondent.

Supreme Court No. S-13509

Court of Appeals No. A-9720
Superior Court No. 3AN-02-6007 Cr.

ON PETITION FOR HEARING
FROM THE COURT OF APPEALS

OPENING BRIEF OF PETITIONER

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Statutes

Alaska Statute 22.05.010 provides:

> **Jurisdiction.**
>
> (a) The supreme court has final appellate jurisdiction in all actions and proceedings. However, a party has only one appeal as a matter of right from an action or proceeding commenced in either the district court or the superior court.
>
> (b) Appeal to the supreme court is a matter of right only in those actions and proceedings from which there is no right of appeal to the court of appeals under AS 22.07.020 or to the superior court under AS 22.10.020 or AS 22.15.240.
>
> (c) A decision of the superior court on an appeal from an administrative agency decision may be appealed to the supreme court as a matter of right.
>
> (d) The supreme court may in its discretion review a final decision of the court of appeals on application of a party under AS 22.07.030. The supreme court may in its discretion review a final decision of the superior court on an appeal of a civil case commenced in the district court. In this subsection, "final decision" means a decision or order, other than a dismissal by consent of all parties, that closes a matter in the court of appeals or the superior court, as applicable.
>
> (e) The supreme court may issue injunctions, writs, and all other process necessary to the complete exercise of its jurisdiction.

STATEMENT OF JURISDICTION

This case involves a petition for hearing from a decision of the court of appeals reversing the trial court denying a motion to suppress evidence. His court has final appellate jurisdiction in all actions and proceedings. AS 22.05.010.

STATEMENT OF ISSUE

May police officers responding to a 911 call reporting a domestic assault walk through the residence from which the call came when in the circumstances they reasonably believe other injured persons may be inside?

STANDARDS OF REVIEW

When a trial court has ruled upon a motion to suppress, the record is reviewed in the light most favorable to upholding the trial court. *Stumbaugh v. State*, 599 P.2d 166, 172-73 (Alaska 1979). Factual findings are upheld unless they are clearly erroneous. *State v. Miller*, 207 P.3d 541, 543 (Alaska 2009).

Whether a search falls within an exception to the warrant rule is reviewed *de novo*. *State v. Blank*, 90 P.3d 156, 159-60 n.19 (Alaska 1994). This court independently determines whether the trial court's factual findings support its legal conclusions. *Miller*, 207 P.3d at 543.

STATEMENT OF THE CASE

Statement of facts

On July 10, 2002, Anchorage patrolmen Justin Doll and Francis Stanfield were dispatched to a disturbance at the trailer located at 3710 Eureka Street, Space 20A. [Exh. 5, 6, 7; Tr. 517-18, 775] The caller reported someone had threatened to stab her in the head with a knife. [Tr. 518, 772] After the officers arrived, parked their cars, and were walking toward the trailer, they heard screaming, crying, and yelling emanating from it. [Tr. 518-19, 773] When the officers got closer to the trailer, . stumbled out of it crying "help me, help me." [Tr. 774] She was wearing only a tank top. [Tr. 518-19, 775] Although the officers instructed her not to do so, Bevin returned to the trailer and put on more clothing. [Tr. 521, 775]

Gibson then came to the trailer door and stood there. [Tr. 776] [Tr. 521, 776-77] The officers drew their weapons and instructed him to come out of the trailer and, when he did so, handcuffed him and secured him in a patrol car. [Tr. 521, 776-77] , who had come back outside, was very upset and confrontational and Officer Stanfield was concerned that she would assault him or Officer Doll. [Tr. 777] She had a swollen eye and a cut on the back of her head. [Exhs. 1, 2, 3, 4; Tr. 522-24, 777-78]

When the back-up officer, Gerard Asselin, arrived, Officers Doll and Stanfield walked through the trailer in order to determine if there were additional injured persons inside. [Tr. 525-26, 778-79] They found no one in the trailer. [Tr. 526] But during the walk-through, the officers smelled a chemical odor, observed unusual chemicals and glassware, and thought that the trailer might contain a clandestine methamphetamine lab. [Tr. 527-28, 778-79]

Officer Doll told Officer Asselin, who had received some training concerning methamphetamine labs, that he thought there was a methamphetamine lab in the trailer and asked him to "take a look." [*Id.*] Officer Asselin concluded that the glassware, equipment, and supplies in the trailer indicated that it contained a methamphetamine lab. [Tr. 792-94] Officer Asselin contacted the Drug Enforcement Unit and two officers from that unit, Detectives Bruce Bryant and Gordon Dorr, were dispatched to determine whether the lab posed an immediate danger, to assess what resources might be needed to respond appropriately, and to investigate. [Tr. 559-60, 795]

Detective Bryant later obtained a search warrant for the trailer. [Exc. 30-42] When the detective executed the warrant, extensive evidence of

methamphetamine production was found. [Tr. 562-83, 588-92, 601-06, 827, 829-32, 836, 863-66, 868, 870-72, 879, 985-1063]

Gibson and met in 1999 when and "Gary" went to Gibson's trailer to pick up some methamphetamine. [Tr. 623-24] Shortly before Gibson met , he had been badly burned while cooking methamphetamine. [Exhs. 32, 33; Tr. 623-29] Gibson owned the trailer; and he paid space rent of $360 a month. [Tr. 659-60]

met Gibson again in 2000 when she and Gary sold him red "Equate" brand suphedrine pills that are used to manufacture methamphetamine. [Exh. 34; Tr. 629-34] A short time later and Gibson "hooked up." [Tr. 630-31] Gibson and both used methamphetamine while they lived together. [Tr. 663]

purchased iodine for Gibson on one occasion and purchased suphedrine for him once or twice a week from WalMart for the two years she lived with him. [Tr. 631, 633-35] Gibson also obtained iodine, suphedrine, and matchbooks from others. [Tr. 636-38] Gibson used these products to cook methamphetamine two or three times a month while lived with him in the trailer, and he had showed and others how to cook or manufacture methamphetamine. [Tr. 639-44, 650-51] Gibson and used MSM, a food supplement, to cut the methamphetamine and in order to

increase the weight of the product that the two produced and sold in half-gram baggies for $50 each. [Tr. 552-55, 1037-39]

Gibson and . cut striker plate strips from matchbooks and Gibson produced red phosphorus by soaking the strips in alcohol. [Tr. 646-47] Gibson cooked the methamphetamine on the stove by putting the ingredients together in a flask that he placed in a frying pan containing sand. [Tr. 647-48]

On July 10, 2002, woke up to find that Gibson was cooking methamphetamine despite an agreement they had made to stop. [Tr. 664-65, 670-79, 741] When confronted him, Gibson kicked her in the ribs and threatened to stab her in the head. [*Id.*] called 911 and lay down on a bed. [*Id.*] When got up to dress, Gibson hit her in the back of the head with a Lipton bottle and punched her in the face. [Exhs. 1, 2, 3, 4; Tr. 670-79]

Course of proceedings

Gibson was indicted for the following offenses: Count I: second-degree misconduct involving a controlled substance (manufacturing material containing methamphetamine), a class A felony; Count II: second-degree misconduct involving a controlled substance (manufacturing material containing methamphetamine), a class A felony; Count III: second-degree misconduct involving a controlled substance (manufacturing material

containing methamphetamine), a class A felony; and Count IV: maintaining a dwelling used to keep controlled substances, a class C felony. [Exc. 1-3] (The remaining counts in the indictment charged with similar offenses. [Exc. 3-5]) On May 16, 2008, Gibson was charged by information with the fourth-degree assault of . [Exc. 88-89]

Prior to trial counts II and III were combined and amended to allege that Gibson possessed pseudoephedrine, iodine, and phosphorus with intent to manufacture methamphetamine; Count IV was renumbered as Count III and the assault count was denominated Count IV. [Exc. 90-91; Tr. 1221-22] Gibson was convicted of the three felony offenses at a jury trial. [Tr. 1179-80] He was found not guilty of the assault charge but convicted of the lesser-included offense, disorderly conduct. [Tr. 1180]

testified against Gibson at trial and pleaded to an amended information charging one count of fourth-degree misconduct involving a controlled substance (possession of methamphetamine). [Tr. 763-67]

ARGUMENT

I. THE TRIAL JUDGE'S RULING UPHOLDING THE INITIAL WALK THROUGH OF GIBSON'S TRAILER SHOULD BE AFFIRMED

A. Introduction

Officers Francis Stanfield and Justin Doll observed what they thought might be a methamphetamine lab when they entered and walked through Gibson's trailer to look for injured persons. Judge Wolverton upheld this initial entry, the later entries to ascertain whether it was a methamphetamine lab and to assess its dangerousness, and the later search conducted under a warrant. The court of appeals held the initial entry was illegal and reversed Judge Wolverton's decision, concluding that the officers had insufficient information to justify an entry under *Gallmeyer v. State*, 640 P.2d 837 (Alaska App. 1982). *Gibson v. State*, 205 P.3d 352, 356 (Alaska App. 2009). [Exc. 99-103] The court of appeals did not reach the question of whether the later entries were proper. *Id.* at 356. [Exc. 103]

The state sought hearing from this Court, arguing that the court of appeals erred in concluding the initial entry by the officers was illegal. This Court granted the state's petition for hearing and ordered full briefing. *See Order*, dated July 9, 2009. The state in its petition asked this Court to overturn the decision of the court of appeals concerning the initial entry and

continues to ask the same in this merits brief. The state requests that this Court, if it agrees with the state regarding the initial entry, to remand the case to the court of appeals to consider in the first instance whether the intermediate entries to determine whether the trailer actually contained a methamphetamine lab and whether there was danger that it would explode were proper.

The proper test to determine the propriety of an entry in the circumstances presented here was set forth by this court in *Stevens v. State*, 443 P.2d 600, 602 (Alaska 1968), not the test set forth in *Gallmeyer*. This court should apply the *Stevens* test and affirm the decision of the trial judge upholding the initial entry.

B. Factual background

On July 10, 2002, the Anchorage Police Department received a 911 call from the house trailer at [Tr. 92] The female caller said a male adult was threatening to stab her in the head. [Tr. 92, 118-19] The dispatcher heard a disturbance in the background and so informed the responding officers. [Tr. 118-19] The dispatcher did not say whether children or other adults were present. [*Id.*]

Officers Stanfield and Doll responded to the trailer "Code 2" – without red lights and sirens. [Tr. 56-57, 93, 117, 196, 212-13] When the

officers arrived at the trailer at 4:44 p.m., they heard screaming inside the trailer and stumbled out of the front door. [Tr. 57, 196, 401] was in distress; she was upset, crying, and saying "help me, help me." [Tr. 58, 182] Her right eye was swollen, and the back of her head was cut and bloody. [Exhs. 3, 4, 5[1]; Tr. 58, 196-97] She was wearing only a tank top. [*Id.*]

Given what one of the officers describes as "pandemonium," they called for back-up. [Tr. 68, 197] At the request of the officers, a radio channel was dedicated to the incident so that other radio calls would not interfere with communication concerning the incident (an action reserved for high-risk incidents). [Tr. 163-64, 169-70, 345] The back-up officer, Officer Gerard Asselin, was dispatched "Code 3" (with red lights and siren). [*Id.*]

, saying she had to put some clothing on, ran back into the trailer despite being instructed not to do so. [Tr. 59, 132, 167, 198] Gibson then came to the door of the trailer, but started to go back inside. [Tr. 197] The officers, concerned for the safety of all because a knife had been reported

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[1] These exhibits were introduced at the suppression hearing and are with the trial file. The remaining exhibits discussed in this brief were admitted at trial, returned to the District Attorney's Office, but have been lodged with the court of appeals. They are located in the office of the appellate clerk.

during the 911 call and because was so upset, drew their guns. [Tr. 59, 68] The officers then ordered Gibson out of the trailer and handcuffed him. [Tr. 60] After Gibson was handcuffed, Officer Asselin was informed that he could proceed "Code 2" – without red lights and siren. [Tr. 363] About this time came out of the trailer but went back in it to obtain a pair of shoes. [Tr. 198, 216-17]

When emerged from the trailer again, she was wearing appropriate clothing, but she was argumentative, uncooperative, upset, screaming, crying, and "carrying on." [Tr. 60-61, 198] Officer Stanfield thought she was going to fight with him or with Gibson, and he confined her in his patrol car. [*Id.*] said there was no one else in the trailer, but the police did not ask her whether she was the individual who had called 911. [*Id.*]

The officers did not accept claim that no one else was in the trailer at face value because they did not know who had made the 911 call and because their experience had been that persons in situation "regularly" do not tell the truth. [Tr. 65-67, 165, 199, 237] The officers also did not know the identity of the person who called 911 or whether more people were in the trailer. [Tr. 67-68]

When Officer Asselin arrived, continued to be uncooperative and was yelling to Gibson that she loved him and was "sorry." [Tr. 348] Officers Stanfield and Doll, cognizant of injuries, unable to obtain further information from her, and knowing that someone had been threatening to use a knife, decided to walk through the trailer in order to ascertain whether someone inside had been injured by the knife or was otherwise in need of medical attention. [Tr. 69-71, 105-06, 118, 200, 240]

Officers Stanfield and Doll, with handguns still drawn, then "cleared" the trailer in a careful and safe manner – a procedure that took two or three minutes. [Tr. 86-88, 202-03, 240-41] While clearing the trailer, the officers saw what they thought was a methamphetamine lab – ingredients and equipment used to cook it – and smelled "an odor." [Tr. 71-83, 148, 203-04]

Officer Doll told Officer Asselin that he thought there was a methamphetamine lab in the trailer. [Tr. 204-05, 352] Officer Asselin, in contrast to Officers Stanfield and Doll, had received training in the identification of methamphetamine labs and was generally familiar with their dangerousness and appropriate precautions. [Tr. 344-45, 252] After Officer Asselin briefly examined the trailer, he called the Drug Enforcement Unit. [Tr. 243, 275-76] Detectives Bryant and Dorr were dispatched to the

trailer at about 5:15 p.m. [Tr. 285-86, 316, 325] When Detective Bryant arrived, Officers Asselin and Stanfield told him they had seen glassware and chemicals and that they thought there was a methamphetamine lab in the trailer. [Tr. 285-86, 303]

Detective Bryant entered the trailer at 5:30 p.m. and walked through it in one or two minutes. [Tr. 287, 306-07] After the walk through, Detective Bryant applied for and obtained a search warrant and executed it that night. [Tr. 293]

C. Proceedings in the trial court

Gibson and filed motions to suppress the evidence and dismiss the indictment arguing that the police entries that led to the issuance of the search warrant were illegal. [Exc. 6-47] The state opposed, and Gibson and replied. [Exc. 48-76] The state then supplied supplemental authorities, and argued exigent circumstances justified the entries. [Exc. 77-82] After an evidentiary hearing, the parties argued the motions. [Tr. 121-80]

D. Trial court decision

1. Introduction

Judge Wolverton issued a comprehensive written decision. [Exc. 83-87] He ruled that the initial warrantless entry was authorized by the emergency aid doctrine. [Exc. 83-86]

2. Factual findings relating to the initial entry

Judge Wolverton found Officers Stanfield and Doll had been dispatched to a domestic disturbance involving a knife, that upon arrival they heard a female "screaming distressfully from the inside of the trailer," and that , harried and visibly injured, stumbled out of the trailer naked except for a tank top. [Exc. 83] said, "Help me, help me." [*Id.*] The officers called for back-up because they had a person coming out of the trailer and did not know how many other persons were involved, and also because they had been informed of the knife. [Exc. 83-84]

Judge Wolverton found the officers drew their weapons when Gibson then came to the door and that the officers ordered him out of the trailer and arrested him. [Exc. 84] After stumbled back into the trailer to get pants (despite being instructed not to do so) and then returned, the officers attempted to question her. [*Id.*] , was "hysterical and uncooperative," but she did say there was no one else inside the trailer. [*Id.*]

then became argumentative to the point that an officer feared she would start a fight with him or Gibson, so the officer placed her in a patrol car. [Exc. 84] One of eyes was swollen and she was cut on the back of the head. [*Id.*] The judge found the officers could not at this point be certain about how many people were involved in the violence because was uncooperative. [*Id.*]

The judge found the officers entered the trailer "specifically to see if anyone else inside was hurt or in need of aid" and that there was "absolutely no evidence . . . something outside the trailer led [the officers] to suspect" the presence of a methamphetamine lab. [Exc. 86] The judge also found the entry was warranted by the specific facts of the case and said he was not ruling there was a general warrantless search exception for all domestic violence cases. [*Id.*]

Judge Wolverton found Officers Stanfield and Doll then "cleared the trailer with their weapons drawn to make sure there was no one else inside injured or hurt." [Exc. 84] Inside the trailer, the officers saw what they thought were components of an "active methamphetamine clandestine laboratory [and] decided to exit because of the dangerous nature of such laboratories." [*Id.*]

3. Judge Wolverton's legal analysis

Judge Wolverton found the entry was justified by the emergency aid doctrine "under the particular circumstances of this case." [Exc. 83] Judge Wolverton concluded the police had "reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property" on account of the report of domestic violence involving a weapon, on account of screaming, on account of half-naked and stumbling exit from the residence, and because of her injuries, her hysteria, her uncooperativeness, and her argumentativeness. [Exc. 84]

Judge Wolverton considered and applied the emergency aid exception to the warrant requirement of *Gallmeyer v. State*, 640 P.2d 837, 842 (Alaska App. 1982). The first requirement is objective: the police must have "reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property." [Exc. 80 (quoting *Gallmeyer*, 640 P.2d at 842)] The judge found this requirement had been met by the report of domestic violence involving a weapon, the screaming the officers heard, half-naked and stumbling exit from the residence, and injuries, her hysteria, her uncooperativeness, and her argumentativeness. [Exc. 85-86] The judge also

found, given the circumstances, that the officers reasonably disregarded claim that no one else was present in the trailer. [Exc. 85-86]

The second *Gallmeyer* emergency entry requirement is that the entry "not be primarily motivated by intent to arrest and seize evidence." [Exc. 85 (quoting *Gallmeyer*, 640 P.2d at 842)] Judge Wolverton found this requirement was met by the officers' testimony that they entered the trailer "specifically to see if anyone else inside was hurt or in need of aid." [Exc. 86] The judge found there was "absolutely no evidence . . . that something outside the trailer led [the officers] to suspect that there could be a meth lab inside." [*Id.*]

The third *Gallmeyer* requirement is the existence of some reasonable basis, approximating probable cause, to associate the emergency with the place to be searched. 640 P.2d at 842. The *Gallmeyer* court explained this means that a warrantless search conducted under the emergency aid doctrine must be "restricted in time and scope to the nature and duration of the particular emergency." 640 P.2d at 842. Judge Wolverton stated that the "officers simply cleared the trailer, falling well within the time and scope limits of the third requirement." [Exc. 86] Accordingly, the judge held the initial warrantless entry was justified under the emergency aid doctrine. [*Id.*]

The judge also upheld the subsequent entries. [Exc. 86-87]

E. Decision of the Court of Appeals

The court of appeals initially stated that it was reversing Judge Wolverton's decision because the information known to the officers "would not have led a prudent and reasonable officer to perceive an immediate need to take action in order to prevent death or to protect against serious injury." *Gibson*, 205 P.3d at 353 (quoting *Gallmeyer*, 640 P.2d at 842). [Exc. 99-100] Later in its opinion, the court said it was reversing because the state failed to show "true necessity – that is, an imminent and substantial threat to life, health, or property" because there was no sign anyone was inside the trailer when the officers entered it. *Gibson*, 205 P.3d at 356 (quoting *Gallmeyer*, 640 P.2d at 843). [Exc. 102] The court then said that to authorize entry on the facts presented here would be to authorize routine police searches in most cases involving a serious domestic dispute. *Gibson*, 205 P.3d at 356. [Exc. 103]

F. The *Gallmeyer* and *Gibson* decisions conflict with this court's decision in *Stevens* and should be overruled

The court of appeals erred in requiring the state to establish "true necessity" in order to justify the entry. In *Stevens v. State*, 443 P.2d 600, 602 (Alaska 1969), this court ruled that an emergency entry is

appropriate when a police officer reasonably believes that an emergency exists. This court explained that the right of police officers to enter and investigate in an emergency is inherent "in the very nature of their duties as police officers, and derives from the common law." *Id.* (quoting *Barone v. United States*, 330 F.2d 543, 545 (2d Cir. 1964)). In *Stevens*, this court stated the proper criterion is "the reasonableness of the belief of the police as to the existence of an emergency, not the existence of an emergency in fact." *Stevens*, 443 P.2d at 602 & n.4 (quoting *Patrick v. State*, 227 A.2d 486, 489 (Del. 1967), and citing *Wayne v. United States*, 318 F.2d 205 (1963)).

In *Schraff v. State*, 544 P.2d 834, 841-42 (Alaska 1975), this court confirmed that the proper criterion to determine the validity of an emergency entry is the reasonableness of the belief of the police in the existence of an emergency. This court observed that "police officers have a customary duty to protect the lives and welfare of citizens at large" and said it had upheld the entry in *Stevens* "because the officers' belief in the existence of an emergency was reasonable." *Schraff*, 544 P.2d at 841-42. And in *Nome v. Ailak*, 570 P.2d 162, 166 (Alaska 1977), this court said it had recognized in *Stevens* that "police officers have the right to enter buildings without a warrant in an emergency as an inherent part of their common law duties."

The requirement that the state prove "true necessity, . . . an imminent and substantial threat to life, health, or property" in order to justify the emergency entry in this case as required by *Gallmeyer* is a far more rigorous test than the one established by this court in *Stevens*. *Gallmeyer* should be overturned not only because it conflicts with *Stevens*, but also because it does not adequately protect victims of crime and does not square with the common-law duty of officers to rescue those in difficulty. This court has held that police have, in many circumstances, a common-law duty to at come to the aid of potential victims of crime – to come to their rescue. For example, in *City of Kotzebue v. McLean*, 702 P.2d 1309, 1314 (Alaska 1985), this court held that the city owed a duty of care to the victim of a person who had called the police station and said that he was going to kill his friend (the victim). In *Lee v. State*, 490 P.2d 1206, 1209-10 (Alaska 1971), this court similarly held that the police owed a duty of care to rescue a child from a lion that was biting her arm.

The higher "true necessity" standard of *Gallmeyer* that the court applied in *Gibson* is not only contrary to *Stevens* but also out of step with mainstream judicial opinion. Emergency entry is normally considered to be appropriate when there are reasonable grounds to believe that some kind of emergency exists, or "there is evidence which would lead a prudent and

reasonable official to see a need to act." 3 Wayne R. LaFave, *Search and Seizure*, § 6.6(a) at 452 & n.13 (4th ed. 2004) (internal citation omitted).

Professor LaFave states: "As one court usefully put it, the question is whether the officers would have been derelict in their duty had they acted otherwise (chosen not to enter a residence to look for victims)." *Id.* at 453 & n.13 (quoting *State v. Hetzko*, 283 So.2d 49, 51 (Fla. 1973), and citing, *inter alia*, *State v. Beede*, 406 A.2d 125, 130 (N.H. 1979) (when officer is seeking missing person, "it is not necessary that the officer be in possession of facts that would warrant the belief that what is sought will be found"; it "is only necessary that the facts warrant the belief that it is appropriate to look"); *State v. Plant*, 461 N.W.2d 253, 263 (Neb. 1990) (entry proper as "had the police officers failed to enter the home to determine the well-being of [three] children, they well may have been derelict in their duty")). Few if any courts other than the court of appeals below require a showing of "true necessity" as a prerequisite to a valid emergency entry.

Professor LaFave's view is consistent with *Wayne v. United States*, 318 F.2d 205, 212 (D.C. Cir. 1963), where Judge Warren Burger, later Chief Justice of the United States, wrote that "the business of police and firemen is to act, not to speculate or meditate on whether a report [of possible

injury] is correct. People could well die in emergencies if police tried to act with the calm deliberation associated with the judicial process."

The *Stevens* test is also consistent with the United States Supreme Court's view of the emergency aid doctrine. In *Brigham City, Utah v. Stuart*, 547 U.S. 398, 406, 126 S.Ct. 1943, 1949 (2006), the Court approved an emergency entry when the "officers had an objectively reasonable basis for believing . . . [a person inside] might need help." *Id.* Earlier, in *Mincey v. Arizona*, 437 U.S. 385, 392, 98 S.Ct.2408, 2413 (1978), the Court said it did not question the right of the police to respond to emergency situations and explained, "Numerous state and federal cases have recognized that the Fourth Amendment does not bar police officers from making warrantless entries and searches when they reasonably believe that a person within is in need of immediate aid."

Further, children, whose interests should surely be considered after an incident of domestic violence, were present at 42 percent of the domestic violence incidents in Anchorage during 1999 and 2002. Manny Rivera, André B. Rosay, Darryl S. Wood, Greg Postle, and Katherine TePas, *Assaults in Domestic Violence Incidents Reported to Alaska State Troopers*, 25 Alaska Justice Forum, University of Alaska Anchorage No. 3 at 4 (Fall 2008). Nationwide, in 43 percent of the domestic violence incidents with female

victims during the period from 2001 to 2005, children under the age of 12 were residing in the household where the incident took place. *Id.* The fact that children are often present in situations similar to that confronting the officers here is an additional reason supporting the application of this Court's *Stevens* test rather than the court of appeals' *Gallmeyer* test.

In sum, the court of appeals applied a more rigorous standard than that established by this court in *Stevens* and *Schraff.* The *Gallmeyer* and *Gibson* decisions conflict with *Stevens* and *Schraff* and the common-law duty of officers to protect victims of crime.

G. The circumstances existing at the time of the initial entry justified the entry into the trailer – a "walk through" – to check for additional injured persons

The court of appeals called the state's argument that the facts warranted the walk through "speculative" and "resting on the contention" that the police did not know whether was the person who made the 911 call. *Gibson*, 205 P.3d at 356. [Exc. 103] It is true that the officers did not ask if she had made the call.

In its analysis, the court of appeals failed to consider the evidence in the light most favorable to party who prevailed below, here the state. *State v. Miller*, 207 P.3d 541, 543 (Alaska 2009); *Stumbaugh v. State*, 599 P.2d 166, 172-73 (Alaska 1979). In concluding the facts did not warrant the

walk-through, the court of appeals mistakenly viewed the fast-moving events in isolation and failed to consider the entire scenario. *See Miller*, 207 P.3d at 545 (court of appeals erred in filing to consider factual context in which officer acted). The police here did not know for sure who had placed the 911 call and had not seen or recovered the knife that had been used to threaten the person who called 911. And what one officer described as "pandemonium" prevailed when the officers arrived at the trailer. [Tr. 59] Someone was inside the trailer screaming, and came out of the trailer wearing only a tank top and saying "help me, help me." [Tr. 68, 197] was uncooperative, argumentative, hysterical, screaming, crying, upset, and "carrying on." [Tr. 60-61, 98] She had a swollen eye and was cut on the back of her head and was unable or unwilling to communicate with the officers. [Tr. 60-61, 98] injuries and her extremely upset condition – her screaming, her stumbling half-naked exit from the trailer, her hysteria, her uncooperativeness, her injuries, and her argumentativeness – were all factors which indicated that violent events had occurred in the trailer; it was reasonable for the officers to check the trailer to see if others had been injured and needed assistance. *See Miller*, 207 P.3d at 546 (domestic disturbances have the potential to, and often do, lead to injury and death of third persons).

In other words, the events were highly stressful and the information available to the officers was somewhat ambiguous. It is unreasonable to expect the police to piece together a perfectly coherent picture in the short time they had to deal with this constantly changing scenario. *See Graham v. Connor*, 490 U.S. 386, 397, 109 S.Ct. 1865, 1872 (1989) (cautioning against second-guessing police officers who are "often forced to make split-second judgments – in circumstances that are tense, uncertain. and rapidly-evolving").

In particular, the court of appeals erred in not fully crediting the dispatcher's report that she had heard a disturbance in the background when the female who was calling said that a male was threatening to stab her in the head. A disturbance – viewed in the light most favorable to upholding the decision below – should be understood as a fracas or commotion involving more persons than the male threatening the person who called 911.

The court of appeals further erred in not fully crediting the testimony of the responding officers that persons in position often lie about the presence of others in a residence when domestic violence has occurred. [Tr. 65-67, 165, 199] *See Miller*, 207 P.3d at 548 (discussing and crediting experience of officer responding to instance of domestic violence).

Other jurisdictions have frequently credited similar testimony and used it to support emergency entries in similar and analogous circumstances.

In *United States v. Valencia*, 499 F.3d 813, 814 (8th Cir. 2007), officers were dispatched to an apartment from which a shotgun had been fired more than once. The officers found pellets across the street and questioned two residents of the apartment. *Id.* Valencia, who was walking away from the apartment building, admitted that he lived in the apartment, but said no one was present in the apartment. *Id.* A second person who claimed to live in the apartment with her boyfriend also denied that anyone was in the apartment. *Id.* Thirty minutes after the initial dispatch, officers broke down the door and conducted a two-minute protective sweep of the apartment. *Valencia*, 499 F.3d at 815.

The Eighth Circuit upheld the entry as objectively reasonable. *Valencia*, 499 F.3d at 815-16. The court said the circumstances created "clear justification for a reasonable law-enforcement officer" to enter the apartment to secure the shotgun and to look for victims in need of medical attention. *Id.*

In *United States v. Bartelho*, 71 F.3d 436, 438 (1st Cir. 1995), police were dispatched to a disturbance in an apartment building by a neighbor who said the female resident (Harris) of the apartment in question had complained that her boyfriend had assaulted her and asked to go to the

hospital. The neighbor said she had not heard the boyfriend leave the apartment. *Id.*

After police persuaded Harris to leave the apartment, she stated that she had had an argument with her boyfriend but that he had left the apartment. *Bartelho,* 71 F.3d at 438. But "the police were not required to take Harris's statement at face value, especially given their domestic-abuse training," and the court upheld the subsequent protective-sweep entry. 71 F.3d at 441. *Accord United States v. Henry,* 48 F.3d 1282, 1284-85 (D.C. Cir. 1995) (upholding protective sweep despite the fact that girlfriend told police her boyfriend had left).

In *State v. Johnson,* 16 P.3d 680, 685 (Wash. App. 2001), police responded to a report of domestic violence and arrested the perpetrator who was outside the house. *Id.* An officer who knocked on the door of the house was met by a female. *Id.* He entered the house without asking permission to do so because he did not know how many victims there were or whether any children were involved. *Id.* at 686. The Washington court upheld the entry and rejected the argument that the police officer should have asked the female who answered the door whether there were more victims inside, since victims of domestic violence "are sometimes uncooperative with police because they fear retribution from their abusers." (quoting *State v. Jacobs,* 2

P.3d 974, 976-77 (Wash. App. 2000)). *Accord Guererri v. State*, 922 A.2d 403, 408 (Del. 2007) (officer was not required to accept resident's assurance, after entry, that no one else was present in residence and properly searched basement; failure to search for injured parties may have been dereliction of duty).

In short, the officers' concern here that someone could be inside the trailer and injured was reasonable. in the circumstances was an unreliable source of information. The officers did not know who had placed the 911 call, had not recovered the knife that had been reported, and were unable to communicate effectively with even though she was outside the trailer. injuries and her extremely upset condition – her screaming, her stumbling half-naked exit from the trailer, her hysteria, her uncooperativeness, and her argumentativeness – were all factors which indicated that violent events had occurred in the trailer so that it was reasonable for the officers to check the trailer to see if others had been injured and needed assistance.

Here, the initial officers merely looked for injured persons. If they had not checked the trailer out and someone had been injured and in need of medical attention, the consequences could have been tragic. *See* Wayne R. LaFave, *Search and Seizure*, § 6.5(e) at 459 (4th ed. 2004)

("Doubtless there are an infinite variety of situations in which entry for the purpose of rendering aid is reasonable"). The record, viewed in the light most favorable to the state, demonstrates Officers Stanfield and Doll reasonably believed that there was a need to determine if injured persons were in the trailer.

CONCLUSION

This court should reverse the decision of the court of appeals and remand to that court for consideration of the propriety of the entries occasioned by the need to determine whether the trailer actually contained a methamphetamine lab and to evaluate its dangerousness.

Dated this 29th day of September, 2009.

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