1 IN THE SUPREME COURT OF THE UNITED STATES

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3 BRIGHAM CITY, UTAH, :

4 Petitioner :

5 v. : No. 05-502

6 CHARLES W. STUART, ET AL. :

7 - - - - - - - - - - - - - - - - -X

8 Washington, D.C.

9 Monday, April 24, 2006

10 The above-entitled matter came on for oral

11 argument before the Supreme Court of the United States

12 at 10:03 a.m.

13 APPEARANCES:

14 JEFFREY S. GRAY, ESQ., Assistant Utah Attorney General,

15 Salt Lake City, Utah; on behalf of the Petitioner.

16 PAUL J. MCNULTY, ESQ., Deputy Attorney General,

17 Department of Justice, Washington, D.C.; on

18 behalf of the United States, as amicus curiae,

19 supporting the Petitioner.

20 MICHAEL P. STUDEBAKER, ESQ., Ogden, Utah; on behalf of

21 the Respondents.

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1 C O N T E N T S

2 ORAL ARGUMENT OF PAGE

3 JEFFREY S. GRAY, ESQ.

4 On behalf of the Petitioner 3

5 PAUL J. MCNULTY, ESQ.

6 On behalf of the United States,

7 as amicus curiae, supporting the Petitioner 15

8 MICHAEL P. STUDEBAKER, ESQ.

9 On behalf of the Respondents 24

10 REBUTTAL ARGUMENT OF

11 JEFFREY S. GRAY, ESQ.

12 On behalf of the Petitioner 51

13

14

15

16

17

18

19

20

21

22

23

24

25

1 P R O C E E D I N G S

2 (10:03 a.m.)

3 CHIEF JUSTICE ROBERTS: We'll hear argument

4 first today in Brigham City, Utah v. Stuart.

5 Mr. Gray.

6 ORAL ARGUMENT OF JEFFREY S. GRAY

7 ON BEHALF OF THE PETITIONER

8 MR. GRAY: Mr. Chief Justice, and may it

9 please the Court:

10 In cases involving safety exigencies, an

11 officer's actions should be judged against a single

12 objective standard of reasonableness, that is, whether

13 the facts and circumstances known to the officers at

14 the time of entry would warrant a reasonable person in

15 believing that immediate intervention is needed to

16 preserve the peace and protect others from harm. When

17 officers have reason to believe that violence is

18 imminent or ongoing, they meet that standard.

19 In this case, the Brigham City officers

20 responded to a complaint at 3:00 a.m. and, upon

21 arriving, witnessed a violent and tumultuous struggle

22 between four adults and a teenager. The officers --

23 when the juvenile threw a punch is when the officers

24 acted and thereby prevented injury. This is exactly

25 what we would expect officers to do.

1 JUSTICE SCALIA: What were they doing in the
2 yard anyway? This sort of occurred to me. They
3 couldn't have seen that until they went into the fenced
4 back yard violating the curtilage of the property. How
5 -- was that justified?
6 MR. GRAY: Yes, it was justified. At that
7 time what they heard from the curb side and then from
8 the front was the same kind of violence going on. They
9 heard that from -- from the time they arrived all the
10 way. They -- they heard the thumping, the shouting,
11 someone saying, get off me, stop, stop. And so what
12 these officers were doing, in the course of that, is
13 investigating that -- that, and it led them to the back
14 yard.
15 Now --
16 JUSTICE SCALIA: Is any less required to --
17 to go into the curtilage than is required to go into
18 the house?
19 MR. GRAY: No.
20 JUSTICE SCALIA: No. It's the same test?
21 MR. GRAY: Yes. And again, that was --
22 JUSTICE SCALIA: So you say that even if he
23 didn't see him throw the punch and -- and draw blood,
24 they could have gone in just because they heard
25 somebody say, stop, stop, get off me?

1 MR. GRAY: It's our position that they could
2 have, though that's a much closer case. In this case,
3 the officers acted in a very guarded manner. I mean,
4 they -- they proceeded and they investigated step by
5 step and, in fact, did not enter until a punch was
6 thrown and there was --
7 JUSTICE SOUTER: So what -- what you're
8 saying is they've got to have a reasonable ground to
9 take the first step. That may not be a reasonable
10 ground to have taken the second step right then and
11 there, but it's the same reasonableness standard.
12 MR. GRAY: Yes, it is.
13 JUSTICE SOUTER: That's -- that's --
14 MR. GRAY: Yes.
15 JUSTICE GINSBURG: One thing that was left
16 out of the succession of acts -- Utah provides for
17 telephone warrants, and there was no attempt to do
18 that. Once they checked to -- to determine that there
19 was probable cause to enter, they could have called for
20 a warrant, but they didn't. Is there a reason why they
21 didn't?
22 MR. GRAY: Yes. The reason is where there's
23 a violent situation, things can change in seconds. I
24 mean, it can turn deadly in seconds. They don't have
25 time. Even though a telephonic warrant would certainly

1 be a more speedy process of getting a warrant, it's not
2 speedy enough where punches are being thrown. I mean,
3 it can turn deadly, one blow could give someone a
4 concussion or even rupture a spleen.
5 JUSTICE SCALIA: Well, you don't -- you don't
6 really mean that if they saw somebody inside with a gun
7 and they heard him saying, I'm going to shoot you in 2
8 minutes, since they could have gotten a telephone
9 warrant, they would have to had to get a telephone
10 warrant?
11 MR. GRAY: No, not at all.
12 JUSTICE SCALIA: I mean, you -- you don't
13 want the -- the telephone warrant requirement to -- to
14 up the ante on -- on what it takes to -- for the police
15 to go in without a warrant, do you?
16 MR. GRAY: No. In fact, precisely for that
17 reason, the officers would not need a telephonic
18 warrant in that situation no more than they would need
19 a telephonic warrant in this situation. Time is of the
20 essence. Violence --
21 JUSTICE SCALIA: But it wouldn't be of the
22 essence if you know you have 2 minutes. I'm going to
23 kill you in 2 minutes.
24 MR. GRAY: Well, that -- that's --
25 JUSTICE SCALIA: Do you really want the

1 policeman to say I got 2 minutes, you know, dial in and
2 get a warrant? That's ridiculous.
3 (Laughter.)
4 MR. GRAY: That -- that would be assuming --
5 that would be assuming that you could take someone who
6 is threatening in that manner at his word. I don't
7 think that's something the officers could -- could
8 afford to do.
9 JUSTICE GINSBURG: Are the police instructed
10 -- the city police instructed about when the telephone
11 warrant procedure is appropriate?
12 MR. GRAY: That I -- I do not know. I assume
13 so. They have procedures in place, but that I do not
14 know.
15 JUSTICE ALITO: When you speak about a
16 violent situation, would that be limited -- would that
17 apply here just because a punch was thrown, or would it
18 be enough that the officers saw some men restraining
19 the young man, or would it be enough if there were
20 violent words being exchanged?
21 MR. GRAY: With -- with violent words,
22 generally not, though if it's accompanied with a show
23 of immediate force or violence, then yes, in that
24 situation.
25 In this situation, I believe that officers

1 could have entered prior to the punch being thrown.
2 What they witnessed is -- is this violent struggle
3 between four adults and a teenager. They had no idea
4 whether or not they were trying to molest the -- the
5 teenager or whether the teenager was an intruder or
6 what happened. But they could tell that it was
7 violent. They knew that alcohol was involved based on
8 the circumstances as they approached.
9 JUSTICE KENNEDY: Did they know that minors
10 were involved? The record doesn't show that, at least
11 in the preliminary direct exam of the officers.
12 MR. GRAY: That minors were involved?
13 JUSTICE KENNEDY: Yes. I mean, they knew
14 that once they got into the back yard. Did they know
15 before they got into the back yard?
16 MR. GRAY: They knew that minors --
17 JUSTICE KENNEDY: Or did they just know that
18 minors stay up late at night?
19 MR. GRAY: They knew that minors were in the
20 back yard. They -- they witnessed the two juveniles.
21 They did not know that --
22 JUSTICE KENNEDY: But that's after they went
23 into the back yard.
24 MR. GRAY: No. They saw that from the
25 driveway, through the -- the slit -- slit -- slats in

1 the fence.

2 JUSTICE KENNEDY: They could see that they

3 were minors.

4 MR. GRAY: Yes, yes.

5 CHIEF JUSTICE ROBERTS: How much -- you've

6 been focusing on the violence because of the punch

7 being thrown, but I gather they were called originally

8 because of concern about the noise and disturbance of

9 the peace and all that.

10 MR. GRAY: Yes.

11 CHIEF JUSTICE ROBERTS: Is that a sufficient

12 basis for them to have gone into the back yard and

13 proceed from there?

14 MR. GRAY: Well --

15 CHIEF JUSTICE ROBERTS: They're just

16 shouting. There are five people in the house shouting.

17 It's 3:00 in the morning or whatever. Is that -- is

18 that enough?

19 MR. GRAY: Probably not, certainly not where

20 the State is -- where the State offers as -- as the

21 proffered justification safety, it would not be enough.

22 That would be a different justification for their

23 actions. Certainly where they're disturbing the

24 neighbors, we would argue that the expectation of

25 privacy had diminished in that home because of that

1 disturbance. But again, where the State -- or where
2 the city is offering as a justification safety, that
3 would not be sufficient to go in.
4 JUSTICE SOUTER: No, but if -- if the -- if
5 the complaint were -- were simply a complaint of noise,
6 and they got to the -- the gate, the back fence, and
7 they could hear all the racket inside and there didn't
8 seem to be any practical way to get people to come to
9 the fence to talk to them, wouldn't they have had the
10 right to go through the gate and at least go up to the
11 door and bang on the door?
12 MR. GRAY: Yes.
13 JUSTICE SOUTER: So they could have gotten
14 through the curtilage. They could at least have gotten
15 to the back door based entirely on noise.
16 MR. GRAY: Yes.
17 JUSTICE SOUTER: Okay.
18 MR. GRAY: Yes.
19 JUSTICE SCALIA: Except that there was a
20 front door, which they approached first. As I recall,
21 they left one of the officers in the front.
22 MR. GRAY: Yes.
23 JUSTICE SCALIA: So they could have banged on
24 the front door.
25 MR. GRAY: They -- they could have, though

1 the evidence was that -- and the trial court found that
2 it was so loud and tumultuous that nobody would have
3 heard it or probably would not have heard it.
4 JUSTICE STEVENS: But I'm a little puzzled.
5 If the noise is the cause of their being there and if
6 the noise is so loud at 3:00 in the morning that it's
7 still continuing and nobody can hear the knock on the
8 door -- they knock on the door several times and shout
9 -- would they not have the right to go in then to quell
10 the noise?
11 MR. GRAY: Absolutely. All that I am
12 maintaining is that they would not be justified under a
13 safety exigency to go in. Certainly to -- as far as
14 disturbing the peace, then yes, but not where the
15 proffered justification is safety.
16 JUSTICE STEVENS: So if you're going to rely
17 on the safety and the -- safety and the danger of harm,
18 how serious does the harm have to be? And I use the
19 word harm as defining the -- the threshold for this
20 kind of entry. What if a father was spanking is child,
21 for example?
22 MR. GRAY: No. Spanking of a child would
23 not. There's no indication under most circumstances of
24 an intent to injure or abuse. Now, of course, if there
25 are circumstances that would suggest abuse, then

1 officers could go in.

2 CHIEF JUSTICE ROBERTS: Doesn't yelling so

3 loudly you can't hear police knock at the door at 3:00

4 in the morning suggest that violence is at least

5 imminent or may well be associated with what they're

6 hearing?

7 MR. GRAY: It certainly approaches that, but

8 again, what we would maintain is there probably has to

9 be more than simple shouting. If -- if it's

10 accompanied by threats or a show of force or violence,

11 then certainly they could go in.

12 JUSTICE SCALIA: Is there, in addition to the

13 safety rationale which you're -- justification, which

14 you're arguing here -- is there a justification to go

15 in to stop an ongoing felony whether safety is involved

16 or not?

17 MR. GRAY: Yes.

18 JUSTICE SCALIA: Is -- is that a separate --

19 MR. GRAY: Yes. That --

20 JUSTICE SCALIA: I mean, you see a guy

21 turning out counterfeit dollar bills, $100 bills, and

22 can you go in right away if you see him doing that?

23 MR. GRAY: Well, it's a crime ongoing, in

24 progress. So there certainly could be made an

25 argument. Now, whether or not there's an exigency, I

1 think that's doubtful because police could secure the
2 scene and secure a warrant and then execute that
3 warrant.
4 JUSTICE SCALIA: Well, I mean, but if that's
5 the case, you have a much easier argument. Wasn't
6 there an assault here? There was clearly an assault.
7 MR. GRAY: Yes, and certainly where officers
8 have reason to believe that there's an ongoing assault,
9 officers can enter.
10 Now, one of the problems with the Utah
11 Supreme Court's holding in this case --
12 JUSTICE GINSBURG: In connection with the
13 answer you just gave, it doesn't matter then? If it's
14 an ongoing crime, they can go in? It doesn't matter
15 whether it would be a misdemeanor or a felony? It
16 doesn't matter how grave the crime is?
17 MR. GRAY: Well, this Court in Welsh
18 indicated that minor offenses -- you couldn't rely on
19 the exigent circumstances exception, or at least it is
20 what it suggested. But certainly an assault, under
21 Utah law, is a class B misdemeanor, punishable by up to
22 6 months in jail, and that's certainly of sufficient
23 gravity to justify officers entering.
24 CHIEF JUSTICE ROBERTS: Any kind of assault.
25 I gather it's an assault if you're just sort of a

1 couple of guys pushing each other back and forth.

2 MR. GRAY: Well, under Utah law, an assault

3 is defined as unlawful force or violence so as to --

4 with an intent to do bodily injury. Now, pushing --

5 there's not that there.

6 Now, one of the chief problems or primary

7 problems with the Utah court's decision in this case is

8 it creates a complicated and confusing bifurcated

9 standard that forces officers unrealistically to choose

10 between roles, to choose whether or not they are going

11 to enter and act as caretakers or enter and act as law

12 enforcement officials.

13 Well, the reality -- first of all, it's --

14 it's very difficult for officers to try to make those

15 kind of judgments in the heat of the moment, and this

16 is precisely the kind of a -- the kind of case where

17 that would be impossible to achieve because officers in

18 this case are acting clearly under both roles. They're

19 stopping crime and they are also protecting others from

20 harm. We want officers to rescue people from harm when

21 they have a reasonable basis to do it, not wait until

22 you have to call an EMT. That's what Mincey provides.

23 And if there are no further questions, I

24 would reserve the remainder of my time.

25 JUSTICE STEVENS: Let me just ask this one

1 question, if I may, if you have -- did the other side
2 preserve the right to challenge this entry under the
3 Utah constitution?
4 MR. GRAY: No, they did not, and -- and the
5 Utah Supreme Court recognized that.
6 CHIEF JUSTICE ROBERTS: Thank you, counsel.
7 General McNulty.
8 ORAL ARGUMENT OF PAUL J. MCNULTY
9 ON BEHALF OF THE UNITED STATES,
10 AS AMICUS CURIAE, SUPPORTING THE PETITIONER
11 MR. MCNULTY: Thank you, Mr. Chief Justice,
12 may it please the Court:
13 The Fourth Amendment does not require police
14 officers to stand by and be a spectator to escalating
15 violence in the home when such an officer has an
16 objectively reasonable basis to believe, given the
17 totality of the circumstances, that prompt action is
18 necessary to prevent imminent harm.
19 CHIEF JUSTICE ROBERTS: So if there were no
20 punch in this case, would they have had a sufficient
21 basis? 3:00 in the morning, loud shouting. Can they
22 conclude, based on their experience, that's likely to
23 escalate into violence and enter on that basis?
24 MR. MCNULTY: Yes, Mr. Chief Justice. In
25 these facts, the Government suggests they would.

1 The -- under the Fourth Amendment, a police
2 officer may enter a residence --
3 JUSTICE KENNEDY: Well, that's just because
4 it's loud? Suppose they were just singing and
5 laughing?
6 MR. MCNULTY: Well, it would depend on -- if
7 -- if words are going to be the key --
8 JUSTICE SCALIA: One thing leads to another.
9 Right?
10 MR. MCNULTY: Well, that's correct. It
11 depends upon, of course, what those words are. It's
12 really a combination of the words and the context of
13 the words. Here you have --
14 JUSTICE KENNEDY: So there has to be some
15 indication of the likelihood of escalation into
16 violence?
17 MR. MCNULTY: Correct, Your Honor. That's --
18 that's --
19 JUSTICE STEVENS: Well, why? What if they're
20 just so loud that it's perfectly obvious they're
21 keeping -- getting -- the neighbors are awake and
22 disturbed by it. Does it have to be a threat of
23 violence?
24 MR. MCNULTY: Well, Your Honor, if there's a
25 loud noise alone, certainly the neighborhood shouldn't

1 have to be a hostage to that noise, and the police
2 officers may be acting reasonably to do what is
3 necessary to end that noise. But it's going to --
4 JUSTICE STEVENS: So then it doesn't matter
5 what's being said.
6 JUSTICE KENNEDY: So then it does matter.
7 MR. MCNULTY: But the -- what's being said
8 may determine -- may determine -- whether or not entry
9 is necessary to respond to an imminent threat where a
10 prompt response is critical.
11 JUSTICE STEVENS: It may determine what is
12 necessary to prevent harm, but what if it's not
13 necessary to prevent harm, just necessary to prevent
14 noise?
15 MR. MCNULTY: Then it may still be
16 reasonable. It may still be reasonable, Your Honor.
17 JUSTICE STEVENS: It seems to me the harm
18 inquiry in this case is, you know, sort of superfluous.
19 We don't even have to look at that.
20 MR. MCNULTY: I agree, Your Honor. It may be
21 that the -- the noise alone could justify the
22 circumstance. Certainly we wouldn't want a test that
23 excluded words only --
24 JUSTICE SCALIA: Well, no. You -- you don't
25 want to say that. The noise alone wouldn't justify

1 going in without knocking as would the -- a scene of a
2 violent event occurring. Certainly you'd have to knock
3 on the door. Now, if they didn't hear you and the only
4 way to get their attention to stop the noise is to go
5 in, fine, but wouldn't you have to knock on the door
6 real hard before you went in to stop the noise?
7 MR. MCNULTY: Justice Scalia, in most cases a
8 knock on the door would -- would be appropriate thing
9 to do.
10 JUSTICE SCALIA: Not appropriate. Necessary.
11 JUSTICE KENNEDY: Necessary.
12 MR. MCNULTY: Well, it may very well be
13 necessary depending upon the totality of the
14 circumstances.
15 JUSTICE SCALIA: I hope so. I mean -- people
16 --
17 JUSTICE STEVENS: Yes, but we've got a case
18 in which knocking on the -- the noise is so loud nobody
19 can hear the knock.
20 MR. MCNULTY: That's why a knock on the door
21 may not always be the right thing to do. In some cases
22 it could be a futile gesture. In this case, the police
23 announced themselves and were not heard because of that
24 tumultuous --
25 JUSTICE STEVENS: And they did knock on the

1 door, yes.

2 MR. MCNULTY: They entered and announced

3 their presence, and they were not heard when they did

4 that. So the knock is -- is normally the appropriate

5 course, but in certain circumstances, the knock may

6 either be futile, it could be dangerous, depending upon

7 what was happening, and it certainly could waste some

8 time if it was a dire emergency.

9 The -- under the Fourth Amendment, a police

10 officer may enter a residence without a warrant when a

11 reasonable officer could conclude, given again all the

12 circumstances, that an impending threat to life or

13 safety justifies immediate intervention and the scope

14 of the intrusion is reasonable in relation to the

15 nature of the emergency.

16 Whether the officer was subjectively

17 motivated to enforce the law or render aid has no

18 relevance in a constitutional inquiry. Volatile

19 situations involving violence in the home can escalate

20 in -- in seconds, and the on-the-scene, split-second

21 judgment about exactly when the police officers should

22 intervene is precisely what the totality of the

23 circumstances test has long addressed and resolves the

24 balance of the Fourth Amendment values.

25 And this Court's recent decision in Georgia

1 v. Randolph contains a clear expression of concern for
2 the need for the police to take prompt action to
3 prevent harm in domestic violence cases.
4 In this case --
5 JUSTICE GINSBURG: This wasn't -- this wasn't
6 a domestic violence case. It wasn't anybody inside
7 calling the police and crying, danger, rescue me. It
8 was an outsider who complained about the noise. So I
9 am wondering why you are emphasizing the prevent
10 somebody from being hurt instead of they're disturbing
11 the peace and the police have a right to protect the
12 neighborhood. It seems to me that that's an easier
13 argument to make.
14 MR. MCNULTY: It is, Justice Ginsburg, to
15 look at the -- the threat to the quiet of the community
16 as one aspect of this. But the case contains even
17 more. The case contains a punch that did some harm to
18 another person in a kitchen setting where there is a
19 strong possibility of escalating violence. It's the
20 additional facts of that violence that was a potential
21 there, added to the noise and the evidence of underage
22 drinking, that made the totality of the circumstances
23 objectively reasonable for the officers to --
24 CHIEF JUSTICE ROBERTS: Well, counsel, let's
25 suppose you have a police officer who knows there's

1 evidence in this house, but he doesn't have probable
2 cause to get a warrant. And he also knows that the
3 family is going to be reenacting the murder scene from
4 some movie as part of the family reunion. And so he's
5 there just at the time where the -- in the scene the
6 one guy says, and now I'm going to kill you with this
7 knife, and he says, ah, and he goes in.
8 Now, subjectively we know that he has no
9 basis for fearing violence, but a reasonable officer on
10 the scene, hearing somebody say I'm going to kill you
11 with this knife, would have a basis for entering.
12 So under your test, is that entry permissible
13 or not?
14 MR. MCNULTY: Permissible, Mr. Chief Justice.
15 CHIEF JUSTICE ROBERTS: Really.
16 MR. MCNULTY: Because there the officer is
17 unaware of the fact based upon the -- as I understood
18 the facts presented, unaware of the fact that that is
19 not --
20 CHIEF JUSTICE ROBERTS: Oh, no. He knows.
21 He knows. He heard this is what they do at the family
22 reunion. They always reenact this.
23 (Laughter.)
24 CHIEF JUSTICE ROBERTS: So he knows that
25 there's no -- well, but that's the difference here

1 between looking at the subjective motivation or what an
2 objective, you know, officer would understand.
3 MR. MCNULTY: If the officer has specific
4 information --
5 CHIEF JUSTICE ROBERTS: Right.
6 MR. MCNULTY: -- a fact knowing that this is
7 not truly an imminent threat or necessary to prompt a
8 quick response, then that would be a fact in the
9 totality of the circumstances that wouldn't justify.
10 But, on the other hand --
11 JUSTICE SOUTER: So you're saying the
12 objective -- the -- the objective officer always knows
13 at least as much as the officers actually know.
14 JUSTICE SCALIA: A good way to put it.
15 MR. MCNULTY: The -- the officer knows --
16 JUSTICE SOUTER: Isn't -- isn't that your
17 standard?
18 MR. MCNULTY: Well, if -- I'm not sure if I
19 understand the question. Would you please repeat it?
20 JUSTICE SOUTER: Yes. I -- I thought you
21 were getting to the point of saying that on the
22 objective test that you urge, the officer -- the
23 objective police officer who sets the standard is
24 deemed to know at least as much as the officer on the
25 scene actually knows. In other words, we don't exclude

1 information --

2 MR. MCNULTY: Right.

3 JUSTICE SOUTER: -- from our objective test

4 when the officer actually has that information.

5 MR. MCNULTY: That's correct.

6 JUSTICE SOUTER: Okay.

7 MR. MCNULTY: What makes it difficult at

8 times is that you often have two officers. One may

9 know something, another may not know it. And that's

10 why objective information is --

11 JUSTICE SCALIA: Except I -- I don't think we

12 look to whether he knew that this was a family

13 reenactment. I think we look to the facts that he had

14 -- that had come to his attention which caused him to

15 believe that this was a family reenactment. I mean,

16 you know, if he had read it in a newspaper or something

17 else. The facts are -- are what matter and not --

18 MR. MCNULTY: Thank you, Justice Scalia.

19 That's -- I agree that that is going to -- even what

20 the officer believes he knows may be subject to error,

21 and therefore, the objective test pulls us out of this

22 question of knowing the officer's mind and allows us to

23 look at the totality of the circumstances, what really

24 was occurring and determine whether or not the

25 reasonable officer would be able to enter

1 constitutionally under those circumstances.

2 And here again is the -- a situation where

3 there was mounting evidence, and the court in Utah

4 wanted to make the motivation of the officer a

5 significant factor in determining whether or not the

6 officer could enter. Specifically, the court looked to

7 the motive or intent of the officer to render aid as

8 one way to analyze the situation. And the government

9 argued that those distinctions -- or the distinction

10 between rendering aid or entering for a law enforcement

11 purpose is really a -- an unnecessary distinction

12 because the officer, as the counsel for the State has

13 argued, is acting in a split-second situation, seeking

14 -- thank you very much, Mr. Chief Justice.

15 CHIEF JUSTICE ROBERTS: Thank you, General.

16 Mr. Studebaker, we'll hear now from you.

17 ORAL ARGUMENT OF MICHAEL P. STUDEBAKER

18 ON BEHALF OF THE RESPONDENTS

19 MR. STUDEBAKER: Mr. Chief Justice, and may

20 it please the Court:

21 There's two bases or two exceptions which

22 would allow somebody to enter into somebody's home,

23 which are before the Court today, one being the

24 emergency aid exception to the warrant requirement, the

25 other one being exigent circumstances requirements for

1 the warrant.

2 Under the facts of this case, neither one of

3 those situations apply. Under exigent circumstances,

4 there has to be probable cause to enter, and there has

5 to be a warrant to enter. And if neither one of those

6 -- actually under exigent circumstances, there has to

7 be probable cause and there has to be the requirement

8 that there be imminent danger basically to evidence or

9 to the person. And there's not exigent circumstances,

10 and the officers have an obligation to obtain a warrant

11 based upon probable cause to enter the home.

12 JUSTICE SOUTER: What -- what --

13 JUSTICE GINSBURG: I thought that probable

14 cause was conceded, and I thought that the Utah courts

15 didn't question that there was probable cause.

16 MR. STUDEBAKER: Your Honor, the -- what

17 happened was that the Utah courts found that the

18 probable cause was there for the emergency aid

19 exception, but I believe under the exigent

20 circumstances requirement -- or the exception, that

21 probable cause was not there to get out -- or actually

22 to get into the home on the situations.

23 But even if probable cause is conceded, the

24 fact is that the facts of the case don't rise to the

25 level of requiring such as immediate entry into a home

1 to bypass the warrant requirement.

2 JUSTICE SOUTER: May -- may I just get back

3 to your general statement? Do I understand you to say

4 that if they arrived on the scene and, you know, a

5 really wild party was going on at 3:00 a.m., they knock

6 at the door, nobody answers the door, they can't hear

7 it for all the screaming and the music and so on, that

8 under those circumstances, the police could not go in

9 to -- to quiet things down?

10 MR. STUDEBAKER: Correct, Your Honor. They

11 would actually have to go out and get a warrant to

12 enter the home. There's not an exigent circumstances

13 under the facts that you presented which would require

14 them to enter the home and bypass the warrant

15 requirement. It's not severe enough under those facts.

16 JUSTICE ALITO: Let's say they -- they see a

17 fight going on. What kind of calculation do you think

18 has to go on in the mind of the officer? They have to

19 think, well, let me look at these people. Do they look

20 like they're -- they're strong enough to really hurt

21 each other? How likely is it that they're going to

22 grab some object that's lying around, a knife, a

23 baseball bat, or something, and -- and escalate the

24 violence? What -- what sort of thought process do you

25 think a reasonable officer is supposed to go through in

1 that situation?

2 MR. STUDEBAKER: Justice Alito, what the

3 officer is required to do is to weigh the totality of

4 the circumstances and make a decision based upon the

5 totality of what they see. And unfortunately, these

6 situations are always fact-intensive based upon what's

7 seen on the scene. And in the case presented here

8 before the Court, none of those facts are presented

9 that -- that would actually weigh and that was going to

10 escalate into that type of situation.

11 The officers actually had personal, firsthand

12 knowledge of the events that were happening. They

13 stood outside the home. They watched the event

14 transpire through the window. The exigency was over

15 when the officer entered the home.

16 JUSTICE BREYER: Why can't you? Is there any

17 case or anything that says you don't look at the whole

18 circumstance to decide if it was reasonable to enter?

19 I mean, suppose I just wrote an opinion, for a

20 hypothetical's sake, that says, look, there was so much

21 noise at 3:00 in the morning nobody could even hear a

22 knock and he looks in the window, sees one of the -- a

23 kid there being held, who's obviously been drinking

24 under age. He takes a swing at somebody else and pokes

25 him in the nose and blood starts to run or -- and under

1 those circumstances, of course, it was reasonable to go
2 in. End of the matter.
3 MR. STUDEBAKER: Except for the fact, Your
4 Honor, I mean, the -- the situation we have is that is
5 -- it would depend on whether it's an ongoing situation
6 or not. And in the facts presented here, it wasn't an
7 ongoing situation. It ended and then the officer --
8 JUSTICE BREYER: You mean -- you mean the
9 noise stopped?
10 MR. STUDEBAKER: It -- shortly after the
11 smacking in the face by the juvenile, Your Honor, the
12 officer entered the home, and by his testimony, it
13 abated right after he entered the home.
14 JUSTICE BREYER: No. The question is whether
15 he could go into the house, and are you saying that
16 before he went into the house, all the noise stopped?
17 MR. STUDEBAKER: It had not stopped. No, it
18 had not, Your Honor.
19 JUSTICE BREYER: Okay. So my question -- I'm
20 interested in the law of it. Why can't I -- what's --
21 what -- the -- the Constitution says reasonable or
22 unreasonable, forbids an unreasonable entry, search.
23 So this doesn't seem unreasonable. A policeman isn't a
24 lawyer. He just has to do what's reasonable in the
25 circumstance. It's a huge -- well, I would be

1 repeating myself. But what I want to know is what in
2 the law makes that opinion wrong?
3 MR. STUDEBAKER: Your Honor, what makes that
4 opinion wrong, based upon the facts that were
5 presented, is the fact that the -- there was no warrant
6 achieved in the situation. If the officer is entering
7 under exigent circumstances --
8 JUSTICE BREYER: And there are two reasons
9 why he didn't want to go get a warrant. It would take
10 about half an hour, at which time all the neighbors are
11 awake, and they have to lose an hour of sleep. And in
12 addition to that, the underage drinking will continue
13 for another half an hour or an hour. And in addition
14 to that, somebody else might get poked in the nose. So
15 those are the reasons why -- or worse. So those are
16 the reasons why he thought it was reasonable to go in.
17 MR. STUDEBAKER: That may be what he thought,
18 not the officer --
19 JUSTICE BREYER: Those are the reasons why it
20 was reasonable to go in.
21 MR. STUDEBAKER: Yes, Your Honor.
22 JUSTICE BREYER: Now, what's wrong with that
23 opinion?
24 MR. STUDEBAKER: What's wrong with the
25 opinion, Your Honor, is it still requires a warrant

1 under the situation.

2 JUSTICE BREYER: Now, suppose I were to say

3 at the end of that it doesn't require a warrant because

4 it was not unreasonable objectively to go in under

5 those circumstances. What I'm looking for you to do is

6 to tell me why.

7 MR. STUDEBAKER: Your Honor, the -- if

8 they're going to enter the home, there has to be,

9 obviously, a serious situation that's going to arise.

10 And so with the -- the presentation which you

11 presented, it's not serious enough to require the

12 sidestepping of a warrant in the situation.

13 JUSTICE SCALIA: Mr. Studebaker, I'm not sure

14 that even the noise wasn't enough to justify what the

15 police did here. As -- as I recall, they -- before

16 they went in, they -- they heard all this noise and

17 they saw the punch. They pushed open the screen door

18 and announced that they were the police. Okay?

19 MR. STUDEBAKER: Yes.

20 JUSTICE SCALIA: And then only went in when

21 nobody heard them. Then they shouted even louder,

22 police. I'm not sure that -- that just the noise

23 wouldn't be enough to allow that. If you can't hear

24 the policeman from the door, who's coming to check

25 about a 3:00 a.m. noisy party, you don't hear his knock

1 on the door, can the policeman not open the door and
2 shout, police? Is that an unreasonable search and
3 seizure.
4 And then if you don't hear that, can he take
5 two steps into the house? He's -- he's not looking
6 under the carpets. He's not looking in the desk
7 drawers. He's just shouting police so that he can
8 bring to the attention of the people there the fact
9 that there's been a complaint from the neighbors and
10 you have to knock off the noise. I -- I would think
11 that's perfectly reasonable. Never mind the punch in
12 the nose.
13 MR. STUDEBAKER: Justice Scalia, and you
14 asked whether I thought it was reasonable or not, and I
15 would say it's not. The -- the -- to bypass that
16 warrant requirement, to enter the home under an exigent
17 circumstances, which is what they were there for, it's
18 got to be more serious than a -- a loud party, the
19 situation.
20 And ironically, the -- the testimony of the
21 officer, which I guess there was a dispute about
22 whether that was there or not because it's not
23 specifically in the findings that the trial judge made
24 or the two appellate courts ruled on -- but if the
25 officer entered the home and shortly after that, I

1 mean, he opened the door, according to his testimony,
2 and announced, basically raised his voice, and they
3 heard him, why cannot he have done that outside the
4 home? And that's the situation. This wasn't a serious
5 enough situation that he couldn't have made the effort
6 to make his presence known outside.
7 JUSTICE SCALIA: They didn't hear him when he
8 -- when he just opened the screen door. He had to step
9 in a few more -- a few more steps. Then they finally
10 heard him. That's his -- the way I understand these
11 facts.
12 MR. STUDEBAKER: And, Justice Scalia, he also
13 had to raise his voice, and our contention --
14 JUSTICE SCALIA: Of course, he had to raise
15 his voice. I mean, there was a lot of noise going.
16 It just seems to me so unreasonable, when a
17 policeman comes to tell people they're making too much
18 noise and the neighbors have complained, that he can't
19 do the minimum that's necessary to get their attention
20 so he can tell them that. He has to go get a warrant
21 to tell them that the neighbors are complaining about
22 too much noise? That just seems absurd.
23 MR. STUDEBAKER: Yes, Your Honor, he would
24 have to get a warrant. And -- and the requirement --
25 JUSTICE BREYER: Does it say that in a case

1 somewhere, or is that just your opinion?

2 MR. STUDEBAKER: It's my opinion, Your Honor.

3 JUSTICE BREYER: All right. Now, what I

4 would like to know is what does it say in a case

5 because I -- I agree, at 3:00 in the morning, it might

6 not appear to many people to be unreasonable when the

7 party is so loud that no one can sleep, that they have

8 to take an extra hour or half an hour or 40 minutes to

9 just tell the people inside the house, knock it off.

10 Now, is there a case somewhere that says -- I guess, we

11 could take a poll or something, but is there a case

12 that casts some light on this?

13 MR. STUDEBAKER: Your Honor, I believe Mincey

14 itself requires the -- the seriousness of the offense

15 be evaluated, and further --

16 JUSTICE BREYER: Which case?

17 MR. STUDEBAKER: Mincey v. Arizona.

18 JUSTICE BREYER: Was that involving a -- is

19 that in this Court? Yes?

20 MR. STUDEBAKER: Yes.

21 JUSTICE BREYER: And was that involving a

22 party or noise, or what was it involving?

23 MR. STUDEBAKER: No, it was not involving a

24 party or noise.

25 JUSTICE KENNEDY: No. It involved -- it

1 involved a homicide, but there, the search in question
2 took place after the premises -- after the entry, after
3 the premises were secured. The entry was never in
4 question in Mincey.
5 MR. STUDEBAKER: Correct.
6 JUSTICE KENNEDY: What was in question was
7 the search after the premises had been secured.
8 MR. STUDEBAKER: Correct, and --
9 JUSTICE KENNEDY: And I don't see how that
10 helps you because here, in the course of securing the
11 -- the premises, they had all -- all the evidence they
12 needed.
13 MR. STUDEBAKER: And -- and to answer the
14 Court's question, there is nothing that I'm aware of
15 where this Court has come out and said that a party is
16 --
17 JUSTICE KENNEDY: So Mincey doesn't help.
18 MR. STUDEBAKER: Correct. And so we --
19 JUSTICE BREYER: I mean, I wouldn't want this
20 to be the party case. This also involves violence and
21 it also involves underage drinking and all three are
22 there together.
23 But I guess a policeman, where he sees or
24 hears or knows a crime is going on, can take steps to
25 try to stop it so that it doesn't have to continue.

1 And is there any case that says it depends on how
2 serious a crime? Is there a case that says if it's a
3 sort of minor crime, like a disturbance of the peace,
4 you have to permit it to continue, but if it's a major
5 crime like homicide, you don't have to?
6 MR. STUDEBAKER: I don't believe there's
7 anything that specifically says that, Your Honor. No.
8 But there are cases out there that say that
9 under the exigent circumstances, it's got to be a
10 serious situation, and the question then becomes is --
11 is the situation -- is the party -- is the loud noise
12 complaint serious enough to warrant entering into the
13 home. And no, we would say it's not, Your Honor. It
14 doesn't rise to that level, especially considering the
15 fact that the exigency that the officers relied upon,
16 the smack -- and it was over. The situation was
17 already under control.
18 JUSTICE SOUTER: Well, it was -- it was over
19 until somebody threw the next punch. They don't know
20 what's going to happen the next. The kid broke away
21 from the four people who were trying to restrain him
22 once. Presumably he might be able to do it again.
23 Maybe one of the four who were restraining him might
24 come up with the idea that the best way to stop him
25 from throwing another punch was to throw one at him.

1 The -- the police cannot make -- it seems to me on the
2 facts in -- in this record, could -- could not
3 reasonably draw the assumption that there was no risk
4 of further violence. Am I going wrong somewhere?
5 MR. STUDEBAKER: Not completely, Justice
6 Souter. But we do have a situation where only he broke
7 free from one of the adults, not three of the adults.
8 He was still under control in this situation. And he
9 had gotten his hand free and smacked one of the other
10 adults, the one who was the victim in this situation.
11 So the officers -- unlike some situations
12 where they're called out and they wander on a
13 situation, the officers in this case had personal
14 knowledge of what was going on. They stood outside the
15 home and watched the event transpire. And so they
16 really need to wait and observe what's going to happen
17 and wait till the last second before they need to go
18 in. In this situation, there was nothing that would
19 demonstrate in the facts that it was going to escalate
20 at all.
21 JUSTICE GINSBURG: You don't -- you can't
22 attribute what you just said to the trial court, and
23 you emphasize the trial court's findings. The trial
24 court said about what went wrong what the police should
25 have done, as required under the Fourth Amendment, was

1 knock on the door. The evidence is there was a loud,
2 tumultuous thing going on and that the occupants
3 probably would not have heard him. But under the
4 Fourth Amendment, he has an obligation to at least
5 attempt before entering. Now, that's a statement that
6 what went wrong was they didn't knock even though it
7 was likely a futile act.
8 Do you -- do you agree that that's a correct
9 statement of the law, that what the police didn't do
10 that they should have done was knock?
11 MR. STUDEBAKER: Yes, Justice Ginsburg, they
12 should have knocked. They should have made that effort
13 first.
14 JUSTICE SCALIA: Why isn't screaming, police,
15 enough? I mean, as I understand the facts, he first
16 opened the screen door. Now, is -- is that an entry?
17 He didn't go in. I assume the screen door opens out.
18 Most screen doors open out. He opened the screen door
19 and shouted, police. Now, that -- that doesn't count?
20 he has to knock on the screen door instead, even
21 though they're more likely to hear him if he opens the
22 screen door and yells, police? Why doesn't that meet
23 the requirement? I -- this -- why is the trial court
24 obsessed with knocking?
25 (Laughter.)

1 JUSTICE SCALIA: I don't understand this.
2 MR. STUDEBAKER: Your Honor, and I think the
3 reason the -- the trial court and -- is concerned about
4 the knocking issue is it's, if you will, the baseline
5 requirement under the Fourth Amendment, under the facts
6 of this case, was to make their presence known by
7 knocking.
8 JUSTICE SOUTER: No, but the -- as I
9 understand the -- the trial court, he accepted the
10 probability that the knock would be futile, and yet he
11 thought as a formality it was nonetheless required. A,
12 do you understand the trial court to have taken that
13 position? And B, if it did, do you believe that is
14 correct as a statement of Fourth Amendment law?
15 MR. STUDEBAKER: I'm sorry, Justice Souter.
16 I didn't catch the first A part.
17 JUSTICE SOUTER: Well, did -- do you
18 understand the trial court to have taken the position
19 that even though the knock would probably have been
20 futile, the police were required to -- to make it
21 anyway, to knock anyway?
22 MR. STUDEBAKER: That is what the trial court
23 --
24 JUSTICE SOUTER: And -- and do you understand
25 that to be a Fourth Amendment requirement, i.e., no

1 futility exception?

2 MR. STUDEBAKER: I do, Your Honor, and I know

3 that that's a -- a complicated issue, but it's still a

4 requirement. But further, the court -- the trial court

5 --

6 JUSTICE SOUTER: Why should there be no

7 futility exception?

8 MR. STUDEBAKER: Well, even if there is, Your

9 Honor, the trial court did not just say that -- there

10 -- he -- the evidence was gone because of the failure

11 to knock. The trial court found that the exigencies,

12 as well as the appellate courts, didn't rise to the

13 level which would require entry into the home.

14 JUSTICE SOUTER: Well, that -- that may be on

15 your argument that noise is never sufficient to

16 dispense with a warrant requirement. But it seems to

17 me that in -- in the reasonableness analysis that the

18 trial court was going through, the trial court was

19 saying even if it would probably be futile, it is not a

20 reasonable entry without a knock. And -- and I take it

21 you -- you accept that and you think the trial court

22 was correct, that there is no futility exception.

23 MR. STUDEBAKER: I -- I agree, Your Honor,

24 and this is why. Under, I believe, Wilson v. --

25 JUSTICE SOUTER: Why -- why should we require

1 a -- a futile act in the name of reasonableness?
2 MR. STUDEBAKER: Your Honor, first, it
3 wouldn't have taken any effort at all to follow through
4 on this, and even though this Court has ruled that, you
5 know, there is mandatory knock and announce -- or
6 requirement, with some exceptions, I don't believe that
7 this is one of those exceptions.
8 JUSTICE SOUTER: No one is denying that. I
9 mean, we've had a knock and announcement requirement
10 for 900 years.
11 MR. STUDEBAKER: Correct.
12 JUSTICE SOUTER: But the question is do you
13 have to knock and announce when, on the facts before
14 you, it is apparent that nobody will hear the knock and
15 it will just be a wasted gesture.
16 MR. STUDEBAKER: Yes.
17 JUSTICE SOUTER: Why?
18 MR. STUDEBAKER: Because, Your Honor, it's
19 our position that it's one of the -- the threshold
20 requirements to protect somebody when they're inside
21 their home is to make that effort.
22 JUSTICE SOUTER: But isn't the standard of
23 the Fourth Amendment a reasonableness standard, and
24 isn't there something bizarre about saying
25 reasonableness requires a totally futile gesture?

1 MR. STUDEBAKER: That was the finding of the
2 court, Your Honor, the trial court, that it was futile.
3 But, again, when an officer is placed in that
4 situation to say that if an officer can decide whether
5 something is futile or not, that could actually -- then
6 that exception, if we're not careful, absorb that rule.
7 So I --
8 JUSTICE SOUTER: Well, yes, that's why courts
9 review these things.
10 MR. STUDEBAKER: Correct, and that is --
11 JUSTICE SOUTER: And if the court says, yes,
12 based on the evidence before me, it would have been
13 futile, do you think Fourth Amendment reasonableness
14 requires the court and ultimately the officer to demand
15 the knock anyway?
16 MR. STUDEBAKER: Personally? Yes. Legally?
17 No.
18 JUSTICE SOUTER: Okay.
19 MR. STUDEBAKER: I mean, I am not going to
20 try -- but, again, this Court -- the -- the courts
21 below did say that that exigent circumstances didn't
22 rise to the level --
23 JUSTICE GINSBURG: Where did the -- where did
24 the trial court say that in the findings of facts?
25 MR. STUDEBAKER: I'm sorry, Your Honor?

1 JUSTICE GINSBURG: I'm looking at the
2 findings of facts. They're in the petition appendix at
3 page 46 and 47. I don't see anything that has been
4 specifically identified by the finder of fact as
5 inadequate, other than the failure to knock. Where --
6 where does the -- where does the court say it doesn't
7 rise to the level of exigent circumstances?
8 MR. STUDEBAKER: Your Honor, if I look at
9 paragraph 5 of the joint appendix -- or I'm sorry -- of
10 the -- of the order, it says, at that point in time the
11 court finds no exigent --
12 JUSTICE SCALIA: Where is it? Where is it?
13 MR. STUDEBAKER: I'm sorry, Your Honor. In
14 the petition for cert filed by the State of Utah, and
15 it would be appendix page 47.
16 JUSTICE GINSBURG: Yes, but what it says
17 right after that to explain is it would have been
18 sufficient. What he -- what he should have done was
19 knock, and that would have supplied all that was
20 necessary.
21 MR. STUDEBAKER: Your Honor, and again, this
22 isn't the, maybe, best worded order that the city has
23 prepared in this case when they -- when the -- it was
24 actually the city that prepared this, petitioners.
25 When I look at it, I look at two different sentences

1 there. There was no exigent circumstances, and
2 further, what he should have done was knock.
3 But further, the two appellate courts that
4 heard this matter before, did rule on the exigent
5 circumstances because that's what the petitioners in
6 this Court had brought before the appellate courts, and
7 they found that in both the Utah Court of Appeals and
8 the Utah Supreme Court, that the exigent circumstances
9 weren't sufficient enough.
10 JUSTICE SCALIA: You know, maybe -- maybe
11 you're taking our announce and a knock -- knock and
12 announce requirement too -- too seriously or too
13 literally. I mean, if a police officer comes up and
14 the door is open, what does he have to do? Lean over
15 and knock on the side of the door? Can't he shout,
16 hello, police? Don't you think that satisfies a knock
17 and announce requirement?
18 MR. STUDEBAKER: Your Honor --
19 JUSTICE SCALIA: You really think you got to
20 knock even when the door is open.
21 MR. STUDEBAKER: Your Honor, under the
22 situation, he's got to make his presence known.
23 JUSTICE SCALIA: Okay. And he did that here.
24 MR. STUDEBAKER: And --
25 JUSTICE SCALIA: He stood at the door. He

1 opened the screen door and said, police --

2 MR. STUDEBAKER: And --

3 JUSTICE SCALIA: -- which he thought would be

4 more effective than knocking on -- on the -- you know,

5 the -- the edge of a screen door, which doesn't make a

6 very good knock.

7 (Laughter.)

8 MR. STUDEBAKER: And once he raised his

9 voice, though, Your Honor, and -- and made himself a

10 little bit more vocal, then they noticed him there.

11 And the --

12 CHIEF JUSTICE ROBERTS: But they still didn't

13 stop. I -- I read somewhere in the facts that only

14 gradually, as each participant in the melee became

15 aware of his presence, did they sort of stop. It

16 wasn't that as soon as he entered, everything quieted

17 down immediately.

18 MR. STUDEBAKER: Chief Justice, like you say,

19 once they made their presence known, it dissipated.

20 The -- the position would be if they can make their

21 presence known inside the home, they can make their

22 presence known outside the home and still protect that

23 sanctity of the home that we're trying to insure that

24 people are protected in within their home.

25 JUSTICE GINSBURG: Well, there seemed to be

1 agreement that they couldn't have made their presence
2 known because the noise inside was so loud that they
3 would not have been heard.
4 MR. STUDEBAKER: That's what the -- the lower
5 courts have found to be true. But Justice --
6 currently, Justice Ginsburg, they found it to be true
7 that the exigent circumstances we're not met under
8 these facts. It wasn't serious enough to enter the
9 home without the warrant, and I think that's the pivot
10 point. Where is that line on the exigent
11 circumstances? And our position would be that that
12 line -- that it's got to be serious, it's got to be
13 imminent, it's got to be an ongoing situation,
14 something where somebody is either going to get
15 seriously injured, evidence is going to be destroyed,
16 somebody is going to flee.
17 JUSTICE ALITO: Well, was there anything in
18 the facts that a reasonable officer would know from
19 looking in the window to suggest that these -- the
20 adults were not -- did not have the intention of
21 inflicting some sort of serious injury on this young
22 man that they were restraining?
23 MR. STUDEBAKER: Based upon the officer's
24 testimony at the suppression hearing, Your Honor, it
25 would be that they did not have a serious intention to

1 harm him is the fact that, one, there was nothing
2 showing that they were actually doing anything more
3 than restraining him, that juvenile. There's nothing
4 in the record that shows that they were beating on him,
5 that they were molesting him, or you know --
6 JUSTICE ALITO: They had -- did they have any
7 reason to know why they were holding him?
8 MR. STUDEBAKER: I would say that they would,
9 Justice Alito, and this is why. You know, all that
10 they were saying was they were trying to get the -- the
11 juvenile to calm down. They were trying to get him to
12 settle down. This was a situation where the officer
13 testified that -- at the suppression hearing, that
14 there was alcohol involved, that there was a minor.
15 Those types of situations don't demonstrate the fact
16 that this was an ongoing violent situation.
17 Again -- and then further, the officers were
18 called out for a party. They weren't called out for a
19 fight in progress or -- or some type of physical
20 altercation. They were called out because somebody had
21 a loud disturbance going on. And those facts in my
22 mind's eye don't rise to the level and would show the
23 officer -- especially when the officer is standing
24 outside the home watching this event, that there's
25 nothing that -- that would rise to the level of

1 entering the home under the exigent circumstances.

2 JUSTICE GINSBURG: The Utah Supreme Court

3 seemed to be puzzled by your failure to raise the Utah

4 protection against the -- the counterpart to the Fourth

5 Amendment. They seemed to suggest that their own

6 constitution afforded greater protection to the privacy

7 of the home. Was there a reason why you argued only the

8 U.S. Constitution and not the State constitution?

9 MR. STUDEBAKER: Justice Ginsburg, I was not

10 the trial counsel below or at the appellate court, so I

11 cannot determine what his matter was or what -- what

12 his basis was for that decision. And it -- then it

13 would appear that you're correct in the fact that the

14 Utah Supreme Court is concerned upon that issue. But

15 the fact is that it seems to have been briefed under

16 the Fourth Amendment, has come up under the Fourth

17 Amendment issues, and so that's what we're -- we're

18 looking at.

19 And even though a State, obviously, can give

20 more protections to its citizens under a State

21 constitution, the Fourth Amendment is still a -- if you

22 will, a baseline requirement, and it still applies to

23 Federal criminal courts.

24 JUSTICE STEVENS: May I ask? I don't think

25 the charges are in the record. At least I missed them.

1 They were charged with -- what are the charges and how
2 -- what were the penalty for what the defendants were
3 exposed to? There's been no trial. They -- they
4 suppressed the evidence. I suppose the proceedings
5 were dismissed, were they?
6 MR. STUDEBAKER: Your Honor, the proceedings
7 have been dismissed against my clients. That is
8 correct.
9 And to answer the Court's question, the
10 charges that they were facing was intoxication -- no.
11 I'm sorry. Disorderly conduct, intoxication, and
12 contributing to the delinquency of a minor.
13 JUSTICE STEVENS: What are the penalties for
14 those charges?
15 MR. STUDEBAKER: Worst case scenario, Your
16 Honor, they could be charged with up to 6 months in the
17 county jail, each one consecutive to each other.
18 JUSTICE STEVENS: That's the major matter
19 we're resolving today.
20 MR. STUDEBAKER: Yes, Your Honor.
21 CHIEF JUSTICE ROBERTS: What is the actual
22 evidence that was suppressed? And to what extent is
23 that evidence that wasn't available just from looking
24 in through the door?
25 MR. STUDEBAKER: Mr. Chief Justice, the

1 evidence was -- that was suppressed was everything that
2 the officer or officers saw once they entered the home
3 and/or heard once they entered the home, basically
4 anything that they obtained once they entered the home.
5 The answer to Your Honor's --
6 CHIEF JUSTICE ROBERTS: Couldn't they have
7 gotten all -- wouldn't he have been able to testify to
8 all of that without even entering the home?
9 MR. STUDEBAKER: They could have, Your Honor.
10 However, they -- they did not. The prosecutor at the
11 time didn't proceed under that issue. I'm not aware of
12 why he did, but we have, though, is obviously that --
13 that may have happened. And as the Court addressed
14 previously, there may have been then an issue related
15 to the curtilage which would have had to have been
16 addressed or discussed.
17 JUSTICE STEVENS: Yes, but among the evidence
18 they did have was that two -- two teenagers were
19 drinking beer in the back yard. So they pretty clear
20 -- the alcohol -- they could have gotten that in
21 evidence.
22 MR. STUDEBAKER: It could have, Your Honor,
23 but I don't know why it did not except for the fact
24 that it could have been built into the curtilage --
25 JUSTICE STEVENS: This wasn't kind of

1 constructed as a test case, by any chance, was it?
2 MR. STUDEBAKER: No, it was not, Your Honor.
3 Not at all. But --
4 CHIEF JUSTICE ROBERTS: Well, not by you.
5 MR. STUDEBAKER: No, it was not, Your Honor.
6 That's correct.
7 What we have, Your Honors, is a situation
8 where under the exigent circumstances, it did not rise
9 to the level which would require the -- the officers to
10 enter the home without getting a warrant.
11 And in the alternative, if they look at
12 emergency aid, to enter the home under the emergency
13 aid doctrine, which would be the equivalent in our
14 opinion to a special needs assessment, then we have to
15 look at probable cause. We have to look at their
16 intent to enter because there's no probable cause to
17 enter if they're performing that caretaking role to
18 protect people.
19 Obviously, the ultimate concern in -- in any
20 type of situation is somebody's sanctity of their home.
21 It becomes a weighing situation where trial courts are
22 -- are being charged to weigh the evidence, weigh the
23 credibility of the people who testify, and then also
24 take into account the constitutional protections which
25 the parties are awarded.

1 And we believe that based upon the facts and
2 the evidence that were -- was presented, that the three
3 different Utah courts that heard this matter were
4 appropriate in their -- in their suppression decisions.
5 Thank you.
6 CHIEF JUSTICE ROBERTS: Thank you, counsel.
7 Mr. Gray, you have 6 minutes remaining.
8 REBUTTAL ARGUMENT OF JEFFREY S. GRAY
9 ON BEHALF OF THE PETITIONER
10 MR. GRAY: Just a matter of clarification
11 initially. Disorderly conduct is a class C
12 misdemeanor, punishable by up to 90 days in jail under
13 the -- how it was charged here. Also intoxication is a
14 class C misdemeanor, and contributing to the
15 delinquency of a minor is a class B misdemeanor,
16 punishable by up to 6 months in jail. So that's --
17 that's what -- but the officers -- and again, this case
18 isn't about what they were ultimately charged with.
19 It's whether or not they had a reasonable basis to
20 believe that immediate intervention was necessary.
21 JUSTICE STEVENS: Don't you think the
22 evidence that was available without going in the house
23 would have supported all those charges?
24 MR. GRAY: Not the intoxication. The
25 intoxication has to be --

1 JUSTICE STEVENS: But two teenagers in the
2 back yard were intoxicated.
3 MR. GRAY: The -- the juveniles. But the
4 defendants in this case were the adults inside the
5 home.
6 JUSTICE STEVENS: Oh, they charge that the
7 adults were intoxicated.
8 MR. GRAY: Yes.
9 JUSTICE STEVENS: Well, that's a serious
10 crime in Utah I guess.
11 (Laughter.)
12 MR. GRAY: We anticipated that comment
13 actually.
14 (Laughter.)
15 MR. GRAY: And --
16 JUSTICE STEVENS: And what's your response?
17 (Laughter.)
18 MR. GRAY: Normally -- normally intoxication
19 -- we think of it as -- as public intoxication, and --
20 and that's where it's usually prosecuted and where we
21 find it. But intoxication that can become an offense
22 where it disturbs others outside of the home, and
23 that's what happened here.
24 CHIEF JUSTICE ROBERTS: Counsel, you have --
25 you have two questions presented. The second is

1 whether this was sufficiently -- sufficiently exigent
2 to fall under the exigent circumstances. But the first
3 was whether the test should turn on the officer's
4 subjective motivation. I don't haven't heard much
5 about that this morning. How is that presented on
6 these facts?
7 MR. GRAY: Well, the court created two
8 different tests. The Utah court created two different
9 tests. And under the one test, it examined whether or
10 not the officers were primarily motivated by a desire
11 to arrest or search for evidence. Now, the court, the
12 Utah Supreme Court, concluded that they did -- that
13 they were -- their motives were primarily law
14 enforcement motives because they did not render aid.
15 And this Court has repeatedly held that an officer's
16 subjective motives play no part in the objective
17 reasonableness test, and it should not do so here.
18 Justice Ginsburg, you indicated that there
19 was no -- no suggestion of domestic violence. The Utah
20 Supreme Court actually acknowledged that where violence
21 is seen in a home between adults and, for example, a
22 younger person, that there would be reason to believe
23 that domestic violence is possibly present. And that's
24 what -- now, the court refused to look at that because
25 there was no finding that the inhabitants or the --

1 those involved were actually cohabitants.

2 Of course, this Court has never required that

3 officers have a certainty of the situation, only a

4 reasonable belief, and they clearly have that.

5 And in any event, whether or not it's

6 domestic violence or some other type of violence, it's

7 something that I believe this Court in Mincey

8 recognized, that officers can and -- and probably

9 should -- maybe they didn't go far, but it would be our

10 position that officers should intervene in the face of

11 violence, and that's what the officers did here.

12 JUSTICE GINSBURG: My point was simply that

13 this was not a 911 call from a distressed spouse. This

14 was a neighbor saying they're keeping me up at night,

15 so that the -- the police response to the noise, not to

16 the violence.

17 MR. GRAY: The initial response was clearly

18 to the noise, but once the officers arrived, it became

19 apparent that there was violence ongoing in the house

20 and that's how the officers proceeded.

21 If there are no further questions, we would

22 ask the Court to reverse the decision of the Utah

23 Supreme Court. Thank you.

24 CHIEF JUSTICE ROBERTS: Thank you, counsel.

25 The case is submitted.

1 (Whereupon, at 10:58 a.m., the case in the
2 above-entitled matter was submitted.)
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