THE COMMUNITY CARETAKING DOCTRINE: THE NECESSARY EXPANSION OF THE NEW FOURTH AMENDMENT EXCEPTION

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INTRODUCTION

Suppose a police department receives multiple complaints of loud noise coming from a local residence.[1] Upon investigation, police officers begin to hear music a block away from the reported residence. The police find several neighbors outside the residence complaining of the nuisance so they decide to knock on the door and see if they can control the nuisance. The police try knocking on all the doors and one officer discovers that the back door is open and enters the home, continuously announcing his presence. The officer continues to walk through the home in search of an occupant of the residence who could turn the music down or off. Upon reaching the basement, the officer discovers wall-to-wall marijuana plants as well as fans and running water. The police eventually find the defendant asleep in the room with the stereo playing the loud music. They arrest the resident for possession of marijuana with intent to distribute.

To prove the legitimacy of this warrantless search, prosecutors must establish that it falls within one of the exceptions to the warrant requirement under the Fourth Amendment.[2] The court's interpretation and application of the exceptions to these requirements would determine whether the evidence obtained in this scenario would be admitted in trial.

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[1] The facts of this scenario are loosely based on the facts of *United States v. Rohrig*, 98 F.3d 1506 (6th Cir. 1996).

[2] *See* Megan Pauline Marinos, Comment, *Breaking and Entering or Community Caretaking? A Solution to the Overbroad Expansion of the Inventory Search*, 22 GEO. MASON U. C.R. L.J. 249, 249 (2012) ("Since the search was conducted without a warrant, the prosecution must prove one of the following to legitimize the search: (1) that there was an emergency and the exigent circumstances exception to the warrant requirement applied, or (2) some exception to both the warrant and probable cause requirements applied.").

The Fourth Amendment provides the constitutional basis for all searches and seizures:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.[3]

The above scenario had no exigent circumstances present in order to justify the police behavior. "[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."[4] The above scenario placed a sense of immediacy on the police to take action because of the neighborhood complaints, but the complaints were not sufficient to justify entry under the Fourth Amendment as an exigent circumstance.

There is now a new exception to the Fourth Amendment warrant requirement: the community caretaking exception. Police can now enter a home under rare circumstances when there is no time to seek a warrant, but the police need to act quickly because they are worried about the well-being of the individuals inside or the property itself.[5] Some examples of these community caretaking situations include: "helping stranded motorists, returning lost children to anxious parents, assisting and protecting citizens in need."[6] The first Supreme Court case referring to the "community caretaking functions" of police is *Cady v. Dombrowski*. *Cady* defined community caretaking activities as those "totally divorced from the detection,

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[3] U.S. CONST. amend. IV.

[4] Brigham City v. Stuart, 547 U.S. 398, 403 (2006) (quoting Mincey v. Arizona, 437 U.S. 385, 393-94 (1978)); *see also* Marinos, *supra* note 2, at 250.

[5] *See* Jennifer Fink, People v. Ray*: The Fourth Amendment and the Community Caretaking Exception*, 35 U.S.F. L. REV. 135, 138 (2000) (concluding that "the community caretaking exception should be limited to those situations involving automobiles, leaving the sanctity of the home intact").

[6] People v. Ray, 981 P.2d 928, 931 (Cal. 1999).

investigation, or acquisition of evidence relating to the violation of a criminal statute."[7]

Cady's holding began as a rule authorizing a routine, warrantless inventory search of an automobile lawfully impounded by the police.[8] Courts have compartmentalized such routine police functions into what has been deemed the community caretaking doctrine (CCD). The CCD has been expanded to encompass searches of private residences by the circuit courts.[9]

When entering the home under the CCD, police officers carry out "dual community caretaking functions of aiding persons in need of assistance and protecting property."[10] As Matthew Bell pointed out in his article, it is important to distinguish an exigent circumstances analysis from a community caretaking analysis.[11] Bell noted that exigent circumstances only apply when police officers are solving crimes, and the CCD applies in more specialized situations, not involving criminal investigations per se.[12] As community caretakers, police officers often get calls concerning suspicious activity or calls from individuals worried about the welfare of their neighbors, or loved ones. The CCD

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[7] Cady v. Dombrowski, 413 U.S. 433, 440 (1973). For a nuanced take on courts' various approaches in analyzing the community caretaking exception, see Michael R. Dimino, Sr., *Police Paternalism: Community Caretaking, Assistance Searches, and Fourth Amendment Reasonableness*, 66 WASH. & LEE L. REV. 1485, 1489-90 (2009) (noting that in *Cady*, the Court found that searches conducted in the performance of community caretaking activities do not require warrants and should be subjected to "the general standard of 'unreasonableness' as a guide in determining" their constitutionality (quoting *Cady*, 413 U.S. at 448)).

[8] *Cady*, 413 U.S. at 442-43; *see infra* Part I.B for a more in-depth discussion of *Cady*.

[9] *See* Marinos, *supra* note 2, at 250 (citing United States v. Quezada, 448 F.3d 1005, 1007 (8th Cir. 2006); Phillips v. Peddle, 7 F. App'x 175, 180 (4th Cir. 2001); United States v. Rohrig, 98 F.3d 1506, 1522 (6th Cir. 1996)).

[10] *Ray*, 981 P.2d at 936; *see also* Matthew Bell, *Fourth Amendment Reasonableness: Why Utah Courts Should Embrace the Community Caretaking Exception to the Warrant Requirement*, 10 BOALT J. CRIM. L. 3 (2005) (arguing that Utah courts should apply the community caretaking doctrine to the home and separate it entirely from an exigent circumstances analysis).

[11] *See* Bell, *supra* note 10, ¶ 3.

[12] *Id.* ("While exigent circumstances apply in the crime-fighting context, the [CCD] applies when 'police are not engaged in crime-solving activities.'" (quoting *Ray,* 981 P.2d at 933)).

applies to police activity surrounding these types of community caretaking functions. The CCD must be governed and "it is clear that the standard for assessing the Fourth Amendment propriety of such conduct is whether [the police officers] possessed a reasonable basis for doing what they did."[13]

However, some criticize the extension of the CCD as "an inappropriate catchall exception for police to rely on after they enter an individual's home without consent or a warrant, collect evidence in plain view, and are unable to justify their actions under one of the exigent circumstances exceptions to the warrant requirement."[14] In fact, several scholars favor limiting the community caretaking exception to only those situations involving automobiles, rejecting the extension of the doctrine to homes,[15] while others support a restricted extension to homes.[16] The Supreme Court has yet to answer whether a police officer may enter a home under the CCD.

By looking at the circuit split and the courts' relative application of the CCD, this Comment will address that unanswered question. Based on a review of the case law and scholarship on the community caretaker exception, this Comment concludes that the constitutional difference between homes and automobiles suggests that a more developed approach is needed to determine whether law enforcement can justifiably enter the home under the CCD.[17] Simply citing a community caretaking purpose should not legitimize a search in a criminal investigation.

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[13] *Id.* at 11 (quoting *Ray*, 981 P.2d at 936-37).

[14] Marinos, *supra* note 2, at 251.

[15] *See* Gregory T. Helding, Comment, *Stop Hammering Fourth Amendment Rights: Reshaping the Community Caretaking Exception with the Physical Intrusion Standard*, 97 MARQ. L. REV. 123, 128 (2013) (arguing that "the U.S. Supreme Court must roll back the expansion of the community caretaking exception that allows warrantless searches of homes"); Fink, *supra* note 5, at 138 (concluding that "the community caretaking exception should be limited to those situations involving automobiles, leaving the sanctity of the home intact").

[16] *See* Marinos, *supra* note 2, at 252 ("seek[ing] to restrict, but not eliminate, community caretaking searches of the home through the implementation of a special community caretaking warrant").

[17] *See id.*; Fink, *supra* note 5; Dimino, *supra* note 7; Bell, *supra* note 10; Debra Livingston, *Police, Community Caretaking, and The Fourth Amendment,* 1998 U. CHI. LEGAL F. 261.

However, homes should not be excluded from the pursuit of legitimate community caretaking activities without careful consideration. Courts have, therefore, correctly recognized the need to help people in need of assistance and to protect property beyond automobiles.[18]

Part I of this Comment seeks to define "community caretaking" while exploring the CCD's development. Part II makes the case that courts should extend the community caretaking doctrine to the home using a modified analytical test to determine the reasonableness of the search.

Part III analyzes the circuit split regarding the extension of the CCD to the home in both federal appellate and state supreme court cases. This Comment contributes to the literature by suggesting that courts adopt a two-fold analytical test to help determine whether a community caretaking search of a home qualifies as reasonable.[19] Furthermore, this Comment provides a basic foundation of what qualifies as an authentic community caretaking activity. Part IV offers a brief conclusion as to why the extension is necessary.

I. BACKGROUND

This section attempts to define "community caretaking" by providing its evolution from two Supreme Court cases to where it is today. This section also analyzes the difference between the community caretaking doctrine and other exceptions to the warrant requirement. The CCD is necessarily separate from the other exceptions to the Fourth Amendment because it falls under several important categories that would not otherwise justify a warrantless entry into someone's home.

A. Defining "Community Caretaking"

Police, as community caretakers, are often called upon to keep the peace and they serve to maintain a sense of security

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[18] *See infra* Part III.B.

[19] *See infra* Part II.C.

among communities.[20] As community caretakers, police often help people who are in need of assistance, respond to calls of concerned citizens, and protect the property within their surrounding jurisdiction. Courts have recognized that "[p]olice must frequently 'care for those who cannot care for themselves: the destitute, the inebriated, the addicted . . . and the very young.'"[21] Community caretaking includes the "mediation of noise disputes, the response to complaints about stray and injured animals, and the provision of assistance to the ill or injured."[22]

Cady v. Dombrowski is the foundational case of the CCD. In *Cady*, Dombrowski's car was broken down on the side of the road after a one-car accident.[23] Because the officers knew Dombrowski was a Chicago police officer and believed he was required to carry a service revolver at all times, the officers conducted a warrantless search of the vehicle "to protect the public from the possibility that a revolver would fall into untrained or perhaps malicious hands."[24] The Court upheld the warrantless search, concluding that "[l]ocal police officers . . . frequently investigate vehicle accidents in which there is no claim of criminal liability and engage in . . . community caretaking functions, totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute."[25]

B. Evolution of the Community Caretaking Doctrine

Cady's holding began as a rule authorizing a routine, warrantless inventory search of an automobile lawfully impounded by the police.[26] In *Cady,* the Supreme Court discussed the community caretaking exception with regard to automobiles and explained that the "ambulatory character" of cars and the fact

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[20] *See* Helding, *supra* note 15, at 138-39 (citing Livingston, *supra* note 17, at 271-72) ("Community caretaking . . . is a description of what police do when they are not investigating crime.").

[21] Livingston, *supra* note 17, at 272 (quoting HERMAN GOLDSTEIN, POLICING A FREE SOCIETY 21, 25 (1977)).

[22] *Id.* at 272 & n.51.

[23] *Cady,* 413 U.S. at 443.

[24] *Id.* at 436-37, 443.

[25] *Id.* at 441, 446, 448.

[26] *Id.* at 448.

that police officers "have much more contact with vehicles" justified the application of the CCD to vehicles.[27] However, the Supreme Court did not express a plan to extend the CCD to homes.

In *South Dakota v. Opperman*,[28] an officer conducted a warrantless "routine inventory search of an automobile lawfully impounded by police."[29] The Court upheld the warrantless inventory search, explaining that the officers were exercising a "'community caretaking function' . . . [i]n the interest[] of public safety."[30] The Court explained that it "has consistently sustained police intrusions into automobiles impounded or otherwise in lawful police custody where the process is aimed at securing or protecting the car and its contents."[31] Like *Cady*, the Court in *Opperman* relied on the diminished expectation of privacy in automobiles as part of its rationale for permitting the officers' search to secure the car's contents.[32]

However, as courts have noted, there is no language in *Cady* or *Opperman* that limits an officer's community caretaker functions to incidents involving automobiles.[33] Today courts have come to view these police functions as a doctrine, the community caretaker doctrine, and "both federal circuit and state supreme

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[27] *Id.* at 441-42 ("The constitutional difference between searches of and seizures from houses and similar structures and from vehicles stems both from the ambulatory character of the latter and from the fact that extensive, and often noncriminal contact with automobiles will bring local officials in 'plain view' of evidence, fruits, or instrumentalities of a crime, or contraband.").

[28] 428 U.S. 364 (1976) (holding that routine inventory searches of automobiles lawfully impounded by the police are reasonable).

[29] *Id.* at 365.

[30] *Id.* at 368 (quoting *Cady,* 413 U.S. at 441).

[31] *Id.* at 373.

[32] *Id.* at 368.

[33] *See* United States v. Rohrig, 98 F.3d 1506, 1523, 1522 (6th Cir. 1996) (concluding where officers entered defendant's home to "abat[e] an ongoing nuisance by quelling loud and disruptive noise," that the officers' "failure to obtain a warrant [did] not render that entry unlawful" because "an important 'community caretaking' interest motivated the officers' entry"); State v. Deneui, 775 N.W.2d 221, 226, 239 (S.D. 2009) (noting that it was deciding "[i]n a case of first impression . . . whether the community caretaker doctrine . . . should also be applied to a home search" and concluded that the exception may be "invoked to justify law enforcement intrusion into a home").

courts have expanded the community caretaking exception to allow the warrantless searches of homes."[34]

C. Distinguishing the CCD from Other Exceptions to the Fourth Amendment Warrant Requirement

The Fourth Amendment warrant requirement has certain exceptions and the Supreme Court has laid out these exceptions in several cases.[35] The Supreme Court has held, for example, that officers can enter homes without a warrant "to prevent the imminent destruction of evidence," to pursue "a fleeing suspect," or "to render emergency assistance to an injured occupant or to protect an occupant from imminent injury."[36] The Supreme Court has referred to this third exception as the "emergency aid exception."[37]

One commentator, Megan Marinos, noted in her Comment the failure of the state and federal courts over the years to distinguish between the emergency aid exception to the warrant requirement and the community caretaking doctrine.[38] A number of courts have separated the emergency aid exception from the "exigent circumstances exception" and included it under the "community caretaking doctrine."[39] However, as Marinos points out in her article on the CCD, "there is . . . a clear distinction between the two."[40] She points out that:

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[34] Helding, *supra* note 15, at 139-40; *see Rohrig*, 98 F.3d at 1509; State v. Pinkard, 785 N.W.2d 592 (Wis. 2010); *Deneui*, 775 N.W.2d at 221.

[35] *See* Brigham City v. Stuart, 547 U.S. 398, 403 (2006) (citing Flippo v. West Virginia, 528 U.S. 11, 13 (1999); Katz v. United States, 389 U.S. 347, 357 (1967); Michigan v. Tyler, 436 U.S. 499, 509 (1978); Ker v. California, 374 U.S. 23, 40 (1963)); *see also* Marinos, *supra* note 2, at 259-60.

[36] *Brigham City,* 547 U.S. at 403; *see also* Marinos, *supra* note 2, at 259-60.

[37] *Brigham City*, 547 U.S. at 402; *see also* Marinos, *supra* note 2, at 261.

[38] Marinos, *supra* note 2, at 261; *see also* United States v. Quezada, 448 F.3d 1005, 1007-08 (8th Cir. 2006) (holding that the police officer had to have a "reasonable belief that an emergency exists requiring his or her attention" for the community caretaking doctrine to apply to a warrantless search of a home).

[39] Marinos, *supra* note 2, at 261-62; *see also Quezada*, 448 F.3d at 1007 ("A police officer may enter a residence without a warrant as a community caretaker where the officer has a reasonable belief that an emergency exists requiring his or her attention.").

[40] Marinos, *supra* note 2, at 262.

> Searches performed pursuant to the community caretaking exception were originally conceived to prevent physical injury and property damage in situations separate from criminal investigations, while searches performed under exigent circumstances consist of police acting without a warrant to serve law enforcement interests that fulfill the probable cause requirement, like preserving evidence or preventing suspects from fleeing.[41]

Because of this distinction, Marinos believes that "[t]he CCD has become an inappropriate catchall exception for police to rely on after they enter an individual's home without consent or a warrant, collect evidence in plain view, and are unable to justify their actions under one of the exigent circumstances exceptions to the warrant requirement." [42] However, courts have recognized the need for police officers to perform community caretaking functions unrelated to crime-fighting: "[O]ur [contemporary] society . . . is an impersonal one. Many of us do not know the names of our next-door neighbors. Because of this, tasks that neighbors, friends or relatives may have performed in the past now fall to the police."[43]

In *People v. Ray*, the Supreme Court of California acknowledged that one legitimate role of police officers is to respond to requests of people who seek police assistance because they are concerned about the safety or welfare of their friends, loved ones, and others and that "circumstances short of a perceived emergency may justify a warrantless entry."[44] Professor LaFave discusses the distinction between entering the premises for investigative purposes and entering for other reasons:

> The police have "complex and multiple tasks to perform in addition to identifying and apprehending persons committing serious criminal offenses"; by design or default, the police are also expected to "reduce the opportunities for the commission of some crimes through preventive patrol and other

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[41] *Id.* (footnote omitted) (citing Minnesota v. Olson, 495 U.S. 91, 100 (1990); Warden v. Hayden, 387 U.S. 294, 299 (1967)).

[42] *Id.* at 251.

[43] People v. Ray, 981 P.2d 928, 934 (Cal. 1999) (quoting State v. Bridewell, 759 P.2d 1054, 1068 (Or. 1988)).

[44] *Id.*

> measures," "aid individuals who are in danger of physical harm," "assist those who cannot care for themselves," "resolve conflict," "create and maintain a feeling of security in the community, and provide other services on an emergency basis."[45]

The CCD, therefore, is necessarily separate from the exigent circumstances exception to the Fourth Amendment because it allows entry in important circumstances that would not otherwise be justified without a warrant.

II. THE COMMUNITY CARETAKING DOCTRINE SHOULD BE EXTENDED TO THE HOME

A more expansive view of the community caretaking exception is needed. The Fourth Amendment grants citizens the right to be free from unreasonable government searches or seizures.[46] "[U]sing a reasonableness standard and requiring good faith" from police officers "will serve as a check on abuse by law enforcement" when performing community caretaking activities and entering the home.[47] "Certainly a balance must be maintained between the recognition of the liberty of a citizen to be free from unreasonable searches and seizures and the recognition of the common sense performance of law enforcement activities."[48]

A. Community Caretaking Activities Can Provide a Reasonable Basis to Initiate a Search

In 1985, the Supreme Court recognized that the Fourth Amendment is "not, of course, a guarantee against *all* searches and seizures, but only against *unreasonable* searches and seizures."[49]

The reasonableness inquiry is laid out in *Bell v. Wolfish*:

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[45] WAYNE R. LAFAVE, 3 SEARCH & SEIZURE § 6.6 (5th ed. 2012) (quoting 1 ABA STANDARDS FOR CRIMINAL JUSTICE § 1-1.1, 2.2 (2d ed. 1980)).

[46] U.S. CONST. amend. IV.

[47] Bell, *supra* note 10, ¶ 35.

[48] *Ray*, 981 P.2d at 939.

[49] United States v. Sharpe, 470 U.S. 675, 682 (1985); *see* Bell, *supra* note 10, ¶ 36.

> The test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application. In each case it requires a balancing of the need for the particular search against the invasion of personal rights that the search entails. Courts must consider the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted.[50]

Each search or seizure of a home requires an analysis of the search's reasonableness by balancing the necessity of the search against the possible violation of an individual's Fourth Amendment rights. Although the Supreme Court has not yet extended the community caretaking doctrine to the home, both state and federal courts have come to "*expect* law enforcement officers to perform community caretaking functions."[51]

For example, in *People v. Ray*, officers became concerned about the possibility of an injured person inside a home and wanted to check on the welfare of the individual. The officers had no knowledge of any facts that would lead a reasonable person in their position to believe entry was immediately necessary to help someone under the emergency aid exception; therefore, they could not use that established Fourth Amendment exception to enter the home without a warrant.[52]

However, the court found "[u]nder the community caretaking exception, circumstances short of a perceived emergency may justify a warrantless entry, including the protection of property, as 'where the police reasonably believe that the premises have recently been or are being burglarized.'"[53] Most case law on the community caretaking doctrine points to the importance of protecting people from harm rather than to protecting property from theft, but "many of the cases involving possible burglaries or

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[50] 441 U.S. 520, 559 (1979).

[51] Bell, *supra* note 10, ¶ 37.

[52] *Ray*, 981 P.2d at 934-35.

[53] *Id.* at 934 (quoting LAFAVE, *supra* note 45, § 6.6).

breakings and enterings stress the dual community caretaking purpose of protecting both."[54]

People v. Ray provides an example of a community caretaking activity that justifies a warrantless entry of a home when the act is prompted by the motive of protecting individuals and/or preserving property and reasonably appears to the officer to be necessary for that purpose.[55] Approving a police entry made with intent to safeguard property and to search for citizens in distress, the *Ray* court concluded that "[w]hen officers act in their properly circumscribed caretaking capacity, we will not penalize the People by suppressing evidence of crime they discover in the process."[56]

The court in *Ray* also pointed to the Restatement of Torts: tort law allows otherwise trespassory entries where it "reasonably appears to be necessary to prevent serious harm to" persons or property, "unless the actor knows or has reason to know that the one for whose benefit he enters is unwilling that he shall take such action."[57] It would be abnormal to deny a police officer a privilege that is given to every other individual who intervenes to aid another or to protect another's property.[58] Therefore, when it is established that a police officer has reasonably entered a home based on a bona fide community caretaking activity, then the entry of that home is justifiable.

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[54] State v. Alexander, 721 A.2d 275, 284 (Md. Ct. Spec. App. 1998) (citing Carter v. State, 405 So. 2d 957 (Ala. Crim. App. 1981); State v. Carroll, 629 A.2d 1247 (Md. Ct. Spec. App. 1993); Commonwealth v. Fiore, 403 N.E.2d 953 (Mass. App. Ct. 1980)).

[55] *Ray*, 981 P.2d at 935.

[56] *Id.* at 939. The *Ray* court recognized that caretaking duties required of police extend beyond simply assisting in medical emergencies. *See* State v. Acrey, 64 P.3d 594, 600 (Wash. 2003) (quoting State v. Kinzy, 5 P.3d 668, 675-76 (Wash. 2000)) ("In this State, the 'community caretaking function' exception to the warrant requirement encompasses 'not only the "search and seizure" of automobiles, but also situations involving either emergency aid or routine checks on health and safety.'").

[57] *Ray*, 981 P.2d at 935 (quoting RESTATEMENT (SECOND) OF TORTS § 197 (1965)).

[58] *Id.* ("It would be anomalous to deny a police officer charged with protecting the citizenry a privilege accorded every other individual who intercedes to aid another or to protect another's property.").

B. The Importance of Distinguishing Between Two Types of Community Caretaking Searches

When evaluating community caretaking searches, there is a useful distinction that divides the community caretaking activity into one of two categories: (1) searches "designed to assist the subject of the search" known as "first-party community caretaking" and (2) searches designed "to assist someone other than the subject of the search" known as "third-party community caretaking."[59] In his article, Professor Michael Dimino explains this distinction in that:

> There is no "government interest" to be weighed in evaluating the reasonableness of first-party community caretaking. Rather, such searches should be analyzed under an implied-consent theory, which would permit a first-party community-caretaking search only if the searching officer reasonably believed that the subject of the search would desire assistance.[60]

A judge must balance the privacy interests of the subject of a search and the subject's interest in receiving police assistance. Like Dimino, I believe that first-party community caretaking searches should be analyzed using this balance; however, I think more factors are to be considered.

"Third-party community caretaking" involves searches designed to assist the general public or a specific person or persons other than the one whose privacy rights are at stake.[61] Dimino argued that courts should ask three questions when evaluating the reasonableness of a third-party community-caretaking search.[62] The questions draw on *Brown v. Texas*'s three-part test for balancing "the public interest and [an individual's] right to personal security and privacy" in the context

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[59] *See* Dimino, *supra* note 7, at 1489.

[60] *Id.*

[61] *Id.*

[62] *Id.* at 1541 ("First, how significant is the intrusion? Second, how serious is the potential harm? And third, what is the likelihood that the intrusion will prevent or lessen the harm?").

of a seizure.[63] Dimino found that the answers to each question "should be determined based on information the searching officer knew or should have known at the time of the search."[64]

I seek to provide a more developed approach that simplifies the determination of reasonableness in community caretaking searches of the home. In doing so, it is important to distinguish between first-party and third-party community caretaking, but instead of looking at what the searching officer knew or should have known, it is more important to look at the community caretaking activity itself and whether or not the interests of that activity and those involved outweigh the privacy interests of the individual whose home or property is being searched. In looking at those interests, courts need to consider the degree of interests, attendant circumstances surrounding the search, and available alternatives.

C. Courts Should Adopt a Two-Fold Analytical Test to Determine the Reasonableness of Community Caretaking Searches of the Home

Allowing police to enter the home when acting as community caretakers could be dangerous if not watched carefully. Police could simply invoke their right as a "community caretaker" whenever they entered a home without a warrant. Therefore, the courts should provide basic guidelines in determining the reasonableness of such community caretaking searches. The following two-fold analysis will help courts determine the reasonableness of a community caretaking search of the home and decide whether the police are truly performing a duty to the community that outweighs the privacy interests of the victim of the search.

In *State v. Anderson*, Wisconsin police officers stopped a vehicle and detained its driver, Anderson.[65] The police observed Anderson moving "feverishly," and a subsequent search uncovered

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[63] Brown v. Texas, 443 U.S. 47, 52-53 (1979); *see* Dimino, *supra* note 7, at 1541.

[64] Dimino, *supra* note 7, at 1544.

[65] State v. Anderson, 417 N.W.2d 411, 412 (Wis. Ct. App. 1987). There the court explained that "[s]topping a vehicle and detaining its occupant constitute[d] a seizure within the meaning of the fourth amendment." *Id.* at 413.

weapons on him and in the vehicle.[66] Wisconsin conceded that the officers lacked probable cause for the initial detainment of Anderson and his vehicle and instead argued that the seizure was reasonable under the Fourth Amendment because the officers were acting as "community caretakers."[67]

To determine whether a search qualifies under the community caretaker exception, the court in *Anderson* looked at the following three elements:

> (1) whether a search or seizure, within the meaning of the Fourth Amendment, has taken place;
>
> (2) whether "the police conduct was a bona fide community caretaker activity"; and
>
> (3) "whether the public need and interest outweigh the intrusion upon the privacy of the individual."[68]

The foundational elements of the *Anderson* test emerged from *Terry v. Ohio*,[69] in which the Supreme Court of the United States determined reasonableness under the Fourth Amendment by balancing the governmental interest of conducting searches or seizures against the privacy interests invaded by such activity.[70] *Terry* permitted an officer to "stop and frisk"[71] an individual whom

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[66] *Id.* at 412.

[67] *Id.* at 413.

[68] *Id.* at 414. When considering the last factor of the *Anderson* test, "weighing the public need and interest against the intrusion," the court also points to significant considerations which include:

> (1) the degree of the public interest and the exigency of the situation; (2) the attendant circumstances surrounding the seizure, including time, location, and the degree of overt authority and force displayed; (3) whether an automobile is involved; and (4) the availability, feasibility and effectiveness of alternatives to the type of intrusion actually accomplished.

Id. (footnotes omitted).

[69] 392 U.S. 1 (1968); *Anderson*, 417 N.W.2d at 414 (holding that the *Anderson* balancing test "is essentially the *Terry* test, but applied in a community caretaker setting").

[70] *Terry*, 392 U.S. at 20-21.

[71] *Id.* at 10 (defining a "stop and frisk" as the term referring to the ability of police officers to detain and search individuals).

the officer believed "may be armed and presently dangerous."[72] Thus, the *Anderson* test is an adaptation of the *Terry* reasonableness standard and is applicable when officers act outside of their role as law enforcers and lack probable cause.[73]

From my review of the case law and scholarship on the community caretaker exception, I have synthesized what I believe are the most important factors when determining whether a search of a home is reasonable under the CCD. First and foremost, a court will need to determine whether the police conduct was a bona fide community caretaking activity. A number of situations call for police to act in their roles as community caretakers, and it is up to the courts to determine what activities are included.[74]

After making that determination, the courts would then need to determine whether the activity is benefitting the subject of the search (first-party community caretaking) or the public (third-party community caretaking). If benefitting the public, then the court would need to look at whether the public's needs and interests outweigh intrusion upon the privacy of the individual. If benefitting the subject of the search, then the court would need to look at whether the individual's interest in police assistance outweighs their interest in privacy. When balancing governmental interests against individual and public interests, courts must consider the following elements:

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[72] *Id.* at 30 (holding that when "a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous . . . he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him").

[73] *See* Hiibel v. Sixth Judicial Dist. Court, 542 U.S. 177, 185 (2004) (working from the premise that the *Terry* Court relied on a Fourth Amendment standard of "reasonable suspicion").

[74] *See* State v. Pinkard, 785 N.W.2d 592, 602-03 (Wis. 2010) (quoting State v. Kramer, 759 N.W.2d 598, 609 (Wis. 2009)) ("A court may consider an officer's subjective intent in evaluating whether the officer was acting as a bona fide community caretaker; however, if the court concludes that the officer has articulated an objectively reasonable basis under the totality of the circumstances for the community caretaker function, he has met the standard of acting as a bona fide community caretaker, whose community caretaker function is totally divorced from law enforcement functions.").

> (1) The degree of public or individual interest and the necessity of the situation;
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> (2) Attendant circumstances surrounding the search, including the time and location of the search, the involvement of other members in the community, and the amount of force displayed; and
>
> (3) The availability, practicability, and effectiveness of alternatives to the type of intrusion accomplished.[75]

Although a multitude of activities fall within the community caretaker doctrine, not every intrusion that results from the exercise of a community caretaking activity will fall within the community caretaker exception to permit a warrantless entry into a home. Therefore, these factors allow courts to determine whether a given community caretaking activity permits a warrantless home entry by ensuring a determination that the activity was reasonably exercised under the totality of the circumstances of the incident under review.

III. APPLICATION OF A TWO-PART REASONABLENESS TEST TO CIRCUIT AND STATE COURT PRECEDENT

The federal circuit courts of appeal and many state courts are split on whether to extend the community caretaking doctrine to the home.[76] Some courts choose to limit the doctrine to automobiles while others view the doctrine as a necessary exception to the warrant requirement in order to maintain a sense

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[75] *See* State v. Anderson, 417 N.W.2d 411, 414 (Wis. Ct. App. 1987).

[76] *See* United States v. Erickson, 991 F.2d 529, 532 (9th Cir. 1993) ("Quite unlike the automobile search performed in *Cady,* the warrantless search of Erickson's home constituted a severe invasion of privacy."); United States v. Pichany, 687 F.2d 204, 209 (7th Cir. 1982) (per curiam) (limiting the *Cady* holding to the automobile and denying an expansive view of the decision that would allow warrantless searches of homes). *But see* United States v. Rohrig 98 F.3d 1506 (6th Cir. 1996) (holding that two officers' warrantless entry into a home was permissible since they were acting as community caretakers to abate a significant noise nuisance); People v. Ray, 981 P.2d 928, 934 (Cal. 1999) (quoting LAFAVE, *supra* note 45, § 6.6(b)) ("Under the community caretaking exception, circumstances short of a perceived emergency may justify a warrantless entry, including the protection of property, as 'where the police reasonably believe that the premises have recently been or are being burglarized.'").

of safety within communities.[77] In the following cases, I will apply my two-fold analytical test in determining whether the police conduct is a bona fide community caretaking activity and then weigh the governmental, public, and privacy interests involved.

A. Courts that Incorrectly Limit the CCD to Vehicles

The three cases below are from federal appellate circuit courts that limit the community caretaking doctrine to vehicles. These cases limit the language of the Supreme Court in *Cady v. Dombrowski* by narrowly interpreting the community caretaking doctrine and its function. These courts fail to see the role of police as community caretakers and focus on privacy interests instead of focusing on the good of the community as a whole.

1. *United States v. Pichany* (7th Cir. 1982)

In *United States v. Pichany*, the Seventh Circuit had to decide whether a warrantless search of a warehouse was valid when police officers were investigating a burglary in a neighboring warehouse.[78] The industrial park in which the warehouse was based contained "approximately sixty large aluminum buildings of nearly equal size and appearance, some of which [were] leased to private businesses."[79] "No business signs or postal addresses designate[d] the occupants of the separate buildings."[80] The officers accidentally entered the defendant's warehouse when called to investigate a neighboring warehouse and, upon entering, the officers found stolen property.[81] There was no real difference in the styles of the warehouses: "except for their military numbering and different style doorways, the three buildings appeared virtually identical."[82] Despite that fact, the court refused to justify the officers' actions and evidence of the stolen property was suppressed.[83] The court found the community caretaking

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[77] *See supra* note 76.
[78] *Pichany*, 687 F.2d at 205.
[79] *Id.*
[80] *Id.*
[81] *Id.* at 206.
[82] *Id.*
[83] *Id.* at 208-09.

exception did not apply and limited its application to situations involving automobiles.[84]

The court incorrectly confined the CCD to automobiles in this case because they failed to consider the importance of an officers' community caretaking function to investigate and prohibit the performance of burglaries.[85] Although the warehouse searched was not the warehouse that the police were notified about, that still does not eliminate the fact that the police were performing a community caretaking activity when they discovered the stolen goods, and, thus, the evidence should not have been suppressed at trial. The court did not apply any test of reasonableness and instead quickly limited community caretaking functions of police to automobiles.

The police were clearly performing a community caretaking activity since they were called to investigate a burglary.[86] The search in this case could be considered a first or third-party community caretaking search since the search of the warehouse sought to benefit the public and the individual from destruction of property and/or burglary. The court would then need to look at the degree of public interest as well as the privacy interest of the individual and the interest the individual may have had in desiring police assistance.

In applying the factors discussed above,[87] the court would then need to consider whether the public interest outweighs the privacy interest of the individual. In *Pichany*, the defendant left the door to his warehouse open in an industrial park where burglaries are obviously likely to occur.[88] Considering the time of the search and location of the warehouse, the public interest in preventing the commission of burglaries far outweighs the privacy

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[84] *Id.*

[85] *Id.*; *see* People v. Ray, 981 P.2d 928, 934-35 (Cal. 1999) (citing State v. Alexander, 721 A.2d 275, 286-87 (Md. Spec. App. 1998); People v. Hill 528 P.2d 1, 21-22 (Cal. 1974)) ("Of necessity, officers may enter premises to resolve the situation and take further action if they discover a burglary has occurred or their assistance is otherwise required.").

[86] *Pichany*, 687 F.2d at 208-09.

[87] *See supra* Part II.C.

[88] *See Pichany,* 687 F.2d at 205 ("The industrial park has a deserted, desolate atmosphere and had been the site of previous break-ins.").

interest of an individual who leaves a door open late at night enhancing suspicion. Although the police officer could have alternatively obtained a warrant, a police officer must be able to act quickly when there is reason to believe that a burglary is in commission.[89] If the Seventh Circuit had considered these factors as well as the governmental and public interest of preventing burglaries and protecting property, then the outcome might have been different for the extension of the CCD.

2. *United States v. Erickson* (9th Cir. 1993)

In *United States v. Erickson*, the Ninth Circuit also limited the community caretaking exception.[90] In *Erickson*, police officers were also investigating a burglary, but this time it involved a warrantless entry into a home.[91] Upon investigation of suspicious activity surrounding a home, an officer came upon an open basement window that was covered with a black plastic sheet.[92] The sheet allowed enough space for someone to gain entry into the home.[93] The officer believed this could have been a point of entry; therefore, he pulled back the plastic sheet from the open window to determine whether the residence had been burglarized.[94] The officer discovered numerous marijuana plants, smelled marijuana, and immediately stopped looking in the window in order to obtain a search warrant.[95] The police also determined that the residence had in fact been burglarized and that numerous marijuana plants had been taken.[96]

The defendant "moved to suppress the evidence obtained from his residence arguing that [the officer's] initial search

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[89] *Ray*, 981 P.2d at 940 (George, C.J., concurring) (quoting People v. Duncan, 720 P.2d 2 (Cal. 1986) ("[A]n officer may enter a dwelling without a warrant if he reasonably believes a burglary is being committed therein")).

[90] United States v. Erickson, 991 F.2d 529, 530-31 (9th Cir. 1993).

[91] *Id.*

[92] *Id.*

[93] *Id.*

[94] *Id.*

[95] *Id.* ("The police executed the warrant the same day and seized marijuana plants, cultivation equipment, and documentary evidence.").

[96] *Id.*

violated the Fourth Amendment."[97] The government argued that the officer "was performing one of his 'community caretaking functions' when he pulled back the plastic sheet and looked inside [the defendant's] basement" while investigating a possible burglary.[98] Like the Seventh Circuit, the Ninth Circuit refused to extend the community caretaking exception, instead limiting the exception to automobiles.[99]

Again, the court incorrectly confined the CCD to automobiles because they failed to consider the importance of an officer's community caretaking function to investigate and prohibit the performance of burglaries.[100] Here, the officers were called to investigate the home and lifted a sheet in front of an open window upon investigation.[101] This is an example of a first-party community caretaking search that seeks to benefit the subject of the search.

Since the subject of the home was not there and could not object to the police officer's investigation, the analysis would involve whether individual interest in police assistance outweighs individual interest in privacy. Considering the factors, a practical community caretaking activity exists since a phone call had been made suspecting a burglary and the police were sent to investigate.[102]

Considering the home was actually burglarized and a window was open, one would objectively believe that such a homeowner would want a police officer to investigate. Furthermore, the fact that a passerby or a concerned neighbor could have lifted the sheet should bar any argument that lifting the sheet was a violation of privacy and not a community caretaking duty.[103] There was no force displayed in lifting a sheet and the only alternative solution would be to obtain a warrant which would,

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[97] *Id.*

[98] *Id.* at 531.

[99] *Id.* at 532 ("Quite unlike the automobile search performed in *Cady,* the warrantless search of Erickson's home constituted a severe invasion of privacy.").

[100] *See supra* note 89 and accompanying text.

[101] *Erickson*, 991 F.2d at 530.

[102] *Id.* at 533.

[103] *See supra* notes 57 & 58 and accompanying text.

again, not be effective or feasible if an officer reasonably believes a burglary is in commission.[104]

3. *Ray v. Township of Warren* (3d Cir. 2010)

In *Ray v. Township of Warren*, the Third Circuit discussed a defendant's civil action against police officers for allegedly entering the defendant's home unlawfully.[105] On the day in question, the police received a call from the defendant's wife who stated "she had arrived at the [defendant's] home to pick up her child for visitation pursuant to a final restraining order that, in part, addressed visitation rights."[106] The officers went to the home and the defendant's wife "was visibly upset and told the officers that she was concerned for the well-being of her daughter."[107] The officers decided to enter the home "so that they could check on the child."[108] Although the court found that the officers were not liable due to qualified immunity, the court also found that the officer's entrance to check on the safety of a child was not a community caretaking exception to the warrant requirement.[109]

The Third Circuit incorrectly confined the application of the CCD to automobiles, failing to consider the police officers' community caretaking function of checking on the health and safety of members of a community, especially children left with a parent who had past domestic disputes with a spouse.[110] The

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[104] *See supra* notes 85 & 89 and accompanying text.

[105] Ray v. Twp. of Warren, 626 F.3d 170, 173 (3d Cir. 2010).

[106] *Id.* at 171.

[107] *Id.* at 171-72. The mother "informed the officers that she had seen someone inside the home who was not responding to the door, whom she believed to be her husband and whom she assumed had custody of the child at the time." *Id.*

[108] *Id.* at 172-73 (footnote omitted) ("The officers entered Ray's home through an unlocked door that was ajar, but obstructed by a piece of lumber meant to keep the door secured. The lumber was moved aside with a 'slim jim,' a device used to gain access to a locked vehicle.").

[109] *Id.* at 179 ("Under the circumstances, the officers were not on notice that their conduct was a clear violation of the law, and they acted reasonably in their belief that they could enter Ray's home for the purpose of checking on his daughter. Accordingly, we agree with the District Court that Appellees are entitled to qualified immunity.").

[110] *Id.* at 171 ("Some of the responding officers had been called by the Rays in the past to deal with domestic problems and were aware of the 'acrimonious nature of the Ray's [sic] divorce proceedings and child custody disputes at the home.'").

police were called upon by a third party seeking help in ensuring the safety of a child, and because maintaining a sense of security in a community is one of the many bona fide community caretaking activities, the police were right to act quickly.

The privacy interests of the spouse are far outweighed by that of the mother and her concern for her child considering that there had been past domestic disputes.[111] Ms. Ray informed the responding officers that she had arrived at the home to pick up her child for visitation pursuant to a final restraining order that, in part, addressed visitation rights.[112] Ms. Ray clearly had concerns and the only available alternative would have been to obtain a warrant which would have taken a lot of time and effort that could have possibly put the child in jeopardy.

B. Courts that Correctly Extend the CCD to the Home

The following cases are examples of courts correctly extending the CCD to the home by analyzing the community caretaking activities while also determining the degree of governmental, public, or individual privacy interests. The last two cases are different from the others in that the majority opinions of both are incorrect yet beneficial. In *United States v. Bute*, the Tenth Circuit denied entry under the CCD; however, the dissent provides a particularly convincing argument that the police were in fact there under the commission of a community caretaking activity, and they provided a necessary safeguard for the community as a whole that far outweighed the privacy of the individual. In *United States v. Quezada*, the Eighth Circuit correctly extended the CCD to the home; however, the analysis fails this Comment's two-fold test of reasonableness in protecting the privacy of the individual.

1. *United States v. Rohrig* (6th Cir. 1996)

United States v. Rohrig is similar to the hypothetical given in the introduction in which police officers responded to calls concerning noise complaints about loud music coming from a home

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[111] *Id.* at 177-78.

[112] *Id.*

in a nearby neighborhood.[113] Upon arrival at the home, the police found several neighbors outside complaining, and they could hear the music from blocks away.[114] The officers "banged repeatedly on the front door of Defendant's home, but received no response."[115] The officers walked around the home, tapping the windows along the way, and eventually discovered that the back door was open. "The officers knocked and hollered to announce their presence, but again received no answer."[116]

In order to provide peace for the neighborhood, the officers eventually entered the home and continued to announce their presence, but no one responded.[117] Upon investigation, "the officers testified that they went downstairs not because they believed that was the source of the loud music, but because they hoped to find an occupant of the home who could turn the music down."[118] In the basement, "the officers discovered 'wall-to-wall' marijuana plants, as well as fans and running water."[119]

Police then went upstairs and found the defendant "lying on the floor of one of the two bedrooms."[120] The defendant was eventually charged with possession of marijuana with intent to distribute and possession of an unregistered sawed-off shotgun.[121] "Defendant subsequently filed a motion to suppress the marijuana and shotgun found in his home, contending that the [police officers'] warrantless entry into his home violated the Fourth Amendment."[122] The court found that:

> Defendant here undermined his right to be left alone by projecting loud noises into the neighborhood in the wee hours

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[113] United States v. Rohrig, 98 F.3d 1506, 1509 (6th Cir. 1996).

[114] *Id.*

[115] *Id.*

[116] *Id.*

[117] *Id.*

[118] *Id.*

[119] *Id.*

[120] *Id.*

[121] *Id.* at 1510 ("Defendant was eventually charged with two federal offenses: (1) possession of marijuana with intent to distribute in violation of 21 U.S.C. § 841(a)(1), and (2) possession of an unregistered sawed-off shotgun in violation of 26 U.S.C. § 5861.").

[122] *Id.*

> of the morning, thereby significantly disrupting his neighbors' peace. Indeed, in this case, we cannot protect Defendant's interest in maintaining the privacy of his home without diminishing his neighbors' interests in maintaining the privacy of *their* homes.[123]

Here, the court correctly extended the CCD to the home in order to allow the officers to act within their community caretaking role to abate ongoing noise nuisances.

This is an example of a third-party community caretaking activity in which the police have a duty to keep the community at peace and that duty outweighs the privacy interests of an individual. The court made it clear that the defendant's privacy interest was far outweighed by the neighborhood's interest in maintaining a sense of peace and privacy in their own homes. The court looked at the degree of public interest and decided that the privacy interest of one individual was diminished by the interests of the neighborhood, especially considering the fact that it was in the middle of the night.[124] The court also considered alternatives, such as obtaining a warrant, and found that "a compelling governmental interest supports warrantless entries where, as here, strict adherence to the warrant requirement would subject the community to a continuing and noxious disturbance for an extended period of time without serving any apparent purpose."[125]

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[123] *Id.* at 1522; *see also id.* at 1519 ("[W]e must be mindful of the needs of the community and society's expectation of the legitimate role of the police."). Although the court also sees an exigency in this case, the better answer is that the police were acting as community caretakers since the court "found no precedent addressing the precise question whether an ongoing breach of the peace may constitute 'exigent circumstances.'" *Id.*

[124] *Id.* at 1521 ("First, the Canton police officers undoubtedly confronted a situation in which time was of the essence. The officers testified that they arrived at Defendant's residence in the middle of the night in response to complaints from neighbors, and that they could hear loud music at least a block away from the home. Upon their arrival at the scene, they were confronted by an irate group of pajama-clad neighbors. Had the officers attempted to secure a warrant, it is clear that the aural assault emanating from Defendant's home would have continued unabated for a significant period of time").

[125] *Id.* at 1522.

2. *State v. Deneui* (S.D. 2009)

In *State v. Deneui*, officers were called to "investigate the possible theft of gas" in a residential area.[126] The local utility company directed the officers to a particular home.[127] The officers testified that "when they were standing in front of the house they could smell the odor of ammonia."[128] They decided "to check to make sure nobody was incapacitated inside."[129] Based on the officers' detection of the toxic gas ammonia, the "citizen complaints about strange gas fumes in the area," and the fact that the front door was "wide open," the officers decided to enter the home.[130]

The *Deneui* court found "homes cannot be arbitrarily isolated from the community caretaking equation," and "[t]he need to protect and preserve life or avoid serious injury cannot be limited to automobiles."[131] The court correctly extended the CCD to homes in order to allow officers to act within their community caretaking role of checking on the health and safety of citizens.[132] Not only was the health of the subject of the search at interest, but also that of the surrounding neighbors, who could have been affected by the toxic gas.

Here the privacy of the individual is far outweighed by the substantial importance of protecting the community as a whole. Considering the factors, the officers' initial intrusion was minimal, displaying no force. "They cracked open the unlocked storm door to call inside, only then to discover that the smell of ammonia fumes became much stronger, thus warranting further inquiry."[133]

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[126] State v. Deneui, 775 N.W.2d 221, 227 (S.D. 2009).

[127] *Id.*

[128] *Id.* at 241.

[129] *Id.* at 241-42.

[130] *Id.* at 242.

[131] *Id.* at 239.

[132] *Id.* at 243-44 ("Although the officers arrived initially in response to a possible theft, as the circuit court later found, the matter evolved into a legitimate community caretaking function that predominated over any criminal investigation: concern that someone inside the home may be in jeopardy from ammonia fumes. The probable source of the fumes was defendant's house, where both the officers and the gas company employee smelled ammonia fumes.").

[133] *Id.* at 244 ("In the totality of circumstances, under the standard of objective reasonableness, we conclude that the circuit court did not err in ruling that the

The officers adequately articulated their concerns about waiting on a warrant; because people inside the home could have been in jeopardy, the officers quickly conducted a search "lasting a matter of minutes" to look for people inside.[134]

3. *State v. Pinkard* (Wis. 2010)

In *State v. Pinkard*, an officer received an anonymous tip in which the caller stated that he had just left Pinkard's residence, and that inside the residence were two people with cocaine, money, and a digital scale.[135] The caller also stated that "the rear door to the residence was standing open."[136] Officers were sent out of concern for the occupants of the residence and, upon arriving for investigation, they found that it "sounded like a drug house."[137] "Remaining outside Pinkard's residence, the officers knocked on [Pinkard's] open door and announced their presence."[138]

The officers eventually entered Pinkard's residence to "check the welfare of the occupants."[139] "Specifically, [an officer] testified that they entered '[t]o make sure that the occupants . . . were not the victims of any type of crime; . . . weren't injured; . . . [nor] victims of . . . a home invasion, robbery; that they were okay, and to safeguard any life or property in the residence.'"[140]

"From the officers' position just inside the rear door . . . [they] could see two people inside the bedroom, Pinkard and a woman,

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responding officers acted justifiably for the welfare of possible persons inside the residence.").

[134] *Id.* at 244 & n.18 ("The flaw in the dissent's argument is that it fails to recognize the context under which the officers entered the home. This is evident in the dissent's claim that 'there was no reason why the officers could not have secured the home and sought a search warrant.' Of course they could have obtained a search warrant, but that entirely ignores the reason they entered the home without a warrant: to ensure that no one was in imminent danger from toxic fumes. Had there been anyone still inside, securing the home and waiting for a search warrant may have been too late for the occupants.").

[135] State v. Pinkard, 785 N.W.2d 592, 594-95 (Wis. 2010).

[136] *Id.* at 595.

[137] *Id.*

[138] *Id.*

[139] *Id.*

[140] *Id.*

who 'appeared to be sleeping.'"[141] "The officers entered the bedroom 'just to see if [they] could awake [the occupants]' and again loudly announced themselves as the police."[142] Neither of the occupants responded, and the officers "had to physically shake Pinkard to wake him."[143]

"In plain view inside the bedroom, the officers seized cocaine, crack cocaine, marijuana and a digital scale," and Pinkard was subsequently charged.[144] Pinkard argued that "the officers' warrantless entry into his residence violated his rights under the Fourth Amendment."[145] The court found that "the officers' warrantless entry into Pinkard's residence was not unlawful because they were operating reasonably within their community caretaker function."[146] The court interpreted the pivotal on-point case *Cady v. Dombrowski*,[147] "not as prohibiting officers from entering a residence without a warrant while exercising a community caretaker function, but instead as 'counsel[ing] a cautious approach when the exception is invoked to justify law enforcement intrusion into a home.'"[148]

The court in this case applied the *Anderson* test and found that

> the officers were engaged in a bona fide community caretaker function based on the following findings of the circuit court: (1) police received a reliable anonymous tip that the occupants of Pinkard's home appeared to be sleeping near drugs, money and drug paraphernalia and that the rear door of the home was standing open; (2) the officers responded to Pinkard's house because they were concerned about the "health and safety" of the occupants; (3) the officers'

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141 *Id.*

142 *Id.*

143 *Id.*

144 *Id.* ("Pinkard was charged with possessing a firearm as a felon, possession of cocaine with intent to deliver as a second or subsequent offense and felony bail-jumping.").

145 *Id.*

146 *Id.* at 595-96. The court also noted that "there is no language in *Cady* or *Opperman* that limits an officer's community caretaker functions to incidents involving automobiles." *Id.* at 598.

147 413 U.S. 433 (1973).

148 *Pinkard*, 785 N.W.2d at 596-596. (quoting *Deneui*, 775 N.W.2d at 239).

> corroboration that the rear door was indeed standing open; and (4) the officers repeatedly knocked and announced their presence before entering the house and before entering the bedroom with no response of any type from Pinkard or his companion.[149]

The court in this case correctly extended the CCD to the home in order to allow police to fulfill their role as community caretakers by allowing warrantless entries when the health and safety of citizens are at risk. Anonymous tips do not always have to be considered an excuse for a warrantless entry into a home; however, when a caller's description can be confirmed (as it was here with the open door), officers should justifiably be able to rely on the caller's concerns. Since the health and safety of the subject of the search was also at stake, this case could also be considered an example of a first-party community caretaking activity. As such, the search would still be justified because the officers had objectively reasonable concerns for Pinkard and because Pinkard was too incapacitated to refuse the intrusion of his home.

4. *United States v. Bute* (10th Cir. 1994)

In *United States v. Bute*, the Tenth Circuit denied the government's argument that the officers were acting within their role as community caretakers, limiting the CCD to the automobile.[150] However, in his dissenting opinion, Judge Anderson pointed out that the officers were in fact acting in their role as community caretakers.[151] In *Bute*, an open garage door at an old manufacturing plant aroused officers' suspicion because they had never seen it open during their ten years of patrolling the area.[152] One officer suspected that the building had been burglarized, and

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[149] *Id.* at 603.

[150] United States v. Bute, 43 F.3d 531, 540 (10th Cir. 1994).

[151] *Id.* at 540-44 (Anderson, J., dissenting).

[152] *Id.* at 540 ("When officers McConkey and Cannon, on a routine patrol schedule, drove past this unlighted commercial building at approximately 11:15 p.m., they saw that the 'garage' door was open, noting that that was an abnormal circumstance, especially at night. Officer McConkey knew from ten years' personal experience in the area that the open door was unusual. He had never seen it open before, and had never seen 'anybody around what was a business.'").

upon entering "noticed what he described as a 'very pungent'" odor.[153] "Eventually, a search warrant was obtained based on the information provided by [the officers]."[154]

The majority held that a warrantless entry should only be permitted "when the officer has an objectively reasonable belief that an emergency exists requiring immediate entry to render assistance or prevent harm to persons or property within."[155] However, the dissent pointed out that "[i]t is also a recognized fact that the police perform this patrol and check function as a result not just of community expectation but community pressure."[156] Judge Anderson asserted that "checking out commercial premises inexplicably left not just unlocked but wide open in the middle of the night is not an activity society tolerates; it is one society demands."[157]

When the garage door was open, "[the building] and its contents were almost entirely exposed and accessible to anyone."[158] Judge Anderson explicitly discussed all the factors when analyzing the officers' warrantless entry into the building, weighing the interests of the public and the government against the individual owner of the warehouse.[159] "The officer conducted this check of the premises to protect the owner's property and safeguard the community, not to search for evidence against the

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[153] *Id.* at 533 (majority opinion).

[154] *Id.* ("The Butes were charged, and later indicted, for possession of methamphetamine with intent to distribute and manufacturing methamphetamine, both in violation of 21 U.S.C. § 841(a)(1).").

[155] *Id.* at 540 ("While the infinite array of facts that may satisfy this requirement must be assessed on a case-by-case basis, it is clear that observing an open and unsecured building, without more, does not. In our judgment, the Fourth Amendment rights of all citizens outweigh the (lesser) expectations of some business owners that law enforcement authorities will enter and secure commercial premises found open at night.").

[156] *Id.* at 542 (Anderson, J., dissenting).

[157] *Id.* (citing LAFAVE, *supra* note 45, § 6.6(b) ("Indeed, entry would be permissible when commercial premises are found to be unlocked and unattended in the evening hours.")).

[158] *Id.* at 541.

[159] *Id.* ("One of the interior doors was partly open. It was the middle of the night. The commercial nature of the building and the fact that it was dark and appeared deserted caused the officer on patrol to investigate. That investigation was limited to shining a flashlight, looking, and assessing if anyone was there. Nothing was touched; the officer did not rummage through any of the building's contents. He only looked.").

owner or tenant."[160] It is evident that the officers in this case were performing a genuine check of the premises suspecting a burglary and there was no time to seek out a warrant since they thought the burglary was in commission.

5. *United States v. Quezada* (8th Cir. 2006)

Although the court in *United States v. Quezada* extended the CCD to the home, that extension fails this Comment's two-fold analytical test of reasonableness that must be considered in order to protect citizen privacy interests under the Fourth Amendment. In *Quezada*, a deputy was sent to someone's home to serve a child protection order.[161] Although the door was shut, the latch was not engaged, and the deputy opened the door slightly when knocking.[162] The deputy entered the home without reason of a bona fide community caretaking activity and charged Quezada with being a felon in possession of a firearm.[163] The court incorrectly defined community caretaking as when an officer has "a reasonable belief that an emergency exists," which suggests that community caretaking is the same as the emergency aid exception of the warrant requirement.[164]

The *Quezada* court failed to define a legitimate community caretaking activity and rarely discussed the privacy interests of the individual. The court relied on the fact that the tenant's lights and television were on, which would make it "more likely that someone was at home"[165] to respond to the deputy. However, there are plenty of situations in which a television or lights could be on in an apartment which would in no way suggest an urgent need to enter the premises. The police went too far when entering the home, and the individual privacy interests as well as public interests far outweigh the governmental interest in entering the

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[160] *Id.* (noting that "[t]he average citizen [would] be dumbfounded at the notion that this officer was prohibited by the Federal Constitution from checking on the safe condition of these premises, under these circumstances, in the manner described.").

[161] United States v. Quezada, 448 F.3d 1005, 1006 (8th Cir. 2006).

[162] *Id.*

[163] *Id.* at 1006-07.

[164] *Id.* at 1007.

[165] *Id.* at 1008.

home in this situation. There were no attendant circumstances suggesting a need for assistance, nor were there any suggesting a need to protect property. The Eighth Circuit allowed the extension of the CCD but interpreted the doctrine too broadly, undermining the privacy protections under the Fourth Amendment.

CONCLUSION

Courts should recognize an expanded view of the community caretaking doctrine in order to justify a warrantless entry of a home when there is a legitimate community caretaking duty of law enforcement officers. Courts must recognize that good faith warrantless searches, when appropriately limited in scope and conducted to provide protection or assistance to citizens in distress, do not violate Fourth Amendment protections. Instead, these intrusions are reasonable because they are occurring in the performance of bona fide community caretaking activities. Police, as community caretakers, are often called upon to keep the peace and they serve to maintain a sense of security among communities.[166] The framework offered here permits courts to distinguish which community caretaking activities are legitimate while also providing a number of factors to take into account when deciding whether that activity is reasonable.

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[166] *See* Helding, *supra* note 15, at 138-39 ("Community caretaking. . . is a description of what police do when they are not investigating crime.").

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