IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

vs.

WILLIE OVIEDA,

Defendant and Appellant.

Case No. S247235
2d Crim. No. B277860
Sup. Ct. No. 1476460

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

APPELLANT'S OPENING BRIEF ON THE MERITS

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TO: THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF CALIFORNIA:

ISSUES ON REVIEW

1. Is it constitutional under Fourth Amendment jurisprudence for police officers to rely on a "community caretaking exception" to the warrant requirement, which the United States Supreme Court has only ever applied to searches of vehicles, to enter and search a home without a warrant when there is no probable cause that a crime has been committed, and no exigent circumstances unfolding that would require the immediate entry of the home?

2. If deemed constitutional, can the community caretaking exception, or its subset emergency aid exception, be properly relied upon to enter and search the home of a previously

suicidal subject where all parties present have exited the home and are cooperating fully, there are no facts indicating that anyone else is inside the home or in need of aid, and where the subject of the call no longer poses a danger to himself?

3. Can the community caretaking exception, which is grounded in the assumption that it will apply only when officers are acting in a community caretaking role as opposed to investigating a crime, be properly relied upon to justify a search where facts demonstrate that the officers harbored a mixed motive and had begun to suspect criminal activity at the time they entered and searched the home?

INTRODUCTION

" 'At the very core' of the Fourth Amendment 'stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion.' [Citation.]" (*Kyllo v. United States* (2001) 533 U.S. 27, 31 [121 S.Ct. 2038, 150 L.Ed.2d 94].) "With few exceptions, the question whether a warrantless search of a home is reasonable and hence constitutional must be answered no." (*Ibid.*) In this case, the Court of Appeal answered, "yes," upholding a warrantless search of appellant's home in the absence of probable cause or emergency circumstances, relying instead on the "community caretaking exception" to the Fourth Amendment's warrant requirement.

The police officers in this case were responding to a call from appellant's sister indicating that within the prior two hours, appellant had been having suicidal thoughts and had access to firearms inside his home. Upon the officers' arrival, appellant and his two friends exited the residence upon request. All who were present were cooperative. Appellant was searched and placed in handcuffs outside the home without incident. The situation was defused. It was not until after all this that the officers decided to enter appellant's home to conduct what they called a "protective sweep," which they later attempted to justify under the much broader "community caretaking exception." At the time of entry, appellant and everyone present were outside the home. No testimony, or other evidence, indicated that anyone else was inside, or that appellant continued to pose a danger to himself. Upon searching the home, the officers found evidence of unrelated criminal activity.

The "community caretaking exception" is set forth in the plurality decision of this Court, *People v. Ray* (1999) 21 Cal.4th 464. The lead opinion in *Ray* provides that circumstances short of an emergency may justify the warrantless entry and search of a home where an officer reasonably perceives a need to act in the proper discharge of his or her community caretaking function, such as "where the act is prompted by the motive of preserving life or property." (*Id.* at p. 473 (lead opn. of Brown, J.), quotations omitted.) A version of this exception was first articulated by the United States Supreme Court in the context of searching an impounded automobile. (See *Cady v. Dombrowski* (1973) 413

U.S. 433 [93 S.Ct. 2523, 37 L.Ed.2d 706].) The high court has never extended this exception to searches of homes, and in *Cady* the court based its holding on the constitutional difference between vehicles and residences under the Fourth Amendment.

Because the community caretaking exception, as interpreted by this Court in *Ray*, allows for warrantless entries of homes in circumstances that do not amount to an emergency, it cannot withstand constitutional scrutiny. Moreover, United States Supreme Court precedent makes clear that this exception was only ever intended to apply to searches of automobiles, and the majority of circuit courts, as well as state courts in several other jurisdictions, have refused to extend it to warrantless searches of homes. Therefore, as set forth below, Fourth Amendment jurisprudence demands that this exception be abandoned when evaluating searches of private dwellings, and it must be held that a police officer cannot, in the name of "community caretaking," enter a person's home and conduct a search without a warrant when there is neither a suspected crime occurring, nor an emergency situation unfolding.

In the alternative, were the Court to determine that the lead opinion in *Ray* was properly decided, the Court must still reverse the Court of Appeal's opinion in this case. Even when allegedly performing a community caretaking function, police officers are required to provide sufficiently specific and articulable facts demonstrating that their warrantless search of a home was both necessary and reasonable. In a case such as this

one, where no such facts exist, a warrantless search of a residence cannot be justified.

Here, the officers claimed that they searched the home to ensure that no one else was inside in need of help, and to "secure" the firearms that appellant possessed. But as Justice Perren explained in his dissenting opinion in the Court of Appeal, the officers "admittedly had *no* information that anyone, child or adult, was inside the house and required help. Indeed, everyone reported to be in the house was outside and completely under the officers' control, including the person they came to rescue, appellant Ovieda." (*People v. Ovieda* (2018) 19 Cal.App.5th 614, 624 (dis. opn. of Perren, J.), emphasis in original.) In addition, at the time of entry, "[t]he officers did not believe that appellant was a danger to himself or others." (*Ibid.*) Therefore, the facts known to the officers at the time they entered the home did not support their justifications for a warrantless search, and "the officers had no objectively reasonable belief that searching the home was imperative." (*Ibid.*)

Moreover, there is evidence in the record indicating that by the time the officers entered the home, they had begun to suspect that criminal activity was afoot. *Ray* is very clear that when officers are investigating a suspected crime, even in part, the community caretaking exception to the warrant requirement can no longer apply. Here, the government has conceded that no probable cause of criminal conduct existed, but the facts demonstrate that the officers were suspicious of criminal activity

and taking on an investigatory role. This renders the community caretaking exception inapplicable.

It is well-settled that warrantless searches of homes are *per se* unreasonable, that the unjustified physical entry of a home is the primary evil against which the Fourth Amendment protects, and that regardless of which exception to the warrant requirement might apply, officers of the law must always provide specific and articulable facts demonstrating the necessity of their decision to cross the threshold of an individual's private residence without a warrant. These legal tenets do not, and should not, change when police officers initially arrive at a person's home for reasons other than performing a criminal investigatory function.

In sum, this Court should outright reject the application of the "community caretaking exception" to warrantless searches of homes, as required by the Fourth Amendment and its well-established jurisprudence. Alternatively, if this Court finds that the exception may constitutionally apply to residences, it should nevertheless reverse the Court of Appeal's decision. Because of the apparent lack of reasonably deduced, articulable facts justifying the search that took place, as well as the clear fact that the officers harbored a mixed motive and were acting at least in part on their unparticularized suspicions of criminal activity, the requirements of the community caretaking exception were not satisfied, and reversal is required.

STATEMENT OF CASE

An information filed on November 25, 2015, charged appellant with: manufacturing hashish oil/cannabis wax (Health

& Saf. Code, § 11379.6, subd. (a)) [Count 1]; possession of an assault weapon (Pen. Code, § 30605, subd. (a)) [Count 2]; possession of a silencer (Pen. Code, § 33410) [Count 3]; and possession of a short-barreled shotgun or short-barreled rifle (Pen. Code, § 33210) [Count 4]. (CT 14-16.)[1]

On December 29, 2015, appellant filed a Motion to Suppress pursuant to section 1538.5 and a Motion to Dismiss. (CT 19-26.) The prosecution filed an opposition to appellant's motion on January 26, 2016. (CT 27-39.) On February 3, 2016, appellant filed a response to the prosecution's opposition. (CT 41-42). A hearing on the motion was held on February 25, 2016. (RT 5-55.) That same day the trial court denied the motion. (RT 54; CT 44, 45.)

On June 9, 2016, appellant pled no contest to Counts 1 and 2, and the remaining counts were dismissed. (RT 60-66; CT 50-58, 60.) He also admitted to a probation violation. (RT 73.) At sentencing proceedings on July 21, 2016, the court suspended judgment and granted appellant probation for three years. (RT 74-75, 76.)

On September 16, 2016, appellant timely filed a notice of appeal of the denial of his suppression motion. (CT 82-84.) Following briefing by the parties, on January 17, 2018, the Court of Appeal, Second Appellate District, Division Six, issued a published opinion affirming the conviction. (See *People v.*

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[1] "CT" and "RT" refer respectively to the Clerk's and Reporter's Transcripts of proceedings conducted in this case. If not otherwise indicated, all further statutory references are to the Penal Code.

Ovieda, supra, 19 Cal.App.5th 614 ("*Ovieda*").) Justice Perren filed a dissenting opinion. (*Id.* at pp. 623-29 (dis. opn. of Perren, J.).) On April 25, 2018, this Court granted review.

STATEMENT OF FACTS

Evidence Presented At The Suppression Hearing

In June of 2015, several officers were dispatched to appellant's home in response to a call describing a suicidal subject who had previously been in possession of a firearm. (RT 8, 35.) Dispatch advised that the subject (appellant) was with two friends, who had since taken the firearm away from him. (RT 19-21, 36.) Appellant's sister had called the police, but was not in the home. (RT 8, 36.) The officers were advised that appellant had been in possession of a firearm within an hour or two prior to their response. (RT 35.)

Five officers arrived on the scene. (RT 11.) When they arrived, they formed a perimeter around the house and contacted Trevor Case, one of the friends who was inside the home. Case came outside and told the officers that appellant had made suicidal comments and tried to access a firearm. Case confirmed that he had taken the guns away from appellant. Case's wife, Amber Woellert, was also in the house. Case explained that Woellert had helped to hold appellant down while Case secured all the firearms he could find so appellant would not have access to them. (RT 9-10, 22, 36-37.) Case gathered the guns, along with magazines and ammunition, and placed them in the garage.

(RT 16, 22, 37.) This all occurred within the two hours prior to the officers' arrival. (RT 46.)

The officers had Case call Woellert, and she and appellant came outside without incident. (RT 11, 38-39.) Appellant allowed an officer to search him, and nothing was found. An officer placed appellant in handcuffs to safely detain him while they assessed the situation and interviewed the parties. (RT 39.)

Case informed the officers that the only people in the house were appellant, himself, and Woellert. (RT 22, 42.) Nothing indicated that anyone else was present, and the officers had no specific information that would have led them to believe any other party was inside the house.[2] (RT 22-23, 28, 42-43.) The officers did not think anyone other than appellant was suicidal. (RT 28.)

The officers had been informed by dispatch (via appellant's sister) that appellant's friend had very recently committed suicide and appellant was depressed over his friend's death. (RT 42.) This fact was then confirmed by Case and appellant when the officers spoke with them. (RT 25, 28, 42.) All of this information was relayed to all of the officers present. (RT 39, 40-41.) The officers were never told, and nothing indicated, that the situation involved any type of domestic issue. (RT 23, 41.)

After appellant and his friends had exited the house and appellant was placed in handcuffs while his friends were interviewed, two of the officers entered appellant's home and

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[2] While appellant did have a roommate, the officers were aware that he was travelling out of state at the time. (RT 43.)

conducted what they referred to as a "protective sweep." (RT 11, 27, 39-40.) Officer Corbett testified that they did this to make sure no additional parties were inside and that nobody was injured or in need of assistance, and because they didn't know the reason for appellant's suicidal ideations. (RT 12.) Officer Garcia also stated that the sweep was done to confirm that no one else was "inside hurt or possibly waiting to cause anyone harm," and to make sure no one was "involved in any illegal possession or use of weapons or firearms." (RT 39-41, 43.)

The officers entered with their guns drawn and went slowly through the home checking rooms and closets. (RT 12-13.) While inside the house they noticed a strong smell of marijuana and saw items consistent with the cultivation and production of concentrated cannabis. (RT 13.) They also saw evidence of weapons, ammunition, magazines, and an empty rifle case. (*Ibid.*)

The officers then asked Case to take them to the garage to show them the weapons he had placed there, and he did. (RT 15.) The officers were aware that Case did not live in appellant's home. (RT 28.) The officers looked in the garage for other parties, and saw the weapons Case had placed in a plastic tub. (RT 17.) They noticed another weapon up on a rack. (RT 17-18.) Case stated that the other gun was an airsoft, but because it looked real the officers had him take it down. (RT 17-18.) In doing so, the officers saw another rifle case that they opened and found contained two more rifles. (RT 18.) They also saw items

necessary to cultivate marijuana and for processing concentrated cannabis. (RT 17.)

The Trial Court's Decision

In denying appellant's motion to suppress, the trial court first distinguished between two exceptions to the presumption of unreasonableness that applies to warrantless searches: the protective sweep, and the community caretaking exception. The court noted that for a protective sweep there normally must be an arrest and a reasonable belief that there is somebody on the premises who poses a danger. (RT 53.) The community caretaking exception, the court found, is broader, and the court stated that it was this exception that guided its decision. (RT 54.)

The court went on to find it credible that the officers wanted to remove firearms and that they didn't know if there were others in the residence (either victims or other people who might cause harm). The court noted that the officers were not required to accept Case's word that he removed the firearm that appellant reached for. The court also noted that the officers would have been subject to criticism and judged neglectful if they did not enter for a quick search to look for other people and/or weapons. In its final ruling, the court found that regardless of whether it was a protective sweep or the officers were acting under their community caretaker function, their warrantless search was appropriate, they had a basis for it, and they would have been subject to criticism and considered neglectful had they not conducted it. (RT 53-54.)

The court briefly went on to note that it drew a distinction between the search of the house and the search of the garage, but ultimately found that the reasons supporting the search of each were the same. The court denied the motion in full.[3] (RT 54; CT 44, 45.)

ARGUMENT

I. THE FOURTH AMENDMENT WARRANT REQUIREMENT AND EXCEPTIONS THERETO

A. The Warrant Requirement And The Exigent Circumstances Exception

The federal constitution's Fourth Amendment, made applicable to the states through the Fourteenth Amendment, proscribes unreasonable searches and seizures. (U.S. Const., 4th & 14th Amends.) The California Constitution includes a similar prohibition. (Cal. Const., art. I, § 13.)

"It is axiomatic that the 'physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.' " (*Welsh v. Wisconsin* (1984) 466 U.S. 740, 748 [104 S.Ct. 2091, 80 L.Ed.2d 732], quoting *U.S. v. United States District Court* (1972) 407 U.S. 297, 313 [92 S.Ct. 2125, 32 L.Ed.2d 752].) Indeed, "[o]f all the places that can be searched by the

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[3] While the prosecution argued in the trial court that the search of appellant's home was justified under the protective sweep doctrine in addition to the community caretaking exception, "[o]n appeal, the Attorney General concede[d] that the protective sweep doctrine, which is typically made in conjunction with an in-home arrest, does not apply." (*Ovieda, supra*, 19 Cal.App.5th at p. 619, n. 2, citing See *Maryland v. Buie* (1990) 494 U.S. 325, 337 [110 S.Ct. 1093, 108 L.Ed.2d 276].) Accordingly, only the community caretaking exception is at issue in this case.

police, one's home is the most sacrosanct, and receives the greatest Fourth Amendment protection." (*U.S. v. McGough* (11th Cir. 2005) 412 F.3d 1232, 1236.) For this reason, it is "a basic principle of Fourth Amendment law that searches and seizures inside a home without a warrant are presumptively unreasonable." (*Payton v. New York* (1980) 445 U.S. 573, 586 [100 S.Ct. 1371, 63 L.Ed.2d 639].)

Still, "because the ultimate touchstone of the Fourth Amendment is 'reasonableness,' the warrant requirement is subject to certain exceptions." (*Brigham City v. Utah* (2006) 547 U.S. 398, 403 [126 S.Ct. 1943, 164 L.Ed.2d 650] ("*Brigham City*"); see also *Coolidge v. New Hampshire* (1971) 403 U.S. 443, 474-475 [91 S.Ct. 2022, 29 L.Ed.2d 564] [search of a home without a warrant is *per se* unreasonable unless it falls within one of the carefully defined exceptions to the warrant requirement].) The types of specific circumstances that allow for a warrantless entry and search of the home include preventing the imminent destruction of evidence (*Ker v. California* (1963) 374 U.S. 23, 40 [83 S.Ct. 1623, 10 L.Ed.2d 726]), fighting a fire and investigating its cause (*Michigan v. Tyler* (1978) 436 U.S. 499, 509 [98 S.Ct. 1942, 56 L.Ed.2d 486]), and engaging in the " 'hot pursuit' " of a fleeing suspect (*U.S. v. Santana* (1976) 427 U.S. 38, 42 [96 S.Ct. 2406, 49 L.Ed.2d 300]). As these examples illustrate, "warrants are generally required to search a person's home . . . 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." (*Mincey v. Arizona* (1978) 437

U.S. 385, 393-394 [98 S.Ct. 2408, 57 L.Ed.2d 290] ("*Mincey*"), emphasis added; see also *Michigan v. Tyler, supra,* 436 U.S. at p. 509 ["a warrantless entry by criminal law enforcement officials may be legal when there is compelling need for official action and no time to secure a warrant"].)

More recently, the Supreme Court has made clear that another "exigency obviating the requirement of a warrant" is "the need to assist persons who are seriously injured or threatened with such injury." (*Brigham City, supra,* 547 U.S. at p. 403.) This exception applies regardless of whether the officers are investigating a crime, and is grounded in the fact that " ' "[t]he need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency." ' " (*Ibid.*, quoting *Mincey, supra,* 437 U.S. at p. at 392, and *Wayne v. United States* (D.C. Cir. 1963) 318 F.2d 205, 212.) "Accordingly, law enforcement officers may enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury." (*Brigham City, supra,* 547 U.S. at p. 403.)

Regardless of which exception is being applied, because of the Fourth Amendment's strong presumption against the reasonableness of warrantless searches of homes, the "police bear a heavy burden when attempting to demonstrate an urgent need that might justify [a] warrantless search[ ] . . . ." (*Welsh, supra,* 466 U.S. at pp. 749-50.)

B. The Community Caretaking Exception To The Fourth Amendment's Warrant Requirement

1) The Origination Of The Exception And Its Limited Application In Supreme Court Jurisprudence

The phrase "community caretaking" was first coined by the Supreme Court in *Cady v. Dombrowski*, *supra*, 413 U.S. at p. 441 ("*Cady*"). In *Cady*, an off-duty Chicago police officer became intoxicated and ran his car off the road. After arresting Cady for drunk driving and impounding his vehicle, the responding officers conducted a search of the automobile because they believed that Chicago police officers were required to carry their service revolvers with them at all times. Not wanting to leave the car unattended with a firearm in it that someone could access, the officers searched the car without a warrant. They found no weapon, but did discover evidence linking Cady to a recent homicide. (*Id.* at p. 436.)

In evaluating the constitutionality of this warrantless search, the Supreme Court recognized that local police officers often must "engage in what, for want of a better term, may be described as community caretaking functions, totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." (*Cady, supra,* 413 U.S. at p. 441.) The court concluded that the search of Cady's car was proper, as it was incident to the caretaking function of the local police to protect "the safety of the general public who might be endangered if an intruder removed a revolver from the trunk of the vehicle." (*Cady, supra,* 413 U.S. at p. 447.)

The underlying facts in *Cady* are significant in evaluating its limitations; the most obvious being that the search at issue in *Cady* concerned a car. Indeed, the Supreme Court's reasoning for upholding the search, under what has since been referred to as the "community caretaking exception," focused greatly on the fact that the officers had searched an automobile, as opposed to a home. The Supreme Court expressly noted that its own "previous recognition of the distinction between motor vehicles and dwelling places [led it] to conclude that the type of caretaking 'search' conducted [t]here of a vehicle that was neither in the custody nor on the premises of its owner . . . was not unreasonable solely because a warrant had not been obtained." (*Cady, supra,* 413 U.S. at pp. 447-48; see also *Ray v. Township of Warren* (3d Cir. 2010) 626 F.3d 170, 175 [noting that the *Cady* "holding was based largely on the constitutional distinction between automobiles and dwellings"].)

Notably, the Supreme Court has only ever applied the community caretaking exception in the realm of automobile searches; it has never extended this exception to searches of homes. (See *Cady, supra,* 413 U.S. 433; *South Dakota v. Opperman* (1976) 428 U.S. 364, 368 [96 S.Ct. 3092, 49 L.Ed.2d 1000] ("*Opperman*"); see also *Colorado v. Bertine* (1987) 479 U.S. 367, 381 [107 S.Ct. 738, 93 L.Ed.2d 739] ("*Bertine*").)

2) The Community Caretaking Exception As Applied In California

In California, the community caretaking exception to the Fourth Amendment's warrant requirement has been extended to

searches of homes, as set forth by a plurality opinion of this Court in *People v. Ray*, *supra*, 21 Cal.4th 464 ("*Ray*"). *Ray* involved the warrantless entry of a home based on a report by a neighbor that the front door had been open all day and the inside of the home was in "shambles." (*Id.* at p. 468 (lead opn. of Brown, J.).) It was suspected that a burglary was in progress or had already taken place. (*Id.* at p. 488 (lead opn. of Brown, J.).) In the lead opinion, three justices relied on a "community caretaking exception" to find the warrantless entry of the defendant's home to be proper.

This exception, the lead opinion explained, stems from the expanding functions of modern police officers in helping to assure the well-being of the public, in addition to performing their criminal investigatory functions. (*Ray*, *supra*, 21 Cal.4th at pp. 471-72 (lead opn. of Brown, J.).) Pursuant to this doctrine, the lead opinion found that "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.' [Citation.]" (*Id.* at p. 473 (lead opn. of Brown, J.), fns. omitted.) The lead opinion went on to explain that '[n]ecessity often justifies an action which would otherwise constitute a trespass, as where the act is prompted by the motive of preserving life or property and reasonably appears to the actor to be necessary for that purpose. [Citations.]'" (*Ibid.*, citing *People v. Roberts* (1956) 47 Cal.2d 374, 377.)

The *Ray* opinion set forth the standard for this exception as follows:

> 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? Which is not to say that every open door . . . will justify a warrantless entry to conduct further inquiry. Rather, as in other contexts, "in determining whether the officer acted reasonably, due weight must be given not to his unparticularized suspicions or 'hunches,' but to the reasonable inferences which he is entitled to draw from the facts in the light of his experience; in other words, he must be able to point to specific and articulable facts from which he concluded that his action was necessary."

(*Id.* at pp. 476-77 (lead opn. of Brown, J.), quoting *People v. Block* (1971) 6 Cal.3d 239, 244.) *Ray* thereby permits warrantless searches of homes under circumstances that do not amount to an emergency, so long as the officer's actions are based on specific and articulable facts demonstrating that his or her entry and/or search was reasonably necessary.

The *Ray* opinion also addressed the "emergency aid exception," which the court found to be a subcategory of community caretaking, albeit one that was inapplicable to the case at hand. (*Ray*, *supra*, 21 Cal.4th at pp. 471, 472-73 (lead opn. of Brown, J.).) Under the emergency aid exception, the *Ray* court explained, "police officers 'may enter a dwelling without a warrant to render emergency aid and assistance to a person whom they reasonably believe to be in distress and in need of that assistance.' [Citation.]" (*Id.* at p. 470 (lead opn. of Brown, J.).)

Lastly, the *Ray* decision emphasized that " 'the defining characteristic of community caretaking functions is that they are

totally unrelated to the criminal investigation duties of the police.' [Citation.]" (*Ray*, *supra*, 21 Cal.4th at p. 471 (lead opn. of Brown, J.).) The opinion made clear that reviewing courts must be wary of officers relying on such exception when their true purpose is to seek out evidence of a crime. It thereby held that "[a]ny intention of engaging in crime-solving activities will defeat the community caretaking exception even in cases of mixed motives," and emphasized that "the trial courts play a vital gatekeeper role, judging not only the credibility of the officers' testimony but of their motivations." (*Id.* at p. 477 (lead opn. of Brown, J.).)

Three of the justices concurred in *Ray* without directly commenting on the community caretaking exception. They instead held that the entry was permissible under a traditional exigent circumstances analysis because the officers had reasonable cause to believe a burglary was in progress, or that a burglary had been committed and there might be persons inside the residence in need of assistance. (*Id.* at pp. 480-482 (conc. opn. of George, C. J.).)

Justice Mosk dissented, concluding that there was no exigency, and rejecting the plurality's creation of a community caretaking exception applicable to searches of homes. (*Id.* at pp. 482-488 (dis. opn. of Mosk, J.).)

Because the *Ray* decision did not garner a majority of the justices' votes, the lead opinion is not binding precedent. (See *Adoption of Kelsey S.* (1992) 1 Cal.4th 816, 829 [" '[A]ny proposition or principle stated in an opinion is not to be taken as

the opinion of the court, unless it is agreed to by at least four of the justices.' [Citations.]"]; see also *People v. Karis* (1988) 46 Cal.3d 612, 632.)

The community caretaking exception was later applied to the warrantless entry of a residence in *People v. Morton* (2003) 114 Cal.App.4th 1039 ("*Morton*"). There the court applied the exception, but found insufficient evidence supporting it, and held that the officers were acting in a criminal investigatory role, which defeated the exception's application. (*Id.* at pp. 1048-49.)

II. TO THE EXTENT THE COMMUNITY CARETAKING EXCEPTION PERMITS WARRANTLESS SEARCHES OF HOMES IN SITUATIONS NOT AMOUNTING TO TRUE EMERGENCIES, SUCH APPLICATION VIOLATES THE FOURTH AMENDMENT TO THE CONSTITUTION

Because only carefully defined exceptions to the warrant requirement can justify the warrantless search of a home, and because all of those exceptions properly center around emergency situations necessitating immediate entry, Fourth Amendment jurisprudence dictates that the "community caretaking exception" as set forth in *Ray* cannot constitutionally justify a warrantless search of a residence. In addition, the Supreme Court precedent setting forth and applying the community caretaking exception makes clear that it was only ever intended to apply to searches of vehicles. For these reasons, most other jurisdictions have limited the exception's application to searches of automobiles, and this Court should do the same. (See e.g. *U.S. v. Erickson* (9th Cir. 1993) 991 F.2d 529; *U.S. v. Pichany* (7th Cir. 1982) 687 F.2d 204; *Ray v. Township of Warren, supra*, 626 F.3d 170.)

A. Warrantless Searches Of Homes Can Only Be Justified In Very Limited Circumstances, All Of Which Require That A True Emergency Be Unfolding, And Therefore *Ray*'s Plurality Holding Is Unconstitutional

The Supreme Court has repeatedly emphasized that homes receive the greatest amount of protection under the Fourth Amendment. (See e.g. *Florida v. Jardines* (2013) 569 U.S. 1, 6 [133 S.Ct. 1409, 185 L.Ed.2d 495] ["[W]hen it comes to the Fourth Amendment, the home is first among equals."]; *Payton, supra*, 445 U.S. at p. 586, quoting *United States District Court, supra*, 407 U.S. at p. 313 ["the 'physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.' "]; *Welsh v. Wisconsin, supra*, 466 U.S. at p. 748 [same]; *Kentucky v. King* (2011) 563 U.S. 452, 474 [131 S.Ct. 1849, 179 L.Ed.2d 865] ["In no quarter does the Fourth Amendment apply with greater force than in our homes, our most private space which, for centuries, has been regarded as entitled to special protection."] (dis. opn. of Ginsburg, J.), internal quotations omitted; see also *Matalon v. Hynnes* (1st Cir. 2015) 806 F.3d 627, 633 ["It is common ground that a man's home is his castle and, as such, the home is shielded by the highest level of Fourth Amendment protection."].)

In addition, the high court has repeatedly "emphasized that exceptions to the warrant requirement are 'few in number and carefully delineated.' " (*Welsh, supra*, 466 U.S. at p. 749, quoting *United States District Court, supra*, 407 U.S. at p. 318.) "Indeed, the [Supreme] Court has recognized only a few such emergency conditions," including, as noted previously, hot pursuit of a

fleeing felon, imminent destruction of evidence, an on-going fire, and the prevention of imminent injury. (*Id.* at p. 750.) It is likewise abundantly clear from Supreme Court precedent that "[b]efore agents of the government may invade the sanctity of the home, the burden is on the government to demonstrate *exigent circumstances* that overcome the presumption of unreasonableness that attaches to all warrantless home entries." (*Ibid.*, emphasis added, quoting *Payton v. New York*, *supra*, 445 U.S., at p. 586; see also *Corrigan v. District of Columbia* (D.C. Cir. 2016) 841 F.3d 1022, 1034 ["Supreme Court precedent has revered the sanctity of the home, condemning warrantless searches *absent an actual exigency based on objective facts.*"], emphasis added.)

This Court has also emphasized the particular importance of maintaining the privacy of homes and the requirement that only emergency situations can justify a warrantless intrusion of the same, noting "that man requires some sanctuary in which his freedom to escape the intrusions of society is all but absolute. Such places have been held inviolate from warrantless search *except in emergencies of overriding magnitude*, such as pursuit of a fleeing felon [citation] or the necessity of action for the preservation of life or property . . . ." (*People v. Dumas* (1973) 9 Cal.3d 871, 882, fn. omitted, emphasis added.) "Homes," this Court has held, "clearly fall within this category of maximum protection." (*Id.* at p. 882, n. 8.)

As Justice Mosk noted in his dissenting opinion in *Ray*, it is for these reasons that the community caretaking exception is

highly problematic when applied to searches of homes, because it "threatens to swallow the rule that absent a showing of *true necessity*, the constitutionally guaranteed right to security and privacy in one's home must prevail." (*Ray, supra*, 21 Cal.4th at p. 482 (dis. opn. of Mosk, J.), emphasis added.) Justice Mosk also pointed out the exception's questionable "assumption that the warrantless search of a residence, under nonexigent circumstances, can be justified on the paternalistic premise that 'We're from the government and we're here to help you.' " (*Ibid.*)

Given this background, while there is no doubt that police officers do at times engage in community caretaking functions that might necessitate entering a person's home, such entries must be limited to situations where the facts indicate a true emergency or exigency, and nothing less. (See *Brigham City, supra,* 547 U.S. at p. 403; *Mincey, supra,* 437 U.S. at p. at 392.) Indeed, the law is very clear that absent an exigency requiring the immediate apprehension of a criminal, the curtailing of a crime, or the prevention of death or imminent injury to human life, a warrantless entry into a residence is prohibited by the Fourth Amendment. *Ray*'s broad community caretaking exception contravenes this well-established jurisprudence by permitting warrantless entries of homes in circumstances that fall "short of an emergency." (*Ray, supra*, 21 Cal.4th at p. 473.) As such, *Ray*'s plurality application of this exception to warrantless searches of homes violates the Fourth Amendment, and must be rejected.

B. The Supreme Court Precedent Setting Forth And Applying The Community Caretaking Exception Is Strictly Limited To Searches Of Automobiles And Dictates Against Applying The Exception To Homes

There is no question that the Supreme Court's enunciation of a community caretaking exception to the warrant requirement in *Cady* was strictly limited to searches of automobiles and not meant to apply to searches of homes. The court's reasoning was explicit and unequivocal when it stated that "[t]he Court's previous recognition of the distinction between motor vehicles and dwelling places *leads us to conclude* that the type of caretaking 'search' conducted here of a vehicle . . . was not unreasonable . . . ." (*Cady, supra,* 413 U.S. at pp. 447-48, emphasis added.)

In addition, the Supreme Court's subsequent cases interpreting *Cady* make its limited application all the more clear. Most recently, in *Collins v. Virginia* (2018) __ U.S. __ [138 S.Ct. 1663, 201 L.Ed.2d 9], the Supreme Court quoted *Cady* when emphasizing that its decisions have historically supported " 'treating automobiles differently from houses' as a constitutional matter." (*Id.* at p. 1670, quoting *Cady, supra*, 413 U.S. at p. 441.)

The high court also addressed *Cady*'s limited significance more directly in *Opperman, supra*, 428 U.S. 364, where it upheld as constitutional a standard inventory search of an illegally parked automobile after it had been impounded. There the court noted that it "has traditionally drawn a distinction between automobiles and homes or offices in relation to the Fourth

Amendment," and cited directly to *Cady* when it explained that "warrantless examinations of automobiles have been upheld in circumstances *in which a search of a home or office would not.*" (*Opperman, supra*, 428 U.S. at p. 367, emphasis added, citing, inter alia, *Cady, supra*, 413 U.S., at pp. 439-440.)

Similarly, in *Bertine, supra*, 479 U.S. 367, the court upheld as constitutional the search of a vehicle and its contents following the driver's arrest and prior to the vehicle's impoundment. There the court cited to *Cady* when noting that it has historically "accorded deference to police caretaking procedures designed to *secure and protect vehicles and their contents* within police custody." (*Bertine, supra*, 479 U.S. at p. 372, emphasis added.) *Bertine* also noted that automobile "inventory searches are now a well-defined exception to the warrant requirement of the Fourth Amendment," thereby further circumscribing *Cady*'s community caretaking exception to this certain type of search. (*Id.* at p. 371, citations omitted.)

Indeed, because of its express limitations, the community caretaking exception stemming from *Cady* is perhaps most commonly applied in cases involving vehicle impoundments. (See e.g. *U.S. v. Coccia* (1st Cir. 2006) 446 F.3d 233, 238 ["the community caretaking function encompasses law enforcement's authority to remove vehicles that impede traffic or threaten public safety and convenience"]; *U.S. v. Rodriguez-Morales* (1st Cir. 1991) 929 F.2d 780, 785 ["Because of the ubiquity of the automobile in modern American civilization, and the automobile's nature . . . the police are constantly faced with dynamic

situations . . . in which they, in the exercise of their community caretaking function, must interact with car and driver to promote public safety."]; *U.S. v. Sanders* (10th Cir. 2015) 796 F.3d 1241, 1248 ["We hold that impoundment of a vehicle located on private property that is neither obstructing traffic nor creating an imminent threat to public safety is constitutional only if justified by both a standardized policy and a reasonable, non-pretextual community caretaking rationale."]; *Miranda v. City of Cornelius* (9th Cir. 2005) 429 F.3d 858 ["Generally, the community caretaking doctrine allows the police to impound where necessary to ensure that the location or operation of vehicles does not jeopardize the public safety."].)

In this context, it should not be overlooked that, while not couched in such terms, *Cady* itself was an inventory search case, addressing the warrantless search of an automobile after it had been impounded. This demonstrates that the community caretaking doctrine discussed therein was never intended to be a broadly applicable exception to the warrant requirement, but rather was merely an early enunciation of what is now the "well-defined exception" of vehicle inventory searches. (*Bertine*, *supra*, 479 U.S. at p. 371.)

Accordingly, there is no Supreme Court precedent, including *Cady* and its progeny, supporting the application of a broad community caretaking exception to warrantless searches of homes. Rather, Supreme Court case law dictates that such exception was and is intended to apply solely to searches of automobiles.

In addition, the reasoning underlying the application of a community caretaking exception to automobile searches, as discussed in the Supreme Court cases cited above and subsequent cases as well, demonstrates why it should not apply in the same manner to warrantless searches of homes. Specifically, the justifications supporting warrantless impoundments of vehicles – which include "the efficient movement of vehicular traffic" (*Opperman, supra*, 428 U.S. at p. 369), and "ensur[ing] that the location or operation of vehicles does not jeopardize the public safety" (*Miranda, supra,* 429 F.3d at p. 860) – as well as the justifications applicable to warrantless inventory searches of vehicles – which include "protect[ing] an owner's property while it is in the custody of the police, [] insur[ing] against claims of lost, stolen, or vandalized property, and [] guard[ing] the police from danger" (*Bertine, supra*, 479 U.S. at p. 372) – are applicable only to vehicles. Indeed, every rationale underlying the Supreme Court's creation of the community caretaking exception is wholly inapplicable in the context of homes.

Moreover, as discussed above, it has repeatedly been held that a person's right to privacy with respect to an automobile is far less significant when compared to the privacy interest one possesses in his or her home. Homes have repeatedly been held subject to maximum protection from unwarranted governmental intrusion, while vehicles inherently receive much less protection. (See e.g. *Opperman, supra*, 428 U.S. at p. 367 ["less rigorous warrant requirements govern [searches of cars] because the expectation of privacy with respect to one's automobile is

significantly less than that relating to one's home or office"]; see also *U.S. v. Erickson*, *supra*, 991 F.2d at p. 532.)

These differing privacy interests and the reasoning underlying the varying degrees of protection they receive recently came to a head in the Supreme Court case, *Collins v. Virginia*, *supra*, 138 S.Ct. 1663. In *Collins*, the Supreme Court considered whether a vehicle parked within the curtilage of a home could be searched without a warrant pursuant to the automobile exception to the warrant requirement. In holding that it could not, the court emphasized that the reasoning underlying searches of automobiles did not apply to searches of homes.

Pursuant to the automobile exception, the search of a car based on probable cause can be considered reasonable when conducted without a warrant based on two justifications: (1) the "ready mobility" of vehicles (i.e., because a "vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought" (*Carroll v. United States* (1925) 267 U.S. 132, 153 [45 S.Ct. 280, 69 L.Ed. 543])), and (2) "the pervasive regulation of vehicles capable of traveling on the public highways." (*California v. Carney* (1985) 471 U.S. 386, 392 [105 S.Ct. 2066, 85 L.Ed.2d 406].) In *Collins*, the high court explained that "the rationales underlying the automobile exception are specific to the nature of a vehicle and the ways in which it is distinct from a house. [] The rationales thus take account only of the balance between the intrusion on an individual's Fourth Amendment interest in his vehicle and the governmental interests in an expedient search of that vehicle; they do not

account for the distinct privacy interest in one's home or curtilage." (*Collins*, *supra*, 138 S.Ct. at p. 1672.) Therefore, the court explained, to allow an officer to rely on the automobile exception to enter and search a home would be to "transform what was meant to be an exception into a tool with far broader application." (*Id.* at pp. 1672-73.)

The same concepts apply here. The rationales underlying the community caretaking searches upheld in *Cady* and its progeny – including the lesser privacy right associated with vehicles, the efficient movement of vehicular traffic, and the protection of property in police custody – simply do not apply to searches of homes. Accordingly, to extend *Cady*'s community caretaking exception as applied to vehicles to include application to homes would improperly "transform what was meant to be an exception into a tool with far broader application," and, "[g]iven the centrality of the Fourth Amendment interest in the home . . . and the disconnect between that interest and the justifications behind [*Cady*'s community caretaking exception, this Court should] decline . . . to extend such exception to permit a warrantless intrusion on a home." (*Collins*, *supra*, 138 S.Ct. at pp. 1672-73.)

C. Exigent Circumstances Analyses And The Emergency Aid Doctrine Render The Proper Balance Under The Fourth Amendment For Evaluating The Constitutionality Of Warrantless Searches Of Homes Conducted For Non-Criminal Purposes

Limiting the community caretaking exception to searches of vehicles will not hinder police officers' ability to perform their

community caretaking functions because the traditional doctrines addressing exigencies and emergencies already allow them to conduct warrantless searches of homes under appropriate circumstances, while also providing the necessary protections under the Fourth Amendment. The Supreme Court of Arizona put it well when it held that "[e]xtending the community caretaker exception to homes would substantially reduce the protection of privacy afforded by the warrant requirement without significantly increasing the ability of law enforcement to make searches to protect the public." (*State v. Wilson* (Ariz. 2015) 350 P.3d 800, 805.)

Exigent circumstances are defined in California to include "an emergency situation requiring swift action to prevent imminent danger to life or serious damage to property, or to forestall the imminent escape of a suspect or destruction of evidence." (*People v. Ramey* (1976) 16 Cal.3d 263, 276.) In addition, as noted above, the Supreme Court has expressly held that the need to assist persons who are seriously injured, or threatened with such injury, is an exigent circumstance that can justify a warrantless intrusion, and therefore "law enforcement officers may enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury." (*Brigham, supra*, 547 U.S. at p. 403.) Of specific relevance to the current case, these types of emergency and exigency doctrines are often applied when officers respond to reports of suicidal subjects. (See e.g., *Roberts v. Spielman* (11th Cir. 2011) 643 F.3d 899, 906 [holding warrantless entry was

justified under exigent circumstances exception where subject was suicidal, suffered from bipolar disorder, and was acting belligerently while refusing to open the door or exit the home]; *Rockwell v. Brown* (5th Cir. 2011) 664 F.3d 985 [warrantless entry was justified under exigent circumstances exception where subject was suicidal, schizophrenic, and bipolar, and had barricaded himself in his room while pounding the walls and hurling threats at the officers]; *Rice v. ReliaStar Life Ins. Co.* (5th Cir. 2014) 770 F.3d 1122 [upholding warrantless entry where officer had objectively reasonable belief that subject would imminently seriously injure himself because subject was suicidal, had been drinking all day, and was sitting in his garage holding a gun to his head].)

Pursuant to these doctrines, police officers clearly have the ability to enter homes without a warrant when there are objective facts indicating that an emergency is unfolding that would necessitate their entry in order to preserve life, or to avoid serious injury or damage to property. Therefore, these are the tests that should govern a police officer's actions when he or she is acting in a community caretaking role, as they comport with the well-established Fourth Amendment law requiring that an exigency or emergency be present in order for the government to overcome its very heavy burden of justifying a warrantless intrusion into a person's private residence, while avoiding the constitutionally problematic "broad and untethered" community caretaking exception that is set forth in *Ray*. (*Ray, supra*, 21 Cal.4th at p. 482 (dis. opn. of Mosk, J.).)

D. Application Of The Community Caretaking Exception To Searches Of Homes Has Been Rejected In Many Other Jurisdictions, Or Applied In Practice As An Emergency Doctrine

"There is a split of authority, state and federal, as to whether the community caretaking doctrine extends beyond the context of automobile searches." (*Macdonald v. Town of Eastham* (D. Mass. 2013) 946 F.Supp.2d 235, 241.) "A majority of the federal Courts of Appeals have concluded that the plain import of the *Cady* decision is that it does not." (*Ibid.*; see also *Ray v. Township of Warren*, *supra*, 626 F.3d at pp. 175-76 ["The majority of circuits have reasoned that the community caretaking doctrine announced in *Cady* is limited to searches of automobiles."].) The reasoning applied by the majority of courts that have rejected extending this exception to searches of homes is sound, and should be adopted by this Court.

For example, the Ninth Circuit, in *U.S. v. Erickson*, *supra*, 991 F.2d 529, concluded that a resident's Fourth Amendment rights were violated when a police officer pulled back a plastic sheet covering a window and looked inside the basement of the defendant's house during a burglary investigation. In doing so, the Ninth Circuit outright rejected the government's assertion "that such a caretaking search . . . is permissible without a warrant or probable cause as long as the officer acted reasonably under the circumstances," instead holding that " '[i]t is precisely this kind of judgmental assessment of the reasonableness and scope of a proposed search that the Fourth Amendment requires be made by a neutral and objective magistrate, not a police

officer.' " (*Id.* at pp. 531, 532, quoting *Mincey, supra,* 437 U.S. at p. 395.)

Erickson also distinguished *Cady* on the grounds that the latter case involved the search of a vehicle as opposed to a home. (*Id.* at pp. 531-32 ["Although it involved a community caretaking function, *Cady* clearly turned on the 'constitutional difference' between searching a house and searching an automobile."].) The court explained that "[q]uite unlike the automobile search performed in *Cady*, the warrantless search of [the defendant's] home constituted a severe invasion of privacy. The fact that [the officer] may have been performing a community caretaking function at the time cannot alone justify this intrusion." (*U.S. v. Erickson, supra*, 991 F.2d at p. 532.)[4]

The Seventh Circuit took a similar approach in *U.S. v. Pichany, supra*, 687 F.2d 204, which concerned a warrantless search of a privately-owned warehouse. The court held that it had "no basis to extend *Cady*" to the search at issue, noting that the "most obvious difference" between the two cases was that

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[4] In subsequent cases, the Ninth Circuit has mentioned the community caretaking functions of officers in the context of searches of homes, but has applied an "emergency exception" to the warrant requirement, which allows an officer to enter a home in the absence of probable cause and without a warrant only when the officer is responding to a perceived emergency, and when he or she has an objectively reasonable basis for concluding that there is an immediate need to protect others or themselves from serious harm. (See e.g., *Ames v. King County, Washington* (9th Cir. 2017) 846 F.3d 340; *U.S. v. Snipe* (9th Cir. 2008) 515 F.3d 947, 952.)

"*Cady* involved the search of an impounded automobile while the present case involve[d] the search of a business warehouse." (*Id.* at p. 207.) The court also noted that "[i]n *Cady*, the Supreme Court articulated several premises behind its decision which indicate[d] that the holding in the case extended only to automobiles temporarily in police custody." (*Id.* at p. 208; see also *id.* at pp. 208-09 ["[T]he plain import from the language of the *Cady* decision is that the Supreme Court did not intend to create a broad exception to the Fourth Amendment warrant requirement to apply whenever the police are acting in an 'investigative,' rather than a 'criminal' function."].)

The Third and Tenth Circuits have also held that the community caretaking doctrine announced in *Cady* applies only to searches of automobiles. (See *Ray v. Township of Warren*, *supra*, 626 F.3d at pp. 174-177; *U.S. v. Bute* (10th Cir. 1994) 43 F.3d 531, 535.) In *Bute*, the Tenth Circuit emphasized that while "reasonableness" is the touchstone for determining the constitutionality of a search, "the precedent of the Supreme Court and this circuit is quite clear that a warrantless search is reasonable only when it falls within one of the clearly defined exceptions to the warrant requirement," and such "precedent neither establishes nor condones application of an amorphous 'reasonableness' test to determine the constitutionality of a warrantless search." (*Bute*, *supra*, 43 F.3d at pp. 534-35, citations omitted.)

Several state courts have similarly limited application of the community caretaking exception to warrantless searches of

cars and refused to extend it to searches of homes. (See e.g. *State v. Wilson* (Ariz. 2015) 350 P.3d 800, 805 ["In situations involving criminal activity, fires or analogous dangers, or the need to render immediate aid, the exigent circumstances and emergency aid exceptions appropriately allow warrantless entry by law enforcement officers, whether or not they are engaged in community caretaking functions."]; *State v. Vargas* (N.J. 2013) 63 A.3d 175, 189, n. 10 [rejecting the community caretaking exception as set forth in *Ray*, and agreeing with the dissent's conclusion that the *Ray* majority " 'obscured the firm line at the entrance to the house that the Fourth Amendment has drawn' "]; *State v. Gill* (N.D. 2008) 755 N.W.2d 454, 459-60 [declining to extend the community caretaking exception to police entry into homes]; *State v. Christenson* (Or. App. 2002) 45 P.3d 511, 514 [reaching same conclusion, and noting that warrantless entries of homes might be authorized under "analogous exceptions, such as the 'emergency doctrine' "].)

Moreover, while certain courts have cited to the community caretaking exception first alluded to in *Cady* to uphold warrantless searches of residences, those courts' application of the exception has been limited, and often resembles something more akin to an emergency doctrine.

For example, in *U.S. v. Quezada* (8th Cir. 2006) 448 F.3d 1005, the Eighth Circuit held that "[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." (*Id.* at p. 1007, emphasis added, citing

Mincey, supra, 437 U.S. at pp. 392-93.) The court thereby held that the officer's warrantless entry would violate "the fourth amendment only if no reasonable officer could have believed that an emergency was at hand." (*Id.* at p. 1008; see also *U.S. v. Smith* (8th Cir. 2016) 820 F.3d 356, 362, 361 [search would be warranted under community caretaking rationale where officers "reasonably believed an emergency situation existed that required their immediate attention," and subject search was justified because facts known to officers indicated a woman was inside the residence being "held against her will or in danger"].)

In addition, while the Sixth Circuit, in *U.S. v. Rohrig* (6th Cir. 1996) 98 F.3d 1506, relied on the community caretaking exception to permit a non-emergency entry of a residence (*id.* at p. 1509 [upholding officers' warrantless entry of home as community caretakers to abate significant and on-going noise nuisance]), subsequent Sixth Circuit cases have retreated from that position, holding that "despite references to the doctrine . . ., we doubt that community caretaking will generally justify warrantless entries into private homes." (*U.S. v. Williams* (6th Cir. 2003) 354 F.3d 497, 508.) In *Williams*, the Sixth Circuit held that a possible water leak in the defendants' residence did not present a "risk of danger" exigency justifying a warrantless entry. (*Id.* at p. 503, citations omitted.) In analyzing the application of *Rohrig*, the court found that the case had " 'fashioned a new exigency that justifies warrantless entry' for 'an ongoing [late night] breach of the peace,' " but that *Rohrig*'s "fact-specific" holding "should not have broad application to significantly

different fact patterns." (*Id.* at pp. 506, 507; see also *Goodwin v. City of Painesville* (6th Cir. 2015) 781 F.3d 314, 331 [referring to *Rohrig* as a "narrow, fact-specific" holding].)

Likewise, while the Fifth Circuit has been cited as one in which the community caretaking exception has been extended to homes (see *McGough, supra*, 412 F.3d at pp. 1237-38), there, too, the court has only applied the exception in a limited manner. This is evident in *U.S. v. York* (5th Cir. 1990) 895 F.2d 1026, 1030, where the officers responded to a call by a long-term houseguest who complained that his host (York) was threatening the guest's children. The houseguest invited the officers inside to keep the peace while he obtained his belongings. The Fifth Circuit concluded that the warrantless entry was reasonable, and referenced the community caretaking functions of the officers; however, its holding was contingent on the guests' nexus to the home, as it noted that had the guests lacked that connection, their "reaction to York's abusive treatment probably would *not* have authorized the deputies to enter York's home." (*Id.* at p. 1029, emphasis added.)

Accordingly, even in those circuits where the courts have cited to the community caretaking exception in the context of warrantless searches of homes, the cases are very limited in nature, and often seem to conflate the doctrine with other exceptions to the warrant requirement. Indeed, some courts have expressly noted that there is "widely-shared confusion between and among the distinct doctrines of community caretaking,

emergency aid, and exigent circumstances." (*Macdonald v. Town of Eastham, supra*, 946 F.Supp.2d at p. 242.)

One such court noted that "[s]ome courts treat these exceptions interchangeably, while others declare that the community caretaker exception applies, but then use the law applicable to one of the other exceptions, such as the emergency doctrine." (*State v. Deneui* (S.D. 2009) 775 N.W.2d 221, 232.) Another court also noted the confusion, but made clear that the community caretaker exception and the emergency exception "are not one and the same," as "[t]he community caretaker exception does not require the circumstances to rise to the level of an emergency to qualify as an exception to the Fourth Amendment's warrant requirement." (*State v. Pinkard* (Wis. 2010) 785 N.W.2d 592, 600, n. 8.) The *Pinkard* court also found that the confusion often "arises when an officer's conduct under the emergency exception is spoken of as 'one of many "community caretaking functions" of the police.' " (*Ibid.*, citation omitted.)

Some of this confusion may be the result of the courts' initial struggle to enunciate a Fourth Amendment standard in instances where officers are not at the outset investigating criminal activity. Regardless, however, the majority of courts have rejected the application of a broad community caretaking exception to searches of homes, either in name or in practice, instead opting to apply an exigent circumstance or emergency doctrine, and this Court should do the same. As set forth in the previous sections, such conclusion is the only one supported by settled Fourth Amendment jurisprudence, which clearly requires

that officers point to specific facts indicating that an actual exigency or emergency is unfolding in order to justify the significant governmental intrusion of a warrantless entry of one's home.

E. Conclusion

Because the Fourth Amendment requires emergency circumstances to justify an officer's warrantless entry of a private residence, and because the community caretaking exception allows for searches in situations that fall short of true emergencies, the Court should re-evaluate its plurality decision in *Ray* and hold that this exception to the warrant requirement does not apply to searches of homes. Supreme Court precedent dictates this conclusion, and the constitutionally mandated protection of the sanctity of the home requires it.

III. IF FOUND CONSTITUTIONAL, THE WARRANTLESS SEARCH CONDUCTED IN THIS CASE CANNOT BE JUSTIFIED UNDER THE COMMUNITY CARETAKING EXCEPTION BECAUSE THERE WERE NO SPECIFIC OR ARTICULABLE FACTS DEMONSTRATING THAT THE OFFICERS' ENTRY AND SEARCH WERE OBJECTIVELY NECESSARY

In the event the Court decides that the "community caretaking exception" as applied in *Ray* properly applies to searches of homes, the Court should still find that it was not properly applied in this case because none of the facts known to the officers at the time of their entry indicated that an immediate search of appellant's home without a warrant was reasonable or necessary.

As noted above, this exception exists because " '[n]ecessity often justifies an action which would otherwise constitute a trespass, as where the act is prompted by the motive of preserving life or property and *reasonably* appears to the actor to be *necessary* for that purpose. [Citations.]' " (*Ray*, *supra*, 21 Cal.4th at p. 473, citing *People v. Roberts*, *supra*, 47 Cal.2d at p. 377, emphasis added.) In addition, in order to justify a warrantless search under this exception, an officer " 'must be able to point to specific and articulable facts from which he concluded that his action was necessary.' " (*Id.* at pp. 476-77, quoting *People v. Block*, *supra*, 6 Cal.3d at p. 244.)

Here, none of the facts known to the officers indicated that an immediate search of appellant's home without a warrant was reasonably necessary for any purpose. The officers were called to appellant's home because within the prior two hours he had made suicidal remarks and had access to firearms. By the time the officers arrived, the firearms had been removed from appellant's vicinity. (RT 9-10, 16, 36-37, 46.) Appellant and his friends exited the home and were completely cooperative. Appellant consented to a search of his person and was handcuffed outside the home without incident. (RT 10-11, 38-39.) Appellant informed the officers about the recent death of his friend; i.e., the cause of his behavior. (RT 42.) His suicidal ideations had nothing to do with anyone present. Appellant's friends remained at the home and were clearly willing and able to assist him. All who were present were outside the home, and nothing in the record indicated anything to the contrary. (RT 22-23, 28, 42-43.)

In sum, at the time of entry, appellant was no longer suicidal; no weapons were in reach; the situation was entirely under control; and everyone was safely *outside* the house. So, what were the specific and articulable facts that would immediately necessitate the officers entering appellant's home to conduct a search? The officers offered two justifications – their desire to ensure that no one was inside the home who needed aid, and their desire to "secure" appellant's weapons – neither of which hold water under the Fourth Amendment.[5]

A. The Officers' Purported Reason For Entering to Ensure That No One Present Needed Help Was Not Supported Because No Facts Indicated That Anyone Was Inside The Home, Much Less Anyone In Need

According to the officers, they entered the home so they could make sure that no one else was inside who was hurt or needed help. (RT 11-12, 39-40.) However, at the time of entry, there was not one fact in the record indicating that anyone was inside the home, much less anyone who needed aid. To the contrary, all the facts of which the officers were aware indicated that all people present were outside the house being fully cooperative, and that they were all in good health. (RT 9-10, 16, 22, 36-37, 42-43, 46.) Indeed, the officers expressly admitted that

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[5] The first justification, pertaining to individuals in need of assistance, is often evaluated under the emergency aid doctrine, which the *Ray* court described as a subcategory of the community caretaking exception, and which is addressed in more detail in Section III.G, *infra.* Because the prosecution did not specifically rely on that doctrine, the justification is first addressed here under *Ray*'s apparently broader community caretaking exception.

they "didn't have any specific information that led [them] to believe somebody else was inside." (RT 42-43; see also RT 28.) This justification is therefore clearly insufficient to support a warrantless search of a home. (See *Goodwin, supra*, 781 F.3d at p. 332 [finding a lack of specific facts supporting a warrantless entry purportedly based on officers' belief that "people within the house were in need of immediate aid" where "there was no indication that [anyone] needed any immediate assistance from the officers"].)

Similar justifications for warrantless entries are often put forth in the context of protective sweeps, which are employed in conjunction with at-home arrests. (*Maryland v. Buie, supra*, 494 U.S. at p. 337.) Under the protective sweep doctrine, an officer may enter a home without a warrant when there are specific and articulable facts indicating that someone is inside the home who might be ready to cause others harm. What the protective sweep cases make clear, however, is that an officer's entry of a home merely to see if someone is inside, when no facts indicate that anyone else is present, is not acceptable under the Fourth Amendment.[6]

For example, in *People v. Celis* (2004) 33 Cal.4th 667, the court expressly found that where the officers entered a home "without any information as to whether anyone was inside the

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[6] To clarify, the protective sweep doctrine does not apply to this case; appellant references it only because it often involves situations where an officer enters without a warrant to see if other people are inside the house, which is similar to the justification the officers offered here.

house," the facts known to the officers fell short of what was required, "that is 'articulable facts' considered together with rational inferences drawn from the facts, that would warrant a reasonably prudent officer to entertain a reasonable suspicion that the area to be swept harbors a person posing a danger to officer safety." (*Id.* at pp. 679-80.)

Similarly, in *People v. Ormonde* (2006)143 Cal.App.4th 282, the court found that where "[n]one of the police officers who testified articulated any reason to believe that other victims or suspects were . . . inside the apartment," and where one of the officers specifically testified "I don't think that I thought there were people in the house, I was just trying to determine if there were people in the house," the facts did not support "a reasonable suspicion that the area to be swept harbor[ed] an individual or individuals posing a danger to those on the arrest scene." (*Id.* at pp. 291, 294, 295; see also *People v. Ledesma* (2003) 106 Cal.App.4th 857, 866 [" '[T]he mere abstract theoretical "possibility" that someone dangerous might be inside a residence does not constitute "articulable facts" ' justifying a protective sweep."].)

The same concept applies here. An officer cannot rely on an abstract possibility that someone might be inside the house to justify a warrantless entry to provide aid, and just as was the case in the foregoing examples, the officers here did not point to any facts indicating that anyone was inside the home or in need of help. Rather, the officers' testimony was quite clear that they

had *no information* indicating that anyone was inside the house or in need of assistance. (RT 28, 42-43.)

The insufficient specific and articulable facts in this case are also similar to those which were found lacking in *Storey v. Taylor* (10th Cir. 2012) 696 F.3d 987 ("*Storey*"). In *Storey*, the court considered whether a warrantless entry and arrest were proper under the Fourth Amendment after officers were called to Storey's home based on a report of a domestic dispute. Storey admitted to having an argument with his wife and told the officers that she had left. When he then would not exit his home, the officer reached into the house and pulled him out. The court found that this warrantless entry and seizure violated Storey's Fourth Amendment rights. (*Id.* at pp. 990-91, 994-97.)

The court explained that "by the time police arrived, they could not hear or otherwise detect an ongoing altercation; the argument, apparently, had ended," "there were no other visual or audible indications of past or present violence," and "Storey . . . admitted he had an argument with his wife, but claimed the argument was now over and she had left." (*Story, supra,* at p. 994.) Based on these facts, the court concluded that the entry and seizure were not reasonable because "there were no signs of an ongoing altercation, and the information available to the officers did not indicate violence was imminent." (*Id.* at p. 995.) In referencing the "community caretaking exception," the court held further that "the facts [did] not show a likelihood of violence such that [the officer's] actions were necessary to protect the safety of Storey, his wife, the officers, or others," and "[t]hus,

there were no 'specific and articulable facts' to justify the intrusion on Storey's liberty." (*Id.* at p. 996, citations omitted.)

Just as was the case in *Storey*, by the time the officers here entered appellant's home, the altercation at issue had passed, appellant and his friends had explained that no one else was present, and no facts indicated that anyone was inside the residence or in need of assistance.

Accordingly, the assertion that the officers had to enter and search the home to provide assistance to persons in need was not based on specific or articulable facts the officers reasonably deduced, but instead was based on nothing more than "unparticularized suspicions or 'hunches,' " which undoubtedly cannot form the basis for any kind of warrantless search. (*Ray*, *supra*, 21 Cal.4th at p. 477.) As Justice Perren pointed out in his dissent below, "Officer Corbett's testimony that 'there *could be* a child' or 'there *could be* somebody injured' was pure speculation," and therefore could not form the basis for the officers' warrantless entry. (*Ovieda*, *supra,* 19 Cal.App.5th at p. 628 (dis. opn. of Perren, J.), emphasis added; see also *People v. Madrid* (2008) 168 Cal.App.4th 1050, 1059 [where officers' inference was "unreasonably speculative" it could not justify a warrantless traffic stop under the community caretaking exception]; *Williams*, *supra*, 354 F.3d at p. 508 [finding search unwarranted where possible water leak "was only speculative"].)

Simply put, "[i]gnorance of a fact, without more, does not raise a suspicion of its existence." (*Ovieda*, *supra*, 19 Cal.App.5th at p. 629 (dis. opn. of Perren, J.).) Moreover, "[t]he Fourth

Amendment requires reasonableness based on *particular circumstances* in order to meet the officers' *heavy burden* to justify a warrantless search of a home." (*Corrigan v. District of Columbia, supra*, 841 F.3d at p. 1030, emphasis added; see also *U.S. v. Smith, supra*, 820 F.3d at p. 360.) Here, the record makes very clear that no particular circumstances existed indicating that anyone was inside appellant's house, and therefore this asserted justification fails on its face.

B. The Officers' Purported Desire To "Secure" Weapons Was Baseless And Unreasonable, And Cannot Justify The Warrantless Search That Took Place

The alternative justification the officers provided is that they wanted to secure the firearms in the home and were not sure whether all the guns had been accounted for. This assertion also fails to justify their entry and search on multiple levels.

1) Appellant Was Already Outside His Home And Nothing Indicated That He Continued To Pose A Danger To Himself, Making This Purported Justification Unfounded

First, while appellant's presence in his home with firearms earlier in the day may have posed a danger to his safety justifying an officer's immediate entry, the facts had changed greatly by the time the officers conducted their search. At the time of entry, the guns had long since been removed from appellant's presence, and appellant was *outside of the house*, speaking to the officers calmly and cooperatively. Indeed, appellant had been searched, found to be unarmed, and placed in handcuffs. Nothing in the record thereafter indicates that he was acting erratically or was still in distress. This was therefore not

a case where a person was in the process of attempting or threatening suicide while inside his home and an officer's entry was necessary to intervene and save that person's life. (Compare cases cited in Section II.C, *supra*, and Section III.D, *infra*.) Rather, the threat that appellant previously posed to himself was over, and certainly no longer taking place *inside* his home. Therefore, the officers' alleged need to enter the home to account for the firearms was illogical and unsupported.

In a case such as this one, where "police officers [have] the situation under control before they enter[]," and there is no "immediate threat" necessitating a warrantless entry, the community caretaking exception cannot support a warrantless search. (*U.S. v. McGough*, *supra*, 412 F.3d at p. 1239.) Indeed, it is highly significant that even when the officers first arrived at the home, they did not barge into the house to run to appellant's rescue. This demonstrates that even at the outset the officers did not think appellant was in imminent danger or in need of immediate assistance. In addition, the 911 call indicated only that appellant had been suicidal within the prior two hours, thereby signifying that any immediate danger had likely passed.

Second, it is unclear what the officers even meant when they stated their intention was to "secure" appellant's firearms. It is legal to own firearms in this country, and there was no alleged basis on which the officers could have confiscated the weapons appellant possessed. (See *District of Columbia v. Heller* (2008) 554 U.S. 570, 635 [128 S.Ct. 2783, 171 L.Ed.2d 637].) The trial court even stated at the suppression hearing that it "did not

locate anything that was helpful regarding the right of officers and [sic] under the circumstances such as this to secure weapons." (RT 49.)[7]

This alleged justification thereby raises the question, how does an officer enter a home, "secure" the occupant's legally-owned firearms, and then leave the home with the assurance that the occupant will not access them again? It is simply not feasible, and therefore it cannot be a reasonable justification for the entry and search that took place in this case.[8]

In sum, when taken through to its logical conclusion, the assertion that it was imperative for the officers to enter and search appellant's home without a warrant to "secure weapons" is unfounded, and any temporary assistance they were rendering could have easily been accomplished without entering the house. As such, this justification cannot reasonably support the warrantless entry that occurred.[9] (*Ray, supra*, 21 Cal.4th at pp. 476-77.)

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[7] In addition, the officers had no reason to believe that appellant's guns were not legally owned, and certainly no probable cause that would have permitted a search on those grounds.

[8] A different result might be reached when officers respond to someone who is actively attempting suicidal inside his home and there are weapons directly in the suicidal person's reach (see *Arden v. McIntosh* (10th Cir. 2015) 622 Fed.Appx. 707, 708-10); however, not one of those circumstances existed in this case.

[9] Notably, when the trial court questioned the officers' power to secure weapons, the prosecutor argued that "it's still defined within the protective sweep that they remove weapons from anybody else who might be in there . . . ." (RT 49-50.) As the Attorney General conceded on appeal, however, the protective sweep doctrine does not apply here. (*Ovieda, supra*, 19

In its majority opinion, the Court of Appeal found that "[t]here was an on-going safety concern because appellant lied about the firearms and his suicidal ideation." (*Ovieda, supra*, 19 Cal.App.5th at p. 620.) The record does not support this conclusion. While appellant initially denied having suicidal thoughts, he subsequently admitted to them and explained why he was having them, and they had nothing to do with anyone present. He also allowed the officers to search and handcuff him without objection. The record demonstrates only that he was cooperating fully, and no longer in distress when the officers chose to enter his home. Therefore, the "on-going" safety concern the Court of Appeal infers is not supported by the record, and cannot justify the search.

2) If The Officers Did Believe That Appellant Continued To Pose A Danger To Himself, There Is A Process Under California Law For Addressing Such A Scenario, Which The Officers Did Not Implement Or Even Reference

Even to the extent the officers had believed appellant continued to pose an immediate risk to himself (which,

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Cal.App.5th at p. 619, n. 2.) In addition, while the trial court found the officers were credible in their desire to remove firearms, the court did not address its own previous concern that the officers had no authority to do so. (RT 53, 49.) Just because the officers' desires were credible does not mean that their actions were reasonable. (See *People v. Morton, supra,* 114 Cal.App.4th at p. 1048 ["[e]ven assuming the detective's testimony was credible, the evidence supporting the application of the community caretaking exception was neither reasonable nor of solid value."].)

importantly, they never articulated), there are legal mechanisms for addressing such dangers, none of which were resorted to here.

Pursuant to Welfare & Institutions Code section 5150 ("section 5150"), "[w]hen a person, as a result of a mental health disorder, is a danger to others, or to himself . . ., a peace officer . . . may, upon probable cause, take . . . the person into custody for a period of up to 72 hours for assessment, evaluation, and crisis intervention . . . ." In addition, a detention to evaluate a person's mental condition permits the issuance of a search warrant to seize firearms. (Pen. Code, § 1524, subd. (a)(10).) Therefore, if the officers had cause to believe that appellant posed a danger to himself, they could have taken him into custody under section 5150; but the officers did not take this measure, or even refer to this process.

The fact that the officers never mentioned section 5150 or any intention to detain appellant for a mental health evaluation demonstrates that they did not actually believe appellant continued to pose a danger to himself, and therefore their entry and "sweep" to account for the weapons was entirely unwarranted.

Indeed, based on the facts known at the time of entry, there were only three possible ways the officers could have interpreted the situation, and none of them justified a warrantless search. The first possibility is that the officers did not have cause to detain appellant under section 5150 because he was no longer in distress, in which case there would be no basis or need to enter

the home to secure the weapons because he no longer posed a danger to himself.

The second possibility is that the officers did believe appellant still posed a danger to himself, in which case they should have detained him, thereby eviscerating any basis or need to enter the home to immediately secure weapons because appellant would have been taken into custody. Indeed, appellant was already outside of the house and unable to access the firearms, meaning he could have been easily detained and removed from the residence where the weapons were stored without any need to enter the home, and then the officers could have followed applicable procedure and sought a properly tailored warrant to confiscate the weapons. As noted above, however, this possibility has no direct support in the record, as not one officer alluded to a possible detention or any facts indicating that appellant continued to pose any risk to himself.

The third possibility is that the officers were not sure whether appellant still posed a danger to himself, or were simply ensuring that he did not, in which case there would have been no need to enter the home to secure the weapons because at that time everyone was outside the home and cooperating fully, there were no weapons in reach, and appellant was certainly not in the midst of a suicidal attempt but rather had agreed to exit his home without incident and had been searched and placed in handcuffs.

In any of the foregoing scenarios, an immediate, warrantless search of appellant's home was entirely unnecessary

and unreasonable. (See *U.S. v. Moss* (4th Cir. 1992) 963 F.2d 673, 678-79 [finding search unconstitutional where "there was no objectively reasonable basis upon which [the officer] could have believed that accomplishment of the stated purposes of his entry required making the search"].) In addition, given that appellant – the only person the officers had any reason to believe had been in danger – was outside and handcuffed, this was also not a fast-moving scenario in which the officers had to make a split-second decision. To the contrary, the situation was completely under their control when the decision to enter was made, and none of the facts indicated that a search or "sweep" was immediately necessary for any purpose.

In addressing the officers' failure to even mention section 5150, the Court of Appeal found that "[t]he only reason that appellant was not taken to a mental health facility was because, thereafter, probable cause developed for his arrest." (*Ovieda, supra*, 19 Cal.App.5th at p. 623.) This assertion is entirely speculative, and its circular reasoning unsound. Nowhere in the record did the officers state that they intended to take appellant to a mental health facility, nor does the record set forth any facts indicating that such a detention would have been warranted. Moreover, neither the District Attorney nor the Attorney General argued that such a detention was justified or intended. As such, the majority's inference is pure conjecture, and not supported by the record or the government's position in this case.

In sum, given the lack of evidence that appellant continued to pose a risk to himself, the officers' lack of authority to

confiscate firearms, and the necessary deduction that if the officers were simply ensuring that appellant was no longer in danger of harming himself they could have easily done so from *outside* the home, it becomes clear that this justification for an immediate entry and search fails to satisfy the government's heavy burden in overcoming the *per se* unreasonableness of a warrantless search of a home. (*Welsh*, 466 U.S. at pp. 749-50.) Indeed, neither the People nor the lower courts have been able to explain what benefit could come from "securing" weapons, and why that purpose was reasonable based on the facts of this case. Therefore, because the officers' search was in no way *reasonably determined* "to be *necessary* for [the] purpose" "of preserving life or property," it cannot be sustained under the community caretaking exception to the warrant requirement. (*Ray, supra*, 21 Cal.4th at pp. 473, emphasis added.)

C. The Court Of Appeal's Majority Opinion Did Not Rely On Cases Applying The Community Caretaking Exception, Instead Citing Only To Highly Distinguishable Cases And Inapplicable Standards

The cases on which the majority opinion of the Court of Appeal relied to justify the search under the community caretaking exception are highly distinguishable. The cases not only apply irrelevant legal standards, but in each case cited, the officers articulated facts clearly indicating that someone *inside* the home was in immediate need of assistance, while here there were no such facts, and no such articulation.

For example, in *People v. Roberts, supra*, 47 Cal.2d 374, which was also relied upon in *Ray*, while investigating a

burglary, the officers were led to the home of someone they knew to be "sickly," and who did not work often. When they knocked on the door, there was no response, but they heard several "moans or groans" that sounded like someone in the apartment was in distress. (*Id.* at p. 380.) The court found that the officers' warrantless entry was proper because they had a reasonable belief, based on known facts, that someone inside the apartment needed assistance. (*Id.* at pp. 376-79.)

Roberts is clearly distinguishable from the present case. There the officers heard noises indicating that someone *inside* the home needed help, and they articulated facts to that effect. There are no similar facts in the present case, and the officers certainly did not point to any.

The Court of Appeal majority's reliance on *People v. Payne* (1977) 65 Cal.App.3d 679 is also misplaced. In *Payne*, a reliable informant reported that the defendant was molesting children in a garage bedroom. (*Id.* at p. 681.) Officers then saw a young boy enter the suspect's garage. Out of concern that appellant would harm the boy, the officers forced their way into the garage, and found the boy partially dressed on a bed. (*Id.* at p. 682.) In holding that no violation of the Fourth Amendment occurred, the court relied on the "emergency doctrine," stating that the "potential crimes for which appellant was being investigated were particularly 'heinous and dangerous,' " and the victim's " 'right to physical and mental integrity [simply] [outweighed] the right of [appellant] to remain secure in his domestic sanctuary . . . .' [Citation.]" (*Id.* at p. 684.)

Payne is also highly distinguishable from this case. There the officers had both probable cause that a crime was unfolding, and clear information that someone *inside* the suspect's home was in need of immediate help. Such circumstances created an emergency situation justifying entry without a warrant, but there is nothing similar in the current case.

Notably, this case is also entirely distinguishable from *Ray* itself. In *Ray,* the officers responded to a home where the door had been open all day and it was "all a shambles inside." (*Ray, supra*, 21 Cal.4th at p. 348.) Suspecting a robbery, the officers approached the door and saw that the home had been ransacked. They knocked but got no response, and so they entered. (*Ibid.*) *Ray* therefore involved facts indicating that a crime had occurred or was occurring *inside the home* based on the officers' direct observations. Here there were no facts indicating that anything was occurring inside the house at the time of entry.

Lastly, the court relied on the highly distinguishable case, *Brigham City, supra,* 547 U.S. 398. As mentioned above, *Brigham City* held that "police may enter a home without a warrant when they have an objectively reasonable basis for believing that *an occupant* is seriously injured or *imminently threatened with such injury.*" (*Id.* at p. 400, emphasis added.) This is vastly different from the current case, which did not even concern an *occupant* by the time the officers entered. Moreover, in *Brigham City* the court found the entry reasonable because the officers there directly witnessed "*ongoing* violence occurring *within* the home." (*Id.* at p. 405, emphasis in original.) This

stands in stark contrast to the facts of this case, and in fact demonstrates why the search of appellant's home was *unreasonable*.

D. To Justify A Warrantless Entry To Assist A Possible Suicidal Subject, An Officer Must Be Aware Of Objective Facts Indicating That Such Immediate Entry Is Indeed Necessary To Assist That Individual And Prevent Self-Harm, And No Such Facts Were Present Here

To be clear, appellant is not asserting that a call regarding a suicidal person can never necessitate a warrantless entrance of a home. But the key to such cases is that an objective review of the circumstances must indicate a *present* danger, where the situation is unfolding *inside* the house, and immediate entry is necessary to save the occupant's life.

For example, in *Sutterfield v. City of Milwaukee* (7th Cir. 2014) 751 F.3d 542, police entered a home to detain a woman for a mental evaluation after she told her psychiatrist, " 'I guess I'll go home and blow my brains out.' " (*Id.* at p. 545.) At the time of entry, the officers knew the woman was in her home, and reasonably believed she was currently suicidal. The court concluded that they had to act expeditiously to intercede in what objectively appeared to be an *unfolding crisis*, *inside* the home. (*Id.* at p. 566.)

Similarly, in *Fitzgerald v. Santoro* (7th Cir. 2013) 707 F.3d 725, 728-729, the officers had been informed that a woman had called the police station from her home, that she sounded intoxicated, and that she had threatened suicide. (*Id.* at p. 732.) Under such circumstances, the officers' forced warrantless entry

of the home was deemed justified based on exigent circumstances, as the officers reasonably believed that the occupant was in need of immediate assistance. (*Id.* at pp. 731-732.) The court also pointed out that the "key question" in the case was "whether 'the circumstances as they appeared *at the moment* of entry would lead a reasonable, experienced law enforcement officer to believe that someone *inside the house* . . . required *immediate* assistance.' [Citation.]" (*Id.* at p. 731, emphasis in original and added.)

The above-cited cases are clearly distinguishable from appellant's, and they demonstrate why the search in this case was improper. Appellant was not inside his home and no attempted suicide or threat of the same was underway when the officers entered. Simply put, no rational person could conclude based on an objective review of the facts of this case that an *immediate, warrantless* entry was necessary to save appellant's life.[10]

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[10] In general, warrantless searches conducted in response to calls reporting suicidal subjects are found to be reasonable where the suicidal subject was inside the house and their suicidal behavior was currently unfolding, thus necessitating an immediate entry in order to potentially save the subject's life, and, as noted above, such cases are generally evaluated under an emergency aid or exigent circumstances doctrine, as they involve actual, unfolding emergencies necessitating an immediate response. (See cases cited in Section II.C, *supra*.)

E. The Exclusionary Rule Applies Regardless Of Whether The Officers Were Initially Investigating A Crime

In rejecting appellant's claim, the Court of Appeal majority also found that "the premise of the exclusionary rule is that it applies only if the police are enforcing the criminal law, i.e., they are entering a residence to search for evidence of crime." (*Ovieda, supra*, 19 Cal.App.5th at p. 622.) This is not so. As the high court stated in *Camara v. Municipal Court of City and County of San Francisco* (1967) 387 U.S. 523 [87 S.Ct. 1727, 18 L.Ed.2d 930]:

> It is surely anomalous to say that the individual and his private property are fully protected by the Fourth Amendment only when the individual is suspected of criminal behavior. For instance, even the most law-abiding citizen has a very tangible interest in limiting the circumstances under which the sanctity of his home may be broken by official authority, for the possibility of criminal entry under the guise of official sanction is a serious threat to personal and family security.

(*Id.* at pp. 530-31, footnote omitted.) Accordingly, "a person's Fourth Amendment rights are not eviscerated simply because a police officer may be acting in a noninvestigatory capacity." (*U.S. v. King* (10th Cir. 1993) 990 F.2d 1552, 1560.)

Moreover, to insinuate that the exclusionary rule should not apply here because when first called to the house the officers were acting in a community caretaking role would imply that officers could walk up to any home and search it, and so long as they were not initially investigating a crime, whatever they happen to find becomes admissible evidence against the resident.

Clearly this is not what the Fourth Amendment contemplates. What conceivably protects the public from such unwarranted governmental intrusions is the necessity that a search predicated on the community caretaking exception be grounded in specific and articulable facts pursuant to which a reasonable person would find the search necessary, and when such facts are lacking, any evidence seized will be excluded.

F. The Court Of Appeal Majority Opinion Misconstrued Appellant's Arguments In Significant Ways And Drew Improper Deductions From The Circumstances Of This Case

The Court of Appeal majority stated that appellant's argument "is premised upon the theory that a suicidal person has the Second Amendment right to possess and bear firearms and that officers responding to a 911 call that someone is threatening suicide must leave when the person comes outside and says there is no problem." (*Ovieda, supra*, 19 Cal.App.5th at p. 620.) Appellant is not aware of any case holding that a previously suicidal person automatically forgoes his right to bear arms, and the Court of Appeal does not cite to any. Regardless, however, appellant has never asserted that an officer must immediately leave the premises once a suicidal subject says there is no issue, and indeed, that is not the question presented in this case. The question here is whether, under the Fourth Amendment, an officer has the right to *enter and search* the home of a reportedly suicidal subject *after* that subject has exited his home and no longer appears to pose a danger to himself. Appellant asserts

that the answer to that question is, "No," and therefore the search that occurred in this case was improper.

The Court of Appeal majority also stated that "[s]urely a police officer may enter a residence to protect a suicidal person and secure the premises if firearms are believed to be present." (*Ovieda*, *supra*, 19 Cal.App.5th at p. 621.) This statement is problematic because it presupposes that *entering* the home is *necessary* to protect the suicidal person, which, the record demonstrates, was not the case here. As Justice Perren correctly pointed out in his dissent, the answer to the majority's rhetorical question is, "Yes," but only "*if* the armed person is inside the residence and the police must enter to take the person into custody for a mental health evaluation." (*Ovieda*, *supra*, 19 Cal.App.5th at p. 628 (dis. opn. of Perren, J.), emphasis added.) Here, "[t]his strawman analysis fails, however, because appellant was outside of his house and not believed to be a danger to himself or others." (*Ibid.*)

Lastly, the majority opinion makes the broad conclusion that "when it comes to choosing between the Fourth Amendment protection against warrantless searches and the preservation of life, the preservation of life controls." (*Ovieda*, *supra*, 19 Cal.App.5th at p. 621.) Appellant does not disagree with this sentiment, but it simply does not apply here. When all inhabitants are outside the home and nothing indicates that anyone present is in danger, the "preservation of life" is not at issue, and therefore it cannot be "chosen" over Fourth Amendment protections, or used to justify an entry and search.

G. The Warrantless Search In This Case Cannot Be Justified Under The Emergency Aid Doctrine Because There Were No Specific And Articulable Facts Demonstrating That Anyone Was Inside The Home Or In Need Of Assistance

As noted above, the "emergency aid" component of the community caretaking exception provides that "police officers 'may enter a dwelling without a warrant to render emergency aid and assistance to a person whom they reasonably believe to be in distress and in need of that assistance.' [Citation.]" (*Ray, supra*, 21 Cal.4th at p. 470.) While the People have not relied upon this exception to the warrant rule in this case, it bears noting that this record contains *no* facts indicating that the officers' entry of appellant's home was necessary to "render emergency aid" to anyone. (*Ibid.*) As discussed in detail above, at the time of entry there was not one fact in the record indicating that anyone else was present inside the home, much less anyone who was in need of emergency aid, and the officers expressly admitted that they "didn't have any specific information that led [them] to believe somebody else was inside." (RT 42-43; see also RT 28.)

"Substantial authority has consistently indicated that warrantless entries based on the emergency aid exception require both the potential for injury to the officers or others and the need for swift action," and "[t]he right to be free from warrantless search under this exception absent these factors is clearly established." (*Goodwin, supra*, 781 F.3d at p. 332.) In this case, the absence of such factors is evident, particularly when compared against those cases in which searches based on this exception have been upheld. (See e.g. *Tamborino v. Superior*

Court (1986) 41 Cal.3d 919, 921-922, 924-925 [report that person is injured and bleeding, coupled with blood stains outside home and neighbor's confirmation that injured person is within, justified police entry to provide emergency aid]; *People v. Troyer* (2011) 51 Cal.4th 599, 607-609 [where police responded to report of shots fired and found badly injured people on porch of home and blood on front door, emergency entry of home to look for additional victims or suspect was objectively reasonable].)

In sum, because this record did not contain *any* specific facts indicating that emergency aid was required by someone inside appellant's home, the emergency aid exception cannot justify the officers' warrantless entry and search. (*Ray, supra*, 21 Cal.4th at pp. 472-473.)

H. Conclusion

As set forth above, the community caretaking exception was misapplied in this case, and the emergency aid doctrine does not apply. The law is clear that an officer's obligation to properly justify his actions under the Fourth Amendment does not lessen simply because he is initially acting in a non-investigatory role, and here the officers failed to provide any such proper justification. As such, the search in this case was conducted in violation of appellant's Fourth Amendment right to be free from unreasonable governmental intrusions, and reversal is required. (*Ray, supra*, 21 Cal.4th at p. 473; *Kyllo v. United States, supra*, 533 U.S. at p. 31.)

IV. BECAUSE THE FACTS OF THIS CASE DEMONSTRATE THAT THE OFFICERS WERE AT LEAST IN PART INVESTIGATING SUSPECTED CRIMINAL ACTIVITY, THEY CANNOT RELY ON THE COMMUNITY CARETAKING EXCEPTION TO THE WARRANT REQUIREMENT

Where an officer conducting a search for community caretaking purposes is also acting in a criminal investigatory role, reliance on the community caretaking exception is precluded. Here, the record demonstrated that the officers' motive was mixed, and yet the lower courts failed to apply this important limitation to the exception.

Pursuant to *Ray*, " 'the defining characteristic of community caretaking functions is that they are totally unrelated to the criminal investigation duties of the police.' " [Citation.]" (*Ray, supra*, 21 Cal.4th at p. 471.) The *Ray* opinion also made clear that reviewing courts must be wary of officers relying on such exception when their true purpose is to seek out evidence of a crime. The court explained that when evaluating the use of this exception, "the trial courts play a vital gatekeeper role, judging not only the credibility of the officers' testimony but of their motivations," and the court emphasized that "[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.)[11]

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[11] While in *Brigham City* the Supreme court held that an officer's subjective motive is irrelevant when evaluating a warrantless search under the Fourth Amendment, there the court was not addressing a "community caretaking exception" as contemplated in *Ray*, but instead was applying an exigency/emergency

Notably, the Attorney General conceded in this case that a warrant based on probable cause could not have issued. (*Ovieda, supra*, 19 Cal.App.5th at p. 619, n. 2.) Yet, the presence of a dual motive on behalf of the officers is demonstrated by several aspects of the record. First, one of the officers testified that they performed the search "to make sure no one else was inside or hurt *or involved in any illegal possession or use of weapons or firearms*." (RT 43, emphasis added.) This testimony alone demonstrates that the officers had begun to suspect criminal activity, and were motivated at least in part by a criminal investigatory purpose.

In addition, the officers made references to the possibility of domestic violence and their need to see if anyone had "been injured by the suicidal subject." (RT 12.) It is contradictory that the officers deemed their entry necessary because of these unsupported fears, and yet were relying on the community caretaking to justify their actions.[12] (*Ray, supra*, 21 Cal.4th at p.

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exception. (*Brigham City, supra*, 547 U.S. at p. 404-05, 406.) It is therefore unclear what effect *Brigham* has had on the community caretaking exception, pursuant to which the officer's motive is a key aspect. In *People v. Madrid, supra*, 168 Cal.App.4th 1050, in which the court evaluated a vehicle stop and detention under the community caretaking exception, the court noted that the high court appears to have rejected the subjective aspect of the analysis, but because the court found that the search was not a reasonable exercise of the officer's community caretaking functions, it did not reach the issue. (*Id.* at p. 1060, n. 5, citing *Brigham City, supra*, 547 U.S. at pp. 404-405.)

[12] Notably, there is nothing in the record, and the officers did not point to any facts, indicating that any form of domestic violence

471 ["Upon entering a dwelling, officers view the occupant as a potential victim, not as a potential suspect."].)

It is also notable that the officers conducted their search with their guns drawn. (RT 12-23.) Such conduct seems incongruous with the assertion that the officers were only there to help, and did not suspect any criminal activity.

The presence of a dual motive is further bolstered by the officers' own descriptions of their actions as a "protective sweep." (RT 12, see also RT 39-40.) Protective sweeps are conducted only in conjunction with in-home arrests. (*Maryland v. Buie*, *supra*, 494 U.S. at p. 337.) Thus, the officers' own narratives indicated that they were acting in a criminal investigatory role.

The officers also referenced their suspicion that Case was not being truthful when he stated that no one else was in the house. This, too, indicates that the officers believed something criminal was afoot. If the subjects were being treated as innocent parties, there would be no reason to suspect they were lying. Yet, the officers did not take them at their word, which demonstrates that they believed wrongdoing was occurring.

It is also quite telling that the officers never asked appellant for permission to enter his home. One would think that if the officers were only there to assist and did not suspect any criminal activity, they would have at least at the outset sought the homeowner's consent to enter; yet, they did not.

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was taking place. The officers' statements in this regard were entirely speculative.

The foregoing facts demonstrate that the officers were not solely playing a community caretaking role, but were also investigating whether something criminal was taking place. In such circumstances, the community caretaking exception does not apply. (*Ray, supra*, 21 Cal.4th at p. 477.) As such, the lower courts' findings that there was no dual motive are not supported by the record.

The Court of Appeal's majority opinion stated that "no one claims the 911 call was a ruse or subterfuge to gain entry and search for evidence of a crime." (*Ovieda, supra*, 19 Cal.App.5th at p. 619.) But the motivations of the 911 call are irrelevant. It is the officers' motivations that matter, and even if their initial purpose was merely to provide assistance, that does not mean their motivations did not change prior to the search. After their initial arrival, the officers' own words and actions indicated that they began to suspect criminal conduct, and when that is the case, they cannot rely on the community caretaking exception to enter and search a home. (*Ray, supra*, 21 Cal.4th at p. 477.)

CONCLUSION

Supreme Court precedent and settled Fourth Amendment jurisprudence dictate that *Ray*'s application of the community caretaking exception to warrantless searches of homes is unconstitutional. However, if the Court holds otherwise, it should still reverse the denial of the suppression motion because, pursuant to the facts of this case, it is clear that no exception to the warrant requirement applies.

The justifications asserted under the community caretaking exception were unreasonable and not supported by the record, and the officers failed to point to any specific or articulable facts that could have rendered the physical entry of appellant's home necessary. In addition, the evidence demonstrates that the officers harbored a mixed motive when they searched appellant's home, which should preclude application of the community caretaking exception altogether.

The officers in this case had options. They could have asked appellant for consent to enter his home, they could have detained him if they had cause to do so, or they could have waited to see how the situation was going to unfold. They did none of these things, instead opting to enter and search his home without a warrant, even though nothing about the facts they described indicated that an immediate search would serve any reasonable purpose. Their actions were therefore prohibited under the Fourth Amendment's proscription of unreasonable governmental intrusions, and appellant respectfully asks this court to reverse the denial of his suppression motion.

CERTIFICATION OF WORD COUNT

I, Elizabeth K. Horowitz, hereby certify that, according to the computer program used to prepare this document, Appellant's Opening Brief on the Merits contains 17,154 words.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed September 24, 2018, at Tulsa, Oklahoma.

Elizabeth K. Horowitz
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Case No: S247235

I, the undersigned, declare: I am over 18 years of age, employed in the County of Tulsa, Oklahoma, and not a party to the subject cause. My business address is 5272 S. Lewis Ave, Suite 256, Tulsa, OK 74105. I served the within Appellant's Opening Brief on the Merits by placing a copy thereof in a separate envelope for each addressee named hereafter, addressed to each such addressee respectively as follows:

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Each envelope was then sealed and with the postage thereon fully prepaid deposited in the United States mail by me at Tulsa, Oklahoma, on September 24, 2018. I also served a copy of this petition electronically on the following parties:

- California Attorney General, at docketingLAawt@doj.ca.gov
- California Court of Appeal for the Second District, Division Six, at 2d6.clerk6@jud.ca.gov

I declare under penalty of perjury that the foregoing is true and correct. Executed on September 24, 2018, at Tulsa, Oklahoma.

Elizabeth K. Horowitz