In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

WILLIE OVIEDA,

Defendant and Appellant.

Case No. S247235

Second Appellate District, Division Six, Case No. ~~B277860~~
Santa Barbara County Superior Court, Case No. 1476460
The Honorable Jean M. Dandona, Judge

RESPONDENT'S ANSWER BRIEF ON THE MERITS

XAVIER BECERRA
Attorney General of California
EDWARD C. DUMONT
Solicitor General
GERALD A. ENGLER
Chief Assistant Attorney General
LANCE E. WINTERS
Senior Assistant Attorney General
MICHAEL J. MONGAN
Deputy Solicitor General
DAVID GLASSMAN
Deputy Attorney General
*GEOFFREY H. WRIGHT
Associate Deputy Solicitor General
State Bar No. 307053
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 510-3921
Geoff.Wright@doj.ca.gov
Attorneys for Respondent

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INTRODUCTION

The role of public officers includes investigating crime; but our society also expects police and other public officials to act as first responders for those requiring medical assistance, to reunite lost children with their parents, and to respond to calls about missing persons, sick neighbors, or premises left open at night. These and other "community caretaking" activities frequently involve entries onto property and "searches" governed by the Fourth Amendment. The lead opinion in *People v. Ray* recognized that such searches are constitutional so long as a "prudent and reasonable officer" would have "perceived a need to act in the proper discharge of his or her community caretaking duties." (*People v. Ray* (1999) 21 Cal.4th 464, 477 (lead opn.).) *Ray*'s standard strikes the correct constitutional balance between society's interest in appropriate community caretaking by law enforcement and an individual's interest in being free from unwanted government intrusions.

Ovieda argues that officers should generally be required to obtain a warrant before entering a home to perform a community caretaking function. He would limit warrantless entries to situations in which they appear necessary to prevent "death or imminent injury to human life." (OBM 32.) But as this Court and the high court have made clear, the warrant framework is inapposite when officers act to assist the public, not to investigate crime. That is true whether the need for community caretaking arises in public or within a home. No doubt, an urgent threat to life or limb provides a clear justification for entering a home. But limiting assistance-related searches to those circumstances would prohibit other important community caretaking functions that society rightly expects public officers to perform.

Preserving *Ray*'s community caretaking doctrine will not undermine the general rule that police must obtain a warrant before entering a home to

investigate crime. Courts are well equipped to distinguish reasonable community caretaking entries from unreasonable or pretextual searches. Many categories of police activity are evaluated on a case-by-case basis using an objective standard of reasonableness. And under *Ray*, the community caretaking doctrine will not apply if the record shows that police entered a home to investigate crime rather than to render aid.

In this case, police acted reasonably in entering Ovieda's home to ensure, among other things, that he did not regain access to firearms while he still posed a danger to himself. But even if this Court were to conclude that the particular facts here did not justify a protective entry, it should reaffirm the community caretaking doctrine. That rule provides the most appropriate framework for evaluating a range of important and highly desirable activities on the part of public officials.

STATEMENT OF THE CASE

A. Factual Background

In June 2015, the Santa Barbara Police Department received a call from Willie Ovieda's sister reporting that Ovieda was suicidal. (Reporter's Transcript (RT) 8, 35.) She told police that Ovieda was with two friends at his home, and that, within the last two hours, he had attempted to grab a gun while threatening to kill himself. (RT 35-36.) The sister was relaying information received from Ovieda's friends; she was not with Ovieda, nor had she witnessed the incident. (RT 8-9, 35-36.)

After arriving at Ovieda's house, police spoke with Ovieda and his two friends outside. (RT 21, 25, 36-39.) One of the friends, Trevor Case, was emotional and told the officers that he feared Ovieda would hurt himself because Ovieda was depressed. (RT 37-38.) Case also confirmed that Ovieda had threatened to kill himself a few hours earlier. (RT 37.) He described how he and his wife had physically restrained Ovieda to prevent him from grabbing a gun. (RT 37-38.) Case informed the officers that he

had removed a handgun and two rifles from Ovieda's bedroom and placed them in the garage. (RT 37-38.) Case was unsure whether Ovieda kept other guns in the home. (RT 38.) For his part, Ovieda initially denied making suicidal comments or having access to firearms. (RT 39.)

One of the responding officers considered the situation "emotional," "dynamic," and "volatile." (RT 9, 13.) The officers concluded that a search of the home was necessary to ensure that no other dangerous weapons were left out in the open, that nobody was inside and armed, and that no one was injured or needed assistance. (RT 11-12, 39-40.) While inside, officers saw, in plain view, equipment for cultivating and producing concentrated cannabis. (RT 13-14.) When they entered the garage, they observed a silencer, several high-capacity magazines, over 100 rounds of ammunition, and four to six firearms. (RT 18.) One was an "Uzi style submachine gun." (RT 18.) The officers also observed additional supplies for growing and processing marijuana. (RT 17-18.)

B. Proceedings Below

Ovieda was charged with (1) manufacturing hashish oil or cannabis wax (Health & Saf. Code, § 11379.6, subd.(a)); (2) possession of an assault weapon (Pen. Code, § 30605, subd. (a)); (3) possession of a silencer (Pen. Code, § 33410); and (4) possession of a short-barreled shotgun or short-barreled rifle (Pen. Code, § 33210). (Clerk's Transcript (CT) 14-16.) He pleaded not guilty to all counts and moved to suppress the evidence obtained from his home and garage as fruits of an unlawful search. (CT 17, 19-26.)

At the suppression hearing, the prosecutor argued that the entry into Ovieda's home was justified under the protective sweep and community caretaking doctrines. (RT 48; see also CT 31-34.) The prosecutor noted that the officers did not know how many weapons were inside the home or whether the weapons were secure. (RT 47-49.) Ovieda argued that the

officers lacked a sufficient basis to conclude that he or anyone else was in danger at the time the officers entered his home. (RT 50-52.)

The superior court denied the motion to suppress. (RT 54.) In explaining its ruling, the court began by distinguishing the protective sweep and community caretaking doctrines, and noting that its ruling was grounded in the community caretaking doctrine. (RT 53-54.) The court said that it found credible the officers' testimony "that they wanted to remove firearms" and "didn't know if there were others in the residence, either victims or other people who might cause a harm." (RT 53.) In the court's view, the officers were "not required to accept Mr. Case's word that he removed the firearm that Mr. Ovieda had reached for." (RT 53.) The court concluded that the officers were "acting under their community caretaker function" when they searched Ovieda's house and would be "subject to criticism . . . had they not done what they did." (RT 54.) Ovieda withdrew his plea of not guilty, pleaded no contest to counts 1 and 2, and the remaining counts were dismissed. (RT 60-66; CT 50-58, 60.) The court suspended judgment and sentenced Ovieda to three years of probation. (RT 74-76.)

The Court of Appeal affirmed, over a dissent. (Opn. p. 2.) Deferring to the trial judge's express factual findings, the appellate court concluded that the search was reasonable under the circumstances. (Opn. pp. 2, 5.) It reasoned that Ovieda's actions "put himself at risk, his friends at risk, and the responding officers at risk." (Opn. p. 6.) And it inferred from the circumstances that the officers justifiably feared for Ovieda's safety (opn. p. 11), and were entitled to enter his home to "separate appellant from his firearms" and "safeguard everyone" (opn. p. 10). In reaching that conclusion, it relied principally on *People v. Ray* (1999) 21 Cal.4th 464, where three justices of this Court recognized that local law enforcement perform a variety of "community caretaking functions" apart from

investigating crime, and that searches to perform these functions may be objectively reasonable even in the absence of a warrant. (Opn. p. 5, citing *Ray, supra*, 21 Cal.4th at pp. 471, 473 (lead opn.).) The Court of Appeal concluded that requiring a warrant in these circumstances "would be at variance with common sense and violative of the letter and spirit" of the community caretaking doctrine. (Opn. p. 9.)[1] The dissent concluded that none of the exceptions to the warrant requirement, including the community caretaking doctrine, justified entering Ovieda's home. (Dis. opn. pp. 2-10.)

ARGUMENT

I. THIS COURT SHOULD PRESERVE THE COMMUNITY CARETAKING DOCTRINE ANNOUNCED IN *PEOPLE V. RAY*

A. The Community Caretaking Doctrine

The Fourth Amendment proscribes "unreasonable searches and seizures." (U.S. Const., 4th Amend.) As its text makes plain, "the ultimate touchstone of the Fourth Amendment is 'reasonableness.'" (*Brigham City, Utah v. Stuart* (2006) 547 U.S. 398, 403; *People v. Troyer* (2011) 51 Cal.4th 599, 602.)

This case concerns how courts should evaluate the reasonableness of entries into a home that are made for the purpose of providing assistance rather than investigating crime. Modern law enforcement is obliged to "perform a multitude of community functions apart from investigating crime." (*United States v. Coccia* (1st Cir. 2006) 446 F.3d 233, 238.) By "design or default," police are expected to "'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.'" (3

[1] The People conceded before the Court of Appeal that the protective sweep doctrine did not apply. (Opn. p. 4, fn. 2.)

LaFave, Search and Seizure (5th ed. 2017) § 6.6, quoting 1 ABA Standards for Criminal Justice (2d ed. 1980) §§ 1-2.2.) These functions have a "longstanding tradition" in the United States. (Livingston, *Police, Community Caretaking, and the Fourth Amendment* (1998) 1998 U. Chi. Legal F. 261, 302.) Studies on local policing estimate that up to two-thirds of police time is spent on non-law-enforcement activities. (See Livingston, *supra*, 1998 U. Chi. Legal F. at p. 263, fn. 9, citing Walker, The Police in America (McGraw Hill 2d ed. 1992) p. 112.)

Communities generally expect public servants to perform these functions. "'[M]any citizens look to the police to assist them in a variety of circumstances, including delivering emergency messages, giving directions, searching for lost children, assisting stranded motorists, and rendering first aid.'" (*State v. Kinzy* (Wash. 2000) 5 P.3d 668, 676.) Indeed, many community caretaking activities have "achieved relatively unquestioned acceptance in local communities." (Livingston, *supra*, 1998 U. Chi. Legal F. at p. 302; see also *Ray*, *supra*, 21 Cal.4th at p. 480 (lead opn.).) At the same time, community caretaking sometimes requires police to intrude on personal privacy or restrain persons or property, thereby implicating the Fourth Amendment.

"'[W]here a search is undertaken by law enforcement officials to discover evidence of criminal wrongdoing, . . . reasonableness generally requires the obtaining of a judicial warrant.'" (*People v. Macabeo* (2016) 1 Cal.5th 1206, 1213, quoting *Riley v. California* (2014) 134 S.Ct. 2473, 2482.) But other categories of searches are properly analyzed for their reasonableness on a case-by-case basis under the totality of the circumstances. (See, e.g., *United States v. Knights* (2001) 534 U.S. 112, 118-119, 121.)

Under the community caretaking doctrine, courts evaluate the objective reasonableness of assistance activities on a case-by-case basis. In

People v. Ray, the lead opinion adopted the following standard to gauge the reasonableness of community caretaking entries: "Given the known facts, would a prudent and reasonable officer have perceived a need to act in the proper discharge of his or her community caretaking functions." (*Ray*, *supra*, 21 Cal.4th at p. 477 (lead opn.).) The officer "'must be able to point to specific and articulable facts from which he concluded that his action was necessary.'" (*Id.*, quoting *People v. Block* (1971) 6 Cal.3d 239, 244.) Evidence that purported community caretaking was instead a pretext for a criminal investigation will defeat application of the doctrine. (*Id.*)

Ray involved the response to a report that the front door of an apartment had been open all day and that the interior was in "shambles." (*Ray*, *supra*, 21 Cal.4th at p. 468 (lead opn.).) After announcing their presence and receiving no response, police entered "'to see if anyone inside might be injured, disabled, or unable to obtain help.'" (*Id.*) This Court upheld the search, with three justices relying on the community caretaking doctrine. (*Id.* at pp. 478-480.) These justices concluded that "[w]hile the facts known to the officers may not have established exigent circumstances or the apparent need to render emergency aid, they warranted further inquiry to resolve the possibility someone inside required assistance or property needed protection." (*Id.* at p. 478.)[2]

Courts widely recognize the community caretaking doctrine in cases involving searches and seizures of automobiles. (See, e.g., *Coccia*, *supra*, 446 F.3d at p. 238; OBM 34-35.) And courts universally agree that

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[2] Three justices concurred on the ground that exigent circumstances justified the warrantless entry. (*Id.* at pp. 480-482 (conc. opn.).) These justices took no position on the community caretaking doctrine. (See *id.*) Justice Mosk dissented, concluding that exigent circumstances were not present, and that the community caretaking doctrine could not justify entering a home. (*Id.* at pp. 482-488 (dis. opn.).)

government officials may enter a home without a warrant to perform one of their core community caretaking functions—providing emergency aid. (See, e.g., *Brigham City*, *supra*, 547 U.S. at p. 403; *Troyer*, *supra*, 51 Cal.4th at p. 605.) As Professor LaFave catalogues, courts have upheld the reasonableness of community caretaking entries into private areas in a wide variety of circumstances:

> [Where] entry is made to thwart an apparent suicide attempt; to rescue people from a burning building; to check on any occupants of a hotel room from which a person had fallen[;] to seek an occupant reliably reported as missing; to seek a person known to have suffered a gunshot or knife wound; to assist a person recently threatened therein to retrieve his effects; to seek possible victims of violence in premises apparently burglarized recently; to assist a person or animal within reported or seen to be ill or injured; to ensure the prompt involuntary commitment of a person who is apparently mentally ill and dangerous; to rescue a person being detained therein; to assist unattended small children; to ensure a weapon within does not remain accessible to children there; to discover the location of explosives; to seek persons possibly affected by detected noxious fumes therein; to respond to what appears to be a fight within; or to check out an occupant's hysterical telephone call to the police, screams in the dead of the night, or an inexplicably interrupted telephone call from the premises.

(3 LaFave, *supra*, § 6.6(a), fns. omitted.)

Many of the cases compiled by Professor LaFave expressly rely on the community caretaking doctrine in concluding that a warrantless search was reasonable. (See, e.g., *United States v. Smith* (8th Cir. 2016) 820 F.3d 356, 360; *People v. Slaughter* (Mich. 2011) 803 N.W.2d 171, 177-180; *State v. Deneui* (S.D. 2009) 775 N.W.2d 221, 239; *State v. Pinkard* (Wis. 2010) 785 N.W.2d 592, 594, 601.) Others hold that the need to render emergency aid justified the warrantless search, without expressly framing their discussion in terms of community caretaking. But as courts have recognized, providing emergency aid is one of law enforcement's

community caretaking duties. (See, e.g., *Ray*, *supra*, 21 Cal.4th at p. 471; *Martin v. City of Oceanside* (9th Cir. 2004) 360 F.3d 1078, 1082.)

Ovieda argues that the community caretaking doctrine should be limited to automobiles, and that the need to prevent death or imminent injury is the only justification that can support a community caretaking entry into the home without a warrant. (See OBM 33-41.) The lead opinion in *Ray* rejected both arguments, concluding that "circumstances short of a perceived emergency may justify a warrantless entry [of a home]" in certain circumstances. (*Ray*, *supra*, 21 Cal.4th at p. 473 (lead opn.).) The Sixth and Eighth Circuits, and the highest courts of Maryland, Michigan, South Dakota, and Wisconsin also hold that the community caretaking doctrine provides a justification for entering a home without a warrant. (See *United States v. Rohrig* (6th Cir. 1996) 98 F.3d 1506, 1519, 1525; *Smith*, *supra*, 820 F.3d at p. 360; *State v. Alexander* (Md. 1999) 721 A.2d 275, 284-287; *Slaughter*, *supra*, 803 N.W.2d at p. 177-180; *Deneui*, *supra*, 775 N.W.2d at p. 239; *Pinkard*, *supra*, 785 N.W.2d at pp. 594, 601.)[3]

As explained below, that understanding of the community caretaking doctrine is consistent with Fourth Amendment principles. The reasonableness of community caretaking searches must be evaluated on a case-by-case basis, whether the intrusion involves an automobile or a home.

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[3] The Sixth Circuit described its holding in *Rohrig* as resting on exigent circumstances. (See *Rohrig*, *supra*, 98 F.3d at p. 1521.) But the officers in *Rohrig* entered a house without a warrant to abate a nuisance which "did not pose a substantial and immediate threat" to safety. (*Id.* at p. 1519.) And in upholding the entry, the court emphasized that the officers were acting in their community caretaking role. (*Id.* at pp. 1521, 1523.) The State agrees with Ovieda that *Rohrig* "relied on the community caretaking exception to permit a non-emergency entry of a residence." (OBM 45.)

And although the need to prevent death or imminent injury may provide the strongest case for entering a home, community caretaking can justify entering a home in other circumstances.

B. The Warrant and Probable Cause Framework Is Inappropriate When Evaluating the Reasonableness of Community Caretaking Activities

The lead decision in *Ray* correctly concluded that community caretaking is a category of police activity that can be objectively reasonable on its own account, independent of the warrant requirement that generally applies when the purpose of a search is to discover evidence of crime. In all Fourth Amendment cases, "the permissibility of a particular practice 'is judged by balancing its intrusion on the individual's Fourth Amendment interests against its promotion of legitimate governmental interests.'" (*Skinner v. Railway Labor Executives' Ass'n* (1989) 489 U.S. 602, 619, quoting *Delaware v. Prouse* (1979) 440 U.S. 648, 654.) "In most criminal cases, [courts] strike this balance in favor of the procedures described by the Warrant Clause of the Fourth Amendment." (*Id.* at p. 619.) For that reason, warrantless searches and seizures are sometimes described as "presumptively unreasonable." (*Payton v. New York* (1980) 445 U.S. 573, 586.)

But "there is no fixed standard of reasonableness that applies to all types of governmental action which is subject to the mandates of the Fourth Amendment." (*Ingersoll v. Palmer* (1987) 43 Cal.3d 1321, 1328, italics omitted, quoting *People v. Hyde* (1974) 12 Cal.3d 158, 173 (conc. opn.).) When faced with "a type of official conduct that (1) has objectives qualitatively different from those of the conventional search and seizure in the criminal context and (2) cannot feasibly be subjected to regulation through the traditional probable cause standard of justification," this Court "may assess the reasonableness of the particular type of search and seizure

by examining and balancing the governmental interest justifying the search and the invasion which the search entails." (*Id.*, italics omitted, quoting *Hyde*, *supra*, 12 Cal.3d at p. 173 (conc. opn.).)

The purpose of community caretaking is to assist the public, not to investigate crime. The warrant and probable cause framework, on the other hand, is uniquely tailored to criminal investigations. "Warrants cannot be issued . . . without the showing of probable cause required by the Warrant Clause." (*Vernonia School Dist. 47J v. Acton* (1995) 515 U.S. 646, 653.) And the probable cause standard is "peculiarly related to criminal investigations." (*South Dakota v. Opperman* (1976) 428 U.S. 364, 370, fn. 5.) Requiring a warrant tempers the zeal of law enforcement "engaged in the often competitive enterprise of ferreting out crime." (*Johnson v. United States* (1948) 333 U.S. 10, 14.) It "assures that legal inferences and conclusions as to probable cause will be drawn by a neutral magistrate unrelated to the criminal investigative-enforcement process." (*Opperman*, *supra*, 428 U.S. at p. 370, fn. 5.)

For this reason, the warrant requirement and the probable cause standard are not appropriate for evaluating the reasonableness of community caretaking activities. The federal Supreme Court recognized as much in *Cady v. Dombrowski* (1973) 413 U.S. 433, which considered what the Fourth Amendment requires of officers who seek to inventory the contents of a vehicle in police custody. (*Id.* at pp. 442-443.) The Court described an inventory search as one of the "community caretaking functions" of local police—functions "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." (*Id.* at p. 441.) Since an inventory search is incident to the caretaking function of the local police, *Cady* held that police do not

need a warrant before inventorying the contents of a vehicle in police custody. (See *id.* at pp. 447-448; *Opperman*, *supra*, 428 U.S. at p. 374.)[4]

In reaching that conclusion, *Cady* explained that traditional Fourth Amendment standards may be inappropriate tools for reviewing many of the day-to-day interactions between local officials and the public. Those standards developed when the Fourth Amendment applied only to federal officials, whose contact with the public almost always involved the investigation of crime. (See *Cady*, *supra*, 413 U.S. at p. 440.) Local law enforcement, in contrast, frequently interacts with the public in less adversarial contexts, demanding a fresh assessment of how Fourth Amendment norms should apply. (See *id.* at p. 441; see also *Terry v. Ohio* (1968) 392 U.S. 1, 20 ["[W]e deal here with an entire rubric of police conduct—necessarily swift action predicated upon the on-the-spot observations of the officer on the beat—which historically has not been, and as a practical matter could not be, subjected to the warrant procedure."].)[5]

In later cases applying *Cady*, the high court has repeatedly emphasized that the warrant and probable cause framework is simply "inapplicable" to inventory searches, because these searches are "noncriminal" and "noninvestigative" in nature. (*Opperman*, *supra*, 428 U.S. at p. 370, fn. 5.) Because the "justification for such searches does not rest on probable cause, . . . the absence of a warrant is immaterial to the

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[4] Inventory searches serve a community caretaking function because they "protect an owner's property while it is in the custody of the police," "insure against claims of lost, stolen, or vandalized property," and "guard the police from danger." (*Colorado v. Bertine* (1987) 479 U.S. 367, 372.)

[5] That community caretaking "differs decidedly from the concerns that prompted the framers of our Constitution to adopt the Fourth Amendment" influenced the lead opinion in *Ray*. (*Ray*, *supra*, 21 Cal.4th at p. 472 (lead opn.).)

reasonableness of the search." (*Illinois v. Lafayette* (1983) 462 U.S. 640, 643; see also *Bertine*, *supra*, 479 U.S. at p. 371.)

For the same reason, this Court has rejected the traditional probable cause standard in the context of entries to render emergency aid. In *People v. Troyer* (2011) 51 Cal.4th 599, 606, the defendant argued that police must have "probable cause" before entering a home to render emergency aid. This Court disagreed, citing the lead opinion in *Ray* for the proposition that the probable cause standard is "inappropriate" in evaluating assistance activities. (*Id.*, quoting *Ray*, *supra*, 21 Cal.4th at p. 475 (lead opn.).)

What is true in the context of inventory and emergency aid searches is true of all community caretaking entries, whether they involve automobiles or dwellings. When police enter a home to assist or protect persons in need, the "justification for such searches does not rest on probable cause" to believe a crime has been committed. (*Lafayette*, *supra*, 462 U.S. at p. 643.) Accordingly, standards adapted to review the constitutionality of criminal investigations "are not helpful in making the determination of reasonableness." (*Troyer*, *supra*, 51 Cal.4th at p. 606, quoting *Ortiz v. State* (Fla.Dist.Ct.App. 2009) 24 So.3d 596, 606 (en banc) (conc. opn.); see also *Lafayette*, *supra*, 462 U.S. at p. 643; *Bertine*, *supra*, 479 U.S. at p. 371.) The warrant and probable cause framework is simply "inapplicable." (*Opperman*, *supra*, 428 U.S. at p. 370, fn. 5.)[6]

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[6] Indeed, the nature of community caretaking will frequently make it impossible to establish the probable cause necessary to obtain a warrant. (See, e.g., Livingston, *supra*, 1998 U. Chi. Legal F. at pp. 275, 281.) "The failure to obtain a warrant should not be the basis for condemning an otherwise appropriate intrusion when a warrant could not have been obtained in any event." (*Id.* at p. 281; see also *Rohrig*, *supra*, 98 F.3d at p. 1523, fn. 9 ["If a warrant cannot be obtained [to abate an ongoing neighborhood disturbance], we can only conclude that the warrant mechanism is unsuited to the type of situation presented in this case."].)

C. The Community Caretaking Doctrine Legitimately Extends to Entries of the Home

Ovieda acknowledges that the community caretaking doctrine may excuse police from having to obtain a warrant to search or seize automobiles, but he argues that the doctrine should not apply to entries of a home. (OBM 33-38.) Stressing the constitutional distinction between cars and homes, he argues that *Cady* did not intend to establish a community caretaking doctrine applicable to entries of a home. (OBM 33-38.) His argument relies heavily on the fact that *Cady* and later inventory search cases involved searches of automobiles. (OBM 33-34.) While there are important differences between how the Fourth Amendment applies to homes and automobiles, the principles underlying *Cady* support the conclusion that the community caretaking exception extends to the home.

It is common ground that "when it comes to the Fourth Amendment, the home is first among equals." (*Florida v. Jardines* (2013) 569 U.S. 1, 6.) The State agrees that *Cady* (and other inventory search cases) "should not apply in the same manner to warrantless searches of homes." (OBM 36.) The inventory search doctrine permits police to inventory the contents of impounded vehicles and any container within that vehicle, so long as officers follow standardized procedures and the inventory is not a pretext to search for evidence of criminal activity. (See, e.g., *Bertine*, *supra*, 479 U.S. at pp. 372-376.) That doctrine assuredly does not permit police to inventory the contents of a home after arresting its owner. But the community caretaking doctrine, adopted by the lead opinion in *Ray*, authorizes no such thing. Under that doctrine, entries into the home are permissible only if officers face an objectively reasonable "need to act" in furtherance of a community caretaking function, and what they do inside must be carefully tailored to that purpose. (*Ray*, *supra*, 21 Cal.4th at p. 477 (lead opn.).)

While *Cady* and other inventory cases did not involve a search of a home, they do inform the appropriate standard for evaluating searches performed for a purpose other than investigating crime. As discussed, these cases recognize that the warrant and probable cause framework is "inapplicable" when assessing the reasonableness of community caretaking activities. (See, e.g., *Opperman*, *supra*, 428 U.S. at p. 370, fn. 5.) That principle finds broad support beyond *Cady*. On many occasions, this Court and the high court have determined that a case-by-case assessment of reasonableness is appropriate where a particular government practice is justified on grounds other than the general need for law enforcement. (See, e.g., *Ingersoll*, *supra*, 43 Cal.3d at pp. 1327-1328; *Vernonia School Dist. 47J*, *supra*, 515 U.S. at p. 653.) That principle is not limited to police practices involving automobiles. (See *Griffin v. Wisconsin* (1987) 483 U.S. 868, 873-874, 876 [search of a probationer's home]; *Skinner*, *supra*, 489 U.S. at pp. 620-621 [federally mandated drug tests of railroad employees]; *O'Connor v. Ortega* (1987) 480 U.S. 709, 721-725 (plur. opn.) [work-related search of government employee's desk and office].)

Ovieda observes (at OBM 42-43) that the Third, Seventh, Ninth, and Tenth Circuits have rejected the community caretaking doctrine outside the context of automobile searches. (See *Ray v. Township of Warren* (3d. Cir. 2010) 626 F.3d 170, 177; *United States v. Pichany* (7th Cir. 1982) 687 F.2d 204, 207-209; *United States v. Erickson* (9th Cir. 1993) 991 F.2d 529, 532-533; *United States v. Bute* (10th Cir. 1994) 43 F.3d 531, 534-535.) Like Ovieda, these circuits place too much emphasis on *Cady*'s distinction between cars and homes. In *Pichany*, for example, the Seventh Circuit concluded that *Cady* did not support a warrantless entry into a warehouse. (*Pichany*, *supra*, 687 F.2d at pp. 207-209.) The court principally distinguished *Cady* on the ground that it "involved the search of an impounded automobile while the present case involves the search of a

business warehouse." (*Id.* at p. 208.) The Ninth Circuit followed a similar approach in *Erickson*, concluding that *Cady* was unhelpful because it hinged on the "'constitutional difference' between searching a house and searching an automobile." (*Erickson*, *supra*, 991 F.2d at p. 532; see also *Bute*, *supra*, 43 F.3d at p. 535 ["[T]he principle of *Cady* is inapplicable here."]; *Township of Warren*, *supra*, 626 F.3d at p. 177 [*Cady* was "based on the distinction between automobiles and homes" and "cannot be used to justify warrantless searches of a home"].)[7] But these decisions largely ignore *Cady*'s broader teaching—applied consistently in other contexts—that the warrant and probable cause framework is inapposite when evaluating police practices that have objectives other than investigating crime. There is no logical basis for distinguishing homes from automobiles for purposes of determining the appropriate standard of reasonableness to govern noncriminal searches.

Moreover, the reasons for treating cars differently from homes under the Fourth Amendment cannot fully explain the decision in *Cady*. Inventory searches of automobiles typically occur in circumstances where there is little or no possibility that the arrestee (or anyone else) could remove evidence from the impounded vehicle. (See *Cady*, *supra*, 413 U.S. at pp. 441-442.) And while the inventory search doctrine does rest in part on a vehicle owner's reduced expectation of privacy in its contents (*id.* at p. 442), diminished privacy expectations cannot fully explain the doctrine.

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[7] There is no clear conflict between the Ninth Circuit's holding in *Erickson* and the lead opinion in *Ray*. *Erickson* concluded that "the fact that [an officer] may have been performing a community caretaking function at the time cannot *alone* justify this intrusion." (*Erickson*, *supra*, 991 F.2d at p. 532, italics added.) Under *Ray*, entry into a home is justified only if police perceive an objectively reasonable "need to act" in furtherance of a community caretaking function. (*Ray*, *supra*, 21 Cal.4th at p. 476 (lead opn.).)

The general automobile exception frees law enforcement from having to obtain a warrant before searching a car, but police must still possess probable cause. (See *United States v. Ross* (1982) 456 U.S. 798, 823-824.) *Cady*, on the other hand, permits inventory searches without a warrant or any degree of individualized suspicion. (See *Cady*, *supra*, 413 U.S. at p. 448; *Opperman*, *supra*, 428 U.S. at pp. 374-376.) *Cady* must rest at least in part on the principle that the justifications for requiring a warrant and individualized suspicion lose force when the purpose of a search is not to investigate crime—which is how the high court itself has explained *Cady* numerous times. (See, e.g., *Opperman*, *supra*, 428 U.S. at p. 370, fn. 5; *Lafayette*, *supra*, 462 U.S. at p. 643; see also *Ortiz v. State*, *supra*, 24 So.3d at pp. 606-607 (en banc) (conc. opn.).) That principle remains sound whether a search involves a car or a home.

Moreover, other Fourth Amendment precedent provides further support for holding that the community caretaking doctrine applies to the home. It is well established that courts should consider the "nature" and "character" of a search in determining the appropriate standard of reasonableness. (*Camara v. Municipal Court of the City & County of San Francisco* (1967) 387 U.S. 523, 534, 537.) Warrantless inventory searches are reasonable in part because they "serve to protect an owner's property while it is in the custody of the police." (*Bertine*, *supra*, 479 U.S. at p. 371 ["[O]ur cases accord[] deference to police caretaking procedures designed to secure and protect vehicles and their contents within police custody."].) And searches of probationers' homes can be reasonable without a warrant or probable cause in part because the relationship between the probation

officer and probationer "is not, or at least not entirely, adversarial." (*Griffin, supra*, 483 U.S. at p. 879; see also *id.* at pp. 876-877.)[8]

The nature and character of community caretaking searches favor a case-by-case assessment of reasonableness, even when those searches involve the entry of a home. When officers check on an elderly person following calls from concerned family, or respond to reports that a person is suicidal, they act out of concern for that person's safety. That the public interests underlying these intrusions will frequently align with the interests of the individuals whose homes are searched distinguishes assistance searches from criminal investigations. (See, e.g., *Bertine*, *supra*, 479 U.S. at p. 371; *Griffin*, *supra*, 483 U.S. at pp. 876-877, 879.)

Community caretaking searches also impose a different sort of privacy intrusion from a criminal investigatory search. In *Camara*, the federal Supreme Court concluded that health and safety inspections of a person's home involve a "relatively limited invasion of the urban citizen's privacy" because they are "neither personal in nature nor aimed at the discovery of evidence of crime." (*Camara*, *supra*, 387 U.S. at p. 537.) Like safety inspections, a police entry to render assistance is not aimed at discovering evidence of crime. And although community caretaking is "personal" in the sense that its goal is to provide assistance to a particular person, the noncriminal nature of community caretaking diminishes the stigma typically associated with being the target of criminal suspicion.

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[8] Searching a probationer's home for contraband is clearly "adversarial" in some respects. *Griffin* focused on the broader social context in which these searches occur, which distinguished them from criminal investigations. (See *Griffin*, *supra*, 483 U.S. at p. 879.) Community caretaking activities likewise occur in a different social context from criminal investigations. (Livingston, *supra*, 1998 U. Chi. Legal F. at pp. 297-298.) That holds true even if, in a particular case, the person whom police are acting to assist does not welcome the assistance.

(See *Hyde*, *supra*, 12 Cal.3d at p. 167 [contrasting airport screenings with the "'annoying, frightening, and perhaps humiliating experience' of a criminal search"; *id.* at p. 177 (conc. opn.) [airport screening involve "no social stigma" and "do not run the risk of public ridicule or suspicion"].)

In short, the constitutional difference between homes and automobiles does not undermine the justification for evaluating the reasonableness of all community caretaking entries on a case-by-case basis. To be sure, the heightened protection afforded to homes "counsels a cautious approach when the exception is invoked to justify law enforcement intrusion into a home." (*Deneui*, *supra*, 775 N.W.2d at p. 239.) The sanctity of the home should bear on the determination of whether a particular community caretaking entry is reasonable. But public officials have a duty to protect people and property wherever they are situated. And the probable cause standard remains an inapposite framework for determining the reasonableness of all assistance searches wherever they occur.[9]

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[9] Contrary to Ovieda's suggestion (OBM 67), evaluating the reasonableness of community caretaking entries on a case-by-case basis does not afford the person who is subject to the search *less* Fourth Amendment protections than someone suspected of criminal activity. While the high court has observed that law-abiding citizens are "fully protected" by the Fourth Amendment, the same case held that routine administrative inspections of homes can be reasonable without the showing of probable cause required in criminal investigations. (*Camara*, *supra*, 387 U.S. at pp. 530, 538.) The Court plainly did not believe it was affording less protection to those subject to safety inspections than to those suspected of a crime; it simply adjusted the appropriate Fourth Amendment standard in light of the public and private interests involved. (See *id.* at pp. 534-538.)

D. Community Caretaking Entries Can Be Reasonable in Circumstances That Do Not Involve Apparent Exigencies or Emergencies

Ovieda argues that the Fourth Amendment permits police to enter a home without a warrant only in a "true emergency or exigency," which he defines as circumstances "requiring the immediate apprehension of a criminal, the curtailing of a crime, or the prevention of death or imminent injury to human life" to someone inside the home. (OBM 32; see also *id.* at pp. 50-54, 62-65 [emphasizing that police must be acting to assist someone "inside the home"].) Only the last of these situations—the need to prevent "death or imminent injury to human life"—implicates a community caretaking function apart from investigating crime. Thus, accepting Ovieda's argument would bar police and other first responders from entering a home in their assistance capacity unless the officers can demonstrate an objectively reasonable belief that someone inside the home faces death or imminent injury.[10]

The Fourth Amendment does not require that result. What its reasonableness standard demands in any situation must be determined with "'at least some measure of pragmatism.'" (*Troyer, supra*, 51 Cal.4th at p. 606, quoting *Mora v. City of Gaithersburg* (4th Cir. 2008) 519 F.3d 216, 222.) Although the need to save an occupant from "death or imminent injury" (OBM 32) offers the most compelling case for entering a home, limiting entries to those circumstances would foreclose other assistance functions that society expects—and should expect—its public servants to perform. For example, Ovieda's standard for emergency apparently

[10] The Fourth Amendment applies with equal force to the actions of all government officials, including firefighters and other first responders. (*Michigan v. Tyler* (1978) 436 U.S. 499, 504-505.) The standard this Court adopts to regulate assistance searches will therefore set the conditions under which any public official may enter a home to provide aid to the public.

prohibits entering a home in any situation, like this one, where law enforcement acts to aid someone outside the home, no matter how pressing the emergency. (See OBM 50-54, 62-65 [asserting that emergency aid exception applies only when a person "inside the house" faces immediate danger].) And Ovieda's standard would raise serious questions about whether police could enter a home to locate the parents of a child found wandering the streets, or to check on the welfare of an elderly individual (or simply one who lives alone), in response to calls from concerned relatives, colleagues, or neighbors. Under Ovieda's framework, police and first responders would therefore face a decision: continue discharging these historically rooted community caretaking duties and risk violating the Constitution, or tell residents "sorry, we can't help you." (See *Ray*, *supra*, 21 Cal.4th at p. 480 (lead opn.).) Forcing that decision on law enforcement does not comport with a pragmatic application of the Fourth Amendment.

Ovieda argues that the federal Supreme Court has impliedly rejected *Ray*'s community caretaking doctrine. (OBM 29-32.) He is mistaken. Although many cases repeat the maxim that a warrant is generally required to enter a home unless some "exigency" or "emergency" exists, none cabins the range of protective entries to circumstances where public officials can demonstrate grounds to conclude that someone inside the home faces "death or imminent injury." (OBM 32.) Because the standards for exigency and emergency aid do not accommodate the full range of reasonable community caretaking entries, the lead opinion in *Ray* was correct to fashion an appropriate standard to accommodate the remainder.[11]

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[11] As Ovieda observes, there is some confusion regarding the relationship among the exigent circumstances, emergency aid, and community caretaking doctrines. (OBM 46-48.) Many courts distinguish the three doctrines on the grounds that the exigency exception involves circumstances where police are investigating crime, whereas the emergency

(continued...)

The decisions of state and federal courts reveal discomfort with a standard that would limit protective entries to situations where an occupant faces "death or imminent injury." (OBM 32.) For example, at least one federal court of appeals has held that police may enter a home to abate a severe and ongoing nuisance. (*Rohrig*, *supra*, 98 F.3d at p. 1509.)[12] The California Court of Appeal has permitted law enforcement to enter a commercial establishment found open at night for purposes of securing it (*People v. Parra* (1973) 30 Cal.App.3d 729, 733), or to enter a dwelling when law enforcement "reasonably believes an animal on the property is in immediate need of aid due to injury or mistreatment" (*People v. Chung* (2010) 185 Cal.App.4th 247, 732; accord *People v. Williams* (2017) 15 Cal.App.5th 111, 122-123; *Broden v. Marin Humane Society* (1999) 70 Cal.App.4th 1212, 1222). Several federal circuits hold that when effectuating an arrest outside the arrestee's home, officers may enter to "retrieve clothes reasonably calculated to lessen the risk of injury to the defendant" while the arrestee is in police custody. (*United States v. Gwinn* (4th Cir. 2000) 219 F.3d 326, 333; accord *United States v. Butler* (10th Cir.

(...continued)
aid and community caretaking exceptions stem from law enforcement's community caretaking role. (See, e.g., *Hopkins v. Bonvicino* (9th Cir. 2009) 573 F.3d 752, 763; *Sutterfield v. City of Milwaukee* (7th Cir. 2014) 751 F.3d 542, 559-561.) This brief treats the three doctrines separately.

[12] Although the Sixth Circuit has described *Rohrig* as "fact-specific" (see OBM 45-46, quoting *United States v. Williams* (6th Cir. 2003) 354 F.3d 497, 507), that is true of all cases holding that an exigency, emergency, or need for community caretaking justifies an entry into a home. Each doctrine requires courts to determine whether an entry was reasonable based on all the facts known to law enforcement. (*Missouri v. McNeely* (2013) 569 U.S. 141, 150 & fn. 3 [emphasizing that an exigency analysis is "fact-specific" and "case-specific"]; *Troyer*, *supra*, 51 Cal.4th at p. 605 [same for emergency aid doctrine]; *Ray*, *supra*, 21 Cal.4th at pp. 477-478 (lead opn.).)

1992) 980 F.2d 619, 621-622; *United States v. Wilson* (5th Cir. 2002) 306 F.3d 231, 240-241, overruled on other grounds by *United States v. Gould* (5th Cir. 2004) 364 F.3d 578, 586 (en banc).) And courts have permitted warrantless entries into homes to search for a child whose guardian has been arrested, or to locate the parents of children found wandering the streets. (See *United States v. Bradley* (9th Cir. 2003) 321 F.3d 1212, 1213-1215; *People v. Miller* (1999) 69 Cal.App.4th 190, 198-200; *In re Dawn O.* (1976) 58 Cal.App.3d 160, 163-164; *United States v. Taylor* (4th Cir. 2010) 624 F.3d 626, 632.)[13]

Although these decisions generally frame the analysis in terms of "exigency" or "emergency," they do not involve exigencies or emergencies as Ovieda uses those terms. None involved a fleeing felon or situations presenting the risk of destruction of evidence. Few presented circumstances where it could even be argued that someone inside the home faced death or serious injury.[14] These decisions are more plausibly explained on the ground that police in each case reasonably perceived a need to act in furtherance of a community caretaking function, and conducted an entry tailored to the circumstances facing the officers. The community caretaking doctrine adopted by the lead opinion in *Ray* permits

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[13] This Court has held that police are not justified in entering a house to locate the guardian of a lost child where the child is not in distress and police have reason to know that the child's guardian is not inside. (*People v. Smith* (1972) 7 Cal.3d 282, 286.)

[14] When public officials enter a home to abate a nuisance, protect property, obtain appropriate clothing for an arrestee, aid a distressed animal, or aid persons outside the house, they could not plausibly assert that "an occupant is seriously injured or imminently threatened with such injury." (OBM 64, quoting *Brigham City, supra*, 547 U.S. at p. 400; see also *Troyer, supra*, 51 Cal.4th at p. 605 [reciting the quoted language as the correct standard under the emergency aid doctrine].)

courts to uphold entries in precisely those circumstances. (*Ray*, *supra*, 21 Cal.4th at pp. 476-477 (lead opn.).)

Indeed, some courts expressly acknowledge that a community caretaking rationale informed their decision to permit a warrantless entry, even if they label the situation facing police as an exigency or emergency. For example, in holding that police may enter a home to obtain appropriate clothing for an arrestee, the Fourth Circuit cited *Cady* and considered the need to protect an arrestee from the elements, the "slight and temporary" nature of the intrusion, and the absence of any indication that the entry was a pretext to search for evidence of crime. (*Gwinn*, 219 F.3d at pp. 333-334.) In *Sutterfield v. City of Milwaukee* (7th Cir. 2014) 751 F.3d 542, 561, a case Ovieda endorses as a correct application of the emergency aid exception (see OBM 65), the Seventh Circuit stated that the community caretaking doctrine provided the better rubric for evaluating the search before it. Police had entered Sutterfield's home nine hours after receiving a call from her psychiatrist indicating that she was suicidal. (*Id.* at p. 554.) In evaluating the reasonableness of that entry, the court thoroughly contrasted how the exigency, emergency aid, and community caretaking doctrines might apply. (*Id.* at pp. 553-561.) "As a matter of doctrine," the court concluded, "the community caretaking doctrine would potentially be the best fit for this case, in that it captures the beneficent purpose for which police entered Sutterfield's home and leaves more room for the delay that preceded it than the emergency aid doctrine otherwise might." (*Id.* at p. 561.) But the court upheld the search under the emergency aid rubric only because it had previously limited the community caretaking doctrine to searches of automobiles. (*Id.* at pp. 561, 566; see also *Pichany*, *supra*, 687 F.2d at pp. 207-209.)

These cases demonstrate that courts widely apply a community caretaking doctrine in practice, if not always in name. The lead opinion in

Ray was well within the mainstream in concluding that assistance searches involving the home can be reasonable even where police lack a basis to conclude that someone inside the home faces death or imminent injury. (See *Ray*, *supra*, 21 Cal.4th at pp. 474, 477 (lead opn.).) Of course, these cases also suggest that the exigency or emergency aid doctrines, as actually applied by many courts, may be flexible enough to accommodate many of the circumstances in which community caretaking entries are reasonable. But Ovieda's version of those doctrines would bar police from entering a home to discharge other reasonable and important community caretaking functions. The Fourth Amendment does not require that result.[15]

Moreover, even if some courts are willing to uphold community caretaking entries under the exigency or emergency aid exceptions in circumstances that stretch the boundaries of those doctrines, *Ray*'s community caretaking standard offers considerable advantages over that approach. By focusing on narrow criteria of urgency—the "lack of time to secure a warrant" (*McNeely*, *supra*, 569 U.S. at p. 149) or whether "an occupant is seriously injured or imminently threatened with such injury" (*Troyer*, *supra*, 51 Cal.4th at p. 605)—the exigency and emergency aid doctrines invite courts to overlook other factors that should bear on the reasonableness of community caretaking entries. These include societal expectations about assistance activities, the extent and gravity of the privacy intrusion, and the likelihood that the intrusion will accomplish the purpose behind it. (See *Ingersoll*, *supra*, 43 Cal.3d at p. 1338; *Hyde*, *supra*, 12 Cal.3d at p. 167 [airline passengers "generally welcome routine

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[15] To the extent this Court holds that entries into the home are permissible only if an "exigency" or "emergency" exists, it should adopt the approach taken by those state and federal courts that have embraced a broad and flexible understanding of those terms.

inspection procedures because they are the direct and immediate beneficiaries of the screening system"].) Limiting courts to the exigency and emergency rubrics therefore hinders the development of appropriate criteria for judging the reasonableness of assistance searches. And, to the extent courts apply those doctrines as Ovieda understands them, it risks condemning important community caretaking entries that society rightly expects public officials to perform.

E. The Community Caretaking Doctrine Does Not Undermine the General Rule That Police Must Obtain a Warrant to Search a Home for Evidence of Crime

Ovieda argues that the community caretaking doctrine threatens to swallow the warrant requirement, but the doctrine is not nearly as broad as he suggests. (See, e.g., OBM 31-32.)[16] Although the doctrine recognizes that an entry into a home to provide assistance may be objectively reasonable in circumstances less urgent than would be allowed under Ovieda's standards for exigency or emergency, it does not permit a warrantless entry whenever public officers are performing a community caretaking function. (*Ray, supra*, 21 Cal.4th at p. 477 (lead opn.).) An objective assessment of necessity remains central to the reasonableness inquiry. (*Id.*) The officer must point to "specific and articulable facts from which he concluded that his action was necessary." (*Id.*) And the "'officer's post-entry conduct must be carefully limited to achieving the

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[16] In many situations where police enter a home to render aid, the community caretaking doctrine will not come into play because the person whom police are acting to assist will welcome and consent to the entry, establishing a separate exception to the warrant requirement. (See *Schneckloth v. Bustamonte* (1973) 412 U.S. 218, 219.) It is only in circumstances such as *Ray*, where police could not locate anyone before entering the home (*Ray, supra*, 21 Cal.4th at p. 468), or as in this case, where police were unable to obtain the consent of the person they acted to assist, that officers must rely on the community caretaking doctrine.

objective which justified the entry—the officer may do no more than is reasonably necessary to ascertain whether someone is in need of assistance or property is at risk and to provide that assistance or to protect that property.'" (*Id.*, brackets omitted.) In short, the search must be objectively reasonable under the totality of circumstances.

Reviewing searches for their objective reasonableness is the "traditional standard[]" used to evaluate Fourth Amendment claims. (*Wyoming v. Houghton* (1999) 526 U.S. 295, 300.) It requires courts to "weigh[] the gravity of the governmental interest or public concern served and the degree to which" the challenged government conduct "advances that concern against the intrusiveness of the interference with individual liberty." (*Ingersoll*, *supra*, 43 Cal.3d at p. 1338.) That standard is well defined and frequently applied. (See *id.*) There is no basis for fearing that judges will give overbroad application to this well-established standard in the context of community caretaking activities.

Authority applying *Ray* demonstrates that courts have proved capable of discerning the limits of the community caretaking doctrine. In *People v. Morton* (2003) 114 Cal.App.4th 1039, 1042, for example, the Court of Appeal concluded that the community caretaking doctrine did not permit the warrantless entry of the defendants' home. Officers believed marijuana had been stolen from the defendants' property; and since drug thefts may involve violence, they argued that a warrantless entry was required to protect the defendants' life or property. (*Id.* at p. 1048.) The court held that the officers' stated concerns were not supported by the record, and accordingly rejected application of the community caretaking doctrine. (*Id.* at pp. 1048-1049.)

Finally, *Ray* addresses the concern that the community caretaking doctrine will be used to justify searches that are in fact conducted to investigate crime. Under *Ray*, "[a]ny intention of engaging in crime-

solving activities will defeat the community caretaking exception even in cases of mixed motives." (*Ray*, *supra*, 21 Cal.4th at p. 477 (lead opn.).) While pretextual entries should be rare where the governing rules are clear, courts are well-equipped to detect them if and when they occur. In the context of inventory searches, for example, public officials may not impound a vehicle and inventory its contents if their goal is "to investigate suspected criminal activity." (*Bertine*, *supra*, 479 U.S. at p. 376.) Applying that standard, the Court of Appeal has not hesitated to hold inventory searches unlawful where it concluded that impounding the vehicle served no apparent community caretaking purpose, or the record revealed an investigatory motive. (See, e.g., *People v. Torres* (2010) 188 Cal.App.4th 775, 786-790; *People v. Williams* (2006) 145 Cal.App.4th 756, 762-763; *People v. Aguilar* (1991) 228 Cal.App.3d 1049, 1053.) *Ray*'s community caretaking doctrine will not undermine the general rule that police must obtain a warrant before entering a home to investigate crime.[17]

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[17] As Ovieda observes, the United States Supreme Court has held that subjective motivations play no role in determining the reasonableness of searches to render emergency aid. (OBM 72-73, fn. 11, citing *Brigham City*, *supra*, 547 U.S. at pp. 404-406.) *Brigham City* does not require this Court to reassess *Ray*'s inquiry into pretext. The high court has permitted an inquiry into an officer's motivations in the inventory search context precisely because the non-investigatory purpose of the search is what justifies deviating from the warrant and probable cause framework. (See *Whren v. United States* (1996) 517 U.S. 806, 811-812.) Inquiring into an officer's motivations for impounding a vehicle ensures that the inventory search doctrine is not used to evade the general rule that police must possess probable cause when they search a vehicle as part of a criminal investigation. *Ray*'s inquiry into pretext serves the same purpose in the context of community caretaking entries into the home—it safeguards the general rule that police must generally obtain a warrant before entering a home for the purpose of investigating crime.

II. THE EVIDENCE AT ISSUE HERE WAS PROPERLY ADMITTED UNDER THE CIRCUMSTANCES OF THIS CASE

The question in all community caretaking cases is whether, given the known facts, a "prudent and reasonable officer [would] have perceived a need to act in the proper discharge of his or her community caretaking functions." (*Ray*, *supra*, 21 Cal.4th at p. 477 (lead opn.).) Under that standard, "'what is reasonable depends on the context within which a search takes place.'" (*Id.* at p. 472.) Each community caretaking entry "must be assessed according to its own rationale on a case-by-case basis." (*Id.*)

Here, police responded to reports that Ovieda had recently threatened to kill himself. At the time they entered Ovieda's home, they knew the following: Ovieda was depressed and had multiple firearms in his home; approximately two hours earlier, he had threatened to take his own life while he reached for a gun; his friends had physically prevented him from accessing the firearm; his friends had removed three guns from his bedroom, but were unsure whether he kept additional firearms inside his home; and his friends remained concerned that he would try to hurt or kill himself. (RT 37-38.) An officer at the scene described the situation as "emotional and dynamic." (RT 12-13.) After first speaking with Ovieda outside his home, the officers concluded that a sweep of the house was necessary to ensure, among other things, that no other dangerous weapons were left out in the open and that no one was injured or needed assistance. (RT 11-12, 39-40.)

On these facts, it was reasonable for the officers to enter Ovieda's home. The officers knew that Ovieda had kept at least three firearms in his home, and his friends were unsure whether they had been able to secure them all. Simply releasing Ovieda back into his home, without at least accounting for all of his firearms, would have been irresponsible. Indeed,

the trial court believed the officers "would be subject to criticism" and "judged neglectful" had they not attempted to secure Ovieda's weapons. (RT 53-54.)[18]

Ovieda's arguments do not require reversal. First, Ovieda argues that "the threat that appellant previously posed to himself was over, and certainly no longer taking place inside his home" by the time the officers entered his home. (OBM 56, italics omitted.) One of Ovieda's friends, however, continued to fear for Ovieda's safety because of his mental state. (RT 38.) And that concern appeared well-founded, especially considering that Ovieda had recently made suicidal comments while attempting to grab a gun. (RT 37.) Under these circumstances, a prudent police officer would not have taken Ovieda's word that he no longer posed a threat to himself.

Ovieda relies on *Sutterfield v. City of Milwaukee* (7th Cir. 2014) 751 F.3d 542 (OBM 65), but that case actually undermines his position. In *Sutterfield*, nine hours elapsed between when a psychiatrist advised law enforcement that Sutterfield was suicidal and when law enforcement entered her home. (*Sutterfield, supra*, 751 F.3d at p. 553.) Sutterfield told the officers that she did not need their assistance. (See *id.* at pp. 561-562, 566.) The Seventh Circuit upheld the search nonetheless. (*Id.* at p. 566.) The court questioned whether a suicidal person should be deemed "competent to assess the state of her own mental health" (*id.* at p. 561), and concluded that the record contained no evidence, other than Sutterfield's own protestations and the passage of time, indicating that "the crisis had

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[18] Moreover, the officers entered the home not just to secure additional firearms, but also to ensure there was nobody inside who was injured or who needed assistance. (RT 12.) Although Ovieda argues that the officers had no articulable basis to conclude that anyone else was inside (OBM 70), the trial court reasonably concluded that the officers were not required to accept everything they were told at face value (RT 53).

passed and that she no longer presented a threat to herself" (*id.* at p. 566). So too here.

Second, Ovieda questions how officers could prevent him from regaining access to firearms unless they intended to seize his guns, and he questions their authority to do so. (OBM 56-58.) The officers did not specify what they intended to do with any guns found inside Ovieda's home. The trial court found that the officers "wanted to remove firearms." (RT 53.) In any event, the officers' actions were reasonable whether they intended to place the firearms in the garage or to temporarily seize them. Ovieda's friends had been proactive in preventing Ovieda from taking his own life. They had physically restrained Ovieda and removed three firearms from his immediate vicinity and placed them in the garage. (RT 37-38.) If the officers intended only to locate any remaining firearms and place them together in the garage, the officers could have reasonably concluded that Ovieda's friends would continue to take reasonable steps to prevent him from accessing them. If the officers instead intended to seize the weapons temporarily, Ovieda is wrong to assert that "there was no alleged basis" on which to do so. (OBM 56.) There is "no shortage of precedents approving preventative seizures for the sake of public safety." (*Mora v. City of Gaithersburg* (4th Cir. 2008) 519 F.3d 216, 227; see also *Opperman*, *supra*, 428 U.S. at p. 369 ["The authority of police to seize and remove from the streets vehicles impeding traffic or threatening public safety and convenience is beyond challenge."].) Courts have accordingly upheld the seizure of firearms from persons or homes when the firearms, left unsecured, pose a hazard. (See, e.g., *United States v. Antwine* (8th Cir. 1989) 873 F.2d 1144, 1147; *United States v. Harris* (8th Cir. 2014) 747 F.3d 1014, 1018-1019; *State v. Brecunier* (Iowa 1997) 564 N.W.2d 365, 368.) On the facts facing the officers—a suicidal person with at least three

firearms inside his home—it would have been reasonable to conclude that a temporary seizure of the weapons was appropriate.

Third, Ovieda faults the officers for not invoking Welfare and Institutions Code section 5150. (OBM 58-62.) Section 5150 is a state law procedure authorizing the temporary detention of persons suffering from a mental health condition that makes them a danger to themselves or others. Once that person is taken into custody, state law mandates that police obtain a warrant to seize any firearms that person owns. (Welf. & Inst. Code, §§ 8100, 8102; Pen. Code, § 1524, subd. (a)(10).) But these procedures do not govern the reasonableness of the officers' actions under the Fourth Amendment. The question for Fourth Amendment purposes is whether the officers had an objectively reasonable basis to conclude that entry was necessary to secure Ovieda's weapons. Even if the officers might have been acting contrary to state law had they temporarily seized Ovieda's firearms without first invoking section 5150, that would not affect whether the seizure complied with the federal constitution. (See, e.g., *Virginia v. Moore* (2008) 553 U.S. 164, 176 [holding that "state restrictions do not alter the Fourth Amendment's protections"]; *People v. Robinson* (2010) 47 Cal.4th 1104, 1122 [applying Moore to hold that blood draw "collected in violation of our state law" nonetheless complied with the Fourth Amendment].)

Finally, Ovieda argues that police began to suspect him of criminal activity before entering his home, based on certain testimony of the officers. (OBM 72-73.) But after hearing the entire testimony of both officers, the trial court concluded that "there was no evidence . . . of any suspicion that there was anything illegal going on in the home." (RT 52.) Ovieda's counsel agreed. (RT 52.) This Court defers to a trial court's factual findings when reviewing a ruling on a motion to suppress. (*Troyer*, *supra*, 51 Cal.4th at p. 606.) The trial court's conclusion, made after

considering the officer's live testimony and the record as a whole, is supported by substantial evidence.

Under the totality of circumstances, the officers here were justified in entering Ovieda's home to ensure that he did not regain possession of firearms. In any event, the community caretaking doctrine remains the most appropriate framework for reviewing the reasonableness of a home entry such as the one at issue here. To the extent this Court holds that the lower courts erred in denying Ovieda's motion to suppress, it should use this case to reaffirm that doctrine while clarifying its appropriate application.

CONCLUSION

The judgment of the Court of Appeal should be affirmed.

Dated: December 3, 2018

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
EDWARD C. DUMONT
Solicitor General
GERALD A. ENGLER
Chief Assistant Attorney General
LANCE E. WINTERS
Senior Assistant Attorney General
MICHAEL J. MONGAN
Deputy Solicitor General
DAVID GLASSMAN
Deputy Attorney General

GEOFFREY H. WRIGHT
Associate Deputy Solicitor General
Attorneys for Respondent

CERTIFICATE OF COMPLIANCE

I certify that the attached Answer Brief on the Merits uses a 13 point Times New Roman font and contains 10,199 words.

Dated: December 3, 2018

XAVIER BECERRA
Attorney General of California

GEOFFREY H. WRIGHT
Associate Deputy Solicitor General
Attorneys for Respondent

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **People v. Ovieda**
Case No.: **S247235**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On December 3, 2018, I served the attached **RESPONDENT'S ANSWER BRIEF ON THE MERITS** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

Elizabeth K. Horowitz
Law Office of Elizabeth K. Horowitz
5272 South Lewis Avenue, Suite 256
Tulsa, OK 74105

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 3, 2018, at San Francisco, California.

M. Campos
Declarant

M. Campos
Signature

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