

# Recent Case Report

## U.S. v. Russell

(9<sup>th</sup> Cir. 2006) \_\_ F.3d \_\_ [2006 WL 213853]

### ISSUE

Did exigent circumstances justify a warrantless entry into the defendant's home?

### FACTS

Russell phoned 9-1-1 in Sacramento, identified himself as "Gregory Hines," and told a sheriff's department operator that he needed an ambulance because "a gun went off" and hit him in the foot. When Russell hung up, the operator spoke with a Metro Fire District dispatcher who had been monitoring the call, pointing out that the caller "didn't really confirm that he shot himself. He just said a gun went off."

The operator then entered the following information in the Computer Aided Dispatch (CAD) system: "Male stated gun went off and he was shot in foot." The entry also identified the caller as "Gregory Hines." This information was transmitted to the responding deputies, as were the subsequent CAD entries.

A little later, Russell placed another call to 9-1-1 and spoke with a different operator. This time he gave his real name and said, "I shot myself in the foot," adding, "My girlfriend is going to kill me." **CAD entry:** "[Russell] is saying that his girlfriend is going to kill him when she finds out what he did. Girlfriend not at residence now." The operator asked Russell if he was alone. He said yes. **CAD entry:** "Willie Russell said he is home alone." At about this time, the operator heard a woman and a man talking in the background, the woman saying, "Where's the gun at? Are you going to give 'em the gun?" **CAD entry:** "Heard male and female voices in background asking what was going on."

As deputies pulled up to the house, they saw Russell "hopping" around outside. They also saw two women exiting the garage. This was unexpected because, as one of the deputies testified, "[T]he call kept saying there is no one else in the house, but then we're getting the conflicting information of other names." One of the deputies sought to question Russell but he refused to identify himself or explain what had happened.

While this was going on, two other deputies entered Russell's house to determine if the shooter or any other victims were inside. Although no one was there, they saw a gun in plain view in Russell's bedroom. They seized the gun and, as the result, Russell was charged in federal court with being a felon in possession of a firearm.

### DISCUSSION

When officers reasonably believe that a shooting or other felonious assault just occurred inside a residence, and that a victim or perpetrator might be inside, they may, of course, enter without a warrant for the purpose of rendering aid or apprehending the assailant. The legal justification for the entry is that such a state of affairs constitutes an "exigent circumstance," which is loosely defined as a situation in which there is a pressing

or urgent law enforcement need, or a compelling need for official action and no time to secure a warrant.<sup>1</sup>

The trial court had ruled that the situation confronting the deputies constituted exigent circumstances and, therefore, the entry was lawful. On appeal to the Ninth Circuit, Russell argued that, based on the 9-1-1 calls and the deputies' observations upon arrival, it was apparent there were no other victims or shooters in the house and, therefore, there was no justification for entering.

The court disagreed, pointing out that the situation confronting the deputies was not as crystal-clear as Russell portrayed it. On the contrary, there was "substantial confusion and conflicting information" as to how the shooting occurred, the number of victims, and whether anyone other than the victim was inside the house. For example, the court noted that the deputies "were told first that one person had been shot in the foot; then another shot himself in the foot; then the police were told the caller was alone; then that his girlfriend was going to kill him; and then that Russell might not be alone." To further complicate things, the arriving deputies found "one injured person (rather than two) in the driveway (rather than in the house) accompanied by two women (rather than alone)."

Apparently recognizing that the court was not buying his argument, Russell retreated to his backup position: that officers who are confronting an uncertain situation should be required to make an effort to determine what had actually happened before making a warrantless entry. It was, of course, theoretically possible for the 9-1-1 operators and the deputies to have stopped what they were doing so they could compare notes, debate the various possibilities, and arrive at a reasoned conclusion as to what had happened. And had they done this, they might have concluded that no one else was inside the house.

The court responded by saying, "It is unreasonable to expect the police to piece together a perfectly coherent picture in the scant minutes they had to digest the constantly-updated and conflicting information."<sup>2</sup> Moreover, such a requirement "would dramatically slow emergency response time, and would therefore be at odds with the purpose of the emergency doctrine—allowing police to respond to emergency situations." For example, the court pointed out that if the deputies had been required "to stop and speak with Russell, who steadfastly refused to divulge any information to officers on the scene, their capability to rescue a potentially injured person inside would have been dramatically handicapped."

Thus, the court concluded, "Given the substantial confusion and conflicting information, the police were justified in searching the house in order to determine whether there were other injured persons, as their information indicated was the case."

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<sup>1</sup> See : *Michigan v. Tyler* (1978) 436 U.S. 499, 509 ["Our decisions have recognized that a warrantless entry by criminal law enforcement officials may be legal when there is compelling need for official action and no time to secure a warrant."]; *Illinois v. McArthur* (2001) 531 U.S. 326, 331 ["[The situation] involves a plausible claim of specially pressing or urgent law enforcement need, i.e., "exigent circumstances."].

<sup>2</sup> See *People v. Superior Court (Peebles)* (1970) 6 Cal.App.3d 379, 382 ["One way of testing the reasonableness of the search is to ask ourselves what the situation would have looked like had another bomb exploded, killing a number of people and perhaps Pulliam himself, while officers were explaining the matter to a magistrate."].