No. _____

In The
Supreme Court of the United States

TERRY LEE COFFMAN,

Petitioner,

v.

STATE OF IOWA,

Respondent.

On Petition For A Writ Of Certiorari To The Iowa Supreme Court

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

WHETHER THIS COURT'S HOLDING IN *CADY V. DROMBROWSKI*, 413 U.S. 433 (1973), PERMITS A WARRANTLESS SEIZURE UNDER THE FOURTH AMENDMENT WITHOUT OBJECTIVE FACTS ESTABLISHING AN IMMEDIATE DISCERNIBLE NEED FOR ASSISTANCE.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Terry Lee Coffman, respectfully requests that a writ of certiorari issue to review the judgment of the Iowa Supreme Court in Case No. 16-1720 filed on June 22, 2018. *State v. Coffman*, 914 N.W.2d 240 (Iowa 2018).

OPINIONS BELOW

The opinion of the Supreme Court of Iowa, upholding the denial of Petitioner's motion to suppress is a published opinion, and is reported at 914 N.W.2d 240 (Iowa 2018). App. 1-75. The opinion of the Iowa Court of Appeals also denying the Petitioner's motion to suppress, No. 16-1720, is unpublished but is available at 2017 WL 3283312. App. 76-88.

JURISDICTION

The judgment of the Supreme Court of Iowa was entered on June 22, 2018, affirming the denial of the Petitioner's motion to suppress, finding that the warrantless seizure of the Petitioner did not violate the Fourth Amendment of the United States Constitution nor Article 1, Section 8 of the Iowa Constitution. App. 30, 40. On September 12, 2018, Justice Neil Gorsuch extended the time to file a petition for a writ of certiorari to and including October 20, 2018. This Court's jurisdiction rests on 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the United States Constitution provides, in pertinent part that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but on probable cause." U.S. Const. amend. IV.

STATEMENT OF THE CASE

On May 22, 2016, Deputy Nicholas Hochberger [hereinafter Deputy Hochberger] of the Story County Sheriff's Office, was on routine patrol just outside of Slater, Iowa, when he observed a vehicle pulled over on the side of the highway with the headlights and brake lights activated. App. 2, 28. Deputy Hochberger activated his red and blue flashing lights and pulled behind the vehicle to "check the welfare of the occupants or see if they need any assistance, if they have vehicle problems or medical problems, or if they are just talking on their cell phone."[1] App. 2. Deputy Hochberger did not notice any overt signs of distress such as a slumped driver, activation of hazard lights, odd-ball parking, or safety hazards that would have been indicative of anyone needing assistance. App. 72. Deputy Hochberger claimed to have activated his top red and

[1] Although not set forth in either the Iowa Court of Appeals Opinion or the Iowa Supreme Court Opinion, it is important to note that Deputy Hochberger admitted at the suppression hearing that the majority of the vehicles stopped on the side of the road that he comes into contact with do not need police assistance.

blue flashing emergency lights for safety reasons and to alert the driver of police presence even though he was in fully-marked patrol vehicle equipment with rear-facing flashing lights.[2] App. 2.

Deputy Hochberger approached the vehicle on foot to speak with the driver and upon reaching the driver's window he immediately smelled the strong odor of alcohol. App. 3. Deputy Hochberger stated to the occupants of the vehicle, "Hi guys, everything ok tonight?" App. 3. Terry Coffman [hereinafter Coffman], the driver, indicated that they were fine and that he was just giving his wife a back rub because she was having neck issues. App. 3. Suspecting that Coffman had been drinking, Deputy Hochberger engaged in a drunk driving investigation that ultimately led to Coffman's arrest. App. 3-4.

Coffman was charged with operating while intoxicated (OWI) first offense, in violation of Iowa Code § 321J.2, a serious misdemeanor, on June 16, 2016. App. 4. Coffman filed a timely Motion to Suppress Evidence seeking to suppress all evidence obtained due to an illegal warrantless seizure of his person under both the Fourth Amendment of the United States Constitution and Article 1, Section 8 of the Iowa Constitution. App. 4. Following an evidentiary hearing, the trial

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[2] Again although not cited by the Iowa Court of Appeals or Iowa Supreme Court, the facts at the suppression hearing indicated that Deputy Hochberger was in a fully-marked patrol vehicle equipped with rear and front facing flashing light separate from his top emergency lights.

court found that a seizure occurred,[3] but denied the motion citing the "community caretaking" exception to the warrant requirement. App. 4. Mr. Coffman ultimately filed a Motion to Reconsider and Request for Expanded Finding of Facts and Conclusions of Law, which was also denied. App. 4. Mr. Coffman waived his right to a jury trial and stipulated to a trial on the minutes of testimony in which the court found him guilty and sentenced him to two days in jail and ordered him to pay a fine. App. 5.

Coffman appealed claiming that the warrantless seizure of his person under both the Fourth Amendment of the United States Constitution and Article 1, Section 8 of the Iowa Constitution had been violated. App. 5. His appeal was transferred to the Iowa Court of Appeals which upheld his conviction finding the public servant prong of the "community caretaking" doctrine supported the warrantless seizure. App. 76-88. A request for further review was filed and granted by the Iowa Supreme Court. App. 5.

In a divided opinion,[4] the Iowa Supreme Court concluded Deputy Hochberger's warrantless seizure of Coffman did not violate either the Fourth Amendment of the United States Constitution nor Article 1, Section 8 of the Iowa Constitution. App. 30, 40. The court

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[3] A person commits a traffic violation in Iowa if they do not yield to an emergency vehicle with red and blue flashing lights activated. *See* Iowa Code § 321.324.

[4] The Iowa Supreme Court was a 4-2 opinion with Cady, C.J., Mansfield, Waterman, and Zager, JJ., joining the majority; Appel and Wiggins, JJ., dissenting; and Hecht, J., taking no part.

specifically concluded that a warrantless "community caretaking seizure" will not run afoul of the Fourth Amendment as long as there are "objective grounds to believe that a motorist or a third party affected by the motorist *may* need assistance." Emphasis added. App. 37. Coffman is now seeking review of that opinion by this Court.

REASONS FOR GRANTING THE WRIT

I. THIS COURT SHOULD RESOLVE THE QUESTION OF WHETHER *CADY v. DOMBROWSKI*, 413 U.S. 433 (1973), CREATED A STAND-ALONE EXCEPTION TO THE FOURTH AMENDMENT'S WARRANT REQUIREMENT, AND IF SO, HOW IT SHOULD BE APPLIED.

In *Cady v. Dombrowski*, 413 U.S. 433 (1973), this Court stated:

> "local police officers . . . frequently investigate vehicle accidents in which there is no claim of criminal liability and 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." Emphasis added.

Id. at 441. Out of this relatively simple and straightforward observation has emerged what legal scholars and lower courts have coined the "community

caretaking" exception to the Fourth Amendment. *See generally* Michael R. Diminio Sr., *Police Paternalism: Community Caretaking, Assistance Searches, and Fourth Amendment Reasonableness*, 66 Wash & Lee L. Rev. 1485 (2009) [hereinafter Diminio].

The purpose of the Fourth Amendment "is to safeguard the privacy and security of individuals against arbitrary invasions by government officials." *South Dakota v. Opperman*, 428 U.S. 364, 377 (1976) (Powell, J., concurring). According to President Reagan, the nine most terrifying words in the English language are "I'm from the government, and I'm here to help." Reagan, Ronald, The President's News Conference (1986). Justice Louis D. Brandeis cautioned that "the greatest dangers to liberty lurk in the insidious encroachment by men of zeal, well meaning but without understanding." *Olmstead v. United States*, 277 U.S. 438, 479 (1928) (Brandeis, J., dissenting). Assuredly, the expanding scope of what constitutes "community caretaking" activity have many, including Mr. Coffman, feeling as though, "my independence seems to vanish in the haze." The Beatles. "Help." (1965).

Unfortunately, the reality of the above quotes becomes more of a reality when reviewing how the so-called community care taking exception has arisen and been strewn into uncharted waters. The lack of clarity as to what privacy interests and factual scenarios implicate the Court's holding in *Cady* have resulted in a lack of uniformity and consistency in its application across the nation. Now is the time for this Court to provide the state and federal courts with direction and

guidance on the scope and standards, if any, to be applied, when analyzing whether the seizure of an individual under the guise of so-called "community caretaking" is justified under the Fourth Amendment. The importance of this opportunity is highlighted by the frequently-recurring fact pattern presented in this case: A motorist is safely and lawfully on the side of the road only to be seized by law enforcement merely to ascertain if assistance is needed.

A. The Court's Holding in *Cady* Did not Create a Stand-Alone Exception to the Warrant Requirement of the Fourth Amendment.

This Court first discussed what has become known as the "community care taking doctrine," wherein a divided Court concluded that a warrantless search of an impounded vehicle after the owner had been arrested was justified under the Fourth Amendment. *Cady*, 413 U.S. at 435-36. In an effort to find a service revolver, the officers uncovered other evidence during the search of the vehicle's trunk which supported the filing of murder charges. *Id*. at 437. As a result, this Court was tasked with determining the constitutional reasonableness of that warrantless search under the Fourth Amendment. *Id*. at 442.

In addressing this issue and concluding that the warrantless search of the vehicle's trunk was justified, the divided Court did not specifically announce that it was creating a new stand-alone exception to the

warrant requirement. Nor has this Court acknowledged that a stand-alone "community caretaking" exception to the warrant requirement exists when mentioning *Cady* in subsequent opinions. *See Colorado v. Bertine*, 479 U.S. 367, 375 (1987); *Illinois v. Lafayette*, 462 U.S. 640, 643 (1983); *South Dakota v. Opperman*, 428 U.S. 364, 367-76 (1976). This is likely because the Court recognized the danger of allowing law enforcement to simply claim they were engaged in community protection and thereby bypass the otherwise applicable protections of the Fourth Amendment. *See* Diminio, 66 Wash. & Lee L. Rev. at 1486 ("police activity directed to . . . correcting a dangerous condition on a highway or assisting a person in need fits uncomfortably within a conception of the Constitution that permits intrusions into private areas only when the police have obtained warrants); *State v. Coffman*, 914 N.W.2d 240, 263 (Iowa 2018) (Appel, J., dissenting) ("arguably everything an officer does pursuant to his or her lawful duties is acting as a public servant. As a result, a case can be made that the public-servant exception to the warrant requirement would swallow up the constitutional restrictions on warrantless searches all together").

Not only does the Court's refusal in *Cady* to specifically adopt a stand-alone exception support the proposition that the Court did not intend to do so, but the Court's use of prior precedent and specific factual findings also supports this interpretation. For example, the Court utilized two "inventory search" cases to support the warrantless search of the vehicle. *Cady*, 413 U.S. at 445-47 (discussing *Harris v. United States*,

390 U.S. 234 (1968) and *Cooper v. California*, 386 U.S. 58 (1967)). In *Harris* and *Cooper*, the Court concluded that the warrantless searches were reasonable under the Fourth Amendment by relying on established police department regulations (i.e., inventory searches) and state law (i.e., impound law) which would necessarily curtail any overreaching by law enforcement.

Moreover, the Court relied heavily on the fact that the owner of the car was incarcerated and the car had been lawfully impounded, stating:

> "the type of caretaking search conducted here of a vehicle that was neither in the custody nor on the premises of its owner, and that had been placed where it was by virtue of lawful police action, was not unreasonable solely because a warrant had not been obtained."

Cady, 413 U.S. at 447-48. The Court also relied upon the fact that departmental standards were utilized to effectuate the search. *Id*. at 443. Thus, the application of existing inventory search cases, and specific factual findings in accord with those decisions, provides further support for the proposition that this Court did not intend on adopting a stand-alone exception to the warrant requirement.

Additionally, the announcement by the majority in *Cady* was not without criticism as Justices Brennan, Douglas, Stewart, and Marshall vigorously dissented. *Id*. at 450. (Brennan, J., dissenting). Writing for the minority, Justice Brennan criticized the Court's departure from existing precedent. *Id.* at 454. In his view,

the search was not supported by any of the then current exceptions to the warrant requirement under the Fourth Amendment and therefore should have been found unconstitutional. *Id*. at 451-53.

In light of the foregoing, it remains far from clear whether *Cady* created a new exception to the warrant requirement (i.e., community care taking), or whether while recognizing that officers serve a community assistance role, *Cady* was simply an inventory search case. *See Commonwealth v. Livingstone*, 174 A.3d 609, 644 (Pa. 2017) (Donohue, J., concurring and dissenting) ("*Cady* is an inventory search case."); *Coffman*, 914 N.W.2d, 261, (Appel, J., Dissenting) ("the interpretive question . . . is whether this language was intended to provide a springboard for a stand-alone community caretaking exception to the warrant requirement that extends far beyond the limitations expressly emphasized in the majority opinion of *Cady*."). As evidenced below, lower courts have since been left to wrestle with how, if at all, the pronouncement in *Cady* is to applied.

B. Irrespective of the *Cady* Court's Intention at the Time, the Scope of the Court's Pronouncement Needs Direction, as Lower Courts are Split on How it Should be Applied.

i. Federal Circuit Courts are Split.

The federal circuit courts are divided on whether the pronouncement in *Cady* was limited in scope to

automobile/inventory searches or created a stand-alone exception to the warrant requirement. *MacDonald v. Town of Eastham*, 745 F.3d 8, 13 (1st Cir. 2014) ("the reach of the community caretaking doctrine is poorly defined outside of [motor vehicle searches]"). The Third, Seventh, Ninth, and Tenth Circuits have appeared to determine that the limiting language in *Cady* and the availability of other exceptions to the warrant requirement do not necessitate the need to expand the scope of the community care taking doctrine outside of automobile searches. *See Ray v. Twp. of Warren*, 626 F.3d 170, 177 (3d Cir. 2010) (recognizing the limitation announced in *Cady* the court concluded that "the community caretaking doctrine cannot be used to justify warrantless searches of a home"); *United States v. Pichany*, 687 F.2d 204, 208-09 (7th Cir. 1982) (per curiam) (finding "the Supreme Court did not intend to create a broad exception to the warrant requirement to apply whenever police are acting in an 'investigative' rather than a criminal function" in refusing to apply the community care taking doctrine to the search of a business warehouse); *United States v. Erickson*, 991 F.2d 529, 532 (9th Cir. 1993) (refusing to extend the community care taking doctrine to searches of house by concluding, "*Cady* clearly turned on the 'constitutional difference' between searching a house and searching an automobile"); *United States v. Bute*, 43 F.3d 531, 535 (10th Cir. 1994) (limiting community care taking to automobile searches).

On the other hand, the Eighth Circuit has seemingly denounced any limitations of this doctrine solely

to automobiles. *See United States v. Quezada*, 448 F.3d 1005, 1007(8th Cir. 2006) (allowing a residential search under community care taking). Other circuits like the First and Sixth, seem to be at an impasse as to whether or not the community care taking doctrine should be extended beyond the confines of automobile searches. *See MacDonald v. Town of Eastham*, 745 F.3d 8 (1st Cir. 2014) (refusing to decide whether the community care taking doctrine applies to searches of homes but finding qualified immunity given the unsettled nature of the law); *Compare United States v. Williams*, 354 F.3d 497, 508 (6th Cir. 2003) ("[W]e doubt that community caretaking will generally justify warrantless entries into private homes.") *with United States v. Rohrig*, 98 F.3d 1506, 1521-22 (6th Cir. 1996) (allowing entry into a home in the middle of the night to turn down loud music disturbing neighbors).

Whatever the intended holding in *Cady*, it has been been further confused due to the holding in *Brigham City v. Stuart*, 547 U.S. 398 (2006), where this Court concluded that "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." *Id.* at 398. In so concluding, the Court rationalized that "an action is 'reasonable' under the Fourth Amendment, regardless of the individual officer's state of mind, 'as long as the circumstances viewed objectively,' support the action." *Id*. at 404. Although analyzed under exigent circumstances as opposed to community care taking, this holding seems to be at odds with *Cady* which requires

a court to determine whether police were engaged in activities "*totally divorced* from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." Emphasis added. 413 U.S at 441. *See Hunsberger v. Wood*, 570 F.3d 546, 554 (4th Cir. 2009) (recognizing the dichotomy between the community care taking doctrine and the exigent circumstances doctrine as "overlapping conceptually" but different as a "doctrinal matter" because the "community caretaking doctrine requires a court to look at the *function* performed by a police officer and the emergency exception requires an analysis of the *circumstances* to determine whether an emergency requiring immediate action existed"). This conceptual overlapping has caused confusion as to the intended scope of the community care taking doctrine among lower state courts as well.

ii. State Courts are Also Split.

As the Iowa Supreme Court recognized, "much of the relevant caselaw [on this subject] has arisen in state courts in light of the fact that community caretaking is generally the role of local police rather than federal officers." *Coffman*, 914 N.W.2d at 245 (Iowa 2018), *citing State v. Kurth*, 813 N.W.2d 270, 273-74 (Iowa 2012). Like the federal courts, state courts are in disarray when it comes to applying the scope of the community care taking doctrine. In conjunction with the lack of express intent to adopt a stand-alone exception in *Cady*, it has been suggested that this confusion stems from the "failure to draw fine lines between the

community caretaking exception and other exceptions to the warrant requirement." *MacDonald*, 745 F.3d at 13. *See also State v. Deneui*, 775 N.W.2d 221 (S.D. 2009) (recognizing the confusion and application by various courts of the "emergency doctrine," the "emergency aid doctrine," and the "community caretaking" doctrine).

Some courts have determined that emergency aid is "a subcategory of the community caretaking exception." *People v. Ray*, 981 P.2d 928, 993 (Cal.1999). Some courts have taken the position that extending the community care taking doctrine to areas outside of vehicle searches "would render the emergency-aid doctrine obsolete." *State v. Vargas*, 63 A.3d 175, 189 (N.J. 2013) ("We cannot unmoor the community-caretaking doctrine from its origins in *Cady*"). Yet other courts continue to maintain a sharp divide between the emergency aid exception and the community care taking exception. *State v. Pinkard*, 785 N.W.2d 592, 601 (Wis. 2010) (allowing the search of a home under community care taking by concluding that "assisting members of the public in the context of automobiles is only one of many circumstances in which police officers may exercise their community caretaker function"). And at least one court has failed to recognize the community care taking doctrine under their own state constitution. *State v. Bridewell*, 759 P.2d 1054, 1059 (Or.1988) (en banc) (finding the "emergency aid doctrine" is an analogous exception to the community care taking doctrine).

Those states that have applied the community care taking doctrine outside of inventory or impound

searches have characterized it as encompassing three separate but related branches including: (1) the emergency aid doctrine; (2) the automobile inventory/ impound doctrine; and (3) the public servant doctrine. *State v. Tyler*, 867 N.W.2d 136, 170 (Iowa 2015); *State v. Ryon*, 108 P.3d 1032, 1042 (N.M. 2005); *State v. Acrey*, 64 P.3d 594, 600 (Wash. 2003) (en banc); *See also* Mary E. Naumann, *The Community Caretaker Doctrine: Yet Another Fourth Amendment Exception*, 26 Am. J. Crim. L. 325, 330-41 (1999).

However, problems often arise when courts attempt to distinguish the subtle differences between the emergency aid doctrine and the public servant doctrine. As the Iowa Supreme Court has recognized, "under the emergency aid doctrine, the officer has an immediate reasonable belief that a serious dangerous event is occurring" and in contrast "a public servant *might or might not* believe that there is a difficulty requiring his general assistance." Emphasis added. *State v. Tyler*, 867 N.W.2d 136, 170 (Iowa 2015). Given these subtle distinctions, the application of this doctrine, not surprisingly, has remained extremely varied. *See generally Livingstone*, 174 A.3d at 627 (providing an extensive listing and varied results of state court attempts to apply this doctrine via the public servant and emergency aid prongs of the community care taking doctrine).

iii. The Applicable Tests Vary.

Attempts by lower courts struggling with how to apply the community care taking doctrine have resulted in a wide array of tests being utilized to determine if various police activity breach the protections of the Fourth Amendment. *See Livingstone*, 174 A.3d 609 (2017) (Pennsylvania Supreme Court providing a detailed analysis of the different tests that have been adopted throughout the United States); *See also* Diminio, Sr., *Police Paternalism: Community Caretaking, Assistance Searches, and Fourth Amendment Reasonableness*, 66 Wash. & Lee L. Rev. 1485 (2009), (taking an in-depth look at the community care taking exception as applied by various courts in various circumstances); John W. Sturgis VII, *Help! I Need Somebody (or Do I?); A Discussion of Community Caretaking and "Assistance Seizures" Under Iowa Law*, 99 Iowa L. Rev. 1841 (2014). [hereinafter Sturgis].

a. Balancing Tests.

Some states, including Iowa, have adopted a test similar to the one announced in *State v. Anderson*, 417 N.W.2d 411, 414 (Wis. Ct. App. 1987), when determining whether the seizure of an individual is authorized under the community care taking doctrine. *State v. Crawford*, 659 N.W.2d 537, 543 (Iowa 2003) (specifically adopting the balancing test set forth in *Anderson*). *See also Livingstone*, 174 A.3d 629-31 (discussing states that have adopted this balancing test to include Utah, Wisconsin, Illinois, and Iowa). This balancing

test generally involves three steps including analyzing: (1) whether there was a seizure within the meaning of the Fourth Amendment; (2) if so, was the police conduct a bona fide community care taking activity; and (3) if so, did the police need and interest outweigh the intrusion upon the privacy of the citizen.

b. Reasonableness Tests.

Some states have adopted a purely "reasonableness test." *Livingstone*, 174 A.3d 631-33 (discussing states that have adopted this test to include Montana, Delaware, Tennessee, South Dakota, West Virginia, Vermont, and Mississippi). Although this test varies slightly within jurisdictions, the common elements require a showing of: (1) specific and articulable facts from which an experienced officer would suspect that a citizen is in need of help or is in peril; (2) if the citizen is in need of aid, then the officer may take the appropriate action to render assistance or mitigate the peril; and (3) once the officer is assured that the citizen is not in peril or is no longer in need of assistance than any actions beyond that constitute a seizure implicating the protections of the Fourth Amendment. *State v. Lovegren*, 51 P.3d 471, 475-76 (Mont. 2002); *Williams v. State*, 962 A.2d. 210, 219 (Del. 2008); *State v. McCormick*, 494 S.W.3d 673, 689 (Tenn. 2016); *State v. Kleven*, 887 N.W.2d 740 (S.D. 2016); *Ullom v. Miller*, 705 S.E.2d 111 (W. Va. 2010); *State v. Hinton*, 112 A.3d 770 (Vt. 2014); *Trejo v. State*, 76 So.3d 684 (Miss. 2011).

c. Hybrid Tests.

A couple of states such as the District of Columbia and New Hampshire have developed a hybrid test which contains elements of both the balancing and reasonableness tests as discussed above. *Hawkins v. U.S.*, 113 A.3d 216 (D.C. 2015); *State v. Boutin*, 13 A.3d 334 (N.H. 2010). In order to be an exercise of reasonable police authority, this test requires the government to show: (1) specific and articulable facts that the government's conduct was totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute; (2) the government's conduct was reasonable considering the availability, feasibility, and effectiveness of alternatives to the officer's action; (3) the officer's action ended when the citizen or community was no longer in need of assistance; and (4) the government's interests outweigh the citizen's interest in being free from minor government interference. *Hawkins*, 113 A.3d at 221-22.

d. Totality of the Circumstances Tests.

At least two states have adopted a "totality of the circumstances" test when applying the community care taking doctrine to seizures. *State v. Bakewell*, 730 N.W.2d 335 (Neb. 2007); *State v. Wixom*, 947 P.2d 1000 (Idaho 1997). This test generally assesses the "totality of the circumstances surrounding the stop, including 'all of the objective observations and considerations, as well as the suspicion drawn by a trained and

experienced officer by inference and deduction" that assistance might be needed. *Bakewell*, 730 N.W.2d at 339.

e. Emergency Aid Limitation.

Professor Diminio has concluded that ten states do not recognize community care taking searches as a valid warrant exception unless the facts present an actual emergency. *See* Diminio, 66 Wash. & Lee L. Rev. at 1503-04. This limitation was first recognized in *People v. Mitchell*, and required that for a search to be reasonable under the community care taking doctrine: (1) the police must have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property; (2) the search must not be primarily motivated by intent to arrest and seize evidence; and (3) there must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched. *Mitchell*, 347 N.E.2d 607, 609 (N.Y. Ct. App. 1976), abrogated by *Bringham City v. Stuart*, 547 U.S. 398, 404-05 (1948).

None of these tests have gone uncriticized. *See* Diminio, 66 Wash. & Lee L. Rev. 1498-1502. Recently, legal scholars and lower courts alike have really struggled with how, if at all, to apply the so-called community care taking doctrine to "assistance seizures," especially "first party assistance seizures." Sturgis, 99 Iowa L. Rev. 1841 (2014); Diminio, 66 Wash. & Lee L. Rev.; *Coffman*, 914 N.W.2d at 268-271; *Livingstone*, 174

A.3d 609. A number of "first party assistance" seizure cases have concluded that police actions similar to those in this case do not withstand constitutional scrutiny regardless of which test is employed. *Livingstone*, 174 A.3d 609; *State v. Boutin*, 13 A.3d 334 (N.H. 2010); *State v. Schmidt*, 47 P.3d 1271; *Ozhuwan v. State*, 786 P.2d 918 (Alaska Ct. App. 1990); *State v. Button*, 86 A.3d 1001 (Idaho Ct. App. 2013); *United States v. Gross*, 662 F.3d 393 (6th Cir. 2011); *United States v. Ingram*, 151 F. App'x 597 (9th Cir. 2005) (Unpublished).

iv. This State of Confusion Needs Direction.

It is important to remember that exceptions to the warrant requirement "should be jealously and carefully drawn." *Jones v. United States*, 357 U.S. 493, 499 (1958). Moreover, there must be a "showing by those who seek [the exception] that the exigencies of the situation made the course imperative." *McDonald v. United States*, 335 U.S. 451, 456 (1948). Finally, any exception must be "confined in scope" and "strictly circumscribed." *Terry v. Ohio*, 392 U.S. 1, 25-26, 29 (1968).

Cady did not clearly and succinctly create an exception to the warrant requirement. Further, this Court's silence in the wake of *Cady* for the last forty years has done nothing to "confine the scope" or "strictly circumscribe" the Court's holding. As a result, lower courts have wrestled with its scope and application resulting in confusing, misleading, and unintended results. More importantly, the development of the emergency aid and public servant prongs of the

community care taking doctrine and the subtle differences between those two, require this Court's guidance because if left alone, run the risk of continued deterioration of Fourth Amendment underpinnings.

This deterioration is evidenced by the Iowa Supreme Court's holding in this case which allows the warrantless seizure of a lawfully stopped motorist exhibiting no signs of distress simply to see if they "*may*" be in need of assistance. This petition provides this Court with a ripe opportunity to corral this spiraling doctrine. Doing so will provide lower courts, law enforcement, and the general public with a framework in which to determine whether normal every day non-criminal actions such as pulling to the side of the road to rub your wife's shoulders will result in a forfeiture of constitutional protections.

CONCLUSION

For the foregoing reasons, petitioner respectfully requests that the Petition for Writ of Certiorari be granted.

Respectfully submitted,

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