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

Respondent's brief

FILE COPY

IN THE SUPREME COURT OF THE STATE OF ALASKA

STATE OF ALASKA,

Petitioner,

vs.

ROBERT GIBSON, III,

Respondent.

Supreme Court No. S-13509

Court of Appeals No. A-9720
Trial Court No. 3AN-02-6007 CR

PETITION FOR HEARING FROM THE COURT OF APPEALS

APPEAL FROM THE SUPERIOR COURT
THIRD JUDICIAL DISTRICT AT ANCHORAGE
HONORABLE MICHAEL WOLVERTON, JUDGE

BRIEF OF RESPONDENT

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VRA CERTIFICATION AND APP. R. 513.5 CERTIFICATION

I certify that this document and its attachments do not contain (1) the name of a victim of a sexual offense listed in AS 12.61.140 or (2) a residence or business address or telephone number of a victim of or witness to any offense unless it is an address used to identify the place of the crime or it is an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court. I further certify, pursuant to App. R. 513.5, that the font used in this document is Arial 12.5 point.

Filed in the Supreme Court
Of the State of Alaska
December 2, 2009

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STATUTES

Alaska Statute 11.71.020(a) provides that:

AS 11.71.020. Misconduct Involving a Controlled Substance in the Second Degree.

(a) Except as authorized in AS 17.30, a person commits the crime of misconduct involving a controlled substance in the second degree if the person

. . .

(2) manufactures any material, compound, mixture, or preparation that contains

(A) methamphetamine, or its salts, isomers, or salts of isomers; or

(B) an immediate precursor of methamphetamine, or its salts, isomers, or salts of isomers;

. . .

(4) possesses a listed chemical with intent to manufacture any material, compound, mixture, or preparation that contains

(A) methamphetamine, or its salts, isomers, or salts of isomers; or

(B) an immediate precursor of methamphetamine, or its salts, isomers, or salts of isomer;

(5) possesses methamphetamine in an organic solution with intent to extract from it methamphetamine or its salts, isomers, or salts of isomers; or

. . .

RULES

None.

CONSTITUTIONAL PROVISIONS

Alaska Constitution, Article I § 14 provides that:

> Article 1 - Declaration of Rights
>
> § 14. Searches and Seizures
>
> The right of the people to be secure in their persons, houses and other property, papers, and effects, against unreasonable searches and seizures, shall not be violated. 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.

Alaska Constitution, Article I § 22 provides that:

> Article 1 - Declaration of Rights
>
> § 22. Right of Privacy
>
> The right of the people to privacy is recognized and shall not be infringed. The legislature shall implement this section. [Amended 1972]

California Constitution, Article 1 § 1 provides that:

> ARTICLE 1 DECLARATION OF RIGHTS
>
> SECTION 1. All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.

United States Constitution, Fourth Amendment provides that:

> Amendment 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.

STATEMENT OF JURISDICTION

This court has jurisdiction pursuant to Alaska Appellate Rule 302 and AS 22.05.010(d).

ISSUE PRESENTED FOR REVIEW

Does the emergency aid exception to the warrant requirement permit the police to enter a residence when the victim and suspect in an alleged domestic violence assault are outside of the small single-wide trailer in which they reside, the victim has told the police that there is no one else inside the trailer, and the police have no evidence that anyone else is inside the trailer?

STANDARD OF REVIEW

This court reviews the denial of a motion to suppress in the light most favorable to upholding the trial court's ruling.[1] The trial court's factual findings will be upheld unless they are clearly erroneous.[2] The evidence will be viewed in the light most favorable to the prevailing party.[3] The court exercises its independent judgment in determining whether the trial court's factual findings support its legal conclusions.[4]

1 *State v. Joubert*, 20 P.3d 1115, 1118 (Alaska 2001).
2 *Id.*
3 *Gallmeyer v. State*, 640 P.2d 837, 839 (Alaska App. 1982).
4 *Joubert*, 20 P.3d at 1118.

INTRODUCTION

On July 10, 2002, a woman called 911 to report a disturbance between herself and a man. The woman said that someone tried to hit or stab her in the head and that a knife might be involved. Two police officers were dispatched to the small single-wide trailer from which the call was made. As they arrived at the trailer, emerged with a reddish/blackish eye and a bleeding head. Robert Gibson came out a moment later and was arrested and put in the police car without incident. sobbed and apologized to Gibson. Despite the fact that the victim and suspect were both out of the trailer, that said no one else was inside, and that the police had no evidence that anyone remained inside, the police entered the residence. They saw what they thought was a methamphetamine laboratory. This led to two other police searches and ultimately a search warrant.

Gibson filed a motion to suppress the evidence discovered pursuant to the warrantless search of the trailer. The trial court denied Gibson's motion to suppress, finding that the police could enter the trailer without a warrant under the emergency aid exception to the warrant requirement. Based on the evidence discovered in the trailer and its fruits, Gibson was convicted, at trial, of three drug-related charges and disorderly conduct (for the alleged assault on Bevin).

The court of appeals, using the proper legal standards, overturned the trial court's ruling on the motion to suppress and correctly found that the evidence did not support an entry into the trailer under the emergency aid exception to the warrant requirement. This court should affirm the court of appeals' ruling.

STATEMENT OF THE CASE

A. Facts

On July 10, 2002 at 4:38 p.m. in Anchorage, there was a call to 911 from a woman concerning a disturbance she was having with a man. The woman claimed that someone threatened to hit or stab her in the head and a knife may have been involved. (Tr. 57, 92, 96, 106, 119, 230, 398) The 911 call-taker entered the text, "Female stated male was threatening to stab her in the head. Could hear 11-19 [disturbance] in the background." (Tr. 399-400)[5] The dispatch did not mention multiple parties. (Tr. 231) If the dispatcher had heard voices other than the male and female involved in the dispatch she probably would have provided that information so that the police would know how many officers to dispatch. (Tr. 400) Officers Stanfield and Doll were dispatched to the trailer from which the call was made and arrived there at 4:44 p.m. (Tr. 56, 62, 106, 194-95, 401) They were dispatched as a normal response —they did not utilize lights or sirens. (Tr. 93, 117, 195)

As they approached the single-wide one-bedroom trailer they heard one woman (later identified as) screaming. (Tr. 57, 144, 151, 196, 212-13) They did not hear a man shouting or any other noises. (Tr. 97) fell or stumbled out the door. (Tr. 57) She said "help me" and sounded upset; she was or had been crying. (Tr. 58) One of her eyes was red and swollen and there was a

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[5] The call-taker takes the call and types in the information which is then forwarded to the dispatcher and relayed to the police officers. (Tr. 56, 195, 397-401)

bloody wound on the back of her head. (Tr. 58, 213; R. 592-93)[6] She was only wearing a tank top. (Tr. 58)

went back into the trailer to put some clothes on. (Tr. 59) The officers did not want her in the trailer and ordered her back out. (Tr. 60) After emerging with pants on, she asked permission and was allowed to go back in and put on shoes. (Tr. 101) When was in the trailer, Stanfield did not hear her speaking to anyone. (Tr. 148)

When initially went into the trailer to put on pants, a man (later identified as Robert Gibson) appeared in the door. (Tr. 58-59, 99, 215) He complied with the officers' orders to come out and he was handcuffed and put in a patrol car. (Tr. 60, 100) Once was dressed and out of the trailer, and Gibson was handcuffed and in the police car, she became uncooperative and argumentative. (Tr. 60-61, 103) "She was still kind of screaming and crying and carrying on." (Tr. 198)[7]

Once and Gibson were out of the trailer, Stanfield did not hear any sounds coming from the trailer and did not see any movement in the trailer. (Tr. 104-05) The officers did not hear any woman screaming. (Tr. 233) There were no calls of distress from inside. (Tr. 233) The curtains did not move. (Tr. 222) There

[6] There is an envelope in the appellate court record that contains pictures, introduced during the evidentiary hearing, of injuries to eye and head. (R. 592-93)

[7] was eventually placed in a patrol car. It is unclear when this occurred. Stanfield seemed to indicate that she was put in a patrol car prior to his search of the residence (Tr. 60-61, 102, 167), but Officer Asselin said that she was waiting outside with him when Stanfield and Doll went into the trailer. (Tr. 347-48,

was no evidence of a third party in the trailer. (Tr. 104-05, 223) They "saw nothing else that would indicate that there was another person inside." (Tr. 223)

When she was asked, told them that no one else was in the trailer. (Tr. 65, 199, 222) According to Stanfield, people regularly lie in domestic violence situations. (Tr. 65, 67) He therefore did not believe statement that no one else was in the trailer. (Tr. 67)

Stanfield and Doll had called for back-up when .... initially came out of the trailer and requested two more officers. (Tr. 68, 197) They initially asked for back-up to come under emergency conditions. (Tr. 197) However, after they had placed Gibson in the patrol car, they said that the back-up officer did not have to respond at an emergency level. (Tr. 219, 345-46) Officer Asselin arrived shortly. (Tr. 220-21, 364-66, 402-03)

When Officer Asselin arrived, he stayed with Gibson and while Stanfield and Doll went in the trailer. (Tr. 69) was upset and yelling to Gibson, who was still in custody in the police car, that she was sorry and she loved him. (Tr. 348) Asselin noticed that she had an injury to her eye and was bleeding in the back of her head and that she appeared to be the victim. (Tr. 348, 390)

Stanfield and Doll entered the trailer without getting consent from or Gibson. They justified their entry as making sure that no one inside was hurt, injured, or dying. (Tr. 69, 106, 109, 200, 240) Stanfield testified that: the substance of the initial report, the state of undress, injuries, the fact that came to the door screaming and requesting help, and the fact that Gibson was calm

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and composed caused him to believe that someone inside could need help. (Tr. 70-71, 185) Stanfield claimed that they did not know what was going on; they did not know who was the victim and who was the suspect. (Tr. 185)

Doll said he did not know if was the person who had called 911 or if anyone else was in the trailer. (Tr 199) Doll admitted that, "under that situation," it was standard practice to enter a residence, without a warrant, even if there was absolutely no reason to believe that someone was inside. (Tr. 226)

The trailer was a single-wide one-bedroom trailer. (Tr. 144, 151) It was a mess. (Tr. 73, 203) Based on what they saw in the trailer the officers thought it was a methamphetamine laboratory (meth lab). (Tr. 74-81, 158, 175, 203, 205) Stanfield thought they were in the trailer for ten minutes or less; Doll and Asselin thought that Stanfield and Doll were in the trailer for two to three minutes. (Tr. 86, 241, 351)

Because they thought that the trailer contained a meth lab, Stanfield and Doll asked Asselin to enter the trailer and clarify what they had seen. (Tr. 242) Asselin went in the trailer and thought the items inside were indicative of meth production. (Tr. 355)

After Stanfield, Doll, and Asselin had already been in the trailer, Doll interviewed (Tr 207, 209, 227-28, 244) said that Gibson had been cooking meth and that is what they had fought about. (Tr. 208) She claimed that she was angry with Gibson because he would not stop cooking meth. (Tr. 209) She said that she had nothing to do with cooking the meth and it was for personal use only. (Tr. 209) She claimed that she was angry because while she had been

asleep, Gibson had resurrected the meth lab. (Tr. 228)

When Asselin came out, he said that it was a clandestine lab and he called Detectives Bryant and Dorr. (Tr. 243, 275-76) Bryant and Dorr arrived and spoke with Asselin, Doll, and Stanfield. (Tr. 277)[8] Detective Bryant, who had been to trainings on clandestine meth labs, went into the trailer with Asselin and Dorr, allegedly to assess the hazard level. (Tr. 257-58, 277, 286, 328, 370) Bryant then applied for and obtained a search warrant. (Tr. 293)

B. Prior Proceedings

1. The trial court

a. Motion work and ruling on warrantless searches

The state initially indicted Gibson on three counts of second-degree misconduct involving a controlled substance (for manufacturing meth) and one count of fourth-degree misconduct involving a controlled substance (for maintaining a dwelling utilized for keeping or distributing controlled substances). (Exc. 1-5) The indictment was later amended and Gibson was charged with two counts of second-degree misconduct involving a controlled substance (one count for manufacturing meth and one count for possessing precursors with the intent to manufacture meth) and one count of fourth-degree misconduct involving a controlled substance (for maintaining a dwelling). (Exc. 90-91) He was also charged, by information, with fourth-degree assault for his alleged actions against (Exc. 88-89) was indicted on three counts of second-degree misconduct involving a controlled

[8] Stanfield said that he did not speak to Detective Bryant. (Tr. 152, 186)

substance (for possessing precursors of meth) and one count of fourth-degree misconduct involving a controlled substance (for maintaining a dwelling). (Exc. 1-5)

Gibson filed a motion to suppress the evidence and dismiss the indictment due to the warrantless search of his residence; he also joined a suppression motion filed by . (Exc. 15-29)[9] The state opposed. (Exc. 48-59) Gibson and both replied. (Exc. 60-74) The state filed supplemental briefing. (Exc. 75-82) There were extensive evidentiary hearings on the motions to suppress. (Tr. 52-420) The parties then orally argued the motion. (Tr. 421-480)

The court issued a written order denying the motion to suppress. (Exc. 83-87) It found that the warrantless entry was justified by the emergency aid doctrine. (Exc. 83) It specifically found that the first search was justified under the emergency aid doctrine and the subsequent warrantless searches were justified by exigent circumstances and the inevitable discovery doctrine. (Exc. 85)

The court found that "[g]iven the unreliability of this clearly distressed person [ ] and the surrounding circumstances," the officers did not act unreasonably in not crediting 's claim that no one else was in the trailer and in entering the trailer "to make sure that no one else was injured or in need of medical assistance." (Exc. 86) The court stated that,

> As one officer testified, it is not uncommon for people involved in domestic violence situations to be inaccurate or untruthful in their description of the circumstances. It would not be reasonable to require officers to accept and rely on the face value of such descriptions under the

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[9] also filed a motion to suppress based on the warrantless search. (Exc. 6-14) Gibson joined in motion. (Exc. 44-47)

circumstances of a particular case such as this one.

(Exc. 86) The court found that all three *Gallmeyer*[10] factors were met. (Exc. 86) The court also explicitly stated that there is not "a general warrantless search exception for all domestic violence cases" and that its findings were specific to the facts of this case (Exc. 86)

b. Convictions

After a jury trial, Gibson was convicted of two counts of second-degree misconduct involving a controlled substance, one count of fourth-degree misconduct involving a controlled substance, and one count of disorderly conduct. (Tr. 1179-80) One count of second-degree misconduct was for manufacturing methamphetamine,[11] the other second-degree misconduct count was for possessing the precursors to methamphetamine with the intent to manufacture methamphetamine,[12] the fourth-degree misconduct count was for maintaining a dwelling used for keeping or distributing controlled substances,[13] and the disorderly conduct charge was for conduct with [14]

2. The court of appeals

Gibson appealed his convictions to the court of appeals. He argued

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[10] *Gallmeyer v. State*, 640 P.2d 837, 841 (Alaska App. 1982) (setting forth the three necessary elements of the emergency aid exception to the warrant requirement) (discussed *infra*).

[11] AS 11.71.020(a)(2). (Exc. 90-91)

[12] AS 11.71.020(a)(4). (Exc. 90-91)

[13] AS 11.71.040(a)(5). (Exc. 90-91)

[14] He was initially charged with fourth-degree assault (Exc. 88-89) but was acquitted at trial and convicted of the lesser-included charge of disorderly conduct. (Tr. 1180)

that the trial court erred in failing to grant his motion to suppress.[15] The court of appeals held that the police unlawfully entered Gibson's house following his arrest and concluded that, "the circumstances of the search, as established at the evidentiary hearing, would not 'have led a prudent and reasonable officer to perceive an immediate need to take action to prevent death or to protect against serious injury to persons or property.'"[16]

The court noted that, although Officer Doll testified that he was not sure if [redacted] was the person who placed the 911 call, there was no evidence that he asked her if she had made the call.[17] The court also quoted Officer Doll's testimony that the police "saw nothing else that would indicate that there was another person inside [the trailer]."[18]

The court discussed the *Gallmeyer* case, which sets forth the factors that must be applied in determining whether the emergency aid exception permits the warrantless entry.[19] The court noted that, under *Gallmeyer*, the emergency aid exception "requires true necessity – that is, an immediate and substantial threat to life, health, or property."[20] The court also quoted *Gallmeyer* for the definition of "true necessity":

> True necessity has never been construed to require

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15 *Gibson v. State*, 205 P.3d 352, 353 (Alaska App. 2009).

16 *Id.* at 353 and 356 (quoting *Gallmeyer v. State*, 640 P.2d 837, 842 (Alaska App. 1982)).

17 *Gibson*, 205 P.3d at 354.

18 *Id.* (internal quotations omitted).

19 *Id.* at 354-55.

20 *Id.* at 355 (citing *Gallmeyer*, 640 P.2d at 843) (internal quotations and footnote omitted).

> absolute proof that injury would necessarily have occurred.... Rather, in determining necessity, the probability and potential seriousness of the threatened harm must be viewed objectively and balanced against the extent to which the police conduct results in a violation of privacy interests.[21]

In applying *Gallmeyer* to the facts of this case, the court noted that the requirement of necessity implied that "a mere possibility that an emergency exists ordinarily will not be sufficient."[22]

The court found that the state justified the warrantless entry into Gibson's home "based on speculation."[23] The court stated:

> [T]he facts known to the officers at the time they entered the trailer strongly support the conclusion that Bevin was the person who made the 911 call. Bevin's injuries were consistent with the threat that the caller reported, but the police never asked Bevin whether she was the person who made the call. ... At the time the police entered the trailer, there was no sign that there was anyone inside, and the police had both Gibson and Bevin in custody. At this point, the police had no reason to believe that there was anyone else in the trailer.[24]

The court noted its concern that "if we were to authorize the police to enter someone's home based on these facts, the police would routinely be able to search a residence in most cases where there was a report of a serious domestic dispute."[25]

Because the court found that the initial warrantless police entry was

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21 *Id.* (citing *Gallmeyer*, 640 P.2d at 844) (internal quotations omitted).
22 *Id.* at 356 (internal quotations and footnote omitted).
23 *Id.*
24 *Id.*
25 *Id.*

unjustified, it did not consider the subsequent two warrantless police entries.[26] It remanded the case to the trial court to consider what evidence should be suppressed, or whether the indictment should be dismissed, as a result of the illegal search.[27]

The state petitioned for hearing and this court granted its petition. Gibson's opposition follows.

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26 *Id.*

27 *Id.*

ARGUMENT

I. THE EMERGENCY AID EXCEPTION IS INAPPLICABLE WHEN THE VICTIM AND SUSPECT ARE OUT OF THE RESIDENCE, THE EMERGENCY NO LONGER EXISTS, AND THERE IS NO EVIDENCE THAT ANYONE ELSE IS IN THE RESIDENCE.

A. Absent a valid exception, a warrantless search of the home is presumptively erroneous under both the United States and Alaska constitutions.

Both the United States and Alaska constitutions protect citizens from warrantless searches.[28] The United States Supreme Court has commented on the special protection afforded by the Fourth Amendment to the home:

> The Fourth Amendment protects the individual's privacy in a variety of settings. In none is the zone of privacy more clearly defined than when bounded by the unambiguous physical dimensions of an individual's home – a zone that finds its roots in clear and specific constitutional terms: 'The right of people to be secure in their ... houses ... shall not be violated.'[29]

Alaska further protects the right to privacy through an explicit right enumerated in the constitution.[30] This court has noted the special protection that Alaska's privacy amendment, along with the state and federal protections against unreasonable searches and seizures, accords a citizen's home:

> In Alaska we have also recognized the distinctive nature of the home as a place where the individual's privacy receives special protection. This court has consistently recognized that the home is constitutionally protected from unreasonable searches and seizures, reasoning that the home itself retains a protected status under the Fourth Amendment and Alaska's constitution distinct from that of the occupant's person. The privacy amendment to the

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28 U.S. Const., amend. IV; Alaska Const., Art. I § 14.

29 *Payton v. New York*, 445 U.S. 573, 589-90 (1980).

30 Alaska Const., Art. I § 22.

> Alaska Constitution was intended to give recognition and protection to the home.[31]

A warrantless entry into a person's home is presumptively invalid under both the federal and state constitutions unless it falls within one of the limited exceptions to the warrant requirement.[32] In these narrow exceptions, invasion of a citizen's privacy will be permitted only when there is a "'compelling need for official action and there is no time to secure a warrant.'"[33]

Here, the trial court found that the emergency aid exception to the warrant requirement permitted the police to enter Gibson's home. However, as the California Supreme Court has noted with regard to the emergency aid exception, "the exception must not be permitted to swallow the rule."[34] In this case, the court of appeals correctly held that the warrantless search of Gibson's home did not fall under the emergency aid exception and was therefore illegal.

B. Case law from the Alaska Court of Appeals defining the parameters of the emergency aid exception is in concert with this court's opinion in *Stevens* and with the law of other jurisdictions.

1. The court of appeals decision in *Gallmeyer*.

The court of appeals addressed the requirements that must be met for the emergency aid exception to apply in *Gallmeyer v. State*.[35] These three requirements are:

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[31] *Ravin v. State*, 537 P.2d 494, 503-04 (Alaska 1975).

[32] *Payton*, 445 U.S. at 586, 589-90; *Johnson v. State*, 662 P.3d 981, 984 (Alaska App. 1983).

[33] *Schultz v. State*, 593 P.2d 640, 642 (Alaska 1979) (quoting *Michigan v. Tyler*, 436 U.S. 499, 509 (1978)).

[34] *People v. Smith*, 496 P.2d 1261, 1263 (Cal. 1972).

(1) 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.

(2) The search must not be primarily motivated by intent to arrest and seize evidence.

(3) There must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched.[36]

The first requirement, the existence of an emergency, is judged by an objective standard: "whether the evidence would 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 to persons or property."[37] For the second requirement, "a high level of judicial scrutiny is focused on the actual intent of officers invoking the exception."[38] For the third requirement, it "must be clear from the circumstances that any warrantless search conducted under the emergency aid doctrine is restricted in time and scope to the nature and duration of the particular emergency."[39] "[T]he search may not be initiated after it is manifest that the emergency has ceased to exist."[40]

The *Gallmeyer* court also further defined the word "emergency," to make clear that an emergency is a "true necessity":

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35 640 P.2d 837 (Alaska App. 1982).

36 *Id.* at 842 (citing *People v. Mitchell*, 347 N.E.2d 607, 609 (N.Y. 1976)) (footnote omitted).

37 *Id.*

38 *Id.*

39 *Id.*

40 *Id.* at 843.

> '[E]mergency aid' ordinarily requires true necessity – that is, an imminent and substantial threat to life, health or property. ... But 'true necessity' has never been construed to require absolute proof that injury would necessarily have occurred. ... Rather, in determining necessity, the probability and potential seriousness of the threatened harm must be viewed objectively and balanced against the extent to which police conduct results in a violation of privacy interests.[41]

2 *Gallmeyer* is consistent with this court's decision in *Stevens* and with other Alaskan caselaw.

In its brief, the state seizes upon the phrase "true necessity" and asserts that this *Gallmeyer* requirement conflicts with this court's decision in *Stevens v. State*[42] and with other Alaska caselaw. (Pet. Br. 18-20) The state contends that "true necessity" is a more rigorous test than that established by *Stevens*. (Pet. Br. 20) "True necessity," however, serves merely to define the term "emergency" and is in accord with this court's prior decisions.

This court discussed the emergency aid exception for the first time in *Stevens v. State*. *Stevens*, considered whether a delay of ten hours in a homicide investigation in response to an emergency call rendered the warrantless search, that would otherwise fall under the emergency aid exception, invalid.[43] In discussing the emergency aid exception, this court said, "The 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."[44] Because this court was not squarely considering the

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41 *Id.* at 843-44 (citations and internal quotations omitted).
42 443 P.2d 600 (Alaska 1968).
43 *Id.* at 601.
44 *Id.* at 602.

applicability of the emergency aid exception, it did not further delineate the requirements of the exception.

Stevens' statement that an officer must reasonably believe that there is an emergency, not that an emergency actually exists, squares with the *Gallmeyer* requirement of a true necessity. The *Gallmeyer* court said that "true necessity' does not mean that an injury must actually have occurred but that the probability and potential seriousness of the threatened harm must be viewed objectively and weighed against the privacy interests at stake.[45] Thus, both *Gallmeyer* and *Stevens* judge an emergency by an objective standard. "True necessity" does not negate the fact that it need not be an emergency in fact; the criteria is still whether the officer reasonably believed there was an emergency. The court of appeals employed the phrase "true necessity" merely to define the term "emergency": "true necessity – that is, an imminent and substantial threat to life, health, or property."[46]

This court discussed the exigent circumstances exception in *Schraff v. State*.[47] *Schraff* is distinguishable in that it concerned the warrantless search of a wallet, not the search of a home.[48] Thus, the special constitutional privacy protection afforded to the home was not relevant in *Schraff*. However, *Schraff's* reiteration of the *Stevens'* requirement that the officer's belief in the existence of the emergency must be reasonable does not conflict with the *Gallmeyer* requirements. The officer's belief must be objectively reasonable, and the emergency that they

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45 *Gallmeyer*, 640 P.2d at 843-44.

46 *Id.* at 843 (citations and internal quotations omitted).

47 544 P.2d 834 (Alaska 1975).

reasonably believe is occurring is defined as a "true necessity." Further, the *Schraff* concurrence stated, in a footnote, that, "The emergency doctrine is based on a showing of a true necessity – that is, an imminent and substantial threat to life, health or property."[49] Thus, two justices of this court[50] explicitly recognized that the requirement of "true necessity" is part and parcel of the emergency aid doctrine; "true necessity" merely delineates what, in fact, is an emergency.

Nome v. Ailak,[51] which the state asserts conflicts with the *Gallmeyer* requirements (Pet. Br. at 19), is similarly consistent with *Stevens* and *Gallmeyer*. *Ailak* is a civil case in which a citizen sued the police for entering his home unlawfully while investigating a reported rape and murder.[52] This court cited *Stevens* and held that a reasonable belief in an emergency justified the police in entering the home.[53] Again, a reasonable belief in an emergency is in accord with the condition that the emergency be a true necessity.

An examination of the dictionary definition of "emergency" illustrates that "true necessity" is merely a means of defining an emergency. Webster's Third New International Dictionary defines emergency as:

> an unforeseen combination of circumstances or the resulting state that calls for immediate action <they were far from help when the ~ overtook them>: as a pressing

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48 *Id.* at 836.

49 *Id.* at 848 n.1 (Boochever, J., concurring) (emphasis added).

50 Chief Justice Rabinowitz joined in Justice Boochever's concurrence. *Id.* at 848 n.1.

51 570 P.2d 162 (Alaska 1977).

52 *Id.* at 165-66.

53 *Id.* at 167.

need: exigency[54]

"A pressing need" is similar to a "true necessity." They are both methods of attempting to explain what an emergency is and when an event will constitute an emergency.

The state asserts that the *Gallmeyer* standards conflict with the duty of a police officer to come to the aid of potential crime victims. (Pet. Br. at 20) Rather than creating a conflict, both *Stevens* and *Gallmeyer* balance the police officer's duty to investigate crime with a citizen's constitutional rights to be free of warrantless searches and to privacy in the home.

For the foregoing reasons, the *Gallmeyer* requirements for the emergency aid exception, specifically its definition of an emergency as being a "true necessity," are not more rigorous than that of *Stevens*. Rather, *Gallmeyer* further explains and delineates the requirements for the emergency aid exception that was first recognized by this court in *Stevens*.

3. The *Gallmeyer* standards for the emergency aid exception conform with those of other jurisdictions.

The state asserts that what it construes to be the "higher true necessity" standard of *Gallmeyer* conflicts with "mainstream judicial opinion." (Pet. Br. at 20) However, *Gallmeyer*'s definition of "emergency" is in concert with caselaw from other jurisdictions.

The state quotes *LaFave* to support its position. (Pet. Br. at 20-21)

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[54] Webster's Third New International Dictionary Unabridged at 741 (1993).

The *Gallmeyer* requirements, however, conform to the standards for the emergency aid exception advocated by *LaFave*. *LaFave*, like *Gallmeyer*, states that an objective standard is used in determining reasonableness:

> the question is whether there were reasonable grounds to believe that some kind of emergency existed, that is, whether there is evidence which would lead a prudent and reasonable official to see a need to act. The officer must be able to point to specific and articulable facts which, taken with rational inferences from those facts, reasonably warrant the intrusion.[55]

The explanation that an emergency is a true necessity does not conflict with *LaFave*'s explanation of the emergency aid exception.

The three cases cited by the state, *State v. Hetzko*,[56] *State v. Beede*,[57] and *State v. Plant*,[58] are also consistent with the *Gallmeyer* requirements. (Pet. Br. at 21) In *Hetzko*, the court noted that the criteria for the emergency aid exception is the reasonableness of the police belief in the existence of the emergency, not an emergency in fact.[59] This is in accord with *Gallmeyer*, which judges the existence of an emergency by an objective standard and states that what is relevant is the reasonable belief of the officer, not that there is an emergency in fact. *Beede* and *Plant* similarly do not conflict with the *Gallmeyer* requirements.[60]

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55 3 Wayne R. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment*; § 6.6(a), at 452 (4th ed. 2004) (footnotes and internal quotations omitted).

56 283 So.2d 49 (Fla.App. 1973).

57 406 A.2d 125 (N.H. 1979).

58 461 N.W.2d 253 (Neb. 1990).

59 *Hetzko*, 283 So.2d at 52.

60 *Beede*, 406 A.2d at 130 (there must be reasonable grounds or a reasonable basis approximating probable cause to associate the emergency with

The state also asserts that the requirement of "true necessity" conflicts with the Supreme Court's decision in *Brigham City v. Stuart*.[61] (Pet. Br. 22) There, the Court held 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."[62] *Brigham City* does not conflict with the *Gallmeyer* requirements. The Court's use of the phrase "imminent threat" mirrors *Gallmeyer*'s definition of "true necessity" as being an "imminent and substantial threat...."[63]

Further, the Alaska constitution affords explicit protection for the privacy of the home, which the United States constitution does not.[64] In his concurrence in *Brigham City*, Justice Stevens noted that the Utah Constitution provided greater protection to the home than does the Fourth Amendment, and, if a claim had been made that the challenged search was unconstitutional under the Utah constitution, it may have prevailed.[65]

Not only is the *Gallmeyer* test, and specifically the use of the phrase "true necessity" to define the term "emergency," in accord with the applicable law in other jurisdictions, other jurisdictions have also used the phrase "true necessity" to define the existence of an emergency.

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the place to be entered); *Plant*, 461 N.W.2d at 262 (court utilizes the same three part test as is set forth in *Gallmeyer* to determine whether the exigent circumstances exist to allow entry into a home absent a warrant).

61 547 U.S. 398 (2006).

62 *Id.* at 400.

63 *Gallmeyer*, 640 P 2d at 843.

64 Alaska Const. Art. I § 22.

The California Supreme Court, in discussing the emergency aid exception, has stated,

> [T]he exception must not be permitted to swallow the rule in the absence of a showing of true necessity -- that is, an imminent and substantial threat to life, health, or property -- the constitutionally guaranteed right to privacy must prevail.[66]

Both the Nevada Supreme Court and the New Mexico Court of Appeals have cited this quote with approval in discussing the emergency aid exception.[67] The Connecticut Appellate Court also quoted the California Supreme Court with approval and, in doing so, explained that, "[i]n employing an exception to a constitutional requirement such as the 'emergency doctrine,' courts should not become mindless automatons that afford the judicial stamp of approval to each and every claim of emergency."[68]

The New Mexico Supreme Court has adopted the same three-part test set forth in *Gallmeyer*.[69] In doing so, the court noted that "generalized, non-specific information" that an injured person may be in a home is not sufficient to satisfy the requirements of the emergency aid exception:

> To justify the warrantless intrusion into a private residence under the emergency assistance doctrine, officers must have credible and specific information that a victim is very

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65 *Brigham City*, 547 U.S. at 407-409 (Stevens, J., concurring).

66 *People v. Smith*, 496 P.2d 1261, 1263 (Cal. 1972). California's constitution also explicitly protects the right to privacy. Cal. Const. Art. 1, § 1.

67 *Howe v. State*, 916 P.2d 153, 159 (Nev. 1996); *Chavez v. Board of County Com'rs of Curry County*, 31 P.3d 1027, 1037 (N.M. Ct.App. 2001).

68 *State v. Geisler*, 576 A.2d 1283, 1290 (Conn.App.Ct. 1990), *rev'd on other grounds*, *Conn. v. Geisler*, 498 U.S. 1019 (1991).

69 *State v. Ryon*, 108 P.3d 1032, 1044-46 (N.M. 2005).

likely to be located at a particular place and in need of immediate aid to avoid great bodily harm or death.[70]

The state asserts that, because statistically children are often present in domestic violence incidents in Anchorage, this court should apply a lesser standard in allowing police to conduct a warrantless search under the emergency aid exception. (Pet. Br. at 22-23) Such "generalized, non-specific information" is what the New Mexico Supreme Court found insufficient to override a citizen's constitutional rights to privacy in the home. A statistical average does not equal an immediate need, absent case-specific details, to enter a home to protect against serious injury to persons or property. There must be an objective reason, based on the circumstances of the case, to believe there is an emergency requiring the police to enter a residence without a warrant.

For these reasons, the *Gallmeyer* test is not more rigorous than that utilized in other jurisdictions. The phrase "true necessity" does not raise the bar of what is required. As with other jurisdictions that employ this phrase, it merely serves to define the term "emergency." *Gallmeyer* provides a test that strikes the appropriate balance between law enforcement's need to respond to emergencies, and a citizen's constitutional right to privacy in the home.

C. Under the facts of this case, the emergency aid exception was inapplicable.

1. The *Gallmeyer* requirements are not met in this case.

None of the *Gallmeyer* factors are met in this case. The emergency aid exception was therefore inapplicable, and the warrantless police entry was unlawful.

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[70] *Id.* at 1048.

The police received the following dispatch, "Female stated male was threatening to stab her in the head. Could hear 11-9 [disturbance] in the background." (Tr. 399-400) From this dispatch, all the police knew was that there was an altercation involving two parties – a man and a woman. The level of urgency that this dispatch was accorded is illustrated by the fact that the police were sent out as a normal response—they did not utilize lights or sirens. (Tr. 92, 117, 195)

Once the two officers, Stanfield and Doll, approached the single-wide trailer, they immediately saw a woman, ' , running out screaming. (Tr. 57, 144, 151, 196, 212-13) They did not hear a man shouting or any other noises. (Tr. 97) was upset, she said "help me," one of her eyes was red and swollen, and there was a bloody wound on the back of her head. (Tr. 58, 213) Although the police did not ask whether she was the woman who called 911,[71] the fact that she ran out of the trailer half-naked, was clearly upset, and had a head injury consistent with the dispatch that a female said a man was threatening to stab her in the head, made it apparent that she was the caller and the victim in the case. The fact that once Gibson was out of the trailer was apologizing to him strengthened the evidence that she was the caller. (Tr. 348) In fact, Officer Asselin, who arrived on the scene later, noticed the injuries to ' eye and head and said that she appeared to be the victim. (Tr 348, 390) The evidence before the officers demonstrated that ' was the caller and the victim.

After ran out of the trailer, she went back in to put on pants. At

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[71] *Gibson v. State*, 205 P.3d 352, 354 (Alaska App. 2009) (stating there is

that point a man, Gibson, came out of the trailer. (Tr. 58-59, 99, 215) He was handcuffed and put in a patrol car without incident. (Tr. 60, 100) then complied with the officers' orders by requesting and receiving permission to go back into the trailer to put on shoes. (Tr. 101) When was in the trailer, Stanfield did not hear her talking to anyone. (Tr. 148)

Once f (the victim) and Gibson (the suspect) were both out of the trailer, the emergency was over. Any "pandemonium" that existed when the police first arrived had now dissipated or, at a minimum, moved out of the trailer. (*See* Pet. Br. at 24) The fact that the emergency was over is demonstrated by the fact that, when Stanfield and Doll initially called for backup, they asked for the backup to come under emergency conditions. (Tr. 68, 197) Once Gibson was placed in custody without incident though, they said that the officer did not have to respond at an emergency level. (Tr. 219, 345-46)

, given her injuries and hysteria, was obviously the victim. Given that was upset and yelling to Gibson that she was sorry and she loved him, Gibson was the suspect. (Tr. 348) Once they were both out of the trailer, there was no reason to believe that there was anyone in the trailer. The two parties were out of the trailer. There was no noise or movement in the trailer. This was a single-wide one bedroom trailer. (Tr. 144-151) In such a small residence, a person in distress is unlikely to go undetected.[72] response to the police that no one was in the

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no indication that Officer Doll asked ' whether she had made the call).

[72] *Cf. State v. Johnson*, 16 P 3d 680, 685 (Wash Ct App. 2001) (victim and suspect in domestic violence situation came out of a large split-level home and

trailer was consistent with their own observations. (Tr. 104-05) As Officer Doll testified, "we saw nothing else that would indicate that there was another person inside [the trailer]." (Tr. 223) There was no emergency, and any emergency that existed was now over.

Stanfield testified that he did not believe [redacted] statement that no one else was in the trailer because, in his career, people have lied to him. (Tr. 65) Further, people regularly lie to him in domestic violence situations, and he had, in the past, been told no one else was inside and later found out that another person was inside. (Tr. 65-67) Absent Stanfield's speculation that people sometimes lie, there was no other evidence that there was anyone else in the house.

Further, Doll's admission that, "under that situation," it was standard practice to enter a residence without a warrant, even if there was absolutely no reason to believe that there was someone inside (Tr. 226), belied the police assertion of a reasonable belief that there was an emergency at hand and an immediate need for their assistance to protect life or property. As it was standard practice to enter a home, the officers were going to search the residence regardless of what the evidence indicated.

For these reasons, the three *Gallmeyer* requirements were not met, and the police entry was illegal. First, the police did not have reasonable grounds to believe that there was an emergency at hand and an immediate need for their

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police did not know if there were other victims).

assistance to protect life or property.[73] There was no true necessity—no imminent and substantial threat to life, health, or property.[74] The victim and suspect were out of the trailer, the police had no reason to believe that there was anyone else inside the trailer, and thus had no reason to enter. (Tr. 223) Their reasons for entering were mere speculation— could be lying and there could be someone else inside. Speculation does not rise to the level of evidence required to violate a citizen's constitutional rights.

The second *Gallmeyer* factor is also not met. The police did not have objectively reasonable grounds to enter the trailer. Given this, and Doll's admission that it was standard practice to enter a residence, without a warrant even if there was absolutely no reason to believe there was someone inside, the search was primarily motivated by an intent to look for and seize evidence.[75]

Finally, once and Gibson were out of the trailer, there was no longer an emergency within the trailer. Thus, there was no reasonable basis, approximating probable cause, to associate any emergency with the trailer.[76]

2. This case is distinguishable from other Alaska cases discussing the emergency aid exception.

In *Gallmeyer*, the court of appeals affirmed the use of the emergency aid exception. Gallmeyer was intoxicated, hit his wife, Linda, threatened her with a

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73 *Gallmeyer v. State*, 640 P.2d 837, 842 (Alaska App. 1982).
74 *Id.* at 843-44.
75 *Id.* at 842.
76 *Id.*

handgun, and pushed her out the door.[77] His wife went across the street, called the police, and told them that her fifteen-month old baby was in the house with Gallmeyer.[78] When the police did not arrive immediately, she called a second time, demanding to know what was taking them so long.[79] Before the police arrived, Linda asked Gallmeyer to put their baby on the porch. He did, but she did not try and pick the baby up.[80] When the police arrived, Linda was upset, had blood on her mouth, and said that there were guns in the house and that Gallmeyer had threatened her with one.[81] A police officer approached the house, did not pick up the baby, and went up to the porch and asked to speak with Gallmeyer. Gallmeyer was incoherent and fumbled with the door latch; the officer took this for acquiescence to his entry.[82] As the officer walked into the house, Gallmeyer turned and walked into the kitchen. The officer saw a gun in Gallmeyer's waistband and took it; after this, Gallmeyer reached for another gun on top of the refrigerator and the men scuffled. Gallmeyer was ultimately charged with being a felon in possession of a firearm.[83]

In holding that the emergency aid exception was applicable in *Gallmeyer*, the court of appeals noted that Linda Gallmeyer called twice requesting emergency assistance; she was upset and excited; she told them that her husband

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77 *Id.* at 839.
78 *Id.*
79 *Id.*
80 *Id.*
81 *Id.* at 840.
82 *Id.*
83 *Id.* at 840-41.

was drunk and had kicked her out of the house; she told the officers that there were numerous firearms in the house and he had specifically threatened her with one of them; and she was too scared to rescue her own daughter.[84] This court found that the officer was justified in thinking that if he just picked up the baby he would endanger himself and the child.[85]

Here, there was only one call to 911. Further, there was not a drunk man who had threatened his wife with a gun and who was still in a household full of guns while his baby toddled nearby. In this case, there was no evidence that anyone remained in the trailer, no evidence of any guns in the trailer, and no evidence that anyone nearby was endangered by someone in the trailer.

In other Alaskan cases in which the court of appeals found the emergency aid exception applicable the police had evidence from which they could deduce that someone inside could be injured or hurt. In one instance, officers could see someone inside who appeared unconscious or dead and was not responding to knocking and yelling.[86] In another, there was a report of a possible homicide, bloods stains and strewn clothes were outdoors, there was music playing inside but no one answered the door.[87] In these cases, the evidence at hand provided reasonable grounds to believe that there was an emergency and an immediate need to prevent death or serious injury. No such evidence existed in this case.

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84 *Id.* at 843.
85 *Id.* at 844.
86 *Harrison v. State*, 860 P.2d 1280, 1282-83 (Alaska App. 1993).
87 *Williams v. State*, 823 P.2d 1, 2, 4 (Alaska App. 1991)

3. The fact that a knife was not recovered and that the police dispatcher used the word "disturbance" are irrelevant.

The state contends that the police had not seen or recovered the knife and that this was a factor that added to the officer's reasonable belief in an emergency. (Pet. Br. at 24) The fact that the police had not recovered the knife is inapposite. A knife is not like a gun, which can be wielded from afar. It is likely that every household in the United States has at least one knife. It is a necessary tool for the preparation and consumption of most food. Thus, whether or not one particular knife may have been in the trailer does not create a reasonable ground to believe there was an imminent and substantial threat to life, health, or property.[38]

The state also argues that from the dispatcher's report that she could hear a "disturbance" in the background when talking to the 911 caller, the police could infer that there were more than two people (a man and a woman) involved, and thus that there could be another person in the trailer after ' and Gibson were outside. (Pet. Br. at 25) According to the state, "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." (Pet. Br. at 25) However, the creation of a disturbance does not require more than one person. Likely, during the 911 call, the Gibson was yelling in the background, creating a disturbance. There is no reason to assume that the use of the word "disturbance" by the dispatcher meant that there were more than two people (Gibson and) in the trailer.

4. The officer's belief that . was lying when she said no one was inside is insufficient, on its own, to justify the warrantless entry into Gibson's home.

The state relies heavily on Stanfield's statement that in domestic violence situations people regularly lie to support its argument that the police had reasonable grounds to believe that there was an emergency at hand and immediate need for their assistance to protect life or property. (Pet. Br. at 25-28) However, even assuming that Stanfield's testimony that people in domestic violence situations had lied to him in the past should be given any weight, it is not sufficient, standing alone, to provide objectively reasonable grounds to believe that there was an imminent and substantial threat to life, health or property that justified the warrantless entry into Gibson's home. If this was enough justification, then the police could enter a home whenever there was a domestic violence assault.[89]

The cases cited by the state (Pet. Br. at 26-28) to support its contention that the fact that domestic violence victims regularly lie was enough to allow the police to enter Gibson's residence are distinguishable. In those cases, there was evidence, beyond a police belief as to the veracity of domestic violence victims, to support the warrantless entry under the emergency aid exception.

In *United States v. Valencia*,[90] there were reports of a shotgun blast coming from an urban apartment; one tenant denied responsibility and the other

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88 *Gallmeyer*, 640 P.2d at 843-44.

89 *See Gibson v. State*, 205 P.3d 352, 356 (Alaska App. 2009) ("[I]f we were to authorize the police to enter someone's home based on these facts, the police would routinely be able to search a residence in most cases where there was a report of a serious domestic dispute.")

90 499 F.3d 813 (8th Cir. 2007).

occupant refused to shed light on the situation.[91] In this situation, there was justification to enter the apartment without a warrant in order to secure the shotgun and discern if the shooter or any victims were inside.[92] Here, a gun was not involved, the police already had arrested the suspect, and the victim was outside of the trailer

In *United States v. Bartelho*,[93] police were called by a downstairs neighbor in regards to an ongoing domestic disturbance in the upstairs apartment. The 911 caller (who lived downstairs) said that her upstairs neighbor had told her that her boyfriend had assaulted her and chased her down the street with a loaded rifle.[94] When police arrived the female in the relationship came out of the upstairs apartment and told the police that her boyfriend had left.[95] Because of their domestic violence training, the police believed she was lying to protect her boyfriend.[96] Additionally, the downstairs neighbor said she had not heard the boyfriend leave.[97] The apartment was on a major road where a July 4th parade was about to start and the police feared putting others at risk.[98] Here, in contrast, the police already had the suspect in custody—Gibson was almost immediately arrested and put in the back of a patrol car. Further, there was no gun involved in the instant case. The police in this case did not have to be concerned that there was a suspect

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91 *Id.* at 816.
92 *Id.*
93 71 F 3d 436 (1st Cir. 1995).
94 *Id.* at 438.
95 *Id.* at 438.
96 *Id.*
97 *Id.*

with a gun hiding in the trailer and capable of endangering the public.

In *United States v. Henry*,[99] the court found that the police conducted a valid protective sweep after executing an arrest warrant when they entered Henry's apartment.[100] The police went to the defendant's apartment to arrest him on a parole violation.[101] An informant said he was in the apartment, armed, and might have "confederates."[102] The police staked-out the apartment and in the late morning the defendant's fiancée came out and told the police that Henry was in the apartment alone.[103] In the early afternoon, Henry stepped out of the apartment, leaving the door ajar behind him.[104] As Henry was being arrested and handcuffed, his co-defendant was outside the building peering into the hallway through a window, and Henry told him "they got me."[105] The police went into the apartment with Henry, did a "security check" to make sure there were no armed individuals who could hurt the officers, and found a gun and heroin.[106]

The *Henry* court found that this was a valid protective sweep. They concluded that Henry was arrested at the threshold to his residence, anyone could have heard him say "they got me," the police had information that his compatriots might be with him, and they had no way to know if his fiancée was telling them the

98 *Id.*
99 48 F 3d 1282 (D C. Cir 1995)
100 *Id.* at 1284.
101 *Id.* at 1283.
102 *Id.*
103 *Id.*
104 *Id.*
105 *Id.*
106 *Id.*

truth when she said that no one else was in the apartment.[107]

This case is distinguishable, first of all, because it concerns a protective sweep and not the emergency aid exception. A warrantless entry for a protective sweep requires only articulable facts, taken together with rational inferences from those facts, that would warrant a reasonable officer in believing that the area harbors a person who could be dangerous to those at the arrest scene.[108] The three *Gallmeyer* factors – requiring, in part, reasonable grounds to believe there is an emergency at hand and an immediate need for their assistance to protect life or property—provide a higher evidentiary threshold. Further, the case is factually distinguishable. The police had information that Henry was armed, that his confederates may be with him, and Henry made a statement that potentially was for the benefit of others who could be lurking in the apartment. For these reasons, the police had reason to doubt his fiancee's statement that Henry was alone. These factors were not present in the instant case.

State v. Jacobs[109] is also distinguishable. In *Jacobs*, the defendant had a history of violating domestic violence restraining orders against James Russell, and there was a history of domestic violence at the address.[110] Russell called 911, hung up, then called again and said things had gotten out of hand the prior night, and again hung up.[111] When 911 called him back, he said there was no

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107 *Id.* at 1284.
108 *Id.* at 1283 (citation omitted).
109 2 P.3d 974 (Wash.Ct.App. 2000).
110 *Id.* at 976.
111 *Id.*

longer a problem and the person with whom he was having an altercation had left.[112] As the officers approach the residence, they saw Russell leave and then go back in again, he appeared intoxicated, was talking fast, and said the defendant was beating on him but had left.[113] The officers insisted on checking the house and found the defendant inside.[114] This case is distinguishable because the police had not found the suspect and, given the history between the two parties, Russell's vacillating statements and his behavior, they had reason to doubt him. Here, in contrast, the police had Gibson in custody and, other than a general assertion that domestic violence victims can lie, no substantive reason to doubt , statement that no one else was in the house.

Guererri v. State[115] is similarly distinguishable. In *Guererri*, the police were dispatched in response to a 911 call that someone had fired gunshots in the area.[116] When they arrived, they saw a SUV that had been hit by shotgun fire parked on the lawn of the residence and shell casings on the street.[117] Pellets had also struck the residence and broke one of its windows.[118] Neighbors said they thought there were people in the residence.[119] However, no one answered the door or calls to the residence.[120] The police were afraid someone was injured in the

112 *Id.*
113 *Id.*
114 *Id.* at 977.
115 922 A.2d 403 (Del. 2007).
116 *Id.* at 405.
117 *Id.*
118 *Id.*
119 *Id.*
120 *Id.*

house and in need of emergency assistance; they kicked in the door and entered.[121] The defendant was there and uninjured; there was no broken glass, shotgun pellets, or blood in the house.[122] The defendant said his roommate might be in the basement, and the roommate came up, he was also uninjured.[123] They both said no one else was in the house, but the police searched anyway and found drugs.[124]

The *Guererri* court upheld the police entrance under the emergency aid exception. It said that the police could reasonably believe that someone else was in the home who was in need of emergency assistance because there were several shotgun firings, the residents were unresponsive, and the neighbors thought there were other people in the house.[125] The police could disbelieve the defendants' statement that no one else was in the house because their behavior and answers to questions were nonsensical.[126] Here, there were no gunshots with unknown shooters or victims, and Gibson immediately came out of the home, and there was no reason to suspect that there could be victims inside.

State v. Johnson[127] is also distinguishable. In *Johnson*, a relative from outside of the house called to say the victim had locked herself in the bathroom.[128] When the officer arrived, the defendant came out of the house, a "large split-level"

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121 *Id.*
122 *Id.*
123 *Id.*
124 *Id.*
125 *Id.* at 406-07.
126 *Id.* at 408.
127 16 P 3d 680 (Wash.Ct.App. 2001).
128 *Id.* at 682.

home.[129] The officer asked the defendant twice if anyone else was in the house; Johnson was slow to answer but finally said that his girlfriend was in the residence.[130] Johnson had a bloody cut on his wrist and smelled of and appeared to be under the influence of marijuana.[131] While one officer was handcuffing Johnson and putting him in the police car, another officer went to the house and knocked on the door.[132] Babette Markishtum answered; she was shaking and had blood on her lip; it looked as though she were going to come out of the house but the officer told her to stay and he walked in.[133] Once inside the officer smelled marijuana, which led to Markishtum making statements about marijuana, and the defendant ultimately consenting to a police search.[134]

The *Johnson* court held that the warrantless entry into the home was supported by the emergency aid exception to the warrant requirement. It said that although officers had already found the sole suspect and sole victim, they did not know this and there could have been other victims or children involved.[135] *Johnson* is distinguishable because the defendant's hesitancy in answering the question of who was in the house was suspicious. Further, the house was large—as opposed to the small single-wide trailer at issue here.

Moreover, *Johnson*, which was decided by a mid-level court in a sister

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129 *Id.* at 682, 685.
130 *Id.* at 682.
131 *Id.*
132 *Id.*
133 *Id.*
134 *Id.*
135 *Id.* at 685.

state, is not binding on this court. Even if this court finds the facts in *Johnson* akin to those here, it should not follow the Washington appellate court, allowing warrantless entry into a home in a domestic violence case solely because domestic violence victims can lie. Such a holding will result in the exception "swallow[ing] the rule."[136] An officer would merely have to assert that domestic violence victims are known to lie in order to enter a residence without a warrant. This court should not render the constitutional requirement of a warrant meaningless.

5. Case law from other jurisdictions demonstrate that the emergency aid exception is not applicable in this case.

Cases from other jurisdictions illustrate why the emergency aid exception is inapplicable to this case. In *State v. Ryon*,[137] for example, the police were dispatched with regards to a possible stabbing victim.[138] When they arrived, a man and woman were outside of the home.[139] The man was bleeding heavily from the head and the woman was crying and yelling.[140] They both told the officer that the woman's boyfriend (Ryon) was responsible and he lived down the street; they gave the officer the address.[141] The home they were standing in front of was checked to assure that no one was inside.[142] The defendant then walked up to the

136 *See People v. Smith*, 496 P.2d 1261, 1263 (Cal. 1972) (holding that the emergency aid exception must not be permitted to swallow the rule—true necessity must be shown).

137 108 P.3d 1032 (N.M. 2005).

138 *Id.* at 1036.

139 *Id.*

140 *Id.*

141 *Id.*

142 *Id.*

officer, covered in blood, and said he wanted to tell her what had occurred.[143] He was immediately arrested.[144] While this was occurring, police, who did not know that the defendant had gone to speak to the officers at the first scene, went to the defendant's home.[145] They had been informed that the defendant may have a head or face injury.[146] The front door was ajar and the lights were on.[147] The officers knocked and no one answered.[148] The police entered the home and found a bloody knife in the kitchen sink.[149]

The *Ryon* court adopted the emergency aid exception and adopted the same three requirements that are set forth in *Gallmeyer*.[150] It found that in the circumstances at hand, there were not facts to "compel a conclusion that swift action was necessary to protect life or avoid serious injury."[151] Many people leave on lights, and a door left ajar, even on a cold winter night, is not an invitation to enter.[152] The court stated that,

> To justify the warrantless intrusion into a private residence under the emergency assistance doctrine, officers must have credible and specific information that a victim is very likely to be located in a particular place and in need of immediate aid to avoid great bodily harm or death.[153]

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143 *Id.*
144 *Id.*
145 *Id.*
146 *Id.*
147 *Id*
148 *Id.*
149 *Id.* at 1037.
150 *Id.* at 1044.
151 *Id.* at 1047.
152 *Id.*
153 *Id.* at 1048.

According to the court, the officers in the case "had only generalized, nonspecific information that Defendant *might* be inside and that he *might* have sustained a head or face injury."[154] The court therefore found the emergency aid exception inapplicable.

Here, the police already had the suspect. Moreover, as in *Ryon*, they had no credible and specific information that a victim was likely to be in the trailer and in need of immediate aid. All they had was the fact that they thought Bevin was lying and therefore there "might" be someone inside. This is insufficient to meet the requirements of the emergency aid doctrine, as it is always possible to speculate that other victims could be injured inside a residence. However, given our constitutional rights, the police must have more than mere speculation to enter a home.

In *Wood v. Commonwealth*,[155] the police entered the defendant's home and arrested him after his wife accused him of assault.[156] After social services removed the children from the residence, the police searched the rest of the house, ostensibly to assure themselves that no one else was there.[157] The appellate court found that the motion to suppress the drugs found as a result of the search should have been granted. The police heard no noise and did not call out to see if anyone was in the home, nor did they ask either of the adults if anyone was in

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154 *Id.* (emphasis added).
155 497 S.E.2d 484 (Va.App. 1998).
156 *Id.* at 485.
157 *Id.* at 486.

the home.[158] In this case, actually told the police that no one else was in the home. Further, as in *Wood*, the police heard no noise in the trailer and had no reason to suspect anyone was inside.

Similarly, in *State v. Will*,[159] the Oregon appellate court found that no emergency justified the police search of a residence and affirmed the granting of a motion to suppress.[160] In *Will*, the police were responding to a domestic disturbance at a residence. By the time they arrived, the two parties were out of the house and the grandmother was in the home with the children. The police found the defendant (who was one of the parties to the domestic dispute) a few blocks away, brought her back to the house, and searched the house.[161] The appellate court found that this search was not justified under the community caretaking or emergency aid exception to the warrant requirement because any need to render aid had not only moved outside of the residence but had dissipated.[162] Similarly, here, any emergency had both moved outside of the trailer with and Gibson and had disappeared once they were both contained, outside of the trailer, by the police.

In *United States v. Davis*,[163] the Tenth Circuit affirmed the granting of a motion to suppress finding that there were no exigent circumstances permitting the

158 *Id.* at 487-88.
159 886 P.2d 715 (Or. App. 1994)
160 *Id.* at 717.
161 *Id.* at 717-718.
162 *Id.* at 719.
163 290 F.3d 1239 (10th Cir. 2002).

warrantless entry into a home.[164] In *Davis*, the police responded to a dispatch concerning a domestic disturbance at the home of the defendant and Desiree Coleman. When they arrived there was no noise or evidence of a disturbance. Davis opened the door with alcohol on his breath and claimed the noise had been created by his disciplining a child.[165] He claimed that Coleman was not at home, but she then appeared and stayed behind him. The officers' attempts to talk to her were impeded by Davis.[166] They ordered him to step outside, said they were coming in, and ordered Coleman out of the house.[167] Davis retreated into the house and the police pushed Coleman aside and entered. Once in the house, the police saw evidence of drug use that led to Davis' charges.[168] The Tenth Circuit said there were no exigent circumstances permitting the warrantless entry into the home—Davis was not threatening or aggressive and the police could have checked Coleman's condition without going inside.[169] The Tenth Circuit held that, "an officer's warrantless entry of a residence during a domestic call is not exempt from the requirement of demonstrating exigent circumstances."[170]

In *Nolin v. State*,[171] the Florida appellate court found that there were no exigent circumstances to support the warrantless entry into the defendant's home. In that case, the police responded to a report of domestic violence by a neighbor.

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164 *Id.* at 1240.
165 *Id.*
166 *Id.* at 1241.
167 *Id.*
168 *Id.*
169 *Id.* at 1243.
170 *Id.* at 1244.

When they arrived, there was broken glass in the yard and they could hear screaming. When they knocked on the door, there was silence so they broke into the house; a woman ran down the hall and a man (the defendant) ran toward the other door. There was a baseball bat leaning against the wall next to the front door.[172] The defendant stopped when ordered to do so and complied with the officers' commands.[173] There was no reason to expect that there were firearms in the home. The police then searched the house, ostensibly for officer safety, and discovered drugs that led to charges against Nolin.[174]

The appellate court found that the motion to suppress should have been granted. It noted that there was no "objective fact" that anyone other than the Nolins were in the home and the Nolins no longer posed any danger to the officers.[175] There were no articulable facts to support a finding that more than two people were in the home; the trial court's focus on the fact that the officers did not know if any others were in the home was the "wrong inquiry."[176]

Here, similarly, there were no articulable facts to support the belief that anyone other than [redacted] and Gibson were in the home. The fact that the officers could not be sure that no one else was in the home was the wrong inquiry—the trial court should have focused, instead, on whether any facts existed to support the belief that anyone else *was* in the trailer. [redacted] and Gibson were out of the trailer,

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171 946 So.2d 52 (Fla. App. 2 Dist. 2006).
172 *Id.* at 54.
173 *Id.*
174 *Id.* at 54-55.
175 *Id.* at 57.

there was no evidence of any firearms inside, and no evidence of any other person inside. In these circumstances, there was no justification for the warrantless search.

In *United States v. Custer*,[177] the district court granted a motion to suppress, finding that there were no exigent circumstances to support the warrantless entry into the home.[178] In *Custer*, Michelle Custer called 911 and said that her husband (the defendant) was armed with a gun. When the police approached the house, Michelle Custer ran toward them carrying a baby. She said that she thought, but was not sure, that no one else was in the home. She said there was a gun in the basement.[179] As the officers got closer to the house, the defendant came out. The police then searched and found guns in the house, which led to the charges against the defendant.[180] The court found that there was no "articulated, reasonable basis for the officers' concern for safety after Mr. Custer was in custody."[181] The initial dispatch mentioned only Michelle and "the husband;" Michelle, the baby and Custer were out of the house; and Michelle did not think anyone else was inside.[182] The officers had no reason whatsoever for believing that someone else was in the residence and the protective search was unjustified.[183]

Just as there was no valid officer safety concern to justify a protective search in *Custer*, in this case there was no reason to think that someone in the

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176 *Id.*
177 281 F.Supp.2d 1003 (D.Neb. 2003).
178 *Id.* at 1008.
179 *Id.* at 1005.
180 *Id.* at 1006.
181 *Id.* at 1007.
182 *Id.*

trailer was injured or dying and thus the emergency aid exception was inapplicable. The dispatch mentioned a male/female disturbance; it did not mention multiple parties. (Tr. 57, 92, 96, 106, 119, 230-31, 398) and Gibson were both out of the trailer. affirmatively said that no one else was inside and the police had absolutely no evidence to refute this. (Tr 65, 104-05, 199, 222, 223) Indeed, in this case, unlike *Custer*, there were not even any allegations that any guns had been used or were present in the trailer.

6. Conclusion

For the foregoing reasons, the requirements for the emergency aid exception were not met in this case. The fact that the police thought could be lying when she said no one was in the trailer, standing alone, did not justify the warrantless entry. If this could justify the entry, then the police could enter private homes whenever there was a domestic violence call simply by asserting that domestic violence victims are inherently not to be believed. In the circumstances of this case, where the victim and suspect were out of the small trailer, the suspect was in custody, there was no evidence of any firearms, and the police had no evidence that anyone was in the home, the police had no grounds to enter the home under the emergency aid exception to the warrant requirement.

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183 *Id.* at 1008.

CONCLUSION

Based on the foregoing argument and authority, this court should affirm the decision of the court of appeals in *Gibson v. State*.[184]

DATED at Anchorage, Alaska this 24 day of November, 2009.

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184 205 P 3d 352 (Alaska App. 2009).