No. 20-157

In The Supreme Court of the United States

EDWARD A. CANIGLIA,

Petitioner,

v.

ROBERT F. STROM, ET AL.,

Respondents.

On Writ of Certiorari to the
United States Court of Appeals for the First Circuit

BRIEF *AMICUS CURIAE* OF THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS AND CRIMINAL PROCEDURE PROFESSORS IN SUPPORT OF PETITIONER

Colin Miller
Associate Dean for
Faculty Development
University of South Carolina
Law School
Mille933@law.sc.edu

Joshua L. Dratel
Co-Chair, *Amicus Committee*
National Association
Of Criminal Defense Lawyers
Dratel & Lewis
29 Broadway, Suite 1412
New York, NY 10006
(212) 732-0707
jdratel@dratellewis.com
(*Counsel of Record*)

Matthew S. Dawson
President
Rhode Island Association
Of Criminal Lawyers
Lynch & Pine
Attorneys at Law
One Park Row, Fifth Floor
Providence, RI 02903
(401) 274-3306
mdawson@lynchpine.com

LANTAGNE LEGAL PRINTING
801 East Main Street Suite 100 Richmond VA 23219 (800) 847-0477

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

OTHER AUTHORITIES

BRIEF OF THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS AND CRIMINAL PROCEDURE PROFESSORS AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

INTEREST OF THE *AMICI CURIAE*[1]

The National Association of Criminal Defense Lawyers (NACDL) is a nonprofit voluntary professional bar association that works on behalf of criminal defense attorneys to ensure justice and due process for those accused of crime or misconduct. NACDL was founded in 1958. It has a nationwide membership of many thousands of direct members, and up to 40,000 with affiliates. NACDL's members include private criminal defense lawyers, public defenders, military defense counsel, law professors, and judges. NACDL is the only nationwide professional bar association for public defenders and private criminal defense lawyers. NACDL is dedicated to advancing the proper, efficient, and just administration of justice. NACDL files numerous amicus briefs each year in the U.S. Supreme Court and other federal and state courts, seeking to provide amicus assistance in cases that present issues of broad importance to criminal defendants,

---

[1] The parties have consented to the filing of this brief, and both of their letters of consent have been filed with the Clerk. Under Rule 37.6 of the Rules of this Court, amicus states that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amicus or its counsel made a monetary contribution to its preparation or submission.

criminal defense lawyers, and the criminal justice system as a whole.

NACDL is keenly interested in Fourth Amendment jurisprudence, particularly in the context of the scope of exceptions to the warrant requirement, and the prospect of authority for ostensibly non-criminal investigative searches serving as a tool for evading the warrant requirement for criminal investigations.

Criminal Procedure Professors:

W. David Ball
Professor of Law
Santa Clara University School of Law

Lara Bazelon
Professor of Law
University of San Francisco School of Law

Valena Beety
Professor of Law
Arizona State University
Sandra Day O'Connor College of Law

John Blume
Samuel F. Leibowitz Professor of Trial Techniques
Cornell Law School

Charles Bobis
Professor of Law (Ret.)
Adjunct Clinical Professor
St. John's University School of Law

Josh Bowers
F. D. G. Ribble Professor of Law
University of Virginia School of Law

Kiel Brennan-Marquez
Associate Professor of Law and William T. Golden Scholar University of Connecticut School of Law

Jenny Carroll
Wiggins, Childs, Quinn & Pantazis Professor of Law
University of Alabama School of Law
Kami Chavis
Professor of Law and Director of the Criminal Justice Program
Wake Forest University School of Law

Frank Rudy Cooper
William S. Boyd Professor of Law and Director of the Program on Race, Gender, and Policing
UNLV William S. Boyd School of Law

Russell Covey
Professor of Law
Georgia State University College of Law

Raff Donelson
Assistant Professor of Law
Penn State Dickinson Law

Joshua Dressler
Distinguished University Professor and Professor of Law Emeritus
The Ohio State University Moritz College of Law

Meredith Duncan
George Butler Research Professor of Law
University of Houston Law Center

Jules Epstein
Professor of Law and Director of Advocacy Programs
Temple University Beasley School of Law

Marc Falkoff
Professor of Law
Northern Illinois University College of Law

Shawn Fields
Assistant Professor of Law
Campbell University Norman Adrian Wiggins School of Law

Jessie Gabel Cino
Associate Dean for Academic Affairs, Associate Professor
Georgia State University College of Law

Brian Gallini
Dean and Professor of Law
Willamette University College of Law

Norman Garland
Professor of Law
Southwestern Law School

Cynthia Godsoe
Professor of Law
Brooklyn Law School

Eve Hanan
Associate Professor of Law
UNLV William S. Boyd School of Law
Thaddeus Hoffmeister
Professor of Law
University of Dayton School of Law

Babe Howell
Professor of Law
CUNY School of Law

Lewis Katz
John C. Hutchins Professor Emeritus of Law
Case Western University School of Law

Kit Kinports
Polisher Family Distinguished Faculty Scholar
Professor of Law
Penn State Law

Daniel Kobil
Professor of Law
Capital University School of Law

Susan Kuo
Professor of Law and Associate Dean for Academic Affairs
University of South Carolina School of Law

Corinna Lain
S. D. Roberts & Sandra Moore Professor of Law
University of Richmond School of Law

Kate Levine
Associate Professor of Law
Benjamin N. Cardozo School of Law

Ken Levy
Holt B. Harrison Professor of Law
LSU Paul M. Hebert Law Center

Arnold H. Loewy
George R. Killam Jr. Chair of Criminal Law, 2006
Texas Tech University School of Law

Cortney Lollar
James and Mary Lassiter Associate Professor of Law
University of Kentucky J. David Rosenberg College of Law

Justin Marceau
Professor of Law
University of Denver Sturm College of Law

Katherine McFarlane
Associate Professor of Law
University of Idaho College of Law

Ben McJunkin
Associate Professor of Law
Arizona State University Sandra Day O'Connor College of Law

M. Isabel Medina
Ferris Family Distinguished Professor of Law
Loyola University New Orleans College of Law

Daniel Medwed
University Distinguished Professor of Law and Criminal Justice
Northeastern University School of Law

Binny Miller
Professor of Law and Co-Director, Criminal Justice Clinic
American University, Washington College of Law

Colin Miller
Professor of Law and Associate Dean for Faculty Development
University of South Carolina School of Law

Luke Milligan
Professor of Law and Co-Director of the Ordered Liberty Program
University of Louisville Louis D. Brandeis School of Law

Caren Morrison
Associate Professor of Law
Georgia State University College of Law

Robert Mosteller
J. Dickson Phillips Distinguished Professor of Law Emeritus
University of North Carolina School of Law

Barbara O'Brien
Professor of Law
Michigan State University College of Law
Tim O'Neill
Professor Emeritus of Law
UIC John Marshall Law School

Leroy Pernell
Professor of Law
Florida A&M University College of Law

William Quigley
Emeritus Professor of Law
Loyola University New Orleans College of Law

Gerald Reamey
Professor of Law
St. Mary's University School of Law

L. Song Richardson
Dean and Chancellor's Professor of Law
University of California, Irvine School of Law

Charles Rose
Dean and Professor of Law
Claude W. Pettit College of Law

David Rudovsky
Senior Fellow
University of Pennsylvania Carey School of Law

Leslie Shoebotham
Victor H. Schiro Distinguished Professor of Law
Loyola University New Orleans College of Law

Colin Starger
Professor of Law
University of Baltimore School of Law

Dean A. Strang
Distinguished Professor in Residence
Loyola University Chicago School of Law

Rodney Uphoff
Elwood L. Thomas Missouri Endowed Professor
Emeritus of Law
University of Missouri School of Law

Samuel Wiseman
Professor of Law
Penn State Law

INTRODUCTION AND SUMMARY OF THE ARGUMENT

In *Sutterfield v. City of Milwaukee*, 751 F.3d 542, 553 (7th Cir. 2014), the United States Court of Appeals for the Seventh Circuit observed that the distinctions among the exigent circumstances doctrine, the emergency aid doctrine, and the community caretaking doctrine "are not always clear." In turn, these fuzzy distinctions have led to a "lack of clarity in judicial articulation and application of the three doctrines." *Id*. at 553 n.5. This lack of clarity means that courts deciding whether the community caretaking doctrine should apply to warrantless home entries often think that doctrine is needed to justify entries that are already covered by the exigent circumstances doctrine and/or the emergency aid doctrine.

As set forth in this *amici* brief, this Court's opinions defining and applying the exigent circumstances and emergency aid doctrines establish that police officers would need to rely on the community caretaking doctrine as an independent justification for warrantless home entries in only two potential situations: to address (1) non-bodily harms such as nuisances; and (2) non-imminent threats of bodily harm.

Framed in that fashion, it is clear that a separate and independent rationale such as "community caretaking" – which was generated by the special circumstances attendant to automobile searches – does not justify invasion of the sanctity of the home. *See Coolidge v. New Hampshire*, 403 U.S. 443, 455 (1971) ("The exceptions [to the warrant

requirement] are 'jealously and carefully drawn,' and there must be 'a showing by those who seek exemption * * * that the exigencies of the situation made that course imperative.'").

Indeed, the way that this Court distinguished its opinion in *Coolidge* in creating the community caretaking doctrine makes clear that the doctrine does not and should not apply to warrantless home entries. *See Cady v. Dombrowski*, 413 U.S. 433, 447-48 (1973). In addition, the capacity for a "community caretaking" exception that permits warrantless searches of the home would invite its use as an end-run around the protections of the warrant requirement.

ARGUMENT

I. The Scope of the Exigent Circumstances Doctrine

This Court defined the exigent circumstances doctrine in its seminal case, *Michigan v. Tyler*, 436 U.S. 499 (1978). In *Tyler*, public officials made three significant warrantless entries into a furniture store: (1) a first entry to fight a fire; (2) a second entry four hours after the fire was extinguished to determine the fire's origin; and (3) a third entry weeks after the fire to take photos. *Id.* at 501-03.

In finding that the first two warrantless entries were Constitutional, the *Tyler* Court held that "[o]ur decisions have recognized that a warrantless entry by criminal law enforcement officials may be legal when there is compelling need for official action and no time to secure a warrant." *Id.* at 509. The *Tyler* Court then held that "[a] burning building clearly

presents an exigency of sufficient proportions to render a warrantless entry 'reasonable.'" *Id*. at 509. Moreover, the Court concluded that "officials need no warrant to remain in a building for a reasonable time to investigate the cause of a blaze after it has been extinguished." *Id*. at 510. Therefore, because the second entry was "no more than an actual continuation of the first," it was Constitutional as well. *Id*. at 511.

Conversely, the third entry weeks after the fire was unconstitutional because it was "clearly detached from the initial exigency and warrantless entry." *Id*. According to the *Tyler* Court, at that point, additional entries could only be made (1) "pursuant to the warrant procedures governing administrative searches;" or (2) pursuant to a search warrant "upon a traditional showing of probable cause applicable to searches for evidence of crime." *Id*.

Since *Tyler*, this Court has recognized other situations in which this exigent circumstances doctrine allows for warrantless home entries due to the "'compelling need for official action and no time to secure a warrant.'" *Missouri v. McNeely*, 569 U.S. 141, 149 (2013) (*quoting Tyler*, 436 U.S. at 509). These situations include the hot pursuit of a fleeing suspect, *see United States v. Santana*, 427 U.S. 38, 42-43 (1976), and preventing the imminent destruction of evidence, *see Kentucky v. King*, 563 U.S. 452, 470 (2011).

II. The Scope of the Emergency Aid Doctrine

This Court recognized the emergency aid doctrine in *Brigham City, Utah v. Stuart*, 547 U.S. 398 (2006). In *Stuart*, police officers responded to a call regarding loud music at a residence and, through a screen door and windows, saw four adults trying to restrain a juvenile. *Id.* at 400-01. The juvenile then broke free and punched one of the adults, who subsequently spit blood into a sink. *Id.* at 401. The officers then entered the residence. *Id.* In finding the entry was Constitutional under the emergency aid doctrine, the *Stuart* Court held that "law enforcement officers may enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury." *Id.* at 403.

In *Michigan v. Fisher*, 558 U.S. 45 (2009), this Court subsequently clarified the emergency aid doctrine. In *Fisher*, police officers responding to a complaint of a disturbance were directed by a couple "to a residence where a man was 'going crazy.'" *Id.* at 45. Upon arrival at the house, the officers saw "a pickup truck in the driveway with its front smashed, damaged fenceposts along the side of the property, and three broken house windows, the glass still on the ground outside." *Id.* at 45-46. They also saw blood on one of the doors of the house as well as blood on the hood of the pickup truck and on clothes inside of it. *Id.* at 46. The back door to the house was locked, and the officers could see a couch blocking the front door. *Id.* They could also see Jeremy Fisher screaming and throwing things inside the house. *Id.* When the officers knocked on the front door, Fisher

refused to answer. *Id.* The officers could see that Fisher had a cut on his hand and "asked him whether he needed medical attention." *Id.* When Fisher ignored this question and profanely told the officers to get a search warrant, the officers entered the house. *Id.*

In finding that the entry was Constitutional under the emergency aid doctrine, the *Fisher* Court disagreed with the Court of Appeals of Michigan. *Id.* at 48. The Court of Appeals had held that the emergency aid doctrine did not apply because "[a]lthough there was evidence that there was an injured person on the premises, the mere drops of blood did not signal a likely serious, life-threatening injury." *People v. Fisher*, No. 276439, 2008 WL 786515, at *2 (Mich. App., March 25, 2008) Moreover, the Court of Appeals observed that the cut on Fisher's hand "likely explained the trail of blood" and that Fisher "was very much on his feet and apparently able to see to his own needs." *Id.*

The *Fisher* Court, however, found that "[e]ven a casual review of *Brigham City* reveals the flaw in this reasoning." *Fisher*, 558 U.S. at 49. According to the Court, "[o]fficers do not need ironclad proof of 'a likely serious, life-threatening' injury to invoke the emergency aid exception." *Id.* As support, the *Fisher* Court noted that "[t]he only injury police could confirm in *Brigham City* was the bloody lip they saw the juvenile inflict upon the adult." *Id.* Moreover, the Court rejected Fisher's argument that the officers lacked a subjective belief that he needed assistance because they did not summon emergency medical personnel. *Id.* Instead, the *Fisher* Court found that the test was "whether there was 'an objectively reasonable basis for believing' that medical

assistance was needed, or persons were in danger." *Id*.

Fisher helps to explain cases in which the emergency aid doctrine applies but the traditional exigent circumstances framework might not. This Court has held that the exigent circumstances doctrine allows for warrantless home entries due to the "'compelling need for official action and no time to secure a warrant.'" *McNeely*, 569 U.S. at 149 (2013) (*quoting Tyler*, 436 U.S. at 509). Meanwhile, for the emergency aid doctrine to apply, public officials need "'an objectively reasonable basis for believing' that medical assistance was needed, or persons were in danger." *Fisher*, 558 U.S. at 49.

In *Fisher*, despite Fisher telling the officers to return with a warrant, it is questionable whether those officers had probable cause to obtain either a search or arrest warrant. But, unlike the exigent circumstances doctrine as a whole, the emergency aid doctrine – a subset thereof – is not premised on expediting an entry rather than waiting to secure a warrant. Instead, because there was an objectively reasonable basis for believing that Fisher needed medical assistance and/or was in danger, the officers could enter, regardless of whether and when they could secure a warrant. Moreover, as the *Stuart* Court noted, the emergency aid doctrine also allows for warrantless entries "to protect an occupant from imminent injury." *Stuart*, 547 U.S. at 403.

III. The Scope of a Possible Community Caretaking Doctrine for Warrantless Home Entries

This Court recognized the community caretaking doctrine in the automobile context in *Cady v. Dombrowski*, 413 U.S. 433, 441 (1973), holding that a warrant is not required when police officers are reasonably performing "community caretaking functions, totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." While this Court has never explicitly addressed when or if this doctrine applies to warrantless home entries, the preceding descriptions of the scope of the exigent circumstances and emergency aid doctrines help bring into focus the question currently before the Court.

Simply put, given the existence of the exigent circumstances and emergency aid doctrines, both of which allow for warrantless home entries, reliance on – and any need for – the community caretaking doctrine as authority for warrantless home entry would apply in only two situations: (1) non-bodily harms such as nuisances; and (2) non-imminent threats of bodily harm. In any other situation conceivably triggering the community caretaking doctrine, police officers can already rely upon the exigent circumstances doctrine and/or the emergency aid doctrine.

A. Non-Bodily Harms Such as Nuisances

Some courts have applied the community caretaking doctrine to warrantless home entries in cases involving dangers that they acknowledge are not as serious as the threat of bodily harm covered by the emergency aid doctrine or the compelling needs covered by the exigent circumstances doctrine. Many of these cases involve nuisances. For example, in *United States v. Rohrig*, 98 F.3d 1506, 1509 (6th Cir. 1996), police officers made a warrantless entry into a house after receiving a loud noise complaint from a neighbor. The United States Court of Appeals for the Sixth Circuit initially noted that "the 'danger' here, loud music, does not rise to the level of the dangers recognized in prior cases" involving the exigent circumstances and emergency aid doctrines. *Id.* at 1519.

The court then held, though, that "although the Warrant Clause certainly is not irrelevant to the governmental intrusion at issue here, that clause nevertheless is implicated to a lesser degree when police officers act in their roles as 'community caretakers.'" *Id.* at 1523. Specifically, "[b]ecause the...officers were not engaged in the 'often competitive enterprise of ferreting out crime,'...there is less cause for concern that they might have rashly made an improper decision." *Id.* The court also found it untenable "to insist that, despite their community caretaking role, the officers must have established 'probable cause,' as that term is used in the context of criminal investigations, before they could enter Defendant's home." *Id.* Therefore, having found that the officers' home entry was motivated by a

community caretaking interest, the Sixth Circuit found "that their failure to obtain a warrant does not render that entry unlawful." *Id*.

Other courts similarly have applied the community caretaking doctrine to warrantless home entries based on noise complaints while acknowledging the lesser risk of harm in such cases. *See, e.g., Olson v. State*, 56 A.3d 576, 606 (Md. App. 2012) (applying the community caretaking exception to a complaint regarding noise that did not endanger the lives of neighbors but instead endangered "the peace and good order of the community"); *Bies v. State*, 251 N.W.2d 461, 471 (Wis. 1977) (applying the community caretaking doctrine to a noise complaint while acknowledging that "[i]t is apparent that the information the officer had could justify little police intrusion upon the privacy of a citizen").

B. Non-Imminent Threats of Bodily Harm

This case involves the second situation in which police officers would need to seek to rely on the community caretaking doctrine to justify a warrantless home entry: to address non-imminent threats of bodily harm. Courts have reached different conclusions on the question of whether the community caretaking doctrine applies in this situation while framing the issue in similar ways.

In *Corrigan v. District of Columbia*, 841 F.3d 1022, 1026 (D.C. Cir. 2016), police officers were dispatched to the defendant's house after being given information about an attempted suicide by a subject who "was possibly armed with a shotgun." Eventually, the defendant voluntarily left his home,

closing and locking the front door behind him. *Id*. at 1027. The defendant surrendered himself into the officers' custody and admitted himself to a Veterans Hospital for PTSD symptoms but did not consent to a search of his home. *Id*. Nevertheless, police officers completed two warrantless entries into his home and seized weapons, including firearms. *Id*. In finding that neither the community caretaking doctrine nor any warrant exception applied, the United States Court of Appeals for the District of Columbia held that there was no objectively reasonable factual basis to believe there was an imminent threat of bodily harm. *Id*. at 1031.

Conversely, other courts have applied the community caretaking doctrine in similar warrantless home entry cases based on non-imminent threats of bodily harm. In *Mora v. City of Gaithersburg*, 519 F.3d 216, 220 (4th Cir. 2008), the defendant made a 911 call, saying he was suicidal and had weapons in his apartment. After officers arrived and drove the defendant to a hospital to see a psychiatrist, there was a warrantless entry into the defendant's apartment and the seizure of firearms. *Id*. In finding this entry justified under the community caretaking doctrine, the United States Court of Appeals for the Fourth Circuit acknowledged that the officers dissipated the emergency by taking the defendant to the hospital. *Id*. at 228. But, despite the lack of an imminent threat of bodily harm, the court still authorized the warrantless entry because, *inter alia*, the police had no way of knowing whether the defendant "might return to the apartment more quickly than expected and carry out some desperate plan." *Id*.

Similarly in *Rodriguez v. City of San Jose*, 930 F.3d 1123, 1127 (9th Cir. 2019), the defendant mentioned "'[s]hooting up schools' and that he had a 'gun safe full of guns'" during a welfare check. After officers detained the defendant and placed him in an ambulance to travel to a hospital for a psychological evaluation, there was a warrantless entry into his house, uncovering firearms. *Id*. at 1128. The United States Court of Appeals for the Ninth Circuit applied the community caretaking doctrine despite the lack of an imminent threat of bodily harm because the defendant "might have had access to a firearm in the near future...should he return from the hospital." *Id*. at 1140.

Finally, in the present case, there was a warrantless entry into the defendant's house that uncovered firearms after he was transported to a hospital for psychiatric evaluation. *Caniglia v. Strom*, 953 F.3d 112, 119-20 (1st Cir. 2020). The United States Court of Appeals for the First Circuit applied the community caretaking doctrine, finding an "imminent" or "immediate" threat of bodily harm because the defendant could have accessed the firearms after he returned from the hospital. *Id*. at 131-33. But, the court added two caveats: "First, the terms 'imminent' and 'immediate,' as used throughout this opinion, are not imbued with any definite temporal dimensions." *Id*. 126. Second, the court noted: "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." *Id*. As support for this second caveat, the court cited *Sutterfield* for the proposition that "'[t]he community caretaking

doctrine has a more expansive temporal reach' than the emergency aid exception." *Id.* (*quoting Sutterfield*, 751 F.3d at 561). In other words, while the First Circuit facially stated that the threat in *Caniglia* was imminent and immediate, its caveats make clear that the court was actually addressing a non-imminent threat of future bodily harm.

IV. The Community Caretaking Doctrine Should Not be Extended From Vehicles to Homes

Both the exigent circumstances doctrine and the emergency aid doctrines justify warrantless entries based upon imminent threats. Specifically, the exigent circumstances doctrine allows police officers to address imminent, "emergency conditions" such as fires, fleeing suspects, and the "imminent destruction of evidence" without needing to wait for a warrant. *Welsh*, 466 U.S. at 750. Meanwhile, the emergency aid doctrine allows warrantless entries so that police officers can "render emergency assistance to an injured occupant or to protect an occupant from imminent injury." *Stuart*, 547 U.S. at 403. In *Cady v. Dombrowski*, 413 U.S. 433, 447-48, this Court similarly created the community caretaking doctrine based on "immediate and constitutionally reasonable" concerns about safety that can be connected to vehicles that are not adjacent to dwellings.

Notably, in creating this doctrine, and in distinguishing this Court's opinion in *Coolidge*, this Court effectively explained both why the community caretaking doctrine cannot apply to warrantless home entries in general and the specific entry in this

case. In *Coolidge*, after police officers collected seven firearms from Edward Coolidge's house, they arrested him on suspicion that he had murdered a fourteen year-old girl. *Coolidge*, 403 U.S. at 445-47. Subsequently, pursuant to a search warrant for objects used in the murder, the officers impounded Coolidge's car that was parked in his driveway and searched it, finding particles of gun powder. *Id*. at 447-48.

But, because the warrant was not issued by a neutral and detached magistrate, this Court had to decide whether the search was Constitutional despite the lack of a lawful warrant. *Id*. at 449-53. The *Coolidge* Court then found that the search was unconstitutional because, *inter alia*, the car "was regularly parked in the driveway of [Coolidge's] house" and there was "no suggestion that, on the night in question, the car was being used for any illegal purpose." *Id*. at 460.

Subsequently in *Cady*, 413 U.S. at 446-47, this Court explicitly distinguished *Coolidge* to create the community caretaking doctrine. In *Cady*, police officers towed a Ford Thunderbird that was disabled in a car accident, and a warrantless search of the vehicle uncovered bloodied items. *Id*. at 436-38. In creating the community caretaking doctrine, the *Cady* Court distinguished *Coolidge* because "[t]he Thunderbird was not parked adjacent to the dwelling place of the owner as in *Coolidge*..., nor simply momentarily unoccupied on a street." *Id*. at 446-47. Rather, because the Thunderbird was "was neither in the custody nor on the premises of its owner," there was an "immediate and constitutionally reasonable...concern for the safety of the general public who might be endangered if an

intruder removed a revolver from the trunk of the vehicle." *Id*. at 447-48.

The *Cady* Court therefore found that a car in a public space can present imminent threats that a car in a driveway cannot. The lack of a similar imminent threat in a car parked in a defendant's driveway thus explains why the search of the car in *Coolidge* was unconstitutional. Moreover, this absence of an imminent threat would explain why courts have found that warrantless searches of cars parked in driveways are not covered by the community caretaking doctrine. *See, e.g., State v. Gonzales*, 236 P.3d 834, 838-41 (Or. App. 2010) (citing *Coolidge* to find that the community caretaking doctrine did not apply to a vehicle parked in the defendant's driveway); *see also Miranda v. City of Cornelius*, 429 F.3d 858, 864 (9th Cir. 2005) ("But no such public safety concern is implicated by the facts of this case involving a vehicle parked in the driveway of an owner who has a valid license."); *Gombert v. Lynch*, 541 F.Supp.2d 492, 500 (D. Conn. 2008) (finding the warrantless search of the defendant's car parked in his driveway was unconstitutional because the court could "find no law...to support the proposition that, under the banner of 'community caretaking,' the police can search and seize items from a vehicle that was not itself already under police custody or control via the police's community caretaking function").

Given that in *Cady* this Court acknowledged its prior recognition that a person's privacy interest is less substantial in her vehicle than in her home, *see Cady*, 413 U.S. at 447, there is even less justification for applying the community caretaking doctrine to warrantless home searches than there is for applying it to vehicles parked next to homes. In the

words of the *Coolidge* Court, the dangers that the community caretaking doctrine would cover in connection with warrantless home searches are not imperative enough to add it to the "jealously and carefully drawn" exceptions to the warrant requirement. *Coolidge*, 403 U.S. at 455.

Finally, there are strong public policy reasons to avoid extending the community caretaking doctrine to warrantless home entries. Courts have recognized the heightened risk that police officers might use the community caretaking doctrine as pretext or subterfuge to search vehicles for contraband or other illegal activity. *See, e.g., State v. Rinehart*, 617 N.W.2d 842, 844 (S.D. 2000) (*quoting Commonwealth v. Waters*, 456 S.E.2d 527, 530 (Va. App. 1995) ("We recognize that '[t]he 'community caretaking' exception should be cautiously and narrowly applied in order to minimize the risk that it will be abused or used as a pretext for conducting an investigatory search for criminal evidence.'"); *State v. Maddox*, 54 P.3d 464, 469 (Idaho App. 2002) ("Allowing officers to conduct community caretaking stops whenever they anticipate that a citizen might be about to embark upon an unwise venture would present far too great an opportunity for pretextual stops and far too great an imposition on the privacy interests of our citizenry to comport with the Fourth Amendment.").

Moreover, courts have begun to realize that this risk intensifies with warrantless home entries. In *People v. Ray*, 981 P.2d 928, 937 (Cal. 1999) (*quoting* 3 LaFave, Search and Seizure (3d ed.1996) § 6.6(b), p. 402)), the Supreme Court of California upheld application of the community caretaking doctrine to a warrantless home entry to check the well-being of

the homeowner while acknowledging that "'courts must be especially vigilant in guarding against subterfuge, that is, a false reliance upon the [personal safety or] property protection rationale when the real purpose was to seek out evidence of crime.'" Subsequently, twenty years later, the same court found that this risk of subterfuge was too great and thus concluded that "the community caretaking exception asserted in the absence of exigency is not one of the carefully delineated exceptions to the residential warrant requirement." *People v. Oviedo*, 446 P.3d 262, 271-76 (Cal. 2019).

Indeed, in terms of the two types of situations identified in this brief, there should be concern that "a police officer may use the false pretext of a community caretaking 'welfare check' or loud music as pretexts for investigation of suspected drug trafficking or possession of illegal firearms." Mark Goreczny, Note, *Taking Care While Doing Right by the Fourth Amendment: A Pragmatic Approach to the Community Caretaker Exception*, 14 Cardozo Pub. L. Pol'y & Ethics J. 229, 253-54 (2015).

Furthermore, an expansion of the community caretaking doctrine would create incentives for law enforcement to use it to engage in warrantless, purportedly non-criminal searches and seizures that were simply stalking horses for criminal investigations that lacked probable cause. Consequently, if the community caretaking doctrine is extended to warrantless home entries, the "public perception of the police may shift dramatically from expecting them to engage in genuine community caretaking activities, to suspicion of police as using community caretaking as a pretext to investigate crimes." *Id*. at 254.

CONCLUSION

The judgment of the court of appeals should be reversed.

COLIN MILLER
Associate Dean for Faculty Development
University of South Carolina Law School
Mille933@law.sc.edu

JOSHUA L. DRATEL
Co-Chair, *Amicus Committee*
NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS
DRATEL & LEWIS
29 Broadway, Suite 1412
New York, N.Y. 10006
(212) 732-0707
jdratel@dratellewis.com
(*Counsel of Record*)

MATTHEW S. DAWSON
President
RHODE ISLAND ASSOCIATION OF CRIMINAL LAWYERS
Lynch & Pine, Attorneys at Law
One Park Row, Fifth Floor
Providence, Rhode Island 02903
(401) 274-3306
mdawson@lynchpine.com