Exigent Circumstances

"Danger was in the air."[1]

When danger is looming—serious and imminent danger—the rules under which officers must operate are instantly transformed. In fact, in a true emergency situation there is really only one operable rule: Do what is reasonably necessary.

There are, of course, all kinds of emergencies. But there is one type that is so serious that it will justify one of the most intrusive actions officers can take: a warrantless, nonconsensual and forcible entry into a home.[2] This type of danger has its own designation under the law: It is called an "exigent circumstance."[3]

It is essential that officers know what makes a situation "exigent" and what they may do in response. For one thing, a failure to take decisive action may result in loss of life, destruction of property or evidence, or the escape of a desperate and violent fugitive. On the other hand, misjudging a situation and overreacting may cause physical or mental trauma for the occupants of the house, engender disrespect for law enforcement, and result in the suppression of any evidence discovered inside.[4]

As you will see, the law of exigent circumstances requires that officers make two basic and sometimes difficult determinations. First, they must determine whether exigent circumstances exist or, at least, whether it reasonably appears they do. This subject is covered in this article.

The second determination comes into play after officers have concluded they are, in fact, facing an emergency: What should they do about it? Should they cordon off the house and wait for a warrant? Make a forcible entry? Conduct a protective sweep, or maybe a full search? These questions and related issues are covered in the accompanying article entitled "Exigent Responses."

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[1] *People* v. *Cove* (1964) 228 Cal.App.2d 466, 471.

[2] See *Payton* v. *New York* (1980) 445 US 573, 585 ["physical entry of the home is the chief evil against which the wording of the Fourth Amendment was directed."]; *Mincey* v. *Arizona* (1978) 437 US 385, 393-4 ["(W)arrants are generally required to search a person's home or his person unless the exigencies of the situation make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment."]; *People* v. *Riddle* (1978) 83 Cal.App.3d 563, 572 ["When emergency circumstances exist, formal, legal, and constitutional requirements, such as the need for a warrant to arrest, for a warrant to search, for a warrant to break into premises, for a demand before forcing entry, for a warrant to seize evidence, each may be excused because of overriding necessity."].

[3] See *People* v. *Baird* (1985) 168 Cal.App.3d 237, 241 ["Among those exceptions [to the warrant requirement] are entries and searches which occur under so-called 'exigent circumstances."]; *People* v. *Ammons* (1980) 103 Cal.App.3d 20, 28 ["Both state and federal courts follow the rule that exigent circumstances may justify a warrantless search which might otherwise have been unreasonable and thus illegal."]; *People* v. *Osuna* (1986) 187 Cal.App.3d 845, 851. **NOTE:** The "exigent circumstances" exception to the warrant requirement is also known as the "emergency doctrine" and the "necessity doctrine." See *People* v. *Smith* (1972) 7 Cal.3d 282, 285-6; *People* v. *Ammons* (1980) 103 Cal.App.3d 20, 29; *People* v. *Riddle* (1978) 83 Cal.App.3d 563, 572.

[4] See *Thompson* v. *Louisiana* (1984) 469 US 17, 222; *People* v. *Amaya* (1979) 93 Cal.App.3d 424, 428.

IS IT "EXIGENT?"

Exigent circumstances have been variously defined as a "specially pressing or urgent law enforcement need,"[5] and a "compelling need for official action and no time to secure a warrant."[6] But because these definitions are rather vague, the courts usually just say that exigent circumstances exist if one or more of following dangers exist:

- Imminent threat to life
- Imminent and serious threat to property
- Imminent escape of a suspect
- Imminent destruction of evidence[7]

At first glance, it might seem as if it should be easy to determine whether a situation is exigent. And sometimes it is, in which case the only decision is how to respond.

But more often than not, the situation is uncertain. Information may be sketchy, unreliable, conflicting, or all of the above. Even if there is clearly some sort of danger it may be hard to tell if it's serious or imminent. Ultimately, it will be a judgment call based on training, experience, common sense, and a good working knowledge of the law of exigent circumstances.

Here's something to keep in mind: Exigent circumstances either exist or they don't. There is no middle ground. There is no such thing as a "semi" exigency. If it's exigent, officers can do what is reasonably necessary to deal with it. If not, they'll probably need to try something else, like seek consent or apply for a warrant.

Later in this article we will discuss specific exigent circumstances that officers are most likely to encounter. But first, we are going to look at the basic principles that are applied in determining whether a situation is exigent.

Basic principles

In determining whether exigent circumstances existed, the courts apply the following principles.

SPECIFIC FACTS: There must be specific facts—not "unparticularized suspicions or hunches"[8]—that reasonably indicated an immediate warrantless entry was necessary.[9] As the Court of Appeal noted, "[I]n each case the claim of

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[5] See *Illinois* v. *McArthur* (2001) 531 US __ [148 L.Ed.2d 838, 847].

[6] See *Michigan* v. *Tyler* (1978) 436 US 499, 509; *People* v. *Avalos* (1988) 203 Cal.App.3d 1517, 1521; *People* v. *Baird* (1985) 168 Cal.App.3d 237, 241. **NOTE:** Exigent circumstances have also been defined as "an imminent and substantial threat to life, health, or property." See *People* v. *Ammons* (1980) 103 Cal.App.3d 20, 30.

[7] See *People* v. *Ramey* (1976) 16 Cal.3d 263, 276; *People* v. *Camilleri* (1990) 220 Cal.App.3d 1199, 1206; *People* v. *Hull* (1995) 34 Cal.App.4th 1448, 1455; *People* v. *Wilkins* (1993) 14 Cal.App.4th 761, 771; *People* v. *Williams* (1989) 48 Cal.3d 1112, 1138; *People* v. *Wharton* (1991) 53 Cal.3d 522, 577; *People* v. *Brown* (1989) 210 Cal.App.3d 849, 855; *People* v. *Ortiz* (1995) 32 Cal.App.4th 286, 291; *People* v. *Koch* (1989) 209 Cal.App.3d 770, 782.

[8] See *People* v. *Block* (1971) 6 Cal.3d 239, 244; *People* v. *Duncan* (1986) 42 Cal.3d 91, 97-8.

[9] See *People* v. *Mitchell* (1990) 222 Cal.App.3d 1306, 1313; *People* v. *McDowell* (1988) 46 Cal.3d 551, 563; *People* v. *Osuna* (1986) 187 Cal.App.3d 845, 851; *People* v. *Duncan* (1986) 42 Cal.3d 91, 98; *People* v. *Mack* (1980) 27 Cal.3d 145, 150. ALSO SEE *People* v. *Jordan* (1976) 55 Cal.App.3d 965, 968 ["The decisions require that the officer's reasons be articulable—not that they be articulated by him with the precision and directness of a Fowler or other specialist in English

an extraordinary situation must be measured by the facts known to the officers."[10]

TRAINING, EXPERIENCE, AND COMMON SENSE: Although the courts demand facts, they will take into account the officers' common-sense interpretation of those facts in light of their training and experience.[11]

HOW DANGEROUS? Without question, the circumstance that is most important is the magnitude of the potential danger.[12] It is safe to say that the greater the potential danger, the more certain the situation is exigent, even if the danger is not particularly imminent or if the information is inconclusive.[13] Here's an example, although admittedly somewhat extreme.

Shortly after midnight on June 5, 1968, Sirhan Sirhan assassinated Sen. Robert Kennedy in Los Angeles. About ten hours later, LAPD officers went to Sirhan's home and conducted a warrantless search for evidence of a conspiracy. Although the officers had no specific reason to believe that Sirhan was involved in a conspiracy to kill other political leaders, the California Supreme Court ruled the entry was justified because the potential threat was so serious. Said the court, "Although the officers did not have reasonable cause to believe that the house contained evidence of a conspiracy to assassinate prominent political leaders, we believe that the mere possibility that there might be such evidence in the house fully warranted the officers' actions."[14]

HOW RELIABLE? If the determination that an emergency existed was based on information from an anonymous or untested informant, officers must ordinarily have reason to believe the information was reliable.[15] This does not mean that officers may never take immediate action if their information is of questionable reliability. Instead, the need for a showing of reliability decreases as

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usage."]; *People* v. *Koch* (1989) 209 Cal.App.3d 770, 782; *People* v. *Block* (1971) 6 Cal.3d 239, 244 ["As a general rule, the reasonableness of an officer's conduct is dependent upon the existence of facts available to him at the moment of the search or seizure which would warrant a man of reasonable caution in the belief that the action taken was appropriate."]; *People* v. *Ortiz* (1995) 32 Cal.App.4th 286, 293.

[10] *People* v. *Snead* (1991) 1 Cal.App.4th 380, 385.

[11] See *People* v. *Messina* (1985) 165 Cal.App.3d 937, 942; *People* v. *Ammons* (1980) 103 Cal.App.3d 20, 30 ["A police officer with many years of experience acquires a certain feel for people and situations."]; *People* v. *Higgins* (1994) 26 Cal.App.4th 247, 254 ["(O)fficers are entitled to use common sense when responding to perceived emergencies."].

[12] See *People* v. *Sirhan* (1972) 7 Cal.3d 710, 739 ["The crime was one of enormous gravity, and the gravity of the offense is an appropriate factor to take into consideration."]; *People* v. *Bacigalupo* (1991) 1 Cal.4th 103, 122; *People* v. *Mitchell* (1990) 222 Cal.App.3d 1306, 1312; *U.S.* v. *Socey* (D.C. Cir. 1988) 846 F.2d 1439, 1444 ["(T)he gravity of the underlying offense will have a great influence on the presence of exigent circumstances."]; *People* v. *Remiro* (1979) 89 Cal.App.3d 809, 831. COMPARE *People* v. *Higgins* (1994) 26 Cal.App.4th 247, 252 ["If the suspected offense is extremely minor, a warrantless home entry will almost inevitably be unreasonable under the Fourth Amendment."].

[13] See *Welsh* v. *Wisconsin* (1984) 466 US 740, 753 ["(A)n important factor to be considered when determining whether any exigency exists is the gravity of the underlying offense for which the arrest is being made."]; *Minnesota* v. *Olson* (1990) 495 US 91, 100 ["(I)n assessing the risk of danger, the gravity of the crime and likelihood that the suspect is armed should be considered."]; *Illinois* v. *McArthur* (2001) 531 US __ [148 L.Ed.2d 838, 850-1].

[14] *People* v. *Sirhan* (1972) 7 Cal.3d 710, 739.

[15] See *People* v. *Superior Court (Haflich)* (1986) 180 Cal.App.3d 759, 766-8.

the magnitude of the potential emergency increases. As the U.S. Supreme Court observed in *Florida* v. *J.L.*, "We do not say that a report of a person carrying a bomb need bear the indicia of reliability we demand for a report of a person carrying a firearm before the police can constitutionally conduct a frisk."[16]

HOW IMMINENT? Although the courts routinely say that exigent circumstances exist only if the threat is "imminent," the use of the word "imminent" is misleading. It is not meant literally as something that is about to happen. Instead, it means a situation in which officers reasonably believed the harm would occur if they delayed taking action until a search warrant could be issued. As the Court of Appeal explained:

> Imminent essentially means it is reasonable to anticipate the threatened injury will occur in such a short time that it is not feasible to obtain a search warrant. Thus it is not sufficient a reasonable officer would believe a condition exists which could *sometime* seriously injure persons or property. Rather the reasonable officer would have to believe the injury is likely to occur before he could obtain a search warrant.[17]

Like the need for reliable information, the requirement that the threat be imminent becomes less important as the magnitude of the potential emergency increases. In other words, if the threat is extremely grave, the fact that officers could not be sure it was also imminent should not affect the outcome.[18]

"**NO TIME TO OBTAIN A WARRANT":** The courts sometimes say that exigent circumstances exist only if there was not enough time to obtain a warrant.[19] This is, of course, true in those rare cases in which officers actually know they have plenty of time before the threat may materialize. But in most cases, they don't know how much time they have—there are too many variables and not enough solid information. Besides, it can be difficult to predict how long it will take to write an affidavit and find a judge to review it.[20]

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[16] (2000) 529 US __ [146 L.Ed.2d 254, 262].

[17] *People* v. *Dickson* (1983) 144 Cal.App.3d 1046, 1065; *People* v. *Blackwell* (1983) 147 Cal.App.3d 646, 652-4. ALSO SEE *People* v. *Koch* (1989) 209 Cal.App.3d 770, 782 ["(I)n most circumstances the element of urgency is an indispensable ingredient of any emergency. . . . Thus, the government must establish that because of the urgency of the situation a warrant could not be obtained in time."].

[18] **NOTE:** The courts have sometimes framed the issue in terms such as these: "[W]e might ask ourselves how the situation would have appeared if the fleeing gunman armed with a shotgun had shot and possibly killed other officers or citizens while the officers were explaining the matter to a magistrate." *People* v. *Bradford* (1972) 28 Cal.App.3d 695, 704. ALSO SEE *People* v. *Cain* (1989) 216 Cal.App.3d 366, 377.

[19] See *People* v. *Camilleri* (1990) 220 Cal.App.3d 1199, 1206.

[20] **NOTE: How long does it take to obtain a warrant?** The answer depends on a number of things. For example, how long will it take to write the affidavit? Can probable cause be established easily, maybe in two or three pages? Or will the affiant have to assemble, interpret, and explain a variety of circumstances, review numerous reports and statements, or provide expert opinions as to the meaning or significance of the circumstances? Also relevant is whether the affiant is experienced in writing affidavits. After all, writing an affidavit can take much longer when the affiant is new at it. Another consideration is how long will it take to locate a magistrate who can find time to review everything. Given the length and complexity of the affidavit and the number of attachments it contains, how long will it take for the magistrate to thoroughly review and understand everything? Will the affidavit and warrant be ready for review during normal business hours when magistrates are available? See *Segura* v. *United States* (1984) 468 US 796; *People* v.

Consequently, the courts are not apt to get bogged down trying to figure out if it was conceivable that officers could have obtained a warrant before some harm occurred.

OFFICERS WERE DILIGENT: Rather than focus on the amount of time it would have taken to obtain a warrant, courts are more interested in whether the officers were acting diligently under the circumstances. For example, in a case in which officers made an emergency entry into a home to arrest a murder suspect, the court noted, "The police did not idly sit by during a period in which a warrant could have been obtained, but promptly gathered together a number of officers and went to the locations involved."[21]

JUDICIAL SECOND-GUESSING: In many cases a judge may be able to figure out a way in which the emergency could have been eliminated quicker or by less intrusive means. But because officers usually do not have the luxury of pondering and analyzing the circumstances they confront,[22] most judges will resist the temptation to "second guess split-second decisions of officers faced with potentially dangerous situations."[23]

OFFICERS' MOTIVATION: In the past the courts would routinely inquire into the officer's motivation for taking action in the face of exigent circumstances.[24]

Ramey (1976) 16 Cal.3d 263, 276; *People* v. *Bacigalupo* (1991) 1 Cal.4th 103, 121; *People* v. *Osuna* (1986) 187 Cal.App.3d 845, 853 ["We know not how quickly a magistrate may be found in Los Angeles at 3:30 A.M."]. Or, will it be necessary to travel to the on-call magistrate's home? If so, how long will it take to get there and back? Can the warrant be submitted by means of telephone, fax or e-mail? If so, are officers and the magistrate familiar with the procedure? If not, it may not save any time.

[21] *In re Jessie L.* (1982) 131 Cal.App.3d 202, 214. ALSO SEE *People* v. *Amaya* (1979) 93 Cal.App.3d 424, 430. COMPARE *People* v. *Ramey* (1976) 16 Cal.3d 263, 276 ["In addition, a delay of some three hours occurred between the time the information was given to [the detective] and the arrest in defendant's home, during which no effort whatever was made to obtain a warrant."]; *People* v. *Ellers* (1980) 108 Cal.App.3d 943, 950.

[22] See *Tamborino* v. *Superior Court* (1986) 41 Cal.3d 919, 924 ["People could well die in emergencies if the police tried to act with the calm deliberation associated with the judicial process." Quoting from *Wayne* v. *U.S.* (D.C. Cir. 1963) 318 F.2d 205, 212 [conc. opn. Burger, C.J.]].

[23] See *United States* v. *Sharpe* (1985) 470 US 675, 686-7 ["A creative judge engaged in post hoc evaluation of police conduct can almost always imagine some alternative means by which the objectives of the police might have been accomplished."]; *People* v. *Osuna* (1986) 187 Cal.App.3d 845, 855 ["Of course, from the security of our lofty perspective, and despite our total lack of practical experience in the field, we might question whether or not those who physically confronted the danger in this instance, selected the 'best' course of action available."];*People* v. *Wilson* (1997) 59 Cal.App.4th 1053, 1063 ["Appellate courts have repeatedly emphasized it is inappropriate for judges to second-guess on-the-spot decisions of officers in the field under these [exigent] circumstances."]; *Tamborino* v. *Superior Court* (1986) 41 Cal.3d 919, 925; *U.S.* v. *Socey* (D.C. Cir. 1988) 846 F.2d 1439, 1446 ["This standard does not permit a court to judge the reasonableness of an officer's belief on the basis of hindsight."]. COMPARE *People* v. *Ellers* (1980) 108 Cal.App.3d 943, 950 [blatant judicial second-guessing].

[24] See *People* v. *Dickson* (1983) 144 Cal.App.3d 1046, 1063 ["(W)as this officer indeed motivated primarily by a desire to save lives and property?"]; *People* v. *Blackwell* (1983) 147 Cal.App.3d 646, 653; *People* v. *Osuna* (1986) 187 Cal.App.3d 845, 856; *Tamborino* v. *Superior Court* (1986) 41 Cal.3d 919, 923-4; *People* v. *Cain* (1989) 216 Cal.App.3d 366, 372; *People* v. *Boragno* (1991) 232 Cal.App.3d 378, 386. BUT ALSO SEE *People* v. *Baird* (1985) 168 Cal.App.3d 237, 244 ["(W)e object to [the *Dickson*] court's requirement that the officer's primary motivation must be determined, and question its apparent holding that it is the appellate court which must determine

And if a court was somehow able to figure out that the officers were motivated solely or in large part by a desire to obtain evidence rather than save people or property, the entry or search might be invalidated. This happened a lot in clandestine drug lab cases in which narcotics officers entered a residence because of fears the chemicals posed a threat to the occupants and their neighbors.

As the result of a 1996 U.S. Supreme Court decision,[25] however, the courts now look solely at the objective facts.[26] Specifically, if a court concludes that officers acted reasonably under the circumstances, the entry or search will be upheld regardless of whether the officers were "properly" motivated.[27]

BALANCING TEST: The courts sometimes say that exigent circumstances exist if the justification for the officers' action was outweighed by its intrusiveness. This is not, however, an accurate statement of the law. The *existence* of an exigent circumstance does not depend on what officers did in response to it. Exigent circumstances either exist or they don't. If they exist, officers can do those things that are reasonably necessary to abate them. If their actions were not reasonably necessary, the actions are unlawful—not because exigent circumstances did not exist, but because they exceeded the permissible scope of the exigency.[28]

Having discussed the basic principles that are applied in determining whether a police action is justified by exigent circumstances, we will now examine the most common types of exigencies officers must contend with.

Person in danger

This is the quintessential exigent circumstance: imminent danger to the health or safety of a person.[29] The others are, of course, important. But as the

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what the officer believed."]; *People* v. *Duncan* (1986) 42 Cal.3d 91, 104; *People* v. *Hull* (1995) 34 Cal.App.4th 1448, 1455-6 [court note that this holding in *Dickson* was abrogated by Proposition 8].

[25] *Whren* v. *United States* (1996) 517 US 806, 814. ["(T)he Fourth Amendment's concern with 'reasonableness' allows certain actions to be taken in certain circumstances, *whatever* the subjective intent."].

[26] See *Whren* v. *United States* (1996) 517 US 806, 811-4.

[27] See *Ohio* v. *Robinette* (1996) 519 US 33, 38 ["And there is no question that, in light of the admitted probable cause to stop Robinette for speeding, Deputy Newsome was objectively justified in asking Robinette to get out of the car, subjective thoughts notwithstanding."]; *People* v. *Wilson* (1997) 59 Cal.App.4th 1053, 1058 ["The United States Supreme Court has mandated that we apply an objective test to the constitutional evaluation of the actions of Officer Vidal."]; *People* v. *Hull* (1995) 34 Cal.App.4th 1448, 1456 ["An officer's motivation is no longer a part of determining whether there is an unreasonable search of seizure . . . "]. **NOTE:** The Court in *Whren* noted that an officer's subjective intent remains a factor in vehicle inventory and administrative searches because the validity of these searches does not depend on objective reasonableness. Said the Court, "Not only have we never held, outside the context of inventory search or administrative inspection that an officer's motive invalidates objectively justifiable behavior under the Fourth Amendment; but we have repeatedly held and asserted the contrary." *Whren* v. *United States* (1996) 517 US 806, 812. Subjective intent is also a factor in vehicle checkpoints. See *City of Indianapolis* v. *Edmond* (2000) 531 US __ [148 L.Ed.2d 333, 346.

[28] See *Illinois* v. *McArthur* (2001) 531 US __ [148 L.Ed.2d 838, 848].

[29] See *Thompson* v. *Louisiana* (1984) 469 US 17, 22; *People* v. *Boragno* (1991) 232 Cal.App.3d 378, 382-6; *People* v. *Amaya* (1979) 93 Cal.App.3d 424, 428 ["Nor is a warrant required when, having come upon the scene of a crime, officers reasonably suspect a victim or victims might be inside a dwelling and in need of immediate aid."]; *People* v. *Hill* (1974) 12 Cal.3d 731, 754 ["A warrantless entry of a dwelling is constitutionally permissible where the officers' conduct is

Court of Appeal noted, "The most pressing emergency of all is rescue of human life when time is of the essence."[30] The following are the most common:

ASSAULT IN PROGRESS: Officers reasonably believed a person inside was being assaulted.[31]

SICK OR INJURED PERSON: Officers reasonably believe someone on the premises needed immediate help because of sickness or injury.[32] Examples:

- ☐ At 4 A.M., a man broke into a woman's apartment, attempted to rape her, then fled. When officers arrived they heard TV sounds coming from the apartment next door. Concerned that the occupant may also have been victimized, they knocked on the door. When no one answered, they entered. Court: "[I]t was in the early-morning hours when most people are asleep, the officers were aware of a recent brutal attack on a defenseless elderly woman next door, the search was close in time to the attack, and they relied on their substantial experience in finding the situation unusual."[33]
- ☐ At 11 P.M., officers responded to a report of a shooting at a residence. No one met them when they arrived, there were two cars in the driveway, the house was dark but the lights outside were on. When no one answered the door, they went in through a window. Court: "[T]here were ample exigent circumstances within the meaning of the preserving-life necessity exception to the warrant requirement to justify the officers' entry."[34]

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prompted by the motive of preserving life and reasonably appears to be necessary for that purpose."]; *People* v. *Soldoff* (1980) 112 Cal.App.3d 1, 6-7; *People* v. *Ray* (1999) 21 Cal.4th 464, 470; *People* v. *Frye* (1998) 18 Cal.4th 894, 989.

[30] *People* v. *Riddle* (1978) 83 Cal.App.3d 563, 572. ALSO SEE *Miranda* v. *Arizona* (1966) 384 US 436, 539; *Illinois* v. *Gates* (1983) 462 US 213, 237.

[31] See *People* v. *Payne* (1977) 65 Cal.App.3d 679 [reliable informant said Payne molested children in his bedroom which was in the garage of a home he shared with his mother. To make sure his mother didn't see him enter with children, he would have the child hide in his car. When Payne went inside, the child would go in the garage door. During a stakeout, officers saw these events transpire; child was 10-12 years old. Officers entered. Court: "The police officers reasonably believed that [the child] was in need of their assistance. The potential crimes for which appellant was being investigated were particularly heinous and dangerous."]; *People* v. *Brown* (1970) 12 Cal.App.3d 600, 604-5; *People* v. *Lucero* (1988) 44 Cal.3d 1006, 1017; *People* v. *Higgins* (1994) 26 Cal.App.4th 247 [anonymous report of domestic violence at a house. Officers saw a man through the window. Woman who answered the door appeared "extremely frightened," marks on her face indicating she'd been hit. She said she'd fallen, denied that a man was inside the house. Officers entered. Court: "Viewed objectively, these circumstances justified the officers' actions to ensure [the woman's] safety."].

[32] See *People* v. *Snead* (1991) 1 Cal.App.4th 380, 385-6; *Mincey* v. *Arizona* (1978) 437 US 385, 392; *Arizona* v. *Hicks* (1987) 480 US 321, 325; *People* v. *Zabelle* (1996) 50 Cal.App.4th 1282, 1287; *People* v. *Ammons* (1980) 103 Cal.App.3d 20, 28-31; *People* v. *Keener* (1983) 148 Cal.App.3d 73, 77; *People* v. *Stamper* (1980) 106 Cal.App.3d 301, 305-6; *People* v. *Higgins* (1994) 26 Cal.App.4th 247, 251-5 [entry justified because officers reasonably believed a woman had just been beaten by her husband even though she denied it]. **NOTE**: A person who is unconscious may be searched for ID. See *People* v. *Gomez* (1964) 229 Cal.App.2d 781; *People* v. *Gonzales* (1960) 182 Cal.App.2d 276.

[33] *People* v. *Cain* (1989) 216 Cal.App.3d 366. ALSO SEE *People* v. *Wharton* (1991) 53 Cal.3d 522; *People* v. *Coddington* (2000) 23 Cal.4th 529.

[34] *People* v. *Soldoff* (1980) 112 Cal.App.3d 1. ALSO SEE *People* v. *Hill* (1974) 12 Cal.3d 731, 755; *Tamborino* v. *Superior Court* (1986) 41 Cal.3d 919, 923.

☐ Officers responded to a report of gunshots coming from inside a house. No one answered the door when the officers knocked. Just then they heard a noise from inside. It sounded "like a shotgun being chambered." They entered. Court: "The officers reasonably concluded that an injured person in need of prompt attention *might* be within the house."[35]

☐ An officer was walking by the open door of a hotel room when he saw a man "seated on the bed with his face lying on a dresser at the foot of the bed." The officer also saw "a broken, jagged piece of mirror" and "dark balls" which appeared to be heroin. He entered. Court: "The circumstances justified the officer's belief that defendant might have overdosed on heroin. Thus, his entry into the room to check on defendant's condition was justified." [36]

FIRES, EXPLOSIVES: The premises are on fire, or there are dangerous chemicals or explosives on the premises which pose an imminent and serious danger to persons or property.[37]

BURGLARY OR ROBBERY IN PROGRESS: Officers reasonably believed a residential burglary or robbery was in progress or had just occurred.[38] The justification for such an entry and sweep is based on the need to arrest the perpetrators if they are still inside, the need to protect any occupants who might be inside, and the need to protect property from theft or destruction. For example, entries have been upheld based on the following indications of burglary:

❑ Officers responded to a report that the front door of a home had been open all day. Looking inside, they saw clothing and paper "strewn on the ground, on the sofa. It was just a real mess inside; it looked like someone had gone through the house." No one responded to the officers' knocking.[39]

❑ At 10:30 P.M. a woman phoned police and said she thought the apartment above hers was being burglarized. She said she heard the sound of breaking glass and footsteps, and she knew the occupant was not at home. When

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[35] *People* v. *Stamper* (1980) 106 Cal.App.3d 301. ALSO SEE *People* v. *Galan* (1985) 163 Cal.App.3d 786.

[36] *People* v. *Zabelle* (1996) 50 Cal.App.4th 1282, 1287-8.

[37] See *Michigan* v. *Tyler* (1978) 436 US 499, 509 ["A burning building clearly presents an exigency of sufficient proportions to render a warrantless entry 'reasonable.'"]; *People* v. *Remiro* (1979) 89 Cal.App.3d 809, 830; *Cleaver* v. *Superior Court* (1979) 24 Cal.3d 297; *People* v. *Avalos* (1988) 203 Cal.App.3d 1517, 1521; *People* v. *Ramsey* (1969) 272 Cal.App.2d 302, 311; *People* v. *Superior Court (Peebles)* (1970) 6 Cal.App.3d 379, 382; *People* v. *Messina* (1985) 165 Cal.App.3d 937, 942-5; *People* v. *Duncan* (1986) 42 Cal.3d 91, 100-5; *People* v. *Osuna* (1986) 187 Cal.App.3d 845, 852; *People* v. *Baird* (1985) 168 Cal.App.3d 237, 245; *People* v. *Avalos* (1988) 203 Cal.App.3d 1517, 1523; *People* v. *Stegman* (1985) 164 Cal.App.3d 936; *People* v. *Scheib* (1979) 98 Cal.App.3d 820, 828; *People* v. *Gurtenstein* (1977) 69 Cal.App.3d 441, 449 [grounds to believe a package contained a bomb]. **ALSO SEE** *People* v. *Baker* (1970) 12 Cal.App.3d 826, 840 [officers reasonably believed that drugs and a gun, possibly loaded, were inside a bowling alley locker under surveillance by officers who intended to arrest any person who opened the locker].

[38] See *People* v. *Superior Court (Haflich)* (1986) 180 Cal.App.3d 759 [robbery in progress]. COMPARE *People* v. *Morgan* (1987) 196 Cal.App.3d 816 [insufficient evidence of burglary in progress]; *Horack* v. *Superior Court* (1970) 3 Cal.3d 720 [insufficient evidence of burglary in progress].

[39] *People* v. *Ray* (1999) 21 Cal.4th 464. ALSO SEE *People* v. *Aylwin* (1973) 31 Cal.App.3d 826; *People* v. *Parra* (1973) 30 Cal.App.3d 729 [door open in business; entry to locate phone number of owner to have him respond].

officers arrived, they discovered that a small pane of glass on the front door had been broken, and glass was on the floor inside the apartment.[40]

❑ At 12:30 P.M., police received a phone call that a burglary "was in progress or had just occurred." When they arrived, they found that all the doors to the house were locked but that a back window was open. And on the ground under the window was a box containing a TV set and other things.[41]

HOMICIDE SCENES: Officers arriving at a house in which a homicide occurred will seldom know for certain whether there are other victims inside, or whether the perpetrator or an accomplice is still there. Consequently, the U.S. Supreme Court has ruled that officers may, as a matter of routine, enter a house that is a homicide scene and conduct a protective sweep.[42]

For example, in *People* v. *Hill*[43] officers were notified that a shooting victim had been driven by friends to a hospital where the victim died. The victim's friends said the shooting occurred during a drug sale at the home of Amelia Hernandez. Officers immediately went there and saw fresh bloodstains on the fence, porch, and on a car parked outside. Looking through a window, they saw what appeared to be bloodstains on the floor. Ruling the officers' subsequent entry was lawful, the court pointed out:

> Although only one casualty had thus far been reported, others may have been injured and may have been abandoned on the premises. There was no response when the officers knocked and announced themselves, and entering the premises was the only practical means of determining whether there was anyone inside in need of assistance.

DEAD BODY: There is no "dead body" exception to the warrant requirement.[44] As a practical matter, however, a warrantless entry is usually justified if, as is usually the case, officers cannot eliminate the possibility of a homicide.[45]

OTHER CRIME SCENES: A crime scene can constitute an exigent circumstance when the perpetrator or any accomplices may still be on the scene, or when a victim of the crime may be injured and on the premises. There is, however, no sweeping "crime scene" exigent circumstance.[46] Instead, a house that is a crime scene may be entered and searched without a warrant or consent only if such action was based on one specific reason to believe an imminent threat exists.

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[40] *People* v. *Bradley* (1982) 132 Cal.App.3d 737.

[41] *People* v. *Duncan* (1986) 42 Cal.3d 91.

[42] See *Mincey* v. *Arizona* (1978) 437 US 385, 392 ["(W)hen the police come upon the scene of a homicide they may make a prompt warrantless search of the area to see if there are other victims or if a killer is still on the premises.".

[43] (1974) 12 Cal.3d 731. ALSO SEE *People* v. *Amaya* (1979) 93 Cal.App.3d 424; *People* v. *Justin* (1983) 140 Cal.App.3d 729, 735.

[44] See *People* v. *Foster* (1980) 102 Cal.App.3d 882, 888.

[45] See *Mincey* v. *Arizona* (1978) 437 US 385, 392-3. **PROSECUTORS NOTE: Inevitable discovery:** In *People* v. *Foster* (1980) 102 Cal.App.3d 882, 888-9 the court ruled that evidence concerning the discovery of a decaying body was admissible under the inevitable discovery doctrine because "given the offensive smell which permeated the alley, the coroner would obviously have been called by someone, and he would have been obliged by law to investigate the death." ALSO SEE Health and Safety Code §§ 102850, 102855, 102860.

[46] See *Mincey* v. *Arizona* (1978) 437 US 385, 395; *Thompson* v. *Louisiana* (1984) 469 US 17, 221; *People* v. *Timms* (1986) 179 Cal.App.3d 86, 91.

"CHECK THE WELFARE" CALLS: "Check the welfare" calls usually involve a report to the police from a friend, relative, neighbor, or employer saying that someone is missing under suspicious circumstances or that someone is believed to be in danger. If the reporting person appears to be reliable, and the circumstances support the belief that the person is in danger, a warrantless entry into the missing person's residence may be justified.[47] Examples:

- ☐ Anonymous report of domestic violence at a house. Officers saw a man through the window. The woman who answered the door appeared "extremely frightened." There were marks on her face indicating she'd been hit. She said she'd fallen and denied that a man was inside the house. Because the officers had actually seen a man inside, they knew she was lying, so they entered. Court: "Viewed objectively, these circumstances justified the officers' actions to ensure [the woman's] safety."[48]
- ☐ Report of two small children left alone in an apartment. No one answered the door when the officer knocked. Just then, a woman arrived, opened the door and started to walk inside. As she opened the door, the officer saw "considerable trash and dirty clothes strewn about the kitchen area." The woman was drunk. The officer entered. Court: "[T]he facts reasonably indicating that an infant child may be unattended constitute such a substantial threat, and that such risk is not dissipated by the return of a custodial parent in a state of obvious intoxication." [49]
- ☐ Mr. and Mrs. Macioce were reported missing. Their friends told officers the Macioce's had missed a church meeting which they ordinarily attended regularly, that no one had answered the door for days, and that Mr. Macioce had missed an appointment for knee surgery. Mail was accumulating and a car was in the driveway. Officers entered Court: "Given that information, we think [the officer's] conduct was eminently reasonable." [50]

Officer safety

A threat to officer safety is, of course, an exigent circumstance that may justify a warrantless entry into a home.[51] Specifically, if officers reasonably believe there is a person inside who poses an immediate threat to them, they may enter the

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[47] See *People* v. *Wharton* (1991) 53 Cal.3d 522, 577-8; *People* v. *Ray* (1999) 21 Cal.4th 464; *People* v. *Clark* (1968) 262 Cal.App.2d 471, 476; *People* v. *Willis* (1980) 104 Cal.App.3d 433, 445.
[48] *People* v. *Higgins* (1994) 26 Cal.App.4th 247.
[49] *People* v. *Sutton* (1976) 65 Cal.App.3d 341. ALSO SEE *People* v. *Neighbours* (1990) 223 Cal.App.3d 1115, 1123; *In re Dawn O.* (1976) 58 Cal.App.3d 160, 163; *People* v. *Miller* (1999) 69 Cal.App.4th 190, 199; *People* v. *Keener* (1983) 148 Cal.App.3d 73, 77. COMPARE *People* v. *Smith* (1972) 7 Cal.3d 282.
[50] *People* v. *Macioce* (1987) 197 Cal.App.3d 262. ALSO SEE *People* v. *Roberts* (1956) 47 Cal.2d 374; *People* v. *Ammons* (1980) 103 Cal.App.3d 20.
[51] See *Maryland* v. *Buie* (1990) 494 US 325, 336; *In re Elizabeth G.* (2001) 88 Cal.App.4th 496, 507; *People* v. *Haugland* (1981) 115 Cal.App.3d 248, 258 [officers reasonably believed a gun was in a briefcase carried by a detainee]. COMPARE *People* v. *Ramey* (1976) 16 Cal.3d 263, 276 [court noted "there was no reason for [the officer] to assume the weapon was available for immediate use"]

house and search for him. This is true regardless of whether the threat materialized while the officers were inside or outside the house.[52]

For example, exigent circumstances based on a threat to officers have been found as follows:

- ❏ Officers arrested a robbery-murder suspect after he was ordered out of his girlfriend's house. The officers reasonably believed that someone inside posed a danger because they were aware that the suspect worked with accomplices.[53]
- ❏ While standing at the open door of a house, officers became aware that a firearm was accessible to an occupant who was hostile to them, intoxicated, or otherwise unstable.[54]
- ❏ FBI agents received information that a carjacker/serial bank robber was staying at a certain motel room with a certain woman. During surveillance, agents saw the woman drive up in a car taken in a carjacking. As the agents approached her, she yelled, "Run, Buddy!" Agents kicked in the door to the motel room and arrested "Buddy." [55]
- ❏ Responding to a report of screams coming from inside a house, an officer knocked on the door. The man who opened the door "appeared to be nervous, looked over his shoulder and—without explanation—moved toward the bedroom in a seemingly hasty fashion." The officer went in after him because he was concerned for his safety and the safety of anyone else in the house.[56]

Drug labs

The presence of an illegal drug lab inside a residence or business can pose a threat to the occupants, their neighbors, and the homes and other property in the immediate vicinity. Still, an illegal drug lab is not, in and of itself, an exigent circumstance that will justify a warrantless entry. Instead, it becomes an exigent

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[52] See *People* v. *Maier* (1991) 226 Cal.App.3d 1670, 1675 ["An accomplice on another floor is surely no more dangerous than one on the other side of a window, or a door."]; *Maryland* v. *Buie* (1990) 494 US 325, 337; *Guidi* v. *Superior Court* (1973) 10 Cal.3d 1, 9; *People* v. *Block* (1971) 6 Cal.3d 239, 245; *People* v. *Baldwin* (1976) 62 Cal.App.3d 727, 742-3; *People* v. *Schmel* (1975) 54 Cal.App.3d 46. 51-2; **COMPARE:** *Dillon* v. *Superior Court* (1972) 7 Cal.3d 305, 314

[53] *People* v. *Maier* (1991) 226 Cal.App.3d 1670. ALSO SEE *People* v. *Brevetz* (1980) 112 Cal.App.3d 65, 73; *Guevara* v. *Superior Court* (1970) 7 Cal.App.3d 531, 535.

[54] *People* v. *Wilson* (1997) 59 Cal.App.4th 1053, 1061. ALSO SEE *People* v. *Dyke* (1990) 224 Cal.App.3d 648, 660 ["(T)he presence of a handgun in a dwelling, in and of itself, obviously does not constitute an exigent circumstance justifying entry. However, the evidence is that the officers reasonably believed [that the fugitive] was secreted inside and was aware of the reason for their presence. They were not obliged to wait and see if he or Dyke would reach for the handgun or otherwise try to escape."]; *People* v. *Mitchell* (1990) 222 Cal.App.3d 1306, 1313; *People* v. *Kizzee* (1979) 94 Cal.App.3d 927, 935 ["The front door of the residence was standing wide open. They were told that a woman was still inside and they knew that a woman had participated in the crime [in which a gun was used]]; *People* v. *Keener* (1983) 148 Cal.App.3d 73, 77; *U.S.* v. Bailey (9th Cir. 2001) 263 F.3d 1022, 1033.

[55] *U.S.* v. *Reilly* (9th Cir. 2000) 224 F.3d 986, 991 ["The officers reasonably suspected that dangerous weapons might be on the premises. Furthermore, Lange's unexpected and vocal reaction to being taken into custody could have tipped Reilly off to the agents' presence and given him adequate time to arm himself or attempt to escape."].

[56] *People* v. *Frazier* (1977) 71 Cal.App.3d 690, 694.

circumstance if officers were aware of facts that reasonably indicated the lab presented an imminent threat.[57]

PCP AND METH LABS: An imminent threat almost always exists if officers reasonably believe the lab is currently being used to make PCP or methamphetamine. This is because, as the California Supreme Court observed, "The extremely volatile nature of chemicals, including ether, involved in the production of drugs such as PCP and methamphetamine creates a dangerous environment, especially when handled unprofessionally by residential manufacturers of illicit drugs."[58]

JUST ETHER: Because ether is highly volatile and therefore dangerous, an imminent and serious threat may be based on the detection of an odor of ether emanating from a home if the odor was so strong as to indicate a high—and therefore dangerous—concentration of the chemical in the house.[59]

For example, in *People* v. *Stegman*[60] a man phoned the Riverside County Sheriff's Department at about 1 A.M., reporting an odor of ether coming from a neighbor's home. When deputies arrived, they confirmed the odor was coming from the neighbor's house; that it was, in fact, ether; and that the odor was so strong it could be detected two houses away. Because the deputies were aware that "ether was a volatile substance, and that there was a danger of explosion and fire," they immediately notified the fire department, requested backup, and evacuated the occupants of nearby homes.

When backup arrived, deputies approached the house from which the odor was emanating. On the back patio they saw "plastic vats with a chemical substance in them." Then, looking through a window of the house, they saw "a vacuum pump, more vats with chemicals, and glass beakers." They could also

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[57] See *People* v. *Duncan* (1986) 42 Cal.3d 91, 103 ["(T)here is no absolute rule that can accommodate every warrantless entry into premises housing a drug laboratory. It is manifest that the emergency nature of each situation must be evaluated on its own facts."]; *People* v. *Osuna* (1986) 187 Cal.App.3d 845, 852; *People* v. *Patterson* (1979) 94 Cal.App.3d 456, 463-4; *People* v. *Messina* (1985) 165 Cal.App.3d 937, 945; *People* v. *Remiro* (1979) 89 Cal.App.3d 809, 831; *People* v. *Superior Court (Peebles)* (1970) 6 Cal.App.3d 379, 382; *People* v. *Baird* (1985) 168 Cal.App.3d 237, 245; *People* v. *Avalos* (1988) 203 Cal.App.3d 1517, 1523 [meth lab in house that caught fire].

[58] *People* v. *Duncan* (1986) 42 Cal.3d 91, 105. ALSO SEE *People* v. *Stegman* (1985) 164 Cal.App.3d 936, 944; *People* v. *Messina* (1985) 165 Cal.App.3d 937, 943 ["(I)t is abundantly clear that the types of chemicals used to manufacture methamphetamines are extremely hazardous to health."].

[59] See *People* v. *Stegman* (1985) 164 Cal.App.3d 936; *People* v. *Duncan* (1986) 42 Cal.3d 91, 103 [disapproving a contrary ruling in *People* v. *Dickson* (1983) 144 Cal.App.3d 1046]; *People* v. *Baird* (1985) 168 Cal.App.3d 237, 244; *People* v. *Blackwell* (1983) 147 Cal.App.3d 646 [strong fumes associated with PCP inside home]. **NOTE:** In *People* v. *Dickson* (1983) 144 Cal.App.3d 1046, 1057-8, one of the most verbose opinions in the history of California jurisprudence, the court opined that ether is not really dangerous in the amounts commonly used to manufacture PCP. See, especially, pp.1067-8. The "logic" behind the *Dickson* court's conclusions has been thoroughly repudiated to the point that *Dickson* is not citable for much of anything except, perhaps, the degree to which some people have too much time on their hands. In any event, *Dickson* has routinely been distinguished, ignored, or disapproved. See *People* v. *Duncan* (1986) 42 Cal.3d 91, 103-4; *People* v. *Osuna* (1986) 187 Cal.App.3d 845, 851; *People* v. *Baird* (1985) 168 Cal.App.3d 237, 244; *People* v. *Stegman* (1985) 164 Cal.App.3d 936, 944; *People* v. *Abes* (1985) 174 Cal.App.3d 796, 808; *People* v. *Messina* (1985) 165 Cal.App.3d 937, 944, fn.2

[60] (1985) 164 Cal.App.3d 936.

hear a motor running inside the house. A deputy then knocked on the door and announced, "Sheriff's deputy, open the door." In response, people inside the house began running. The deputies then entered and arrested the occupants.

In ruling the circumstances reasonably indicated an immediate entry was necessary, the court pointed out the smell of ether could be detected two houses away. Said the court, "Ether at such high levels of concentration would be highly dangerous regardless of purpose, thus constituting an exigent circumstance."

THE NEED FOR DILIGENCE: In the past, the courts would occasionally invalidate warrantless entries into drug labs if it appeared the officers were motivated by a desire to obtain evidence or make arrests rather than save lives or property. As noted, however, the courts no longer look to the officers' motivation. Instead, if the circumstances were such that it was objectively reasonable for them to immediately enter, their motivation for doing do is immaterial.

Still, if officers were not diligent in responding to the situation, a court might conclude the officers' actions proved there was no emergency, or at least there was time to obtain a warrant.[61] If this happens, the entry may be invalidated.

Destruction of evidence

Probably the most common type of exigent circumstance is the imminent destruction of evidence. This is because most types of evidence can be destroyed quickly and easily, and the destruction of evidence is a top priority for most criminals, especially when they have reason to believe the police are closing in.[62]

As we will now discuss, there are two requirements that must be met for this exigent circumstance to exist:

(1) **Evidence is present:** There must be probable cause that destructible evidence in the home.[63]

(2) **Impending destruction:** Officers must have reason to believe the evidence might be destroyed if they delayed taking action until a warrant was issued.[64]

EVIDENCE IS PRESENT: In the absence of direct evidence, an officer's belief that destructible evidence is on the premises may be based on reasonable inference. This often occurs when officers have probable cause to believe a suspect committed a certain crime. If perpetrators of such a crime typically utilize a certain type of instrumentality it may be reasonable to infer that the suspect

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[61] See *People* v. *Baird* (1985) 168 Cal.App.3d 237, 245.

[62] See *United States* v. *Santana* (1976) 427 US 38, 43 ["Once Santana saw the police, there was likewise a realistic expectation that any delay would result in the destruction of evidence."]; *In re Jessie L.* (1982) 131 Cal.App.3d 202, 214. ALSO SEE *People* v. *Superior Court (Dai-Re)* (1980) 104 Cal.App.3d 86, 90 [court notes that the preservation of evidence is "of great social importance."].

[63] See *Illinois* v. *McArthur* (2001) 531 US __ [148 L.Ed.2d 838, 848].

[64] See *Ferdin* v. *Superior Court* (1974) 36 Cal.App.3d 774, 782 ["Of course, mere probable cause for officers to believe that contraband is within a home will not justify a warrantless search."]; *People* v. *Camilleri* (1990) 220 Cal.App.3d 1199, 1209 ["Mere fear or apprehension alone that evidence will be destroyed will not justify a warrantless entry of a private home. Instead, there must exist specific and articulable facts which, taken together with rational inferences, support the warrantless intrusion."]. COMPARE *Vale* v. *Louisiana* (1970) 399 US 30, 34 ["(B)y their own account the arresting officers satisfied themselves that no one else was in the house when they first entered the premises."].

also possesses such an instrumentality[65]—and that it is located in his home.[66] For example, if may be reasonable to believe there are drugs and sales paraphernalia in the suspect's home when there is probable cause to believe he is a drug dealer.[67]

IMPENDING DESTRUCTION: The mere presence of evidence in a home is not an exigent circumstance. Instead, it becomes so if officers reasonably believe it would be destroyed or become useless if they waited for a warrant.

For example, in *Mincey* v. *Arizona*[68]officers made a warrantless entry into a home in which an undercover officer had just been murdered. The entry was, of course, lawful. But after the scene was secured and the perpetrator arrested, the officers conducted an extensive search of the house. In ruling the search was unlawful, the U.S. Supreme Court noted, "There was no indication that evidence would be lost, destroyed, or removed during the time required to obtain a search warrant. . . . We decline to hold that the seriousness of the offense under investigation itself creates exigent circumstances . . . ."

What circumstances tend to show a suspect is about to destroy evidence? Here are some of the most common:

A SHOUTED WARNING: If officers have probable cause to believe there is evidence inside a house, it may be reasonable to believe its destruction is imminent if, upon arrival, they hear someone inside or outside shouting a warning that the police are here.[69]

FLUSHING TOILETS: If there is probable cause to believe there are drugs on the premises, the sound of a toilet flushing that coincides with the officer's arrival is a classic indication of destruction of drugs.[70]

FRANTIC ACTIVITY: After officers knock on the door or arrive outside, any yelling, running, or frantic activity is an indication that evidence is being destroyed or soon will be. [71]

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[65] *See People* v. *Bennett* (1998) 17 Cal.4th 373, 388; *People* v. *Frank* (1985) 38 Cal.3d 711, 728; *People* v. *Meyer* (1986) 183 Cal.App.3d 1150, 1162; *People* v. *Koch* (1989) 209 Cal.App.3d 770, 780; *People* v. *Tuadles* (1992) 7 Cal.App.4th 1777; *People* v. *Sanchez* (1981) 116 Cal.App.3d 720, 727; *People* v. *Aho* (1985) 166 Cal.App.3d 984, 992-3; *People* v. *Cleland* (1990) 225 Cal.App.3d 388, 392-3; *In re Christopher R.* (1989) 216 Cal.App.3d 901, 905; *People* v. *Freeny* (1974) 37 Cal.App.3d 20, 29; *People* v. *Gonzalez* (1990) 51 Cal.3d 1179, 1206.

[66] See *People* v. *Miller* (1978) 85 Cal.App.3d 194, 204 ["A number of California cases have recognized that from the nature of the crimes and the items sought, a magistrate can reasonably conclude that a suspect's residence is a logical place to look for specific incriminating items."].

[67] See *People* v. *Senkir* (1972) 26 Cal.App.3d 411, 420-1; *People* v. *Superior Court (Marcil)* (1972) 27 Cal.App.3d 404, 413 ["Numerous cases have upheld search warrants on the theory that one who sells narcotics may have more at his residence or place of operations."]; *People* v. *Golden* (1971) 20 Cal.App.3d 211, 218-9 (dis. opn. of Kaus. J.) ["We have all handled enough narcotics cases and thus gained knowledge of the habits of peddlers, that we may perhaps reasonably suspect that such a person who deals a small amount of merchandise from his home, has more where it came from."].

[68] (1978) 437 US 385, 394.

[69] See *U.S.* v. *Reilly* (9th Cir. 2000) 224 F.3d 986, 991.

[70] See *People* v. *Clark* (1968) 262 Cal.App.2d 471, 475 ["The repeated flushing of the toilet behind the locked door of the bathroom in premises where marijuana is being kept and the police are at the threshold is almost a commonplace signal of the destruction of evidence."]; *People* v. *Alaniz* (1986) 182 Cal.App.3d 903, 906 ["Keenly aware of appellant's penchant for flushing toilets even when nature did not call . . . "].

DRUGS, STOLEN PROPERTY IN PLAIN VIEW: If officers see contraband or other evidence in plain view in the suspect's home, and if they reasonably believe the suspect was aware they had seen it, they can usually infer that the suspect will attempt to destroy it if he is given the opportunity.[72]

ACCOMPLICE ARRESTED: If a suspect's accomplice has been arrested, and if there is reason to believe the suspect has learned about it or soon will, it may be reasonable to believe the suspect will soon start destroying any destructible evidence in his home.[73] The following are circumstances that tend to show the suspect has learned about his accomplice's arrest and will start destroying evidence:

ACCOMPLICE ARRESTED OUTSIDE HOME; SUSPECT INSIDE: If officers have just arrested the suspect's accomplice outside the home, it is usually reasonable to believe the suspect saw the arrest and will destroy evidence if given the opportunity. Examples:

Robbery: A drug store in Modesto had just been robbed of drugs and money. The getaway car was traced to a house in the city. When officers arrived, they saw the car in the driveway and arrested one of the suspects who was standing outside. When they saw two men looking out of a window in the house, the officers entered and arrested them. Court: "The officer saw two males looking out the front window of the residence observing the detention of [their accomplice]. Sergeant Puthuff reasonably could conclude evidence might be destroyed within the house."[74]

Drug case: While conducting surveillance of a motel room in which cocaine was being sold, officers saw one of the suspects walk outside and drop a package in the trash; the package looked like the package in which cocaine was transported. Based on this, the officers "feared that destruction or movement of the cocaine was occurring or was imminent and that the suspects were preparing to flee." So they immediately arrested the man. Because they thought the others inside the motel room might have seen the arrest occur, officers entered the

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[71] See *People* v. *Seaton* (2001) 26 Cal.4th 598, 632 ["for five to ten minutes, during which time [the officers] heard noises that sounded like objects being moved. Based on these circumstances, the officers could reasonably fear that unless they entered, persons in the house would destroy evidence."]; *People* v. *Freeny* (1974) 37 Cal.App.3d 20, 26 [after officers at the front door identified and demanded entry, they heard "shrill female sounds emanating from within the house and the sound of footsteps running away from the door."]; *People* v. *Carrillo* (1966) 64 Cal.2d 387, 392; *People* v. *Abes* (1985) 174 Cal.App.3d 796, 807.

[72] See *People* v. *Robinson* (1986) 185 Cal.App.3d 528, 532; *People* v. *Ortiz* (1995) 32 Cal.App.4th 286, 293-4; *People* v. *Hull* (1995) 34 Cal.App.4th 1448, 1456; *People* v. *Curley* (1970) 12 Cal.App.3d 732, 744.

[73] See *People* v. *Freeny* (1974) 37 Cal.App.3d 20, 33 ["No reasonable man could conclude other than that Mrs. Freeny would destroy evidence of her guilt, which was equal to that of appellant, if she learned of his arrest . . . ."]. COMPARE *Dillon* v. *Superior Court* (1972) 7 Cal.3d 305, 314["There is, of course, always the possibility that some additional person may be found in a house outside of which an arrest took place. But the mere possibility of additional persons in the house, without more, is not enough . . . "]; *People* v. *Brown* (1989) 210 Cal.App.3d 849, 856.

[74] *People* v. *Daughhetee* (1985) 165 Cal.App.3d 574, 578.

room and secured it, pending issuance of a warrant. Court: The officers' fear that the cocaine would be destroyed was reasonable.[75]

ACCOMPLICE ARRESTED AWAY FROM HOME; SUSPECT WILL SOON PANIC: A variation of the "Accomplice Arrested Outside" exigency is the situation in which officers arrest the accomplice some distance from the house in which the evidence and the suspect are located. Depending on the circumstances, it may be reasonable for officers to figure that the suspect will panic and destroy evidence when his accomplice fails to return on time.

Murder case: Shortly after a drive-by shooting, the driver dropped off a passenger at the passenger's home. The driver was arrested shortly thereafter, not far from the house. Court: It was reasonable for officers to believe the passenger would learn of the arrest and destroy the guns used in the shooting, or at least wipe them clean of fingerprints.[76]

Drug case: Officers arrested a drug seller's middleman after he sold a kilogram of cocaine to an undercover officer for $36,000. Having determined that the seller was at home, they immediately went to his house, entered it, and secured it pending issuance of a search warrant. They did this because they figured the suspect "would be expecting the payment for the kilo very soon after it had left the residence, and when that money did not arrive the [suspect] would know something was wrong," that he would "get nervous about an unexplained delay in payment and might either flee or destroy evidence. Court: The officers' fears were reasonable; the entry was lawful based on exigent circumstances.[77]

ACCOMPLICE OR SPOUSE IS COOPERATING WITH POLICE: A suspect who learns that an accomplice or his estranged spouse is now cooperating with police may also immediately destroy evidence.

Drug case: A woman asked officers to stand by while she removed her clothing from the trailer she shared with her estranged husband. As she walked outside with her things, she told officers that her husband had just "slid some dope underneath the couch." When the husband came outside, an officer told him he could not go back inside until a warrant

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[75] *U.S.* v. *Parra* (10th Cir. 1993) 2 F.3d 1058.

[76] *In re Elizabeth G.* (2001) 88 Cal.App.4th 496, 507.

[77] *People* v. *Camilleri* (1990) 220 Cal.App.3d 1199. ALSO SEE *Ferdin* v. *Superior Court* (1974) 36 Cal.App.3d 774, 782 ["But the combination of circumstances present here: the probable cause to arrest Ferdin and the danger that the miscarriage of the [middleman's] mission would become known to Ferdin with consequent destruction of contraband, justified the actions, less than search, of entry and monitoring the occupants."]; *In re Jessie L.* (1982) 131 Cal.App.3d 202, 214 ["The police could reasonably conclude that there was no time to get a warrant and that the remaining suspects must be promptly arrested because they might flee or destroy evidence upon word getting out that David C. was in custody and had made statements to the police."]; *People* v. *Thompson* (1972) 25 Cal.App.3d 132, 140-1 [reasonable to believe a person who shipped marijuana to the defendant would notify the defendant when the package was due to arrive; if it didn't arrive on time, defendant might not pick up the package]. COMPARE *People* v. *Rodriguez* (1981) 123 Cal.App.3d 269, 272.

was issued. Court: "[T]he police had good reason to fear that, unless restrained, [the husband] would destroy the drugs before they could return with a warrant. They reasonably might have thought that [the husband] realized that his wife knew about his marijuana stash; observed that she was angry or frightened enough to ask the police to accompany her; saw that after leaving the trailer she had spoken with the police . . . . They reasonably could have concluded that [the husband], consequently suspecting an imminent search, would, if given the chance, get rid of the drugs fast."[78]

Imminent Escape:
"Hot" and "Fresh" Pursuits

In the context of exigent circumstances, there are two types of imminent escapes: "hot" and "fresh." Either one will justify a warrantless entry and a sweep of the premises. The problem for officers is knowing whether they are actually involved in a "hot" or "fresh" pursuit, or whether it's some lesser kind of chase that does not constitute an exigent circumstance.

"HOT" PURSUITS: A "hot" pursuit occurs if officers attempt to arrest a suspect in a public place but he runs into a house or other private place.[79] In such cases, the suspect's escape is more than "imminent"—it's "in progress."

There are four requirements for a warrantless entry based on "hot" pursuit. They are:

(1) **Probable cause to arrest:** There was probable cause to arrest the suspect for a felony or misdemeanor.[80]

(2) **Attempt to arrest outside:** Officers attempted to arrest the suspect in a public place.

(3) **Suspect runs inside:** The suspect attempted to escape by running into a house or other private place.[81]

(4) **Officers follow him in:** Immediately, or shortly thereafter,[82] officers went in after him.[83]

For example, in *United States* v. *Santana*,[84] officers went to Santana's house to arrest her because she had just sold drugs to an undercover officer. As the

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[78] *Illinois* v. *McArthur* (2001) 531 US __ [148 L.Ed.2d 838].

[79] **NOTE:** If the suspect runs into somebody else's house, he will probably not have standing to challenge the officers' warrantless entry and search. See *Rakas* v. *Illinois* (1978) 439 US 128, 148; *Hudson* v. *Palmer* (1984) 468 US 517, 525 ["The applicability of the Fourth Amendment turns on whether the person invoking its protection can claim a justifiable, a reasonable, or a legitimate expectation of privacy that has been invaded by governmental action."].

[80] See *People* v. *White* (1986) 183 Cal.App.3d 1199, 1205.

[81] See *U.S.* v. *Johnson* (9th Cir. 2001) 256 F.3d 895, 905 [not a "hot" pursuit because officers had merely a "gut feeling" the suspect fled onto the property that was searched]. **NOTE:** It is unsettled whether officers must have probable cause or merely reasonable suspicion to believe the suspect went into the private place. See *People* v. *White* (1986) 183 Cal.App.3d 1199, 1205-8.

[82] See *People* v. *Bradford* (1972) 28 Cal.App.3d 695, 703.

[83] See *People* v. *Abes* (1985) 174 Cal.App.3d 796, 806; *People* v. *McDowell* (1988) 46 Cal.3d 551, 562; *People* v. *Mack* (1980) 27 Cal.3d 145. **NOTE: Knock-notice:** Officers in "hot pursuit" are not required to comply with the knock-notice requirements unless there were other circumstances that made an unannounced entry unreasonable. See *Wilson* v. *Arkansas* (1995) 514 US 927, 936-7; *People* v. *Patino* (1979) 95 Cal.App.3d 11, 21.

officers pulled up in front of the house, they saw Santana standing at the doorway. She saw them, too, and ran inside. The officers followed her in, arrested her, and in the process discovered evidence in plain view. Their entry, said the Court, was lawful because it was a "true hot pursuit." Said the Court: "[A] suspect may not defeat an arrest which has been set in motion in a public place by the expedient of escaping to a private place."

A pursuit may be "hot" even though it occurred long after the crime was committed so long as the four requirements listed above are met. For example, in *People* v. *Patino*[85] LAPD officers ran after a man who had just burglarized a bar. Although they lost him, they spotted him about an hour later and resumed the chase. The man ran into an apartment and the officers went in and arrested him. The court ruled that even though the officers lost the suspect for about an hour, their pursuit became a "hot" one when they saw him again and chased him into the apartment.

Note that a pursuit may be "hot" regardless of whether the suspect is wanted for a felony or misdemeanor. For example, in *People* v. *Lloyd* an officer chased the driver of a car who had driven through a red light. The driver eventually stopped in front of a house and went inside with officers in pursuit. In ruling their entry was lawful, the court said:

> Where the pursuit into the home was based on an arrest set in motion in a public place, the fact that the offenses justifying the initial detention or arrest were misdemeanors is of no significance in determining the validity of the entry without a warrant.[86]

"FRESH" PURSUITS: Unlike "hot" pursuits, "fresh" pursuits do not involve a physical chase. Instead, the officer's belief that the suspect's escape is imminent is based on circumstantial evidence.

Sometimes the circumstantial evidence is quite strong. For example, in one case officers learned that a murder suspect was staying at a motel, and that money would soon be delivered to him so he could flee to Texas.[87] In another case, an officer's belief that a murderer was fleeing, or soon would be, was based on the discovery of a fresh trail of blood leading from a murder scene to the suspect's house.[88] The theory here was that the suspect would start running as soon as he realized he had left a trail of blood.

In most cases, however, an officer's belief that a suspect's escape is imminent is based mainly on reasonable inference. The most common inference is that a person who has committed a serious felony, and who is now inside his home or the home of a friend or relative, will quickly leave the house and go into active flight if he has reason to believe that officers have learned his identity or were otherwise closing in.

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[84] (1976) 427 US 38, 43. ALSO SEE *People* v. *Superior Court (Quinn)* (1978) 83 Cal.App.3d 609, 616.

[85] (1979) 95 Cal.App.3d 11. ALSO SEE *People* v. *Ngaue* (1992) 8 Cal.App.4th 896, 903; *People* v. *Bradford* (1972) 28 Cal.App.3d 695, 703.

[86] (1989) 216 Cal.App.3d 1425, 1430. ALSO SEE *In re Lavoyne M.* (1990) 221 Cal.App.3d 154, 159; *People* v. *Abes* (1985) 174 Cal.App.3d 796, 807; *People* v. *White* (1986) 183 Cal.App.3d 1199, 1203-4.

[87] *People* v. *Lopez* (1979) 99 Cal.App.3d 754, 766.

[88] *People* v. *McDowell* (1988) 46 Cal.3d 551.

Because situations such as these are potentially dangerous and call for quick action, the courts permit a warrantless entry into the home to arrest a suspect if four circumstances exist.

(1) **Serious felony:** Officers must have had probable cause to arrest the suspect for a serious felony, usually a serious and violent felony.[89]

(2) **Diligence:** Officers must have been diligent in their investigation.[90]

(3) **Suspect in house:** Officers must have reasonably believed the suspect was now inside the house.[91]

(4) **Circumstantial evidence of flight:** Officers were aware of circumstances indicating the suspect was in active flight or soon would be.

What facts are sufficient? The following are examples:

Intensive investigation in progress: When a person commits a serious felony that he knows or believes was reported to the police, he will expect an immediate, all-out effort to identify and apprehend him. The length of such an effort will vary depending on the seriousness of the crime and the number of leads. In any event, if during this time officers reasonably believe the perpetrator is inside his home, a warrantless entry might be justified under the "fresh" pursuit doctrine. Examples:

- ❑ At 8 A.M., Hayden robbed a cab company at gunpoint. Two cab drivers followed him to his home nearby and notified police. When officers arrived, they entered and arrested him. Court: "The police were informed that an armed robbery had taken place, and that the suspect had entered [his house] less than five minutes before they reached it. They acted reasonably when they entered the house and began to search for a man of the description they had been given."[92]
- ❑ The body of a young woman was discovered at 5:20 A.M. along a road in Placer County. She had been raped, robbed, and murdered. Sheriff's detectives quickly identified the woman and developed probable cause to believe that Williams was the perpetrator. The next day, they found the victim's stolen car near the apartment of Williams' girlfriend. They entered the apartment and arrested him. In ruling the arrest was lawful under the "fresh" pursuit doctrine, the court noted the investigation proceeded steadily and diligently from the time the body was discovered, adding, "The proximity of the victim's car clearly

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[89] See *People* v. *Smith* (1966) 63 Cal.2d 779, 797; *People* v. *Amaya* (1979) 93 Cal.App.3d 424, 428 ["Thus, officers need not secure a warrant to enter a dwelling in fresh pursuit of a fleeing suspect believed to have committed a grave offense and who therefore may constitute a danger to others."]; *In re Jessie L.* (1982) 131 Cal.App.3d 202, 214 ["Immediate flight was a reasonable possibility in light of the seriousness of the crime involved, murder."]; *People* v. *Escudero* (1979) 23 Cal.3d 800. 811 [nighttime residential burglary]; *People* v. *Superior Court (Dai-re)* (1980) 104 Cal.App.3d 86, 90 [nighttime commercial burglary]. COMPARE *Welsh* v. *Wisconsin* (1984) 466 US 740, 753.

[90] See *People* v. *Williams* (1989) 48 Cal.3d 1112, 1139 ["There was no unjustified delay by the investigating officers during which time an arrest warrant for the homicide could have been obtained."]."

[91] See *People* v. *White* (1986) 183 Cal.App.3d 1199, 1207-9.

[92] *Warden* v. *Hayden* (1967) 387 US 294, 298.

suggested defendant's presence in the apartment, and also made flight a realistic possibility."[93]

❏ Gilbert shot and killed an Alhambra police officer during a botched bank robbery. Gilbert and one of his accomplices, King, got away but, unknown to them, a third accomplice named Weaver was quickly captured. Weaver identified Gilbert as the shooter and told officers where he lived. While en route to the apartment, officers learned that King had just left the apartment. Figuring that Gilbert might be inside, they forcibly entered. Although Gilbert was not there, officers found some evidence in plain view. In ruling the entry was lawful under the "fresh" pursuit doctrine, the California Supreme Court noted that the officers learned of Gilbert's address less than two hours after the robbery and murder and that it was reasonable for them to believe he had returned to his house. Said the court, "Presumably [Gilbert] was in the apartment. Since the officers were in fresh pursuit of two robbers who escaped in the same automobile, [the assumption that Gilbert was inside the apartment] was not unreasonable."[94]

WITNESS COULD ID: "Fresh" pursuit may also occur if the perpetrator of a serious felony was aware that his victim or witnesses could identify him. Examples:

❏ A man who had killed two people while robbing a jewelry store, attempted to kill a third person who escaped. The third person knew the killer's name. When officers identified the suspect a few hours later, they immediately went to his apartment, entered, and arrested him.[95]

❏ A woman who had been kidnapped and raped by a man in a motel room was able to escape when the man fell asleep. She immediately notified police who entered the room and arrested him. Court: "The police could well have believed that the victim's absence upon defendant's arousal would sound an alarm for him to flee . . . ."[96]

❏ Lanfrey stabbed another man in a bar. Witnesses provided officers with leads concerning the perpetrator's name and temporary residence. Almost six hours after the stabbing, officers entered Lanfrey's motel room and arrested him. Court: "It is true that at the time defendant Lanfrey was arrested in his motel room, approximately five and a half hours had elapsed since the stabbing incident. however, during that period, the officers had been engaged in an ongoing field investigation leading them to Lanfrey. There does not appear to have been any unjustified delay by the officers during which probable cause had jelled and a warrant could have been obtained."[97]

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[93] *People* v. *Williams* (1989) 48 Cal.3d 1112.
[94] *People* v. *Gilbert* (1965) 63 Cal.2d 690. ALSO SEE *In re Elizabeth G.* (2001) 88 Cal.App.4th 496; *People* v. *Superior Court (Peebles)* (1970) 6 Cal.App.3d 379.
[95] See *People* v. *Bacigalupo* (1991) 1 Cal.4th 103, 121-2.
[96] *People* v. *Kilpatrick* (1980) 105 Cal.App.3d 401, 410.
[97] *People* v. *Lanfrey* (1988) 204 Cal.App.3d 491, 509.

PERPETRATOR DROPPED ID: A perpetrator can be expected to flee as soon as he realizes he left ID of some sort, such as a wallet, at or near the crime scene. Examples:

❑ At 12:40 A.M., a man caught Escudero burglarizing a home near Sacramento. Escudero sped away in a car and the man followed him until Escudero stopped the car and ran off on foot. The man removed the vehicle registration from the car and notified sheriff's deputies. Deputies immediately went to the address listed on the registration and arrested Escudero inside his home. Court: "Throughout the events in question the police were pursuing a man whom they suspected of having broken into an occupied private home in the middle of the night to commit a burglary; this is a serious crime, with an ever-present potential for exploding into violent confrontation. The need to prevent the imminent escape of such an offender is clearly an exigent circumstance."[98]

ACCOMPLICE ARRESTED: If an accomplice of the perpetrator was arrested, and if there is a reasonable possibility that the perpetrator learned of the arrest, it may be reasonable to believe the perpetrator has figured that his accomplice will probably identify him and will immediately flee. Examples:

❑ Four juveniles on a robbery spree killed a young man and fled. One of the juveniles, David C., was arrested two days later at 5 A.M. By 6:30 A.M., he had given officers the address of one of his accomplices. Officers immediately went to the house, forcibly entered and arrested him. Court: "The police could reasonably conclude that there was no time to get a warrant and that the remaining suspects must be promptly arrested because they might flee or destroy evidence upon word getting out that David C. was in custody and had made statements to the police."[99]

❑ A live-in maid named Szabo reported to LAPD officers that burglars broke into her employers' house, tied her up, and stole TV's, stereos, and other things. It turned out that a patrol officer had written down the license number of a suspicious van parked in front of the house earlier that evening. Officers traced the car to the home of Mr. and Mrs. Csemers who had some of the stolen property and were arrested. When officers saw a photograph of Szabo in the Csemers' home, they concluded (correctly) that Szabo was an accomplice. They immediately went back to Szabo's house and arrested her. Court: "A telephone call

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[98] *People* v. *Escudero* (1979) 23 Cal.3d 800. 810-1. ALSO SEE *People* v. *Superior Court (Dai-re)* (1980) 104 Cal.App.3d 86, 91 [although no direct evidence that anyone saw the defendants ramming a car through a clothing store which they then burglarized, the court seemed to infer that the existence of witnesses: "[The burglars] must have known that they would attract attention, even at 4 A.M."].

[99] *In re Jessie L.* (1982) 131 Cal.App.3d 202, 213-4. ALSO SEE *People* v. *Smith* (1966) 63 Cal.2d 779, 797.

> from Mr. or Mrs. Csemers after they were booked in jail warning [Szabo] of her vulnerability was not unlikely."[100]

"Do-it-yourself" exigencies

The term "do-it-yourself exigency" is used to describe an exigent circumstance that was intentionally created by officers to justify a warrantless entry or search.[101] Although a do-it-yourself exigency may, in fact, constitute a true exigent circumstance, the courts will ordinarily suppress evidence discovered as the result of one because they don't want officers going around manufacturing emergencies in order to conduct warrantless searches.

In fact, even if officers did not specifically intend to create an emergency, an entry or search may be invalidated if a court finds that officers intentionally and unnecessarily engaged in conduct they knew or should have known would result in an emergency situation.

For example, in *People* v. *Bellizzi*[102] officers received a tip that a suspected drug dealer was staying in a certain hotel in South San Francisco. In order to get the suspect to open the door so they could talk with him, they arranged to have a housekeeper knock on the door and identify herself while they remained out of sight. When the suspect, Bellizzi, opened the door and looked outside, he saw one of the plainclothes officers holding a gun. Bellizzi immediately tried to close the door but the officers rushed in, detained him, and seized evidence in plain view.

Although the officers reasonably believed that Bellizzi posed a threat to them when they entered, the court ruled the threat was intentionally or negligently created by the officers and was, therefore, of the "do-it-yourself" variety. Said the court:

> The officers resorted to a ruse with a hotel employee in order to get the door open, then observed appellant go into a panic at the sight of an armed stranger in plain clothes, rather than the employee he had expected. While the officers might at that point have justifiably feared appellant might attempt to defend himself, with a gun or otherwise, this exigency was created by the officers themselves.

Although, as *Bellizzi* illustrates, a "do-it-yourself" exigency may result even if officers did not actually intend to create one, the courts are not apt to invalidate an entry or search on these grounds merely because there were "better" ways of handling the situation or even if the officers actions were "ill advised."[103] As the U.S. Court of Appeals put it, "As long as police measures are not deliberately

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[100] *People* v. *Szabo* (1980) 107 Cal.App.3d 419, 429.

[101] See *People* v. *Mendoza* (1986) 176 Cal.App.3d 1127, 1131; *U.S.* v. *Socey* (D.C. Cir. 1988) 846 F.2d 1439, 1448 ["It is true that police officers cannot deliberately create exigent circumstances to justify a warrantless entry into a private dwelling."]; *People* v. *Daughhetee* (1985) 165 Cal.App.3d 574, 578-9; *People* v. *Freeny* (1974) 37 Cal.App.3d 20, 32; *People* v. *Superior Court (Hulbert)* (1977) 74 Cal.App.3d 407, 418-9; *People* v. *Robinson* (1986) 185 Cal.App.3d 528; *Ferdin* v. *Superior Court* (1974) 36 Cal.App.3d 774, 781; *People* v. *Kizzee* (1979) 94 Cal.App.3d 927, 935-6.

[102] (1995) 34 Cal.App.4th 1849.

[103] See *U.S.* v. *Socey* (D.C. Cir. 1988) 846 F.2d 1439, 1448-9 ["Perhaps [the officer] could have pursued a different course, less likely to expose the police presence to the occupants in the house. But this calculation, made in hindsight, is not relevant to our inquiry."].

designed to invent exigent circumstances, we will not second-guess their effectiveness."[104]

[104] *U.S.* v. *Socey* (D.C. Cir. 1988) 846 F.2d 1439, 1449.