SUPREME COURT
FILED

OCT 03 2018

Jorge Navarrete Clerk

Deputy

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

Elizabeth K. Horowitz
State Bar No. 298326

Law Office of Elizabeth K. Horowitz, Inc.
5272 S. Lewis Ave, Suite 256
Tulsa, OK 74105
Telephone: (424) 543-4710
Email: elizabeth@ekhlawoffice.com
Attorney for Appellant
By Appointment of the Court of Appeal
Under the California Appellate Project
Assisted Case System

TABLE OF CONTENTS

APPELLANT'S OPENING BRIEF ON THE MERITS 10

ISSUES ON REVIEW 10

INTRODUCTION 11

STATEMENT OF CASE 15

STATEMENT OF FACTS 17

ARGUMENT 21

I. THE FOURTH AMENDMENT WARRANT REQUIREMENT AND EXCEPTIONS THERETO 21

A. The Warrant Requirement And The Exigent Circumstances Exception 21

B. The Community Caretaking Exception To The Fourth Amendment's Warrant Requirement............................. 24

1) The Origination Of The Exception And Its Limited Application In Supreme Court Jurisprudence... 24

2) The Community Caretaking Exception As Applied In California 25

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 29

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 30

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 33

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 38

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 41

E. Conclusion 48

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 48

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 50

B. The Officers' Purported Desire To "Secure" Weapons Was Baseless And Unreasonable, And Cannot Justify The Warrantless Search That Took Place 55

1) Appellant Was Already Outside His Home And Nothing Indicated That He Continued To Pose A Danger To Himself, Making This Purported Justification Unfounded 55

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 58

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 62

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 65

E. The Exclusionary Rule Applies Regardless Of Whether The Officers Were Initially Investigating A Crime 67

F. The Court Of Appeal Majority Opinion Misconstrued Appellant's Arguments In Significant Ways And Drew Improper Deductions From The Circumstances Of This Case 68

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 70

H. Conclusion 71

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 72

CONCLUSION 75

CERTIFICATION OF WORD COUNT 77

TABLE OF AUTHORITIES

FEDERAL CASES

Ames v. King County, Washington (9th Cir. 2017) 846 F.3d 340 42

Arden v. McIntosh (10th Cir. 2015) 622 Fed.Appx. 707 57

Brigham City v. Utah (2006) 547 U.S. 398, 403 [126 S.Ct. 1943, 164 L.Ed.2d 650] .... *passim*

Cady v. Dombrowski (1973) 413 U.S. 433 [93 S.Ct. 2523, 37 L.Ed.2d 706] .... *passim*

California v. Carney (1985) 471 U.S. 386, 392 [105 S.Ct. 2066, 85 L.Ed.2d 406] 37

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] 67

Carroll v. United States (1925) 267 U.S. 132, 153 [45 S.Ct. 280, 69 L.Ed. 543] 37

Collins v. Virginia (2018) __ U.S. __ [138 S.Ct. 1663, 201 L.Ed.2d 9] 33, 37, 38

Colorado v. Bertine (1987) 479 U.S. 367, 381 [107 S.Ct. 738, 93 L.Ed.2d 739] 25, 34, 35, 36

Coolidge v. New Hampshire (1971) 403 U.S. 443, 474-475 [91 S.Ct. 2022, 29 L.Ed.2d 564] 22

Corrigan v. District of Columbia (D.C. Cir. 2016) 841 F.3d 1022 .... 31, 55

District of Columbia v. Heller (2008) 554 U.S. 570, 635 [128 S.Ct. 2783, 171 L.Ed.2d 637] 56

Fitzgerald v. Santoro (7th Cir. 2013) 707 F.3d 725 65

Florida v. Jardines (2013) 569 U.S. 1, 6 [133 S.Ct. 1409, 185 L.Ed.2d 495] 30

Goodwin v. City of Painesville (6th Cir. 2015) 781 F.3d 314 .... 46, 51, 70

Kentucky v. King (2011) 563 U.S. 452, 474 [131 S.Ct. 1849, 179 L.Ed.2d 865] 30

Ker v. California (1963) 374 U.S. 23, 40 [83 S.Ct. 1623, 10 L.Ed.2d 726] 22

Kyllo v. United States (2001) 533 U.S. 27, 31 [121 S.Ct. 2038, 150 L.Ed.2d 94] 11, 71

Macdonald v. Town of Eastham (D. Mass. 2013) 946 F.Supp.2d 235 .... 41, 47

Matalon v. Hynnes (1st Cir. 2015) 806 F.3d 627, 633................. 30

Maryland v. Buie (1990) 494 U.S. 325, 337 [110 S.Ct. 1093, 108 L.Ed.2d 276] 21, 54, 71

Michigan v. Tyler (1978) 436 U.S. 499, 509 [98 S.Ct. 1942, 56 L.Ed.2d 486] 22, 23

Mincey v. Arizona (1978) 437 U.S. 385, 393-394 [98 S.Ct. 2408, 57 L.Ed.2d 290] 22, 23, 32, 42, 45

Miranda v. City of Cornelius (9th Cir. 2005) 429 F.3d 858 ... 35, 36

Payton v. New York (1980) 445 U.S. 573, 586 [100 S.Ct. 1371, 63 L.Ed.2d 639] 22, 30, 31

Ray v. Township of Warren (3d Cir. 2010) 626 F.3d 170 .... 25, 29, 41, 43

Rice v. ReliaStar Life Ins. Co. (5th Cir. 2014) 770 F.3d 1122 40

Roberts v. Spielman (11th Cir. 2011) 643 F.3d 899 39

Rockwell v. Brown (5th Cir. 2011) 664 F.3d 985 40

South Dakota v. Opperman (1976) 428 U.S. 364, 368 [96 S.Ct. 3092, 49 L.Ed.2d 1000] 25, 33, 34, 36

Storey v. Taylor (10th Cir. 2012) 696 F.3d 987 .... 53, 54

Sutterfield v. City of Milwaukee (7th Cir. 2014) 751 F.3d 542 ... 65

Tamborino v. Superior Court (1986) 41 Cal.3d 919 70

U.S. v. Bute (10th Cir. 1994) 43 F.3d 531 43

U.S. v. Coccia (1st Cir. 2006) 446 F.3d 233 34

U.S. v. Erickson (9th Cir. 1993) 991 F.2d 529 .... 29, 37, 41, 42

U.S. v. King (10th Cir. 1993) 990 F.2d 1552 67

U.S. v. McGough (11th Cir. 2005) 412 F.3d 1232 .... 22, 46, 56

U.S. v. Moss (4th Cir. 1992) 963 F.2d 673 61

U.S. v. Pichany (7th Cir. 1982) 687 F.2d 204 .... 29, 42

U.S. v. Quezada (8th Cir. 2006) 448 F.3d 1005 44

U.S. v. Rodriguez-Morales (1st Cir. 1991) 929 F.2d 780 34

U.S. v. Rohrig (6th Cir. 1996) 98 F.3d 1506 .... 45, 46

U.S. v. Sanders (10th Cir. 2015) 796 F.3d 1241 35

U.S. v. Santana (1976) 427 U.S. 38, 42 [96 S.Ct. 2406, 49 L.Ed.2d 300] 22

U.S. v. Smith (8th Cir. 2016) 820 F.3d 356 .... 45, 55

U.S. v. Snipe (9th Cir. 2008) 515 F.3d 947 42

U.S. v. United States District Court (1972) 407 U.S. 297, 313 [92 S.Ct. 2125, 32 L.Ed.2d 752] 21, 30

U.S. v. Williams (6th Cir. 2003) 354 F.3d 497 .... 45, 54

U.S. v. York (5th Cir. 1990) 895 F.2d 1026 46

Wayne v. United States (D.C. Cir. 1963) 318 F.2d 205 23

Welsh v. Wisconsin (1984) 466 U.S. 740, 748 [104 S.Ct. 2091, 80 L.Ed.2d 732] 21, 23, 30, 62

STATE CASES

Adoption of Kelsey S. (1992) 1 Cal.4th 816 28
People v. Block (1971) 6 Cal.3d 239 .... 27, 49
People v. Celis (2004) 33 Cal.4th 667 51
People v. Dumas (1973) 9 Cal.3d 871 31
People v. Karis (1988) 46 Cal.3d 612 29
People v. Ledesma (2003) 106 Cal.App.4th 857 52
People v. Madrid (2008) 168 Cal.App.4th 1050...................... 54, 73
People v. Morton (2003) 114 Cal.App.4th 1039...................... 29, 58
People v. Ormonde (2006)143 Cal.App.4th 282........................... 52
People v. Payne (1977) 65 Cal.App.3d 679 63
People v. Ramey (1976) 16 Cal.3d 263.. 39
People v. Ray (1999) 21 Cal.4th 464 .... *passim*
People v. Roberts (1956) 47 Cal.2d 374 .... 26, 49, 62
People v. Troyer (2011) 51 Cal.4th 599.. 71
State v. Christenson (Or. App. 2002) 45 P.3d 511 44
State v. Deneui (S.D. 2009) 775 N.W.2d 221............................... 47
State v. Gill (N.D. 2008) 755 N.W.2d 454.................................... 44
State v. Pinkard (Wis. 2010) 785 N.W.2d 592............................. 47
State v. Vargas (N.J. 2013) 63 A.3d 175, 189.............................. 44
State v. Wilson (Ariz. 2015) 350 P.3d 800 .... 39, 44

STATE STATUTES

Health & Safety Code Sections:

11379.6 16

Penal Code Sections:

1524 59
1538.5 16

30605 16
33210 16
33410 16

Welfare & Institutions Code Sections:
5150 .... 59, 61

CONSTITUTIONAL PROVISIONS

Federal:
U.S. Const., 4th Amend. .... *passim*
U.S. Const., 14th Amend. 21

State:
Cal. Const., art. I, § 13 21

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

APPELLANT'S OPENING BRIEF ON THE MERITS

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.*

---

[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

---

[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

---

[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.)