APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 19-1764

EDWARD A. CANIGLIA,
Plaintiff, Appellant,

v.

ROBERT F. STROM, as the Finance Director of the City of Cranston, ET AL.,
Defendants, Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND
(Hon. John J. McConnell, Jr., *U.S. District Judge*)

Before
Barron, *Circuit Judge*, Souter,[*] *Associate Justice*, and Selya, *Circuit Judge*.

Thomas W. Lyons, with whom *Rhiannon S. Huffman* and *Strauss, Factor, Laing & Lyons* were on brief, for appellant.

Marc DeSisto, with whom *Patrick K. Cunningham*, *Caroline V. Murphy*, and *DeSisto Law LLC* were on brief, for appellees.

March 13, 2020

[*] Hon. David H. Souter, Associate Justice (Ret.) of the Supreme Court of the United States, sitting by designation.

SELYA, ***Circuit Judge***. There are widely varied circumstances, ranging from helping little children to cross busy streets to navigating the sometimes stormy seas of neighborhood disturbances, in which police officers demonstrate, over and over again, the importance of the roles that they play in preserving and protecting communities. Given this reality, it is unsurprising that in *Cady v. Dombrowski*, 413 U.S. 433 (1973), the Supreme Court determined, in the motor vehicle context, that police officers performing community caretaking functions are entitled to a special measure of constitutional protection. *See id.* at 446–48 (holding that warrantless search of disabled vehicle's trunk to preserve public safety did not violate Fourth Amendment). We hold today—as a matter of first impression in this circuit—that this measure of protection extends to police officers performing community caretaking functions on private premises (including homes). Based on this holding and on our other conclusions, we affirm the district court's entry of summary judgment for the defendants in this highly charged case.

I. BACKGROUND

We start with the cast of characters. At the times material hereto, plaintiff-appellant Edward A. Caniglia resided with his wife, Kim Caniglia, in Cranston, Rhode Island. The defendants include the City of Cranston (the City), Colonel Michael J.

Winquist (Cranston's police chief), and five Cranston police officers.[1]

Having identified the central players, we rehearse the relevant facts in the light most congenial to the summary judgment loser (here, the plaintiff). *See Avery v. Hughes*, 661 F.3d 690, 691 (1st Cir. 2011). On August 20, 2015, marital discord erupted at the Caniglia residence. During the disagreement, the plaintiff retrieved a handgun from the bedroom—a handgun that (unbeknownst to Kim in that moment) was unloaded. Kim initially maintained that the plaintiff also brought out a magazine for the gun, but she subsequently stated in a deposition that she only remembered his retrieval of the handgun. Throwing the gun onto the dining room table, the plaintiff said something like "shoot me now and get it over with." Although the plaintiff suggests that this outburst was merely a "dramatic gesture," Kim took it seriously: worried about her husband's state of mind even after he had left to go for a ride," she returned the gun to its customary place and hid the magazine. Kim also decided that she would stay at a hotel for the night if the plaintiff had not calmed down when he returned. She began to pack a bag.

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[1] The plaintiff sued Colonel Winquist and the five officers—Brandon Barth, Russell C. Henry, Jr., John Mastrati, Wayne Russell, and Austin Smith—in both their individual and official capacities. He also sued a sixth officer, Robert Quirk, but the entry of judgment in Quirk's favor has not been appealed. Additionally, the plaintiff sued the City by and through its Finance Director, Robert F. Strom. *See* R.I. Gen. Laws § 45-15-5.

The plaintiff's return sparked a second spat. This time, Kim departed to spend the night at a nearby hotel. When Kim spoke to the plaintiff by telephone that evening, he sounded upset and "[a] little" angry.

The next morning, Kim was unable to reach her husband by telephone. Concerned that he might have committed suicide or otherwise harmed himself, she called the Cranston Police Department (CPD) on a non-emergency line and asked that an officer accompany her to the residence. She said that her husband was depressed and that she was "worried for him." She also said that she was concerned "about what [she] would find" when she returned home.

Soon thereafter, Officer Mastrati rendezvoused with Kim. She recounted her arguments with the plaintiff the previous day, his disturbing behavior and statements, and her subsequent concealment of the magazine. At some point during this discussion, Kim mentioned that the handgun her husband produced the previous day had not been loaded. The record contains conflicting evidence about whether Kim told the officers that the plaintiff brought out the magazine in addition to the unloaded handgun. Although Kim made clear that she was not concerned for her own safety, she stressed that, based on her fear that her husband might have committed suicide, she was "afraid of what [she] would find when [she] got home."

Officer Mastrati then called the plaintiff, who said that he was willing to speak with the police in person. By this time, Sergeant Barth and Officers Russell and

Smith had arrived on the scene. The four officers went to the residence and spoke with the plaintiff on the back porch while Kim waited in her car. The plaintiff corroborated Kim's account, stating that he brought out the firearm and asked his wife to shoot him because he was "sick of the arguments" and "couldn't take it anymore." When the officers asked him about his mental health, he told them "that was none of their business" but denied that he was suicidal. Officer Mastrati subsequently reported that the plaintiff "appeared normal" during this encounter, and Officer Russell described the plaintiff's demeanor as calm and cooperative. This appraisal, though, was not unanimous: Sergeant Barth thought the plaintiff seemed somewhat "[a]gitated" and "angry," and Kim noted that he became "very upset" with her for involving the police.

The ranking officer at the scene (Sergeant Barth) determined, based on the totality of the circumstances, that the plaintiff was imminently dangerous to himself and others. After expressing some uncertainty, the plaintiff agreed to be transported by ambulance to a nearby hospital for a psychiatric evaluation. The plaintiff claims that he only agreed to be transported because the officers told him that his firearms would not be confiscated if he assented to go to the hospital for an evaluation. But the record contains no evidence from any of the four officers who were present at the residence suggesting that such a promise was made.

At some point that morning, someone (the record is unclear as to whether the "someone" was Kim or the

plaintiff) informed the officers that there was a second handgun on the premises. After the plaintiff departed by ambulance for the hospital, unaccompanied by any police officer, Sergeant Barth decided to seize these two firearms. A superior officer (Captain Henry) approved that decision by telephone. Accompanied by Kim, one or more of the officers entered the house and garage, seizing the two firearms, magazines for both guns, and ammunition. Kim directed the officers to each of the items seized. The parties dispute both whether Kim indicated that she wanted the guns removed and whether the officers secured her cooperation by telling her that her husband had consented to confiscation of the firearms. There is no dispute, though, that the officers understood that the firearms belonged to the plaintiff and that he objected to their seizure.

The plaintiff was evaluated at Kent Hospital but not admitted as an inpatient. In October of 2015—after several unsuccessful attempts to retrieve the plaintiff's firearms from the CPD—the plaintiff's attorney formally requested their return. The firearms were returned in December. The CPD never prevented the plaintiff from obtaining other firearms at any time. Nor did the events at issue involve any criminal offense or investigation.

Shortly before his firearms were returned, the plaintiff repaired to the federal district court, pressing a salmagundi of claims stemming from the defendants' alleged seizures of his person and his firearms. These claims included, as relevant here, claims brought pursuant to 42 U.S.C. § 1983 alleging

violations of the Second and Fourth Amendments, as well as state-law claims alleging violations of the Rhode Island Constitution; the Rhode Island Mental Health Law (RIMHL), R.I. Gen. Laws §§ 40.1-5-1 to -43; and the Rhode Island Firearms Act (RIFA), R.I. Gen. Laws §§ 11-47-1 to -63.

Once discovery was completed, the parties cross-moved for summary judgment. With one exception, the district court granted summary judgment in the defendants' favor on the plaintiff's federal and state-law claims. *See Caniglia v. Strom*, 396 F. Supp. 3d 227, 242 (D.R.I. 2019).[2] This timely appeal followed.

II. ANALYSIS

Orders granting summary judgment engender de novo review. *See Avery*, 661 F.3d at 693. In conducting this tamisage, we scrutinize the record in the light most hospitable to the nonmovant (here, the plaintiff) and affirm "only if the record reveals 'that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.'" *Id.* (quoting Fed. R. Civ. P. 56(a)). We are not wedded to the district court's reasoning but, rather, may affirm "on any ground made manifest by the

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[2] The district court granted summary judgment in the plaintiff's favor on one claim. *See Caniglia*, 396 F. Supp. 3d at 237–38. Specifically, the court ruled that the City violated the plaintiff's due process rights in two ways: by seizing his firearms without providing notice of any mechanism to secure their return and by arbitrarily denying his initial requests for their return. *See id.* at 238. Pursuant to a stipulation, the court later awarded the plaintiff nominal damages. No appeal has been taken from these rulings.

record." *Mason v. Telefunken Semiconductors Am., LLC*, 797 F.3d 33, 38 (1st Cir. 2015). Against this backdrop, we examine the plaintiff's claims one by one.

A. *The Fourth Amendment Claims.*

The centerpiece of the plaintiff's asseverational array is his contention that the defendant officers offended the Fourth Amendment both by transporting him involuntarily to the hospital for a psychiatric evaluation and by seizing two firearms after a warrantless entry into his home. We begin with constitutional bedrock: the Fourth Amendment guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. The officers assert that their conduct at the plaintiff's residence constituted a reasonable exercise of their community caretaking responsibilities and thus did not transgress the Fourth Amendment. The district court agreed.[3] *See*

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[3] The district court ruled in the alternative that qualified immunity provided a shield against Fourth Amendment liability. *See Caniglia*, 396 F. Supp. 3d at 235–36; *see also McKenney v. Mangino*, 873 F.3d 75, 80 (1st Cir. 2017) ("Qualified immunity is a doctrine that shelters government officials from civil damages liability 'insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982))). Qualified immunity, though, offers no refuge either to the City or to the officers in their official capacities. *See Haley v. City of Boston*, 657 F.3d 39, 51 (1st Cir. 2011); *Nereida-Gonzalez v. Tirado-Delgado*, 990 F.2d 701, 705 (1st Cir. 1993). Because we are able to resolve the

Caniglia, 396 F. Supp. 3d at 234–35. Before plunging into these turbulent waters, we pause to frame the issues and to clarify certain threshold matters.

1. *Framing the Issues.* The plaintiff's Fourth Amendment claims focus on two alleged seizures, one of his person and the other of his firearms. The seizure of a person occurs when an objectively reasonable individual, standing in that person's shoes, would not have "felt free to cease interaction with the officer[s] and depart." *United States v. Espinoza*, 490 F.3d 41, 48–49 (1st Cir. 2007); *see United States v. Drayton*, 536 U.S. 194, 200–01 (2002). In contrast, a seizure of personal property occurs when there has been "some meaningful interference with an individual's possessory interests in that property." *United States v. Jacobsen*, 466 U.S. 109, 113 (1984).

Although the plaintiff concedes that he ultimately agreed to be transported to the hospital for a psychiatric evaluation, he nonetheless complains that he was subjected to an involuntary seizure. In support, he avers that the defendant officers extracted his consent through impermissible chicanery, falsely promising that they would not confiscate his firearms if he agreed to go to the hospital for a psychiatric evaluation. The defendants do not challenge this averment head-on but, rather, assume for purposes of this appeal that a seizure of the plaintiff's person occurred. Even though there is no evidence that any

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plaintiff's Fourth Amendment claims on the merits, we do not address the district court's alternative ruling.

police officers, emergency services personnel, or hospital staff physically compelled the plaintiff to submit to a psychiatric evaluation once he reached the hospital, we assume—favorably to the plaintiff—that the involuntary seizure of his person lasted through his eventual psychiatric evaluation.[4]

Two other threshold matters demand our attention. The first requires some stage-setting. The record makes pellucid that the officers' initial presence on the plaintiff's back porch was lawful: the plaintiff's wife had summoned them to the premises and the plaintiff himself had agreed to speak with the officers outside the residence. *See Florida v. Jardines*, 569 U.S. 1, 7–8 (2013) (observing that police do not violate Fourth Amendment by occupying curtilage when homeowner has "given his leave (even implicitly) for them to do so"). But whether the officers' entry into the home after the plaintiff's departure was consensual is a more nuanced matter.

Although the parties agree that the plaintiff's wife led the officers to both of the firearms, the plaintiff asserts that the officers secured his wife's permission to enter the home and seize the firearms by falsely

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[4] In indulging this assumption, we do not abandon the longstanding principle that "deception is a well-established and acceptable tool of law enforcement." *Pagán-González v. Moreno*, 919 F.3d 582, 591 (1st Cir. 2019). Although some species of deception (such as false claims of a warrant or fabricated exigencies) may vitiate consent, *see id.* at 594–95, we are aware of no persuasive precedent establishing that an officer's strategic deployment of an empty promise, standing alone, constitutes coercion sufficient to vitiate consent in this context.

representing that the plaintiff had consented to their confiscation. Even though deception is not categorically foreclosed as a tool of police work, *see supra* note 4, consent may sometimes be deemed involuntary if gained through a police officer's apocryphal claim of authority, *see Pagán-González v. Moreno*, 919 F.3d 582, 593, 596 (1st Cir. 2019); *United States v. Vázquez*, 724 F.3d 15, 22 (1st Cir. 2013); *United States v. Miller*, 589 F.2d 1117, 1132 (1st Cir. 1978). Given the factual disputes surrounding the representations made to the plaintiff's wife, we think it prudent to assume that the officers' entry into the home was not only warrantless but also nonconsensual.

The remaining threshold matter requires no assumption on our part. The undisputed facts establish that a seizure of the plaintiff's firearms occurred. It is uncontroverted that the defendant officers understood that the two handguns belonged to the plaintiff and that he objected to any confiscation of them. And in this venue, the defendants press no argument that they secured valid consent from the plaintiff's wife to seize the firearms.

2. *The Scope of the Community Caretaking Doctrine.* The defendants seek to wrap both of the contested seizures in the community caretaking exception to the warrant requirement. Notably, they do not invoke either the exigent circumstances or emergency aid exceptions to the warrant

requirement.[5] Nor do the defendants contend that their seizures of the plaintiff and his firearms were carried out pursuant to a state civil protection statute. *See*, *e.g.*, *Alfano v. Lynch*, 847 F.3d 71, 77 (1st Cir. 2017).

The community caretaking exception derives from *Cady*, a case in which the Supreme Court upheld the warrantless search of a disabled vehicle when the police reasonably believed that the vehicle's trunk contained a gun and the vehicle was vulnerable to vandals. *See* 413 U.S. at 446–48. The *Cady* Court

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[5] As we have previously noted, there is substantial overlap between the community caretaking, exigent circumstances, and emergency aid exceptions. *See MacDonald v. Town of Eastham*, 745 F.3d 8, 13–14, 13 nn.2–3 (1st Cir. 2014). "[C]ourts do not always draw fine lines" between these exceptions. *Id.* at 13; *see Sutterfield v. City of Milwaukee*, 751 F.3d 542, 553, 561 (7th Cir. 2014) (resolving analogous case under emergency aid exception but acknowledging that community caretaking doctrine "would potentially be the best fit"). Because the defendants seek shelter only behind the community caretaking exception, we have no occasion to craft crisp distinctions between those three exceptions. We doubt, however, that either the exigent circumstances exception or the emergency aid exception would be a perfect fit for the full tableau of this case. On the one hand, exigency "is defined by a time-urgent need to act that makes resort to the warrant process impractical"—an inquiry that is of limited utility outside the criminal investigatory process. *Sutterfield*, 751 F.3d at 559–60. On the other hand, the emergency aid exception is typically employed in scenarios in which an individual within a dwelling has already been seriously injured or may be about to sustain such injuries in a matter of moments. *See*, *e.g.*, *Michigan v. Fisher*, 558 U.S. 45, 45–46, 48 (2009) (per curiam); *Brigham City v. Stuart*, 547 U.S. 398, 406 (2006); *Hill v. Walsh*, 884 F.3d 16, 23 (1st Cir. 2018).

explained that police officers frequently engage in such "community caretaking functions, totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." *Id.* at 441. Police activity in furtherance of such functions (at least in the motor vehicle context) does not, the Court held, offend the Fourth Amendment so long as it is executed in a reasonable manner pursuant to either "state law or sound police procedure." *Id.* at 446–48; *see South Dakota v. Opperman*, 428 U.S. 364, 374–75 (1976). In reaching this conclusion, the *Cady* Court noted the "constitutional difference between searches of and seizures from houses and similar structures and from vehicles," a distinction stemming from the "ambulatory character" of vehicles and police officers' "extensive, and often noncriminal contact with automobiles." 413 U.S. at 442; *see Opperman*, 428 U.S. at 367–68.

Since *Cady*, the community caretaking doctrine has become "a catchall for the wide range of responsibilities that police officers must discharge aside from their criminal enforcement activities." *United States v. Rodriguez-Morales*, 929 F.2d 780, 785 (1st Cir. 1991); *see MacDonald v. Town of Eastham*, 745 F.3d 8, 12 (1st Cir. 2014). In accordance with "this evolving principle, we have recognized (in the motor vehicle context) a community caretaking exception to the warrant requirement." *MacDonald*, 745 F.3d at 12. Elucidating this exception, we have held that the Fourth Amendment's imperatives are satisfied when the police perform "non-investigatory duties,

including community caretaker tasks, so long as the procedure employed (and its implementation) is reasonable." *Rodriguez-Morales*, 929 F.2d at 785. Police officers enjoy wide latitude in deciding how best to execute their community caretaking responsibilities and, in the typical case, need only act "within the realm of reason" under the particular circumstances. *Id.* at 786; *see Lockhart-Bembery v. Sauro*, 498 F.3d 69, 75 (1st Cir. 2007).

Until now, we have applied the community caretaking exception only in the motor vehicle context. *See United States v. Davis*, 909 F.3d 9, 16–17 (1st Cir. 2018), *cert. denied*, 139 S. Ct. 1352 (2019); *Boudreau v. Lussier*, 901 F.3d 65, 72–73 (1st Cir. 2018); *Jaynes v. Mitchell*, 824 F.3d 187, 197 (1st Cir. 2016); *United States v. Gemma*, 818 F.3d 23, 32 (1st Cir. 2016); *Lockhart-Bembery*, 498 F.3d at 75–76; *United States v. Coccia*, 446 F.3d 233, 238–40 (1st Cir. 2006); *Rodriguez-Morales*, 929 F.2d at 784–87; *cf. Miller*, 589 F.2d at 1125 (upholding boarding of abandoned boat under combination of community caretaking and exigent circumstances exceptions). But on one notable occasion, we have recognized a community caretaking function extending beyond vehicle searches and impoundment, holding that the temporary seizure of a motorist for the purpose of alleviating dangerous roadside conditions could be a reasonable exercise of the community caretaking function. *See Lockhart-Bembery*, 498 F.3d at 71–72, 75–76.

To be sure, the doctrine's reach outside the motor vehicle context is ill-defined and admits of some

differences among the federal courts of appeals. *See Matalon v. Hynnes*, 806 F.3d 627, 634 (1st Cir. 2015); *MacDonald*, 745 F.3d at 13. A few circuits have indicated that the community caretaking exception cannot justify a warrantless entry into a home. *See Sutterfield v. City of Milwaukee*, 751 F.3d 542, 554 (7th Cir. 2014); *Ray v. Township of Warren*, 626 F.3d 170, 177 (3d Cir. 2010); *cf. United States v. Pichany*, 687 F.2d 204, 208–09 (7th Cir. 1982) (per curiam) (holding community caretaking exception not applicable to warrantless entry into business warehouse). Several other circuits, though, have recognized that the doctrine allows warrantless entries onto private premises (including homes) in particular circumstances. *See*, *e.g.*, *Rodriguez v. City of San Jose*, 930 F.3d 1123, 1137–41 (9th Cir. 2019), *petition for cert. filed*, No. 19-1057 (U.S. Feb. 25, 2020); *United States v. Smith*, 820 F.3d 356, 360–62 (8th Cir. 2016); *United States v. Rohrig*, 98 F.3d 1506, 1521–23 (6th Cir. 1996); *United States v. York*, 895 F.2d 1026, 1029–30 (5th Cir. 1990). So, too, a handful of circuits—including our own—have held that police may sometimes seize individuals or property other than motor vehicles in the course of fulfilling community caretaking responsibilities. *See*, *e.g.*, *Rodriguez*, 930 F.3d at 1138–41; *Vargas v. City of Philadelphia*, 783 F.3d 962, 971–72 (3d Cir. 2015); *United States v. Gilmore*, 776 F.3d 765, 769, 772 (10th Cir. 2015); *Lockhart-Bembery*, 498 F.3d at 75–76; *Samuelson v. City of New Ulm*, 455 F.3d 871, 877–78 (8th Cir. 2006); *United States v. Rideau*, 949 F.2d 718,

720 (5th Cir. 1991), *vacated on other grounds*, 969 F.2d 1572 (5th Cir. 1992) (en banc).

Today, we join ranks with those courts that have extended the community caretaking exception beyond the motor vehicle context. In taking this step, we recognize what we have termed the "special role" that police officers play in our society. *Rodriguez-Morales*, 929 F.2d at 784. After all, a police officer—over and above his weighty responsibilities for enforcing the criminal law—must act as a master of all emergencies, who is "expected to aid those in distress, combat actual hazards, prevent potential hazards from materializing, and provide an infinite variety of services to preserve and protect community safety." *Id.* at 784–85. At its core, the community caretaking doctrine is designed to give police elbow room to take appropriate action when unforeseen circumstances present some transient hazard that requires immediate attention. *See id.* at 787. Understanding the core purpose of the doctrine leads inexorably to the conclusion that it should not be limited to the motor vehicle context. Threats to individual and community safety are not confined to the highways. Given the doctrine's core purpose, its gradual expansion since *Cady*, and the practical realities of policing, we think it plain that the community caretaking doctrine may, under the right circumstances, have purchase outside the motor vehicle context. We so hold.

This holding does not end our odyssey. It remains for us to determine whether the community caretaking doctrine extends to the types of police activity that the defendants ask us to place under its

umbrella. First, we must consider the involuntary seizure of an individual whom officers have an objectively reasonable basis for believing is suicidal or otherwise poses an imminent risk of harm to himself or others. Second, we must consider the temporary seizure of firearms and associated paraphernalia that police officers have an objectively reasonable basis for thinking such an individual may use in the immediate future to harm himself or others. Third, we must consider the appropriateness of a warrantless entry into an individual's home when that entry is tailored to the seizure of firearms in furtherance of police officers' community caretaking responsibilities.

For several reasons, we conclude that these police activities are a natural fit for the community caretaking exception. To begin, the interests animating these activities are distinct from "the normal work of criminal investigation," placing them squarely within what we have called "the heartland of the community caretaking exception." *Matalon*, 806 F.3d at 634–35 (explaining that courts must "look at the *function* performed by a police officer" when examining whether activity falls within heartland (emphasis in original) (quoting *Hunsberger v. Wood*, 570 F.3d 546, 554 (4th Cir. 2009))). When police respond to individuals who present an imminent threat to themselves or others, they do so to "aid those in distress" and "preserve and protect community safety." *Rodriguez-Morales*, 929 F.2d at 784–85. These are paradigmatic examples of motivating forces for community caretaking activity. *See Opperman*, 428 U.S. at 374 (observing that "sole justification" for

search in *Cady* was "the caretaking function of the local police to protect the community's safety").

We add, moreover, that any assessment of the reasonableness of caretaking functions requires the construction of a balance between the need for the caretaking activity and the affected individual's interest in freedom from government intrusions. *See United States v. King*, 990 F.2d 1552, 1560 (10th Cir. 1993); *Rodriguez-Morales*, 929 F.2d at 786. This balancing test must, of course, be performed anew in each individual case. The community's strong interest in ensuring a swift response to individuals who are mentally ill and imminently dangerous will often weigh heavily in the balance. After all, the consequences of a delayed response to such an individual "may be extremely serious, sometimes including death or bodily injury." *McCabe v. Life-Line Ambulance Serv., Inc.*, 77 F.3d 540, 547 (1st Cir. 1996). Although an individual has robust interests in preserving his bodily autonomy, the sanctity of his home, and his right to keep firearms within the home for self-protection, these interests will sometimes have to yield to the public's powerful interest "in ensuring that 'dangerous' mentally ill persons [do] not harm themselves or others." *Id.*

Last—but surely not least—encounters with individuals whom police reasonably believe to be experiencing acute mental health crises frequently confront police with precisely the sort of damned-if-you-do, damned-if-you-don't conundrum that the community caretaking doctrine can help to alleviate. If police officers are left twisting in the wind when

they take decisive action to assist such individuals and prevent the dreadful consequences that might otherwise ensue, they would be fair game for claims of overreach and unwarranted intrusion. Conversely, if the lack of constitutional protection leads police officers simply to turn a blind eye to such situations and tragedy strikes, the officers would be fair game for interminable second-guessing. *Cf. Mora v. City of Gaithersburg*, 519 F.3d 216, 228 (4th Cir. 2008) (observing that if police had "not taken the [plaintiff's] weapons, and had [the plaintiff] used those weapons to cause harm, the officers would have been subject to endless second-guessing and doubtless litigation").

The short of it is that the classes of police activities challenged in this case fall comfortably within the ambit of the community caretaking exception to the warrant requirement. But that exception is not a free pass, allowing police officers to do what they want when they want. Nor does it give police carte blanche to undertake any action bearing some relation, no matter how tenuous, to preserving individual or public safety. Put bluntly, activities carried out under the community caretaking banner must conform to certain limitations. And the need to patrol vigilantly the boundaries of these limitations is especially pronounced in cases involving warrantless entries into the home. *See Matalon*, 806 F.3d at 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."). We turn next to these guardrails.

As a starting point, police officers must have "solid, non-investigatory reasons" for engaging in community caretaking activities. *Rodriguez-Morales*, 929 F.2d at 787. They may not use the doctrine as "a mere subterfuge for investigation." *Id.* Leave to undertake caretaking activities must be based on "specific articulable facts," *King*, 990 F.2d at 1560, sufficient to establish that an officer's decision to act in a caretaking capacity was "justified on objective grounds," *Rodriguez-Morales*, 929 F.2d at 787. Then, too, those actions must draw their essence either from state law or from sound police procedure. *See id.* at 785.

Contrary to the plaintiff's importunings, "sound police procedure" need not involve the application of either established protocols or fixed criteria. We have defined sound police procedure broadly and in practical terms; it encompasses police officers' "reasonable choices" among available options. *Id.* at 787; *see Coccia*, 446 F.3d at 239 (explaining, in vehicle impoundment context, that "it is inappropriate for the existence of (and adherence to) standard procedures to be the sine qua non of" reasonable community caretaking functions). There is, moreover, "no requirement that officers must select the least intrusive means of fulfilling community caretaking responsibilities." *Lockhart-Bembery*, 498 F.3d at 76. Even so, community caretaking tasks must be narrowly circumscribed, both in scope and in duration, to match what is reasonably required to perform community caretaking functions. *See Opperman*, 428 U.S. at 374–75; *Smith*, 820 F.3d at

362. The acid test in most cases will be whether decisions made and methods employed in pursuance of the community caretaking function are "within the realm of reason." *Lockhart-Bembery*, 498 F.3d at 75 (quoting *Rodriguez-Morales*, 929 F.2d at 786).

Before endeavoring to apply these principles, we offer two final caveats. First, the terms "imminent" and "immediate," as used throughout this opinion, are not imbued with any definite temporal dimensions. Nor is our use of these terms meant to suggest that the degree of immediacy typically required under the exigent circumstances and emergency aid exceptions is always required in the community caretaking context. *See Sutterfield*, 751 F.3d at 561 (noting that "[t]he community caretaking doctrine has a more expansive temporal reach" than the emergency aid exception). Because the summary judgment record shows that a reasonable officer could have found that an immediate threat of harm was posed by the plaintiff and his access to firearms, *see infra* Parts II(A)(3)–(4), we need not decide whether the community caretaking exception may ever countenance a police intrusion into the home or a seizure (whether of a person or of property) in response to some less immediate danger.

Second, the parties debate, albeit in a desultory manner, whether the officers had probable cause to seize the plaintiff. We have used such a metric in considering seizures of the person pursuant to civil protection statutes, *see, e.g.*, *Alfano*, 847 F.3d at 77, but generally have scrutinized community caretaking activities for reasonableness, *see*, *e.g.*, *Lockhart-*

Bembery, 498 F.3d at 75. Here, the police intrusions at issue—specifically, the seizures of an individual for transport to the hospital for a psychiatric evaluation and of firearms within a dwelling—are of a greater magnitude than classic community caretaking functions like vehicle impoundment. In such circumstances, it may be that some standard more exacting than reasonableness must be satisfied to justify police officers' conduct. Once again, though, we need not definitively answer this question: the record makes manifest that an objectively reasonable officer would have acted *both* within the realm of reason and with probable cause by responding as the officers did in this instance.[6] For ease in exposition, we nonetheless use variations of the term "reasonable" throughout this opinion to describe the defendant officers' conduct.

Having laid the foundation, we move from the general to the specific. The key questions, of course, relate to whether the defendants acted within the margins of the Fourth Amendment both when they seized the plaintiff and when they seized his firearms.

3. *The Seizure of the Plaintiff.* As said, the plaintiff alleges that he was unlawfully seized by the

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[6] Withal, we think it bears mention that similar police activities carried out under the auspices of some analogous exceptions to the warrant requirement are traditionally not evaluated under a probable cause framework. *See*, *e.g.*, *Hill*, 884 F.3d at 23 (holding that police need only show objectively reasonable basis to believe "person inside the home is [in] need of immediate aid" to justify warrantless entry under emergency aid exception).

defendant officers when they sent him to the hospital for a psychiatric evaluation. The officers lean on the community caretaking exception as their justification for this seizure.

Our review of the record makes manifest that no rational factfinder could deem unreasonable the officers' conclusion that the plaintiff presented an imminent risk of harming himself or others. Viewed objectively, the facts available to the officers at the time of the seizure place this conclusion well within the realm of reason. The officers knew that the plaintiff had fetched a firearm during an argument and implored his wife to "shoot [him] now and get it over with." They also knew that his behavior had so dismayed his wife that she spent the night at a hotel and requested a wellness check on her husband the next morning because she feared that he might have committed suicide. No rational finder of fact could determine that an officer confronted with this scenario would be acting unreasonably by refusing to shut his eyes to the plaintiff's obvious risk of self-harm.

We conclude, as well, that the officers acted in conformity with sound police procedure by seizing the plaintiff and sending him to the hospital for a psychiatric evaluation. CPD General Order 320.70, which was in effect in August of 2015, authorized officers to send an individual who is "imminently dangerous" to himself or others to a hospital by means of emergency transportation for an involuntary psychiatric evaluation. The plaintiff counters that General Order 320.80 (which requires police to

terminate civil "keeping the peace" activities if met with resistance) is a trump card, rendering the officers' conduct impermissible in light of the plaintiff's alleged resistance to visiting the hospital. We disagree. General Order 320.70 plainly governs factual scenarios where, as here, CPD officers encounter individuals whom they reasonably perceive are imminently dangerous and in need of an emergency psychiatric evaluation.

Even if the officers' actions were not tethered to an established procedure, their decision to remit the plaintiff to the hospital would still have fallen within the universe of reasonable choices available to them at the time.[7] Faced with the unenviable choice between sending the plaintiff to the hospital and leaving him (agitated, ostensibly suicidal, and with two handguns at his fingertips), the officers reasonably chose to be proactive and to take preventive action. Because community caretaking functions need only be warranted under either state

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[7] Relying chiefly on the opinions of a retained expert, the plaintiff faults the officers for not consulting a list of warning signs that CPD officers are trained to recognize when they encounter potentially suicidal individuals. He likewise faults the officers for failing to pose a series of questions that CPD officers are trained to ask such individuals. In this case, though, the plaintiff arguably exhibited a significant number of warning signs and, beyond denying that he was suicidal, steadfastly refused to discuss his mental health. And in any event, the outcome of our inquiry into whether the officers followed sound police procedure does not hinge on their application of fixed criteria. *See Coccia*, 446 F.3d at 239; *Rodriguez-Morales*, 929 F.2d at 787.

law or sound police procedure (as we have broadly defined that term), *see Rodriguez-Morales*, 929 F.2d at 785, 787, and the seizure here was fully justified by the latter, the plaintiff's remonstrance that no positive state law or existing CPD order had explicitly extended the community caretaking exception to this factual scenario is without force. To cinch the matter, the methods employed by the officers to effectuate the seizure were within the realm of reason. The undisputed facts reveal that the officers facilitated the plaintiff's transport to the hospital by ambulance in a calm, professional manner and without any physical coercion or restraints.

In an initial effort to blunt the force of this reasoning, the plaintiff first suggests that his production of the unloaded firearm and his exhortation to "shoot [him] now" were mere "dramatic gesture[s]" that did not bespeak any suicidal ideation. Even if the plaintiff intended only a hyperbolic flourish, we cannot say that it was outside the realm of reason for the officers to discern a serious risk of imminent self-harm, given the surrounding factual context: a man had recklessly thrown a firearm, made a desperate exclamation suggesting (at best) a fraught frame of mind or (at worst) a propensity for self-harm, and so unnerved his wife that she hid the magazine for the gun from him, stayed overnight at a hotel, and worried whether her husband might have committed suicide the next morning. Standard police equipment does not include crystal balls. Here, we think it apparent that the officers were amply warranted on

objective grounds in concluding that the flashing red lights signaled imminent danger. *See id.* at 787.

Nor do we accept the plaintiff's argument that the passage of approximately twelve hours between the plaintiff's outburst and his encounter with the officers necessarily diminished the imminence of the potential threat. *See Ahern v. O'Donnell*, 109 F.3d 809, 818 (1st Cir. 1997) (per curiam) (rejecting argument that officers "could not reasonably have viewed [plaintiff] as dangerous because he did not engage in dangerous behavior between" troubling telephone call and seizure approximately thirty-seven hours later). It is, of course, true that "emergencies do not last forever." *Sutterfield*, 751 F.3d at 562. On these facts, though, it seems to us—as it could have appeared to objectively reasonable officers—that the mere passage of a short period of time, without more, was not enough to allay the valid fear that the plaintiff might do harm to himself or others, particularly when the plaintiff's wife continued to express urgent concerns about the plaintiff's well-being the morning after his disturbing interaction with her. *See id.*

We find similarly unconvincing the plaintiff's argument that no reasonable officer could have determined that the plaintiff posed an imminent threat to himself or to others because he appeared calm and denied suicidal intentions. We do not gainsay that either an individual's demeanor or his self-assessment of his mental health (or both, in combination) might under some circumstances render unreasonable any conclusion that the individual posed a danger to himself or others. But nothing in

the record before us suggests that the plaintiff's relatively calm demeanor and conclusory assurances that he was not suicidal significantly reduced the likelihood that he might engage in self-harm. *See id.* at 563; *Ahern*, 109 F.3d at 818. After all, suicidal individuals are not apt to be the best judges of their own mental health. Common sense teaches that such individuals may deliberately conceal or downplay their self-destructive impulses, particularly when speaking with the police. *See Rudolph v. Babinec*, 939 F.3d 742, 747 (6th Cir. 2019) (per curiam). So, too, the plaintiff's reliance on the fact that he was neither admitted to the hospital nor deemed suicidal by medical personnel is mislaid.[8] The lawfulness of the

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[8] We likewise discount the plaintiff's reliance on the opinion of his retained expert, *see supra* note 7, who concluded that the plaintiff's words and actions could not "possibly be construed as indicating that he was at imminent risk of suicide." In formulating this opinion, the expert cited only the plaintiff's assessment of his own behavior, offered during an interview held some three years after the events that gave rise to this litigation. The plaintiff's subjective, post hoc rationalizations are irrelevant to whether the officers made objectively reasonable determinations based on the facts available to them. *See Ahern*, 109 F.3d at 817. Moreover, it is unclear whether the expert, when rendering this opinion, viewed the evidence from the perspective of an objectively reasonable officer rather than, as his report seemed to indicate, from the vantage point of a trained psychologist with "more than 47 years [of experience] as a Suicidologist." That an expert psychologist might have reached a different conclusion about the plaintiff's condition than a police officer without such training does not render the officers' determination objectively unreasonable. *Cf. Sutterfield*, 751 F.3d at 562 (noting that "[o]nly a medical professional could make" ultimate judgments about "risk that [plaintiff] might harm

defendants' actions must be measured by the facts in the officers' possession at the time of the seizure, not by whether the conclusions that they drew from those facts were later substantiated. *See United States v. Huffman*, 461 F.3d 777, 785 (6th Cir. 2006); *Ahern*, 109 F.3d at 817–18; *cf. United States v. Coombs*, 857 F.3d 439, 446 (1st Cir. 2017) (admonishing that "[h]indsight is always 20/20"). In this case, the facts available to the officers at the time of the alleged seizure warranted their conclusion that the plaintiff posed a serious and imminent risk of harming himself or others.

In an attempt to find a pearl in an apparently empty oyster, the plaintiff contends that if the officers wished to send him to the hospital to undergo a psychiatric evaluation, the RIMHL required them first to secure a judicial order committing him to the hospital, obtain a physician's application for emergency certification, or file a written application for emergency certification themselves. This contention is futile.

To begin, police officers cannot file petitions for civil court certification. *See* R.I. Gen. Laws § 40.1-5-8(a) (2006) (amended 2018). Here, moreover, the defendant officers could not, given the factual circumstances at hand, have filed an application for the plaintiff's emergency certification. In August of 2015, the RIMHL—since amended—allowed police officers to apply for the emergency certification of an

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herself"). Consequently, the expert's opinion does not create a genuine issue of material fact.

individual "whose continued unsupervised presence in the community would create an imminent likelihood of serious harm by reason of mental disability" only if "no physician [was] available" to conduct an initial examination. *Id.* § 40.1-5-7(a)(1) (2006) (amended 2017). An objectively reasonable officer would have understood (as the defendant officers apparently did) that a physician competent to perform a preliminary assessment of the plaintiff's mental health would be readily available at the hospital. Consequently, the RIMHL did not permit the defendant officers to file an application for emergency certification themselves.

At the time of the plaintiff's seizure, the RIMHL neither explicitly authorized nor expressly forbade police officers from transporting individuals whom they reasonably perceived as imminently suicidal to the hospital and causing them to undergo a preliminary psychiatric evaluation by a physician who could make an independent judgment about whether to file an application for emergency certification. By contrast, General Order 320.70 gave CPD officers the authority to transport such individuals to the hospital and ensure that they were evaluated. Importantly, the RIMHL did not purport to preclude such police activity in pursuance of internal policies and procedures. The plaintiff offers no reason as to why we should not read the RIMHL in harmony with General Order 320.70. *Cf. Rathbun v. Autozone, Inc.*, 361 F.3d 62, 68 (1st Cir. 2004) (explaining that under "in pari materia" canon of construction, legal provisions that "relate to the same subject matter should be considered together so that they will

harmonize with each other and be consistent with their general objective scope" (quoting *State v. Ahmadjian*, 438 A.2d 1070, 1081 (R.I. 1981))). Such a harmonious reading conduces to the conclusion that the defendant officers' seizure of the plaintiff did not violate state law.

To say more about the seizure of the plaintiff's person would be supererogatory. We conclude that no rational factfinder could determine that the defendant officers strayed beyond the realm of reason by deeming the plaintiff at risk of imminently harming himself or others. Consequently, the officers' seizure of the plaintiff was a reasonable exercise of their community caretaking responsibilities. Thus, that seizure did not offend the Fourth Amendment.

4. *The Seizure of the Firearms.* The next hill we must climb relates to the defendant officers' warrantless entry into the plaintiff's home and their seizure of his handguns. Seizures of personal property generally require a warrant or some recognized exception to the warrant requirement. *See United States v. Sanchez*, 612 F.3d 1, 4 (1st Cir. 2010). The same benchmark obtains, with particular force, for entries into the home. *See Payton v. New York*, 445 U.S. 573, 589–90 (1980); *MacDonald*, 745 F.3d at 12. Once again, the defendant officers seek to cloak their conduct in the raiment of the community caretaking function.

Notwithstanding our two-pronged assumption that the plaintiff remained seized within the meaning of the Fourth Amendment during his time at the

hospital and that his psychiatric evaluation was involuntary, our assessment of the seizure of his firearms does not turn on what actually happened at the hospital. Instead, this assessment centers on how an objectively reasonable officer remaining at the residence after the plaintiff's departure could have appraised the danger posed by the handguns in the plaintiff's home. We conclude that the officers could reasonably have believed, based on the facts known to them at the time, that leaving the guns in the plaintiff's home, accessible to him, posed a serious threat of immediate harm. To begin, the plaintiff freely admitted to throwing one of the firearms onto a table and making a statement that a reasonable officer could have construed as a harbinger of self-harm. What is more, this episode so concerned the plaintiff's wife that she felt compelled to hide the magazine containing the bullets for that gun and then to leave the dwelling to stay overnight at a hotel. To cap the matter, the officers knew that the plaintiff might soon return to a contentious domestic environment, that he was "sick of the arguments" with his wife, and that he was upset that she had involved the police. These facts could have led an objectively reasonable officer to grow concerned that, despite Kim's assurances that she did not fear for her own safety, she too might be at near-term risk.

The plaintiff counters that he already had been removed from the scene at the time of the seizure. That is true as far as it goes, but it does not take the plaintiff very far. From the perspective of an objectively reasonable officer, the plaintiff's departure

had not necessarily dispelled the threat of harm.[9] There is no evidence that the officers had any inkling when the plaintiff would return or what his mental state might be upon his return. And since the officers did not accompany the plaintiff to the hospital, they had no way of knowing precisely what information would be imparted to healthcare providers about the plaintiff's circumstances. Similarly, they had no way of knowing whether emergency services personnel would monitor the plaintiff to ensure that he was evaluated, let alone whether an emergency certification would ensue. And even though the plaintiff had assented to go to the hospital for an evaluation, his initial reticence and refusal to answer certain questions about his mental health could have given an objectively reasonable officer pause about whether he would in fact submit to an evaluation. Such doubts would have been typical for CPD officers faced with this sort of scenario: Captain Henry (the officer who approved the seizure of the plaintiff's firearms) testified that although CPD officers can

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[9] The plaintiff calls our attention to the defendants' apparent concession (during oral argument on the summary judgment motions in the district court) that neither the exigent circumstances exception nor the emergency aid exception could have justified the seizure of the plaintiff's firearms after he had been removed from the scene. Because the defendants have not invoked either exception as a justification for the seizure, it would serve no useful purpose for us to speculate about the relevance of any such concession. In all events, the defendants have consistently asserted, both here and in the court below, that the threat of peril did not evaporate once the plaintiff was removed from the scene.

forcibly transport individuals in need of emergency psychiatric evaluations to the hospital, officers cannot "force [such individuals] to participate in anything" and would not try to do so.

On this record, an objectively reasonable officer remaining at the residence after the plaintiff's departure could have perceived a real possibility that the plaintiff might refuse an evaluation and shortly return home in the same troubled mental state.[10] Such uncertainty, we think, could have led a reasonable officer to continue to regard the danger of leaving firearms in the plaintiff's home as immediate and, accordingly, to err on the side of caution. *See Rodriguez*, 930 F.3d at 1140 (observing that "reasonable officer would have been deeply concerned by the prospect" that individual who threatened

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[10] At the time of the plaintiff's seizure, an application for emergency certification could be filed for an individual who refused to consent to an examination if the applicant's observations of the individual demonstrated that "emergency certification [was] necessary." R.I. Gen. Laws § 40.1-5-7(a)(1) (2006) (amended 2017). Nothing in the RIMHL indicated, however, that an individual who refused to consent to an evaluation could be physically restrained between the moment of their refusal and the execution of an application for emergency certification (which could take place up to five days after the applicant last observed the individual, *see id.* § 40.1-5-7(b)). Accordingly, if the plaintiff had refused to submit to an evaluation and a physician had nonetheless determined that an application for certification should be filed, it remained a distinct possibility that the plaintiff could simply have left the hospital and returned home while such an application was being prepared.

shooting "might have had access to a firearm in the near future," even though individual had been taken to hospital); *Mora*, 519 F.3d at 228 (rejecting argument that "emergency vanished" after appellant left for hospital, partially due to lack of certainty about when appellant would return and what his state of mind would be at that time).

One rejoinder to this conclusion (albeit a rejoinder not advanced by the plaintiff) might be that the defendant officers should have accompanied the plaintiff to the hospital to see how events unfolded before taking action with respect to his firearms. Although that is a reasonable course of action that could have been pursued, we do not require police officers to choose the least intrusive means of fulfilling their community caretaking responsibilities. *See Lockhart-Bembery*, 498 F.3d at 76. Nor is it at all clear that accompanying the plaintiff to the hospital and monitoring his interactions with medical staff would have been less intrusive than a circumscribed entry into the plaintiff's home. Because the officers' decision to seize the plaintiff's handguns for temporary safekeeping was within the realm of reason, it does not matter that "alternative reasonable options were also available." *Id.*; *see Rodriguez-Morales*, 929 F.2d at 786 (observing that "critical question" in vehicle impoundment case was not whether officers "could have effected an impoundment more solicitously, but whether the decision to impound and the method chosen for implementing that decision were, under all the circumstances, within the realm of reason").

We are likewise persuaded that the defendants' actions in entering the plaintiff's home and seizing his firearms were consistent with sound police procedure. The police play a vital role as guardians of the public weal. They must, therefore, be granted some measure of discretion when taking plausible steps to protect public safety, particularly when human life may be at stake and the margin for error is slight. *See Rodriguez-Morales*, 929 F.2d at 786–87 (explaining that the "search for equipoise" in community caretaking cases "almost always involves the exercise of discretion" (quoting *Lopez v. Aran*, 844 F.2d 898, 905 (1st Cir. 1988))). As the Seventh Circuit cogently reasoned in an analogous case, "[o]ne need only imagine the public outcry . . . had the police left the gun[s]" in place and the plaintiff "returned home and then used the gun[s]" to inflict harm. *Sutterfield*, 751 F.3d at 570. Here, the officers' decision to confiscate the firearms was a reasonable choice from among the available alternatives. *See Rodriguez*, 930 F.3d at 1139–40 (holding that police had "substantial public safety interest" in preventing access to guns when mentally ill individual had threatened violence); *United States v. Harris*, 747 F.3d 1013, 1018–19 (8th Cir. 2014) (concluding that officers were allowed to seize firearm when failure to do so could have resulted in "[a]ny number of dangerous, or even deadly, outcomes"); *Mora*, 519 F.3d at 227 (deeming "public safety rationale" a "sound basis" for seizing firearms of individual who had threatened suicide and shooting).

To close the circle, the record establishes that the methods employed by the police to effectuate the seizure of the firearms were reasonable. The officers did not ransack the plaintiff's home, nor did they engage in a frenzied top-to-bottom search for potentially dangerous objects. Instead—relying on Kim's directions—they tailored their movements to locate only the two handguns bearing a close factual nexus to the foreseeable harm (one of which the plaintiff had admitted throwing the previous day and the other of which had been specifically called to the officers' attention).

We add a coda. In upholding the defendants' actions under the community caretaking doctrine, we in no way trivialize the constitutional significance of warrantless entries into a person's residence, disruption of the right of law-abiding citizens to keep firearms in their homes, or involuntary seizures of handguns. By the same token, though, we also remain mindful that police officers have a difficult job—a job that frequently must be carried out amidst the push and pull of competing centrifugal and centripetal forces. Police officers must sometimes make on-the-spot judgments in harrowing and swiftly evolving circumstances. Such considerations argue persuasively in favor of affording the police some reasonable leeway in the performance of their community caretaking responsibilities.

In the circumstances of this case, we think that no rational factfinder could deem unreasonable either the officers' belief that the plaintiff posed an imminent risk of harm to himself or others or their belief that

reasonable prudence dictated seizing the handguns and placing them beyond the plaintiff's reach. Consequently, the defendants' actions fell under the protective carapace of the community caretaking exception and did not abridge the Fourth Amendment.

B. *The Remaining Claims.*

Having tackled the plaintiff's most substantial assignments of error, we proceed to his other claims. We first examine the plaintiff's claims that the defendant officers, in their individual capacities, violated the Second Amendment by seizing his firearms. Next, we assess the plaintiff's municipal liability claims. At that juncture, the lens of our inquiry narrows to evaluate the plaintiff's claims that the defendants abridged the Rhode Island Constitution. We conclude with an appraisal of the two state statutory claims advanced by the plaintiff.

1. *The Second Amendment Claims.* The plaintiff insists that the defendant officers violated the Second Amendment by seizing the two handguns from his home. He concedes, however, that the officers never attempted to restrict his ability to purchase or possess other firearms. The district court rejected this claim, ruling that "the Second Amendment is not implicated when the police reasonably seize a gun under their well-established duties as community caretakers" and that "the Second Amendment does not protect an individual's right to possess a particular gun." *Caniglia*, 396 F. Supp. 3d at 237.

The Second Amendment provides that "[a] well-regulated Militia, being necessary to the security of a

free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II. The Supreme Court has determined that the Second Amendment protects an individual's right to keep and bear arms even outside the context of service in a militia. *See District of Columbia v. Heller*, 554 U.S. 570, 592 (2008); *see also McDonald v. City of Chicago*, 561 U.S. 742, 791 (2010) (applying Second Amendment to states through Fourteenth Amendment). Although the *Heller* Court did not venture to delineate the complete dimensions of the Second Amendment right, it made clear that the Second Amendment does not guarantee an unlimited right to "keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." 554 U.S. at 626.

Our precedent teaches that the core of the Second Amendment right is confined to self-defense in the home by law-abiding citizens. *See Worman v. Healey*, 922 F.3d 26, 36 (1st Cir. 2019), *petition for cert. filed*, No. 19-404 (U.S. Sept. 25, 2019); *Gould v. Morgan*, 907 F.3d 659, 671 (1st Cir. 2018), *petition for cert. filed*, No. 18-1272 (U.S. Apr. 4, 2019). We have not yet had occasion to address whether the seizure of specific firearms from the home in pursuance of a legitimate police function infringes on this core right when, as in this case, a gun owner has not been barred from keeping or acquiring other firearms.

There are few guideposts bearing on the resolution of this issue. The appellate courts that have grappled with the issue have either skirted it, *see Sutterfield*, 751 F.3d at 571–72, or have held that the deprivation

of specific firearms does not abridge the Second Amendment, *see Rodgers v. Knight*, 781 F.3d 932, 941–42 (8th Cir. 2015). When all is said and done, we need not conduct an archeological dig into this uncertain terrain. Regardless of whether the seizure of particular firearms can ever infringe the Second Amendment right—a matter on which we take no view—it was by no means clearly established in August of 2015 that police officers seizing particular firearms in pursuance of their community caretaking functions would, by doing so, trespass on the Second Amendment. Here, the plaintiff has wholly failed to identify either binding precedent or a chorus of persuasive authority "sufficient to send a clear signal" to reasonable officers, *Alfano*, 847 F.3d at 75, that seizures of individual firearms pursuant to the community caretaking exception fell outside constitutional bounds.

The doctrine of qualified immunity is by now familiar. We previously set forth the parameters of that doctrine. *See supra* note 3. In general terms, the doctrine is designed to shield government officials from suit when no "red flags [were] flying" at the time of the challenged action—red flags sufficient to alert reasonable officials that their conduct was unlawful. *MacDonald*, 745 F.3d at 15. Because this is such a case, the defendant officers in their individual capacities are entitled to qualified immunity with respect to the plaintiff's Second Amendment claims. We therefore hold that the district court did not err in granting them summary judgment on those claims.

2. *The Municipal Liability Claims.* This brings us to the plaintiff's section 1983 claims against the City and the defendants in their official capacities. *See Nereida-Gonzalez v. Tirado-Delgado*, 990 F.2d 701, 705 (1st Cir. 1993) ("An official capacity suit is, in reality, a suit against the governmental entity, not against the governmental actor."). The plaintiff submits that the City maintains "an ongoing practice of seizing people and requiring them to have psychological evaluations and seizing their firearms without court orders or exigent circumstances." *See Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690–91 (1978) (holding that local governments may be sued under section 1983 pursuant to practices that are "so permanent and well settled as to constitute a 'custom or usage' with the force of law" (quoting *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 167–68 (1970))). In this instance, the plaintiff asserts that the challenged practice resulted in a violation of his Fourth Amendment rights.

The *Monell* Court made clear that municipalities cannot "be held liable [under section 1983] unless action pursuant to official municipal policy of some nature *caused a constitutional tort*." *Id.* at 691 (emphasis supplied); *see Lund v. Henderson*, 807 F.3d 6, 10 n.2 (1st Cir. 2015); *Kennedy v. Town of Billerica*, 617 F.3d 520, 531–32 (1st Cir. 2010). We already have held that the officers' conduct fell within the encincture of the community caretaking function and, thus, did not offend the Fourth Amendment. Given this determination, it necessarily follows that the plaintiff cannot prevail against the City on a theory of

municipal liability grounded on a Fourth Amendment species of constitutional tort.

This does not end the matter. It is not entirely clear whether the plaintiff's claims against the City, as configured on appeal, encompass a Second Amendment component. Relying on the plaintiff's allegations in the complaint, the district court framed the plaintiff's Second Amendment claims as alleging, in relevant parts, that the City "deprived him of his lawfully obtained and possessed weapons for no reason" through a "set of customs, practices, and policies." *Caniglia*, 396 F. Supp. 3d at 236.

On appeal, though, the plaintiff does not appear to assert that the City is liable for an underlying Second Amendment violation. While he summarily adverts to the City's "unwritten practice of seizing firearms for safekeeping" in portions of his brief concerned with the alleged Fourth Amendment violations, he never connects these cursory allusions to municipal liability with his claim of an underlying Second Amendment violation. Indeed, the portion of his reply brief dealing with the City's liability under section 1983 only mentions the City's purported violations of the Fourth Amendment and the Rhode Island Constitution. More problematic still, even though the record contains evidence that might perhaps have been effectively marshaled to illustrate a custom of seizing firearms for safekeeping under conditions like those at hand (including a General Order and testimony from the police chief and various officers), the plaintiff's efforts to assemble and analyze that evidence are unacceptably meager. The net result is that, even if

we assume that the plaintiff intended to argue on appeal that the City caused an infringement of his Second Amendment right by way of a custom or policy, that claim has been fatally underdeveloped.

We need not tarry. In this circuit, it is settled beyond peradventure that a reviewing court is not obliged to do a lawyer's work for him by putting meat on the bones of a skeletal argument. *See United States v. Zannino*, 895 F.2d 1, 17 (1st Cir. 1990). "[I]ssues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived." *Id.* Accordingly, we deem abandoned any claim that the plaintiff suffered a Second Amendment violation because of a policy or practice attributable to the City.

3. *The State Constitutional Claims.* We come now to the plaintiff's claims that the seizure of both his person and his handguns transgressed article 1, section 6 of the Rhode Island Constitution and his imbricated claim that the handgun seizure also violated article 1, section 22. We address these claims sequentially.

(a). Article 1, section 6 of the Rhode Island Constitution guarantees "[t]he right of the people to be secure in their persons, papers and possessions, against unreasonable searches and seizures." The plaintiff contends that the officers' conduct violated this provision, which he asserts "provides stronger protections against searches and seizures than the Fourth Amendment." For several reasons, this argument lacks force.

With certain limited exceptions, not relevant here, the Rhode Island Supreme Court construes article 1, section 6 as coextensive with the Fourth Amendment. *See*, *e.g.*, *State v. Morris*, 92 A.3d 920, 930 (R.I. 2014); *Duquette v. Godbout*, 471 A.2d 1359, 1361 (R.I. 1984). This lockstep approach holds true both in cases involving entries into dwellings under emergency circumstances, *see*, *e.g.*, *Duquette*, 471 A.2d at 1361–62, and in cases concerning the seizure of individuals, *see*, *e.g.*, *State v. Foster*, 842 A.2d 1047, 1049–50, 1050 n.3 (R.I. 2004) (per curiam). With respect to the types of police activity at issue here, we have no reason to suspect that the Rhode Island Supreme Court would afford more robust protection under article 1, section 6 than is available under the Fourth Amendment. *See State v. Andujar*, 899 A.2d 1209, 1223–24, 1224 n.12 (R.I. 2006) (cautioning that decision to depart from minimum Fourth Amendment protection "should be made guardedly" (quoting *State v. Werner*, 615 A.2d 1010, 1014 (R.I. 1992))).

Moreover, although the state supreme court has not explicitly extended the community caretaking doctrine either to warrantless seizures of individuals and property or to warrantless entries into dwellings, it has articulated an expansive view of the doctrine. For example, the court has described the doctrine as one concerning "the many varied daily tasks" police are called upon to perform, including "acting as a domestic-relations counselor," serving as a makeshift midwife, and informing a "citizen of the loss of a loved one." *State v. Cook*, 440 A.2d 137, 139 (R.I. 1982); *see*

State v. Roussell, 770 A.2d 858, 860–61 (R.I. 2001) (per curiam).

To complete the picture, we think it noteworthy that the Rhode Island Supreme Court has adopted an "emergency doctrine" that bears some resemblance to the community caretaking function. *See*, *e.g.*, *Duquette*, 471 A.2d at 1362 (deeming forcible entry into apartment justified under Fourth Amendment and article 1, section 6 because police had reason to believe minor was in peril inside). An expansion of the exigent circumstances exception, the emergency doctrine permits warrantless police activity on private premises (including entries into dwellings) when officers "have a reasonable belief that [their] assistance is required to avert a crisis" and the motivation underlying the activity is "to preserve life and property rather than to search for evidence to be used in a criminal investigation." *Id.*; *see State v. Goulet*, 21 A.3d 302, 313–14 (R.I. 2011); *State v. Portes*, 840 A.2d 1131, 1136–37 (R.I. 2004).

Given the Rhode Island Supreme Court's expansive conception of the community caretaking function, its adoption of the "emergency doctrine," and its demonstrated propensity to construe article 1, section 6 as coterminous with the Fourth Amendment, we discern no basis for believing that the state supreme court would find that the officers' conduct violated the state constitution. Since the plaintiff has failed to offer any convincing rationale as to why the defendants' seizures of his person and his firearms would violate article 1, section 6 when those seizures do not violate the Fourth Amendment, summary

judgment for the defendants was appropriate on this aspect of the plaintiff's state constitutional claims.

(b). The plaintiff also contends that the seizure of his firearms violated article 1, section 22 of the Rhode Island Constitution. This provision memorializes the principle that "[t]he right of the people to keep and bear arms shall not be infringed." In the plaintiff's view, article 1, section 22 guarantees him an absolute right to keep arms in his home; and he asserts that the defendants infringed this right by taking his firearms without a warrant, court order, or exigent circumstances. The district court rejected this claim, *see Caniglia*, 396 F. Supp. 3d at 236–37, and so do we.

The plaintiff's argument that article 1, section 22 guarantees an absolute right to keep guns in the home appears to be wishful thinking. The argument hangs by a single thread: a line in a footnote in *Mosby v. Devine*, 851 A.2d 1031, 1043 n.7 (R.I. 2004). There, the Rhode Island Supreme Court reviewed the RIFA's licensing framework for the carriage of pistols and revolvers, *see* R.I. Gen. Laws § 11-47-18; *Mosby*, 851 A.2d at 1047. In a footnote refuting the dissent's "assertions about the law of self-defense in Rhode Island," the court stated, without citation to any authority, that "one has an absolute right to keep firearms in one's home or place of business." *Mosby*, 851 A.2d at 1043 n.7. This singular statement cannot support the weight of the plaintiff's argument that his right to keep firearms in the home is unfettered.

To begin, the statement was not essential to the court's review of the licensing scheme before it, which

principally implicated the right to carry certain types of guns outside homes and businesses (not the right to keep guns within the home). *See id.* at 1043 n.6 (deeming retention of guns in home "a situation far removed from the issues facing us today"). "[O]bservations relevant, but not essential, to the determination of the legal questions" before a court are paradigmatic examples of non-binding dicta. *Dedham Water Co. v. Cumberland Farms Dairy, Inc.*, 972 F.2d 453, 459 (1st Cir. 1992).

Although courts often give weight to dictum that appears "considered as opposed to casual," *id.*, we cannot say that the sentence on which the plaintiff relies qualifies as considered dictum. For one thing, when viewed in the fullness of the surrounding text, the sentence sends mixed signals about the scope of the right to keep arms in the home under article 1, section 22. After all, in the text that immediately precedes the footnote in which the sentence at issue appears, the *Mosby* court left no doubt that it would *not* attempt to either "define the extent" of the rights to keep and bear arms or "establish the limits" of article 1, section 22. 851 A.2d at 1043. And for another thing, the sentence is little more than a waif in the wilderness, unaccompanied by citation of authority or any further elucidation.

We need not dwell on this claim. Beyond his plaint that article 1, section 22 guarantees an "absolute" right to keep guns in his home, the plaintiff has not adequately developed any other relevant argument. As a result, any such argument—including any contention that the *Heller* framework applies as a

matter of state constitutional law under article 1, section 22—has been waived. *See Zannino*, 895 F.2d at 17.

4. *The State Statutory Claims.* Our final chore is to consider the plaintiff's two state statutory claims, which seek damages for alleged violations of the RIMHL and the RIFA, respectively. The linchpin of both claims is yet another state statute: R.I. Gen. Laws § 9-1-2. This statute permits individuals to pursue claims for damages resulting from injuries caused by the commission of a crime (even if uncharged). *See Kelly v. Marcantonio*, 187 F.3d 192, 202 & n.8 (1st Cir. 1999).

(a). The plaintiff attempts to use section 9-1-2 as a respirator to breathe life into his RIMHL claim. To make the connection, he asserts that the defendants committed a criminal violation of the RIMHL by conspiring to have him admitted to the hospital. *See* R.I. Gen. Laws § 40.1-5-38 (criminalizing conspiracy to "improperly cause to be admitted or certified to any facility" any person not covered by RIMHL). He further asserts that by sending him to the hospital without first securing a physician's application for emergency certification or a judicial order committing him to the hospital, the defendants were, in effect, conspiring to have him improperly admitted.

This claim consists of more cry than wool. As we already have concluded, *see supra* Part II(A)(3), the RIMHL—both when viewed in isolation and when read in conjunction with CPD General Order 320.70—did not forbid the police from transporting an

individual to the hospital for an outpatient psychiatric examination by a physician. In addition, the record is devoid of any probative evidence that the defendants conspired to have the plaintiff admitted to the hospital. Even when construed in the light most favorable to the plaintiff, *see Avery*, 661 F.3d at 691, the record discloses no more than that the defendants sought to have him transported to the hospital and evaluated by medical professionals. There is simply no evidence, either direct or circumstantial, sufficient to support a finding that the defendants schemed to have him hospitalized.

(b). The plaintiff's RIFA claim fares no better. The RIFA "regulate[s] the possession and use of an array of weapons." *Mosby*, 851 A.2d at 1045. The plaintiff alleges that the RIFA makes certain violations of its terms punishable by imprisonment, *see* R.I. Gen. Laws § 11-47-26, and further alleges that the defendants committed such a crime by seizing his firearms "without just cause." In support, the plaintiff relies on a wholly inapposite admonition in a section of the RIFA concerning the safe storage of firearms, which instructs that the section should not be construed "to provide authority to any state or local agency to infringe upon the privacy of any family, home or business except by lawful warrant." *Id.* § 11-47-60.1(a). Finally, the plaintiff alleges that he does not fall into any of the categories of persons prohibited from possessing firearms. *See*, *e.g.*, *id.* § 11-47-6 (mental incompetents and drug addicts); *id.* § 11-47-7 (illegal aliens).

These allegations do not carry the day. As we already have held, *see supra* Part II(A)(4), the seizure of the plaintiff's firearms fell within the ambit of the community caretaking exception to the warrant requirement. The plaintiff has not identified any provision of the RIFA that criminalizes the temporary seizure of firearms pursuant to this exception. And because this case does not involve a categorical ban on the plaintiff's possession of firearms, his plaint that he cannot be totally foreclosed from possessing firearms lacks relevance.

In sum, no reasonable factfinder could conclude, on this record, that the defendants committed criminal violations under either the RIMHL or the RIFA. Thus, the court below did not err in entering summary judgment for the defendants on the plaintiff's state statutory claims.

III. CONCLUSION

We need go no further. Police officers play an important role as community caretakers. As this case illustrates, they sometimes are confronted with peculiar circumstances—circumstances that present them with difficult choices. Here, the actions of the defendant officers, though not letter perfect, did not exceed the proper province of their community caretaking responsibilities. The able district court recognized as much and, for the reasons elucidated above, its judgment is

Affirmed.

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

EDWARD A. CANIGLIA, **Plaintiff,** **v.** **ROBERT F. STRUM as the Finance Director of THE CITY OF CRANSTON, THE CITY OF CRANSTON, COL. MICHAEL J. VINQUIST in his individual capacity and in his official capacity as Chief of the CRANSTON POLICE DEPARTMENT, CAPT. RUSSELL HENRY, JR., in his individual capacity and in his official capacity as an officer of the**	)	**C.A. No. 15-525-JJM-LDA**

CRANSTON POLICE	)
DEPARTMENT,	)
MAJOR ROBERT	)
QUIRK, in his	)
individual capacity	)
and in his official	)
capacity as an officer	)
of the CRANSTON	)
POLICE	)
DEPARTMENT, SGT.	)
BRANDON BARTH, in	)
his individual capacity	)
and in his official	)
capacity as an officer	)
of the CRANSTON	)
POLICE	)
DEPARTMENT,	)
OFFICER JOHN	)
MASTRATI in his	)
individual capacity	)
and in his official	)
capacity as an officer	)
of the CRANSTON	)
POLICE	)
DEPARTMENT,	)
OFFICER WAYNE	)
RUSSELL in his	)
individual capacity	)
and as an officer of the	)
CRANSTON POLICE	)
DEPARTMENT,	)
OFFICER AUSTIN	)

SMITH in his individual capacity and in his official capacity as an officer of the CRANSTON POLICE DEPARTMENT, and JOHN and JANE DOES NOS 1–10, in their individual capacities and in their official capacities as officers of the CRANSTON POLICE DEPARTMENT,	)
Defendants.	)

MEMORANDUM AND ORDER

JOHN J. MCCONNELL, JR., United States District Judge.

This case brings to the forefront the constitutionality of police conduct when officers are not acting in their law enforcement or investigatory capacity, but aiding individuals out in the community. Edward Caniglia's wife called Cranston police for assistance when she became concerned for her husband's health and safety. Police arrived at the Caniglia's home, and spoke to both Mr. and

Mrs. Caniglia, and ultimately decided to send Mr. Caniglia in a Cranston rescue for a well-being check at Kent Hospital and to remove from the home the guns that he legally possessed.

Mr. Caniglia filed this lawsuit and both he and the City have filed cross-motions for summary judgment. The City moves (ECF No. 45) on these counts: Count I – Rhode Island Firearms Act; Count II – Second Amendment/Article I, § 2 of the Rhode Island Constitution; Count III – Fourth Amendment/ Article 1, § 6 of the Rhode Island Constitution; Count V – Equal Protection; Count VI – Rhode Island Mental Health Law; and Count VII – Conversion, and claims for Declaratory and Injunctive Relief. Mr. Caniglia has cross-moved (ECF No. 43) on Counts III, VI, and VII and also on Count IV – Due Process, and the City's immunity and community caretaking function defenses.

I. FACTS

On August 20, 2015, Mr. Caniglia and his wife had an argument in their home in Cranston, Rhode Island. ECF No. 55 at ¶ 1. Mrs. Caniglia asked her husband what was wrong, and he responded by going into their bedroom and returning with a gun; he threw it on the table and said, "why don't you just shoot me and get me out of my misery." *Id.* at ¶ 3. Mrs. Caniglia was shocked by her husband's behavior and threatened to call 911. *Id.* at ¶¶ 5–6. Mr. Caniglia left the home. *Id.* at ¶ 7. Mrs. Caniglia did not call 911. *Id.*

Mrs. Caniglia hid the gun between the mattress and box spring in their bedroom. *Id.* at ¶ 8. She then

realized that the gun had not been loaded because she saw the magazine under the mattress. *Id*. at ¶ 9. She moved the magazine to a drawer. *Id*. She hid the gun and magazine because she was worried about her husband's state of mind. *Id*. at ¶ 11. When Mr. Caniglia returned to their home, the couple continued to fight, and Mrs. Caniglia left to spend the night at a hotel. *Id*. at ¶ 14.

The next morning, Mrs. Caniglia tried to reach Mr. Caniglia by phone, but he did not answer. ECF No. 59 at ¶ 62. She became worried; she was afraid that he would do something with the gun. *Id*. at ¶ 63. She called Cranston police and asked them to make a well call.[1] ECF No. 55 at ¶ 16. She also asked for an escort back to her home to check on Mr. Caniglia. ECF No. 59 at ¶¶ 63–64. Officers John Mastrati, and Austin Smith, and Sargent Brandon Barth arrived at the hotel to speak with Mrs. Caniglia. ECF No. 55 at ¶ 19. She told them about the gun and what she did with it and the magazine and about what Mr. Caniglia said during their argument. *Id*. at ¶ 20. She told them that she was concerned about her husband's safety and about what she would find when she got home; she was worried about him committing suicide. *Id*. at ¶ 22.

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[1] Mrs. Caniglia testified that the police officers' actions were not what she expected. She wanted an escort home and she and the police would knock on the door and when her husband answered she would know he was okay, and "that we would talk, and if things were fine, the officer would leave." ECF No. 59 at ¶ 142.

Officer Mastrati called Mr. Caniglia and asked to speak with him at his home. ECF No. 59 at ¶ 66. He told Mrs. Caniglia that her husband sounded fine, but instructed her to follow them to the home, and to stay in the car. *Id*. at ¶ 67. The officers spoke with Mr. Caniglia on his back porch. *Id*. at ¶ 69. Mr. Caniglia told Officer Mastrati that he brought the gun out during an argument with his wife, that he was sick of arguing with her, and that he told his wife "just shoot me" because he "couldn't take it anymore." ECF No. 55 at ¶¶ 26, 29. He was calm for the most part and told Officer Mastrati that he would never commit suicide. ECF No. 59 at ¶¶ 70–71. He seemed normal during that encounter. *Id*. at ¶ 80. When officers asked about his mental health, he told them it was none of their business. *Id*. at ¶ 82.

Mrs. Caniglia arrived at the house and the officers told her she could come in. ECF No. 55 at ¶ 31. Mr. Caniglia asked her why she called the police and she told him that she was worried about him. *Id*. at ¶ 33. Based on his conversations with Mrs. Caniglia, Officer Mastrati was concerned about Mr. Caniglia's suicidal thoughts and that he was a danger to himself. *Id*. at ¶¶ 36–37. Sargent Barth, who was in charge at the scene, also considered Mr. Caniglia's statement that his wife should shoot him as a suicidal statement. *Id*. at ¶ 38.

A rescue from Cranston Fire Department responded to the scene. Richard Greene, a rescue lieutenant, remembers little about the call but that police told him that they recovered a gun from the scene and that Mr. Caniglia asked his wife to shoot him. ECF No. 59

at ¶ 103. Officer Greene told Mr. Caniglia that he was taking him to Kent Hospital, and he went. *Id.* at ¶¶ 105–106. Mr. Caniglia disputes the officers' characterization that he went voluntarily because he says he only went so that the officers would not take his guns, but there is no evidence that Mr. Caniglia's submission to Cranston rescue was involuntary. ECF No. 65 at ¶ 70. A physician and a nurse examined him, and he was evaluated by a social worker. ECF No. 59 at ¶ 121. The hospital discharged him the same day. *Id.*

Sargent Barth made the decision to seize Mr. Caniglia's guns,[2] which Captain Henry approved based on the assertion from the officers at the scene who felt it was reasonable to do so based on Mr. Caniglia's state of mind. ECF No. 55 at ¶ 41; ECF No. 59 at ¶ 87. Captain Henry was concerned that if the guns remained in the home, Mr. Caniglia and others could be in danger. ECF No. 55 at ¶ 42. After Mr. Caniglia left the home, Mrs. Caniglia showed the police where the guns and magazines were kept in the bedroom and garage and the officers removed them from the premises. *Id.* at ¶ 40. The parties dispute the assertion that Mrs. Caniglia wanted the guns removed, but it is undisputed that she pointed out

[2] There is a dispute over what the police said to Mr. and Mrs. Caniglia about seizing the guns—the Caniglia's say that the police told Mrs. Caniglia that her husband approved the seizure and that if Mr. Caniglia went to the hospital for an evaluation, they would not take the guns—but that dispute is not material because ultimately, they took the guns. ECF No. 59 at ¶¶ 85–86.

where the guns were and allowed the officers to remove them. ECF No. 59 at ¶¶ 113–114.

A few days later, Mrs. Caniglia went to the Cranston Police Department to retrieve her husband's guns. *Id.* at ¶ 122. After being informed that she needed a copy of the police report and such a request required a captain's approval, she complied and waited only to be told a few days later that her request was denied, and she needed to get a court order. *Id.* at ¶¶ 122–123. A month later, Mr. Caniglia tried to get his guns back from Cranston Police and they told him that they were not going to release them. *Id.* at ¶ 125. Mr. Caniglia's attorney sent a letter to Chief Michael Winquist requesting that the police return the guns to no avail. *Id.* at ¶ 126. After filing this lawsuit, the police gave Mr. Caniglia his guns back without a court order. *Id.* at ¶¶ 133–134. Cranston Police did not prevent Mr. Caniglia from buying or possessing any new guns during this time period. ECF No. 55 at ¶ 46.

II. STANDARD OF REVIEW

When ruling on a motion for summary judgment, the court must look to the record and view all the facts and inferences therefrom in the light most favorable to the nonmoving party. *Continental Gas. Co. v. Canadian Univ. Ins. Co.,* 924 F.2d 370, 373 (1st Cir. 1991). Once this is done, Rule 56(c) requires that summary judgment be granted if there is no issue as to any material fact and the moving party is entitled to judgment as a matter of law. A material fact is one affecting the lawsuit's outcome.

URI Cogeneration Partners, L.P. v. Board of Governors for Higher Education, 915 F. Supp. 1267, 1279 (D.R.I. 1996).

The analysis required for cross-motions for summary judgment is the same. *Scottsdale Ins. Co. v. Torres,* 561 F.3d 74, 77 (1st Cir. 2009) ("The presence of cross motions neither dilutes nor distorts this standard of review"). In evaluating cross motions, the court must determine whether either party is entitled to judgment as a matter of law based on the undisputed facts. *Id.*

III. ANALYSIS

The Court will begin by discussing the motions on Mr. Caniglia's federal claims. The Court will first discuss Count III, which alleges that the City unlawfully seized him and his guns in violation of the Fourth Amendment, then Count II, which alleges that the City violated Mr. Caniglia's rights under the Second Amendment by taking his guns, and then Count IV which is a claim that the City violated due process by failing to afford him any process for the return of his guns. The Court will also address the City's asserted immunity and defenses. Finally, the Court will turn to Mr. Caniglia's claims under Rhode Island common and statutory law, Counts I, VI, and VII.

A. Count III – Fourth Amendment

Both Mr. Caniglia and the City have moved for summary judgment on his Fourth Amendment search and seizure claim. In this claim, Mr. Caniglia alleges that the City violated his Fourth Amendment right to

be free from unreasonable searches and seizures by taking his guns from his home without a warrant and requiring him to submit to a mental health evaluation. ECF No. 51 at ¶ 78. The City argues that it is entitled to summary judgment because the officers' behavior was reasonable and consistent with its duty to protect the public. The Court will first look at the relevant Fourth Amendment law as well as the parameters of the community caretaking function and qualified immunity defenses that the City invokes.

1. Fourth Amendment Law

Generally, Fourth Amendment jurisprudence talks about searches and seizures in terms of arrests, investigatory stops, or inventory searches. *Morelli v. Webster*, 552 F.3d 12, 19 (1st Cir. 2009) ("A detention at the hands of a police officer constitutes a seizure of the detainee's person and, thus, must be adequately justified under the Fourth Amendment."); *United States v. Coccia*, 446 F.3d 233, 237–38 (1st Cir. 2006) ("[A] law enforcement officer may only seize property pursuant to a warrant based on probable cause describing the place to be searched and the property to be seized."). But here, the City argues that its police officers did not violate Mr. Caniglia's constitutional rights because they neither stopped nor arrested him for law enforcement purposes, but detained him and seized his guns in furtherance of their duties under the community caretaking function. The City moves for summary judgment on this defense and also on qualified immunity. Mr. Caniglia argues that he is entitled to summary judgment because it is undisputed that his Fourth Amendment rights were

violated and that this exception does not apply here because it has only been sanctioned as an exception in cases involving seizures and searches of vehicles, not homes.

2. Community Caretaking Function

"The Supreme Court recognized several decades ago that '[l]ocal police officers, unlike federal officers, frequently … engage in what, for want of a better term, may be described as community caretaking functions.'" *United States v. Gemma*, 818 F.3d 23, 32 (1st Cir. 2016) (quoting *Cady v. Dombrowski*, 413 U.S. 433, 441 (1973)). "Apart from investigating crime, police are 'expected to aid those in distress, combat actual hazards, prevent potential hazards from materializing and provide an infinite variety of services to preserve and protect public safety.'"[3]

[3] Mr. Caniglia correctly points out that courts are split about whether the community caretaking function standard the United States Supreme Court first set forth in *Cady* in the vehicle context also applies to searches of a home. *See, e.g.*, *Ray v. Twp. of Warren*, 626 F.3d 170, 177 (3d Cir. 2010); *United States v. Bute*, 43 F.3d 531, 535 (10th Cir. 1994); *United States v. Erickson*, 991 F.2d 529, 532 (9th Cir. 1993); *United States v. Pichanv*, 687 F.2d 204, 207–09 (7th Cir. 1982); *Hawkins v. United States*, 113 A.3d 216, 222 (D.C. 2015). The Fifth and Eighth Circuits have applied the community caretaking function to warrantless searches of the home, *see United States v. York*, 895 F.2d 1026, 1029 (5th Cir. 1990); *United States v. Quezada*, 448 F.3d 1005, 1007–08 (8th Cir. 2006). The Sixth Circuit has ruled both ways. *Compare United States v. Rohrig*, 98 F.3d 1506, 1521–25 (6th Cir. 1996), with *Goodwin v. City of Painesville*, 781 F.3d 314, 331 (6th Cir. 2015) and *United States v. Williams*, 354 F.3d 497, 508–09 (6th Cir. 2003). The First Circuit has not had occasion to rule either way on this question. *MacDonald v. Town of Eastham*, 745 F.3d 8, 13–14 (1st Cir. 2014). But given the court's recognition of the validity of police caretakers who "combat actual hazards, prevent potential hazards from materializing and provide an infinite

Gemma, 818 F.3d at 32 (quoting *United States v. Rodriguez-Morales*, 929 F.2d 780, 784–85 (1st Cir. 1991)); Cady, 413 U.S. at 441 (The community caretaking function is "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute.").

"The community caretaking doctrine gives officers a great deal of flexibility in how they carry out their community caretaking function." *Lockhart-Bembery v. Sauro*, 498 F.3d 69, 75 (1st Cir. 2007) (citing *Rodriguez-Morales*, 929 F.2d at 785). As long as police are not investigating a crime, the Fourth Amendment imperatives stay intact, "so long as the procedure involved and its implementation are reasonable." *Id.* "Reasonableness does not depend on any particular factor; the court must take into account the various facts of the case at hand." *Lockhart-Bembery*, 498 F.3d at 75. Courts "must balance 'its intrusion' on [an individual's] substantial liberty interests in remaining in [his] home, against the defendants 'legitimate governmental interests' in minimizing the risk of harm to [an individual], the family members, and themselves" while performing their community functions. *Estate of Bennett v. Wainwnght*, 548 F.3d 155, 172 (1st Cir. 2008) (citing *Skinner v. Ry. Labor Executives' Ass'n*, 489 U.S. 602, 619 (1989)).

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variety of services to preserve and protect public safety[,]" *Gemma*, 818 F.3d at 32 (quoting *Rodriguez-Morales*, 929 F.2d at 784–85), and the reality that these services could be required not only in vehicles, but also in homes as well, it appears that the community caretaking defense could be applied in a home, depending on the facts of each individual case.

The Court will first address whether there was a seizure of a person. Mr. Caniglia argues that it was unreasonable for the City to require him to go to the hospital for a mental health check. But "not all personal intercourse between policemen and citizens involves 'seizures' of persons. Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred." *Terry v. Ohio,* 392 U.S. 1, 19 n. 16 (1968); *see also United States v. Smith,* 423 F.3d 25, 28 (1st Cir. 2005) ("In order to find a seizure, ... we must be able to conclude that coercion, not voluntary compliance, most accurately describes the encounter."); *see also Lockhart-Bembery,* 498 F.3d at 75–76. The officer's insistence, even if viewed as an order, was not a seizure because Mr. Caniglia voluntarily left in the Cranston rescue.

But even if sending him to the hospital was a seizure, "a seizure does not violate the Fourth Amendment unless it is unreasonable under the circumstances." *Estate of Bennett,* 548 F.3d at 172 (citing *Skinner* 489 U.S. at 619); *Ahern v. O'Donnell,* 109 F.3d 809, 816 (1st Cir. 1997). Here, the Court finds that a jury could not find that any of the individual officers' conduct in sending Mr. Caniglia for a mental health evaluation was unreasonable. Their response to the Caniglia home was not part of a criminal investigation and had no law enforcement investigatory purpose. Officers responded to a call from Mr. Caniglia's wife who was concerned about his mental and emotional well-being. Officer Mastrati believed Mr. Caniglia was a danger to himself. ECF

No. 55 at ¶ 37. Sargent Barth considered Mr. Caniglia's statement to his wife to be a suicidal statement. ECF No. 55 at ¶ 38. Looking at the record as a whole, the officers had a legitimate safety concern for the Caniglia's at the time. *Lockhart-Bembery,* 498 F.3d at 76. There can be no dispute that sending Mr. Caniglia to talk to a mental health professional is a quintessential community caretaking function and was reasonable under these circumstances.

Regarding the seizure of the guns, there is no dispute that the officers knew the guns were legally possessed and did not suspect that they would uncover evidence of a crime so were acting solely in their roles as community caretakers. But Mr. Caniglia argues that the officers' response in removing his guns was not reasonable because they knew he was not suicidal, Mrs. Caniglia knew he was not suicidal, the gun was not loaded when he brought it out during the argument, and most of the events that prompted their well-being check happened the day before so there was no emergency or reason remove the guns from the home.

The City argues that the officers' actions that day were reasonable based on their belief that the Caniglia's were in crisis. Mrs. Caniglia called police and told them about the previous days' argument that devolved into Mr. Caniglia putting a gun on the table and making a suicidal comment, that Mr. Caniglia was depressed, and that she was afraid and worried about her husband. Captain Henry believed that if the officers left Mr. Caniglia at his home with the guns, he, his wife, and their neighbors could potentially be

in danger. ECF No. 55 at ¶ 42. The Court finds that the officers' conduct was reasonable under these circumstances. Could they have left the guns in the home pending Mr. Caniglia's clearance from Kent Hospital? Perhaps, but, "[t]here is no requirement that officers must select the least intrusive means of fulfilling community caretaking responsibilities." *Lockhart-Bembery*, 498 F.3d at 76 (citing *Colorado v. Bertine*, 479 U.S. 367, 373–74 (1987); *Rodriguez-Morales*, 929 F.2d at 786). Thus, the Court finds that the undisputed record supports its conclusion that the City and its officers were authorized by the community caretaking function to send Mr. Caniglia to Kent Hospital for a mental health evaluation and to seize his guns. The City's conduct did not violate Mr. Caniglia's rights under the Fourth Amendment.

Even if the Court were to find that the City were "mistaken in their judgment" and violated Mr. Caniglia's rights under the Fourth Amendment, the City argues that qualified immunity protects it from liability. *Estate of Bennett*, 548 F.3d at 172. Given these facts, the Court agrees. The Court will briefly review the legal standard for qualified immunity as it relates to Fourth Amendment analysis.

3. Qualified Immunity

"Qualified immunity[4] protects an officer from suit when a reasonable decision in the line of duty ends up

[4] An officer who is entitled to qualified immunity under federal law is similarly immune from suit for the state-law equivalent of that claim under Rhode Island law. *Estrada v. Rhode Island*, 594

being a bad guess—in other words, it shields from liability 'all but the plainly incompetent or those who knowingly violate the law.'" *Belsito Commc'ns, Inc. v. Decker* 845 F.3d 13, 22–24 (1st Cir. 2016) (quoting *Ashcroft v. al-Kidd*, 563 U.S. 731, 743 (2011)); *see also Morelli v. Webster,* 552 F.3d 12, 19 (1st Cir. 2009). A two-step inquiry requires the court to ask "(1) whether the facts alleged or shown by the Plaintiff make out a violation of a constitutional right; and (2) if so, whether the right was 'clearly established' at the time of the defendant's alleged violation." *Maldonado v. Fontánes*, 568 F.3d 263, 269 (1st Cir. 2009) (quoting *Pearson v. Callahan,* 555 U.S. 223, 243 (2009)). The second step has two prongs: a law is clearly established depending on (1) "the clarity of the law at the time of the alleged civil rights violation" and (2) "whether a reasonable defendant would have understood that his conduct violated the plaintiffs' constitutional rights." *Id.* The Court therefore must inquire "whether, at the time of the intrusion, Fourth Amendment jurisprudence signaled to the individual defendants in this case that their conduct overstepped constitutional boundaries." *Macdonald v. Town of Eastham,* 745 F.3d 8, 12 (1st Cir. 2014).

When the First Circuit has considered whether the community caretaking function applies to searches and seizures in homes as well as cars, it observed that "the reach of the community caretaking doctrine is poorly defined outside of the motor vehicle milieu,"

F.3d 56, 63 (1st Cir. 2010) (citing *Hatch v. Town of Middletown*, 311 F.3d 83, 89–90 (1st Cir. 2002)).

that it "has not decided whether the community caretaking exception applies to police activities involving a person's home," and that the case law reveals that the scope and boundaries of the community caretaking exception are nebulous." *Id.* at 13–14. The First Circuit concluded that "neither the general dimensions of the community caretaking exception nor the case law addressing the application of that exception provides the sort of red flag that would have semaphored to reasonable police officers that their entry into the plaintiff's home was illegal." *Id.* at 15.

Because of this ambiguity, the Court finds that it is not clearly established that the community caretaking exception does not apply to police activity in the home intended to preserve and protect the public. *Gemma*, 818 F.3d at 32. Sending Mr. Caniglia for a voluntary well-being check and taking his guns for his and his family's safety were reasonable exercises of the officers' mandate. The City did not force Mr. Caniglia to go to the hospital and Mrs. Caniglia told police her husband had guns and allowed them to enter the home to take them. Nothing about those facts would have led police to believe they were violating Mr. Caniglia's clearly established constitutional rights. The Court thus defers to the officers' reasonable decisions made in the line of duty and concludes that qualified immunity applies to bar this claim against the City.

The Court GRANTS the City's Motion for Summary Judgment (ECF No. 45) and DENIES Mr. Caniglia's Motion for Summary Judgment (ECF No. 43) as to Count III.

B. Count II – Second Amendment of the United States and Rhode Island Constitutions

Mr. Caniglia's Second Amendment claim alleges that the City, through "a set of customs, practices, and policies," deprived him of his lawfully obtained and possessed weapons for no reason. ECF No. 51 at ¶¶ 73–74. The policy at issue is that the City will take an individual's weapons for safekeeping without a warrant if they believe that person may be a threat to himself or others. *Id.* at ¶ 27.

The United States Supreme Court announced in *D.C. v. Heller* that an individual has a right to possess firearms in his or her home for protection, but noted that "[l]ike most rights, the right secured by the Second Amendment is not unlimited" and thus does not protect "a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose" or "for any sort of confrontation." 554 U.S. at 595, 626 (2008) (emphasis omitted); *see also Worman v. Healey;* 922 F.3d 26, 34 (1st Cir. 2019).

Keeping this limitation in mind, the Court must consider whether the City's justification for taking Mr. Caniglia's guns comes within the scope of the Second Amendment's protection of the right to bear arms. If it does not, the inquiry ends.

"The issue is a sensitive one, as it implicates not only the individual's right to possess a firearm, but the ability of the police to take appropriate action when they are confronted with a firearm that may or may not be lawfully possessed, and which, irrespective of

the owner's right to possess the firearm, may pose a danger to the owner or others." *Sutterfield v. City of Milwaukee,* 751 F.3d 542, 572 (7th Cir. 2014).

Here, the Court finds that the City's policy of removing the guns from a home where an individual threatened suicide does not affect Mr. Caniglia's Second Amendment right to possess a gun. Just as the Second Amendment is not implicated when the police seize a firearm during an arrest, or at a crime scene, the Second Amendment is not implicated when the police reasonably seize a gun under their well-established duties as community caretakers. Moreover, it also is undisputed that the City eventually returned Mr. Caniglia's guns to him and that the City did not prevent Mr. Caniglia from buying or possessing any guns the incident in his home. ECF No. 55 at ¶¶ 46–48. The Court has found under similar facts that the Second Amendment does not protect an individual's right to possess a particular gun. *Richer v. Parmelee,* 189 F. Supp. 3d 334, 343 (D.R.I. 2016) *(Richer 1).* The parties have presented no new case law or argument that persuades it otherwise.

The City's Motion for Summary Judgment (ECF No. 45) on Count II is GRANTED.

C. Count IV – Fourteenth Amendment Due Process

Mr. Caniglia moves for summary judgment on his due process claim–the Court granted a similar motion for the plaintiff in *Richer I.* Mr. Caniglia alleges that the City violated his due process rights when it seized

his guns with no policy, custom, or procedure–with no process–for returning them. The City refused to return Mr. Caniglia's property for four months and only did so after Mr. Caniglia repeatedly asked, had his lawyer send a letter, and ultimately sued.

The Fourteenth Amendment forbids the City from depriving "any person of life, liberty, or property, without due process of law."[5] "In evaluating a procedural due process claim under the Fourteenth Amendment, we must determine 'whether [the plaintiff] was deprived of a protected interest, and, if so, what process was his due.'" *Garcia-Gonzalez v. Piug-Morales,* 761 F.3d 81, 88 (1st Cir. 2014) (citing *Logan v. Zimmerman Brush Co.,* 455 U.S. 422, 428 (1982)). The City held Mr. Caniglia's property for four months, which qualifies as a deprivation of his property right. *See Fuentes v. Shevin,* 407 U.S. 67, 85 (1972) ("a temporary, nonfinal deprivation of property is nonetheless a 'deprivation' in the terms of the Fourteenth Amendment.").

The Court's analysis of this claim in the *Richer I* case is instructive here. The Court focused on the process due and remarked that due process "is flexible and calls for such procedural protections as the particular situation demands." *Richer I,* 189 F. Supp. 3d 339 (quoting *Morissey* v. *Brewer,* 408 U.S. 471, 481 (1972)). Relying on the *Matthews v. Eldridge* test, this Court noted the three relevant factors in determining what procedural protections are due:

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[5] This constitutional right is actionable against state and municipal officials through 42 U.S.C. § 1983.

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Richer I, 189 F. Supp. 3d at 339 (quoting *Matthews v. Eldridge,* 424 U.S. 319, 335 (1976)). Analyzing the first factor, the Court held that the private interest in the "use and possession of property" ingrained in the Fourteenth Amendment trilogy "reflects the high value, embedded in our constitutional and political history, that we place on a person's right to enjoy what is his, free of government interference." *Richer I,* 189 F. Supp. 3d at 339 (quoting *Fuentes,* 407 U.S. at 81). The Court concluded based on *Fuentes* that absent extenuating circumstances, due process requires a baseline of notice and an opportunity to be heard when chattels are to be confiscated." *Richer I,* 189 F. Supp. 3d at 340 (quoting *Fuentes,* 407 U.S. at 96).

First, the Court finds that Mr. Caniglia had a private interest in his personal property. Second, it is undisputed that the City took his personal property, did not afford him any notice of how to get his property back, and arbitrarily denied his requests for its return. Once in litigation, the City argues that the process

Mr. Caniglia should have taken advantage of was to file a state court action under R.I. Gen. Laws § 12-5-7 to recover his property. But the burden on Mr. Caniglia to pay filing and service fees, to hire a lawyer, and wait for justice to ensue is too much of a barrier to his constitutional right to enjoy his property, "free from government interference." *Richer I,* 189 F. Supp. 3d at 339 (quoting *Fuentes,* 407 U.S. at 81).

Finally, the Court considers the City's interest, articulated here as the traditional community caretaking function of protecting the health and safety of the public. The Court acknowledges that the City's officers were in a sensitive situation and acted within reason, trusting their law enforcement instincts to protect the Caniglia's by removing guns from a once volatile domestic situation that could again escalate once the police left. That said, once Mr. Caniglia left the hospital after being cleared by a doctor, a nurse, and a social worker, returned home to his wife, that exigency disappeared and without a reignition of that fight or evidence of domestic instability, the Court finds that Mr. Caniglia's interest in retaining his property outweighed the City's interest in keeping his guns away from him. *Richer I,* 189 F. Supp. 3d at 340; *Razzano v. Cty, of Nassau,* 765 F. Supp. 2d 176, 189 (E.D.N.Y. 2011) ("once a person whose [guns] are taken has the opportunity to legally obtain and possess new [guns], the retention of that individual's old [guns] does not greatly protect the public from potential harm."). Because Mr. Caniglia has shown there is undisputed evidence that the City denied him

due process, the Court GRANTS Mr. Caniglia's Motion for Summary Judgment (ECF No. 45) on Count IV.[6]

D. Count V – Equal Protection

The City moves for summary judgment on Mr. Caniglia's Equal Protection claim. In that claim, he alleges that he is entitled to injunctive relief against the City's policies, customs, and practices, which deprived him of his legal guns in violation of the Fourteenth Amendment. Because Mr. Caniglia fails in both his pleading and his presentation of any disputed material facts, his equal protection claim cannot survive.

"The equal protection guarantee of the Fourteenth Amendment prohibits the state from 'deny[ing] any person within its jurisdiction the equal protection of the laws.'" *Pagan v. Calderon,* 448 F.3d 16, 34 (1st Cir. 2006) (quoting U.S. Const. Amend. XIV, § 1). Equal protection has been interpreted to mean that "all persons similarly situated should be treated alike." *City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 439 (1985). "Plaintiffs claiming an equal

[6] On a side note, the Court feels compelled to address Mr. Caniglia's argument that the City's officers took the guns solely to cover all their bases so that they would not be subject to liability or public censure for leaving the guns in the home. While the Court finds that the facts and law justify the City's actions, his perceptions as a citizen provides all the more reason for the City to develop "a clear procedure ... about how to review and resolve the seizure and retention of guns." *Richer*, 189 F. Supp. 3d at 340. "Appropriate procedures initiated or noticed by the [City] would have eliminated the risk of such a lengthy deprivation without [plaintiff] having a meaningful opportunity to contest it." *Id.* The lack of any procedure violates notions of due process.

protection violation must first identify and relate *specific instances* where persons *situated similarly in all relevant aspects* were treated differently." *Buchanan v. Maine*, 469 F.3d 158, 178 (1st Cir. 2006) (emphasis in original) (internal quotation mark omitted). "Thus, the proponent of the equal protection violation must show that the parties with whom he seeks to be compared have engaged in the same activity vis-à-vis the government entity without such distinguishing or mitigating circumstances as would render the comparison inutile." *Cordi-Allen v. Conlon*, 494 F.3d 245, 251 (1st Cir. 2007) (citing *Perkins v. Brigham & Women's Hosp.*, 78 F.3d 747, 751 (1st Cir. 1996)).

Looking through the entire record, from the complaint through the summary judgment evidence, Mr. Caniglia does not point to any other individual similarly situated who was treated differently. He speculates that other gun owners could fall victim to the City's unconstitutional gun seizure policies and procedures, but fails to cite any specific cases. At this stage of the case, Mr. Caniglia's equal protection claim allegations are not enough to survive summary judgment. The Court GRANTS the City's Motion for Summary Judgment (ECF No. 45) on Count V.

Now the Court will discuss the motions made on Mr. Caniglia's state law claims.

E. Count I – Rhode Island Firearms Act

The City moves for summary judgment on Mr. Caniglia's claim under the Rhode Island Firearms Act ("RIFA"), R.I. Gen. Laws § 11-47-22(b). Mr.

Caniglia alleges that the RIFA limits the circumstances under which police can prevent individuals from possessing guns and the City's conduct violated the statute. To determine the exact violative conduct, the Court finds itself taking a circuitous route. He argues that the City took his guns under R.I. Gen. Laws § 11-47-6, which limits those "under guardianship or treatment or confinement by virtue of being a mental incompetent" from possessing a gun. He then argues that the City had no basis for taking his guns under this section, but also asserts that the City should have returned his guns under § 11-47-22(b) because the guns were not evidence of a civil or criminal matter. The City denies that it violated the RIFA when it took his guns.

The RIFA provides no further relief because the City returned Mr. Caniglia's guns to him. *Richer I*, 189 F. Supp. 3d at 343 (finding that the RIFA "only contemplates injunctive relief, and not damages."). In the face of this truth, Mr. Caniglia argues that he is entitled to relief under R.I. Gen. Laws § 9-1-2 which "provides civil liability for criminal offenses" and a "plaintiff may recover civil damages for injury… that results from the commission of a crime or offense, irrespective of whether charges have been filed against the offender." *Morabit v. Hoag*, 80 A.3d 1, 4 (R.I. 2013). Mr. Caniglia asserts that "Defendants' unwritten policy of requiring persons whose guns they have seized to obtain an order in state court before they return them" is a criminal act. ECF No. 51 at ¶ 69. The assertion is not supported by the facts in this case though because it is undisputed that the City

returned Mr. Caniglia's guns without a state court order. The City did not violate the RIFA so he is not entitled to money damages under § 9-1-2.[7]

The Court therefore GRANTS the City's motion for Summary Judgment (ECF No. 45) on Count I.

F. Count VI – Rhode Island Mental Health Law

Mr. Caniglia alleges that the Rhode Island Mental Health Law ("RIMHL") provides the processes through which state actors can require an individual to submit to care for mental health issues; specifically, he argues that the statute dictates that before the state moves forward with having an individual admitted or certified to a medical or mental health facility, it must obtain a certification from a doctor that the individual needs immediate care. Because the City failed to get the certification and conspired to have him admitted to Kent Hospital for a mental health evaluation, Mr. Caniglia alleges that it violated the RIMHL.

Both parties move for summary judgment. The City argues it is entitled to dismissal because first, the RIMHL does not provide for a private right of action, and second, there is no evidence that the City attempted and/or conspired to have Mr. Caniglia

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[7] Even if there were a violation of the RIFA, "[t]he plain language of the statute [] requires a causal connection between the alleged crime and the claimed injury." *Kelly v. Marcantonio*, 187 F.3d 192, 203 n.8 (1st Cir. 1999). Mr. Caniglia has failed to allege or produce evidence of a causal connection between the crime and his injury—presumably because he has his property back and he has no evidence of current injury.

admitted to Kent Hospital so no doctor certification was required. Mr. Caniglia concedes the first point but argues again that he has a cause of action for damages under R.I. Gen. Laws § 9-1-2. He also argues that that the City's agreement to send him to the hospital for a psychological evaluation is undisputed evidence of a conspiracy and it is irrelevant that he was not admitted.

Even if there is a private right of action, the scheme legislated in the RIMHL is not a fit here. The purpose of the RIMHL is "remedial. It was designed to establish a due-process framework for the commitment of mentally ill persons and for their periodic reevaluation." *In re Doe*, 440 A.2d 712, 716 (R.I. 1982). It is undisputed that the City did not seek emergency certification for Mr. Caniglia to a medical or mental health facility, but there is also no evidence in the summary judgment record that the City intended to or conspired to admit or commit Mr. Caniglia to Kent Hospital.

Moreover, the Court imagines that it is not unusual for police to send an individual to the hospital for an evaluation after being summoned by a family member to check on his or her well-being. The officers asked Mr. Caniglia to go with Cranston rescue to get checked out at Kent Hospital and he agreed to go. ECF No. 65 at ¶ 70. He was there for a brief time and then released by medical staff. There is no evidence that police officers had any contact with hospital staff during or after the evaluation to attempt or ensure his admission. Because the City has not violated the

RIMHL, there is no crime so § 9-1-2 does not provide Mr. Caniglia any relief.

The Court GRANTS the City's Motion for Summary Judgment (ECF No. 45) and DENIES Mr. Caniglia's Motion for Summary Judgment (ECF No. 43) on Count VI.

G. Count VII – Conversion

Both parties move for summary judgment on Mr. Caniglia's common law claim for conversion. In his complaint, he alleges that the City seized his guns without his permission, without legal justification, and retained them for several months despite his repeated requests that they be returned. The City objects and argues that the claim should be dismissed because the City's actions do not legally qualify as a conversation.

In an action for conversion, the Court focuses its inquiry on "whether the defendant has appropriated to his own use the chattel of another without the latter's permission and without legal right." *Terrien v. Joseph*, 73 R.I. 112, 53 A.2d 923, 925 (1947). "This intentional exercise of control over the plaintiff's chattel must 'so seriously interfere[] with the right of another to control it that the [defendant] may justly be required to pay the other the full value of the chattel.'" *Narragansett Elec. Co. v. Carbone,* 898 A.2d 87, 97 (R.I. 2006) (quoting Restatement (Second) *Torts* § 222(A)(l) at 431 (1965)). Essentially, a conversion forces a defendant to purchase the property by judicial sale. *Prosser and Keeton on Torts* § 15 at 90 (5th ed. 1984).

To determine if a defendant has converted property, the Court should consider

> (a) [T]he extent and duration of the actor's exercise of dominion or control;
>
> (b) the actor's intent to assert a right in fact inconsistent with the other's right of control;
>
> (c) the actor's good faith;
>
> (d) the extent and duration of the resulting interference with the other's right of control;
>
> (e) the harm done to the chattel;
>
> (f) the inconvenience and expense caused to the other.

Restatement (Second) of Torts § 222A(2) (1965). While the City kept Mr. Caniglia's property after a few months, there is no evidence that the City intended to assert any kind of ownership over the property; it removed the guns from the Caniglia home in its reasonable belief that it was in the interest of public safety, and there is no evidence that the property was damaged in any way. And while the City's resistance to returning the guns inconvenienced Mr. Caniglia, this sole factor does not convince the Court that the City intended to convert his property.

The Court GRANTS the City's Motion for Summary Judgment (ECF No. 45) and DENIES Mr. Caniglia's Motion for Summary Judgment (ECF No. 43) on Count VII.

IV. CONCLUSION

Well-being checks are an important part of the work of law enforcement, often putting officers in a position

to invade the privacy of an individual's home to protect the health and safety of those inside and of the community as a whole. Officers must strike a balance, however, between responding to a crisis and respecting the inviolate rights of community members. Here, the Court determined from the undisputed material facts that the City operated within its duties to care for the community during the well-being check on Mr. Caniglia and his family. The arm of the law, however, can only go so far into the zone of privacy guaranteed by the United States Constitution. The City infringed on Mr. Caniglia's rights when it refused to return his property and failed to provide him with any process of how to get it back after his health and safety were secured.

Therefore, the Court GRANTS the City's Motion for Summary Judgment (ECF No. 45) as to Counts I, II, III, V, VI, and VII. The Court GRANTS Mr. Caniglia's Motion for Summary Judgment (ECF No. 43) as to Count IV and DENIES it as to Counts III, VI, and VII.

IT IS SO ORDERED.

s/John J. McConnell, Jr.
John J. McConnell, Jr.
United States District Judge

June 4, 2019