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**RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA**

Maynard, Justice, dissenting:

I dissent because I believe the circuit court properly concluded that the deputies had a right to enter the appellants’ residence based on exigent circumstances.

The deputies below responded to a report of a potential domestic dispute involving a gunshot and yelling. Once the deputies arrived on the scene, they were confronted by Ms. Tinger who was acting in an agitated manner. The deputies also had reason to believe that Mr. Bookheimer was in the residence either armed with a gun or wounded. Under the law as articulated by this Court and the United States Supreme Court, this emergency afforded the deputies the right to enter the residence without first obtaining a warrant.

The United States Supreme Court has indicated that “[t]he Fourth Amendment does not require police officers to delay in the course of an investigation if to do so would gravely endanger their lives or the lives of others.” *Warden v. Hayden*, 387 U.S. 294, 298-299, 87 S.Ct. 1642, 1646, 18 L.Ed.2d 782 (1967). This Court has held that the warrantless search of a residence by police officers was proper where the police were attempting to locate an injured or deceased child whom the officers had reason to believe was in the residence.

See State v. Cecil, 173 W.Va. 27, 311 S.E.2d 144 (1983). In the instant case, the deputies had a duty to enter the residence and speak with Mr. Bookheimer face to face to ensure that he was not injured and that he was not a threat to Ms. Tingler. Also, until the deputies determined Mr. Bookheimer's whereabouts, they had reason to fear for their own safety due to the fact that Mr. Bookheimer may have been armed. Anytime a gunshot is fired inside a home, the police have a right and a duty to enter the home to investigate without a warrant. The majority has created a dangerous precedent for domestic violence situations with this decision. To say the police cannot enter a home without a warrant where there is gunfire and loud yelling does great damage to domestic violence victims. In sum, the deputies in the instant case were compelled to act quickly to ensure their own safety as well as the safety of Ms. Tingler and Mr. Bookheimer.

Finally, the majority opinion is based on wholly unwarranted assumptions. The majority opinion assumes that Ms. Tingler's anger and yelling were not caused by circumstances occurring prior to the officers' arrival, but rather were aimed at the fact that the officers were present on her property. The majority opinion also assumes that the deputies' entry into the residence was not motivated by a possible emergency, but rather by an intent to arrest or secure evidence. Neither of these assumptions is compelled by the evidence.

For the reasons stated above, I would affirm the judgment of the circuit court.

Accordingly, I dissent.